CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

LEVEL 6 – UNIT 14 – LAW OF WILLS AND SUCCESSION

JUNE 2022

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 2022 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

Although candidates tend to find the essay questions more challenging, marginally more essay questions were selected for answer than the Section B scenario-based questions. And performance on the Section A essay questions was again weaker than performance on the Section B questions.

This is a Level 6 paper and candidates are required to show knowledge and understanding of question topics at this level.

Reading questions and responding as instructed is an important exam skill candidates need to develop.

Example: Question A3 on privileged wills instructed candidates to critically analyse the 2 categories, and also how intention is dealt with and how revocation can be achieved. Candidates who answered this question tended to focus on the two categories, with limited reference to the intention required and revocation. This resulted in marks not being achieved.

For the essay questions the knowledge element requires clear statements of legal principles, in an appropriate level of detail and supported by appropriate citation, both case law and statutory.

Candidates also need to show understanding through discussion and critical analysis as directed by the question. Candidates should also end answers with a concluding comment related to the question.

Wills and Succession is an area with a significant case law base. Candidates should be able to name the case and provide a concise summary to illustrate a point as appropriate. A number of candidates were not able to provide case names, though did provide a summary of facts where credit was given based on merit.

For the Section A questions, candidates were generally able to evidence knowledge of the topic but were not able to evidence understanding through analysis.

Candidates also need to ensure that they end their answer with a conclusion – linked to the question.

For the problem-solving questions candidates need to show knowledge through clear statements of legal principles, in an appropriate level of detail, supported by appropriate citation. Understanding is then shown through applying the legal principles to the scenario described. And candidates should clearly state the outcome in a conclusion.

Some candidates failed to achieve higher marks for Section B questions because they homed in on what they perceived as the issue, rather than stating all the legal principles, and then analysing each one. So, some relatively easy marks were not achieved.

Example: Question B1 re validity of Matthew's will. Candidates needed to clearly state s9 criteria and then analyse each aspect. Some candidates jumped straight into discussing signatures rather than addressing need for writing etc.

Good performance was seen from candidates who:

- Had good knowledge across the specification.
- Showed knowledge by clearly stating the relevant legal principles in appropriate detail.
- Supported statements of law by citing cases by name, adding facts where relevant, and relevant statutory or procedural provisions.
- And were then able to show understanding through analysis or application.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Section A

Question 1

This question on knowledge and approval was not a popular question. While candidates were able to show some knowledge, answers often tended to lack evidence of the detailed knowledge required at Level 6. There was also a lack of reference to case law to illustrate how the courts apply in practice.

Question 2

This question on revocation was a popular one but many candidates focussed on revocation by destruction and by marriage, and failed to reference express revocation and implied revocation, and dependant relative revocation. Knowledge of lost and mutilated wills was another aspect that could have been developed.

Question 3

This question on privileged wills was not a popular one. The candidates who chose this question were able to show some knowledge of privileged wills, but again the knowledge could have been developed in more detail. Candidates also failed to achieve marks because they showed only limited knowledge of the renovation of privileged wills.

Question 4(a)

This question on mental capacity was a popular question answered by almost all candidates and it produced the best result on the paper.

Candidates were able to show good knowledge of Banks v Goodfellow. However, knowledge of the Mental Capacity Act and of its relationship to Banks (as per question) was more variable.

(b)

This question concerned the exception to the general principle of mental capacity being present at the time of execution as stated in Parker v Felgate. Some candidates failed to state the general principle, although knowledge of the exception was generally shown.

However, not all candidates were able to provide a justification for the rue, or to explain how the courts have viewed the exception, with reference to Battan Singh and Perrins.

Section B

Question 1

This was a popular question which needed to be answered logically by stating the s9 Wills Act 1837 requirements, and then applying them to Matthew's will.

Some candidates failed to do this, and simply focussed on the issue of signatures (Matthew's signature and its position and Thomas's apparent failure as a witness to provide his actual signature).

Very few candidates referred to the 2018 Court of Appeal decision in Payne v Payne which addressed this requirement. Although, in some cases candidates were able to come to the correct conclusion re the will by relating to the approach taken re testators signatures.

Where there was a lack of awareness and the candidate concluded that the will was invalid, they were unable to correctly address who could replace Barbara as executor.

