

LEGAL PROFESSION ADMISSION BOARD

SEPTEMBER 2009

SUCCESSION

Time: Three Hours

This paper consists of **seven** questions.

Candidates are required to attempt any **five** questions.

No question is compulsory.

All questions are of equal value.

If a candidate answers more than the specified number of questions, only the first **five** questions attempted will be marked.

All questions may be answered in one examination booklet.

Each page of each answer must be numbered with the appropriate question number.

Candidates must indicate which questions they have answered on the front cover of the first examination booklet.

Candidates must write their answers clearly. Lack of legibility may lead to a delay in the candidate's results being given.

Permitted Materials: This is a closed book exam. No materials are permitted in the examination room.

Attached to this paper is a copy of Law Extension Committee materials (case list and statutory extracts, including the Succession Act 2006) and further extracts from the former Wills, Probate and Administration Act 1898, and the Probate and Administration Act 1898.

As some instances of cheating and of bringing unauthorised material into the examination room have come to the attention of the Admission Board, candidates are warned that such conduct will result in instant expulsion from the examination and may result in exclusion from all further examinations.

This examination should not be relied on as a guide to the form or content of future examinations in this subject.

Question 1

T died intestate on 1 February 2009. T divorced his wife, W, in 2000 and since January 2008 has been living in a de facto relationship with Mary, with whom he had two children, one now aged five years and the other aged one year. T is survived by all of the above persons, as well as two sisters (each of whom has a child) and two nieces (the children of a deceased brother).

T's assets and liabilities at his death were:

House (occupied by T and Mary at his death)	\$300,000
Furniture	\$40,000
Jewellery	\$20,000
Shares in public companies	\$100,000
Bank account	\$100,000

Mortgage on house	\$50,000
Debts	\$230,000
Funeral and testamentary expenses	\$20,000

- (i) Explain how the estate should be distributed on the above facts.
- (ii) How should the estate be distributed if Mary and T's children had predeceased T?

(20 marks)

Question 2

(a) T died at the age of 91 years. He was up to the time of his death, active and intelligent, though not well educated. By his will dated January 2009, made just after he suffered heavy losses on the stock market as a result of the economic crisis, he left the whole of his estate (except for a small legacy to charity) to his niece, Mary, who lived with him. Prior to 2009 T had made several wills, all of which left very large gifts to two nephews, Bill and Cedric, who are stockbrokers and had always looked after T's financial affairs without charge. Just before making his last will, T had told his friends that his nephews had defrauded him by making large commissions at his expense when they knew that the market was about to crash. There is credible evidence that T's nephews have always acted honestly and reasonably with respect to their uncle's investments.

Bill and Cedric wish to challenge the will. Advise them.

(Question 2 continues)

(Question 2 continued)

(b) T, who was seriously ill and needed urgent surgery, prepared written instructions setting out how she wished her property to be distributed at her death. The solicitor prepared a will in accordance with her written instructions, but before she could attend to sign the will she was urgently admitted to hospital and died.

At her death her will dated 2 February 2000 was found, with the following words written across it and bearing her signature: "As I am about to make a new will, this will is no longer good."

Advise if any of the documents are admissible to a grant.

(20 marks)

Question 3

(a) On 1 July 2008, T wrote out her will and signed it. The following week, when two of her friends visited her, she said to them: "This is my will, which I have already signed, will you witness it?" Before the witnesses could sign, T left the room to answer the telephone. When T returned, the will was handed to T with the witnesses' signatures on it.

On 1 February 2009, T made the following document: "This is a codicil to my will dated 1 July 2008. I appoint X instead of Y as my executor." The document was signed by T and two witnesses.

Explain which, if any, of the documents should be admitted to a grant.

(7 marks)

(b) On 1 March 2005, T made the following valid will: "I give my house to my son, Albert, and the residue of my estate to my daughter, Beatrice." The will was witnessed by Albert and Beatrice.

On 1 December 2007, T made the following valid codicil to his will: "I appoint my son Albert, who is a solicitor, as my executor and I direct that he is entitled to be paid his usual professional fees for any legal work done by him for my estate." The codicil was witnessed by Albert and Rupert.

T died on 1 July 2009.

Explain whether the dispositions are affected by the interested witness rule.

(7 marks)

(Question 3 continues)

(Question 3 continues)

(c) T's will, dated 1 February 2005, provides: "This will is made in contemplation of my marriage to Harry. I give my house to Harry, my law library to my friend, John, my jewellery to my daughter, and the residue of my estate to my son. I appoint John and Harry my executors."

On 1 May 2009, T married John.

Explain who is entitled to T's estate, and who should obtain the grant and what type of grant should be made.

(6 marks)

(20 marks)

Question 4

(a) T's will gives a specific gift of a valuable painting to A, and a general legacy of 100 BHP shares to B. The painting is at all relevant times valued at \$100,000. It is insured, the annual premium being \$2,000. It has been placed in various national and international exhibitions, for which the estate received \$5,000 in the first year, and \$15,000 in the second year after T's death. The BHP shares are at all relevant times each valued at \$30 and have paid an annual dividend of \$3.00 per share.

T died on 1 July 2006, but because of various disputes the estate was not distributed until 1 July 2009.

