



CHIEF EXAMINER REPORT

JANUARY 2024

LEVEL 6 UNIT 14 – Law of Wills & Succession

The purpose of the suggested points for responses is to provide candidates and Training Providers with guidance as to the key points candidates should have included in their answers to the January 2024 examinations.

The suggested points for responses sets out points that a good (merit/distinction) candidate would have made.

Candidates will have received credit, where applicable, for other points not addressed in the suggested points for responses or alternative valid responses.

Chief Examiner Overview

Overall, this paper tested well. Most candidate seemed to really grasp what was being asked of them and were able to cover even more difficult aspects of the mark scheme.

Candidates could fall short when they had not read the paper properly, or answered the first part of a two part question, including the second part of the question, which would lead them to repeat themselves for the second part.

Candidate Performance and Suggested Points for Responses

It is noted that the low numbers of candidates taking the Level 6 exams limits the scope for constructive feedback to be given and for firm conclusions to be reached. Therefore, feedback on candidate performance is limited.

Section A

Question 1	25 marks
Overall candidates seemed to grasp what this question was asking. The odd few concentrated on the wrong thing, i.e. concentrating on the test for capacity and not how the presumption can be rebutted. But largely it was answered well. There was a relatively even spread on this question.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Requirement for testamentary capacity and testamentary intention (animus testandi or knowledge and approval) to exist for a will to be valid - testator can have testamentary capacity but lack testamentary intention • Reference <i>Guardhouse v Blackburn</i> (1866) • Discuss that although a testator may have testamentary capacity, he may lack testamentary intention i.e. due to mistake or where the will reflects wishes of third party rather than the testator. The burden of proof of testamentary intention is on the propounder - the rebuttable presumption and the switch of evidential burden • Identify the circumstances in which the rebuttable presumption does not apply (blind/illiterate testators and suspicious circumstances) • Analyse the position of blind/illiterate testators • Explanation of "suspicious circumstances" e.g. force, fear, fraud, undue influence <i>Barry V Butlin</i> (1838) • Relevant cases e.g. <i>Sherrington v Sherrington</i> (2005), <i>Knight v Edonya</i> (2009), <i>Schrader v Schrader</i> (2013) <i>Wyniczenko v Pucinska-Surowk</i> (2005) • Explain undue influence with reference to <i>Parfitt v Lawless</i> (1872) and need for actual evidence of undue influence • Explain mistake and analyse impact, <i>Marley v Rawlings</i> (2014) • Explain evidence required to rebut the presumption <i>Kenward v Adams</i> • Credit reference to precautions that could be taken • Reasoned conclusion 	

Question 2a	18 marks
Answered well – most candidates that attempted this question attained a mark that would have led to passing it.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • A specific gift of a particular item may be given under a Will but if the subject matter of the gift is no longer owned by the deceased as at the date of death because the subject matter has been sold or destroyed or given away during testator's lifetime this will fail by ademption and the beneficiary will receive nothing. • Discuss that if it is unclear whether the testator died first or an item was destroyed first, then the property is held to have perished before the testator <i>Durrant v Friend</i> (1852) • Discuss ademption and gifts of shares which will only adeem if the stock changes in character <i>Re Slater</i> (1907), <i>Re Clifford</i> (1912) and <i>Re Leeming</i> (1912); and other types of specific gifts e.g., bank accounts, <i>Re Dorman</i> (1994); life assurance policies <i>Soukun v Hardoyal and Others</i> (1999) 	

- Discuss ademption and contracts or sale - gift adeems even if the contract is not completed until after the testator's death and beneficiary only entitled to enjoy property until contract completed unless the contract for sale predates the will, the beneficiary will be entitled to the sale proceeds *Re Calow (1928)* or *Re Sweeting (Deceased) (1988)*
- Discuss ademption and an option to purchase. General rule, *Lawes v Bennett (1785)*, reference to situation where devisee does take asset
- Where the beneficiary predeceases the testator, the gift will lapse although the gift may be saved by a substitutional gift in a Will. If a gift is subject to a contingency e.g., an age contingency and the beneficiary dies before satisfying contingency, then the gift also lapses. Where gift is made to beneficiaries as tenants in common and the testator outlives a beneficiary that share will lapse, *Page v Page (1728)*
- The doctrine of lapse does not apply where there is a class gift
- *Pearks v Mosely (1880)*
- s33 Wills Act 1837 is an exception to the doctrine of lapse where a bequest is made to children or remoter issue who pre-decease the testator. S33 allows issue of the beneficiary living at the testator's death to take their parents share. This is subject to contrary intention in the Will *Rainbird v Smith (2012)*