Question 2

This was another popular question.

(a)

required candidates to give advice regarding a will. In this case the focus was amendments made to the will and the requirements of s21 Wills Act 1837, which not all candidates referred to. Candidates who evidenced knowledge of s21 and applied it were able to achieve good marks.

(b)

required general advice on the payment of debts and liabilities of a solvent estate, (see mark scheme). Candidate responses showed a disappointing level of knowledge.

(c)

Another question where responses were disappointing. Many responses failed to explain the potential liabilities of a personal representative – misappropriation, maladministration and failure to safeguard assets. They simply focussed on the protections, and in particular s27 Trustee Act 1925, and so failed to achieve many of the marks available.

Question 3

This was the least popular question. But despite the low numbers involved, there were some good answers, showing knowledge and understanding. Some responses, where candidates focussed on the scenario, did lack knowledge of the rules of construction. But most responses showed knowledge and understanding of who a "child" or "grandchild" would be and were able to advise re Hussein.

Question 4(a)

This was a popular question and resulted in a good standard of response from many candidates who were able to identify that Ian died intestate, outline the rules and apply correctly.

The responses of some candidates who lacked understanding of the *per stirpes* rule was disappointing. These candidates identified William as the sole beneficiary which was not correct.

(b)

A range of knowledge was seen in responses, with some candidates failing to state clearly the key factors to be considered when claiming under Inheritance (Provision for Family and Dependants) Act 1975.

However, many candidates were able to show knowledge and to advise Belinda appropriately.

SUGGESTED POINTS FOR RESPONSE

LEVEL 6 – UNIT 14 – LAW OF WILLS AND SUCCESSION

Question Number	Suggested Points for Responses	Marks (Max)
1	Responses should include: • General rule – need specific intention - the testator must have knowledge and approval of the Will they actually sign at the time they sign it • This is subject to the rule in Parker v Felgate that if there is a lack of knowledge and approval at the time of signing the will may still be valid if the testator knew and approved the contents at the time of instruction , that the Will was prepared in accordance with the testator's instructions and that at the time they executed it they knew they were signing a Will for which they had given instructions • Reference to Guardhouse v Blackburn [1866] • The Court must be satisfied that the testator knew and approved the contents of the Will. • *Prima Facie*, execution by the testator indicates knowledge and approval unless there is evidence of suspicious circumstances • The testator must intend the document to operate as a Will even if they knew and approved the contents, the document would be refused probate it was not intended to take effect as a Will • Even if there is knowledge and approval, probate would be denied wholly or in part where there is evidence of fraud.	**25**

	• The Court if unlikely to find that a testator knew and approved of only part of the Will Fuller v Strum [2002] • In all cases the burden of proof lies on the propounder. • In practice, there is a rebuttable presumption that a testator who has the necessary capacity and who has duly executed the Will, did so with the necessary knowledge and approval of its contents • In such cases, those wishing to challenge the Will must prove either that the testator lacked the necessary knowledge and approval because of a mistake, or they were induced to make the Will by force, fear, fraud or undue influence • Any part of the Will the testator did not know or approve cannot be admitted to probate. • There is no presumption of knowledge and approval if the testator is blind or illiterate or the will is signed by someone other than the testator on his behalf, or • Where there are suspicious circumstances surrounding the signing of the Will Barry v Butlin [1883] • Reference to the cases of Wyniczenko v Plucinska-Surowka [2005] Sherrington v Sherrington [2005] Schrader v Schrader [2013] Wintle v Nye [1959] Reasoned conclusion .	
	Question 1 Total:25 marks	

Question Number	Suggested Points for Responses	Marks (Max)
2	Responses should include: • Express revocation – a revocation clause in a new will, or a document executed in accordance with s9 Wills Act 1837 • Implied revocation - will can be revoked by executing a new one disposing of whole estate, Pepper v Pepper [1870] • A Will or Codicil can be revoked by physical destruction provided the testator intended the Will to be revoked, Gill v Gill (1909). This can be by burning, tearing or otherwise destroying s20 Wills Act 1837, Cheese v Lovejoy (1877) • Destruction may involve the whole will or significant parts of the will Hoobs v Knight (1936), In the Estate of Nunn (1936), In the Estate of Adams (1990) • The testator need not destroy the Will personally. **S**20 Wills Act 1837 allows for someone else to destroy the Will provided they do so in the presence of the testator and by their direction. In the Goods of Dadds (1857), Re Kremer (1965) • Intention to revoke must be present at the time of destruction, Perkes v Perkes (1820) • Reference to Re Booth [1926] stating that a Will accidently destroyed in a fire does not revoke it	**25**

