

COUNCIL OF LEGAL EDUCATION



**EXAMINATION FOR ADMISSION
TO THE ROLL OF ADVOCATES**

ATP 102: PROBATE & ADMINISTRATION

TUESDAY 18th OCTOBER, 2022

DURATION: 3 HOURS.

Instructions to Candidates:

- (a) This paper contains Seven (7) printed pages including the cover page, with a total of Six questions.
- (b) Candidates **MUST** answer FIVE (5) questions.
- (c) Question ONE is compulsory and carries 20 marks.
- (d) All other questions carry 10 marks each.
- (e) Answers **MUST** be supported by relevant case law and statutory provisions where required.

PLEASE TURN OVER

QUESTION ONE

Mr. Wesley, a Senior Counsel and an astute business man owned properties which included large tracts of land and houses in various parts of Kenya. He also owned a house in Bond street, London UK which he frequently used as his holiday home. He had 3 wives and 11 children. At the age of 75 years, he started a relationship with Maggie, a marketing executive he met at a business meeting. The relationship thrived and two years down the line, Maggie conceived. She informed Mr. Wesley who was so elated and told her that he would marry her. He then began making plans for the traditional wedding ceremony but before the same could materialize, he suffered a head injury while playing golf and was rushed to hospital while unconscious. He remained in a coma for two weeks and when he came out of the coma, he could not remember much. His first wife Rebecca was in his room when he gained consciousness but he could not remember her at all. His children would visit but he could not remember them except for a few lucid moments where he would recall some people. The doctors said it was dementia and that his mental state was not so stable. The doctors indicated he would need surgery to remove a clot in his head. After a month in hospital, his first wife Rebecca visited him with her lawyer Mr. Van Vicker who was also a senior counsel and asked him to make a will. He mumbled a few words in annoyance and Mr. Van Vicker (SC) wrote the following words;

"I bequeath all my earthly possessions to Rebecca my first wife who shall have the discretion to share out my estate with my other dependents. I appoint Rebecca and Van Vicker (SC) to be the executors of my will." Dated 13th September 2020.

Van Vicker and Rebecca signed the document and asked Mr. Wesley to sign but he was not in his lucid moments and was unable to sign.

Maggie gave birth two months later and she visited Mr. Wesley with the new born baby boy. He was so excited and the doctors were happy that his excitement triggered his memory and he even named the new born baby - Wesley junior. Maggie visited every other day. Three days before his scheduled surgery, one bright Sunday afternoon, Mr. Wesley asked for his doctor - Benjamin and his best friend and confidant - Ashton Jones. He also asked for the nurse on duty and he told Dr. Benjamin to write down the following;

"Maggie has given me so much joy in my old age. In case I die I have given Maggie house number 154 Bond Street London as a gift. I shall immediately instruct my London lawyers to effect the transfer immediately. I am proud of my last born son Wesley junior who is just an infant. All my other children are adults. To

avoid him missing out on my estate, I give and bequeath my 10 acre ranch in sweet waters to Wesley junior which shall be held in trust for him by my confidant - Ashton Jones. The rest of my earthly assets and possessions shall devolve to my 3 wives in equal shares who shall have a life interest on the same after which the same shall devolve to their children. I appoint Ashton Jones and Dr. Benjamin as joint executors of my will." Dated this 10th day of December 2020.

Mr. Wesley appended his signature. Ashton Jones, Dr. Benjamin, Maggie and nurse on duty all signed the document as witnesses. Mr. Wesley then made a call to his London lawyers and instructed them to effect the transfer of the bond street house to Maggie. He further told them that Maggie would contact them directly to give them her details. A week later, Maggie received the transfer deed from London and visited Wesley in hospital so as to get him to sign it. He was not able to sign on her first two visits as he was not in a proper state of mind after surgery, but he eventually signed on her third visit and told her the bond street property would belong to her if he died. Maggie executed her part and later sent the transfer deed and all documents to the London lawyers. Mr. Wesley (SC) died two weeks later after suffering a blood clot in the lungs. After his burial, Ashton Jones called a family gathering and read out the contents of the Will dated 10th December 2020. Rebecca was not pleased as she believed being the first wife, she was entitled to a larger share. She thus informed the gathering that the deceased had already made an oral will dated 13th September 2020 which came before the will of December.

