



THE CATHOLIC UNIVERSITY OF EASTERN AFRICA

A. M. E. C. E. A MAIN EXAMINATION

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MAY – JULY 2018 TRIMESTER

FACULTY OF LAW

EVENING PROGRAMME

CLS 419: LAW OF SUCCESSION

Date: JULY 2018

Duration: 2 Hours

INSTRUCTIONS: Answer Question ONE and ANY OTHER TWO Questions

- Q1. Prof, Jamoko has a well-known clinic, he has recently been dreaming of death and his body being eaten by crocodiles at Awach River. He comes into your offices and asks you to draft for him a will. He has left all of his real estate property in Nairobi, to his mistress Akoth. He leaves his tea farming business, worth Kshs 500,000,000, to go to his brother's sons who shall share it equally. He also states that His two daughters, Queen and Anne, who are married with two children each Nelly and Norah, Tinah and Tamara respectively shall not inherit anything from him since they are already married and their children are also women thus inheriting their parent's property is against Bahenge customary law. The wife Atoti will not have anything as she has no sons and she is old and likely to die anytime. His rental property in Kisii County shall go to his long-term friend, Julia, who has been very supportive in his dark moments. To his faithful cook, Jatedo, he left his pick-up car. To his House-Helper, Awuor, he leaves a valuable rare first edition novel. The proceeds of his current account at Omuom Bank shall be used to prepare a crimation within his compound, and the ashes to be buried facing Mount Motonguria. The lawyer to have all his shares with Madaktari sacco and the clinic business. The remainder of the proceeds shall be given to his beloved pastor who had promised to pray for him to go to heaven. Lastly, He appoints Mr. Odhis, the family accountant who is well versed with his books of account, as the executor of his estate. That he shall come back later on the course of the day with Mr.Odhis and pendo to act as witnesses to his will. Discuss the legal issues arising in the above excerpt and distribute the estate of the deceased as per Law of succession ACT CAP 160 Laws of Kenya.

(30 marks)

Q2. With aid of case law describe the rules on revocation and alteration of wills under the law of succession cap 160 laws of Kenya. **(20 marks)**

Q3. Mrs Atwech is a wealthy business-woman who owns several pieces of land and rental houses. She had never gotten married and the uncles have been engaging her in legal battles wanting the court to find that her father's property should be given to them. She however seems to appreciate her constitutional rights and she has put up a well spirited fight in court. Recently, after one of those serious court sessions she received an sms warning her of dire consequences if she does not drop the case the message read 'if you do not get married soon and drop all the property cases in court you will follow your parents to the grave'. Last evening on her way from work, she noticed a tinted car trailing her at a safe distance behind. She drove straight to her younger sister Kalando's home; she explained the recent developments of the case. She then gave her car log book to Kalando and wrote a cheque of Kshs1,500,000, which she gave to her saying, 'Have these, I have no use for them any longer.' she promised to send a messenger with all the land title deeds. Mrs Atwech full of anxiety then stood up drove towards her home. Before reaching her home, she was involved in a grisly accident and died on the spot.

Advice Madam Kalando on the ownership and the rights to the property mentioned above. **(20 marks)**

Q4. Write explanatory notes on the following law of succession concepts:

- a) Intermeddling with property of a deceased person **(6marks)**
- b) Dependants **(6 marks)**
- c) Cohabitee **(4marks)**
- d) Oral wills **(4marks)**

Q5. Mrs Molly a wealthy lady and strong supporter of the Gikundo culture that one should never think of death died intestate. She was survived by her husband, Mr. Ogoch and three daughters, Zawadi 10 years, Baraka 12 year old and Amani 14 years all school-going. Her estate comprising of tea plantation, that is picked on daily basis, two matatus plying long- mjini fetching daily collections and real estate at mjini estate all estimated to be worth roughly Kshs100 million. Discuss the persons entitled to take out a grant of representation and the types of grants required to be taken out before distribution of her estate can be effected. **(20 marks)**

END