	• Wills destroyed as a result of a mistaken belief are not revoked Re Southerden [1925] • A Will or Codicil can also be revoked by presumption • Where a Will, known to be in the possession of the testator cannot be found at death after reasonable searches and enquiries, the presumption arises that he has destroyed it with the intention of revoking it. Lambell v Lambell [1831]. The presumption can be rebutted with evidence to the contrary Sugden v Lord St Leonards [1876] • A lost Will does not automatically mean that the testator intended to revoke it. It must be proved by affidavit evidence that a lost or destroyed will was validly executed and that it was not validly revoked. The contents of the Will must be proved. This may be done by producing a completed draft, or a copy, or the Will may be reconstructed from the evidence of anyone who has knowledge of its contents for example the solicitor who prepared the will, beneficiaries or witnesses. • Dependant relative revocation – if a testator makes a new will intending to revoke an old will but the new will is not valid, then the old will is not revoked but remains valid. Reference to Re Jones [1976] when the Court of Appeal posed a series of questions to be asked where a testator destroyed their Will did the testator intend on revoking the Will? If not, there is no revocation if there was an intention to revoke, is the intention absolute or qualified? If qualified, what is the nature of the qualification. If the qualification is in the form of a condition or contingency, has that condition or contingency been fulfilled? If not, the revocation is ineffective? • S18(1) Wills Act 1837 as amended s18 Administration of Justice Act 1982 provides that a Will shall be revoked by the testator's marriage and civil partnership • To overcome this, the Wills Act 1837 as amended s18 Administration of Justice Act 1982 allows a Will to be made in contemplation of marriage so that it is not revoked on marriage • Reasoned conclusion which is supported with evidence	
	Question 2 Total:25 marks	

Question Number	Suggested Points for Responses	Marks (Max)
3	Responses should include: • s11 Wills Act 1837 (WA 1837) grants British military personnel the right to make oral and informal wills without requiring the normal formalities including witnesses while in actual military service these are known as privileged wills • s11 WA 1837 extended this right to mariner at sea reflecting the higher risks of sudden death facing merchant seamen	**25**

	• Privileged wills can be made by service personnel and merchant seamen under 18 years as an exception to the normal rule in s17 WA 1837 which requires all testators to be 18 years or older. • Privileged wills remain valid even after the military service or time at sea has ended. Wartime wills will be valid even after many years of peace. • actual military service is a question of fact in each case. In re Willingham [1949] it was held that actual military service means active military service, in other words such service directly concerned with operations of law which is/has been in progress or is imminent. For example where a soldier is in a training camp and could be posted to the operational area at anytime or such other example given by candidate • a soldier may be in actual military service as soon as he receives orders in connection with the war and may remain in actual military service after the war has ended. The soldier does not have to be in a warzone when making a privileged will Re Colman [1958] • in Re Anderson [1958] the Court said that a formal state of war need not exist, it was sufficient for there to be a warlike operation. • Mariner means members of the Royal Navy or the Merchant Navy or someone else who is employed on board a ship • 'At sea' has a wide interpretation and can include anyone attached to a ship • to establish the exceptional circumstances of privileged status, it is not sufficient simply to prove that the testator came within one of the above categories. The Court must be satisfied that the words used conveyed testamentary intent • The testator need not be conscious of making a will so long as the words indicate testamentary intention Re Stable [1919] • WA 1837 states that revocation can be informal while the testator enjoys privileged status • a privileged will can be made by a minor. s3(3) Family Law Reform Act 1969 provides that where a minor has made a privileged Will and leaves privileged status, they may revoke the will informally. To make a new will the person must retain privileged status and attain 18 and make a formal will when the testator has left privileged status, revocation must comply with s18 or s20 WA 1837 • s15 WA 1837 does not apply to privileged will because it does not need to be witnessed to be declared valid Re Limond [1915] • Alterations to a privileged will are presumed to have been made during privileged status • Privileged wills are still used today although the British armed forces have changed enormously and most soldiers, sailors and	