- a) In light of the narrative and with the help of case law and relevant statutory provisions, discuss the validity or otherwise of the Will dated 13th September 2020 in relation to the will dated 10th December 2020. (8 marks)
- b) Ashton Jones has decided to petition for grant. He has approached you. Name 2 main pleadings to be filed in court. (2 marks)
- c) The 3rd wife, Maryanne, decided to disregard both wills and sought legal help. She has insisted that the deceased died intestate and his property should be divided equally among his three households. It is her case that Maggie should not own the Bond street, London property as she was not known in the family and that she was a gold digger not worth any asset from the deceased and that the bond street property should revert back to the deceased's estate. Maggie has approached you for legal advice. With the help of case law and statutory provisions, evaluate Maggie's claim as regards the Bond street London property. (6 marks)

- d) Assume that both wills were nullified and the court has directed for the matter to proceed as if the deceased died intestate and appointed all three wives as the Administrators. They have refused to consider Wesley junior saying that he is an illegitimate child as his mother was not a wife of the deceased.
- Briefly discuss whether Wesley junior is entitled to a share of the estate of the deceased. (4 marks)

QUESTION TWO

Peter and John were minors aged 13 and 14 years respectively when their parents died in a tragic road accident. Their Aunt, Jennifer, was appointed as the administrator of the estate of their deceased parents and the Court appointed their Uncle, Thomas, to hold the net estate in trust for their benefit until they reach the age of majority.

Unfortunately, after their parent's funeral, the two children were chased away from their parent's palatial home in Eldoret to go and live with their paternal grandparents in Bomet County. Neither Jennifer nor Thomas paid their school fees or for their other needs. The two children dropped out of school and lived in abject poverty on what their aged grandparents could provide. Peter and John, who are now 20 and 21 years respectively have learned from various legal awareness programs held in Bomet that it is possible to get back their late parents estate from their uncle and aunt. They have approached you, an advocate based in Bomet for advice on how they can assert their rights as heirs of their late parents.

- a. Advise them on the duties of Jennifer and Thomas with respect to the estate of the deceased and whether they discharged the duties. (3 marks)
 - b. On further inquiry, Peter and John found out that apart from the home in Eldoret, their parents had retirement savings worth Kshs. 35,000,000, a farm in Bomet measuring 5 acres, rental properties in Eldoret Town which yielded Kshs. 250,000 a month in rental income, and shares in various companies worth Kshs. 5,000,000. Since she was appointed as the administrator, Jennifer has been collecting the rent and dividends from the shares and has been spending it all on her family. Jennifer refused to distribute the property as per the letters of administration and in fact, stopped talking to any family member who raised a concern on how she was handling the estate.
- Using relevant statutory provisions and case law, advise Peter and John on the appropriate steps to take to recover their inheritance. (4 marks)
- c. The siblings feel aggrieved that their education was compromised and their standard of living lowered as a result of the actions of Jennifer and Thomas. They

are wondering if there are any remedies that can accrue personally to their aunt and uncle, advise them. (3 marks)

QUESTION THREE

Mr. Zuri passed away five years ago leaving behind one hundred (100) acres of land in Wakanda County. At the time of his death he was a widower. He was blessed with five children, one boy and four girls. The boy, Diamond was the apple of his father's eye being the only son and first born child of the family. Diamond upon the death of his father Mr. Zuri, successfully petitioned and was granted Letters of Administration to the estate of his late father. He then transferred the said property and had it registered in his name. The process was undertaken secretly without involvement of his siblings but with the blessings of the elders and the clan. The siblings role in the meetings between Diamond and the elders was limited to ensuring that the elders were well fed and comfortable. At one point the siblings were summoned at the meeting and told that the said property will pass to Diamond since they are married their husbands should give them land and that Diamond should be left to do as he wished with the property.