Explain how much A and B should have received.

(7 marks)

(b) The dispositive provisions in T's will, which is dated 1 April 2005, include the following: "I give my jewellery to my daughter, Linda."

Linda has a son, and four grandchildren (two of whom are the children of a deceased daughter of Linda and two are children of her surviving son).

Explain how you would distribute the estate:

(i) if T died on 1 June 2007 and Linda died on 1 January 2007; and

(ii) if T died on 1 August 2009 and Linda died on 1 January 2009.

(7 marks)

(Question 4 continues)

(Question 4 continued)

(c) T's will, dated 1 July 2009, includes the following residuary gifts: "I give the residue of my personal estate to my nephews A, B and C, and the residue of my real estate to my niece D." T died on 15 August 2009, C and D having predeceased her.

Explain who is entitled to T's residuary estate. Would your answer differ if T's will had been made on 1 July 2007?

(6 marks)

(20 marks)

Question 5

(a) T, who was ill and in hospital, asked her friend F to instruct a solicitor to make a will for T leaving all of T's estate to F. F's solicitor attended T, who executed the will. The will was challenged by a cousin and a niece of T on the basis that T did not know or approve the contents of the will.

Advise whether the cousin and niece have the standing to challenge the will, and who would bear the onus of proof.

(b) T's will disposed of her shares in public companies to A, \$20,000 to the RSPCA, and the residue of her estate to C. At T's death the value of the shares was \$250,000, and the residue of the estate (after providing for the legacy to the RSPCA and debts) was worth \$5,000.

Explain who is entitled to the grant and what type of grant should be made.

(c) T's will, which appoints A his executor, provides, inter alia: "A, being a solicitor, may make all usual professional charges for work done by her in relation to the administration of my estate." A has done all the legal work for the estate, including obtaining a grant and conveyancing services for the sale of estate assets, and has performed other work, including running T's business so that it could be sold as a going concern, attending to the burial of the deceased, and other non-legal work performed for the estate.

A wishes to charge for all her services to the estate, and also claim commission for her pains and trouble in administering the estate. Advise her.

(Question 5 continues)

(Question 5 continued)

(d) T died on 1 January 2008. T's executor, X, published a valid notice of intended distribution of the estate. After the expiration of the time in the notice, X distributed the whole of T's estate. Two months after the distribution of the estate, X received two claims: one from D, who claims that T had failed to repay a loan he made to T, and another from E, who claims that that he is an ex-nuptial child of T and was therefore entitled to a share of the residuary estate, which was left to T's children.

As X has refused to settle the claims, D and E have sued X. Advise X.

(20 marks)

Question 6

T, who was a widower, died on 1 June 2009 aged 50 years. He has a daughter, Denise, a child of his first marriage. Denise is aged 18 years and is studying law at university. T is also survived by Frank, the son of his second wife from a prior relationship. Frank, who is now aged 15 years, was 5 years old when T and Frank's mother married. Frank is mildly handicapped and will not be able to pursue tertiary studies. At most he will only be able to take manual work. T always treated Frank as he would have treated a son of his own, and he took a close interest in Frank's development. He enjoyed taking Frank to sporting fixtures and other social outings. Frank helped around the house as would any other teenager and he mowed the lawn and helped keep the garden clean. Frank has no independent resources, his mother having contributed all her savings (\$100,000) to the purchase of the home occupied by her and T at his death.

When Frank's mother died four years ago, T transferred the title to the family home, which was in his name, to himself and his daughter as joint tenants. The home is valued at \$800,000. Apart from the home, T was in receipt of a pension and had about \$50,000 in savings.

T's will leaves $\frac{3}{4}$ of his estate to his daughter and $\frac{1}{4}$ of his estate to Frank. T's daughter and Frank (through his guardian) have commenced family provision applications against T's estate. T's daughter claims that she, being the only child of T, should be entitled to the whole estate.

Advise the executor of the estate whether Denise and Frank are entitled to bring the claims, and the likely result of the claims.

(20 marks)

(Question 7 follows)

Question 7

T's will, dated 1 February 2004, provides as follows:

"I give my house to my husband, my car to my son, and my jewellery to my daughter. I give 1000 BHP shares to my godson and \$80,000 to the RSPCA. I give the residue of my real and personal estate to my son and daughter equally. I direct that all my debts be paid from the residue of my estate, but if such residue shall not be sufficient to pay all my debts then the excess shall be borne by my said son and daughter in proportion to the values of their shares in my estate, their shares to be charged with the payment of the excess accordingly."

T died on 1 August 2009, survived by all of the persons named in the will.

At the date of the will, T had a Holden motor vehicle valued at \$10,000. BHP shares were at all relevant times worth \$20 each.

At her death, T left the following assets and liabilities:

House	\$500,000
BMW motor vehicle	\$80,000
Jewellery	\$50,000
Holiday home	\$300,000
AGL shares	\$50,000
QBE shares	\$50,000
Furniture and personal effects	\$20,000
Bank account	\$50,000

Mortgage on house	\$300,000
Debts	\$30,000
Funeral and testamentary expenses	\$40,000

Explain how the estate should be distributed.

(20 marks)

END OF PAPER