

## CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JANUARY 2023

LEVEL 6 UNIT 14 – 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

Those candidates who performed well were methodical in their structure to answering the examination question and gave better discussion and exploration on each element of their answer.

Candidates achieved limited marks where they included the correct point for each question but did not go on to then discuss and apply the point they were making in greater depth.

Some candidates referenced case law correctly but gave too much detail on the actual cases and what happened in those cases, as opposed to applying the case law to the actual question and why it was relevant to the point being made.

Overall, the recommendation for the future would be that it isn't enough to just make a point. In order to achieve the higher level of mark you need to illustrate more than a basic knowledge by including discussion and application to the question.

## CANDIDATE PERFORMANCE FOR EACH QUESTION

### Section A

#### Question 1

Candidates tended to achieve lower marks when solely focusing on formalities of a Will and not exploring capacity to a fuller extent.

#### Question 2(a)

Candidates tended to achieve lower marks when focusing predominantly on destruction of a Will and limiting explanation on implied and express intent.

#### 2(b)

Candidates tended to lose marks in not having a full understanding of mutual wills and lacking in explanation of how they can be revoked, or not as the case may be.

#### Question 3

Candidates largely answered well in achieving basic marks but fell short when not including changes made to legislation and why those changes were made, and also when there was limited discussion on potential claims the spouse could make.

#### Question 4(a)

Most candidates were able to identify the basic points i.e., correct legislation and case law but were limited in their discussion of those points.

#### 4(b)

Most candidates were able to explain the rule but lacked discussion and reasoned conclusion.

### Section B

#### Question 1

Candidates were limited in achieving marks on their description on construction and in their advice on types of legacies.

#### Question 2(a)

Candidates tended to miss out secured and unsecured debts discussion and S35 Administration of Estates Act 1925 and property to which a debt is secured.

**2(b)**

Candidates tended to miss out on discussion re contrary intention and exploring the full explanation of the rule of survivorship. Only a small number of candidates discussed the statutory order.

**2(c)**

Candidates generally did not explore contrary intention in any detail or take this step by step to achieve the correct conclusion.

**Question 3**

Candidates did not explore that all assets do not necessarily devolve under the will. There was a limited number of candidates that explored properly the breach of an executor's duties.

**Question 4(a)**

Largely candidates were able to gain good marks on this question and were able to explore each point in the correct order in terms of reaching the right end answer. Candidates missed out on marks in lacking discussion re adoption and order of entitlement.

**4(b)**

Candidates largely performed well on this question. Candidates did not achieve marks where they did not confirm the correct type of grant that would be applied for, did not cover S33 Administration of Estates Act 1925, and that both Heather and Oliver would apply for the grant.

**SUGGESTED POINTS FOR RESPONSE****JANUARY 2023****LEVEL 6 UNIT 14 – LAW OF WILLS & SUCCESSION**

<b>Question Number</b>	<b>Suggested Points for Responses</b>	<b>Marks (Max)</b>
<b>1</b>	<p>An answer which consists of reasoned analysis, breaking down the issue into sections and using supporting evidence for and against.</p> <p>Allocation:</p> <ul style="list-style-type: none"> <li>• Law and citation</li> <li>• Understanding</li> <li>• Reasoned conclusion</li> </ul> <p>Responses should include:</p> <ul style="list-style-type: none"> <li>• Consideration of formalities of making a Will: <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. In the <u>Goods of Adams (1872)</u> <u>Re Chalcraft (1948)</u>, In the <u>Goods of Savory (1851)</u></li> <li>In the presence of 2 witnesses – discussed</li> <li>Discuss not applicable to privileged wills</li> <li>Attestation clauses and their use r12 Non- Contentious Probate Rules 1987</li> </ul> </li> <li>• Age to make a Will – 18 section 7 Wills Act 1837</li> <li>• Exploration of mental capacity <ul style="list-style-type: none"> <li>Mental capacity required to make a will – the rules in <u>Banks v Goodfellow (1890)</u></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 <u>Schrader v Schrader (2013)</u></li> <li>Understand moral claims but freedom to ignore <u>Boughton v Knight (1873)</u></li> <li>Do not need a perfectly balanced mind e.g. In the <u>Estate of Park (Deceased) (1954)</u>, <u>Ewing v Bennett (2001)</u>, <u>Key v Key (2010)</u></li> </ul> </li> <li>• Exploration of lack of knowledge and approval: <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 <u>Parker v Felgate</u> exception</li> </ul> </li> </ul>	<b>25</b>