Diamond has now passed away in a boating accident in Wakanda County Lake. His wife Mrs. Diamond has commenced succession proceedings in respect of her late husband which relates to the one hundred (100) acres of land in Wakanda County.

The siblings of Diamond have approached you an Advocate for legal advice on this matter.

- (a) Discuss having regard to relevant statutes and case law, whether the siblings of Diamond are entitled to inherit the estate of their late father Zuri. (3 marks)
- (b) Advise the siblings on the specific steps and legal processes to be taken to pursue their rights to their father's estate, if any. (3 marks)
- (c) State any 4 grounds upon which (b) above, would be premised. (4 marks)

QUESTION FOUR

- a) Ali died intestate leaving behind two sons, one daughter and grandson, Omari. Upon his death, one of his grandson's Omari petitioned for letters of administration of estate of his grandfather Ali as he was eyeing a ten acres prime land in Mariakani left by his grandfather. Upon filing the said petition, Omari started bragging to the friends that he is now a millionaire owner of the prime land and he even put it up for sale after gazettment of the Petition. His aunty - Saumu who is the deceased's daughter, learnt of the petition by Omari and she

informed her two brothers -Rajab and Safari. Saumu, Rajab and Safari have sought your legal services on the way forward.

- i. Identify the application(s) required and outline the procedure to be followed thereof in securing your clients' interests. (5 marks)
- ii. State grounds in support of the application. (1 marks)

b) Mr. Cunningham is a wealthy man who lived in London. For his holidays, Mr. Cunningham visited Kenya for two weeks in February and August every year. To make his stay easier, he bought land and built a home in Naivasha and Malindi in Kenya. He hired Stanley to take care of his homes by keeping them cleaning and gardening. Stanley also served as his cook and guide when he came for his holidays. He also hired Stability Property Consultants to rent out the homes to tourists when he was not in Kenya.

Mr. Cunningham died in September 2021 from respiratory complications arising from COVID - 19. He was survived by two daughters who had never visited Kenya and had no interest in the property in Kenya. Mr. Cunningham left a will that was subjected to probate in London in the United Kingdom. In that will, he bequeathed the two properties to Stanley.

Stanley was contacted through his local chief and put in contact with a Mr. Robinson, the solicitor handling the distribution of Mr. Cunningham's estate. He was informed of the passing of his boss and the wishes expressed in his will. He was instructed to come to your chambers to receive further advice on how to obtain his inheritance.

Advise Stanley on how he will obtain his inheritance. (4 marks)

QUESTION FIVE

- a. Major Austin was urgently sent on a UN Peacekeeping mission in The Republic of Wakanda. Just before leaving, he told his fiancée - Alison, in the presence of his brother and cousin; "if I die in war, all my earthly possessions shall belong to you, Alison."

Major Austin served his time in war and returned back after one year. Two weeks after returning, he was involved in a serious road accident and died. Alison is desirous of taking out probate based on the oral will of the deceased and has approached you for advice.

In light of the narrative, interrogate the will by major Austin and whether it is still valid. (5 marks)

- b. Amber made a will, one day, she got into a fight with one of the beneficiaries and tore the will into four pieces. A day later after calming down, she put the pieces together using cello tape.

In light of the above would you consider Amber's will revoked or not? Explain your answer. (5 marks)

QUESTION SIX

- a) Annemarie died in a fatal road accident. She had various properties and also owned buses in the transport industry. She is survived by a son Rick and a minor daughter - Becky. Her son Rick is faced with the following:
- The rental properties are going to waste as the tenants are not remitting rent to him., the bus workers are not sending the daily income from the buses.
 - The younger sister is bound to be chased away from the international school she attends for lack of school fees
 - He needs to pursue a claim for damages arising out of the road accident.