Question 2b	7 marks
This was a very well answered question part. Candidates tended to achieve higher mark in this lower mark question with a good proportion of candidates being able to attain 5 and above out of 7.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Courts apply the presumption that an alteration was made after execution and is therefore not valid Unless it is attested by both the testator's and witnesses' signatures or initials • S21 Wills Act 1837 • Reference to <i>In the Goods of Blewitt (1880)</i> • The presumption does not apply if the alteration was filling in a blank space on the original document As in <i>Cooper v Bockett (1846)</i> • An obliteration occurs where the original wording is not visible and cannot be read by natural means <i>Re Itter (1950)</i> scientific non-natural means are not permissible to determine the original wording one exception to this is conditional revocation whereby testator only intended to obliterate the original wording based on the presumption that the new wording would apply, if replacement wording is not permissible non-natural means or scientific means may be used to decipher the original wording • Another exception is unintentional obliteration whereby the words are obliterated by accident such as a drink spilled on the words in the will 	

Question 3a	19 marks
This question was largely answered well.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Reference to s9 Wills Act 1837(WA) as amended by s17 Administration of Justice Act 1982 (AJA). A Will must be in writing , this can be in ink or pencil e.g In the Goods of Adams [1872] , it can be on any material e.g Hodson v Barnes [1962], it can be in any language e.g Kell v Charmer [1856] • Explanation of the definition of ‘signature’ e.g. Re Chalcraft (1948), Re Cook [1960] , discussion of signature by another e.g. Barrett v Bem (2012) and the position of the ‘signature’ e.g. Wood V Smith [1993], Weatherhill v Pearce [1995] • Signature ‘made or acknowledged’ in the presence of two witnesses Casson v Dade [1781] Sherrington v Sherrington [2005] , discussion of “presence” and case e.g. Brown v Skirrow [1902] • Requirements of the witnesses’ signatures Payne and Another v Payne [2018] • Reference to privileged Wills as an exception to these formal requirements s11 WA , In the Estate of Stanley [1916], Re Wingham [1949], Re Stable [1919], In the Estate of Knibbs [1962] and In the Estate of Rapley (Deceased) [1983] • Reasoned conclusion 	

Question 3b	6 marks
Again, this question was largely answered well. Most attempts generated near to or full marks.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Reference to s1 Mental Capacity Act 2005 (MCA) and the two stage test a. A person must be assumed to have capacity unless it is established that they lack it and a person is not to be treated as unable to make a decision merely because they have made an unwise decision • S2 MCA provides that a person lacks capacity if at the material time they are unable to make a decision because of an impairment of the mind • S2 MCA provides that mental capacity cannot be established just by reference to the person’s age, condition or aspect of their behaviour which might lead to others making unjust assumptions about their capacity • Reference to the test applied to determine testamentary capacity as set out in Banks V Goodfellow [1870] and the test requiring the testator to understand a) that they are making a Will which would come into effect on their death and not some other document b) the extent of their property and c) the claims that may be brought against their estate. Schrader v Schrader [2013], Boughton v Knight [1873] • Comment on relationship between Banks and MCA and reference Scammell v Farmer [2008] and Key v Key [2010] • Reasoned conclusion 	

Question 4

25 marks

66.67% candidates attempted to answer this one. This had a wider spread of candidate marks – it allowed the better abled candidates to do quite well.

Suggested Points for Response:

- 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 - personal chattels defined in s55 (X) AEA 1925 statutory legacy plus interest from date of death was £270,000 but increased as of July 2023 to £322,000 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. *Re MacCulloch* (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 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. *Kane v Radley-Kane* (1998)
- Discuss that if provision not adequate a claim can be made under the Inheritance (Provision for Family and Dependents) 1975 which has a more generous surviving spouse standard, “such provision as is reasonable in all the circumstances”. Discuss surviving spouse standard guidelines and orders available to the court
- Reasoned conclusion

Section B

Question 1	25 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none">• Order of payment of debts depends on whether estate is solvent- assets sufficient to meet debts and liabilities- or insolvent• Executors should look at secured debts first and then unsecured debts• S35 Administration of Estates Act 1925- property against which a debt is secured- beneficiary, not estate, is liable for payment of the debt- unless there is a contrary intention- beneficiary may have to sell the asset to pay the debt• Discuss bequest of "Barrowdale"- subject to a mortgage- as there is no contrary intention in the will, Stephen will be liable to pay the mortgage off• Discuss that the estate is solvent- the total assets £598,470 exceed the debts of £13,000- but, taking into account that the house and car are specifically bequeathed, the assets not specifically bequeathed only total £17,500• Funds for payment of the unsecured debts can be specified by the testator in an express provision, otherwise the Statutory Order under s34 AEA 1925 must be applied• 1 Property undisposed of by the will- as there is a residuary bequest in the will this does not apply• 2 Residue disposed of by the will subject to a fund for pecuniary legacies- the assets not specifically bequeathed amount to £17,500 and the legacies amount to £10,000, so the £7,500 left will need to be used to pay debts-so there will be no residue- there is a shortfall of £5,500.• 3 and 4 Property specifically given or charged for payment of debts – there is none.• 5. The pecuniary legacy fund- here it is £10,000-this will be needed to cover the shortfall leaving £4,500 in the legacy fund- so the legacies will abate, and Elaine and Irene will receive £2,250 each• 6 Property specifically bequeathed- the house and the car will pass to Stephen and Doreen respectively.• Reasoned conclusion	

