

CHIEF EXAMINER COMMENTS WITH SUGGESTED ANSWERS

JANUARY 2020

LEVEL 3 - UNIT 8 LAW OF WILLS AND SUCCESSION

Note to Candidates and Learning Centre Tutors:

The purpose of the suggested answers 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 2020 examinations. The suggested answers set out a response that a good (merit/distinction) candidate would have provided. The suggested answers do not for all questions set out all the points which candidates may have included in their responses to the questions. Candidates will have received credit, where applicable, for other points not addressed by the suggested answers.

Candidates and learning centre tutors should review the suggested answers 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

Overall, candidate performance was good.

Some candidates were clearly capable of achieving higher marks if they had observed the number of marks available for questions. For example, if a question is worth 10 marks, only writing one sentence is insufficient.

Some candidates tried to make the question fit their learning and tried to answer scenario 1 death bed gifts by looking at the mental capacity of the testator, which was clearly not the point of the question.

It is concerning that a number of candidates are not familiar with the intestacy rules; possibly because most of the work in practice revolves around cases where there is a Will.

CANDIDATE PERFORMANCE FOR EACH QUESTION

SECTION A

Q1 Most candidates failed to say that a Will revokes an earlier Will only in so far as it is inconsistent. Most recognised the importance of a revocation clause.

Q2 Most candidates performed well in this question.

Q3 Generally well answered.

Q4 Generally well answered.

Q5 Generally well answered.

Q6 A concerning number of candidates got this question wrong saying that siblings would inherit instead of parents.

Q7 Generally well answered.

Q8 Generally well answered.

Q9 Generally well answered.

Q10 Disappointingly, a few said that the testator would make the affidavit.

Q11 Candidates struggled with this question.

Section B Scenario 1

Q1a Generally very well answered.

Q1b Some candidates missed out on marks for not referring to the three witnesses individually.

Q2 Generally well answered.

Q2b Generally well answered, although very few candidates mentioned that the certificate of ownership was not handed over.

Q3 Very well answered.

Section B Scenario 2

Q1a Generally well answered.

Q1b Generally well answered, although few candidates said that the size of the estate is a factor.

Q1bii Generally well answered, few candidates suggested that 'The View' could be given to Frank to live in.

Q2 Generally well answered.

Q3a Very well answered.

Q3b Again, very well answered.

Section B Scenario 3

Q1 Generally well answered.

Q2 Generally well answered, although a few candidates did not realise that the funeral expenses rank behind the mortgage.

Q3 Generally well answered.

Q4a Candidate performance was weak in this question, with candidates failing to apply legal facts to the given scenario.

Q4b Generally very well answered.

SUGGESTED ANSWERS

LEVEL 3 - UNIT 8 LAW OF WILLS AND SUCCESSION

SECTION A

1. A later Will revokes an earlier Will only to the extent that it is inconsistent. This means that it may not be clear whether the whole of the earlier Will is revoked or just part of it. For the avoidance of doubt a revocation clause should be included.
2. The rules relating to formalities are found in s.9 Wills Act (WA) 1837.
3. The reasons why a testator might decide to appoint a professional executor are that he may envisage a family argument and an independent executor may help ease the tension; the estate may be particularly large and complex and only a professional executor can deal with it; the beneficiaries may be charities/minor children; the testator may wish to relieve his children of the burden, i.e. because they have young families of their own or do not live locally; the testator may realise that his children/beneficiaries may not be able to deal with his estate for whatever reason when the time comes; there may be no relatives or friends or anyone suitable to act as executor.
4. A gift in a Will might lapse if the beneficiary pre-deceases the testator, there is no substitute beneficiary referred to in the Will, or s.33 WA 1837 does not save the gift because it is not to the testator's own children.
5. A Will might not be revoked by the subsequent marriage, where a Will states that it is made in contemplation of marriage and the testator intended that the Will should not be revoked. The expected marriage must be to a particular person who must be specifically named in the Will.
6. If a single woman without children died intestate her parents would first be entitled to inherit her estate, if they are still living at the date of her death and, if so, in equal shares.