In light of the narrative, advise Rick on the various types of grant to be petitioned for in respect to the issues he is facing. (6 marks)

- b) Mr. Malimali died testate. In his will he had appointed his sister - Maliwaza to be the executor of his will. He was a widower with three grown up children. Three years down the line, Maliwaza had not taken steps to start the succession process, though she kept saying she would do so and that there was no hurry. She was collecting rent from one of the deceased's properties and she felt that if she took out probate, she would not be able to continue enjoying rental proceeds as the will divided his properties equally among all his children. It is now four years past their father's death and the children are tired of waiting for Maliwaza to apply for grant. They have visited your office for legal advice. Advise the children on what steps are needed so as to compel Maliwaza to take out grant. (4 marks)

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COUNCIL OF LEGAL EDUCATION
EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES

UNIT CODE:

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 SUBJECT/UNIT PROBATE AND ADMINISTRATION

REGISTRATION NUMBER

DATE: 18TH OCTOBER 2022

INSTRUCTIONS TO CANDIDATES

1. Enter the Unit code, Subject of the Examination, Admission Number and Date in the spaces provided. The admission number should be as it appears on the Examination Card.
2. Do not write your name anywhere in this booklet.
3. Attempt each question on a fresh page of the booklet.
4. If an additional booklet is used, it MUST be fastened at the END of this booklet.
5. Insert in the column headed 'Question Number' the numbers of questions answered in the order in which you have attempted them.
6. Kindly ensure your handwriting is LEGIBLE.

| Question Number | Examiner <u>RO</u> | | Moderator <u>FO</u> | | Quality Assurer | |
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Questions ...SIX (6).....

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a) Advise Rick on the various types of Grants to be petitioned.

i) The first grant Rick can apply for in respect of the rental properties going to waste is the grant of Ad Colligenda bona which is provided for under Section 67 of the Law of Succession Act and Rule 36 of the Probate and Administration Rules. This is a type of limited grant as provided for under Section 54 of the Act. It is limited as to purpose.

The grant is issued where the deceased person's estate is being wasted or is of a perishable nature hence the need to preserve the estate. It is limited for the purpose of collecting and preserving the estate of the deceased. In this case, Rick is entitled to petition for this grant for the collection of the rent and the income from the buses and preserve the same.

ii) The second type of grant Rick is entitled to is a Special Limited Grant as provided for in Section 49 of the Act. It is also a limited grant; limited as to purpose.

The consideration in granting issuing this grant is that its purpose is of an urgent nature such that it cannot await the issuance of a full grant.

In Rick's case, the urgency is brought about by Becky's school fees which unless the same is paid for, she will be chased away from school.

This grant is limited to collection of assets and paying of debts.

ii) The third grant Rick is entitled for is the grant of, Grant Ad litem as provided for under the Fifth Schedule of the Act. Likewise, it is a limited grant; limited as to purpose.

The grant is issued where a person intends to institute or defend a suit ~~or~~ for or against the deceased person's estate.

In Rick's case, he is entitled to the grant so as to enable him institute a suit for damages arising out the deceased's (Annamarie) road accident.

b) The situation gives rise to the need of a issuing a Citation to the executor, that is, Maliwaza. The proper citation in this instance would be a Citation to take out probate.

The procedure is provided for under Rule 15 of the Probate and Administration Rules.

The Children should issue a Citation to Maliwaza to take out Probate. They are entitled to do so since Maliwaza is an executor who has intermeddled with the estate.

Upon issuing the Citation, Maliwaza would be required to ^{show cause why she should not} apply for the grant of Probate together with an affidavit stating that she has entered appearance.

Failure by maliwaza to enter appearance, the Children are entitled to apply to Court for an Order on notice to maliwaza to ~~to~~ apply for grant of probate within a specified time.

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Questions Five (5)

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a) Advise Austin on the validity of the oral will.

Section 8 of the Law of Succession Act provides for two forms of wills; oral and written.

Section 9 sheds light on the validity of oral wills. It provides that an oral will is valid if it is made in the presence of two competent witnesses and the testator dies within a period of 3 months from the making of a will. However, the requirement for death to occur within 3 months does not operate in Privileged wills. This refers to wills made by members of the Armed Forces and Merchant Marines while in Active Service.

Active Service is defined in Section 2 of the Act to mean the time between given the command or being deployed and until the conclusion of the mission.

