

**COUNCIL OF LEGAL EDUCATION**



**EXAMINATION FOR ADMISSION  
TO THE ROLL OF ADVOCATES.**

**ATP 102: PROBATE & ADMINISTRATION**

**TUESDAY 16<sup>TH</sup> JULY, 2019.**

**DURATION: 3 HOURS.**

**Instructions to Candidates:**

- (a) This paper contains Five (5) 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**

## QUESTION ONE

Mr. Tawanda had 2 wives and 8 children. The 1<sup>st</sup> wife, Kasande had 4 children and the 2<sup>nd</sup> wife Ruvimbo likewise had 4 children. He executed a will on 30<sup>th</sup> October 2010 and his two friends Caesar and Robert were witnesses. Mr. Tawanda died 3 years later. Mr. Tawanda's will included the following clauses:

- i. I give my 10-acre land in Mavingo to my wives and Ruvimbo;
- ii. I give my 4-acre land in Kadoma to my sons Eric and Fred;
- iii. I give my Mercedes benze KTAB 001E to my sisters and Mildred;
- iv. I give my shares in Blue Moon Breweries limited to my daughters Memory and Mary;
- v. I give all my savings in Chase Manhattan to my wife Ruvimbo;
- vi. I give my house in Avondale to my wife Ruvimbo (The word Kasande cancelled in pencil and Ruvimbo added in pencil)
- vii. I give my house in Sundale to my wife Ruvimbo;
- viii. I give the residue of my estate to the trustee/executor of my will to hold in trust for all my children.

All the amendments/cancellations are handwritten. Alterations in clause 3 (a), 3(b) and 3(c) are made in ink and the cancelled words are illegible whilst alterations in clause 3(d), 3(e) and 3(f) are made in pencil.

As per the will, the deceased appointed his sister Mildred as the executrix of the will. Immediately after the funeral of the deceased, Mildred sought to apply for grant of probate with written will annexed. The 2<sup>nd</sup> wife Ruvimbo was aware of the existence of the will and was also aware that Mildred had petitioned the court for grant of probate. The grant was issued on 21<sup>st</sup> January 2014. Six months later, Mildred made an application for confirmation of grant without informing the 1<sup>st</sup> wife, Kasande.

One bright Saturday afternoon at a family get-together, the children began discussing the family property and one of the daughters Memory, born of the deceased's 2<sup>nd</sup> wife commented that the deceased had left a will and his sister Mildred was the executrix and she had already petitioned the court. The 1<sup>st</sup> wife's children Daniel, Alex, Jane and Patricia were surprised as they were not aware. They subsequently informed their mother Kasande. Two days later, Kasande went to the High Court in Mashvingo to enquire about the grant of probate. Upon conducting a search, she was shown the grant of probate issued to Mildred and the original will annexed to the Petition. She then acquired copies and sought the services of a lawyer.

- (a) Discuss, using caselaw and statutory provisions, the effect of the alterations as shown in clause 3 of Mr. Tawanda's will. (8 marks)
- (b) Kasande has approached you to lodge an objection on her behalf. Explain the possible grounds in support of her application for objection. (5 marks)
- (c) Assume that the High Court sitting in Mashvingo, having heard the matter, has declared the will invalid and revoked the grant of probate issued to Mildred. Explain the process that the parties would require to undertake in pursuit of administration of the estate of the deceased. In your answer;
  - i) identify the mode of succession and the potential administrator(s)
  - ii) identify and explain the pleadings and the particulars required. (7 marks)