

COUNCIL OF LEGAL EDUCATION



PRE-BAR EXAMINATIONS

SEPTEMBER, 2010

FAMILY LAW AND THE LAW OF SUCCESSION

Instructions

- (a) Candidates **MUST** answer Question **One** and **any other 3 questions**
 - (b) All questions carry **25 marks** each
 - (c) Time allowed is **3 hours**
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1. (a) Eric Oyoo and Mary Otieno were married under Luo Customary Law in 1990. In January 1999 a baby boy, Nick was born to them at which time, Mary convinced Eric that it was prudent to consolidate their position by going through another marriage ceremony under the African Christian Marriage and Divorce Act (Cap.151, Laws of Kenya). A colourful wedding ceremony was thereafter held in December, 1999.

However, in July 2009 while travelling from Kisumu to Nairobi, Eric was involved in a grisly car crash near Nakuru, and unfortunately he was pronounced dead on arrival at the war Memorial Hospital, Nakuru.

After the burial ceremonies were conducted, John Oyoo, Eric's brother, appeared on the scene and claimed the right to inherit his late brother's wife, and to be a guardian to their child, Nick. John has also taken possession of Eric's car and clothes.

Advise Mary, who finds John's proposal unacceptable.

(15 marks)

- (b) Mr. Reju was a wealthy man with five houses in Nairobi and a large farm in Kitale.

Five years ago, Reju met and began to cohabit with Penzi, a twenty-year old girl, who had dropped out of college six months earlier.

Mr. Reju died testate one month ago at the age of seventy two years, survived by his wife Manda and two grown up sons. In his will, Reju bequeathed his entire estate to his cohabitee Penzi to the exclusion of his wife and sons.

Manda and her sons have come to your chambers seeking legal advice on their inheritance. Advise them.

(10 marks)

2. Jona met Mary at Elite Night Club in January, 2009. In June the same year, Jona married Mary under African Customary Law. After the marriage, Jona found out that Mary had a child from a previous liaison. He had also become aware that Mary was of loose morals and drinks excessively, and on a number of occasions she had left home to spend nights out.

Jona now wishes to end the marriage. Advise him accordingly.

(25 marks)

3. With the aid of decided cases, discuss the law governing division of matrimonial property in Kenya upon divorce.

(25 marks)

4. Write explanatory notes on the following:

(a) Restoration of conjugal rights

(b) Presumption of death as a ground for dissolution of marriage

(c) Void and voidable marriage

(25 marks)

5. Mr. Kalu was an infantry soldier attached to the Lang'ata Army Barracks. Three months ago he was sent to Somalia on a peace keeping mission. Whilst maintaining peace and order, he was shot by an unknown gunman. Two of his colleagues rushed him to hospital. On the way to hospital he told them:-

"If I do not make it, make sure Rael my fiancée gets all my stuff." He died the following day.

Upon Kalu's demise his father applied for a grant of letters of administration arguing that his son died intestate. On the other hand, Rael has applied for a grant of probate claiming that the words spoken by Kalu constitute a privileged will.

Advise the parties accordingly.

(25 marks)

6. Discuss in depth the concept of Parental Responsibility under the Children's Act, No. 8 of 2001.

(25 marks)
