



CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JANUARY 2023

LEVEL 3 UNIT 8 – LAW OF WILLS & SUCCESSION

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 January 2023 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

There was a lower number of candidates sitting this paper than usual.

The paper appeared to perform well with only a few candidates failing to pass and many candidates achieving higher marks. In Section B scenario 3 was by far the most popular choice, although most candidates performed similarly in both Section A and Section B no matter which scenario they chose. Overall, it was a pleasing set of results.

Questions that covered aspects of Learning Outcome (LO)3, especially the operative and administrative clauses found in Wills, LO7, LO8 and LO10 often highlighted gaps in knowledge of candidates and candidates should take care to prepare for the exams well by learning all aspects of the specification, although there were many candidates who were well prepared and scored highly in these questions.

In general candidates were more confident about explaining relevant legal rules than applying them and this was particularly evident in Scenario 2 Q1 and Scenario 3 Q1 a and b.



A common error was that a number of candidates did not read the questions carefully, such as Section A Q5 which asked about the requirements for destruction of a Will and not how to destroy a Will, conversely in Section B, scenario 2, Q2a asked about the grounds for making an I(PFD)A 75 claim and not the requirements to be able to make a claim.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Section A

Question 1

Answered well with all candidates getting at least one mark.

Question 2

Candidates gave a variety of examples for this question. Where examples were given, that were in addition to property also passing under the person's Will, they were credited. Examples that were based on the Will no longer being valid were not credited as per the wording of the question.

Question 3

This question was either answered very well or badly by candidates, it appeared to depend on knowledge or lack of it.

Question 4

In the main, candidates performed well in this question, with those not doing well wrongly assuming that the gift would lapse though lack of knowledge. A number of candidates also referred to s33 being subject to contrary intention and were credited for this.

Question 5

Most candidates were awarded 2 or 3 marks for this question, but were helped by the fact that there were five possible points of credit. No candidates appeared to appreciate / define the requirement for substantial destruction and merely repeated the s20 wording of 'burning, tearing or otherwise destroying'.

Question 6

Candidates performed very well in this question, with only 3 failing to get half marks.

Question 7

In the main, candidates performed very well in this question with 43% getting all 4 marks.

Question 8

There were only two candidates who failed to get either of the marks for this question, although only a few were awarded both marks mainly because they omitted to mention that named executors had to be able to act (age, mental capacity etc) as well as being willing to act.

Question 9

Many of the candidates were awarded both of the marks for this question.

Question 10

Some candidates were awarded no marks or only one of the marks for this question, but as more than half were awarded all three marks it was a question of lack of knowledge. Some candidates wrote about the standard of provision to be awarded rather than the types of order, but the instruction was very clear in the question and appeared to be because of lack of knowledge.

Section B**Scenario 1**

Only a few candidates chose to answer the questions based on this scenario and the standard of answer was less good with no candidates who answered it being awarded a distinction. Some candidates were awarded significantly more marks for Section A than Section B.

Question 1

Some candidates were awarded 4 or 5 of the 5 marks available for this question. A few were awarded 2 marks where their answers were less complete. All candidates appeared to understand the requirements of the question.

Question 2

This question was not answered well by the candidates. It appeared to be a lack of detailed knowledge and not any misunderstanding.

Question 3

No candidate was awarded all 4 marks for this question. Some candidates incorrectly believed that s33 would apply so poor marks were lack of knowledge.

Question 4

Candidates appeared to find this question more difficult, with none being awarded more than 4 of the 6 marks. The issue appeared to be lack of detailed knowledge rather than any misunderstanding of the question.

Question 5(a)

This question was not answered well by the candidates. The issue appeared to be lack of detailed knowledge rather than any misunderstanding of the question.

5(b)

Similar to Q5a this question was not answered well with the issue appearing to be lack of detailed knowledge rather than any misunderstanding of the question.

Scenario 2

Question 1

This question was on the popular topic of mental capacity but required application rather than it being the usual straight knowledge recall question usually asked and some candidates included very little or no application.

The question quite clearly asked for the precautions to be taken ... and candidates mostly did not follow this instruction.

