

COUNCIL OF LEGAL EDUCATION



PRE-BAR EXAMINATION

PBR 005 - FAMILY LAW & THE LAW OF SUCCESSION

FRIDAY, 28th SEPTEMBER, 2012

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. (a) Mr. Smith came to Kenya from England as a tourist three months ago. After two months' tour of the country, he met a beautiful girl he wishes to marry and settle in the country. On inquiry about marriage, divorce and division of matrimonial property upon divorce as well as custody of children, a tour guide informed him that there are several marriage laws in Kenya applicable to different communities and races.

Mr. Smith has now come to your Chambers for legal advice on the various issues particularly on the following:

- (i) Grounds that culminate in the (ending) termination of a valid marriage. **(5 marks)**
- (ii) Division of matrimonial property upon divorce. **(5 marks)**
- (iii) Custody of children particularly if they are below four years old. **(5 marks)**

As an Advocate of the High Court of Kenya, advise Mr. Smith bearing in mind the provisions of the Constitution, marriage laws, property law, the Children Act No.8 of 2001 as well as case law.

(b) Mr. Rugo died intestate two weeks ago after a long illness. During the funeral arrangements a young lady came to the deceased's home claiming that she was his daughter and that he used to cater for her School fees and upkeep but Mrs. Rugo, the widow was trying to sideline her in the planned burial by omitting her name in the various funeral publications and advertisements. At that moment, the widow ordered her out of the compound.

The widow also ordered the mother of the deceased to vacate the room she had been occupying for many years during the lifetime of the deceased.

The young lady and the deceased's mother have come to your chambers for legal advice. Advise them accordingly.

(10 marks)

2. Mrs. Tayo died testate two months ago. Prior to her demise, her widower had been retrenched and depended on her for his upkeep. Before her demise, the deceased wrote a will in which she bequeathed the widower two houses and a car. She also made other legacies for the children from a previous marriage.

Upon her demise, the deceased's children chased him away claiming that the widower had married their mother for her property which was acquired during the deceased's previous marriage to their deceased father.

Mr. Tayo has now come to your chambers for legal advice on how he can inherit the property bequeathed to him by the deceased.

With the assistance of the provisions of the Law of Succession (Chapter 160, Laws of Kenya) advise Tayo accordingly.

(25 marks)

3. (a) A written will is a testamentary document stating the manner in which the maker's property is to devolve upon the testator's demise.

With the assistance of relevant case law and the provisions of the Law of Succession Act (Chapter 160, Laws of Kenya), discuss the essentials and formalities to be followed in making a valid will. **(15 marks)**

(b) Njogori met Nelisha at Super-Nite Club in January 2010. In June the same year, Njogori and Nelisha got married under the Marriage Act (Chapter 150, Laws of Kenya). Thereafter, Njogori found out that Nelisha had a child from a previous liaison. He has also become aware that Nelisha is of loose morals and drinks excessively. Njogori now wishes to end the marriage and has come to you for advice.

Advise him accordingly.

(10 marks)

(25 marks)

4. Discuss void and voidable marriages, explaining the circumstances under which each of the two situations arises.

(25 marks)

5. Mr. Tembo married Doreen under the African Customary Law three years ago. The marriage lasted two and a half years when Tembo left the matrimonial home and went to live with Casha and is now planning a high profile wedding under the Marriage Act (Chapter 150, Laws of Kenya).

Doreen is distraught and does not know what to do.

Advise Doreen on African Customary marriages and how she can stop Mr. Tembo from marrying Casha.

(25 marks)

6. Write explanatory notes on the following:

(a) Privileged wills

(5 marks)

(b) Construction of wills

(5 marks)

(c) Donatio Mortis causa

(5 marks)

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

(5 marks)

(e) Oral will

(5 marks)