



CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

NOVEMBER 2023

LEVEL 3 UNIT 8 – LAW OF WILLS AND SUCCESSION

Note to Candidates and Learning Centre Tutors:

The purpose of the suggested points for responses is to provide candidates and learning centre tutors with guidance as to the key points candidates should have included in their answers to the November 2023 examinations. The suggested points for responses sets out a response that a good (merit/distinction) candidate would have provided. Candidates will have received credit, where applicable, for other points not addressed by the marking scheme.

Candidates and learning centre tutors should review the suggested points for responses in conjunction with the question papers and the Chief Examiners' **comments contained within this report**, which provide feedback on candidate performance in the examination.

CHIEF EXAMINER COMMENTS

5 candidates or fewer this exam. For this reason, Chief Examiner comments on overall and question-specific performance has not been included as the data is too limited for meaningful trend analysis.



SUGGESTED POINTS FOR RESPONSE**NOVEMBER 2023****LEVEL 3 UNIT 8 – LAW OF WILLS AND SUCCESSION****SECTION A**

Question Number	Suggested Points for Responses	Marks (Max)
1	A codicil is: a. a testamentary instrument b. normally making minor changes to a Will c. which must comply with the same requirements as a Will	3
2	a. Intention will not be presumed where Testator cannot read his own Will b. Additional steps will need to be taken to show knowledge and approval c. Eg the will being read over to Testator d. Adapt the attestation clause accordingly	4
3	A general legacy is: a. a gift of an unspecified item b. which is undisguised from other property fitting the same description	2
4	a. Ademption only applies to specific gifts b. It occurs when the subject matter of the gift does not form part of the estate c. At the date of death d. The result is that the beneficiary cannot receive the legacy	4
5	a. Under s18A Wills Act 1837 b. The will is read as if the former spouse had died... c. ...at the date of the decree absolute / divorce d. Any gift to her will fail / fall into residue e. Any appointment of her as an executor will fail	4
6	a. Under the intestacy rules the estate would pass to the deceased's children b. Who would inherit in equal shares c. Any child's share of the monies would be held in trust until he/she reaches 18 d. The parents would receive nothing e. S46 AEA 1925	3

Question Number	Suggested Points for Responses	Marks (Max)
7	<ul style="list-style-type: none"> a. An executor is appointed by will/admin'or appointed by court following statutory list b. Executor derives authority from the will/admin'or from the grant of letters of administration (so cannot act until grant is issued) c. Executor is the deceased's choice/admin'or may not have been d. A sole executor may take a grant where estate has life or minor interest/must be 2 admin'ors 	3
8	The grant of letters of administration with the will annexed	1
9	This might indicate an attempt by the testator to revoke the will	1
10	Categories of claimant include: <ul style="list-style-type: none"> a. Spouse/civil partner or b. former/spouse/civil partner who has not re-married c. Child/child of the family d. Other person maintained (immediately before death) e. Surviving cohabitee 	5
Section A Total:30 marks		

Section B - Scenario 1

Question Number	Suggested Points for Responses	Marks (Max)
1(a)	<p>Candidates need to be able to apply these tests, using relevant information from the scenario to make basic conclusions about Denise's capacity. The test is not to conclude correctly, but to show an understanding of the rules.</p> <p>Under <u>Banks v Goodfellow</u> (1870):</p> <ul style="list-style-type: none"> a. Denise must understand the nature of the act b. Which she must do because she has deliberately drafted the document herself c. She needs to know what she owns d. Which she seems to as she has made a list of all her assets and debts e. She needs to be able to consider any moral claims on her estate f. And since she has also made a list of all her family and friends she can clearly bring them to mind, g. although this doesn't necessarily mean she has considered each as a potential beneficiary 	7



Question Number	Suggested Points for Responses	Marks (Max)
1(b)	<p>Under Mental Capacity Act 2005:</p> <ul style="list-style-type: none"> a. As above, Denise appears to understand relevant information b. As she has made a list and drafted her own will c. We could assume that she can retain this information d. And use it in making decisions e. because she has been so independent when making her will f. and was able to talk it through with Tom g. There is nothing to suggest she cannot communicate effectively h. And she was able to hold a conversation about her will with Tom. 	7
2(a)	<p>To be a valid DMC the gift:</p> <ul style="list-style-type: none"> a. Must be made in contemplation of death b. Must be contingent on death c. The donor must part with some dominion over the property before death – there must be some delivery of the subject matter 	3
2(b)	<ul style="list-style-type: none"> a. Denise knew she was very ill and from her words was not expecting to live so she has fulfilled the first condition b. The gift also seems to have been conditional on death as Denise and Harry agreed he would hand the keys back if she recovered c. Denise has not only handed over her house keys to Harry d. But also told him where to find the title deeds e. and given him access to the fireproof filing cabinet f. The most relevant case here would be <u>Sen v Headley</u>(1991) which dealt with the gift of a house. (Note that other cases may be offered in order to obtain these 3 marks) g. 1 mark for accurately setting out the facts of this case and h. 1 mark for showing relevance to this case. i. The conclusion here must be that Harry may keep the house. 	8
2(c)	<p>To make a gift of the house to take effect on death</p> <ul style="list-style-type: none"> a. Denise needed to either make a new will including this gift b. Or make a codicil to include the gift, Which would be executed in the same way as a will and read alongside it 	3

