

LAW OF SUCCESSION

by Student's Name

Course code + name  
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**QUESTION 1**

The facts present a number of issues that are related to the law of succession. In this discourse each issue has been specified and an explanation of the issue is made. There are several issues that crop up in the facts of the case.

The first issue is whether or not the Will made by Mr. Wilson is a valid will. Normally a valid will must meet three major conditions. One is that a testator must be mentally sound at the time he or she made the will. Secondly, a testator must show the intention to make the will which is also referred to as *Animus Testandi*<sup>1</sup>. Lastly, a testator must ensure that all the formalities are satisfied as provided under the wills Act 1837. From the facts, it is clear that the process of making the will met all the three conditions. One would argue that the state of mind of Mr. Wilson was not upright but the facts show that he had made the will after recovering from a long convalescence.

As a crucial issue, Mr. Watson is unable to determine what his role in the execution of the will is. Looking at the facts of the case, it is clear that Mr. Wilson chose Mr. Watson to be the executor of his estate. An executor must be any person who is of sound mind as well as a person who is not an underage. In the facts, there is nowhere stated that Watson, the trix, is of unsound mind or is an underage person. This is provided under the S118 Supreme Court Act 1981 and Rule 35 NCP Rules 1987. Thus, his role as an executor of Mr. Wilson's estate is a legal role. Among the duties that Wilson is mandated to carry out in his position as a trix is searching for any unclaimed property of the deceased. In addition, Wilson has a duty to facilitate payments of all the bills that the estate incurs. Also, Wilson has a duty to distribute the residue of the estate to all the persons that benefit from the estate. It is the duty of the executor to identify and dispute all claims that may be made against the estate. Lastly, the executor is mandated to carry out all the tax obligations of the estate of the deceased.

There is an issue as to whether the codicil made by Wilson on the 18<sup>th</sup> day of November is a valid one. There is one peculiar aspect about the process of making the codicil. As per the facts, Mr. Wilson made such a codicil under intoxication. Rules that govern the formation of a will are similar to those of formation of a codicil. As a result, the fact that Mr. Wilson made the codicil under intoxication renders the codicil unenforceable under the law of succession. Consequently, the initial terms of the will remain and that means a legacy of £50,000.00 [fifty thousand pounds] in his will that he left to Ms Felicity Grant his housekeeper of ten years must be executed as per the provisions of the initial will. The case of *MacDonell v. Purcel* serves as a clear example of a codicil not accepted by virtue of intoxication. In this case, the applicant who was one of the heirs to the estate of the deceased sued the defendant claiming that the defendant was a mere employee of the deceased and the codicil made by the deceased to allocate the defendant a section of the estate was done when the deceased was hospitalized and, probably the drugs may have intoxicated the deceased at the time of the formation of the codicil. The court ruled in favor of the plaintiff since it was convinced that the deceased might have made the codicil under the influence of drug intoxication. According to one of the judges of the court, the deceased was not of sound mind at the time he altered the original will.

The issue of 'general legacy' and 'pecuniary legacy' has also been underscored in the facts of the case. With regards to pecuniary legacy, it is a legacy given in form of money. In most

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<sup>1</sup> Frankie McCarthy, *Succession Essentials* (Dundee Univ Press 2012).

cases, pecuniary legacy carries interest from a year after the death of the testator<sup>2</sup>. On the other hand, general legacy refers to any form of gift granted by the testator to the heir in the form of a testament or a will. For instance, a deceased who writes a will bequeathing his son all the household and pieces of land makes a general legacy while a father who bequeaths his daughter all the money on his bank account in form of a will or testament makes a pecuniary legacy.

There is an issue as to how Mr. Watson will be liable if he fails to locate and allocate the estate to both Mr. James Wilson and Anne Canning. Per se, Mr. Watson incurs a personal liability if he fails to locate these people and allocate them the estate of the deceased. However, section 27 of Trustees Act 1925 offers reprieve to Mr. Watson. According to this section, the executor will make a notice on the dailies requiring the beneficiaries to make claim to the estate. The notice expires after two months. Failure by the potential beneficiaries to show up and claim exonerates the executor from personal liability.

Whether the misspelled name of Nathan Metcalfe invalidates the will is another issue to be ascertained. This is a tricky situation which requires wisdom of the court when making a decision. Under this circumstance, the intent of the testator is given priority<sup>3</sup>. If the intent of the testator was to bequeath property to Nathan Metcalfe then it is valid. So, looking at the other options, there is no other name or statement that may confuse the executor. Consequently, the executor is very aware that the intent of the testator was to bequeath estate to Nathan Metcalfe.

There is an issue of a torn Will whereby important parts are missing. In such a scenario, the executor should ensure that extremely important details are present. For instance names of the beneficiaries and the signature of the testator. If these are present, the will can be executed. However, if important details lack, the will is invalidated.

Mr. Wilson can decline the legacy made to him by Mr. Wilson by putting the 25,000 pounds under the trust of the Trees for Life Council Charity. The Will that Mr. Watson makes to grant 20,000 pounds legacy to Mrs. Patel; and subsequent codicil that incase Patel dies earlier the legacy be granted to one of the legal officers were all valid since they were made by Mr. Watson when he was of sound mind; had an intent to make a will; and it fulfills all the formalities.

