



## **CHIEF EXAMINER REPORT**

**JANUARY 2025**

**LEVEL 6 UNIT 14 LAW OF WILLS AND 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 2025 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.

## Chief Examiner Overview

Where candidates fell short, they tended not to answer all of the questions fully. Some candidates who failed answered certain questions within their paper really well and then completely fell short in the other questions they answered, which was disappointing when you could see they did have capability.

Candidates who achieved higher marks thought fully about the topic they were being asked to comment on and explored this in line with the unit specification.

## 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 may be limited.

### Section A

Question 1a	13 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• S22 Wills Act 1837 permits 2 methods of revival-express revival or constructive revival</li> <li>• Discuss that a will that is destroyed cannot be revived</li> <li>• There must be clear evidence of an intention to revive shown in 1 of 3 ways , In the Goods of Steele (1868)</li> <li>• So, a codicil must clearly refer to a previous revoked will and show intention if it is to revive it</li> <li>• Discuss that there must be certainty of the testator's intention, Marsh v Marsh (1860) and Re Dear (1975), or other cases</li> <li>• S34 Wills Act 1837- the effect of revival- the revived will is valid as at the date of revival and can therefore save a gift in previous form from failing</li> <li>• Discuss that revived will is valid from the date of revival and so may affect property bequeathed, Re Reeves (1928) and save unattested <u>alterations made</u> before revival and gifts that might have failed e.g. where a beneficiary or their spouse has witnessed the will but codicil has unrelated witnesses , Anderson v Anderson 1872</li> <li>• Discuss in The Estate of Davis (1952)</li> </ul>	

Question 1b	12 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• <u>S21 AJA 1982</u> has codified the rules relating to the admission of external evidence re the construction of wills- and sets out 3 alternative conditions, 1 of which must be satisfied for the admission of alternative evidence</li> <li>• Discuss the impact of s21- that many earlier cases involving the construction of a will are obsolete and might be decided differently today e.g. Perrins v Morgan 1943</li> <li>• S21 (a): insofar as any part of the will is meaningless-lack of meaning must be apparent from the will itself</li> <li>• S21 (b): insofar as the language used in any part of it is ambiguous on the face of it - this condition deals with patent ambiguity, language is clearly ambiguous and extrinsic evidence is now permitted to establish testator's intentions .</li> <li>• S21 (c): insofar as evidence other than evidence of the testator's intention shows that the language used in any part of it is ambiguous in the light of the surrounding circumstances - this</li> </ul>	

relates to latent ambiguity where there is no obvious ambiguity- once the ambiguity is evident, then extrinsic evidence may be admitted(

- S21 c- latent ambiguity- will allow admission of evidence to create ambiguity- Re Jackson (1933)
- Discussion of relevant cases such as Re Williams (1985). Tyrell v Tyrell (2002) Spurling v Broadhurst (2012), Pinnel v Anison (2005), Sandover v Brown (2004)

## Question 2

25 marks

The majority of candidates attempted this question and, largely, they performed well.

### Suggested Points for Response:

- 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 as a beneficiaries than any other family member
- If the testator leaves a surviving spouse (SS) or civil partner (CP) and no issue, then the SS or CP will inherit the whole estate on the presumption that most testator's give priority to their spouse or CP in their Wills reference to Law Commission Report
- Discuss if this is fair and reasonable ie short marriage
- s46(2A) AEA 1925 states the SS or CP must survive the testator by 28 days before they can inherit
- If the testator dies leaving a SS or CP and where there is issue then the SS or CP will inherit: All of the personal chattels of the testator as defined by s55(x) AEA 1925
- Discuss the definition of this
- Business assets and Re McCulloch 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 provisions in relation to the family home- passing by survivorship if held as joint tenants but if in sole name of testator or as tenants in common, there is a right to appropriate family home within 12 months of grant of representation 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
- Reference to other cases include Kane v Radley-Kane and Others [1998], Re Collins [1975], Re Reynolds [1966], Re Crispin's Will Trust [1974]

