



**CILEX Level 6 Single Subject Certificate/CILEX Level 6 Professional Higher Diploma in Law and Practice/CILEX Level 6 Graduate Fast-Track Diploma**

**Unit 14 – Law of Wills and Succession**

**Question paper**

**June 2023**

**Time allowed: 3 hours and 15 minutes (includes 15 minutes reading time)**

**Instructions and information**

- It is recommended that you take **fifteen** minutes to read through this question paper before you start answering the questions. However, if you wish to, you may start answering the questions immediately.
- There are **two** sections in this question paper — Section A and Section B. Each section has four questions.
- You must answer **four** of the eight questions — at least **one** question must be from **Section A** and at least **one** question must be from **Section B**.
- This question paper is out of 100 marks.
- The marks for each question are shown — use this as a guide as to how much time to spend on each question.
- Write in full sentences — a yes or no answer will earn no marks.
- Full reasoning must be shown in your answers.
- Statutory authorities, decided cases and examples should be used where appropriate.
- You are allowed to make notes on your scrap paper during the examination.
- You can use your own unmarked copy of the following designated statute book – ***Blackstone’s Statutes on Property Law 30th edition, Meryl Thomas, Oxford University Press, 2022.***
- You must comply with the CILEX Exam Regulations – Online Exams at Accredited Centres/CILEX Exam Regulations – Online Exams with Remote Invigilation.

***Turn over***

## SECTION A

Answer at least one question from this section.

1. Explain the powers, responsibilities, and liabilities that arise from being a personal representative.

**(25 marks)**

2. (a) Critically assess the rules applicable to the provision for a surviving spouse or civil partner on intestacy.

**(20 marks)**

- (b) Explain the entitlement of a surviving spouse or civil partner to apply for sufficient provision under the Inheritance (Provision for Family and Dependants) Act 1975.

**Please note:** you do **not** need to discuss proprietary estoppel.

**(5 marks)**

**(Total:25 marks)**

3. "A Will is, by its very nature, revocable by the testator until death" - Adapted from Parry and Kerridge, The Law of Succession, 13<sup>th</sup> edition.

Critically analyse, in light of this statement, the methods for revoking a Will.

**(25 marks)**

4. (a) Critically analyse, with reference to statute and case law, the rules of construction used by the court where a provision in a Will is unclear.

**(20 marks)**

- (b) Explain the possible effect of an alteration to a Will.

**Please note:** you do **not** need to discuss codicils.

**(5 marks)**

**(Total:25 marks)**

## SECTION B

Answer at least one question from this section.

### Question 1

Adam is a 27-year-old sales assistant and Josef is a 25-year-old customer services adviser. They met at a drug rehabilitation centre. They had both started taking drugs at university and had continued to use into their twenties. They eventually recognised they needed help to stop this habit. Josef had been particularly badly affected mentally by his habit. Their treatment has been successful, although Josef still has some mental health issues and remains on medication. During their treatment, they developed a close relationship. They are now about to get married and wish to organise their affairs prior to the wedding, including making Wills.

Adam and Josef's key assets are their properties. Adam's property is valued at £235,000 with a mortgage of £145,000. Josef's property is valued at £170,000 with a mortgage of £110,000. They are about to buy a further property jointly as beneficial joint tenants where they will live, and plan to rent out the properties they already own in their sole names to provide income. The property they are about to purchase is valued at £400,000 and they have been approved for a mortgage of £350,000. They have also started to collect gold sovereigns, which they view as an investment.

Adam and Josef wish to leave all their assets to each other in the first instance. They plan to adopt a child one day and, if they are successful, would want this child to ultimately benefit. However, they recognise that adoption may not be successful. If this is the case, they wish to ensure that their assets pass to their respective siblings when the second of them passes away. Adam has two sisters, Sylvia and Florence. Josef has a sister and a brother, Layla and Rio, who unfortunately do not get on well with Adam's family. Adam and Josef also wish to include specific gifts to Josef's niece and nephew, Tabatha and Emmanuel, who are twins and have just turned 18 years of age. Adam believes they should simply gift a specific sum of money whereas Josef has suggested that they could gift their collection of sovereigns.

They have been talking to their close friend from university, Genevive, who works in finance and whose advice concerning their plans they deeply value. Genevive told them some information about mirror Wills and mutual Wills, but told them to seek further advice also.

- (a) Advise Adam and Josef on the steps they need to take to make valid mirror Wills, including an explanation of the legacies they will need to include to give effect to their wishes.

**(20 marks)**

- (b) Adam and Josef ask you about making mutual Wills. Advise them as to the nature and effect of mutual Wills.