Applying the law to Austin's oral will, the will satisfied all the pre-requisite of a valid oral will subject to it being a Privileged will. However, upon his return, Austin's will ceased to be a Privileged will since Austin was out of Active Service.

Alison is therefore not entitled to apply for a grant of probate based on the oral will. In the absence of any will, Austin died Intestate and the appropriate grant to be applied for subject to the rules of Intestacy is a grant of Letters of Administration Intestate.

(4)

b) Considering Amber's will Revocation.

The power to revoke a will is provided for under Section 17 of the Act which provides that a testator may revoke his/her will provided that he/she has the capacity.

Section 18 and 19 provides for the ways of revoking a will.

The applicable provision in Amber's case would be Section 18 which provides for Revocation by Actual destruction of the will with the intention to revoke the will.

For this Revocation to be effective, ~~two~~^{three} conditions must be satisfied

- i) Actual destruction of the will
- ii) Intention to revoke the will
- iii) Capacity to revoke the will.

The requirement of Actual destruction was well explained in the case of Cheesejoy v Lord. In Amber's case, the act of tearing the will into four pieces amounted to actual destruction under Section 18.

With regards to intention, in the case of Gill v Gill the court held that destruction of a will induced by rage does not amount to intention. Additionally, Amber's act of putting the torn pieces is an indication that she did not have the intention of revoking the will.

Capacity to revoke a will was explained in Re Aynsley where the court held that the act of an old and confused lady to tear her will into 40 pieces did not amount to Revocation. In conclusion, Amber's will is still valid.

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Questions ONE (1)

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6) a) Discuss the validity or otherwise of the two wills.

b) The will dated 13th September 2020

Validity of wills is inspected in two ways; Capacity to make a will and the form of the will.

Section 5 of the Law of Succession in providing for Testamentary freedom provides that the same is subject to the capacity of the testator. Capacity is twofold; Age and Mental Capacity.

From the facts, it is evident that Mr. Waskey is of age hence can make a will. With regards to Mental Capacity, there are several considerations to be taken. A testator's lack of mental capacity does not necessarily invalidate the will. This is because a will made before such incapacity or during moments of lucidity is still valid as was discussed in *Vijay Ragh Chandrasekhar - v - The Public Trustee*.

The test for mental capacity is provided for in the case of *Banks - v - Goodfellow* which provides that a will is valid where the testator has a sound understanding of the nature of making a will, a sound recollection of all his/her property and an understanding of the people to whom he/she is morally obligated to provide for. Insane delusions also vitiate the testator's mental capacity as was illustrated in the case of *Vaghella - v - Vaghella* although the same is not evidenced in the given facts.

Another important aspect of validity of wills is that of knowledge and approval of the contents of the will

as was discussed in the case of John Githunji -v- Githwa Kiarie

Section 7 of the Law of Succession Act invalidates any will which is made as a result of undue influence, coercion, fraud or importunity.

With regards to the formal validity of wills, the Act provides for two forms of wills; oral wills and written wills. These will be discussed further when addressing the individual wills.

Having discussed the general validity of wills, I will now direct myself to the two wills to examine their validity in light of the above discussion.

1.) The will dated 13th September 2020

Rebecca alleges that Mr Wesley made an oral will dated 13th September 2020

With regards to capacity to make a will, Mr Wesley satisfies the requirement of full age.

However, it is evident that Mr Wesley had an impaired mental capacity at the time of the making of the will. This is because the will was made while he was suffering from dementia and was additionally not in a lucid moment.

Knowledge and approval of the will is also impaired. This is as a result of undue influence and importunity from Rebecca and Mr Vicko.

Undue influence was explained in the case of Murathi -v- Murathi and another. The will is therefore void by dint of Section 7 of the Act.

With regards to the formal validity of the oral will,

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Questions ... ONE (1) ...

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the requirements are set out in Section 9 of the Act. That is, the requirement of two competent witnesses and that the ~~testator~~ Testator dies within 3 months. Section 13 further provides that a will is invalid where a witness is a beneficiary of a will unless ~~two~~ two additional independent witnesses are present. This therefore invalidates the oral will which was witnessed by Rebecca and Van Vicker.

