CILEX

CHIEF EXAMINER REPORT

JANUARY 2026

LEVEL 6 UNIT 14– LAW OF WILLS AND SUCCESSION

The purpose of the report is to provide candidates and training providers with guidance as to the key points candidates should have included in their answers to the January 2026 examinations.

The ‘suggested points for responses’ set 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
Candidates choices of questions were fairly evenly balanced between Section A essay questions and Section B questions where they had to advise on scenarios. Section A Question A3 on intestacy was popular and Question A4 on mental capacity. In Section B, Question B1 was the most popular AND then Question B3. For candidates who were well prepared with knowledge across the specification and relevant study skills the paper enabled a fair assessment of knowledge and understanding with key topics within the specification being examined. Where candidates performed less well it was due to a lack of the detail required at Level 6 and also due to a less well-structured answer.

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 1	25 marks
This question was not a popular Section A question, and the few candidates that attempted did not provide in-depth responses. Candidates failed to show application through cases and to identify the importance of evidence or reference mistake and Marley v Rawlings.	
Suggested Points for Response:	
• For a valid Will testator must have testamentary capacity (general intention) • Testator must also have testamentary intention, or animus testandi, (specific intention) - knowledge and approval of the Will they sign e.g.Guardhouse v Blackburn (1866) • Time of knowledge and approval, discuss Parker v Felgate (1883) exception • Discuss that although a testator may have testamentary capacity, he may lack testamentary intention i.e. where the will reflects wishes of third party rather than the testator • The burden of proof of testamentary intention is on the propounder; explain rebuttable presumption and the switch of evidential burden • Rebuttable presumption does not apply in suspicious circumstances • Explain suspicious circumstances e.g. Barry v Butlin (1883) • Analyse application through relevant cases e.g Sherrington v Sherrington (2005), Knight v Edonya (2009), Schrader v Schrader (2013) Wyniczenko v Plucinska-Surowka (2005) • Undue influence e.g. Parfitt v Lawless (1872) re need actual evidence of undue influence relevant cases e.g, Carpeto v Good (2002), Gill v Woodall and others (2010) • reference to Law Commission report Modernising Wills Recommendation 20 • Evidence is required to rebut the presumption	

Question 2	25 marks
Candidates showed good knowledge of ademption regarding specific bequests, but too often failed to discuss contracts for sale and options and a beneficiary pre-deceasing the testator.	
Suggested Points for Response:	
- Ademption applies where a specific gift in a Will does not form part of the estate at the date of death; a specific gift is a particular item given under a Will for example “my piano”; but the subject matter of the gift may no longer owned by the deceased at the date of death because it has been sold, given away or destroyed during the testator's lifetime; the legacy will fail by ademption and the beneficiary will receive nothing - Discuss that if it is unclear whether the testator died first or the item was destroyed first, then the property is held to have perished before the testator Durrant v Friend (1852); credit reference to Law Commission report “Modernising Wills Recommendation 29 - Discuss ademption and gifts of shares which will only adeem if the stock changes in character Re Slater (1907), Re Clifford (1912) e.g. Re Leeming (1912); and other types of specific gifts e.g., bank accounts, e.g. Re Dorman (1994); life assurance policies, e.g. Soukun v Hardoyal and Others (1999) - Discuss ademption and contracts for 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 e.g. Re Calow (1928), Re Sweeting (Deceased) (1988) credit reference to Law Commission report “Modernising Wills Recommendation 28 - Discuss ademption and an option to purchase. General rule that exercise of the option even after testator’s death converts land into money from date of grant of option Lawes v Bennett (1785); credit reference to treatment of income from property to date of exercise of option; credit reference to Law Commission report “Modernising Wills Recommendation 28 - Lapse occurs when the beneficiary predeceases the testator; 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, e.g. Page v Page (1728)	

Question 3	25 marks
This was popular question but performance was average. There is a very logical structure to this topic, and common discussion points, however, responses lacked clarity about the situation where there is a spouse but no children and detail relating to chattels. They also lacked recognition of aspect of fairness in the provision.	
Suggested Points for Response:	