	RAF personnel now have access to military lawyers for legal advice who can prepare wills for them in the usual away Reasoned conclusion which is supported with evidence	
		Question 3 Total:25 marks
Question Number	**Suggested Points for Responses**	**Marks (Max)**
4(a)	Responses should include: • The traditional common law test for mental capacity is established in the leading case of Banks v Goodfellow (1870) where Cockburn CJ stated that a testator must have a "sound and disposing mind and memory" • There is a three-stage requirement test that must be satisfied for the testator to be mentally competent under Banks v Goodfellow (1870) • Firstly, the testator must understand the nature of the business he is engaged in: ie the testator understands that he is making a will that takes effect upon his death and not some other document • Secondly, the testator must be able to recall the extent of his property. However, case law shows that he does not need to recall every item that he owns, a general awareness of his property is sufficient (see Wood v Smith [1993] and Schrader v Schrader [2013]). The simpler the will may indicate that a lower degree of mental capacity is required (see In the Estate of Park (1954) • Thirdly, he must be able to recall those persons who may have a moral claim upon him even if he chooses not to benefit them (Harwood v Baker [1840]). For example, in Boughton v Knight [1873] Sir James Hannan stated, "[The testator] may disinherit the children, and leave property to strangers in order to gratify spite, or to charities to gratify pride". Therefore, a testator is free to make a will where he is "moved by capricious, frivolous, mean or bad motives" as stated in Fuller v Strum [2002]. • Arguably, this element of the Banks test has been somewhat limited as persons with a moral claim may now be able to make a claim for reasonable financial provision out of the deceased's estate under the Inheritance (Provision for Family and Dependants) Act 1975. • A further consideration is that the testator must not be suffering from a delusion of the mind that causes them reason not to benefit those people. So, for example, if a testator leaves his daughter out of his will due to an "insane delusion" which has "poisoned his natural affections" towards her he will be held as lacking mental capacity (Dew v Clark [1826] and Banks). • The Mental Capacity Act 2005 (MCA 2005) sets out a general statutory test of mental capacity relating to a person's informed decisions about their health, welfare and finances.	**17**

	• The MCA 2005 establishes a presumption of mental capacity for all persons in s1, unless a lack of mental capacity is proven. This is hard to reconcile with the common law burden of proof, which shifts back and forth but ultimately is always on the propounder to prove mental capacity. • S2states that a person lacks capacity if at the material time he is unable to make a decision for himself because of an impairment of, or a disturbance in the functioning of, the mind or brain. • S3 provides guidance concerning when a person is considered unable to make a decision for himself. • The overall focus of s3 is on whether or not the person can understand all the relevant information surrounding the decision and the reasonably foreseeable consequences of making such a decision. Whereas, as illustrated in Re Walker [2014], testators are not required to understand all the information or the foreseeable consequences. • Initially, it was unclear whether the MCA 2005 statutory test had replaced the common law mental capacity test . However recent case law such as Scammell v Farmer [2008] Re Walker [2014] and Elliott v Simmonds [2016] appear to assert that the correct test is still that from the leading case in Banks v Goodfellow (1870), although Scammell concerned a testatrix's capacity before the MCA came into force. Thus, the Banks competence test appears to remain the sole test for testamentary mental capacity, at least in practice. • However, the MCA 2005 is not entirely redundant in the area of testamentary capacity. It appears to have assisted in the development of the Banks competence test to accommodate the contemporary medically recognised effects bereavement can have upon rational decision-making. Key v Key (2010) • In conclusion, the position in English law is clearer: the Banks v Goodfellow test is still very much being used as the sole test for testamentary mental capacity. However, although a long-established test, as it accommodates changes to mental capacity in the 21st century, it appears not to be without influence from the MCA 2005. Reasoned conclusion which is supported with evidence.	

