



CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

LEVEL 3 UNIT 8 – LAW OF WILLS & SUCCESSION

JUNE 2023

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 June 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

Generally, this was a well answered question paper with a pleasing number of very good responses.

Candidates are reminded to read the questions carefully as marks were lost where candidates wrote about related topics such as the general requirements to make a Will rather than the formal requirements asked for in Scenario 1 in Section B.

Candidates need to revise all areas of the specification as in each scenario in Section B a range of Learning Outcomes are covered.

Candidates should also take advantage of the reading time to read all of the questions in each section B scenario before deciding which scenario questions to attempt.



CANDIDATE PERFORMANCE FOR EACH QUESTION

Section A

Question 1- well answered question.

Question 2 - Almost all candidates answered this question correctly.

Question 3

This was a more challenging question as candidates were more prepared to explain why an affidavit of plight and condition would be required rather than answering the question as to what the requirements for such an affidavit are.

Question 4

Some candidates failed to score highly on this question as they had not identified a gift to a spouse / civil partner lapsing following the end of the marriage / civil partnership.

Question 5 - A very well answered question.

Question 6

The responses to this question were mixed with some very good answers, although some candidates were still using the pre 2014 definition of personal chattels.

Question 7 - A well answered question.

Question 8 - Most candidates passed this question.

Question 9

Almost all candidates identified the requirement for an affidavit of plight and condition many achieved full marks for this question.

Question 10 - A well answered question.

Section B

Scenario 1

This scenario was chosen by the majority of candidates but was the least well-done of all the scenarios and some candidates did not appear to be well prepared for the questions asked.

Question 1(a) and (c) required explanation and application of the formal requirements to make a Will. Although many candidates correctly identified these were found in s9 of the Wills Act 1837 there were too many candidates who also discussed capacity requirements for making a Will which were not creditworthy and nor was the case of Banks v Goodfellow as a result.

Question 2

This question required a detailed knowledge of the working of s33 Wills Act 1837 which was not evident in answers.

Question 3

Candidates understood the types of grant involved in this question and Julia's right to renounce, but there was insufficient knowledge of how to renounce and the reason Helen would be entitled to a Grant of Letters of Administration with the Will Annexed, as a residuary beneficiary and not just a beneficiary.

Scenario 2

This was the least popular scenario.

Question 1 - This question on the types of gifts in Wills was answered very well.

Question 2

The answers to this question on a gift subject to a contingency suffered from a lack of detailed knowledge on the operation of these gifts.

Question 3

This question on administrative powers of PRs was not answered well, and candidates are reminded that they need to learn the powers that are given to PRs by the Trustee Act 2000 where no administrative powers are included in a Will.

Scenario 3

This scenario was not chosen by many candidates, but those who did choose to answer it did so well.

Question 1

Involved the distribution of an estate on intestacy where there was both a surviving spouse and issue and was answered well.

Question 2

Involved the rights of a surviving spouse to have the matrimonial home appropriated to her as part of her share of the estate on an intestacy. It was generally well answered.

Question 3

Involved the claim of a spouse under the I(PF&D)A 1975. The question on factors that the court considers was less well done. Full credit was given for any factor that was applied correctly, so most candidates achieved good marks, but candidates often did not choose factors that were most appropriate given the facts of the scenario.

SUGGESTED POINTS FOR RESPONSE

LEVEL 3 UNIT 8 – LAW OF WILLS & SUCCESSION

SECTION A

| Question Number | Suggested Points for Responses | Marks (Max) |
|-----------------|---|-------------|
| 1 | <ul style="list-style-type: none">a. Unsuitability of intestacy rulesb. The need to appoint guardians for minor childrenc. The wish to appoint executors of choice rather than rely on administrators appointed by courtd. Preference for professional executorse. To mitigate inheritance taxf. To protect vulnerable beneficiaries with trust arrangements | 4 |
| Question Number | Suggested Points for Responses | Marks (Max) |
| 2 | A privileged will remains valid after the emergency or hostilities have ended | 1 |