- Intestacy rules found in AEA (1925), IEA (1952) and ITPA (2014)
- Estate of an intestate is held on statutory trust under s47 AEA (to pay funeral expenses and debts) and is then distributed under the strict order of entitlement in s46 AEA 1925
- There is a 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 e.g. if surviving spouse is spouse of a relatively short marriage
- Surviving spouse entitlement where there are children
- Discuss that the definition of personal chattels has been simplified but under new definition business assets and investment which could be substantial, will not automatically pass to the surviving spouse but may fall into residue; e.g. Re Reynolds (1966), Re McCulloch (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 to £270,000 with a further increase in 2023 to £322,000, and a further review due in 2025
- 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 house owned as joint tenants then testator's half share passes to spouse by survivorship; but if owned as tenants in common or in sole name of testator then forms part of estate; under AEA (1925) there is a right to appropriate family appropriation; the right must be exercised in writing and within 12 months of the grant e.g. Kane v Ridley-Kane and others (1998); the equality money may need to be paid; the issue will be the extent to which home is an asset of estate and money available to spouse
- If provision not adequate a claim can be made under the Inheritance (Provisions for Family and Dependants Act 1975 (IPFDA 1975); discuss that IPFDA 1975 has a more generous surviving spouse standard, "such provision as is reasonable in all the circumstances."

Question 4a	18 marks
Candidates often simply listed the 3 Banks criteria, but too often did not develop or reference appropriate cases. There was also a lack of exploration of the Mental Capacity Act. A few candidates were unclear about the relationship between Banks and the Mental Capacity Act.	
Suggested Points for Response:	
• Common law test - test in Banks v Goodfellow (1870*)* • Must understand making a will to come into effect on death • Must recall property owned, though not extent e.g. Schrader v Schrader (2013) • Must understand moral claims on them, though need not address them, e.g. Boughton v Knight (1873); will may be valid even though capricious of mean (e.g. Fuller v Strum (2002) • Claims can be made under Inheritance (Provision for Family and Dependants) Act 1975 (IPFDA) • Explanation of the lucid interval, insane delusions and application by the courts e.g. Cartwright v Cartwright (1793), Richards v Allan (2000) • Explanation of presumption of capacity and the burden of proof • Continuing mental state e.g. Burgess v Hawes (2013) • Mental Capacity Act (2005) (MCA 2005) – its general application • Explanation of the relevant sections of MCA 2005 section 1 section 2 section 3 • Comparison of Banks with MCA 2005: presumption of capacity and capacity being decision and time specific • Discuss impact of MCA 2005 on the Banks test e.g. Scammell v Farmer (2008), Re Walker (2014) Elliott v Simmons (2016), Baker v Hewston (2023) • Discuss that MCA has extended Banks e.g. Key v Key (2010) • Use of the "Golden Rule" e.g. Kenward v Adams (1975)	

Question 4b	7 marks
Some candidates did not to start with the general rule regarding capacity and there was disappointing performance from a number of candidates who were unable to clearly state the rule in Parker V Felgate.	
Suggested Points for Response:	
• Explain the general rule regarding when a testator should have mental capacity for making a will • explain that the rule in Parker v Felgate (1883*)* is an exception – will valid if testator had capacity at time of giving instructions for the preparation of the will, subject to conditions; • the will was prepared by the solicitor; • in accordance with the instructions; • at the time of executing the will, the testator was 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*)*	

Section B

Question 1	25 marks
This was a popular question which produced the best performance of the paper. The legacy that some candidates found challenging was the legacy of the piano. Some candidates also showed a lack of understanding of the impact of an option and stated that the sale proceeds would go to Leo and Yolanda which is incorrect. However, the fact that any income up to sale would go to Leo and Yolanda was not mentioned.	
Suggested Points for Response:	

Clauses (i)and (ii)

- S21 Wills Act 1837 – presumption that an unattested alteration was made after will was executed and so is invalid.
- Where there is an alteration of an original bequest, the original bequest will be effective if it can be read by natural means, but if it cannot be read by natural means it will fail and probate will be granted with a blank space e.g. Re Itter (1950)
- Clause (i) the alteration is initialled but not witnessed therefore not compliant with s21 and invalid; this is an obliteration and as original sum cannot be read Leo will receive £15000
- Clause (ii) the alteration is not compliant with s21 but the original can be seen
- Yolanda will receive £5000
- Credit supported by the witnesses who do not recall the alterations