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<sup>2</sup> Ralph C Brashier, *Inheritance Law And The Evolving Family* (Temple University Press 2004)

<sup>3</sup> Nuala Casey, *Wills, Probate & Estates* (Oxford University Press 2006).

**QUESTION 2(a)**

According to the facts of the case, Mr. Wall appointed Lucy as the executor of the will. Looking at the procedure of appointment, it is clear that this was a valid appointment. From the facts of the case, it is true that the appointment was both express as well as implied. This is ascribed to the fact that the testator, Mr. Wall wanted his estate to be executed by his wife and in the absence of the wife, his cousin Thomas Menon should take over the process of execution. A case that offers similar situations is one of *The Goods of Cook (1902)*<sup>4</sup>. In this case, the court was asked to determine whether or not the executor of the estate was validly appointed. The facts of the case were that one of the beneficiaries, who were the plaintiff, sued the defendant disputing his validity as the executor of the estate. The issue was taken to the court of appeal whereby the leading judge ruled that by mere pronouncement by the testator that the defendant would be the executor, he automatically rendered him a valid executor. As a result, both Lucy and Menon were valid executors.

However, a problem arose whereby Lucy died before the death of the testator. This means Thomas Menon was the rightful executor to take over the process. However, the facts are clear that Thomas was extremely occupied and he therefore declined to be the executor of the will. This renders the will devoid of an executor. Under such circumstances, the court comes in to appoint an administrator. S114 (4) Supreme Court Act 1981 accords the court all powers to choose an administrator of an estate which there is no specific executor specified in the will<sup>5</sup>. From the facts of the case, it is overt that the circumstances render the will lacking an executor since Lucy is dead while Menon does not have time to execute the will.

Alternatively, given that Lucy died before the death of the testator, the testator would have well appointed another executor given that Menon was not ready to take the task of an executor. This could have been effected by Mr. Wall preparing a codicil. A codicil is an alteration made to a will by the testator.

One of the beneficiaries of the estate of the testator could as well take over the duty of appointing the testator. This is applicable as it was done in the case of *In the Goods of Gringan(1828)* whereby the matter was taken to court for determination. The complainant was disputing the two executors of the estate appointed. He claimed that the two executors were not valid since they were not appointed by the testator or the court. Instead, they were appointed by one of the legatees. In its decision, the court affirmed that the process was valid since the testator had authorized the legatees to appoint any person they wish would be an executor of his estate.

In conclusion, therefore, the fact remains that the testator did not make a Will authorizing the beneficiaries to appoint their own executors. Consequently, the option of involving the court would suffice in the circumstances. Therefore, S114 (4) Supreme Court Act 1981 would apply whereby the court will appoint an administrator to the estate of Mr. Wall. The best administrators to the will include firms of solicitors. These are people with adequate knowledge in matters of succession and inheritance. The court can appoint such administrators following the death of Mr. Wall. The appointment by the court would not be carried out during the time when Mr. Wall existed. According to the facts, he son of Lucy who was not fathered by her current husband (Mr. Wall) is not party to the estate since he was never mentioned in the will. If he was not an

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<sup>4</sup> Miriam Anderson and Esther Arroyo i Amayuelas, *The Law Of Succession* (Europa Law Publishing 2011).

<sup>5</sup> Simon Greenleaf Crosswell, *Handbook On The Law Of Executors And Administrators* (West Pub Co 1897).

underage, he would be the perfect person to be appointed as the administrator of the estate of Mr. Wall.

**QUESTION 2(b)**

From the facts of the case, it has been established that Lucy died in April 2006. The death occurred at the time when the will had been made. She also died before the testator of the will died. However, before the testator died, he made no alterations to the initial will that was prepared in the year 1993. The question is whether or not the will should apply even after the death of Lucy. The fact is that the testator never made any other additional information regarding the details of the will. Never was the will specified that in case Lucy dies, her share of the estate should be given to any other person. It is also worth noting that there are five major elements that characterize a will. First, the will must be accompanied by the intent. Secondly, a will's wishes are only intended to take effect after the death of the testator. Thirdly, a will only takes effect after the death of the testator<sup>6</sup>. Fourth, a will is normally revocable. Lastly, a will is ambulatory. From the third aspect of the will, it can be deduced that the will by David to bequeath a section of his estate to the wife is invalid since Lucy died before the testator. Consequently, her fate to the will is sealed and she could not benefit from it in any manner. Therefore, it is upon the administrator of the estate of David to ask the court to make a decision. Under the circumstance, the court may choose to equally distribute the property of Lucy across those mentioned as beneficiaries in the will.

