



## CHIEF EXAMINER REPORT

**JUNE 2024**

**LEVEL 6 UNIT 14 – LAW OF WILLS & 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 June 2024 examinations.

The 'suggested points for responses' sections 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

Overall, candidates performed better on the Section B questions. To improve on the Section A questions, candidates should focus on understanding the question's requirements and the broader implications that are relevant and could gain marks.

Candidates excelled in question A4, which asked about challenging the validity of a will. This was handled very well overall, and candidates should apply the same exam technique to other questions for consistent success.

## 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	8 marks
Overall, the question performed well, as expected for an 8-mark question. However, candidates who did not do well often provided very basic answers.	
Suggested Points for Response:	
<ul style="list-style-type: none"><li>• Explanation of specific legacy</li><li>• Effect of divorce or dissolution, s18A WA 1837</li><li>• Explanation of what that means for the spouse</li><li>• As amended by the Law Reform (Succession) Act 1995; relevant case law, eg: Re Sinclair (1985).</li></ul>	

Question 1b	5 marks
This question also saw generally good performance. This was expected for a five-mark question, but those who didn't do well provided very basic responses.	
Suggested Points for Response:	
<ul style="list-style-type: none"><li>• S18 WA 1837, as amended by AJA 1982 and Marriage (Same Sex Couples) Act 2013</li><li>• Explanation of exceptions on expectation of marriage and rules relating to this</li></ul>	

Question 1c	12 marks
Candidates often struggled on this question about mutual wills, often failing to provide the level of detail required to produce a substantial and detailed response.	
Suggested Points for Response:	
<ul style="list-style-type: none"><li>• Explanation of the equitable doctrine of mutual wills</li><li>• Explanation of crystallisation of the floating trust</li><li>• Explanation of evidence of mutual intention not to revoke</li><li>• Relevant cases, eg: Dufour v Pereira (1769), Re Cleaver(1981), Re Goodchild (1996), Charles v Fraser (2010), Fry v Densham – Smith (2010).</li><li>• Explanation of benefits and burdens of creating mutual wills</li></ul>	

Question 2	25 marks
Only a small number of candidates attempted this question and valid data is limited. Those who did attempt the question generally performed very well.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• Explanation of a solvent estate: assets are sufficient to pay all funeral, testamentary and administration expenses, debts and liabilities;</li> <li>• Explain irrelevant that it cannot pay all legacies;</li> <li>• Explanation of Insolvent estate: assets are insufficient to pay all liabilities as above; (</li> <li>• Beneficiaries will receive nothing, creditors will not be paid in full.</li> <li>• Part II of Sch I AEA 1925 order in which assets are used to pay debts;</li> <li>• Relevant case law, eg: Re Birmingham (1959), Re Neeld (1962),</li> <li>• Statutory order for unsecured debts, property falling outside the order;</li> <li>• Variation of the order for unsecured debts;</li> <li>• Relevant case law, eg: Re James (1947), Re Gordon (1940), Re Kempthorne (1930);</li> <li>• methods of showing contrary intention (s35) for debts charged on property.</li> <li>• PRs must follow order of priority which cannot be varied by T, risk of personal liability for superior unpaid debts, limited protection;</li> <li>• availability of joint property to cover debts;</li> <li>• order for payment of debts: secured creditors option to rely on security or prove debt in whole or part, funeral testamentary and administration expenses</li> </ul>	

Question 3a	5 marks
Most candidates who attempted this question were able to achieve marks at the higher end.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• Reasonable financial provision and the test of reasonableness, relevant case law eg: Ilott v Mitson (2011), (2015) CA &amp; (2017) SC;</li> <li>• Explanation of surviving spouse standard;</li> <li>• Explanation of ordinary standard;</li> <li>• Explanation of consideration of changes arising post death.</li> </ul>	

Question 3b	10 marks
A number of candidates performed well on this question. Generally, those who attempted it tended to secure decent marks.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• Explanation of S3 common guidelines, financial resources of applicant/beneficiaries, obligations and responsibilities of the deceased, size and nature of the estate, applicant's physical or mental disability, any other matter;</li> <li>• Explanation of particular guidelines, as applicable to each category of applicant.</li> <li>• Explanation of types of orders: periodical payments; lump sum payments; transfers of property; settlement of property; acquisition of property; interim payment order.</li> </ul>	

Question 3c	10 marks
Candidates did not perform as well on this question as they did on part B.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• Explanation of preliminary requirements of the Act including: domicile; time limit for applications; the applicant falls into one of the categories; reasonable financial provision has not been made.</li> <li>• Analysis of how court has applied classification of applicants: s1 of the Act; spouse or civil partner; former spouse or civil partner;</li> <li>• Analysis of other influencing factors such as financial settlement on divorce; a person cohabiting with the deceased, position of same sex partners; a child of the deceased, definition to include adopted, illegitimate, en ventre sa mère; stance re adult children; a person treated by deceased as a child of the family; (Ilott v Mitson (2017) UKSC 17; any person maintained by the deceased immediately before death.</li> <li>• Inclusion of relevant case law; eg: Barrass v Harding and Newman (2001), Re Coventry (1979), Re Abram (Deceased) (1996), Espinosa v Bourke (1999), Re Nahajec (Deceased) (2017); Jelley Iliffe (1981), Gully v Dix (2004), Kaur v Singh Dhaliwal (2014), Swetenham v Walkley (2014).</li> </ul>	