| Question Number | Suggested Points for Responses | Marks (Max) |
|-----------------|---|-------------|
| 3 | <p>It is important to include a revocation clause in a Will because:</p> <ul style="list-style-type: none"> a. a later will revokes an earlier one only to the extent it is inconsistent b. this may mean that the whole earlier will is revoked, but this may not be clear so c. for the avoidance of doubt / confusion, a revocation clause should be included d. so the previous Will is revoked in its entirety | 3 |
| Question Number | Suggested Points for Responses | Marks (Max) |
| 4 | <p>A gift in a Will might lapse:</p> <ul style="list-style-type: none"> a. where the beneficiary has died before T b. and no substitutional gift was made / s33 Wills Act 1837 does not save it c. or the gift was made to a spouse or civil partner d. and the marriage/civil partnership ended before T's death. | 4 |
| Question Number | Suggested Points for Responses | Marks (Max) |
| 5 | <ul style="list-style-type: none"> a. Marriage / civil partnership revokes a will b. S.18 WA 1837 c. Unless the will is made in expectation (contemplation) of it d. To a particular named person / <u>Sallis v Jones</u> With the intention that it should not be revoked. | 3 |
| Question Number | Suggested Points for Responses | Marks (Max) |
| 6 | <p>Personal chattels include:</p> <ul style="list-style-type: none"> a. any tangible moveable property (i.e. non land) other than b. money or securities for money, c. business assets or d. assets held solely as an investment. e. s55 Administration of Estates Act 1925 (as amended by s3 Inheritance and Trustees Powers Act 2014 | 4 |
| Question Number | Suggested Points for Responses | Marks (Max) |
| 7 | <p>A chain of representation may be broken by:</p> <ul style="list-style-type: none"> a. an executor dying intestate b. a testator failing to appoint an executor in a will c. a sole executor failing to accept the office d. All named executors predeceasing T. | 3 |
| Question Number | Suggested Points for Responses | Marks (Max) |
| 8 | <p>A Grant of Letters of Administration with Will annexed applies if:</p> <ul style="list-style-type: none"> a. there is a will but b. there is no executor named in the will c. the executor is unable/unfit to act or has died d. the executor named does not want to act | 3 |

| Question Number | Suggested Points for Responses | Marks (Max) |
|----------------------------------|---|-------------|
| 9 | The Registrar would require: <ul style="list-style-type: none"> a. an affidavit of plight and condition b. under r15 NCPR 1987 c. because it might suggest an attempt at revocation / confirming that T didn't intend to revoke it | 3 |
| Question Number | Suggested Points for Responses | Marks (Max) |
| 10 | The surviving spouse standard of financial provision is: <ul style="list-style-type: none"> a. such financial provision as is reasonable in all the circumstances b. whether or not it is required for the spouse's maintenance. | 2 |
| Section A Total: 30 marks | | |

Section B - Scenario 1

| Question Number | Suggested Points for Responses | Marks (Max) |
|-----------------|--|-------------|
| 1(a) | <ul style="list-style-type: none"> a. The formal requirements are laid down in S9 WA 1837 (as amended by AJA 1982). b. The will must be in writing and signed by T c. Or signed by another for T and at T's direction d. It should appear that T intended to give effect to a Will by his signature e. When T signs or acknowledges his signature two witnesses must be present together f. Both witnesses should sign the will In T's presence (but not necessarily in each other's presence. g. Credit any relevant case law Couser v Couser, Hodgson v Barnes | 6 |
| 1(b) | <p>The purpose of an attestation clause is:</p> <ul style="list-style-type: none"> a. to describe the process by which the will was signed b. and to make it clear that the necessary formalities have been followed. c. The inclusion of the attestation clause raises the presumption of due execution d. although it is not strictly necessary for a Will to be valid e. but if no such clause is included a witness may need to swear an affidavit of due execution confirming that the correct formalities of signature by testator and witnesses were followed/ to avoid need for affidavit of due execution f. Rule 12 NCPR 1987. | 4 |
| 1(c) | <p>The formalities have been complied with because:</p> <ul style="list-style-type: none"> a. The Will is in writing and has been signed by Barbara herself b. The start of the Will 'This is the last Will and Testament of Barbara Clark' and / or the attestation clause show that Barbara intended to make a Will | 7 |