Question 3	25 marks
Only a small handful of candidates attempted this question. Of those that did, most performed quite well. A few provided answers that were scant and without relevant detail.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• 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</li> <li>• s11 WA 1837 extended this right to mariner at sea reflecting the higher risks of sudden death facing merchant seamen</li> <li>• Privileged wills can be made by service personnel and merchant seamen under 18 years as an exception to the normal rule in s7 WA 1837 which requires all testators to be 18 years or older.</li> <li>• 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.</li> <li>• actual military service is a question of fact in each case. In re Wingham [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</li> <li>• 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]</li> <li>• 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 operations.</li> <li>• Mariner means members of the Royal Navy or the Merchant Navy or someone else who is employed on board a ship In the Goods of Hale (1915)</li> <li>• 'At sea' has a wide interpretation and can include anyone attached to a ship In the Goods of McMurdo (1868)</li> <li>• 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</li> <li>• The testator need not be conscious of making a will so long as the words indicate testamentary intention Re Stable [1919]</li> <li>• WA 1837 states that revocation can be informal while the testator enjoys privileged status</li> <li>• 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</li> <li>• s15 WA 1837 does not apply to privileged will because it does not need to be witnessed to be declared valid Re Limond [1915]</li> <li>• Alterations to a privileged will are presumed to have been made during privileged status</li> <li>• 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</li> </ul>	

Question 4a	20 marks
This was the most answered question in section A. The majority of candidates that answered were able to achieve high marks.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• MCA 2005 – its general application</li> <li>• Explanation of the relevant sections of Mental Capacity Act 2005 section 1 section 2 section 3</li> <li>• Test in Banks v Goodfellow (1870) (2) e.g.</li> <li>• Schrader v Schrader (2013), Boughton v Knight (1873) (2)</li> <li>• Explanation of the lucid interval, insane delusions and application of the courts e.g. Cartwright v Cartwright (1793), Richards v Allan (2000)</li> <li>• Explanation of presumption of capacity and the burden of proof Rational will Continuing mental state e.g. Burgess v Hawes (2013)</li> <li>• Comparison of Banks with MCA 2005: presumption of capacity and capacity being decision and time specific</li> <li>• Discuss impact of MCA 2005 on the Banks test e.g. Scammell v Farmer (2008), Re Walker (2014) Elliott v Simmons (2016)</li> <li>• Discuss that MCA has extended Banks e.g. Key v Key (2010)</li> <li>• Use of the “Golden Rule” e.g. Kenward v Adams (1975)</li> </ul>	
Question 4b	5 marks
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• Brief explanation of general rule of testamentary capacity (Banks v Goodfellow)</li> <li>• Explanation of the rule in Parker v Felgate (1883) – capacity at time of giving instructions to the solicitor for the preparation of the will ; the will was prepared in accordance with the instructions ; at the time of executing the will, they were capable of understanding and did understand they were executing a will for which they had previously given instructions discussion of application e.g. Perrins v Holland and Others (2010), Battan Singh v Amirchand (1948)</li> </ul>	

## Section B

Question 1a	8 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• S25 AEA 1925-executors' duties are to collect and safeguard assets, pay debts and distribute estate to those entitled- should be carried out with due diligence. (2)</li> <li>• Discuss that there is a breakdown of trust between the executors and the beneficiary here Re Steele (2010), Khan v Crossland (2012) (2)</li> <li>• Discuss that Lori has a range of options open to her-she could request an inventory and account under s25 AEA 1925, she has a right to compel due administration, if there had been undue delay she could claim devastavit, and she could ask the court to use its powers under s116 Senior Courts Act 1981 to pass over Kyle in favour of her, though Kyle unlikely to agree- Re Potter (1899) (3)</li> <li>• Lori and George could make an application to the court under s61 Senior Courts Act 1981 and Civil Procedure Rules 1998.</li> <li>•</li> </ul>	