Question 4	25 marks
This question had the highest number of candidates achieving good scores. Overall, performance on this question was excellent.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• <i>Consideration of formalities of making a Will:</i> <ul style="list-style-type: none"> <li>• S 9 Wills Act 1837</li> <li>• In writing – discussed</li> <li>• Signed by testator with intention – discussed e.g. <i>In the Goods of Adams (1872)</i> <i>Re Chalcraft (1948)</i>, <i>In the Goods of Savory (1851)</i></li> <li>• In the presence of 2 witnesses – discussed</li> </ul> </li> <li>• <i>Exploration of mental capacity:</i> <ul style="list-style-type: none"> <li>• Mental capacity required to make a will – the rules in <i>Banks v Goodfellow (1870)</i></li> <li>• Understanding of making a will to come into effect on their death</li> <li>• Extent of their property. No need to have perfect recollection <i>Schrader v Schrader (2013)</i></li> <li>• Understand moral claims but freedom to ignore</li> <li>• Boughton v Knight (1873)</li> <li>• Do not need a perfectly balanced mind e.g. In the</li> <li>• Estate of Park (Deceased) (1954), Ewing v Bennett</li> <li>• (2001), Key v Key (2010)</li> </ul> </li> <li>• <i>Exploration of lack of knowledge and approval:</i> <ul style="list-style-type: none"> <li>• Must be specific knowledge and approval of the will that is signed at the time of signing</li> <li>• Reference Parker v Felgate exception</li> <li>• A person who is blind or illiterate must have the will read to them, otherwise will invalid e.g. <i>Christian v Intsiful (1954)</i></li> </ul> </li> </ul>	

- Suspicious circumstances will render a will invalid – e.g. where a will may have been made in response to force, fear, fraud or undue influence e.g. *Barry v Butlin (1838)*, *Sherrington v Sherrington (2005)*
- Explain and discuss undue influence e.g. *Gill v Woodall (2010)*, *Schrader v Schrader (2013)*
- Mistake and its effect on knowledge and approval e.g. *Marley v Rawlings (2014)*, *Collins v Elstone (1893)*
- *Conclusion* supported by reasoning

## Section B

Question 1	25 marks
This question was well answered. Candidates generally achieved a high number of marks and covered many aspects.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• Gift to Julian, Ali can retain £10,000 of the premium bonds to settle the outstanding loan of £10,000 and then pay the balance to Julian <i>Re Savage [1918]</i></li> <li>• Ali would become personally liable to Gregory's trustee in bankruptcy if he pays to him the legacy of £16,000 because all property belonging to a bankrupt vested in the names of the trustees in bankruptcy s306 Insolvency Act 1986 (IA 1986) and should be paid to the trustees and not Gregory</li> <li>• The gift of Hyacinth's beneficial in the commercial property store will fail because the property was held as joint tenants, and Hyacinth's interest will automatically pass to Stephanie by survivorship for Hyacinth's interest to have passed under her Will the property should have been held as tenants in common <i>Page v Page [1728]</i></li> <li>• The gift at 4 is defined as a 'class gift' <i>Pearks v Mosely [1880]</i> All four of Ali's children alive at the date of Hyacinth's death qualify as a beneficiary as well as the one not yet born but was en ventre sa mere at the date of Hyacinth's death <i>Viner v Francis [1789]</i> the gift to the children over 21 years is an immediate vested gift as they are each entitled to their legacy on Hyacinth's death <i>Viner v Francis [1789]</i> and gift to the two children under that age and the child en ventre sa mere is a immediate contingent gift <i>Andrews v Partington [1791]</i> (as they will become entitled to the legacy if they reach the age of 21 years if not the failed share will pass to the other children who were alive at the date of Hyacinth's death</li> </ul>	