Question 2(a)

Some candidates discussed the requirements to be able to bring a claim rather than the grounds on which the claim would be made as asked for by the question. Others showed a lack of detailed knowledge with 3 being the maximum number of marks awarded.

2(b)

There were a possible 11 points of credit for this 8 mark question and some candidates were awarded 4 or more marks with one being awarded full marks. It tended to be a lack of knowledge that prevented higher marks rather than any misunderstanding of the question requirements.

Question 3

This question required similar content to Q2a and Q2b combined, but in relation to a different person in the scenario. There were a possible 10 points of credit for this 7 mark question with one candidate being awarded full marks. Again, it tended to be a lack of knowledge that prevented higher marks rather than any misunderstanding of the question requirements.

Scenario 3

Chosen by just over 70% of the candidates who sat the exam the marks were higher for this scenario than the other two. Most candidates who chose this scenario were awarded similar marks for both Section A and Section B and in view of the small cohort candidate performance was probably no better in this scenario than at least Scenario 2.

Question 1(a)

This was a straightforward question which most candidates answered well, including remembering the statutory reference.

1(b)

This question involved a detailed explanation and application of s18(3) and most candidates were awarded at least half marks.

Question 2(a)

This question on the intestacy rights of a spouse was answered very well by most candidates with a high percentage being awarded 6 or 7 of the 7 marks available.

Question 2(b)

This question on the intestacy rights of surviving children was answered less well. In particular there was a lack of awareness that the administrators hold the share of residue on the statutory trusts for all of the children/issue, even those who are 18 or over and for whom there is no ongoing trust.

Question 3

This applied question about the appointment of administrators was answered less well. It appeared to be a lack of knowledge of the rule that 2 administrators are required where there is a minority and a misunderstanding of the requirement to clear off someone higher in the statutory order. A few candidates still gained 4 or 5 of the 5 marks available.

Question 4

Candidates performed well in this 2 mark question, with over half being awarded full marks. Those who did not often muddled up collecting in (selling) assets with distribution of assets and were not awarded the second mark in these circumstances.

SUGGESTED POINTS FOR RESPONSE

JANUARY 2023

LEVEL 3 UNIT 8 – LAW OF WILLS & SUCCESSION

SECTION A

Question Number	Suggested Points for Responses	Marks (Max)
1	<ul style="list-style-type: none"> Anyone over the age of 18 can make a will They must have the necessary mental capacity/be of sound mind They must make a will of their own free will / must not act under duress / must act voluntarily/have intention Comply with formalities S9 WA 1837 	3
2	Where a person has made a Will property can pass outside their will: <ul style="list-style-type: none"> under a DMC under a codicil <i>to that</i> Will (including a later privileged Will) property passing by survivorship under a partial intestacy of residue under a nomination of a life insurance policy etc under a court order made under the I(PF+D)A 1975 	3
3	If T owns a business the clauses that should be included in his Will include <ul style="list-style-type: none"> Power to continue to run the business for as long as the PRs think fit 	4



	<ul style="list-style-type: none"> • Power to use assets other than those in use at date of death • Indemnity for the PRs against personal liability • Power to employ staff and managers to run the business • Power to insure property to its full value 	
4	<ul style="list-style-type: none"> • Under s.33 Wills Act 1837 • where a testator leaves in his will a gift to his child or remoter issue • if that child dies before him (as here) • the gift will pass to the child or issue of the deceased beneficiary. • Simon's child will inherit • Subject to contrary intention in the Will. 	4
5	<p>A will can be revoked by destruction:</p> <ul style="list-style-type: none"> • if the testator has the intention to revoke • And the document is substantially destroyed/ not just a part thereof • Will must be destroyed either by the testator • Or another can do it for him in his presence and by his direction • S20 WA 1837 	3
6	<p>A partial intestacy occurs where:</p> <ul style="list-style-type: none"> • A portion of the estate has not been disposed of <p>Any one example of when this might arise, for example, there will be a will which either does not deal with all the residue, or a residuary gift fails completely, or all of the beneficiaries have died.</p>	1
7	<p>An administrator will be appointed:</p> <ul style="list-style-type: none"> • Where there is either no (surviving) executor appointed in a will • Or he is unable / predeceased • or unwilling to act • Or there is no will at all 	4
8	<p>A grant of probate is appropriate:</p> <ul style="list-style-type: none"> • Where the deceased left a (valid) will • And there are executors willing and able to act 	2
9	<p>You would expect the affidavit to be made by:</p> <ul style="list-style-type: none"> • either one of the witnesses to the will • Or (if unavailable), some other person present when the will was executed, • or who could attest as to the testator's handwriting. 	2
10	<p>The orders that the court can make include:</p> <ul style="list-style-type: none"> • periodic payments, • a lump sum order, • a transfer of property order, • a settlement order <p>Credit any other appropriate order</p>	3
Section A Total: 30 marks		

