



THE CATHOLIC UNIVERSITY OF EASTERN AFRICA

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MAIN EXAMINATION

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SEPTEMBER –DECEMBER 2021

FACULTY OF LAW

REGULAR PROGRAMME

CLS 224: LAW OF SUCCESSION

Date: DECEMBER 2021

Duration: 2 Hours

INSTRUCTIONS: Answer Question ONE and any TWO Questions

Q1. Mrs. Matoke comes to your law offices and asks you to draft her a will. She states that she wishes to distribute her property amongst her three children – Tom, Mary and Pendo, her former husband – Mr. Matoke, as well as her two servants – Omondi and Kemboi. She first revokes her previous will, in which she had left all her property to Mr. Matoke and distributes her estate as follows. To Tom, she leaves behind her two Volkswagen beetles and her mango farm in Kitui; to Mary, she leaves behind her residential property in Kilifi and three tractors; and to Pendo, who is thirteen years old, she leaves the contents of her savings accounts and three tracts of land in Kiambu. She gives Mr. Matoke her onion farm in Baringo and appoints him as executor of her estate. Lastly, she gives Omondi, her trusted servant, her new Mercedes Benz and to Kemboi, she left her diamond ring.

Mrs. Matoke leaves you to draft the will and states that she shall be back in two days with Kemboi and Pendo as witnesses to her will. Two days later, she comes with Kemboi and Pendo who witness the will. Mrs. Matoke takes the will and keeps it in her safe for safe keeping. A week later, she overhears a conversation between her children, Tom and Mary, who seem to be planning the way they will spend the property they will receive from their mother's estate after her death. Angered by their wasteful ways, she takes her will out of her safe, cancels out the clauses with provisions for Tom and Mary, then tears up the will and throws it in a waste basket. Kemboi, her servant, sees the pieces while cleaning up and puts them in the kitchen drawer for safekeeping.

Yesterday, Tom and Mary came into your office carrying the torn will. They inform you that their mother was involved in a car accident in which she lost her life.

Discuss the legal issues raised above.

(30 marks)

Q2. Lord Atkin in *Perrin v Morgan* [1943] AC 399 stated that ‘the sole object (in construing wills) is to ascertain from the will the testator’s intentions’.
Using case law and statutory provisions, discuss the exceptions to the rule in construction of wills, that the will must speak for itself.’ **(20 marks)**

Q3. Mr. Kiruki, a well-known local farmer, died two months ago, no will has been found amongst his belongings. He left behind four wives and nine children. His first wife, Habida, had three daughters; his second wife, Kate, has two sons; his third wife, Maria, has one daughter; whilst his fourth wife, Carol has three sons. Mr. Kiruki left behind residential property in Mtwapa, Tana River and Nakuru. He also had a pawpaw farm in Samburu as well as 400 head of cattle in Garissa. The rest of his estate amounted to Kshs 100 million. Kate and Carol are of the view that Habida and Maria’s daughters should not inherit their father’s property as Tula customary law forbids daughters from inheriting their fathers. Mr. Kiruki’s brothers as well state that they have a stake in the estate and that they should inherit all the livestock as required by Tula customary law. Habida and Maria come to you for legal advice regarding this matter. Using case law and statutory provisions, illustrate how Mr. Kiruki’s property shall be distributed. **(20 marks)**

Q4. Mr. Shamba, a wealthy businessman who owns several pieces of land. One of these parcels of land has been the subject of a bitter ownership dispute which has lasted several years. Recently, the matter was taken to court and is yet to be determined. Two days ago, he received a text message on his mobile phone, right after a court session, stating “If you don’t stop, we shall finish you.”
This morning on his way to work, he noticed a tinted car tailing him a safe distance behind. He drove straight to his younger brother, Mr. Gari’s office filled him in on the recent developments of the case. He then gave his car log book to Mr. Gari and wrote a cheque of Kshs 500,000, which he gave to him saying, ‘Have these, I have no use for them any longer.’ He promised to send a messenger with the title deed to one of his properties later in the day. Mr. Shamba then stood up drove towards his office. Before reaching his office, he was involved in a grisly accident and died on the spot.
Advice Mr. Gari on the ownership and the rights to the property mentioned above. **(20 marks)**

- Q5.
- a) Discuss the crime of intermeddling in relation to the administration of estates. **(10 marks)**
 - b) Miss Tina died intestate, leaving behind her husband, Mr. Hero and three children of school-going age. Her estate is estimated to be worth roughly Kshs 50 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. **(10 marks)**

END