In the will it is stated that the testator specified that his Beneteau 670 Motor Boat and his Honda 580 Adventurer Inflatable Rib Boat should be given to his friend known as Jonathan. Unfortunately, it was established that the testator had two friends whose names were Jonathan. The two friends with one name cause confusion as to who is the exact person that the will refers to. This issue showed up in the case of *Tyson verses Lee*<sup>7</sup>. In this case, the testator had made a will to address it to his two nephews. The will stated that, "One of my two houses should be given to my nephew, Lee. At the time of the execution of the will, it was realized that the testator had two nephews with the names Lee. Thus, the executor rendered the will invalid with regards to the confusion provisions. Consequently, the plaintiff took the matter to the court arguing that he was the target of the will. Upon hearing the facts of the case, the court ruled that the will lacked the validity as per the provision made by the testator over the names. From the facts present, it can also be deduced that the will to award Jonathan is equivocal and the property cannot pass to either of the two as heir to the estate of the testator.

In his will, David bequeathed to his two children Charlotte Campbell and Angus Wall the sum of £200,000.00 [TWO HUNDRED THOUSAND POUNDS] each. Unfortunately, tragedy struck whereby Charlotte died before she inherited the property. However, Charlotte was blessed with two issues while Angus was married with no issue. The matter that arises in this scenario is whether or not the will should be exercised as written by the testator or the executor should alter it in order to suit the circumstances at hand. The fact is that the will can never be amended to suit the circumstances. The initial statement is that only two of David's children will inherit the above specified amount of shillings. That statement is enough to exclude any other person from

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<sup>6</sup> William Musyoka, *A Casebook On The Law Of Succession* (LawAfrica Publishing Ltd 2010).

<sup>7</sup> Floyd R Mechem, Alfred G Reeves and Nathan Abbott, *Cases On The Law Of Succession To Property After The Death Of The Owner* (West Pub Co 1895).

benefiting from the stated amount of money. That means even after the death of Charlotte, her two children cannot benefit from the will. This is ascribed to the fact that the testator never gave any other subsequent option in case a tragedy meets either or all of his two children. One would argue that the money that was intended to be given to Charlotte can as well be given to her two children. That cannot happen lest the will is being jeopardized. This case contrasts the facts and the verdict in the case of *Re Song*. In this case, a father wrote a will for his two sons. The will stated that “My estate should be shared between my sons in equal measure and in case either of the son predeceases the other, all the property of the deceased passes to the children of the deceased. If the deceased will have no children at the time of his death, the entire estate shall be bequeathed to the existing son. Looking at this case, it is factual that the will made was unambiguous since it was precisely and conclusively stated.

The Honda 580 Adventurer Inflatable Rib Boat is a property that is already under question. Despite it being under an equivocal will statement, it has also been stolen. Therefore, the fact that the subject of the will is stolen renders the will a frustrated one. When the will is frustrated, it cannot be executed. So, assuming that the will details that allow Jonathan to take the Honda 580 Adventurer Inflatable Rib Boat was unequivocal, another hurdle could be that this part of the will was not practicable as the estate in question was stolen and it was never recovered. The case of *Loyd verses Queen* gives a clear example of a will that could not be executed due to the destruction of the subject matter. In this case, the testator bequeathed his mansion to his nephew. The will stated that “I bequeath my mansion, which is in good condition, to my nephew if I die since he has always been with me during my difficult moments. After writing the will, the testator died within a year of writing the will. However, before the execution of the will, the mansion caught a fire and the mansion got burned. The court held that the will could still be executed in favor of the deceased nephew who renovated it and stayed in it. In this case, property in question was destroyed but was in the condition to repair. On the other hand, the boat was stolen and it could not be obtained again. The two cases contrast each other.

According to the will, the 1964 Porsche 356 C classic car was to be bequeathed to Raishbrook but then it was sold by David in 2009 and he bought a 1965 Mercedes Benz 230SL with the proceeds of the sale. The issue that arises is whether Raishbrook is entitled to the Mercedes Benz 230 SL given that it was the replacement of what was stated in the will. The fact remains that the will cannot be altered by the change in the subject matter. The Mercedes Benz 230 SL and the Porsche 356 C classic car are totally different subjects in the will. The fact that David sold the car was an implied change of the will. He literally wanted to deny the opportunity for Raishbrook to be bequeathed the car.

David’s Georgian Oak Bureau has been loaned but the property in the Bureau remains under the care of David. Consequently, the Bureau can be bequeathed to the beneficiary that the testator wrote in his will. The fact that the bureau has been loaned cannot distort the provision of the will. The will remains intact and it can be executed legally as it was done in the case of *Re Johns*<sup>8</sup>. In this case, the will was drafted by the testator to bequeath his leased land. According to the will, upon the expiry of the lease, the beneficiary will assume ownership of the land. The will was considered valid by the court and land was bequeathed to the beneficiary upon the completion of the lease period.

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<sup>8</sup> Robert L Mennell and Sherri Burr, *Wills And Trusts In A Nutshell*.

Finally, the fact that East Anglia Canine Rescue Society ceased to exist before the testator's death means that the testator had no intent to bequeath the property to this charity organization. If it were that he had the intention, he could have made a codicil which would be used to revive the charity organization since it ceased to exist at the time when he was alive. Thus, the validity of this statement in the will is under question.

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