

Law of Succession

CAT

Evening Class, Date: (8/7/2015). Time: 1 hour

Instructions: Answer any two questions

1. Persons of unsound mind are incapable of making a will. Discuss this statement with the aid of case law and Law of Succession Act. (15 marks)
2. Using case law discuss the requirements to witnessing a valid will. (15 marks)
3. (a) Discuss survivorship in relation to laws of succession. (5marks)
(b) Write short notes on the following:
 - i. Express revocation (6 marks)
 - ii. Implied revocation (4 marks)

COUNCIL OF LEGAL EDUCATION



DIPLOMA IN LAW (PARA-LEGAL STUDIES)

KENYA SCHOOL OF LAW
LIBRARY

LAW OF SUCCESSION

THURSDAY 7TH OCTOBER, 2010

DURATION: 2 HOURS

Instructions to Candidates

- (a) Answer Question **ONE** and **ANY OTHER THREE** Questions
- (b) Question **ONE** carries **25 marks**
- (c) All other questions carry **15 marks** each

PLEASE TURN OVER

QUESTION ONE

- (a) Discuss the law relating to construction of wills highlighting the various ways in which a written will may be construed. {10 marks}
- (b) Describe the various ways in which a written will may be revoked. {15 marks}

QUESTION TWO

Mrs. Anne Kamani whose husband Major Kamani died in a road accident on the 20th of August, 2010 has discovered while going through her late husband's bags, a written will which though it had been executed by her deceased husband, there was no attestation. She has approached the law firm of Maoni Mingi Advocates where you work.

Upon interviewing the client, it has become apparent that Major Kamani had an extra-marital affair with Njeri with whom he had sired two children.

The proprietor of the firm has instructed you to prepare a detailed legal opinion on:

- (a) Mrs. Kamani's rights under the circumstances. {8 marks}
- (b) The legal position of Njeri and her children {7 marks}

QUESTION THREE

Outline the procedural steps that a lawyer would undertake in his/her quest to procure a Grant of Letters of Administration for his client and the correct forum he would approach.

{15 marks}

QUESTION FOUR

Write short explanatory notes on the following:

- (a) Doctrine of escheat {5 marks}
- (b) Doctrine of testamentary freedom {5 marks}
- (c) Grant of probate {5 marks}

QUESTION FIVE

Distinguish between confirmation and revocation of grant.

{15 marks}

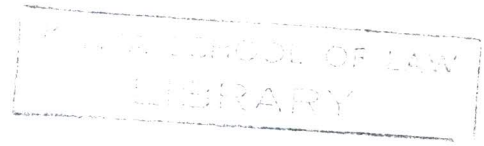
QUESTION SIX

Citing relevant case law, discuss the legal position of 'the other woman' as envisaged by Section 3(5) of the Law of Succession Act {Cap 160, Laws of Kenya.}

{15 marks}

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DIPLOMA IN LAW (PARA-LEGAL STUDIES)

LAW OF SUCCESSION

THURSDAY 25TH AUGUST, 2011

DURATION: 2 HOURS

Instructions to Candidates

- (a) Answer Question ONE and ANY OTHER THREE Questions
- (b) Question ONE carries 25 marks
- (c) All other questions carry 15 marks each

PLEASE TURN OVER

QUESTION ONE

- (a) Distinguish between testate and intestate succession. **{2 marks}**
- (b) On 2nd February, 2011, Amos Wairegi, who had been unwell for close to five years, asked all his children to meet him at his home in Dagoretti on 10th February, 2011. All his seventeen children, six male and eleven female attended. Wairegi's three wives also attended. Mr. Wairegi explained to them why he had called them and informed them that he wanted to distribute his properties because he was aware his health was failing him. He was seventy years. Except for three of his children, all the children were above eighteen years of age and most of his daughters had already been married.

Mr. Wairegi told them that his properties would be distributed as follows after his death:

- Each of the three wives and their children would retain the parcels of land on which they lived;
- That the daughters would not be given anything since under the Kikuyu Customary Law, daughters did not inherit anything;
- That the commercial properties in Thika town and in Embu would be shared equally between the sons.
- All the money in Barclays Bank and Equity Bank would be shared equally between the three wives.

