

COUNCIL OF LEGAL EDUCATION



EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES

ATP 102: PROBATE AND ADMINISTRATION

FRIDAY 20TH NOVEMBER, 2015

DURATION: 3 HOURS

Instructions to Candidates

- (a) Candidates **MUST** answer **FOUR** questions
- (b) **Question One is Compulsory**
- (c) **Answer at least one question from section B**
- (d) Question One carries 24 marks
- (e) All other questions carry 12 marks each
- (f) Marks shall be lost for illegibility

PLEASE TURN OVER

4. Mr. Kiptasia died intestate seven months ago, survived by two widows, Naumi and Charity. Naumi had two sons and Charity three daughters. At the time of his death, Kiptasia had amassed a considerable fortune.

The two widows and the eldest son applied for a Grant of Letters of Administration, in order to distribute the estate of the deceased, with no objection from the other members of the family. They agreed as to the distribution of the minor assets which included personal and household effects, cars and animals. However, the problem arose during the division of a 1,000 acre piece of land in Transmingi, Kitale. Naumi and her two sons proposed that they should inherit 700 acres while Charity and her three daughters inherit the rest. Naumi contended that Charity's daughters did not need a lot of land since they would get married and subsequently inherit from their husbands.

Charity found Naumi's proposal to be discriminative and instead proposed that the property be divided equally between the two families. Naumi refused to accept Charity's proposal.

Charity as a result has come to you for legal advice and to give you instructions to take the necessary legal action to ensure that she and her children receive appropriate share of her deceased spouse's estate.

Advise her accordingly.

(12 marks)

5. "Section 3 (5) of the Law of Succession Act has been rendered redundant by Section 6 of the Marriage Act, 2014." *Anonymous*

With the aid of the Law of Succession Act and the Marriage Act as well as case law, critically discuss the above statement.

(12 marks)

6. Mr. Nima, a businessman went to South Sudan to carry out sugar business. His business flourished until December 2014 when the South Sudan rebels started destroying businesses belonging to foreigners. Five months ago his shop was attacked. Before the attack the business people were advised that armed snipers were approaching their area. At this juncture Nima told his shop assistant that if he (Nima) was killed, his uncle Mainani should inherit his property. At about 7.00 p.m. the attackers arrived and Nima was shot dead at close range.

After Nima's burial his uncle Mainani went to court to petition for a Grant of Probate. However, Mr. Nima's father, Mzee challenged the petition claiming that his son had died intestate without a spouse or children, and that he (Mzee) was the rightful applicant. Mzee therefore plans to apply for a Grant of Letters of Administration in order to administer Nima's estate. Nima left several houses in Nairobi which Mzee had been taking care of and collecting rent during his son's absence. Secondly, Nima as his only son used to support him as Mzee's wife had died two months previously.

Mzee has come to you for legal advice. Advise him as to ~~and take~~ the necessary action he should take to protect his interests.

(12 marks)