

CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

LEVEL 6 UNIT 14 – 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

It seems to be the case across the paper that candidates tended to do very well with the lower mark questions. This can often be expected with more basic points being achievable for lower mark questions than the higher mark essay style questions.

The main points to stress to candidates are that those who achieve higher marks are not just considering the basic elements of law raised by the question but are homing in on the unit specification and the wider scope of areas that can be covered and should be considered. This is especially the case for the essay type questions.

In the scenario questions, candidates should be mindful that they do have to apply the law to the scenario to achieve the better level of mark, not just recite the law.

Generally, candidates were good at citing relevant case law and using it appropriately within each question.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Section A

Question 1

A relatively low entry question at 20 candidates, which is low in comparison to other questions. Candidates that did enter did not generally achieve high marks. Candidates didn't entirely grasp the extent of what was being asked in this question and only tended to achieve very basic marks by covering the primary points of the roles of personal representatives.

Question 2(a) and (b)

This was a high entry question. Most candidates performed very well on (b), achieving largely near to full marks. Part(a) wasn't done as well but this can be expected as it was the higher mark question out of the two. Generally, candidates were good at attempting (a), with the ability to cover a wide proportion of the mark scheme even if not achieving the full marks allowed by not answering as in depth as the mark scheme allowed for.

Question 3

The most popular question on the paper and one of the highest performing. Generally, candidates were able to achieve a good mark because of the number of marks allowed for discussion of destruction of wills over the other ways to revoke a will.

Question 4(a) and (b)

This was the least popular question on the paper. Those who did answer tended to perform relatively low on (a) but much better on (b).

Section B

Question 1 (a) and (b)

This was a low entry question, but candidates that did answer tended to do quite well on it and were able to achieve sufficient marks to pass. This was a well performing question overall.

Question 2

This was the most popular question on the paper with 59 out of 68 candidates attempting it. Candidates were generally very good at covering the mental capacity tests and case law that was applicable. Where candidates tended to fall down was answering this question too much as an essay and not as an application and would not actually apply the relevant law to the facts of the question.

Question 3(a) and (b)

Answered by just over half of the candidates. Both questions tended to be answered well, again, especially part (b) which was the lower mark question, with candidates able to achieve the majority of the mark scheme of this question. With part(a), most candidates were able to achieve a large spread of the marks available, but lower achieving candidates did not go into the level of application required in areas such as the separated partner and the impact that may or may not have on the estate distribution.

Question 4

Answered by just over half of the candidates. One of the highest performing questions on the paper. Candidates appeared comfortable in answering this question and dealing with the aspects of the scenario in order to achieve a good level of the mark scheme.

SUGGESTED POINTS FOR RESPONSE

LEVEL 6 UNIT 14 – LAW OF WILLS & SUCCESSION

Question Number	Suggested Points for Responses	Marks (Max)
1	<p>Responses could include:</p> <ul style="list-style-type: none">• Purpose of a grant: to establish the authority of the personal representatives; to establish the validity of any will or to establish that there is no valid will.• Powers given under AEA 1925, Trustee Act (TA) 1925 and TA 2000; power to postpone distribution; power to sell mortgage and lease; power of investment; power to purchase land; power to insure; power to run a business; power to maintain minors; power to advance capital; power to delegate; the rules relating to appropriation.• An understanding that these powers can be extended and varied by will; property which does not devolve on the PRs; powers of PRs before grant, position of administrators as opposed to executors.• Explanation of duty to collect assets and administer with due diligence; time at which property devolves upon PRs; property which will not devolve on PRs; duty of care introduced by TA 2000.• Loss arising from breach of duty; examples include misappropriation, maladministration, negligence; usually several liabilities amongst a number of PRs; liability for the acts of agents.• Appropriate use of s27 TA 1925 advertisements; use of searches; setting aside a fund; insurance; application to the court for directions; the use of Benjamin orders (ie: <i>Re Benjamin (1902)</i>); application for a decree of presumption of death under Presumption of Death Act 2013: <i>Greathead v Greathead (2017)</i>• Solvent and insolvent estates; responsibilities discussion	25