Section B - Scenario 1

Question Number	Suggested Points for Responses	Marks (Max)
1	<ul style="list-style-type: none"> The gift to Yosh Brown is a specific legacy As far as objects/gifts are concerned the will is treated as if it had been executed immediately before the death of Vic Brown Section 24 Wills Act 1837 (WA 1837) This mean that Yosh will be entitled to all of the records owned by Vic Brown This includes any records acquired after the date of the will / owned at the date of death⁴ 	5
2	<ul style="list-style-type: none"> A receipts clause in a will allows payments to a child's parent or guardian The payments can be made out of either income or capital The clause should state that the parent or guardian can give a valid receipt on behalf of the beneficiary The inclusion of a receipts clause will discharge the PRs from any further liability with regards to that particular gift 	3
3	<ul style="list-style-type: none"> Zak has died before Vic If the record collection had been given to Zak who passed away it would have lapsed/failed Lapsed refers to the status of the beneficiary at the date of death Irrespective of the type of gift Here there is no substitute beneficiary/contrary intention So the gift falls into the residue of Vic's estate 	4
4	<ul style="list-style-type: none"> Before he died Vic could have made a codicil to his will A codicil is a document prepared and signed in the same way as a will Making a change to the original will Whereby he changed clause 1 only giving the records to Abigail instead of to Yosh A new Will could be prepared instead of a codicil The codicil should specify that this is the only change/in all other respects the will remains the same 	6
5(a)	<ul style="list-style-type: none"> Under section 31 TA 1925 trustees can apply income from the estate for the maintenance, education and benefit of the minor e.g. to pay for music lessons for Abigail Brown Any surplus income must be accumulated/invested so that it will generate future income/capital is preserved S8 Inheritance and Trustees' Powers Act 2014 (ITPA 2014) Trustees can pay out of income as they see fit/have wide discretion 	6
5(b)	<ul style="list-style-type: none"> Under s32 TA 1925 	6

	<ul style="list-style-type: none"> • trustees can advance capital to a beneficiary before he is absolutely entitled • Trustees have complete discretion to advance monies • Payments must be for the advancement/benefit of the child/be for setting the child up in life • Under S9 Inheritance and Trustees' Powers Act 2014 (ITPA 2014) • Trustees can now advance the whole/entire trust fund before the beneficiary becomes absolutely entitled • This means that there may be nothing for the beneficiary to take when he reaches the age contingency • Payments can be made out of capital for music lessons or overseas trips for Abigail as this is enhancing her life/his own advancement/setting her up in life 	
Question 5 Total: 12 marks		
Scenario Total: 30 marks		

Section B - Scenario 2

Question Number	Suggested Points for Responses	Marks (Max)
1	<ul style="list-style-type: none"> • Testamentary capacity is an issue as Daniel is taking a lot of medication. • As it may not be practical to obtain formal medical evidence of Daniel's mental capacity to make a will in view of the short time he has left to live • And to counter any challenge made the solicitor should make his own assessment of Daniel's mental capacity to make a Will • And keep a detailed file note of the instructions given for the will. • The note should record the assessment of Daniel's understanding of the effect of a Will • Daniel should be asked to identify his main assets (house and bank account) with approximate values • To show he knows the extent of his estate • And he should also be asked to say who his family members are • To show he is aware of the moral claims he ought to consider • To provide evidence that the conditions set out in <u>Banks v Goodfellow</u> have been met. • The solicitor's assessment and notes will also have to consider Daniel's apparent awareness of what he was doing at the time was executed if this was later than the instructions for the will • And how he was able to communicate his instructions • To show that he is able to make a decision for himself • under s3(1) Mental Capacity Act 2005 	10