**(5 marks)**

**(Total:25 marks)**

**Turn over**

## Question 2

Niamh is 37 years old. At the age of 30 Niamh suffered a brain injury. After extensive neuro rehabilitation over two years, Niamh was able to live independently again in a rented property and to return to work on a part-time basis. She has managed this with support from her parents, Patrick and Caroline, and also her boyfriend of 12 months, Oscar. Niamh met Oscar online and is aware he has previously been in prison for fraud. Niamh is an only child. Sadly, her parents both died in a car accident in October 2022. Niamh's parents held Lasting Powers of Attorney for property and affairs for Niamh. There were no replacement attorneys appointed and on her parents' death and these are now void.

Niamh is due to inherit approximately £200,000 from her parents' estates once a Grant of Probate is obtained. Niamh has an aunt and uncle, Hilary and Ishmael. Following the death of her parents, Hilary and Ishmael have provided regular support and Niamh has seen them several times a month. Niamh has come to you for advice on making a Will and Oscar has come with her. She tells you that she loves animals and is very grateful to Oscar for all his support. She therefore wishes to leave all her estate to be divided equally between the RSPCA and Oscar. When you ask her about her family, she tells you that she is an only child with no other relatives. Later, when she mentions Hilary and Ishmael she initially appears slightly confused about the relationship, until prompted by Oscar. She then says that although they have been very kind, Oscar has been much kinder and more helpful, and she couldn't have managed without him. She says that Oscar is now helping her to manage her money and is dealing with all her bills, and that she is considering appointing him as attorney for her property and affairs.

Explain to Niamh the mental capacity requirements to be able to make a valid Will and the steps that you would need to take to ensure that she has the requisite mental capacity to make a Will in the terms she has indicated.

**(25 marks)**

### Question 3

Benjamin died in November 2022. For five years prior to his death, Benjamin lived with Clara. They bought the property, 17 Acacia Avenue, as beneficial tenants in common in equal shares in 2017. After three years Benjamin and Clara ended their relationship, but they continued to live together due to the COVID-19 pandemic and uncertainty around their respective jobs. The property is valued at £260,000 with a mortgage of £190,000.

Benjamin had mentioned to his friend, Theo, that he intended to make a Will and that although his relationship with Clara had ended, he would have included her in his Will. Theo is not aware that Benjamin actually did make a Will, but Clara was aware of Benjamin's intentions. Inquiries have been made at the Will registry and local solicitors, but there is no evidence of a Will being made.

Benjamin was survived by his sister, Emily, and a stepsister, Delilah, whom he treated no differently to Emily. Their mother, Siobhan, is still alive and lives in a nursing home. Emily has two children, Zachary and Viola. Benjamin had previously said to Emily that he'd wanted to leave gifts to her two children upon his death.

Benjamin's personal effects are valued at £25,000, and his financial assets in savings, shares and other investments total £10,000.

(a) Explain, with reference to the rules of intestacy, who will inherit Benjamin's estate. **(17 marks)**

(b) Advise who may be the most appropriate person to take out the Grant of Representation in the circumstances, and explain their powers and obligations under Section 33 of the Administration of Estates Act 1925.

**(8 marks)**

**(Total: 25 marks)**

**Turn over**

#### Question 4

McKenzie Kelly died in January 2021. McKenzie had executed a home-made Will in 2018 as she didn't believe it was necessary to use a Chartered Legal Executive or other professional. In the Will, she appointed her friends, Imad and William, to be her executors. McKenzie's Will contained the following gifts:

- £3,000 MK  
'(i) I leave ~~£100,000~~ to RSPCC.  
£100,000  
(ii) I leave ~~£3,000~~ to my favourite nephew.
- (iii) I leave to my daughter, Nancy, my rare artwork.
- (iv) My residuary estate to my partner, and should he predecease me, to my grandchildren upon them reaching the age of 18'.

All the alterations are in McKenzie's handwriting. The figure '£3,000' in clause (i) as well as the initials 'MK', are written in pencil. The alteration in clause (ii) is written in ink.

McKenzie's Will was validly made and witnessed by her two neighbours at the time. Both neighbours moved to new addresses in 2019.

McKenzie had got divorced in 2016. At the time of her death, McKenzie did have a partner, Graham. McKenzie did not remarry.

McKenzie had one daughter, Nancy, and two nephews, Ryan and Karl.

Her estate amounts to £300,000. McKenzie also had a property she held as beneficial joint tenants with Graham valued at £350,000. McKenzie was a collector of antiques and artwork of which she had several pieces.

Advise Imad and William as to the validity and effect of each of the gifts in McKenzie's Will.

**(25 marks)**

**End of the examination**