



**KISII UNIVERSITY**  
**UNIVERSITY EXAMINATIONS**

**SECOND YEAR EXAMINATION FOR THE AWARD OF THE**  
**DEGREE OF BACHELOR OF LAWS**  
**SECOND SEMESTER, 2023/2024**  
**(JANUARY-APRIL, 2024)**

**LLBK 225: LAW OF SUCCESSION**

**STREAM: Y2 S2**

**TIME: 2 HOURS**

**DAY: MONDAY, 12:00 – 2:00 P.M.**

**DATE: 08/04/2024**

---

**INSTRUCTIONS**

- 1. Do not write anything on this question paper.***
- 2. Answer Question ONE and any TWO other Questions.***
- 3. Illustrate your answer with relevant cases and statutory provisions where applicable.***

**QUESTION ONE**

Mrs. Matoke comes to your law firm and asks you to draft her a will. She states that she wishes to distribute her property amongst her three children – Tom, Mary and Pendo, her former husband – Mr. Matoke, as well as her two servants – Omondi and Kemboi. She first revokes her previous will, in which she had left all her property to Mr. Matoke and distributes her estate as follows. To Tom, she leaves behind her two Volkswagen beetles and her mango farm in Kitui; to Mary, she leaves behind her residential property in Kilifi and three tractors; and to Pendo, who is thirteen years old, she leaves the contents of her savings accounts and three tracts of land in Kiambu. She gives Mr. Matoke her onion farm in Baringo and appoints him as executor of her estate. Lastly, she gives Omondi, her trusted servant, her new Mercedes Benz and to Kemboi, she left her diamond ring. Mrs. Matoke leaves you to draft the will and states that she shall be back in two days with Kemboi and Pendo as witnesses to her will. Two days later, she comes with Kemboi and Pendo who witness the will. Mrs. Matoke takes the will and keeps it in her safe for safe keeping. A week later, she overhears a conversation between her children, Tom and Mary, who seem to be planning the way they will spend the property they will receive from their mother's estate after

her death. Angered by their wasteful ways, she takes her will out of her safe, cancels out the clauses with provisions for Tom and Mary, then tears up the will and throws it in a waste basket. Kemboi, her servant, sees the pieces while cleaning up and puts them in the kitchen drawer for safekeeping. Yesterday, Tom and Mary came into your office carrying the torn will. They inform you that their mother was involved in a car accident in which she lost her life.

- a) Discuss the legal issues raised above. **(20 Marks)**
- b) Using relevant statutory provisions and case law, discuss whether there is a valid will.

**(10 Marks)**

## **QUESTION TWO**

a) Mr. Shem James, a well-known local farmer, died two months ago, no will have been found amongst his belongings. He left behind four wives and nine children. His first wife, Jeruto, had three daughters; his second wife, Kate, has two sons; his third wife, Maria, has one daughter; whilst his fourth wife, Carol has three sons. Mr. Kiruki left behind residential property in Mtwapa, Tana River and Nakuru. He also had a pawpaw farm in Samburu as well as 400 head of cattle in Garissa. The rest of his estate amounted to Kshs 100 million. Kate and Carol are of the view that Habida and Maria's daughters should not inherit their father's property as Tula customary law forbids daughters from inheriting their fathers. Mr. Kiruki's brothers as well state that they have a stake in the estate and that they should inherit all the livestock as required by Tula customary law. Habida and Maria come to you for legal advice regarding this matter. Using case law and statutory provisions, illustrate how Mr. Kiruki's property shall be distributed.

**(7 Marks)**

b) Lord Atkin in *Perrin v Morgan* [1943] AC 399 stated that 'the sole object (in construing wills) is to ascertain from the will the testator's intentions. Using case law and statutory provisions, discuss the exceptions to the rule in construction of wills, that the will must speak for itself.'

**(7 Marks)**

c) With reference to statutory and case law, discuss the various types of limited grants.

**(6 Marks)**

## **QUESTION THREE**

a) Discuss the crime of intermeddling in relation to the administration of estates.

**(7 Marks)**

b) Miss Tina died intestate, leaving behind her husband, Mr. Hero and three children of school-going age. Her estate is estimated to be worth roughly Kshs 50 million. Discuss the persons entitled to take out a grant of representation and the types of grants required to be taken out before distribution of her estate can be affected.