	Credit AORP (i.e. the Golden Rule) if discussed.	
2(a)	<ul style="list-style-type: none"> • Sarah might be able to bring a claim against the estate under the Inheritance (Provision for Family and Dependents) Act 1975 • On the grounds that she was being partly maintained by Daniel immediately before his death (s1(1)(e)) • Provided that Daniel was making a substantial contribution towards her reasonable needs (s1(3)) • Daniel was partly maintaining Sarah because he had been paying her utility bills for the last four years • And as the utility bills would be a large part of Sarah's expenditure they would probably be seen as a substantial contribution. 	5
2(b)	<p>The matters the court will take into account are:</p> <ul style="list-style-type: none"> • The financial needs of Sarah • Her reliance on state benefits • The needs and resources of Maya as the beneficiary of his estate • The obligations Daniel had towards both Sarah and Maya • The size and nature of his estate • Note that the estate is modest • And any other relevant circumstances (s3(1)) including • The length of time and basis on which Daniel maintained Barbara • The extent of his contribution and • Whether and if so to what extent Daniel had assumed responsibility for Sarah's maintenance (s3(4)) • Sarah's conduct 	8
Question 2 Total:13 marks		
3	<ul style="list-style-type: none"> • Maya can claim as a former spouse who has not remarried • A former spouse would claim under section 1 (1) of the IPFDA 1975. • If the family court has barred her claim as a former spouse she can claim as a cohabitee • Factors the court would consider: the period of cohabitation since their divorce • any contribution by Maya to Daniel's family's welfare • the financial needs and resources of Maya • the financial needs and resources of any beneficiary • size of the estate • Daniel's moral obligations to Maya • The fact that Daniel had already made financial provision for Maya on their divorce 	7
Scenario Total: 30 marks		

Section B - Scenario 3

Question Number	Suggested Points for Responses	Marks (Max)
1(a)	<ul style="list-style-type: none"> • S18 Wills Act 1837... • ...states that a will is automatically revoked on marriage or civil partnership • So, James' will was revoked by his marriage to Ellen in 1998 	3
1(b)	<ul style="list-style-type: none"> • Under s18(3) Wills Act 1837 a will is not automatically revoked on marriage or CP if it is made "in expectation (contemplation) of marriage" and this is what James has attempted to include in his will • To be effective, the will must state ... • ...that the testator expects to be married • to a particular person. • It is not enough to express a general intention to marry ... • ...which is why James' will is not saved by the clause he has inserted in his will • Relevant case law would be <i>Sallis v Jones</i> (1936) which contained a similar clause which was not explicit enough. 	7
Question 1 Total: 10 marks		
2(a)	<ul style="list-style-type: none"> • As James has died intestate • S46 AEA 1925 as amended by Inheritance and Trustees's Powers Act 2014 governs the distribution • Ellen is the surviving spouse and James also has children (and issue) surviving him • This means that Ellen will receive all the personal chattels • And statutory legacy of £270,000 • She will also receive one half of the remainder • Outright (NB no longer a life interest) • She could have the house appropriated to her as long as she paid equality money • Ellen would have to survive for 28 days 	7
2(b)	<ul style="list-style-type: none"> • The half of the estate not passing to Ellen • will pass to James' children on statutory trusts • Which means to them equally provided that if any have predeceased then on to their children per stirpes • on attaining 18 (or marrying before then) • So here, Callum and Grace will receive one third each • And Ben's one third share will pass to his son Tom 	6
Question 2 Total: 13 marks		
3	<ul style="list-style-type: none"> • Under r22 NCPR 1987 • Ellen is the first entitled to apply • Followed by Callum and Grace • As there are minors inheriting there will need to be at least two PRs 	5

	As Grace is abroad it would be sensible for Callum to apply with Ellen	
4	<ul style="list-style-type: none"> As administrators derive their power from the grant of representation... ...they have no authority to sell estate assets until this grant is issued 	2
Scenario Total: 30 marks		