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**KIRIRI WOMENS' UNIVERSITY OF SCIENCE AND TECHNOLOGY**  
UNIVERSITY EXAMINATION, 2023/2024 ACADEMIC YEAR  
FOURTH YEAR, SECOND SEMESTER EXAMINATION  
FOR THE DEGREE OF BACHELOR OF SCIENCE  
(BUSINESS ADMINISTRATION)

Date: 14<sup>th</sup> August, 2023

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) Discuss the concept of secrecy in relation to trusts. (4 Marks)
- b) On Friday the 30<sup>th</sup> September 2022 the High Court in Meru declared some sections of the Succession Act unconstitutional. Discuss the Court's ruling bringing out clearly what requires to be done to address the matter. (6 Marks)
- c) After all other obligations had been discharged the estate of Hobert Njoroge 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Just before he died Hobert had withdrawn from Sigara SACCO and his dues paid to him in full.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)
- d) 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. (6 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. (8 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) Mr. Muchiri an old man from Embakasi, Nairobi County had made a will. He had three wives Njeri, Mwikali and Chebet. On one occasion he had a meeting with the wives discussing the behavior of some sons who had become drunkards and had even been harassing some of Muchiris tenants forcefully collecting rent from them. The meeting turned ugly when the wives started arguing on who was on the wrong and who was right. In a state of anger, Muchiri took the will and threw it into the fire declaring that he was cursing the children and none of them would ever enjoy the fruits of Muchiri's labour. Mwikali the second wife grabbed the will before the fire could totally consume it. Muchiri later died without making another will. None of the wives knows how a will looks like but Mwikali maintains that there is a valid will which she is holding. Discuss the situation above from a legal point of view. (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) Legacies are defined as specific, general or demonstrative. Explain the importance of this classification in relation to abatement. (5 Marks)

- c) Discuss the challenges trustees face in executing their duties and responsibilities clearly bringing out the requirements of the Trustee Investment Act. (7 Marks)