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**University Examinations 2015/2016**

FOURTH & THIRD YEAR SECOND SEMESTER EXAMINATION FOR THE DEGREE

OF

 BACHELOR OF COMMERCE

**BFC 3378: TRUST AND EXECUTORSHIP**

**DATE: APRIL 2016 TIME: 2 HOURS**

**INSTRUCTIONS:** *Answer question* ***one*** *and any other* ***two***questions.

**QUESTION ONE (30 MARKS)**

1. Briefly explain the meaning of the term “abatement” (2 marks)
2. Identify and explain the four classifications of legacies. (8 marks)
3. Briefly explain the meaning of the following terms as used in the law of succession:
4. Donatio mortis causa. (2 marks)
5. Partial intestacy. (2 marks)
6. Kifo died on 12 March 2003, and by his will made in 2001, bequeathed the following
7. To Linda, my daughter, Sh.100,000
8. To Elisha, my son, my house in Thome.
9. To Lita, my wife, Sh. 500,000 on condition that she does not marry again.

The executor has established that:

* Kifo gave Linda Sh.60,000 in 2002 to enable her open a salon.
* The contract for the purchase of the house in Thome was completed in June 2004.
* Lita is engaged to Kisongo and their wedding is scheduled for 31 December 2004.

**Required:**

Explain how the executor should deal with each bequest. (9 marks)

1. Onyango died intestate, leaving his two wives Atieno and Akinyi whom he married under a system of law which permits polygamy. Anyango, his second wife had predeceased him leaving two childred, Suswa and Supra who are still alive. Atieno has three surviving children: Pamela and Obama while Akinyi has no children.

Onyango’s estate consist of:

1. Personal effects Sh. 400,000
2. Household effects Sh. 1,000,000
3. Motor vehicle Shs. 500,000
4. Residue Sh. 3,000,000

**Required:**

A statement showing how Onyango’s estate will be distributed. (7 marks)

**QUESTION TWO (20 MARKS)**

Mali Mengi (aged 57) died in a road accident on 31 December 2013. On 1 May 2014 after his executors had paid all debts (except for the mortgage for his freehold house and debt to Mkopeshaji) testamentary and funeral expenses, his estate was ascertained as follows:

|  |  |  |
| --- | --- | --- |
|  |  | Shs. ‘000’ |
| Cash in bank accounts  |  | 4,250 |
| Freehold house  |  | 3,250 |
| Toyota corolla  |  | 360 |
| Nissan sunny  |  | 220 |
| Television and music system  |  | 105 |
| Debt due from Pungufu  |  | 40 |
| Furniture and personal effects  |  | 302 |
| 10,000 ordinary shares in Cement Ltd.  |  | 1,200 |
| 4,500 ordinary shares in Soko Mjinga Ltd.  |  | 370 |
| Sh.800,000 10% Kenya stock |  | 165 |
| Income received to date  |  |  |
| Interest  |  230 |  |
| Dividend from Soko Mjinga Limited  |  |  |
|  |  |  |
| Less: Mortgage interest paid 31 March 2014 |  |  |
|  |  |  |
|  |  |  |

Extracts from Mali Mengi’s will left bequests as follows:

1. To each of my sons. Kikwajuni, Mnazini, and Mwembeni Shs.1 million.
2. To my wife Darajani, I leave my furniture, household and personal effects and the residue of my estate.
3. To my daughter Nanjale, my freehold house free of all duties. The hose was subject to a mortgage of Sh. 1 million carrying interest at 24% per annum payable 31 March and 30 September. Duty on the house amounts to Sh. 130,000.
4. To my friend Kisitu, one of the motor cars owned by me at the time of my death he may choose.
5. To my friend Mungu Sh. 100,000
6. To my sisters-in-law Sh. 300,000
7. To my cousin, Nipa, my painting of Mausoleum by Kikuvu
8. To my driver Ndeleva Sh. 150,000
9. To my friend Shimba, my holding of Sh.800,000 110% Kenya stock, Mali Mengi owned Shimba Sh. 100,000.
10. To my sister Malindi Sh. 300,000
11. To my personal assistant, Sijapata half of my holdings in Cement Ltd.
12. To my niece Sinani, 4,000 ordinary shares from my holding of such shares in Cement Ltd.
13. To my nephew Shaibu Sh.200,000 payable out of my shares in Cement Ltd.
14. To my friend Mlungu Sh. 50,000.
15. To my neighbor, Jirani Sh. 50,000
16. To my sister Dada, Sh.100,000 to establish a business.