Question Number	Suggested Points for Responses	Marks (Max)
4(b)	Responses should include: • The general principle is that testators must have mental capacity at the time they execute their will. • For example, in Ewing v Bennett [2001] the Court of Appeal upheld a will where the testatrix was in the early stages of dementia, the fact that she lacked mental capacity after execution was irrelevant. • However, an exception under the rule in Parker v Felgate [1883] applies where a testator had mental capacity at time of instructing solicitor but lacks mental capacity at execution. Provided the will is prepared in accordance with the instructions and the testator is capable of understanding and does understand that he is executing a will which his solicitor has prepared according to his previous instructions (Re Flynn [1982]), the testator can be regarded as having capacity making the will valid. In Parker the testatrix was roused from a coma to execute her will for which she had previously given instructions • Clearly, the rule is justified in deathbed situations to allow instructions that have been given by a declining testator shortly before they lose capacity and then executed within a short period before death • In Battan Singh v Amirchand (1948) the Privy Council did not apply the rule where the instructions were given to a lay intermediary to pass to the solicitor. Lord Normand pointed out the obvious risks and stated that in this situation the rule should be applied 'with the greatest caution and reserve' as 'the opportunities for error in transmission and of misunderstanding and of deception in such a situation are obvious…there is no ground for suspicion'. • The Court of Appeal in Perrins v Holland and Others [2010] approved the use of the rule, where there was a significant period of 18 months between the giving of instructions and the signing of the will, and the lay intermediary was the beneficiary under the will. • In conclusion, the rule in Parker v Felgate, despite being an anomaly, is a justifiable departure only when it is confined to the most exceptional circumstances, such as those akin to deathbed executions, and when the warning in Amirchand is strictly observed.	**8**
		Question 4 Total:25 marks

SECTION B

Question Number	Suggested Points for Responses	Marks (Max)
1	Responses should include: • s9 Wills Act [1837] (WA 1837) sets out the steps which must be taken in order for a will to be validly executed in other words signed and witnessed. No will shall be valid unless it is in writing and signed by the testator or by some other person in his presence and by his direction and it appears that the testator intended by his signature to give effect to the will and the signature is made or acknowledged by the testator in the presence of two or more witnesses present at the time and each witness either attests or signs the will or acknowledges his signature in the presence of the testator • The Will must be in writing and must be in ink and written by hand or typed using a computer. Matthew's will satisfies this requirement. • Reference to Hodson v Burns [1926] and Kell v Charmer [1856] • The Courts have adopted a wide interpretation of 'signature'. The signature need not be of the testator's name or usual signature as long as it shows the intention to execute the Will. In the Goods of Adams [1872) it was held that the testator's initial would be acceptable as is the case with Matthew's Will • In Re Chalcraft [1948] the testator only signed part of her name because she was weak but the Court held that the signature was valid. This applies to Matthew's signature where he was only able to initial it • s9 WA 1837 requires that each witness either attests and signs the will or acknowledges his signature in the presence of the testator. In Payne and Another v Payne [2018], the Court of Appeal had to decide if the mere printing of the witnesses' names in the absence of a traditional signature was acceptable. The witness said they had seen the testator sign his signature and then filled in their name address and occupation but had not actually signed the will because there was insufficient room to make their signatures. The Court of Appeal decided that this was sufficient. Therefore a will is valid even though the witness did not sign in the traditional sense and this would be the case in Matthews will • s9 WA 1837 states that the testator intended by his signature to give effect to the will. It's effect is that the testator can place a signature anywhere on the will so long as it is apparent from the positioning of the signature that it is intended to give effect to the will	**25**

	• This was considered in the case of Wood V Smith [1992] where the testator did not sign the will at the foot of the will but instead at the top. In such cases, the outcome depends on whether the evidence normally from the witnesses indicates that the testator intended their name to be a signature or merely a part of the will. In all cases that where a will is signed in an unusual place in other words other than at the and opposite the attestation clause, the registrar or District Judge will require evidence of the testator's intention before admitting the will to probate • Reasoned conclusion is that Matthew's Will was validly executed • Identifying that the appointment of Gail as sole executor failed because she died before Matthew • And that in the absence of a substitute executor, application must be made for Letters of Administration (with will annexed) to appoint an administrator to deal with the estate. • The order of entitlement to make the application is set out in r20 Non-Contentious Probate Rules 1987 (NCPR 1987) • Residuary beneficiaries are entitled to take out the grant of representation and in this case that would be the stepdaughter Barbara she is referred to as an Administrator • Reasoned conclusion supported by evidence.	
	Question 1 Total:25 marks	
Question Number	**Suggested Points for Responses**	**Marks (Max)**
2(a)	Responses should include: • Clause 1 – the alterations to this gift were made at the time the Will was executed and r14 NCPR applies. Amendments need only be executed by the initials of the testator and witnesses In the Goods or Blewitt [1880] and therefore the alterations are valid and the gift to Charles Batten is for £30,000 • Clause 2 - this is a pecuniary legacy the alteration was made after the Will was executed and therefore s21 Wills Act 1837 applies whereby no alteration to a Will is valid after the Will has been executed unless it was done at the same time the Will was executed such alterations should be initialled by the testator and the two witnesses in the Goods of Blewitt [1880] the gift to St Keith's Church will remain as £500 and not £1,000. • Clause 4 – the name of the beneficiary has been obliterated s21 Wills Act 1837. The words which have been crossed out and cannot be read. The effect of the obliteration is that the clause will be read with a blank appearing where the word used to be ie the clause will read *'I give my designer watch collection and my car to'* and in effect the gift will fail and the items gifted will	**10**