	<p>A person who is blind or illiterate must have the will read to them, otherwise will invalid e.g. <u>Christian v Intsiful</u> (1954)  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. <u>Barry v Butlin</u> (1838), <u>Sherrington v Sherrington</u> (2005)  Explain and discuss undue influence e.g. <u>Gill v Woodall</u> (2010), <u>Schrader v Schrader</u> (2013)  Mistake and its effect on knowledge and approval e.g. <u>Marley v Rawlins</u> (2012), <u>Collins v Elstone</u> (1893)</p> <ul style="list-style-type: none"> <li>• Conclusion supported by reasoning</li> </ul>	
	<b>Question 1 total:25 marks</b>	
<p><b>2(a)</b></p>	<p>An answer which consists of reasoned analysis, breaking down the issue into sections and using supporting evidence for and against.</p> <p>Allocation:</p> <ul style="list-style-type: none"> <li>• Law and citation</li> <li>• Understanding</li> <li>• Reasoned conclusion</li> </ul> <p>Marks should be distributed in the following areas:</p> <p>Responses should include:</p> <ul style="list-style-type: none"> <li>• Intention to revoke – animus revocandi Must be unambiguous e.g. <u>Re Freeman (1910)</u> (must be present when destruction takes place)</li> <li>• Description and explanation/analysis of express revocation Knowledge and approval present (1) e.g. <u>Kitcat v King</u> (1930) Re <u>Durance</u> (1872)</li> <li>• S20 Wills Act 1837</li> <li>• Description and explanation/analysis of implied revocation (e.g. <u>Pepper v Pepper</u> (1870))</li> <li>• Description and analysis of revocation by destruction - s20 Wills Act 1837 – the act of destruction (1) e.g. <u>Cheese v Lovejoy</u> (1877), In the Estate of Adams (1990), In the <u>Estate of Nunn</u> (1936) (2); by the testator or another in testator’s presence e.g. <u>In the Goods of Dadds</u> (1857), Re <u>De Kremer</u> (1965); discussion of intention - intention present e.g. <u>Gill v Gill</u> (1909), mental capacity e.g. <u>Brunt v Brunt</u> (1873), accidental destruction e.g. Re <u>Booth</u> (1926) Re <u>Southerden</u> (1925), intention present throughout e.g. <u>Perkes v Perkes</u> (1820)</li> <li>• Description and explanation/analysis of presumption of revocation – mutilated or lost wills e.g. <u>Sugden v Lord St Leonards</u> (1876)</li> </ul>	<p><b>20</b></p>

	<ul style="list-style-type: none"> <li>• Description and explanation/analysis of revocation by marriage and civil partnership and Wills made in expectation of marriage or civil partnership Effect of divorce/nullity</li> <li>• Administration of Justice Act 1982</li> </ul>	
<b>2(b)</b>	<p>Responses should include:</p> <ul style="list-style-type: none"> <li>• Description/explanation of equitable doctrine of mutual wills, Evidence of mutual intention not to revoke</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>• Reasoned conclusion</li> </ul>	<b>5</b>
	<b>Question 2 total:25 marks</b>	
<b>3</b>	<p>An answer which consists of reasoned evaluation, offering opinion/verdict which is supported with evidence.</p> <p>Allocation:</p> <ul style="list-style-type: none"> <li>• Law and citation</li> <li>• Understanding</li> <li>• Reasoned conclusion</li> </ul>	<b>25</b>

	<p>Responses should include:</p> <ul style="list-style-type: none"> <li>• Strict order of entitlement in s46 AEA 1925 and statutory trust in s47 AEA 1925</li> <li>• 28-day survivorship period to inherit</li> <li>• Surviving spouse entitlement amended by ITPA 2014</li> <li>• 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</li> <li>• Surviving spouse entitlement where there are no children- takes all the estate</li> <li>• Discuss whether this is fair in all circumstances i.e. surviving spouse is spouse of a relatively short marriage</li> <li>• Surviving spouse entitlement where there are children - personal chattels defined in s55 (1) (X) AEA 1925 statutory legacy plus interest from date of death currently £270,000 and half of residue absolutely with the remaining half going to the children</li> <li>• 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. <u>Re MacCulloch</u> (1981)</li> <li>• 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</li> <li>• Discuss that the surviving spouse now receives half the residue absolutely, rather than in trust as previously (1) Discuss whether half of residue sufficient</li> <li>• 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. <u>Kane v Radley-Kane</u> (1998)</li> <li>• Discuss that if provision not adequate a claim can be made under the Inheritance (Provision for Family and Dependents Act 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</li> <li>• Reasoned conclusion</li> </ul>	
<b>Question 3 total: 25 marks</b>		
<p><b>4(a)</b></p>	<p>An answer which consists of reasoned analysis, breaking down the issue into sections and using supporting evidence for and against.</p> <p>Allocation:</p> <ul style="list-style-type: none"> <li>• Law and citation</li> </ul>	<p><b>20</b></p>