Mr. Wairegi then told them that there were other plots in Nakuru town which he would distribute once he confirmed their titles. However, he did not live to do so, since he passed away on 28th March, 2011.

- (i) Explain whether Amos Wairegi died testate or intestate **{5 marks}**
- (ii) Who had priority in applying for a Grant of Representation to the estate of the late Amos Wairegi? **{3 marks}**
- (iii) Do you think the act of the deceased to deny the daughters any inheritance was legally justified? Explain. **{3 marks}**
- (iv) Assuming that Amos Wairegi died intestate, how would you propose the method of distributing his property amongst the wives and children? **{4 marks}**
- (c) Explain why Kenya has a Law of Succession Act (Cap.160). **{3 marks}**
- (d) State and explain the legal requirements for a valid will under the Law of Succession Act. **{5 marks}**

QUESTION TWO

- (a) Section 7 of the Law of Succession Act provides as follows:

"A will or any part of a will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, or has been induced by mistake is void"

Based on the above provision of the law, discuss the circumstances that may render invalid an otherwise valid will. {8 marks}

- (b) "A will is ambulatory". What is the meaning of this expression? {2 marks}
(c) State and briefly explain the different ways in which a written will may be revoked. {5 marks}

QUESTION THREE

- (a) One of the reasons why people make wills is to ensure that only particular beneficiaries inherit the properties of the testator. In the absence of a will, the categories of people who may be entitled to inherit properties upon the death of a person may be wider.
- (i) What is the status of children born out of wedlock in relation to the right to inherit a man's properties? {4 marks}
(ii) Explain the rights of a woman who had illegally been married to the deceased person (and hence the marriage was void under the law) {3 marks}
(iii) Is it possible for a person who is not a wife, child or parent of the deceased person to inherit part of the property of the deceased? {3 marks}
- (b) Donatio mortis causa is a doctrine that provides for gifts in contemplation of death. Explain the conditions that must exist before such gifts can be valid. {5 marks}

QUESTION FOUR

- (a) A personal representative of a deceased person may either be an executor appointed under a will or a an administrator. Whether one is an executor or an administrator, the law gives them certain powers in order for them to perform certain duties required of them.
- (i) Explain the powers of personal representatives. {4 marks}
(ii) List five (5) different duties of personal representatives. {5 marks}
- (b) Explain the meaning of the expression 'codicil', and state two uses of a codicil {3 marks}
- (c) Who will administer the estate of a person who left a valid will but did not appoint an executor or executrix of the will? {3 marks}

QUESTION FIVE

- (a) Discuss the grounds upon which a grant of representation may be revoked or annulled by the court. {8 marks}
- (b) When a person applies to court for a grant of representation, the law requires that the person discloses to court certain information relating to the deceased to facilitate the administration of the estate. State the information that must be included in an application for a grant of representation. {7 marks}

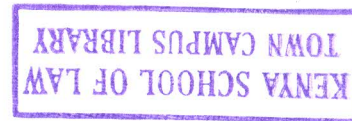
QUESTION SIX

Write short notes on the following:

- (i) Alteration of a will. {2 marks}
- (ii) Attestation of a will. {2 marks}
- (iii) Confirmation of grant {2 marks}
- (iv) The relationship between law of succession, property law and family law. {4 marks}
- (v) Grounds for objection to a grant of representation. {3 marks}
- (vi) The doctrine of escheat. {2 marks}

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COUNCIL OF LEGAL EDUCATION



DIPLOMA IN LAW (PARA-LEGAL STUDIES)
(2ND YEAR TERM I)

LAW OF SUCCESSION

TUESDAY 6TH AUGUST, 2013

DURATION: 2 HOURS

Instructions to Candidates

- (a) Answer Question **ONE** and **ANY OTHER THREE** Questions
- (b) Question **ONE** carries **25 marks**
- (c) All other questions carry **15 marks** each

PLEASE TURN OVER

QUESTION ONE

Immediately after Jay's funeral his wife Mary comes to you and says:

"My husband wrote a will which I witnessed together with my 12 year old son. He also called a shopkeeper nearby to sign although I am sure he did not know what he was doing.