	<ul style="list-style-type: none"> • Part II of Sch I AEA 1925 order in which assets are used to pay debts; debts charged on property and s35 AEA 1925, debts charged on more than one property, eg: Re Birmingham (1959), Re <u>Neeld</u> (1962), statutory order for unsecured debts, property falling outside the order. • Variation of the order for unsecured debts, eg: Re <u>James</u> (1947), Re <u>Gordon</u> (1940), Re <u>Kempthorne</u> (1930); methods of showing contrary intention (s35) for debts charged on property. • PRs must follow order of priority which cannot be varied by T, risk of personal liability for superior unpaid debts, limited protection; availability of joint property to cover debts; order for payment of debts: secured creditors option to rely on security or prove debt in whole or part, funeral testamentary and administration expenses. • Reasoned conclusion 	
Question 1 Total:25 marks		
Question Number	Suggested Points for Responses	Marks (Max)
2(a)	<p>Responses could include:</p> <ul style="list-style-type: none"> • Strict order of entitlement in s46 AEA 1925 and statutory trust in s47 AEA 1925 • 28-day survivorship period to inherit • Surviving spouse entitlement amended by ITPA 2014 • Discuss that the ITPA 2014 was enacted following a Law Commission Report and perceived unfairness in AEA 1925 provisions aimed to provide a simplification of entitlement. • Surviving spouse entitlement where there are no children- takes all the estate. • Discuss whether this is fair in all circumstances i.e. surviving spouse is spouse of a relatively short marriage. • Surviving spouse entitlement where there are children. <ul style="list-style-type: none"> - personal chattels defined in s55 (1) (X) AEA 1925 statutory legacy plus interest from date of death currently £270,000 and half of residue absolutely with the remaining half going to the children • Discuss that the definition of personal chattels has been simplified but under new definition business assets and investments, which could be substantial, will not automatically pass to the surviving spouse but may fall into residue e.g. <u>Re MacCulloch</u> (1981) • Discuss that the statutory legacy is subject to a 5-year review, and that this was delayed to 2020 but the legacy was then increased from £250,000. • Discuss that the surviving spouse now receives half the residue absolutely, rather than in trust as previously. Discuss whether half of residue sufficient • Discuss provisions in relation to the family home- depends on nature of ownership - if in sole name there is a right to 	20

	<p>appropriate family home within 12 months of grant- home will be valued at date of appropriation- equality money may need to be paid- issue will be extent to which home is an asset of estate and money available to spouse e.g. <u>Kane v Radley-Kane</u> (1998)</p> <ul style="list-style-type: none"> Reasoned conclusion 	
2(b)	<p>Responses could include:</p> <ul style="list-style-type: none"> I(PFD)A 1975 Effect of domicile; time limit for applications; the applicant falls into one of the categories; reasonable financial provision has not been made. Classification of applicants: s1 of the Act; spouse or civil partner; former spouse or civil partner; eg: <u>Barrass v Harding and Newman</u> (2001) and consideration of financial settlement on divorce; a person cohabiting with the deceased, position of same sex partners; A Reasonable financial provision and the test of reasonableness, relevant case law eg: <u>Ilott v Mitson</u> (2011), (2015) CA & (2017) SC; surviving spouse standard; ordinary standard; consideration of changes arising post death. S3 common guidelines, financial resources of applicant/beneficiaries, obligations and responsibilities of the deceased, size and nature of the estate, applicant's physical or mental disability, any other matter 	5
Question 2 Total:25 marks		
Question Number	Suggested Points for Responses	Marks (Max)
3	<p>Responses could include:</p> <ul style="list-style-type: none"> S.9 Wills Act 1837 formalities and explanation Intention to revoke – <u>animus revocandi</u>. Must be unambiguous e.g. Re Freeman (1910) must be present when destruction takes place Description and explanation/analysis of express revocation. Knowledge and approval present e.g. <u>Kitcat v King</u> (1930) Re Durance (1872) S20 Wills Act 1837 Description and explanation/analysis of implied revocation e.g. <u>Pepper v Pepper</u> (1870) Description and analysis of revocation by destruction - s20 Wills Act 1837 – the act of destruction e.g. <u>Cheese v Lovejoy</u> (1877), In the Estate of Adams (1990), In the Estate of Nunn (1936); by the testator or another in testator's presence e.g. In the Goods of Dadds (1857), Re De Kremer (1965); discussion of intention - intention present e.g. <u>Gill v Gill</u> (1909), mental capacity e.g. <u>Brunt v Brunt</u> (1873), accidental destruction e.g. Re Booth 	25