It is also noteworthy that where an oral will conflicts with a written will, the written will shall prevail in accordance with the Act.

In conclusion, the will dated 13th December 2020 is invalid.

(ii) The will dated 10th December 2020

With regards to mental capacity, the will is valid since the testator was in a lucid moment and additionally satisfies the test for mental capacity in *Banks - v - Goodfellow*.

Formal validity of written wills are provided for under Section 11 of the Act which provides that the will should

i) be executed by the testator

ii) be attested by two independent competent witnesses.

The issue of formal validity of will was well explained in the case of *Re Estate of GKK*.

Applying the law to the facts, the will dated 10th December 2020 is valid. This is because Mr Wasley had the requisite mental capacity and further fulfilled the requirement in Section 11

(7)

b) Advise Jones on the pleading his required petition.

② The required application petition in the scenario is a Grant of Probate. Jones would file;

- i) A petition for application for the grant of probate in Form 78 annexing the original written will and the death Certificate.
- ii) The application is to be supported by an Affidavit in the prescribed form.

c) Evaluate Maggie's claim as regards the Bond Street London Property.

③ The London property forms the subject of a gift in contemplation of death. The import of this would be that it does not form part of the deceased's estate. The condition for a gift to constitute a gift in contemplation of death (donation mortis causa) is provided for under Section 31 of the Act and in the case of *Cain - v - Moon*.

Section 31 provides that a gift passes as a gift in contemplation of death even where the transfer process has not been completed if the following conditions are satisfied;

1. The gift is made while contemplating death as a result of a present or imminent danger.
2. The subject matter of the gift is a movable property.
3. There is delivery of the property or the

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means of possession of the property.

4. The gift is made in a manner that it is intended to revert back to the owner in case he/she survives
5. The donor dies without having survived that illness or danger
6. The beneficiary survives the donor

From an analysis of the facts, the London Property satisfies the requirements for a donatio mortis causa hence the same is not the deceased person's free property.

d) Wesley junior is entitled to a share of the estate since he qualified under the definition of a child under section 2 of the Act.

Additionally, the Court in the case of John Mabea - v - Milka Mabea provides that the fact that a child is illegitimate is not a bar to inheriting his father's estate.

Section 29 provides that the children of the deceased (biological children) are entitled to the dependants of the deceased without proving dependency. This section does not provide for legitimacy of a child to be a factor in determining whether an illegitimate child is a dependent.

13/20

17

a) Advise Peter and John on the duties of Jennifer and Thomas with respect to the estate.

In the present scenario, Jennifer is the appointed administrator (personal representative) of the deceased estate while Thomas is the trustee of the Continuing trust created under section 41 of the Act. Notably, the Continuing trust should continue until the children become of full age or in the case of a female child, marries at an age below 18.

With regards to the personal representative, Section 79 of the Act provides that upon being appointed as a personal representative, all the deceased's free property vests on such a personal representative.

The Duties of a Personal representative is provided for under section 83 of the Law of Succession Act which provides as follows:-

- i) duty to pay for ~~the~~ a reasonable funeral expense out of the estate
- ii) duty to collect the deceased person's estate
- iii) duty to pay for the expenses of obtaining the grant of representation and other expenses of administration.
- iv) duty to ascertain the deceased person's debts and pay them.
- v) duty to apply for confirmation of the grant within 6 months from the date of grant.
- vi) duty to produce in court an inventory of all accounts and dealings with the estate.
- vii) duty to distribute the estate to the subject

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Questions Two (2)

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to section 55 of the Act and retain the trust properties.

vii) Duty to complete the administration.

From the facts, it is evident that Jennifer and Thomas have failed to discharge their duties diligently.

b) John and Peter are entitled to make an application for revocation of grant under Section 76 of the Act and Rule 44 of the Probate and Administration Rules. Their ground for revocation would be that the administrator has failed to diligently administer the estate and failed to provide an inventory of account and dealing with the estate as provided for under Section 53.

