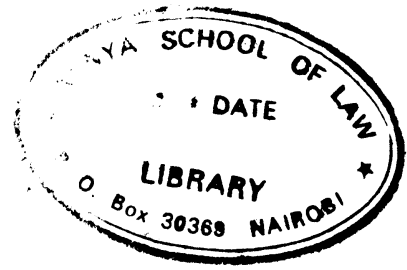


COUNCIL OF LEGAL EDUCATION



PRE-BAR EXAMINATION

FAMILY LAW & THE LAW OF SUCCESSION

WEDNESDAY, 21ST SEPTEMBER, 2011

DURATION: 3 HOURS

Instructions to Candidates

- (a) Answer Question ONE and any other three Questions
- (b) ALL Questions carry 25 marks each
- (c) Marks may be lost for illegibility

PLEASE TURN OVER

1. Mr. Jones came to Kenya a month ago as a tourist. After touring several parts of the country, he met a beautiful Kenyan girl he wishes to marry and settle in Malindi. On inquiry about the marriage laws in Kenya, a tour guide informed him that there are several marriage and divorce laws in Kenya, including Customary Marriage and Divorce Law.

Mr. Jones is perturbed by what the tour guide told him, and seeks clarification of this matter by a marriage and divorce expert before finalizing his wedding arrangements.

Explain to him the origin and existence in Kenya of the numerous marriage and divorce laws indicating the persons to whom the different laws apply.

(25 marks)

2. Mr. Mozi, a 70 year old businessman wishes to write a will because he believes he is about to die due to the fact that he has been having nightmares that his family were organizing his funeral at Langata Cemetery.

Whilst giving you instructions, Mr. Mozi informs you that he has five sons, two daughters and a wife but he wishes to bequeath his entire estate to his youngest son Joshi because he is his best child. He says his wife used to look at him with bad eyes and his other children were rude to him.

After you have drawn up the will, Mr. Mozi promises to return the following day with witnesses to sign the document, but while crossing the road, he is hit and killed by a speeding motorist who failed to stop.

Mr. Mozi passed on survived by his wife Netti and seven children.

During the funeral arrangements, three women appeared. The first one who had two sons, who were a spitting image of the deceased, told the mourners that she had cohabited with the deceased at Mali Nyingi Estate for the last eight years and regarded herself as his wife. The second woman, who had a daughter stated that she was married to the deceased under Jamii Customary Law, but because she was unable to give birth to a baby boy, the deceased divorced her and married Netti in church.

The third woman said that she was the deceased's girl friend and he used to maintain her in an apartment at Kileleshwa, but when her baby girl was born three months earlier, the deceased stopped supporting her.

After Mr. Mozi's burial, the four women with their children have come to you for legal advice.

Advise them accordingly.

(25 marks)

3. With the aid of decided cases and statutory provisions and bearing in mind the relevant provisions of the constitution, discuss division of matrimonial property in Kenya upon divorce.

(25 marks)

4. (a) With the aid of statutory provisions and case law define 'privileged wills'.

(15 marks)

(b) Miss Luka was an infantry soldier attached to Kahawa Army Barracks. Six months ago she was one of the peace keeping soldiers sent to Somalia to maintain peace and order. Whilst maintaining peace and order, she was shot by a sniper. Two of her colleagues rushed her to hospital. On the way to hospital she told them:

"If I do not make it, make sure Johnnie gets all my stuff"

Miss Luka died the following day.

Upon her demise, her father applied for a Grant of Letters of Administration arguing that his daughter died intestate. On the other hand Johnnie her fiancée, applied for Probate claiming that the words spoken by the deceased constitute a privileged will.

Advise the parties accordingly.

(10 marks)

5. Citing relevant statutory and constitutional provisions, discuss the requirements of a valid marriage and divorce under African Customary Law.

(25 marks)

6. Write explanatory notes on the following:

(a) Void and voidable marriage. **(5 marks)**

(b) Restoration of conjugal rights. **(5 marks)**

(c) Presumption of death as a ground for dissolution of marriage. **(5 marks)**

(d) The difference between a 'Grant of Letters of Administration' and 'Grant of Probate'. **(5 marks)**

(e) Construction and revocation of wills. **(5 marks)**