Question Number	Suggested Points for Responses	Marks (Max)
3	<ul style="list-style-type: none"> a. The correct grant of representation in this estate is a grant of probate b. Because there are surviving executors willing to act 	2
Scenario 1 Total: 30 marks		

Section B - Scenario 2

Question Number	Suggested Points for Responses	Marks (Max)
1(a)	<ul style="list-style-type: none"> a. Marie is entitled to the household contents b. and the designer watch c. Which are tangible, moveable property d. But not the £100,000 in Jacob's sole name at the bank e. Because money is excluded f. And not the Chinese vases g. Because they appear to have been bought solely as an investment. h. And not the house known as 'Hilltops' i. Because it is immovable property j. Under ITPA (2014) (which amends s55 AEA 1925) k. Credit for noting that she has survived 28 days 	9
1(b)	<p>Marie will also receive:</p> <ul style="list-style-type: none"> a. A statutory legacy of £270,000 and b. Half of the residue c. Absolutely d. Because there are issue 	3
2(a)	<ul style="list-style-type: none"> a. Provided the house is the family home b. and that she is living in it c. a surviving spouse can require the administrators to transfer their spouse's house to them in satisfaction of their share of the estate d. within 12 months of the issue of the Grant of Letters of Administration e. But if the house is worth more than the share she is entitled to f. At the date of appropriation g. They have to pay equality money to make up the difference. 	6
2(b)	<ul style="list-style-type: none"> a. 'Hilltops' was the family home of Jacob and Marie b. And Marie is living in it c. So she can require it to be appropriated to her as her share of Jacob's estate d. Provided she pays equality money e. as the value of 'Hilltops' appears to be greater than her share of the estate. 	4
Question 2 Total: 10 marks		



Question Number	Suggested Points for Responses	Marks (Max)
3	<ul style="list-style-type: none"> a. Normally a will is revoked by a subsequent marriage b. Under S.18 WA 1837 c. So a September 2022 Will would have been revoked by his subsequent marriage to Marie d. and the estate would still have been distributed according to the intestacy rules e. This rule is avoided if the will is made “in expectation of marriage” (accept contemplation and/or anticipation) f. Provided that Testator specifies that he anticipates being married g. to a named person h. So if Jacob had stated in his September 2022 Will that he expected to get married to Marie i. then his estate would have been distributed according to the terms of that Will. 	8
Scenario 2 Total: 30 marks		

Section B - Scenario 3

Question Number	Suggested Points for Responses	Marks (Max)
1	<ul style="list-style-type: none"> a. The deceased’s estate is administered in accordance with the rules contained in AEA 1925. b. The PRs are responsible for ensuring that the deceased's assets are gathered in and all debts/ creditors are paid c. The residue in the estate is then held on trust for the minor beneficiary Forrest Stewart d. Until he attains the age of 18 e. The administrators should prepare and circulate final estate accounts f. showing all incomings and out-goings in the estate/ assets less liabilities, expenses g. Provided the administrators act in accordance with their statutory powers they incur no personal liability. 	6

Question Number	Suggested Points for Responses	Marks (Max)
2	<ul style="list-style-type: none"> a. The order in which debts, legacies and residue are paid depends on whether the estate is solvent or insolvent. b. Order for payment of debts is governed by the Administration of Estates Act 1925 (AEA 1925) c. S34(3) AEA 1925 d. And the Administration of Insolvent Estates of Deceased Persons Order 1986 (AIEDPO 1986). e. Tayo's estate is insolvent since debts exceed assets f. Debts must therefore be paid in the order set out in AIEDPO 1986 until all the assets are extinguished g. Secured debts are dealt with first h. Here this is the mortgage of £65K with Easy Money Bank i. Next the funeral expenses of £3,500 should be paid/the funeral expenses take priority over the other general / ordinary debts j. General / ordinary debts would be paid last k. And would include the garage bill of £1,300 and credit card bills of £13,000 l. There are insufficient funds in the estate to pay all of these liabilities in full 	10
3(a)	A Grant of Letters of Administration will be needed to deal with Tayo's estate	1
3(b)	<ul style="list-style-type: none"> a. R22 NCPR sets out entitlement to apply for the grant b. As Tayo was not married / did not have a spouse c. Tayo's child Forrest is entitled to the estate but he is still a minor d. The grant would be issued to the person with parental responsibility for Forrest e. This would be his mother Capri Stewart f. And one other person g. S114 (2) Senior Courts Act 1981 / R32 NCPR 1987 	4

Question Number	Suggested Points for Responses	Marks (Max)
4	<ul style="list-style-type: none"> a. If Tayo had been married to Capri she would have been entitled to the estate under the intestacy rules b. S46 AEA 1925 c. provided that she survived him for a period of 28 days (beginning with the day when the intestate dies) d. If the mortgage were paid out of the life policy the estate would be solvent rather than insolvent e. Capri would be entitled to the personal chattels f. as defined by S3 Inheritance and Trustees' Powers Act 2014 g. So Capri would therefore inherit the household and personal effects worth £500 and the motor vehicle worth £600 h. And the first £270,000 i. Including the house known as 6a Cater Street, Kempston j. And all the monies in the bank accounts k. After payment of debts owed 	9
Scenario 3 Total: 30 marks		