The procedure is that they should file an application of revocation by way of summons accompanied by an affidavit stating their ground for seeking revocation. The matter will then proceed for directions ex parte where the applicants will be given directions to serve on Jennifer and Thomas and the manner of such service.

Upon the proper service, the Court will issue a notice to Jennifer and Thomas for a hearing to determine the matter.

Peter and John should also make an application to Court for an order that Jennifer and Thomas produce to Court a full and accurate account of the estate and their dealings over the same.

c) Section 95 of the Act imposes Criminal Sanctions against personal representatives who fail to ~~diligently~~ undertake their mandate. On being proved guilty, Such personal representatives are liable to pay fines or imprisonment or both fine and imprisonment. The offences are as follows:-

- i) ~~Fact~~ Recklessly or negligently failing to collect the assets of the deceased or wasting the property
- ii) Failure to produce a full and accurate inventory of all the assets of the deceased and dealings over the same.
- iii) Giving a false inventory & accounts.
- iv) Continuing to administer a deceased person's estate after forming an opinion that the estate is bankrupt.

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Questions Four (4)

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a) Saumu, Rayab and Safari can make an application 1

a) i) Saumu, Rayab and Safari can file an objection for the application of the grant pursuant to Section 67, Rule 7(4) and Rule 17 of the Act and Rules respectively. They should file the objection within a period of 30 days from Gazettement of the application. 1

After filing the objection, the registrar will require them to file an application for cross application and an answer to the Petition within a specified period. 1

Failure to file the above will have the effect of validating Omari's application for grant. However, upon their filing of the cross application and the answer, the matter shall be set down for hearing where the court will make the determination. 2

ii) The first ground would be the suitability of Omari being the administrator considering the rules of Intestacy on who is entitled to apply for grant of ~~the~~ under Section 66. The other ground would be the failure to issue a notice to those in a higher rank of priority to enable them to either consent or renounce their right to apply for grant. 1

b) Section 4 of the law of succession Act provides that in determining the applicable law of succession of Immovable Property, the choice of law would be where the property is situate. In the present scenario, the subject matter of the will is immovable property and is situate in Kenya. The applicable law therefore is that of Kenya.

The process that Stanley would undertake is that he should initiate the process of applying for a grant of probate in London. Upon being issued with the grant, Stanley should produce the grant to the High Court of Kenya for resealing of the grant under Section 77 of the Act and in accordance with the Probate and Administration Rule.

The effect of the resealing is to make the grant executable in Kenya so as to facilitate the transfer of the property to Stanley.

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COUNCIL OF LEGAL EDUCATION
EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES

UNIT CODE:

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 SUBJECT/UNIT CONVEYANCING

REGISTRATION NUMBER:

DATE: 17/10/2022

INSTRUCTIONS TO CANDIDATES

1. Enter the Unit code, Subject of the Examination, Admission Number and Date in the spaces provided. The admission number should be as it appears on the Examination Card.
2. Do not write your name anywhere in this booklet.
3. Attempt each question on a fresh page of the booklet.
4. If an additional booklet is used, it MUST be fastened at the END of this booklet.
5. Insert in the column headed 'Question Number' the numbers of questions answered in the order in which you have attempted them.
6. Kindly ensure your handwriting is LEGIBLE.

| Question Number | Examiner <i>RO</i> | | Moderator <i>FO</i> | | Quality Assurer | |
|--------------------|--------------------|------------|---------------------|-----------|-----------------|----------|
| | Mark | Initials | Mark | Initials | Mark | Initials |
| <i>3</i> | <i>00</i> | <i>VMN</i> | <i>00 -</i> | | | |
| <i>4</i> | <i>1</i> | <i>RO</i> | <i>00 -</i> | | | |
| <i>5</i> | <i>1</i> | <i>RO</i> | <i>01 -</i> | | | |
| <i>6</i> | <i>1</i> | <i>RO</i> | <i>00 -</i> | | | |
| <i>not done</i> | <i>00</i> | <i>VMN</i> | <i>←</i> | | | |
| | | | | | | |
| | | | | | | |
| TOTAL MARKS | <i>3</i> | <i>VMN</i> | <i>01 -</i> | <i>FO</i> | | |