	fall into the residue in the Estate of Hamer [1943] Credit reference to Re Itter (1950) and use on non-natural methods Responses could include: • Clause 3 - The gift of the flat in London is a specific legacy but fails for ademption because it did not form part of Quincy's estate at the date of his death . • Clause 5 - The gift of one half of the residue of the estate to Olivia lapses because she and Quincy had divorced after the Will was made and Olivia is deemed to have died at the date of the divorce s18A WA 1837 . Amy will inherit the whole of Quincy's estate	
Question Number	**Suggested Points for Responses**	**Marks (Max)**
2(b)	Responses should include: • The rules on the payment of debts depends on whether the estate is solvent or insolvent, and whether or not the testator has made provision in his will. • Here the estate is solvent but there is no provision in the will, so s35 Administration of Estate act 1925 (AEA) applies • Quincy's debts are paid in order of priority secured debts first then unsecured debts • Identifying that the mortgage is a secured debt of the estate and subject to s35 Administration of Estate Act 1925 (AEA) . • After the payment of the mortgage, Quincy's other unsecured debts (credit cards and loans) can be paid according to the statutory order • Credit knowledge of statutory order • Reference to case law Re James [1947] or Re Gordon or [1940] Re Kempthorne [1930] • Conclusion	**6**
Question Number	**Suggested Points for Responses**	**Marks (Max)**
(c)	Responses should include: • The PRS must collects assets, pay debts and administration expenses and distribute estate as per will or intestacy • take reasonable steps to ascertain the debts payable by the estate as failure to do so could render them personally liable • Reference to the three types of liability as follows: • Misappropriation of estate assets where the PR uses the assets for their personal use Re Morgan [1881] • Maladministration for example applying estate assets in the incorrect order or incurring unreasonable expense or wasting assets. Failing to take reasonable steps to ascertain the debts	**9**

	payable by the estate) as failure to do so could render them personally liable. Failing to ensure they distribute to those entitled. • Failure to safeguard assets for example failing to insure property • In order to gain protection from the claims of creditors or beneficiaries of which they may not be aware of, PR's must advertise in the way set out in s27 TA 1925 which requires an advert be placed in the London Gazette and local newspapers to where the testator lived • The Will may contain a clause restricting the liability of the PRs to wilful wrongdoing Re Armitage v Nurse [1998] • Reference to relief under s61 TA 1925 granted by the Court Re Benjamin [1902]	
	Question 2 Total:25 marks	
Question Number	**Suggested Points for Responses**	**Marks (Max)**
3	Responses should include: • The Court will look at what Sabrina meant to do when she made her will in light of the actual words used Perrin v Morgan [1943] • In contrast however Marley v Rawlings [2014] the Court took a different approach and viewed the Will in the same way as a commercial contract and looked at what the testator actually intended • The function of the Court is to interpret the words used by Sabrina and not make a Will itself. The Court will look at the Will as a whole and not just at the issue in hand • The general principle is that the intention of the testator is deduced only from the Will itself to assist the Court adopts the rules of construction • Words are firstly given their grammatical meaning In Sabrina's will the use of grandchildren will include all of Sabrina's biological grandchildren s19 Family Law Reform Act 1987 (FLRA 1987) this would include Fariba's two children, the adopted grandchildren Adoption and Children Act 2002 (ACA 2002) but not the step grandchild • The use of the word children will include all of Sabrina's biological children which would include Fariba • Secondly the words are given a secondary meaning the Court will apply the 'armchair rule' when using this way of interpreting the words of Sabrina's Will as set out in Boyes v Cook [1880] which asks you to place yourself so to speak in the testator's armchair and consider the circumstances by which he was surrounded when he made his will in applying this the word 'husband' in Sabrina's Will will include Hussein Re Smalley [1929]	**25**