| | <ul style="list-style-type: none"> c. There is an attestation clause that raises the presumption that the will was validly executed as it says that execution of the Will by Barbara was 'in our joint presence and then by us in hers' d. Showing that Jack and Fran were together when they saw Barbara sign the Will e. And that Barbara saw both Jack and Fran witness her signature f. One relevant case should be named such as Hodson v Barnes, Marley v Rawlings, Barrett v Benn, Wood v Smith or Courser v Courser. g. The facts should be used to illustrate the process of due execution (or lack of it) in that case. | |
|-----------------------------------|--|--------------------|
| Question 1 Total: 17 marks | | |
| Question Number | Suggested Points for Responses | Marks (Max) |
| 2 | <ul style="list-style-type: none"> a. As Alfred has pre-deceased Barbara the residuary estate would pass to her children equally. b. So Julia Clark would receive half of the estate. c. Noah Clark's half of the estate passes to his child Helen Skinner d. under the rules of S33WA 1837 which provides an exceptions to the general rule of lapse. e. S33 only applies to issue of the testator f. but this is the case here as Helen is a direct descendant of Barbara Clark. g. There is no contrary provision expressed by the will to say that S33 WA 1837 is not to apply. | 7 |
| Question Number | Suggested Points for Responses | Marks (Max) |
| 3 | <ul style="list-style-type: none"> a. Julia may apply for a grant of probate to Barbara's estate b. but if she does not wish to act she can renounce as executrix of the will. c. To renounce she must sign a written renunciation which is filed at the Probate Registry. d. Alternatively Julia could have power reserved to her. e. In either event Helen will then apply to apply for a grant f. as a residuary beneficiary under the will. g. The application is for a Grant of Letters of Administration with will annexed. Rule 20 NCPR 1987. | 6 |
| Scenario Total: 30 marks | | |

Section B - Scenario 2

| Question Number | Suggested Points for Responses | Marks (Max) |
|-----------------------------------|---|-------------|
| 1(a) | <ul style="list-style-type: none"> a. The gift of the necklace to Rupī is a specific legacy b. Because it has been specifically identified in the will as shown by use of word 'my' c. but the legacy will adeem/fail d. as not owned by Nadi at date of her death e. the executors are not required to buy a replacement | 5 |
| 1(b) | <ul style="list-style-type: none"> a. the gifts of the hedge trimmer and garden shredder are general legacies b. because they have not been specifically identified / no words such as 'my' have been used c. Ademption does not apply to general gifts/general gifts do not fail d. So the gift will still take effect and the e. PRs will have to purchase a hedge trimmer and garden shredder for Tijay | 5 |
| 1(c) | <ul style="list-style-type: none"> a. Section 15 Wills Act 1837 b. Jasmine Galway is a witness to the Will c. So she does not receive her legacy | 3 |
| Question 1 Total: 13 marks | | |
| Question Number | Suggested Points for Responses | Marks (Max) |
| 2 | <p>Gifts to granddaughters are:</p> <ul style="list-style-type: none"> a. Gifts of residue b. which means that they will receive one half each of the monies that are left in Nadi's estate c. it is also a contingent gift (i.e. subject to each attaining 25 years of age) d. until they are 25 their share of the residue will be held upon trust for them e. by Tijay and Rupī who as executors will also act as the trustees. f. So if either one of them dies before 25 their gift will fail and a partial intestacy will arise | 6 |
| Question Number | Suggested Points for Responses | Marks (Max) |
| 3(a) | <p>A minor's receipt clause :</p> <ul style="list-style-type: none"> a. will make the administration of Nadi's estate much more straightforward and quicker b. If such a clause were included it would mean that the parent or guardian can give a valid receipt on behalf of the beneficiary c. Furthermore the receipt clause will discharge the executor from any further liability as far as the gifts are concerned | 3 |