7. A partial intestacy occurs when someone dies leaving a valid Will but the Will does not deal with the whole of the estate. For example, not all of the residue is disposed of or one of the named beneficiaries dies before the testator and no substitute is named.
8. S.32 Trustee Act (TA) 1925 as amended by s.9 Inheritance and Trustees Powers Act (ITPA) 2014, allows trustees to pay capital to a beneficiary before he is entitled to the trust fund. The whole of the trust fund can be advanced, but it must be for the advancement or benefit of the child.
9. A grant of letters of administration with Will annexed, is appropriate where there is a valid Will, but there are no named executors, who are willing or able to act.
10. Where a Will does not include an attestation clause, one of the witnesses to the Will would swear the affidavit, or if they have died or lost capacity then the affidavit would be sworn by some other person who was present when the Will was signed. Alternatively, it could be another person who could attest to the testator's handwriting.
11. The surviving spouse standard of financial provision under the Inheritance (Provision for Family and Dependents) Act (IPFDA) 1975, is such financial provision as is reasonable in all the circumstances, whether or not it is required for the spouse's maintenance.

SECTION B

Scenario 1

1. (a) The formal requirements to make a Will are set out in s.9 Wills Act (WA) 1837:
 - the Will must be in writing and signed by the testator;
 - it must be signed or acknowledged by the testator in the joint presence of two witnesses;
 - who must then both sign and acknowledge the Will;
 - in the presence of the testator;
 - although not necessarily in each other's presence.
- (b) The Will is in writing and was signed by Indira. It does not matter what the Will is written on, for example, an eggshell, as set out in Hodson v Barnes (1926).

Both Rosalyn and Natalie were present when the Will was signed by Indira. Rosalyn signed as first witness in Indira's presence; Natalie has also signed in Indira's presence. Since all three persons were together to acknowledge their signatures at some point, it does not matter that Rosalyn did not watch Natalie sign as in Couser v Couser (1996).

2. (a) To be a valid *donatio mortis causa* (deathbed gift) the gift:
- must be made in contemplation of death;
 - must be conditional on death;
 - the donor must part with some dominion over the property before death.

- (b) Applying this to the facts of the scenario, Indira was in a train accident with her son Ravi. As Ravi died in the accident, Indira will have contemplated her own death. It was reasonable for Indira to believe that death was imminent.

The wording shows that the gift of the car was conditional on death, i.e. 'If I don't make it'. Presumably, if Indira was to recover from the injuries sustained in the accident, the car was to be returned to her.

A *donatio mortis causa* can be revoked at any time until the death of the donor. Handing over the key constitutes parting with dominion over the property. Under the principle established in Sen v Headley (1991), handing over a key to a large or bulky item would enable the recipient to take possession. However, as the ownership certificate was not also handed over; it could be said that Indira did not actually transfer the asset to Jeanette. Although, Indira would not have had the certificate with her at the time of the accident, so it could be argued that she did the best that she could, in the circumstances, to part with the property that forms part of the gift.

3. Ravi's gift will be saved by s.33 Wills Act (WA) 1837. As he is a direct descendant of Indira, his half share in the estate will pass to his two children in equal shares, but will be held on the statutory trust until they each attain the age of 18.

Scenario 2

1. (a) Frank will be able to make a claim under the Inheritance (Provision for Family and Dependents) Act (IPFDA) 1975, as a child of the deceased. Frank can make a claim on the grounds that the Will does not provide reasonable financial provision for him. The standard of provision would be the maintenance standard. The claim must be made within six months of the date of issue of the grant,
- (b) (i) The court will take into account Frank's needs and resources; the needs and resources of Julie and Kate; Agnes' obligations towards Frank; the size of Agnes' estate; Frank's physical disability; and any other relevant circumstances, including Frank's conduct.
- (b) (ii) Frank has insufficient financial resources of his own because he can no longer work as a lorry driver and is dependent on state benefits. The other beneficiaries, Julie and Kate, already have sufficient financial resources as Julie's husband is wealthy and Kate has a well-paid job in the city. Their needs are limited since they own their own homes, where Frank is living in rented accommodation. Agnes has a sizeable estate at around £950,000, so there is sufficient to provide for Frank's reasonable maintenance without depriving Julie and

