UNIT 8 - LAW OF WILLS AND SUCCESSION

Suggested Answers – January 2009

Note to Candidates and Tutors:

The purpose of the suggested answers is to provide students and tutors with guidance as to the key points students should have included in their answers to the January 2009 examinations. The suggested answers do not for all questions set out all the points which students may have included in their responses to the questions. Students will have received credit, where applicable, for other points not addressed by the suggested answers.

ILEX is currently working with the Level 3 Chief Examiners to standardise the format and content of suggested answers and welcomes feedback from students and tutors with regard to the ‘helpfulness’ of the January 09 Suggested Answers.

Students and tutors should review the suggested answers in conjunction with the question papers and the Chief Examiners’ reports which provide feedback on student performance in the examination.

Section A

1. Question 1 requires the candidate to identify any 3 characteristics of a will. This could include that a will takes effect on death, that it is a declaration of intent, that it can be revoked, that it must normally be in a prescribed form (i.e. complying with the formalities of s9 Wills Act 1837), that it deals with disposal of assets on death (and other matters), that those assets may be acquired after execution.

2. A blind or illiterate testator cannot read his will. Therefore, the necessary intention to make a will is not presumed. Additional steps must be taken to show knowledge and approval, most likely that the will is read over to the testator by an independent person. The attestation clause should be amended to show this.

3. A contingent gift is subject to a condition, most often that the beneficiary should attain a certain age, for example 21. If the condition is not met, the gift will not pass to that beneficiary – it will fail. A vested gift has no such attached condition and will pass to the beneficiary simply on them surviving the testator.

4. This term relates only to specific gifts found in wills. A specific gift is one of a particular thing owned by the testator. If the subject matter of the gift does not form part of the estate at the date of death then the gift cannot take effect. This is ademption.
5. Revocation by destruction is governed by s20 Wills Act 1837. In order for a
testator to revoke his will by destruction there must be the act of
destruction either by the testator or in his presence at his direction, and
also the intention to revoke. If either element is not present then
revocation will not have taken place regardless of the state of the will.

6. There are a number of circumstances in which revocation will occur.
Candidates need to identify any two of the following: express revocation
by a declaration executed in the same manner as a will, a later will or
codicil, the testator’s marriage, the testator entering into a civil
partnership.

7. An intestacy will occur where the deceased leaves no will, or where his will
is invalid.

8. Administrators are appointed where there are no executors. This may be
because the deceased had not made a will or where the executors under a
will have pre-deceased the testator, or are unable or unwilling to act for
some other reason. Administrators are appointed by the court under r20 or

9. A grant of letters of administration with the will annexed.

10. Affidavit evidence may be required on application for the grant of
representation where the will shows signs of alteration, obliteration or
interlineation (under r14 NCPR 1987) or where there are signs of possible
revocation by destruction (under r15 NCPR 1987). It may also be required
where there are pin holes or other marks which might suggest another
document had been attached to it.

11. Within 6 months of the date of the grant of representation.

Section B

Scenario 1

1. Linda has not left a will and so the rules of intestacy apply here. s46
Administration of Estates Act 1925 contains the order of priority for
division of the estate. Linda has left a spouse (Terry), but given the size of
the estate he will not take the whole of it. Linda’s surviving brother and
niece will also share in the estate.

Terry will receive under the rules all Linda’s personal chattels (her personal
possessions), and a statutory legacy of £200,000. He also receives one
half of the remainder of the estate outright.

2. Under s46(2A) AEA 1925 Terry must survive Linda by 28 days before he
can inherit under her estate. If he does not survive for 28 days then the
estate will be divided as if he had predeceased her.

3. This question requires the candidate to explain how the estate is
distributed and specifically does not require a mathematical calculation.
The remaining half of Linda’s estate will pass to her family under s46 AEA 1925. In the absence of children and surviving parents, brothers and sisters of the whole blood will inherit on the statutory trusts. This means that brothers and sisters take in equal shares and if any brother or sister has predeceased leaving children or remoter issue then those children or issue take their parent’s share equally.

Here, Linda leaves Alan and her late sister’s child Samantha. They will take one half of the remaining estate each.