| | | |
|----------------------------------|--|---|
| 3(b) | <ul style="list-style-type: none"> a. The Trustee Act 2000 (TA 2000) b. gives professional executors the legal authority to charge a reasonable amount for their services c. even though there is no specific charging clause in the will d. Nonetheless it is good practice to include a specific charging clause in a will | 3 |
| 3(c) | <ul style="list-style-type: none"> a. Under s19 TA 1925 as amended by s34 TA 2000 b. the trustees have the power to insure 8 Glebe Avenue against all risks of loss or damage e.g. fire or burglary. c. This power extends to all trustees d. The full value of the property can be insured | 2 |
| 3(d) | <ul style="list-style-type: none"> a. TA 2000 gives trustees the power to invest the proceeds as if these funds were their own b. The trustees will have to invest the sale proceeds of 9 Glebe Avenue to protect the capital of the estate c. They will have to take detailed specialist investment advice d. Given the large sum of money involved e. They are obliged to review the investments on a regular basis | 3 |
| Question 3 Total:11 marks | | |
| Scenario Total: 30 marks | | |

Section B - Scenario 3

| Question Number | Suggested Points for Responses | Marks (Max) |
|----------------------------------|---|-------------|
| 1(a) | <ul style="list-style-type: none"> a. Identify that this is an intestacy because there is no will b. S.46 AEA 1925 governs distribution c. as amended by Inheritance and Trustees Powers Act 2014 d. Identify the surviving family- ie spouse e. because she has survived 28 days f. and issue g. Mavis will receive the personal chattels h. A statutory legacy of £270,000 i. And one half of the remainder... j. ...outright | 8 |
| 1(b) | <ul style="list-style-type: none"> a. The half not passing to Mavis b. Will pass to children c. on statutory trusts d. This means to them equally provided that if any have predeceased then on to their children e. per stirpes f. on attaining 18 or marrying before then g. So, Carl and Lewis will receive one third each h. And Thea's children (Nicole and Dean) will receive the final third equally between them | 7 |
| Question 1 Total:15 marks | | |

| Question Number | Suggested Points for Responses | Marks (Max) |
|----------------------------------|--|-------------|
| 2 | <ul style="list-style-type: none"> a. As spouse Mavis has special rights to apply to the PR b. ... to appropriate the family home to her c. in settlement of part of her interest in the estate d. She must apply within 12 months e. of the grant being issued f. The PRs are not able to sell the property in the meantime g. No consents are required of the other beneficiaries h. (NB s.41 appropriation will not work here due to the family dispute) i. Mavis would not be required to pay equality money | 6 |
| Question Number | Suggested Points for Responses | Marks (Max) |
| 3(a) | <ul style="list-style-type: none"> a. Mavis may make a claim under the Inheritance (Provision for Family and Dependents) Act 1975 b. Within 6 months of the grant being issued c. She falls within the category of spouse – (section number not required for mark) | 3 |
| 3(b) | <p>There are many factors the court could take into account.</p> <p>Might include the following:</p> <ul style="list-style-type: none"> a. Mavis' needs and resources and the needs and resources of the other beneficiaries b. note that Mavis has little money of her own, is unlikely to be employable and has no income. Lewis should be able to support himself and Carl may once he has recovered. c. The deceased's obligations towards Mavis d. Kevin managed the finances and made payments to Mavis for housekeeping etc e. The size and nature of the estate f. the estate is large and not tied up in business assets or joint property. <p>Further guidelines the court may take into account on an application by a surviving spouse:</p> <ul style="list-style-type: none"> a. The age of the applicant and duration of the marriage b. Kevin and Mavis had been married for some time. Mavis is not a young woman. Credit that it is similar to divorce. c. Contribution made by the applicant to the welfare of the family d. as Mavis has not been in paid employment during her lengthy marriage we could assume that she has occupied herself by looking after the family – and has produced three children. | 6 |
| Question 3 Total: 9 marks | | |
| Scenario Total: 30 marks | | |