Clause (iii)

- "My piano" is a specific legacy; when Naomi died she had 2 pianos so there is latent ambiguity;
- S24 WA (1837) – the Will speaks from death subject to contrary intention; in the case of a specific gift and the circumstances show the testator intended a certain item there will be a contrary intention; e.g. Re Sikes (1927); Naomi and had indicated that she was selling the baby grand piano which was a later acquisition so Imogen will receive the upright piano.
- Here, Stuart can provide evidence that Naomi only owned the upright piano when she executed her will and was considering selling the baby grand piano and therefore "my piano" means the upright piano.

Clause (iv)

- This is a specific legacy and is subject to ademption; as Naomi had granted Alex an option to purchase which he has exercised the gift will be adeemed, Laws v Bennett (1795); the proceeds of sale will fall into residue and Leo and Yolanda will receive nothing
- Advice on legacy in clause (iv) – specific legacy which is subject to ademption – option to purchase exercised will cause the gift to be adeemed and the proceeds of sale to fall to the residue.

Clause (v)

- Explain that as Naomi's husband has pre-deceased her, the residuary estate will pass to her grandchildren; this is a gift to a class and class closing rules apply with the class closing when a beneficiary reaches to identified age of 18; here one grandchild has attained 18 year and they will receive their share now with the 14 year old grandchild's inheritance being deferred and contingent on them reaching the age of 18.

Question 2a	13 marks

Candidates needed to explain the role of an Executor with reference to s25(1) Administration of Estates Act 1925 – providing examples of what an executor needs to do and applying where relevant to scenario where there were issues regarding the business properties (insurance, management and sale).

Suggested Points for Response:

- Although Thierry has appointed Paul as his executor in his Will, Paul will need to apply for a Grant of Probate to confirm him as executor and to deal with Thierry's estate
- A Grant of Probate will be required to prove title to land – Thierry owned a number of properties – if and when it is sold
- 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.

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
- Paul's duties will include:
- Ensuring that all the properties owned by Thierry are insured and maintained pending sale.
- Managing the properties pending sale Re Crowther (1895).
- Obtaining the best possible sale price for the estate when the various properties are sold
- Paying funeral expenses, testamentary expenses e.g. legal costs and inheritance tax ; other tax such as income tax and CGT on sale of assets; credit reference to charitable relief on IHT
- Distributing to the beneficiaries as per instructions in the Will
- Paul will need to carry out his duties in a timely manner as PR's are expected to manage administration with due diligence and in this case charities are residuary beneficiaries and will be monitoring progress
- Paul's role as Executor of Thierry's estate will be demanding in terms of time and of work

Question 2b	12 marks
Candidates were able to show some relevant knowledge, e.g. of devastavit and s27 notices, but not of s61 protection.	
Suggested Points for Response:	

- S1 Trustee Act (TA) 2000 imposes a duty to exercise such care and skill as is reasonable in the circumstances e.g. to act with due diligence, safeguard assets, to pay debts promptly
- Paul will be personally liable when if he fails to perform his duties as he should – breach of duty or *devastavit*
- Paul will be liable for misappropriation – using estate assets for personal use Re Morgan (1881); or entering collusive sale; he needs to be careful when selling the properties if he uses his son to help
- Paul will be liable for maladministration – e.g. misapplication (not following correct order of using assets to satisfy debs, unjustified expenses, wasting assets, failure to pay debts promptly, failure to collect assets with due diligence, failure to distribute to those entitled e.g. Thompson v Thompson (1821), Re Whorwood (1887)
- Paul will be liable if he fails to safeguard assets e.g. he needs to keep insurances up to date
- Paul should consider S27 TA 1925 notices to protect himself against claims from unknown creditors against the estate
- This means advertising in the London Gazette and in the newspaper local to where the deceased lived or had a business
- Time limit of at least two months' notice for claims must be specified
- Notices provide protection against claims by unknown creditors, and beneficiaries.
- Will be important here given that there are 10 investment properties

Question 3	25 marks
This is a question with a natural order for legal rules under the I(PFD) A 1975. So knowledge of the 3 principles, reasonable provision and how it is decided (the guidelines) – and application to the scenario.	
Suggested Points for Response:	

