



THE CATHOLIC UNIVERSITY OF EASTERN AFRICA

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

AUGUST – DECEMBER 2018 TRIMESTER

FACULTY OF LAW

REGULAR PROGRAMME

CLS 419 / 224: LAW OF SUCCESSION

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Date: DECEMBER 2018

Duration: 2 Hours

INSTRUCTIONS: Answer Question ONE and ANY OTHER TWO Questions

Q1. Mr. and Mrs. Patrick met and fell in love in 1979 while at the university. They took their vows before the local District Commissioner and obtained a marriage certificate in 1981. In 1990, Mr. Patrick drafted a will in which he left all his property to Mrs. Patrick. After several attempts to have children, it was discovered that Mrs. Patrick had an incurable disease which rendered her unable to conceive children. This terrible development caused tension between the couple and resulted in a separation in 1996.

In 2000, Mr. Patrick met one Zuhura who already had one child, Mali. The two began to live together and got two children, Zawadi and Tabia. In 2003, Mr. Patrick and Zuhura had a bitter disagreement after which the two parted ways. Mr. Patrick decided to move back to his rural home and concentrate on his farming business. In 2017, he met Zaria, a local wealthy business woman with whom he entered into a marriage covenant under Islamic Law. With Zaria, Mr. Patrick was blessed with one child, Maringo.

In January 2018, Mr. Patrick came to your office and instructed you to draft him a will. He distributed his property as follows. To Zawadi and Tabia, he left the proceeds of his bank account; to Zaria he left his two mango farms in his rural home; to his trusted driver, he left behind his new car and to Tausi, his best friend, he left behind his rental property in the city. Mr. Patrick appoints you as his executor and states that he shall come back with Maringo and Zaria, who will witness his will. He comes back that afternoon and reads the document. While doing so, Zaria is in the next room attending to Maringo who is constantly crying.

Mr. Patrick affixes his signature on the document. Five minutes later, Zaria comes in and affixes her mark, after which Maringo's thumb print is fixed on the document.

Last week, Mr. Patrick was involved in a grisly road accident in which he died on the spot. Zaria comes to your office carrying a document which appears to have been torn up. She says she found the document in Mr. Patrick's safe three days after his death. Upon close inspection of the document, you realise that this is Mr. Patrick's will. Parts of the will appear to have been scratched out and Mr. Patrick's signature has been scored out. The words "all these are revoked" can be seen at the back of the document.

a) Discuss the manner in which Mr. Patrick's property shall be distributed. **(20 marks)**

b) Discuss the provisions of Section 3(5) of the Law of Succession Act Cap 161 in relation to the scenario above. **(10 marks)**

Q2. Mariam and Tim, the children of Mr. and Mrs. Mapesa come to your office seeking legal advice. Their parents were involved in a grisly road accident a month ago after which the couple and the driver instantly lost their lives. Their vehicle, a Mercedes Benz, registration number KCS 898A, was completely damaged and declared a write off. The two children come carrying their mother, Mrs. Mapesa's will. In the will are the following clauses:

1. To my beloved son Tim, I leave behind 10 million Kenya shillings.
2. To my daughter Mariam, I leave behind my, Mercedes Benz, registration number KCS 898A.
3. To my driver Patrick, I leave behind 500,000 Kenya shillings.

Tim is claiming that he requires provision from his mother's estate to cater for his school fees. In the meantime, Hasara, Mrs. Mapesa's brother is in possession of his sister's death certificate and claims that he is entitled to the proceeds of his sister's bank account.

Discuss:

- a) The validity of the gifts mentioned above **(15 marks)**
b) The validity of Hasara's claim to the property **(5 marks)**

Q3. Akili Mingi, a newly qualified doctor, was deployed to Marini, a small town in the middle of the country. A number of cases of the deadly ebola virus had been reported in the area. Akili Mingi has been working at the local hospital for two months. Last week, while performing his usual rounds at the hospital, he began

to feel unwell and it appeared that he exhibit signs and symptoms of the dreaded virus. Immediately, the hospital placed him in isolation as tests were conducted. Nancy, the nurse on duty and a close friend o, was instructed to keep checking on Akili Mingi. During one of the check ups, Akili gave his car keys, debit cards and gold watch to Nancy saying, "I have no use for these any longer". He then promised to have the title deed of his one acre piece of land in the capital city delivered to Nancy as soon as possible.

Later that night, Akili Nyingi was informed that he was suffering from malaria and not ebola. He was later discharged. The next morning, he called his advocate and instructed him to draft him a will, leaving all his property to his mother, Halima. Yesterday morning as he walked to work, Akili Nyingi was hit by a speeding truck which was attempting to overtake a small car, and died on the spot.

Discuss the validity of the gifts given above. **(20 marks)**

- Q4. "...the question is not, of course, what the testator meant to do when he made his will, but what the written words he uses meant in the particular case - what are the "expressed intentions" of the testator."
- Lord Simon LC in *Perrin v Morgan* [1943] AC 399.

Using examples, discuss the principles followed in construction of wills in regards to:

- a) Ascertaining the subject matter of gifts. **(5 marks)**
 - b) Ascertaining beneficiaries **(5 marks)**
 - c) Class closing rules for:
 - i) Contingent class gifts **(5 marks)**
 - ii) Deferred class gifts **(5 marks)**
- Q5. Mwaura, a 70 year old retired army officer and wealthy business man, married four wives, Anita, Wairimu, Maria and Pendo, in accordance with Rai customary law. With Anita, Mwaura has three children; with Pendo he has one child; with Wairimu two children;and with Maria two children (Kanana and Tina). In 2010, Mwaura was diagnosed with lung cancer, after which his health and strength began to deteriorate and he was constantly in and out of hospital. This took a great toll on his family as hospital bills kept accumulating which meant that they had to dispose of his some of his assets to offset these bills. In 2015, Maria asked Mwaura to distribute the remaining property amongst his children before his impending death. Mwaura flatly refused. This greatly angered Maria and she decided to seek a divorce from Mwaura. The following year, Kanana became pregnant and gave birth to a baby boy, Peter. She, sadly, developed

complications and died shortly after.

In January 2018, Mwaura was once again hospitalised. This time, he was informed he had days to live and thus, he should finalise his affairs. He called his entire family together and distributed his remaining property, amounting to 300 million, amongst his male children. In addition, Mwaura specifically instructed that his four farms in Kitui, Samburu, Malindi and Lodwar should be sold and the proceeds be used for his wives' upkeep. Lastly, he instructed that his daughters should not inherit anything since it was against Rai customary law. Wairimu reduced these instructions into writing. Miraculously, Mwaura's health improved and he was discharged.

In November 2018, Mwaura died peacefully in his sleep. Nderitu, his brother, claims that he is entitled to a tenth of Mwaura's property.

Discuss the manner in which his estate shall be distributed. **(20 marks)**

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