**(7 Marks)**

- c) With reference to case laws and statutory provisions, discuss three instances in which the property of a deceased can pass upon death without invoking either the process of testacy or intestacy succession. (6 Marks)

#### **QUESTION FOUR**

Wills are by far the most common testamentary dispositions. Gifts under will sometimes fail for various reasons.

- a) Describe how wills may fail, under the Law of Succession Act, 1981 with respect to
- i. Doctrine of Ademption
  - ii. Doctrine of forfeiture
  - iii. Doctrine of Lapse (6 Marks)
- b) Describe four manners in which wills may be revoked under the Law of Succession Act, 1981. (8 Marks)
- c) Describe the two principal ways in which wills may be revived and the consequence of such revival. (6 Marks)

#### **QUESTION FIVE**

Remmy is a shrewd businessman with an expansive business venture in real property, hardware and gold in Kisii, Kenya. Remmy is married to Nancy his childhood sweetheart. Their marriage was celebrated in the Seventh Day Adventist Church, New life- Kisii on 3<sup>rd</sup> January 1996. They are blessed with two issues, Melody a girl born in December 1996, and Shabalala, a boy born in October 2013. Nancy works as the finance officer in Kisii County. She occasionally assists Remmy in the business in matters finances and taxes. Nancy is not a director in any of the companies. However, the business is housed on land in Kisii that is jointly owned. Specifically, the hardware, the gold shop are located in the expansive Sammy Lavvy Building on Kisii Block 12/209. The businesses are considered as a family business and sometimes Melody works there during her long college breaks, a tradition she has kept since high school. Besides Sammy Lavvy building the couples also had other properties which were owned individually. Nancy owned several blocks of apartments namely Kisii Block 12/120, Kisii block 12/130, and a ranch in Nyamage measuring 100 hectares that she inherited from her late parents. Remmy on the other hand owned fleets of trailers, personal high end cars, Kisii block 12/100, Kisii Block 12/105, Nakuru block 15/902 and Bonchari Block 13/23.

Remmy and Nancy are known to be great friends and have enjoyed a peaceful relationship since the celebration of their marriage. They served as role models

to many couples and are often invited by the church to talk to young couples. Unknown to Nancy, Remmy had a love relationship with Jeruto, Nancy's classmate and close friend who was a frequent visitor to the household whenever the two had long study breaks. Jeruto was from a humble background. Nancy being a darling of his father, persuaded him to assist with topping up of Jeruto's college fees. Jeruto had been enrolled in a self-sponsored programme at the university to study law but her aunt Meggie, who used to pay her fees, died in an accident and since then, paying fees became a challenge. Jeruto was overwhelmed by incessant love overtures from Remmy and gave in to pressure to a relationship which they guarded. Remmy reciprocated by paying her college fees and upkeep.

On 20<sup>th</sup> October 2021, Remmy claimed to have a business meeting in Nakuru City, but unknown to Melody and Nancy, Remmy had taken Jeruto for an excursion. In an attempt to keep the family traditions of having dinner together by 9:00 pm, Remmy noticed that he was running late and decided that he would make up by taking a shortcut to avoid the traffic jam after dropping Jeruto at her aunt's place. However, the route was bumpy, rough with many trailers overlapping and when he attempted to overtake his vehicle collided with an oncoming trailer. He was rushed to hospital but succumbed after ten (10) days. Jeruto was devastated by the death of Remmy. She was carrying Remmy's child and Remmy had promised her a home in Milimani area within Nakuru City.

Remmy died intestate. In march 2022 in Kisii High Court, Nancy began the process of seeking letters of administration for purposes of distributing the estate to the respective beneficiaries. However, on 20<sup>th</sup> May 2023, and before the administration process was finalized, Nancy was involved in a grisly accident and died on the spot.

Jeruto gave birth to a bouncing baby girl, Louisa on 13<sup>th</sup> August 2022, and informed Remmy's family that the child was Remmy's daughter. She is also laying a claim on Nakuru Block 15/902 based on Remmy's promise to her. Melody has come for your advice.

- a) Discuss the steps Melody need to undertake to ensure full distribution of the estate of her late father. **(7 marks)**
- b) Discuss steps Melody would take to administer the estate of her late mother and the properties that would form part of her mother's estate based on the above narration. Use case laws to buttress your answers. **(7 Marks)**
- c) Proffer a well written opinion to Melody on the position of Jeruto and her daughter in context of law of succession. **(6 Marks)**