4. There is no will and so a grant of letters of administration will be appropriate. r22 NCPR sets out the order of entitlement to apply for this grant. The first entitled is Terry, and as there is no need for more than one administrator (there is no life interest or minority interest) he can apply alone.

5. Jean may use the Inheritance (Provision for Family and Dependants) Act 1975 to apply to the court for provision from the estate.

If Jean can prove that she was, immediately before Linda’s death, maintained by her then she will fall into the category of maintained person under s1(1)(e) of the Act. She will also need to show that financial provision is required to provide reasonable money for her maintenance. She is most likely to be awarded periodic payments or a lump sum.

**Scenario 2**

1. The formal requirements to make a valid will are laid down in s9 Wills Act 1837. Candidates should set these out clearly and accurately.

The will must be: in writing and signed by the testator, signed or acknowledged by the testator in the joint presence of two witnesses, who then sign or acknowledge their signatures before the testator, but not necessarily before each other.

2. Candidates should then apply the formal requirements set out above to the facts of the scenario, quoting no more than TWO cases and explaining their relevance.

The will is clearly in writing and Steven has signed. Steven signed before only one witness but he then acknowledged his signature before them both. The wording of the scenario makes it clear that Steven drew to the attention of both witnesses the signature he had made. The witnesses both signed in Steven’s presence. We can conclude that the will is validly executed.

Case law which could have been used here to illustrate an answer might include Couser v Couser (1996) which provides good commentary on the meaning of acknowledgment, and Casson v Dade (1781) which deals with the meaning of “presence”. There are other relevant cases which would receive credit.

3. The problem here is that Lili is a witness to the will. Under s15 WA 1837 a witness to a will cannot benefit from it. Lili will lose her gift, but this will not affect the validity of the will as a whole.
4. This is a specific gift. Where the subject matter of a specific gift does not form part of the estate at the date of death, the gift will fail by ademption. Carole will receive nothing.

5. This is a general pecuniary gift. The normal rule is that such a gift will fail ("lapse"), if the beneficiary dies before the testator. The exception is under s33 WA 1837 which saves gifts to children or remoter issue of a testator. Where such a child or issue have died before the testator leaving a child or issue of their own, then that child or issue may take the gift instead, unless the will shows contrary intention. Here, Petra (who is Steven’s child) has left her own child, Boris, who will inherit her £100,000 legacy in her place.

Scenario 3

1. Flora cannot be forced to accept the office of executor. If she wishes to stand down she must renounce. This must be done in writing and filed with the Probate Registry in order to clear her off the application for the grant of probate.

The problem here is that Flora has taken steps to involve herself in the estate by collecting papers and arranging the funeral. Such steps may be seen as intermeddling, and if this is the case she will have some personal liability as an executor whether she accepts the office or not.

However, acts of kindness and humanity are not generally seen as intermeddling and so she may still be able to renounce.

Alternatively she may instead have power reserved to her. This will mean that the grant of probate is issued to the remaining executors, but that Flora may in the future take a grant of probate and act as executor if she wishes.

2. The will does not contain an attestation clause. This means that there is no presumption of due execution and on application for the grant of probate the Registry are likely to require an affidavit of due execution by one of the attesting witnesses – r12 NCPR 1987. In addition, the affidavit should also deal with the position of Stanley’s signature which is below the witnesses, suggesting that it may have been made after the witnesses signed, which would not comply with s9 WA 1837.

3. This is a demonstrative legacy. It is something of a hybrid, being a general gift paid from a specific fund. It does not adeem like a specific gift. If the fund is insufficient to pay the legacy then the balance is paid from the residuary estate. So, in this case, Emily will receive the full £10,000, £6,000 from the account and the balance paid from the residuary estate.

4. Sophia’s gift is not contingent on any condition, it is a vested gift. This means that she need only survive the testator in order to inherit. This she has done. As she is under 18, the executors will invest the money for her until she reaches 18 and is old enough to give a valid receipt for the money. If she should die before reaching 18, the money will form part of her estate to be divided between her beneficiaries. As she will be too
young to make a will (in normal circumstances) it would be divided under the intestacy rules between any children or, failing that, her parents.