

# COUNCIL OF LEGAL EDUCATION



## EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES

### **ATP 102: PROBATE AND ADMINISTRATION**

FRIDAY 2<sup>ND</sup> DECEMBER, 2016

DURATION: 3 HOURS

#### Instructions to Candidates

- (a) This paper contains **Five printed pages** including the cover page, with a total of **Six questions**
- (b) Candidates **MUST** answer **FIVE** questions
- (c) **Question ONE** is compulsory and carries **20 marks**
- (d) **All other questions** carry **10 marks each**
- (e) Answers **MUST** be supported by relevant case law and statutory provisions where required

PLEASE TURN OVER

Tenants in common

Summership

### QUESTION ONE

Mr. and Mrs. Mbwa Mwitw were married at the Registrar of Marriages. They own their palatial home as joint tenants. Mr. Mbwa Mwitw owns two ten (10) acre farms half of which was acquired forty (40) years ago in Sokwe Mtu County, two (2) cars a Porsche Cayenne and a Range rover, he keeps one hundred (100) exotic birds and fifty (50) horses while Mrs. Mbwa Mwitw owns a rental property in her name alone that she inherited from her mother. The rental income is deposited into an investment account in her name.

The beneficiaries named on Mrs. Mbwa Mwitw's investment account are Pomboo and Paa who are the biological children of Mr. and Mrs. Mbwa Mwitw.

dependent  
Power to Responsibility

In 1991 Mr. and Mrs. Mbwa Mwitw went to their advocate's chambers with instructions to prepare their will. Mr. Mbwa Mwitw stated that upon his death, his estate should be distributed to his wife Mrs. Mbwa Mwitw, if she survives him and if she fails to survive him then the will provides that his estate be distributed equally between their biological children. Mrs. Mbwa Mwitw's will contains reciprocal provisions to that of Mr. Mbwa Mwitw.

Mr. and Mrs. Mbwa Mwitw have been living and caring for an orphan Swala and he is not mentioned anywhere in their wills. The Advocate prepared the wills. Mr. and Mrs. Mbwa Mwitw reviewed and signed the wills at the Advocate's offices with the Advocate Court Clerk and Secretary signing the wills as witnesses.

Subsequent to execution of their wills Mr. and Mrs. Mbwa Mwitw were blessed with a daughter Farasi who was born in 1995. Mr. and Mrs. Mbwa Mwitw instructed their advocate to prepare new wills and they booked an appointment with their Advocate to execute their wills which would include and provide for Farasi as they had provided for Pomboo and Paa. However the Advocate was always held up in court and as time passed they forgot to update their wills to include Farasi. → lapse of time

Widow not present

Two years ago, Mrs. Mbwa Mwitw comes across her will and believing that it is invalid for not providing for Farasi tears it in half and leaves it in the safe. She promises to visit her lawyer to make a new will including Farasi but has no intention of changing anything else in the will contents. She goes to the bank and updates records of her investment account and adds Farasi as beneficiary alongside her brothers Paa and Pomboo.

→ F.I.D. → under wills

One month ago Mr. and Mrs. Mbwa Mwitw were driving home from work late in the evening when their car was swept away by floods after heavy downpour and they both died as a result of drowning. Prior to his death, Mr. Mbwa Mwitw had promised to give his daughter the Porsche Cayenne as a gift if she passed her Bar Exams which she has since passed.

After the funerals a woman arrived at the home claiming that she was married to the deceased Mr. Mbwa Mwitw but divorced thirty (30) years ago and that in fact, the court had awarded her half (1/2) acre in one of the farms in Sokwe Mtu County belonging to Mr. Mbwa Mwitw where she lived. She therefore regarded herself as Mbwa Mwitw's widow. → former wife

Not long thereafter another woman visited the home with a two (2) year old boy who resembled Mr. Mbwa Mwitw. She introduced herself as Fisi a girlfriend to Mr. Mbwa Mwitw for five (5) years and she had sired a son Fisilet with Mr. Mbwa Mwitw. She therefore regarded herself as his

→ child

Parental  
plus parental  
responsibility  
to be proved

→ up to date  
→ during the life time