	<ul style="list-style-type: none"> <li>• Understanding</li> <li>• Reasoned conclusion</li> </ul> <p>Responses should include:</p> <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 <u>Banks v Goodfellow</u> (1870) e.g. <u>Schrader v Schrader</u> (2013), <u>Boughton v Knight</u> (1873)</li> <li>• Explanation of the lucid interval, insane delusions and application of the courts e.g. <u>Cartwright v Cartwright</u> (1793), <u>Richards v Allan</u> (2000)</li> <li>• Explanation of presumption of capacity and the burden of proof Rational will. Continuing mental state e.g. <u>Burgess v Hawes</u> (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. <u>Scammell v Farmer</u> (2008), Re <u>Walker</u> (2014) <u>Elliott v Simmons</u> (2016)</li> <li>• Discuss that MCA has extended Banks e.g. <u>Key v Key</u> (2010)</li> <li>• Use of the “Golden Rule” e.g. <u>Kenward v Adams</u> (1975)</li> <li>• Reasoned conclusion</li> </ul>	
<b>4(b)</b>	<ul style="list-style-type: none"> <li>• Explanation of the rule in <u>Parker v Felgate</u> (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. <u>Perrins v Holland and Others</u> (2010), <u>Battan Singh v Amirchand</u> (1948)</li> <li>• Reasoned conclusion</li> </ul>	<b>5</b>
<b>Question 4 total: 25 marks</b>		

## SECTION B

Question Number	Suggested Points for Responses	Marks (Max)
<b>1</b>	<p>An answer which offers advice based on evidence. It should supply possible alternatives and pro's and con's but highlight the best option with sound justifications.</p> <p>Allocation:</p> <ul style="list-style-type: none"> <li>• Law and citation</li> <li>• Understanding</li> <li>• Reasoned conclusion</li> </ul> <p>Responses should include:</p> <ul style="list-style-type: none"> <li>• S21 Wills Act 1837</li> </ul>	<b>25</b>





	<ul style="list-style-type: none"> <li>• Discussion re alterations being made before or after execution, applying the information that the witnesses do not recall the alterations</li> <li>• Ink or pencil – pencil only deliberative</li> <li>• Types of gifts – pecuniary legacies, specific legacies e.g. <u>Bothamley v Sherson</u> (1875), <u>Re Eve</u> (1956), residuary legacies</li> <li>• Advice on type of legacy and effect of the alteration to clause (ii) – pencil - original sum of £10000 effective</li> <li>• Advice on type of legacy effect of alteration on clause (iii) – not compliant with s21 - £1000 effective</li> <li>• General approach to construction of wills – <u>Perrin v Morgan</u> (1943) – words may be given usual meaning or secondary meaning – secondary may involve reference to surrounding circumstances e.g. <u>Re Davidson</u> (1949), <u>Re Smalley</u> (1929) – armchair rule <u>Boyes v Cook</u> 1880 – latent ambiguity and admission of extrinsic evidence <u>Re Jackson</u> (1933)</li> <li>• Advice on type of legacy in clause (i) and impact of latent ambiguity</li> <li>• Advice on beneficiary named in clause (ii)</li> <li>• Specific legacies and ademption e.g. <u>Laws v Bennett</u> (1795) option to purchase e.g. <u>Re Marlay</u> (1915)</li> <li>• Advice on legacy in clause (iv) – type of legacy – option to purchase exercised causing the gift to be adeemed and the proceeds of sale to fall to the residue. Discussion re entitlement to any income prior to sale of option</li> <li>• Explanation of residuary estate passing to grandchildren as lapsed to husband – one being immediate to the grandchild who has attained 18 years and the other being deferred contingent</li> <li>• Conclusion setting out advice to Oliver based on the application of the above</li> </ul>	
<b>Question 1 total:25 marks</b>		