	• As a general rule the Court do not readily use extrinsic evidence, that is evidence from outside of the Will such as letter of wishes or Sabrina's personal circumstances as a means of discovering the testator's intention as this would effectively make s9 Wills Act 1837 redundant However, there are circumstances where the Court will allow extrinsic evidence as per the armchair rule and if there is ambiguity for example the gift of Sabrina's house to her 'husband' such evidence will be taken into account Re Jackson [1933] • However, s21 AJA 1982 allows the Court to now use such evidence to resolve a patent ambiguity s21(1)(b) AJA 1982 with reference to these cases when the section was applied Re Williams [1985] Tyrell v Tyrell [2002] Spurling v Broadhurst [2012] in Sabrina's case the Court will consider her wishes regarding Hussein and look at the reasons set out in the letter she has left to decide whether reference to 'my husband' in clause 3 meant Hussein	
	Question 3 Total:25 marks	
Question Number	**Suggested Points for Responses**	**Marks (Max)**
4(a)	Responses should include: • Reference to the law of intestacy being found in AEA 1925 as amended and the Intestates' Estates Act 1952 (IEA 1952) and ITPA 2014 • When a person dies wholly or partially intestate, their assets become subject to a statutory trust under s33 AEA 1925 • The PRs hold all the assets held under s33 AEA 1925 on trust with the power to sell • Subject to the payment of funeral expenses, and debts the PRs must distribute the estate in accordance with s46 AEA 1925. • Reference to the surviving spouse or civil partner taking priority over any other family member and confirming that Ian was not married at the time of death • If the testator dies leaving no spouse, children or parents, then the estate will be divided between his siblings of the whole blood. Is any of the siblings predecease, their share will pass to their children instead *per stirpes* unless there is contrary intention. Ian's estate will therefore pass as to 1/2 to William 1/2 to Will and Nick who will inherit their mother's share Vicky will not inherit as she is a sibling of the half blood. Belinda's children have no entitlement • Confirming Hill Trees passes by survivorship to Belinda Ian's savings will pass under intestacy to his sibling, and nephews as well as his share of the cottage in Wales which he owned as tenants in common with his brother	**15**

	• Reference to other cases include Kane v Radley-Kane and Others [1998], Re Collins [1975], Re Reynolds [1966], Re Crispin's Will Trust [1974] • Reasoned conclusion	
Question Number	**Suggested Points for Responses**	**Marks (Max)**
4(b)	Responses should include: • The Inheritance (Provision for Family and Dependants) Act 1975 (1975 Act) allows the Court to change the effect of a Will or intestacy if certain criteria are met • Belinda can bring a claim under the 1975 Act because 1. Ian has not made reasonable financial for Belinda 2. Ian was domiciled in England at the date of his death 3. As a person living in the same household as husband and wife with Ian, Belinda is entitled to bring a claim under s1(1)(ba) 1975 Act 4. Also as person maintained by Ian s1(1)(e) 1975 Act • The Court will consider whether Ian has made reasonable financial provision for Belinda and in doing so will apply the two-stage process • 1. Has the Will or intestacy made reasonable financial provision for Belinda, if the answer is no and • 2. What would amount to reasonable financial provision for Belinda Ilott v Mitson [2015] • The Court will also look at Belinda's financial resources and needs now and in the foreseeable future s3(1) 1975 Act eg her earning capacity, income, social security benefits and can make an order just to enable Belinda to buy a modest property Graham v Murphy [1996] • The Court will also consider the size of Ian's estate (1s3(1)(e) 1975 Act Re Fullard [1981] • The Court would most likely award Belinda with a share of Ian's estate, however, because the bulk of his assets are in the house which she inherits, the Court may conclude that she has been reasonably provided for Reasoned conclusion	**10**
		Question 4 Total:25 marks