Question 2a	17 marks
Overall performance was strong for those candidates who attempted this question. Only a few candidates provided weaker responses, which was very encouraging.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• Whole intestacy the note is not a valid will and this can't be classed as partial intestacy</li> <li>• Section 46 of the Administration of Estates Act 1925 as amended by the Inheritance and Trustees' Powers Act 2014 .</li> <li>• 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;</li> <li>• Section 47 statutory trusts</li> <li>• Division of the estate per stirpes if more than one</li> <li>• Discussion re Leonard not being a spouse or civil partner, therefore will not inherit under the rules of intestacy. The property they own as tenants in common, Dominic's half will form part of the estate and pass under the intestacy rules .</li> <li>• Leonard would have to make a claim under I(PFD)A 1975 to claim a share of the estate.</li> <li>• No spouse and therefore all beneficiaries will be from the same class.</li> <li>• Contingent on child attaining age of 18 to obtain vested interest Megan is over 18.</li> <li>• 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 Megan is not entitled to inherit from Dominic's estate</li> <li>• Next relevant category is sisters and brothers of the whole blood Neil and Ursula</li> <li>• Neil has pre-deceased Dominic, but is survived by his 2 children Christopher and Felicity who will take his half share per stirpes</li> <li>• Christopher is an adult and can inherit his quarter share immediately , whilst Felicity's quarter share must be held on statutory trusts until she is 18</li> <li>• Ursula, as sister of the whole blood, will inherit a half share of the estate.</li> <li>• Renee as a sister of the half blood will come into category after Ursula and so will not inherit</li> </ul>	

Question 2b	8 marks
Some candidates struggled with this question and were not always able to identify who should be responsible for obtaining the grant of representation.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• Types of grant of representation – the type required here administration on intestacy</li> <li>• Administrator takes their authority from the order of the court</li> <li>• Order of entitlement to grant follows the order of beneficial entitlement on a total intestacy r22 NCPR 1987</li> <li>• Entitled to the grant only if they are entitled to share in the estate</li> <li>• S33 AEA assets become subject to statutory trust and PR all of undisposed-of estate on trust with power to sell.</li> <li>• Required to pay funeral expenses, debts from cash, assets and any other duties</li> <li>• Conclusion that Christopher and Ursula are beneficiaries of the estate following the order of entitlement will take out the Grant of Representation</li> </ul>	

Question 3	25 marks
Although it was one of the more challenging questions on the paper, the candidates who tackled it were often of a higher calibre, achieving distinction marks.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• The court will look at what Zmorda meant to do when she made her will in light of the actual words used <i>Perrin v Morgan</i> [1943]</li> <li>• In contrast however <i>Marley v Rawlings</i> [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</li> <li>• The function of the court is to interpret the words used by Zmorda and not make a Will itself The court will look at the Will as a whole and not just at the issue in hand</li> <li>• 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</li> <li>• Words are firstly given their grammatical meaning In Zmorda's will the use of grandchildren will include legitimate and illegitimate grandchildren s19 Family Law Reform Act 1987 (FLRA 1987) this would include Phelix and Quincy/Victor Adoption and Children Act 2002 (ACA 2002) but not Romeo because he is a step grandson</li> <li>• Secondly the words are given a secondary meaning the court will apply the 'from the armchair rule' when using this way of interpreting the words of Zmorda's Will as set out in <i>Boyes v Cook</i> [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 Zmorda's Will will include Xion <i>Re Smalley</i> [1929] and the gift to Victor would be a deemed valid even though Victor's legal name is Quincy <i>Charter v Charter</i> [1874]</li> <li>• 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 the Zmorda'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 54 Queensway to 'my son' such evidence will be taken into account <i>Re Jackson</i> [1933]</li> <li>• Also, 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 <i>Re Williams</i> [1985] <i>Tyrell v Tyrell</i> [2002] <i>Spurling v Broadhurst</i> [2012] in Zmorda's case the court will consider Zmorda's wishes regarding Omar and look at the reasons set out in the letters Zmorda has left to decide on whether reference to 'my son' in clause 3 meant Kyro alone and in terms of her wishes re the house.</li> </ul>	

Question 4a	15 marks
Overall performance on this question from candidates who attempted the question was at a good level, with candidates generally achieving mid- to higher range scores.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• S25 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:</li> <li>• To collect and preserve the assets of the estate</li> <li>• Settle the debts and liabilities incurred by testator during his lifetime</li> <li>• Distribute the estate to those legally entitled</li> <li>• 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</li> <li>• Collect and preserve the assets - Edward will have to ensure that all the properties owned by Isaac are insured and maintained pending sale . He is also able to continue managing these properties pending sale <i>Re Crowther (1895)</i> When the properties are sold, he must obtain the best possible sale price for the estate</li> </ul>	



- Payment of funeral expenses, testamentary and administration expenses – Edward 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 - Edward 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
- A reasoned conclusion

Question 4b	10 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
<ul style="list-style-type: none"> <li>• Rs are not obliged to distribute the estate until the normal executor's year has expired S44 AEA 1925.</li> <li>• But are expected to manage administration with due diligence so with a charity as residuary beneficiary Edward will need to carry out his duties in a timely manner.</li> <li>• PRs should consider S27 TA 1925 notices to protect themselves against claims against the estate.</li> <li>• This means advertising in the London Gazette and in the newspaper local to where the deceased lived</li> <li>• 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.</li> <li>• Edward will have to consider very low risk of claim from Brendan under I(PFD) Act and not make any distribution for 6 months including why this period is relevant.</li> <li>• Any breach of duty is called a <i>devastavit</i>. 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.</li> <li>• There may be a relieving provision in the will which limits Edward'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.</li> </ul>	