Question 1b	5 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• Executors can be liable to beneficiaries for devastavit- misappropriation and maladministration e.g. using estate assets as own and failing to distribute – Re Morgan (1881)</li> <li>• Discuss that Kyle should not use the house (an estate asset) for personal use unless he pays rent to the estate for the house whilst he is occupying it if he does not, he is liable for misappropriation.</li> <li>• Discuss that the car needs to be accounted for and passed to George as per the will-if it has been sold but this was after Jay passed away –then Kyle liable for maladministration</li> </ul>	

Question 1c	12 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• S61 TA 1925- executor has acted honestly and reasonably .</li> <li>• Discuss that the delay in preparing the probate papers was through no fault on Kyle's part</li> <li>• S27 TA 1925 statutory notices</li> <li>• Discuss that the delay owing to the solicitors dealing with the estate</li> <li>• Where a beneficiary sui juris has acquiesced</li> <li>• Discuss that Lori as beneficiary has acquiesced to the breach by not raising any objections when Kyle moved in to the house</li> <li>• Plene administravit</li> </ul>	

- Reference to executor's year
- IFPDA 1975

Question 2a	5 marks
This was the most attempted question overall in section B. Overall candidates performed well in each section.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• Identifying that the appointment of Solomon as sole executor failed because he died before Yashmeen</li> <li>• The type of grant available to Christine is called Letters of Administration (with Will annexed)</li> <li>• And that in the absence of a substitute executor, application must be made for administration of the estate with will annexed</li> <li>• The order of entitlement to make the application is set out in r20 Non-Contentious Probate Rules 1987 (NCPR 1987)</li> <li>• Residuary beneficiaries are entitled to take out the grant of representation and in this case that would be Christine she is referred to as an Administrator</li> </ul>	
Question 2b	13 marks
This was a high performing question with most candidates able to achieve a higher level of mark and certainly most achieved 7 and above.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• Clause 1. This is a specific gift which is defined as a particular existing item from the assets belonging to the deceased Bothamley v Sherson [1875] the gift fails due to ademption because it was subject to a contract for sale Re Sweeting (Deceased) [1988] Lawes v Bennett [1785] the property will be subject to the sale and on completion the net proceeds of sale will pass under clause 5. (2)</li> <li>• Clause 2. This is a specific gift which on the face of it lapsed because Beth predeceased Yashmeen s33 WA overrides this and the gift will pass to Beth's daughter Nina instead (2) provided there is no contrary intention in the Will reference to Rainbird v Smith [2012]</li> <li>• Clause 3. The gifts of the bracelet is a specific legacy the gift fails for ademption because it did not form part of Yashmeen's estate at the date of her death if it is lost</li> <li>• Clause 4. This is a pecuniary legacy the alteration was made after the Will was executed and therefore s21 WA applied 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 original figure was not obliterated and so can still be ascertained Yashmeen's amendment to the gift to William is not valid the gift to William remains as £10,000</li> <li>• Clause 5. The gift of the residue of the estate to Solomon lapses because he did not survive Yashmeen. The residue therefore passes to Christine and Nina as Beth's share of the estate will pass to her daughter Nina under s33 WA</li> </ul>	



Question 2c	7 marks
Again, as above, higher scores were achieved in this question.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>Identifying that the estate is not insolvent s421 Insolvency Act 1986 (IA)</li> <li>Yashmeen's debts are paid in order of priority secured debts first then unsecured debts</li> <li>Identifying that the mortgage is a secured debt of the estate and subject to s35 Administration of Estate act 1925 (AEA) in that the gift to Christine is subject to her taking in the mortgage subject to contrary intention as stipulated in the Will and therefore the gift is free of the mortgage which is payable out of the residue of the estate however as established in Q1(b) the gift lapses</li> <li>After the payment of the mortgage, Yashmeen's other unsecured debts (care fees and overpayment of pension) can be paid out of residue</li> <li>Reference to case law Re James [1947] or Re Gordon or [1940] Re Kempthorne [1930]</li> </ul>	