Write on both sides of the paper

Questions 39

Do not write
either margin

The law of succession act define the word siblings. The scenario that is being explained is that of an old man who does not acknowledge that having a will is not only a need but a must. Looking at our previous years and according to Plato, having a will is of essence not only to you but your generation. According to section 66 of the law of succession Act every family should be treated equally and on the other hand this is not a plan or a vendetta but our law ought to be understood, respected and analysed in front of the general public. The Late Jankara once said for you to have laws that the common man will understand is exposing the citizens to the law.

According to the letter the latter dies intestate. The rule is ~~not~~ that while you are with inheriting something it's not a right.

Section 66 gives the order of priority order of priority but where everything that is owned in the family must be shared according to the eldest.

Do not write in
either margin

Questions 39

Write on both sides of the paper

The doctrine of ~~new~~ that
good non habit, indicates that
that you cannot give what
you don't have.

(B)

Write on both sides of the paper

Questions 35

Do not write
either margin

The law of succession act
 supported with the Kenyan
 constitution.
 Article 65 declares the order
 of priority. Long ago the days
 gone where women could not own
 land. If you look at our
 constitution 2010, it understands
 and supports equality. Diamond
 should understand the doctrine
 of nemo dat quod non habet
 and also understand the law. The law
 is very clear from freedom and
 the and right to own property
 gender discrimination is a violation of
 human rights. According to
 Amund & Chirumancha, women have
 been exploited to the state that
 they cannot empower themselves. The
 law of succession
 act is clear on how every
 person will get an equally share
 where testate or intate

6

55

Do not write in
either margin

Questions 3c

Write on both sides of the paper

The doctrine of ~~no~~ ^{no} ~~not~~
good non ~~have~~ ^{have} states that you
cannot have what you don't
own. According to the law
of succession act, once you die
intestate, the order of priority will
follow as it is stated in
section 66 of the ISA
Act.

00
10

00

Write on both sides of the paper

Questions 19

Do not write
either marginSection
6(4)

The doctrine of caveat emptor declares that a buyer must always be ware. On the other hand the doctrine of nemo dat quod non habet dictates that you cannot give what you don't have. Section 16 clearly indicates the order of priority.

fb the law clearly state the following that you can die or leave the world you testate or intestate. The gist is that they ought to apply for letters of administration.

Do not write in
either margin

Questions

Write on both sides of the paper

4b.
Movable and immovable properties are
a subject to the Law of Succession
act according to section 4. In
movable properties the law used is
the law of the domicile. In
Kenya when it comes to immovable
we follow the law of Kenya.

⑥

①

60

Write on both sides of the paper

Questions

Do not write in
either margin

The law of succession of
defines the meaning of Active
Service. It says that active
service begins the time that
you have been given instruction
you may ~~be~~ be in uniform
but you are not in active
service.

According to the narrative given
this is an oral will which
is ~~not~~ a will that is meant
to expire after 3 months
but the exception is ~~not~~ in
the ~~armed~~ forces.

Do not write in
either margin

Questions ^{sl}

Write on both sides of the paper

The law of succession of
state that once the pieces
have been together and they
can read it amount to a
will. ^{So??}

(B)

(1)

01

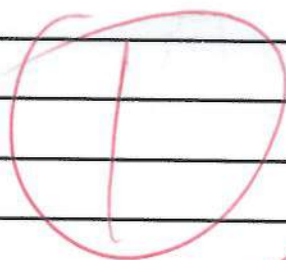
Write on both sides of the paper

Questions 6

Do not write in either margin

60 The letters that ought to be sought are letters of grounds of ~~administrators~~ administration once confirmed the letters are with a grant they will be issued confirm the letter. (8)

61 According to section 66 the order of priority ~~priority~~ matters once someone has been granted has been granted letters to execute a will it they fail one can move to court and execute it. how?? (8)



80