Apart from me and my three children he also left some property for his father in the will. I found the will after his death and on it he had written all this is cancelled".

- (a) Discuss the validity of the will. (15 marks)
- (b) Discuss devolution of the property. (10 marks)

QUESTION TWO

Write short notes on the following:

- (a) Grant de bonis non administratis. (8 marks)
- (b) Grant ad colligendum bona. (7 marks)

QUESTION THREE

- (a) What are the characteristics of gift in contemplation of death? (7 marks)
- (b) Discuss grants where a person dies in Kenya and has immovable property in Kenya and movable property in a foreign country. (8 marks)

QUESTION FOUR

Mary has just found out that her brother-in-law has filed a petition for the grant of letters of administration for her late husband's estate and has not included her nor her children as dependants.

- (a) She wants to know what she can do in order to get included and also to act as an administrator of the estate. (10 marks)
- (b) Dependants are not all equal. Discuss this in light of the Law of Succession Act. (5 marks)

QUESTION FIVE

- (a) What information does a person need to be able to file an intestate succession case? (8 marks)
- (b) Briefly discuss the procedure which will be followed by a petitioner filing for grant of letters of administration intestate. (7 marks)

QUESTION SIX

Mental capacity when making a will under the Kenyan Law of Succession has a different measure from that of the medical profession.

Discuss this statement using case law where relevant. (15 marks)

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DIPLOMA IN PARALEGAL STUDIES

YEAR II TERM I

LAW OF SUCCESSION

5TH AUGUST, 2014

DURATION: 2 HOURS

Instructions to Candidates

- (a) Answer Question ONE and ANY OTHER THREE Questions
- (b) Question ONE carries 25 Marks
- (c) All other questions carry 15 Marks each

PLEASE TURN OVER

1. a) Discuss mental capacity of the testator in relation to creation of a validly Will. (13 Marks)
- b) With the aid of Case Law and the Law of Succession Act, explain how mistake takes away the capacity of a testator in making a Will. (12 Marks)
2. a) Using Case Law and the Law of Succession Act, discuss what constitutes a validly attested Will. (7 Marks)
- b) What are the ingredients of *Donatio Mortis Causa*? (8 Marks)
3. Wills may be revoked by the testator at any time before his death. Discuss this statement in the light of Case Law and Law of Succession Act. (15 Marks)
4. a) Describe the deceased's dependants entitled to his intestate estate as provided for under Sec. 29 of the Law of Succession Act. (5 Marks)
- b) Mr. Komen died without leaving a Will. He left the following people succeeding him: A divorced wife who has 3 children, his current first wife who has 2 children, a second customary law wife with 3 children, and a cohabitee with 3 children. Using Case Law where appropriate discuss how the deceased persons' estate will be divided. (10 Marks)
5. a) What is intermeddling? (7 Marks)
- b) Who are the persons entitled to grant of letters of administration Intestate? (5 Marks)
6. a) Name in order of priority who should take out letters of administration. (5 Marks)
- b) What are the powers of an administrator of an estate? (10 Marks)

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DIPLOMA IN LAW (PARALEGAL STUDIES)

LAW OF SUCCESSION

12TH AUGUST, 2015

DURATION: 2 HOURS

Instructions to Candidates

- (a) Answer Question **ONE** and **ANY OTHER THREE** Questions.
- (b) Question **ONE** carries **25 Marks**.
- (c) All other questions carry **15 Marks** each.