Question 3	25 marks
The majority of candidates attempted this and overall those that did attempt it did well.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>The Inheritance (Provision for Family and Dependants) Act 1975 (1975 Act) allows the court to change the effect of a Will if certain criteria are met</li> <li>Erica can bring a claim under the 1975 Act because</li> <li>Rita has not made reasonable financial for Erica</li> <li>Rita was domiciled in England at the date of her death</li> <li>As a child Erica is entitled to bring a claim under s1(c) 1975 Act</li> <li>Although Erica is an adult, Rita had a moral duty to provide for her Re Coventry [1979] Re Jennings [1994]</li> <li>It was not Erica's fault that the relationship between her and Rita broke down Re Nahajec (Deceased) [2017]</li> <li>There is nothing to suggest Erica would waste her award as she will most likely use it towards herself and her children's care</li> <li>The size of Rita's estate is significant to justify the claim</li> <li>The court will consider whether Rita has made reasonable financial provision for Erica and in doing so will apply the two stage process 1. Has the Will made reasonable financial provision for Erica, the answer is no and 2. What would amount to reasonable financial provision for Erica Iltott v Mitson [2015]</li> <li>The court will also look at Erica's financial resources and needs now and in the foreseeable future s3 1975 Act eg Erica's earning capacity, income, social security benefits and can make an order just to enable Erica to buy a modest property Graham v Murphy [1996]</li> <li>The court will also consider the size of Rita's estate s3(e) 1975 Act Re Fullard [1981]</li> <li>The court most likely will award Erica with a share of Rita's estate because although Erica was not financially dependant on Rita, the court will consider how Erica is likely to use the money and the beneficial impact it would have on her life</li> <li>Erica can make an application under the 1975 Act before a grant of probate has been issued s4 1975 Act as amended by Inheritance and Trustees Powers Act [2014] the application must be issued within 6 months of the date the grant of probate is issued</li> <li>The court has the power to make a variety of orders eg periodical payments lump sums or transfers of property</li> </ul>	

Question 4	25 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
<p><b>Mirror Wills</b></p> <ul style="list-style-type: none"> <li>• Explanation of mirror wills – wills for couples that “mirror” each other</li> <li>• Popular for couples – married or unmarried – as they reflect common wishes to be respected whoever dies first</li> <li>• Both testators must identical wishes</li> <li>• Mirror wills are not binding so they be revoked unilaterally at any time, even after death of 1<sup>st</sup> testator</li> </ul> <p><b>Mutual Wills</b></p> <ul style="list-style-type: none"> <li>• Wills that aim to ensure that the wishes of both testators are respected after the death of the first testator.</li> <li>• Understanding of making a will to come into effect on their death that is irrevocable on death of first testator and binding on survivor</li> <li>• Requirements for mutual wills (3) Dufour v Pereira ; Fry v Densham</li> <li>• Crystallisation of the trust</li> <li>• Revocation can take place prior to one of the testators dying and can be unilateral</li> <li>• Reference to undermining testamentary freedom</li> <li>• Reference to life interest discretionary trust instead of mutual will</li> </ul> <p><b>Comment</b></p> <ul style="list-style-type: none"> <li>• Both mirror wills and mutual wills may be seen as a way for couples to ensure that their estate is passed in accordance with their agreed wishes</li> <li>• But mirror wills are not legally on the couples binding and can be changed after the death of the first party, reflecting testamentary freedom</li> <li>• Mutual wills are legally binding on the death of the first partner and so can restrict the 2<sup>nd</sup> partner being able to react to any changing circumstances</li> <li>• Legacies</li> <li>• Explain legacies needed in this situation: Specific legacies and ademption ; general legacies; pecuniary legacies residuary legacies and rule in Allhusen v Whittell (1867)(2); need for a substitution clause to allow for siblings to inherit if no issue</li> <li>• Adopted children treated as legitimate children of adopter eg: Hardy v Hardy and Another (2013);</li> <li>• Property falling outside of the will – survivorship explanation</li> </ul>	