<p><b>2(a)</b></p>	<p>An answer which offers advice based on evidence. It should supply possible alternatives and pro’s and con’s but highlight the best option with sound justifications.</p> <p>Allocation:</p> <ul style="list-style-type: none"> <li>• Law and citation</li> <li>• Understanding</li> <li>• Reasoned conclusion</li> </ul> <p>Response should include:</p> <ul style="list-style-type: none"> <li>• Order of payment of debts depends on whether estate is solvent- assets sufficient to meet debts and liabilities- or insolvent</li> <li>• Discuss that the estate is solvent</li> </ul>	<p><b>5</b></p>
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	<ul style="list-style-type: none"> <li>• Discuss if estate was insolvent, PRs must follow order of priority which cannot be varied by Testator as set out in IA 1986 and AIEDPO 1986</li> <li>• Executors should look at secured debts first and then unsecured debts</li> <li>• 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</li> </ul>	
<b>2(b)</b>	<ul style="list-style-type: none"> <li>• Discuss bequest of “my flat in West Norwood”- subject to a mortgage- as there is no contrary intention in the will, Keisha will be liable to pay the mortgage off</li> <li>• Discuss the rule of survivorship and the Oxford house will fall directly to Peter and will not form a part of the assets for the purposes of the payment of debts.</li> <li>• Funds for payment of the unsecured debts can be specified by the testator in an express provision, otherwise the Statutory Order under Section 34 Part II Schedule 1 AEA 1925 must be applied</li> <li>• 1 Property undisposed of by the will- as there is a residuary bequest in the will this does not apply</li> <li>• 2 Residue disposed of by the will subject to a fund for pecuniary legacies- the assets not specifically bequeathed amount to £60,000 and the legacies amount to £20,000, so the £40,000 left will need to be used to pay debts-residue will be £6,000</li> <li>• 3 and 4 Property specifically given or charged for payment of debts – there is none.</li> <li>• 5. The pecuniary legacy fund- here it is £20,000- legacies will be paid out and won't abate</li> <li>• 6 Property specifically bequeathed- the house in London will pass to Keisha.</li> </ul>	<b>15</b>
<b>2(c)</b>	<ul style="list-style-type: none"> <li>• Contrary intention means the testator varies the statutory order for payment of debts</li> <li>• Contrary intention expressed in the will makes a designated fund primarily liable for debts and liabilities</li> <li>• Reference that this would exclude the statutory order – intention to exonerate the residue</li> <li>• The flat would have to be sold before Keisha could receive the proceeds therefore Keisha would receive less of value of the flat</li> </ul>	<b>5</b>
<b>Question 2 total:25 marks</b>		
<b>3</b>	<p>An answer which offers advice based on evidence. It should supply possible alternatives and pro's and con's but highlight the best option with sound justifications.</p> <p>Allocation:</p> <ul style="list-style-type: none"> <li>• Law and citation</li> <li>• Understanding</li> <li>• Reasoned conclusion</li> </ul>	<b>25</b>

	<ul style="list-style-type: none"> <li>• 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: <ul style="list-style-type: none"> <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> </ul> </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 - Saad will have to ensure that all the properties owned by Callum are insured and maintained pending sale. He is also able to continue managing these properties pending sale <u>Re Crowther</u> (1895). When the properties are sold, he must obtain the best possible sale price for the estate</li> <li>• Payment of funeral expenses, testamentary and administration expenses – Saad must pay but is only responsible for liabilities arising from obligations entered by the deceased <u>Homer's Devises Case</u> (1852). Debts must be paid promptly <u>Re Tankard</u> (1942). Debts that carry interest must be paid first. If unenforceable debts are paid the Executor is liable. 1Limitation period for actions in contract or tort is six years; twelve years in relation to land and covenants</li> <li>• Payment of Inheritance Tax - Saad is responsible for completion of the paperwork and payment of Inheritance Tax to <u>HMRC, IRC v Stannard 1984</u> can be held personally liable for any inheritance tax due</li> <li>• 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 10 investment properties.</li> <li>• Saad will have to consider very low risk of claim from Quentin under I(PFD) Act and not make any distribution for 6 months.</li> <li>• 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 with a charity as residuary beneficiary Saad will need to carry out his duties in a timely manner.</li> <li>• Any breach of duty is called a devastavit. Main areas of liability are misappropriation of assets, maladministration and a failure</li> </ul>	
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	<p>to safeguard assets. Executor can be held personally liable if there is a breach of duty.</p> <ul style="list-style-type: none"> <li>• There may be a relieving provision in the will which limits Saad'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> <li>• A reasoned conclusion</li> </ul>	
	<b>Question 3 total:25 marks</b>	
<b>4(a)</b>	<p>An explanation which clarifies the situation with a detailed account of how and why it has occurred. It should make complex procedures or sequences of events easy to understand and define key terms where appropriate.</p> <p>Responses should include:</p> <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 Stephen not being a spouse or civil partner, therefore will not inherit under the rules of intestacy. The property they own as tenants in common, Barbara's half will form part of the estate and pass under the intestacy rules .</li> <li>• Stephen 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 Matthew 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. (<u>Hardy v Hardy and another</u> (2013). Therefore Matthew is not entitled to inherit from Barbara's estate</li> <li>• Next relevant category is sisters and brothers of the whole blood Ivan and Heather</li> <li>• Ivan has pre-deceased Barbara, but is survived by his 2 children Oliver and Unity who will take his half share per stirpes</li> </ul>	<b>17</b>

	<ul style="list-style-type: none"> <li>• 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</li> <li>• Heather, as sister of the whole blood, will inherit a half share of the estate.</li> <li>• Alison as a sister of the half blood will come into category after Heather and so will not inherit</li> </ul>	
<b>4(b)</b>	<p>Responses should include:</p> <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 NCPA 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 and debts from cash and assets</li> <li>• Conclusion that Heather and Oliver following the order of entitlement will take out the Grant of Representation</li> </ul>	<b>8</b>
<b>Question 4 total:25 marks</b>		