PLEASE TURN OVER

QUESTION ONE

- (a) Explain the advantages of making a will under the Law of Succession Act. (10 Marks)
- (b) Using case law discuss the required mental capacity needed to write a valid will. (15 Marks)

QUESTION TWO

- (d) Giving explanations state the characteristics of *Donatio Mortis Causa* (Gift in contemplation of death) (10 Marks)
- (c) Explain the concept of survivorship in relation to law of succession. (5 Marks)

QUESTION THREE

Using case law discuss attestation of a will under the law of succession. (15 Marks)

QUESTION FOUR

- (a) Discuss the three distinct classes of dependants as laid down in the Law of Succession Act. (7 Marks)
- (b) What is the entitlement of a surviving spouse with no children to a deceased's estate where the deceased died intestate? (8 Marks)

QUESTION FIVE

- (a) Using case law where applicable discuss the issues that the courts will consider when dividing the deceased property. (10 Marks)
- (b) List down the information that is needed to file for a grant of letters of administration. (5 Marks)

QUESTION SIX

Write brief notes on the following grants.

- (a) *Grant ad colligenda bona* (7 Marks)
- (b) *Grant pendent lite* (4 Marks)
- (c) *Grant de bonis non administratis.* (4 Marks)

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KENYA SCHOOL OF LAW
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DIPLOMA IN LAW (PARA-LEGAL STUDIES)

2ND YEAR TERM I EXAMINATION

LAW OF SUCCESSION – DPS 203

3RD AUGUST, 2016

DURATION: 2 HOURS

Instructions to Candidates

- (a) Answer Question ONE and ANY OTHER THREE Questions
- (b) Question ONE carries 25 Marks
- (c) All other questions carry 15 Marks each

PLEASE TURN OVER

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KENYA SCHOOL OF LAW
TOWN CAMPUS LIBRARY

Question One:

- (a) Using case law where applicable, discuss mental capacity in relation to writing a valid will. (15 Marks)
- (b) Describe undue influence in relation to writing of a valid will under the Law of Succession Act (Cap 160). (10 Marks)

Question Two:

Write short notes on the following:

- (a) Survivorship (6 Marks)
- (b) *Donatio mortis causa* (9 Marks)



Question Three:

Using case law illustrate valid revocation of a will by destruction Under the Law of Succession Act (Cap 160). (15 Marks)

Question Four:

- (a) Explain the rights of children of a deceased person to the estate under intestate succession. (10 Marks)
- (b) State any **FIVE** considerations that a court will take when considering reasonable provision to dependants as provided by the Law of Succession Act (Cap 160). (5 Marks)

Question Five:

Write short notes on the following:

- (a) Grant *ad colligendum* (10 Marks)
- (b) Grant *pendente lite* (5 Marks)

Question Six:

- (a) State the persons who are entitled to grant of letters of administration under the Law of Succession Act (Cap 160). (6 Marks)
- (b) Briefly explain the information needed under the Law of Succession Act (Cap 160) in filing an application for grant of letters of administration intestate. (9 Marks)

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DIPLOMA IN LAW (PARA-LEGAL STUDIES)

2ND YEAR TERM I EXAMINATION

LAW OF SUCCESSION

27TH JULY, 2017

DURATION: 2 HOURS

Instructions to Candidates

- (a) Answer Question ONE and ANY OTHER THREE Questions
- (b) Question ONE carries 25 Marks
- (c) All other questions carry 15 Marks each

PLEASE TURN OVER

Question One

- a) Discuss mental capacity of a testator in relation to making of a valid will under Kenyan Law. (15 marks)
- b) Using case law where applicable discuss signatures of witnesses and the testator in a valid written will. (10 marks)

Question Two

Discuss revocation by destruction of written wills. (15 marks)

Question Three

Write short notes on the following:-

- a) Failure of gifts in a will; and (5 marks)
- b) Persons qualified to appointment as executors of a will as per the Law of Succession Act. (10 marks)

Question Four

- a) State instances when a person's estate may be divided intestate under Kenyan Law. (10 marks)
- b) What is the effect of the grant of letters of administration intestate under Kenyan Law? (5 marks)

Question Five

- a) List down the information required when filing out the forms for a grant of letters of administration under Kenyan Law. (8 marks)
- b) Who is entitled to grant of letters of administration intestate as per the Law of Succession Act. (7 marks)

Question Six

Write short notes on the following rights to inherit under intestate succession in Kenya:

- a) Where the deceased leaves one spouse and children; and (7 marks)
- b) Where the deceased was a polygamist. (8 marks)

END

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DIPLOMA IN LAW (PARA-LEGAL STUDIES)

2ND YEAR TERM I EXAMINATION

LAW OF SUCCESSION – DPS 203

1st August, 2018

DURATION: 2 HOURS



Instructions to Candidates

- (a) Answer Question ONE and ANY OTHER THREE Questions
- (b) Question ONE carries 25 Marks
- (c) All other questions carry 15 Marks each

PLEASE TURN OVER

Question One

- a) Discuss the writing of a Will under the following headings:
- i. Mental capacity ; and (15 marks)
 - ii. Suspicious circumstances. (5 marks)
- b) List down in order of priority persons who are entitled to take out grant of letters of administration under the Law of Succession Act chapter 160, laws of Kenya. (5 marks)

Question Two

Using case law where applicable discuss how a will is validly attested to by witnesses under the Law of Succession Act chapter 160, laws of Kenya. (15 marks)

Question Three

Using case law where applicable, explain how wills are revoked under the following headlines under chapter 160, laws of Kenya:

- a) Involuntary revocation ; and (3 marks)
- b) Destruction must be by physical actions . (12marks)

Question Four

- a) Outline instances when a grant of letters of administration with a will annexed may be applied for under the Kenya's law of succession. (6 marks)
- b) State instances when a gift in a Will will fail under chapter 160, laws of Kenya. (7 marks)
- c) Define a codicil. (2 marks)

Question Five

- a) Outline the process of obtaining of a simple grant of letters of administration intestate. (12 marks)
- b) State persons who may not be granted letters of administration. (3 marks)

Question Six

Write short notes on the following methods of division of the deceased property intestate as provided for under the Law of Succession Act chapter 160, laws of Kenya:

- a) Where the deceased leaves a spouse and child; and (7 marks)
- b) Where the deceased was a polygamous person. (8 marks)

END

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DIPLOMA IN LAW (PARA-LEGAL STUDIES)

2ND YEAR TERM I EXAMINATION



LAW OF SUCCESSION – DPS 203

30 July, 2019

DURATION: 2 HOURS

Instructions to Candidates

- (a) Answer Question ONE and ANY OTHER THREE Questions
- (b) Question ONE carries 25 Marks
- (c) All other questions carry 15 Marks each

PLEASE TURN OVER

Question One

- a) Using case law where applicable discuss mental capacity in relation to drawing a valid will under the Law of Succession Act (Cap 160) (15 marks)
- b) Discuss the provision of the law on a valid privileged oral will as per the Law of Succession Act Cap 160. (4 marks)
- c) Using case law, discuss what would constitute a signature in a written will. (6 marks)

Question Two

Explain revocation of wills by destruction under the following headings:

- (a) Revocation must involve a physical act of revocation. (10 marks)
- (b) Destruction can only be valid if it is done with an intention to revoke. (5 marks)

Question Three

"Property of a deceased person dying intestate in Kenya after 1981 can only be divided according to the law as laid down in the Law of Succession (Cap 160)". Discuss the above statement under the following headings:

- a) Where the deceased died intestate leaving a spouse and child or children. (7 marks)
- b) Where the deceased died intestate leaving a polygamous family. (8marks)

Question Four

- a) List in order of priority those who are entitled to take out a grant of letters of administration as provided for under the Law of Succession Act (cap 160) (5 marks)
- b) State the effect of grant of letters of administration (6 marks)
- c) List those who are not allowed by the law to take out a grant of letters of administration. (4 marks)

Question Five

- a) Discuss the information needed in order to file for grant of letters of administration as provided under the Law of Succession Act (cap 160) (7 marks)
- b) Briefly explain the procedure for obtaining of the grant of letters of administration intestate. (8 marks)

Question Six

- a) Briefly explain the reason why it is sometimes necessary to obtain a limited grant of letters of administration. (4 marks)
- a) Discuss the following limited grants.
 - (i) Grant ad colligenda bona;
 - (ii) Grant ad litem

END