Mali Mengi executors ascertained the following beneficiaries were dead:

* Son Mnazini died in 1997 leaving a wife and two children.
* Son Mwembeni died in 1998 leaving a wife.
* Sister Malindi died in 1996 leaving two daughters.
* Driver, Ndeleva aged 60 died in the same accident as Mali Mengi. It was impossible to determine the order in which Mali Mengi and Ndeleva died.

The executors also advises you that:

1. Kisitu chose the Toyota Corolla
2. Mali Mengi sold his painting of the mausoleum using the proceeds to purchase his holding in Soko Mjinga Ltd.
3. There is no such investment as 110% Kenya stock. The referees in the will to 110% is thought to be a typing error not previously noticed.
4. Jirani replied in writing that he did not want anything from Mali Mengi because Mali Mengi was a bad neighbor.
5. Mali Mengi paid the Sh.100,000 during his life to hi,s sister Dada to establish a business.

**Required:**

1. A statement showing the distribution of Mali Mengi’s estate on 1 May 2014. (16 marks)
2. A list of legacies to which the executors should not assent, briefly give reasons for the decision. (4 marks)

**QUESTION THREE (20 MARKS)**

Kombo died on 31 October 2014 and left his estate as follows:

|  |  |
| --- | --- |
|  | Shs.  |
| Household furniture  |  90, 000 |
| Cash in house  |  2, 000 |
| Cash at bank  | 250,000 |
| 10,000 ordinary shares of Sh.20 each in KFC Ltd. Valued at Sh. 30 per share | 300, 000 |
| Investment at 5% on freehold property securities (interest thereon paid to 30 June 2014) | 400, 000 |
| Share in business of Kombo & Co. valued at death  | 1, 226, 000 |
| Sundry debtors  |  20, 000 |
| His liability amounted to |  5,000 |
| Funeral expenses  | 10, 000 |

The following additional information is available:

1. A legacy of Sh.20,000 was bequeathed to his executor and was paid on 28 January 2015
2. The residue of the estate was left in trust for his infant son.
3. The household furniture was sold on 15 December 2014 for Sh. 96,000
4. The shares were sold on the same date at Sh.29 ex div: a dividend being received on 25 January 2015 at 10% for the year ended 31 December 2014.
5. Interest on investment in freehold property securities was received on 31 December 201, on which date the shares in the business of Kombo & Co. was received with interest at 5% per annum.
6. The liabilities and funeral expenses were discharged on 20 December 2014 on which date Sh.10,000 of the debts due were received. The balance being unpaid at the date of preparation of the accounts.

Required:

1. Journal entries to record the above transaction (5 marks)
2. The Estate cash book (4 marks)
3. The Estate income account (3 marks)
4. The Estate Capital account (5 marks)
5. Balance sheet of Kombo: deceased as at 31 January 2015 (3 marks)

**QUESTION FOUR (20 MARKS)**

1. What conditions must a gift in contemplation of death fulfill in order to take effect (5 marks)
2. In the creation of a trust, the “three certainties” are necessary.

Explain what the three certainties are, giving an example of each and indicating the effect of the failure of each (6 marks)

1. Mr. Onyancha dies intenstate, leaving two wives, Agnes and Carol whom he married under a system of law which permits polygamy; a third wife Belinda had predeceased him. Agnes has three children; Purity, Quaran and Rast; Belinda had children Storm and Thunder; Carol has no children.

All the children are alive at the time of Mr Onyancha’s death. The value of his personal and household effects was Shs. 700,000 and the value of the next residue of the estate was Shs.2,800,000. How shoud his estate be divided? (9 marks)

**QUESTION FIVE (20 MARKS)**

1. Explain the arguments for the against the legislation of Matrimonial Properties Act (2012) and the Marriage and Divorce Act (2013) in relation to Section 42 of succession Act Cap 160. (8 marks)
2. Discuss various ways through which a trustee can be appointed and how such a trust can be terminated. (6 marks)
3. State and explain the fundamental characteristics of a will (6 marks)