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KIRIRI WOMENS' UNIVERSITY OF SCIENCE AND TECHNOLOGY
UNIVERSITY EXAMINATION, 2022/2023 ACADEMIC YEAR
FOURTH YEAR, SECOND SEMESTER EXAMINATION
FOR THE DEGREE OF BACHELOR OF SCIENCE
(BUSINESS ADMINISTRATION)

Date: 8th December, 2022
Time: 11.30am – 1.30pm

KAC 404 - TRUST AND EXECUTORSHIP

INSTRUCTIONS TO CANDIDATES

ANSWER QUESTION ONE (COMPULSORY) AND ANY OTHER TWO QUESTIONS

QUESTION ONE (30 MARKS)

- a) On Friday the 30th September 2022 the High Court in Meru declared some sections of the Succession Act unconstitutional.
- i) Discuss the Court's ruling (6 Marks)
 - ii) Explain clearly what requires to be done to address the matter. (4 Marks)
- b) After all other obligations had been discharged the estate of Hobert Njorge comprised the following
- | | |
|--------------------------------------|-----------|
| Plot at Kitengela | 900,000 |
| 15% Kenya Government Stock | 1,500,000 |
| Artifacts | 1,000,000 |
| East Africa Building Society deposit | 1,634,600 |
| House at Ruaka | 2,000,000 |
| Motor car | 150,000 |
| Household effects | 200,000 |
| Cash at bank | 3,165,000 |
- His will provided as follows
- To his sister Mary Shs1, 000,000.
 - To his son Alex the plot at Kitengela and Shs560, 000.
 - To his daughter Lucy Shs1, 500,000 payable out of his account with EA Building Society.
 - To his friend Gichina his ordinary shares in Sigara SACCO.
 - To his brother Kamau Shs1, 500,000.
 - To the local country club where he was a member the 15% Kenya Government stock.
 - To his wife Jane Shs5, 000,000 and his personal effects. All beneficiaries were adults at the time of death
- The following is further provided:
- Just before he died Hobert had withdrawn from Sigara SACCO and his dues paid to him in full.

Mary and Alex had died in a gristly road accident four months before Hobert. Mary is survived by a son Magana while Alex left a widow Akinyi and a daughter Ann. The will of Alex left the whole of his estate to his widow Akinyi.

Required;

- i) A distribution account showing how the final distribution of the estate would be done. (10 Marks)
- ii) Explain how you have dealt with the specific items where there is uncertainty. (6 Marks)
- c) Discuss the concept of a discretionary trust. (4 Marks)

QUESTION TWO (20 MARKS)

- a) Discuss the rules in polygamous intestate succession. (4 Marks)
- b) Discuss the devolvement rules where one dies intestate without leaving a spouse or any children. (6 Marks)
- c) Explain the meaning of the term settlor. (2 Marks)
- d) Discuss the essential conditions to be fulfilled when a trust is being created. (8 Marks)

QUESTION THREE (20 MARKS)

- a) Discuss the importance of the valuation of shares as cum div and cum cap in relation to the valuation of an estate. (4 Marks)
- b) Trust law is one of the laws directly borrowing from Britain and used in Kenya. Discuss the other sources of law in Kenya which could guide succession matters. (10 Marks)
- c) Discuss the factors that would cause testamentary dispositions to fail. (6 Marks)

QUESTION FOUR (20 MARKS)

- a) Discuss the reasons that make people not be willing to draw wills in the Kenyan context. (8 Marks)
- b) Gilbert died on 1st January 2018. His will left his house to the wife for her life and on her death to his youngest son Timo absolutely. The residue of his estate was left to be held in trust for the benefit of his wife for her life and on her death to be shared amongst his children Nomsa, Nyarokat, Agubala, Kimani and Mutie. His will gave no further directions as to the investment of trust funds. On 1st January 2018 his house was valued at Shs13, 000,000. He held 100,000 shares at EABL valued at Shs42-48 and Shs5, 000,000 (nominal value) Kenya Government Stock valued at 90-92. He also had Shs2, 500,000 in the bank. The debts and funeral expenses amounted to Shs300, 000. On 1st July 2018 the EABL shares were quoted at Shs48-50 and the 12% Government Stock at Shs88-92. (12 Marks)

QUESTION FIVE (20 MARKS)

- a) A will is a formal expression of a person's distribution of his estate on his death. It is thus final in determining the distribution. Discuss. (8 Marks)
- b) Discuss the challenges trustees face in executing their duties and responsibilities clearly bringing out the requirements of the Trustee Investment Act. (12 Marks)