Question 2	25 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • The Court will look at what Kingsley meant to do when he made his 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 Kingsley 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 Kingsley’s will the use of grandchildren will include all of Kingsley’s biological grandchildren s19 Family Law Reform Act 1987 (FLRA 1987) this would include Wes’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 Kingsley’s biological children which would include Wes • Secondly the words are given a secondary meaning the Court will apply the ‘armchair rule’ when using this way of interpreting the words of Kingsley’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 Kingsley’s Will will include Adrian Re Smalley [1929] • 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 Kingsley’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 Kingsley’s house to his ‘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(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 Kingsley’s case the Court will consider his wishes regarding Adrian and look at the reasons set out in the letter he has left to decide whether reference to ‘my husband’ in clause 3 meant Adrian • Reasoned conclusion 	

Question 3a	17 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • Whole intestacy the note is not a valid Will and 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 Frances not being a spouse or civil partner, therefore will not inherit under the rules of intestacy. The property they own as tenants in common, Belinda's half will form part of the estate and pass under the intestacy rules . • Frances would have to make a claim under I(PFD)A 1975 to claim a share of the estate. • No spouse and therefore all beneficiaries will be from the same class. • The next category is issue. Contingent on child attaining age of 18 to obtain vested interest Nadia is over 18. • Section 67 Adoption and Children Act 2002 – from date of adoption an adopted child is treated as the child of the adoptive parents and not of any other person, such as the natural parents. (Hardy v Hardy and another (2013) Therefore Nadia is not entitled to inherit from Belinda's estate • Next relevant category is sisters and brothers of the whole blood Curtis and Tina • Curtis has pre-deceased Belinda, but is survived by his 2 children Oliver and Unity who will take his half share per stirpes • Oliver is an adult and can inherit his quarter share immediately , whilst Unity's quarter share must be held on statutory trusts until she is 18 • Tina, as sister of the whole blood, will inherit a half share of the estate. • Hayley as a sister of the half-blood will come into category after Tina and so will not inherit 	

Question 3b	8 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
<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 • Need two administrators as there is a minor beneficiary • Conclusion that Tina and Oliver, as the beneficiaries of the estate who have reach majority and following the order of entitlement will take out the Grant of Representation 	

Question 4	25 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> • S25 (1) AEA 1925 imposes the duty to collect and get in the real and personal estate of the deceased and administer it according to law. So, an Executor's duties are: • To collect and preserve the assets of the estate • Settle the debts and liabilities incurred by testator during his lifetime • Distribute the estate to those legally entitled • An executor should be aware that not all property devolves under the will e.g., joint tenancy, life interest, donatio mortis causa, life policies, foreign policy • Collect and preserve the assets - Yinka will have to ensure that all the properties owned by Mathieu are insured and maintained pending sale . She is also able to continue managing these properties pending sale Re Crowther (1895) When the properties are sold, she must obtain the best possible sale price for the estate • Payment of funeral expenses, testamentary and administration expenses – Yinka must pay but is only responsible for liabilities arising from obligations entered by the deceased Homer's Devises Case (1852) Debts must be paid promptly Re Tankard (1942) Debts that carry interest must be paid first If unenforceable debts are paid the Executor is liable. Limitation period for actions in contract or tort is six years; twelve years in relation to land and covenants • Payment of Inheritance Tax - Yinka is responsible for completion of the paperwork and payment of Inheritance Tax to HMRC, IRC v Stannard 1984 can be held personally liable for any inheritance tax due • PRs should consider S27 TA 1925 notices to protect themselves against claims against the estate This means advertising in the London Gazette and in the newspaper local to where the deceased lived Time limit of at least two months' notice for claims must be specified S27 notices provide protection against claims by unknown creditors, and beneficiaries . Will be important here given there are 20 investment properties. • Yinka will have to consider very low risk of claim from Verity under I(PFD) Act and not make any distribution for 6 months. Discussion whether Verity would meet criteria for claim on facts given. • PRs are not obliged to distribute the estate until the normal executor's year has expired S44 AEA 1925 . But are expected to manage administration with due diligence so Yinka will need to carry out her duties in a timely manner. • Any breach of duty is called a devastavit. Main areas of liability are misappropriation of assets, maladministration and a failure to safeguard assets. Executor can be held personally liable if there is a breach of duty. 	

- There may be a relieving provision in the will which limits Yinka's liability but if not, relief can be granted under S61 TA 1925 if a claim brought but PR acted honestly, reasonably and ought fairly to be excused.
- A reasoned conclusion