	<p>(1926) <u>Re Southerden</u> (1925), intention present throughout e.g. <u>Perkes v Perkes</u> (1820)</p> <ul style="list-style-type: none"> • Description and explanation/analysis of presumption of revocation – mutilated or lost wills e.g. <u>Sugden v Lord St Leonards</u> (1876) • Description and explanation/analysis of revocation by marriage and civil partnership and Wills made in expectation of marriage or civil partnership. Effect of divorce/nullity • Administration of Justice Act 1982 • Reasoned conclusion 	
Question 3 Total:25 marks		
Question Number	Suggested Points for Responses	Marks (Max)
4(a)	<p>Responses should include:</p> <ul style="list-style-type: none"> • The basic rule, intention as expressed in the will, consideration of factual background; eg: Rowland (1963), <u>Scale v Rawlins</u> (1892) <u>Marley v Rawlings</u> (2014) • Ordinary meaning for ordinary words; technical words given their technical meaning; eg: Cook (1948) dictionary principle. • Explanation of the general rule to exclude extrinsic evidence; • Exceptions: the armchair principle, the surrounding circumstances; eg: <u>Thorn v Dickens</u> (1906), <u>Re Fish</u> (1893); • Latent ambiguity, not apparent on the face of the will; eg: <u>Re Jackson</u> (1933); s21 AJA 1982, covers wording which is meaningless, latent ambiguity and patent ambiguity, will allow evidence of T’s intention to resolve (but not create) ambiguity; eg: <u>Re Williams</u> (1985), <u>Harris v Estate of Cooper (Deceased)</u> (2010), <u>Spurling v Broadhurst</u> (2012), <u>Marley v Rawlings</u> (2014); <u>Brooke v Purton</u> (2014) • The use of class closing rules; definition of immediate, deferred, contingent and deferred contingent class gifts; Gifts of specified amount to a class of people, eg: <u>Pearks v Moseley</u> (1880). • The construction of successive interests; s22 AJA 1982 presumption re spouses eg: <u>Harrison and Another v Gibson and Others</u> (2006); the rule in <u>Lassence v Tierney</u> (1849). • Adopted children treated as legitimate children of adopter eg: <u>Hardy v Hardy and Another</u> (2013); illegitimate children treated as if legitimate. • Reasoned conclusion 	20

4(b)	Responses could include: <ul style="list-style-type: none"> • Provisions of s21 WA 1837 • Presumption alteration made post-execution, exception to this is where alteration is to complete blank spaces, attested alterations admitted; • Effect of unattested alterations; • Meaning of “apparent”, effect of original wording being “not apparent” (obliteration) and exceptions if unintentional or conditional; • Rules on use of extrinsic evidence; eg: <u>Cooper v Bockett</u> (1846), In the estate of Hamer (1943), Re Itter (1950). • Reasoned conclusion 	5
Question 4 Total:25 marks		