- In order to succeed in a claim under I(PFD)A 1975 the applicant must show that:
  - 1 Deceased died resident/domiciled in England and Wales.
  - 2 Locus standi within one of categories of S1(1) I(PFD)A.
  - 3 There was a failure to make reasonable financial provision.
- Normal time limit of lodging a claim within six months from the date of issue of the Grant of Probate
- Court must decide whether the will failed to make reasonable financial provision, and if so, what is reasonable financial provision.
- The standard of provision to be considered here is the maintenance standard i.e., such financial provision as would be reasonable in all the circumstances of the case for the applicant to receive for maintenance
- Applied subject to various principles - (examples)
- and common guidelines (examples)
- Chandice was resident/domiciled in England and Wales as at the date of her death as shown by her owning a house inherited from her parents.
- Jenna falls within one of the six categories of persons able to bring a claim under the Inheritance Provision for Family & Dependants Act 1975, as a child of the deceased
- Jenna is an able-bodied adult and Chandice did not owe her a special moral obligation
- More recently the courts have taken a wider view of what constitutes a moral obligation towards an adult child, e.g. Ilott v Mitson (2015), Ilott has emphasised that a child does not have an automatic entitlement but must prove his or her case, all relevant factors should be considered, but the key consideration in making an award is that it is for reasonable maintenance
- Court would consider the estrangement but also Jenna's circumstances including the effect of any award on Jenna's future entitlement to state benefits
- A sum could be awarded from the estate to enable Jenna to improve her lifestyle/make her less reliant on state benefits, as in Ilott
- Size of the estate would justify this
- Eithan - the long-standing nature of their relationship would be considered as it could be said to show Chandice accepted some moral obligation to provide for him in his failing health e.g. Stephanides v Cohen (2002)
- Discuss that Eithan will not be able to claim as a cohabitee
- Eithan might claim as a person being partially maintained

Question 4	25 marks
Some candidates failed to start with asking was the estate solvent or insolvent. Candidates generally showed knowledge of rules relating to properties bequeathed where mortgages existed. However, did not show full knowledge of s34 order and then apply methodically to the scenario.	

Suggested Points for Response:

- Grace and Robert should first consider whether the estate is solvent or insolvent
- A solvent estate is an estate where there are sufficient assets to pay the debts and liabilities, although there may not be sufficient assets to fully meet the legacies
- Fiona's estate is solvent as her assets total £365,000 and her debts total £40,000
- The proceeds of the life policy will not form part of Fiona's estate. They will be paid directly to the beneficiary named, Robert
- Grace and Robert should then consider which debts are secured and which debts are unsecured, as secured debts must be settled before unsecured
- The property Orchard cottage is left to Grace and is subject to a mortgage of £20,000. A mortgage is a secured debt
- Under s35 AEA 1925 the general rule is that the beneficiary is responsible for the mortgage unless there is a contrary intention shown
- In Fiona's Will there is a contrary intention and so the property will pass to Grace without responsibility for repayment of the mortgage which must be repaid from the remainder of the estate
- The Will may indicate which assets are to be used to pay the funeral expenses, administration expenses and remaining unsecured debts. But in Fiona's Will there are no instructions
- The executors will have to follow the order in a s34(3) AEA 1925 as set out in Part 11 Sch 1 AEA 1925
- 1 Property undisposed of in the Will – there is none
- 2 Residue disposed (net assets) of by the Will, subject to a fund for pecuniary legacies, £20,000 in Fiona's case
- 3 Property specifically bequeathed for payment of debts – none here
- 4 Property charged with payment of debts – none here
- 5 Fund retained to meet pecuniary legacies - £20,000
- 6 Property specifically devised/bequeathed – 'Orchard Cottage' and the car
- 7 Property appointed under a general power – none here
- In Fiona's case, she has specifically bequeathed 'Orchard Cottage' (£310,000) and her car (£5000)
- The remaining assets (HCPE, bank balances and savings) total £50,000 and the liabilities and debts total £40,000, leaving only £10,000 for the pecuniary legacies
- These will abate rateably and the beneficiaries will receive £5,000 each
- There will be no residue for the hospice