Kate of all that they are expected to inherit. Frank's back injury could be considered a physical disability; and his conduct towards his mother was that of a loving and caring son, i.e. he visited his mother regularly and helped her with shopping and household chores. Frank was led to believe that he would inherit equally when the time came. In the recent case of Ilott v Mitson (2015), the court asked was reasonable provision made and, if not, what provision should have been made. There would be no point in the court awarding Frank a modest cash sum, since his means tested benefits would then be withdrawn. As in Ilott v Mitson, Frank needs enough money to enable him to buy a house of his own, or he could be given the cottage in the Lake District for him to live in.

Five categories of people who can make a claim under the IPFDA 1975 are:

- spouse/civil partner;
 - former spouse/civil partner who has not remarried;
 - surviving cohabitee of a mixed sex or same sex couple living together two or more years before the death;
 - child of the deceased;
 - person brought up as a child of the family if the deceased was in a marriage/civil partnership;
 - any other person maintained by the deceased immediately prior to death.
2. (a) If the Will is set aside then the estate will be dealt with under the intestacy rules in s.46 Administration of Estates Act (AEA) 1925. Since there is no previous Will and Agnes is a widow, her estate would pass to her children Julie, Kate and Frank in equal shares.
- (b) The grant would be a Grant of Letters of Administration.

Scenario 3

1. The administrator, or personal representative (PR), of an estate must administer the deceased's estate in accordance with the rules contained in Administration of Estates Act (AEA) 1925. The PRs are responsible for ensuring that all the deceased's assets are gathered in and all debts/creditors are paid. The PRs are obliged to prepare and circulate formal estate accounts showing all incomings and out-goings in the estate, and detailing assets, liabilities and expenses. Provided the PRs act in accordance with their statutory powers they incur no personal liability.
2. The assets of the estate are less than the liabilities which means that the estate is insolvent. The order in which the debts, liabilities and residue are paid is governed by AEA 1925 and the Administration of Insolvent Estates of Deceased Persons Order (AIEDPO) 1986. The order for payment is:
 - secured debts i.e. the mortgage of £70,000 takes priority/is paid off first;
 - the funeral expenses of £4,000 are to be paid;
 - specially preferred debts;
 - preferred debts;

- ordinary debts i.e. the credit card bills of £2,500 and £12,000 would rank equally;
- deferred debts are paid last. Here there are no debts in this category.

There are insufficient funds in the estate to pay all the liabilities in full.

3. Rule 22 of the Non-Contentious Probate Rules (NCPR) 1987 sets out the entitlement to apply for the grant. Since Michele was not married, did not have any children and her parents have pre-deceased her, her surviving siblings, Denise and Barbara, would be entitled to deal with her estate. However, as two of the beneficiaries Lucy and Graham are minors, there must normally be two administrators to protect their interests under s.114 (2) Senior Courts Act 1981. Therefore, both Denise and Barbara could act or, if one of them does not wish to act, then the mother or person with parental responsibility for Lucy and Graham could act alongside one of the sisters.
4. (a) If there was no mortgage, then the estate would be solvent, i.e. assets would exceed liabilities. There will be enough money in the estate to pay all the liabilities in full. The administrators do not need then to regard the rules for order of payment set out in AIEDPO 1986. The funeral invoice of £4,000, the credit card bills of £2,500 and £12,000 could all be paid in full. The balance of £63,000/residue can then be distributed in accordance with the intestacy rules.

(b) Under s.46 AEA 1925, the estate will be divided equally between the siblings. Barbara, Denise and Eric would each receive a one third share. Since Eric has already died, his one third share would be split equally between his two children Lucy and Graham; their share of the estate would be held on trust until they attain the age of 18.