

COUNCIL OF LEGAL EDUCATION



EXAMINATION FOR ADMISSION
TO THE ROLL OF ADVOCATES

ATP 102: PROBATE AND ADMINISTRATION

WEDNESDAY 14TH NOVEMBER, 2012

DURATION: 3 HOURS

Instructions to Candidates

- (a) Candidates should attempt **FOUR** questions
- (b) **Answer Question One** and **at least one question from Section B**
- (c) All questions carry 15 marks each
- (d) Marks may be lost for illegibility

PLEASE TURN OVER

SECTION A

1. Dr. Mellow died a month ago survived by his widow Jellow and two sons, Malliow and Jelliow. Just before his demise, he had been informed that his crops and country house in Tamamaji had been burnt by Tokomeo tribesmen from a neighbouring country. Upon hearing the news, he decided to go and confirm, and to his shock and consternation, he found his once lovely farm and house totally destroyed! At that juncture, he begun to mutter; "My God....." and before he completed the statement he collapsed and was rushed to Hospital Nzuri by his driver, Jollow. On the way, he told Jollow that should he die, everything he owns, except the car he was driving, should belong to his wife, to the exclusion of his sons who used to beat him up whenever he was drunk.

Dr. Mellow also told Jollow that since he had been a good driver, he (Dr. Mellow) was giving Jollow the car to remember him by. He further told the driver to keep the keys in a safe place, and should he not recover, the car shall be Jollow's. Dr. Mellow died on arrival at Hospital Nzuri.

After the burial of Dr. Mellow, Jellow called a family meeting to discuss inheritance of the deceased's estate. Whilst the discussion was going on, several strange people arrived in the compound, among them four women and two young persons aged sixteen and seventeen respectively.

The first of the women, named Jolly, claimed that she had been cohabiting with the deceased at Jacaranda Estate, Westlands for the previous ten years and should therefore be among the beneficiaries.

The second woman, Masela, stated that she was the deceased's girlfriend and that the deceased used to pay rent for her apartment and provide for her upkeep since they started seeing each other a year earlier.

The third woman, Kasela, alleged that the deceased had married her fifteen years earlier under African Customary Law and that she was living in one of the deceased's houses in Nakuru Town. She claimed a share of the deceased's estate (although Jellow had chased her away during the funeral arrangements).

The fourth woman (an elderly lady) alleged that she was the deceased's step-mother and that the deceased used to send her Kshs.2,000/= monthly for her upkeep and that she should therefore receive a share of the deceased's estate

The young persons (boy and girl), on the other hand, claimed that they were the deceased's children and he used to pay their school fees and provide for their upkeep although their mother had severed all relationships with the deceased. They also stated that they needed school fees urgently.

Having regard to the Constitution of Kenya, 2010, the Law of Succession Act (Cap.160, Laws of Kenya) and relevant case law, discuss the respective entitlements or otherwise of all the persons named in the above narrative vis-à-vis the estate of Dr. Mellow. In your answer indicate the specific legal step(s) each claimant should take in order to pursue their claims.

(15 marks)