SECTION B

Question Number	Suggested Points for Responses	Marks (Max)
1(a)	Responses could include: <ul style="list-style-type: none"> • S 9 Wills Act 1837 • In writing – discussed. • Need for executors – discussed. • Signed by testator with intention – discussed physical and mental presence e.g In <u>the Goods of Adams</u> (1872) Re Chalcraft (1948), In the Goods of Savory (1851) • In the presence of 2 witnesses – discussed. • Attestation clauses and their use r12 Non- Contentious Probate Rules 1987 • Age to make a Will – 18 section 7 Wills Act 1837 • Description and explanation/advice of revocation by marriage and civil partnership and Wills made in expectation of marriage or civil partnership; Effect of divorce/nullity - That they will need to make their wills in contemplation of marriage. • Mental capacity required to make a will – the rules in <u>Banks v Goodfellow</u> (1890) • Understanding of making a will to come into effect on their death. • Use of the “Golden Rule” e.g. <u>Kenward v Adams</u> (1975) and whether should be used here. • Explain legacies needed in this situation: Specific legacies; general legacies; pecuniary legacies; residuary legacies and rule in <u>Allhusen v Whittell</u> (1867); • Adopted children treated as legitimate children of adopter eg: <u>Hardy v Hardy and Another</u> (2013) • Property falling outside of the will – survivorship explanation. • Conclusion 	20

1(b)	<p>Responses could include:</p> <ul style="list-style-type: none"> • Description/explanation of equitable doctrine of mutual wills (Evidence of mutual intention not to revoke) • Crystallisation of the trust • Revocation can take place prior to one of the testators dying and can be unilateral. • Reference to undermining testamentary freedom • Reference to life interest discretionary trust instead of mutual will • Conclusion that it is often advised that testators do not create mutual wills due to their stringent and restrictive nature. 	5
Question 1 Total:25 marks		
Question Number	Suggested Points for Responses	Marks (Max)
2	<p>Responses could include:</p> <ul style="list-style-type: none"> • Mental capacity required to make a will – the rules in <i>Banks v Goodfellow</i> (1890). Understanding of making a will to come into effect on their death. Extent of their property. No need to have perfect recollection <i>Schrader v Schrader</i> (2013). Niamh understands how much is in her estate. Understand moral claims but freedom to ignore <i>Boughton v Knight</i> (1873) • Do not need a perfectly balanced mind e.g. In the Estate of Park (Deceased) (1954), <i>Ewing v Bennett</i> (2001), <i>Key v Key</i> (2010) • Mental Capacity Act 2005 and relationship with case law, eg: <i>Key v Key</i> (2010), <i>Re Wison</i> (Deceased) (2013), <i>Elliot v Simmonds</i> (2016), <i>Walker v Badmin</i> (2014), <i>Simon v Byford</i> (2014); Law Com ‘Making a will’ 231 proposal to replace <i>Bank v Goodfellow</i> test with MCA 2005. • Rebuttable presumption of knowledge and approval. Explanation of presumption of capacity and the burden of proof. Is this a rational will. Continuing mental state e.g. <i>Burgess v Hawes</i> (2013) • <i>Guardhouse v Blackburn</i> (1866), <i>Barry v Butlin</i> (1838), <i>Wintle v Nye</i> (1959), <i>Fuller v Strum</i> (2002); time at which knowledge and approval is required; rules on burden of proof, eg: <i>Sherrington v Sherrington</i> (2005), <i>Schrader v Schrader</i> (2013) • Must be specific knowledge and approval of the will that is signed at the time of signing. • Potential for suspicious circumstances with Oscar – should see Niamh on her own. • Suspicious circumstances will render a will invalid – e.g. where a will may have been made in response to force, fear, fraud or undue influence e.g. <i>Barry v Butlin</i> (1838), <i>Sherrington v Sherrington</i> (2005) • Explain and discuss undue influence e.g. <i>Gill v Woodall</i> (2010), <i>Schrader v Schrader</i> (2013) 	25

	<ul style="list-style-type: none"> • Use of the “Golden Rule” e.g. <u>Kenward v Adams (1975)</u> Discussion re should be used in this circumstance Including attendance note by solicitor and letter by Niamh setting out why no provision for auntie and uncle • Discuss whether any entitlement of auntie and uncle to make claim – not fall in classification of applicants under I(PFD)A 1975. Nothing to say maintained by Niamh so likely any claim would fail • Discussion re Attorney not being able to create or amend a will. 	
Question 2 Total:25 marks		
Question Number	Suggested Points for Responses	Marks (Max)
3(a)	<p>Responses should include:</p> <ul style="list-style-type: none"> • Whole intestacy – no evidence of will and comment to Emily doesn’t establish a formal will - this can’t be classed as partial intestacy. • Section 46 of the Administration of Estates Act 1925 as amended by the Inheritance and Trustees' Powers Act 2014 • Order of entitlement: spouse; issue; parents; brothers and sisters of the whole blood; brothers and sisters of the half-blood; grandparents; uncles and aunts of whole blood; uncles and aunts of the half-blood; the crown. • Section 47 statutory trusts • Division of the estate per stirpes if more than one • Discussion re Clara not being a spouse or civil partner, therefore will not inherit under the rules of intestacy. The property they own as tenants in common, Benjamin’s half will form part of the estate and pass under the intestacy rules. • Clara may attempt to make a claim under I(PFD)A 1975 to claim a share of the estate. Claim would have to be as person maintained. Discussion re standard of reasonable financial provision. Discussion re types of orders available to the court for reasonable provision. Unlikely to be successful. • No spouse and therefore all beneficiaries will be from the same class. • Stepsister would not be in order of entitlement. • Next relevant category is parents – mum still alive and will inherit all of estate as no spouse or children. 	17

3(b)	<p>Responses could include:</p> <ul style="list-style-type: none"> • Types of grant of representation – the type required here administration on intestacy • Administrator takes their authority from the order of the court. • Order of entitlement to grant follows the order of beneficial entitlement on a total intestacy r22 NCPR 1987 • Entitled to the grant only if they are entitled to share in the estate • S33 AEA assets become subject to statutory trust and PR all of undisposed-of estate on trust with power to sell. • Required to pay funeral expenses and debts from cash and assets • Discuss that Benjamin’s half of the mortgage would have to be repaid from his estate as no will setting out contrary intention • Conclusion that the mum, as the sole beneficiary of the estate following the order of entitlement will take out the Grant of Representation. But discussion re suitability of mum to take out grant if in nursing home and incapable and if Emily can apply on mum’s behalf 	8
Question 3 Total:25 marks		
Question Number	Suggested Points for Responses	Marks (Max)
4	<p>Responses could include:</p> <ul style="list-style-type: none"> • S21 Wills Act 1837 • Discussion re alterations being made before or after execution, applying the information that the witnesses will have to be tracked down to sign affidavits as to whether they recall witnessing the alterations. Change of address of witnesses does not revoke will • Ink or pencil – pencil only deliberative • Types of gifts – pecuniary legacies, specific legacies e.g. <u>Bothamley v Sherson</u> (1875), <u>Re Eve</u> (1956), residuary legacies • Advice on type of legacy and effect of the alteration to clause (i) – pencil - original sum of £100,000 effective • Advice on type of legacy effect of alteration on clause (ii) – not compliant with s21 - £3000 effective • General approach to construction of wills – <u>Perrin v Morgan</u> (1943) – words may be given usual meaning or secondary meaning – secondary may involve reference to surrounding circumstances e.g. <u>Re Davidson</u> (1949), <u>Re Smalley</u> (1929) – armchair rule <u>Boyes v Cook</u> (1880) – latent ambiguity and admission of extrinsic evidence <u>Re Jackson</u> (1933) S21 AJA 1982 • Advice on type of legacy in clause (ii) and (iii) and impact of latent ambiguity • Advice on beneficiary named in clause (ii) and (iv) (2) whether gift to ‘favourite nephew’ will adeem 	25

	<ul style="list-style-type: none"> • Discussion re specific legacies and ademption e.g. <u>Laws v Bennett</u> (1795) • Explanation of residuary estate passing to Graham and jointly owned property passing by survivorship • Conclusion setting out advice to Imad and William based on the application of the above 	
	Question 4 Total: 25 marks	