



THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

UNIT 8 – LAW OF WILLS AND SUCCESSION*

Time allowed: 1 hour and 30 minutes plus 15 minutes' reading time

Instructions to Candidates

- You have **FIFTEEN** minutes to read through this question paper before the start of the examination.
- **It is strongly recommended that you use the reading time to read this question paper fully.** However, you may make notes on this question paper or in your answer booklet during this time, if you wish.
- **This question paper is divided into TWO sections. You must answer ALL the questions from Section A. There are three scenarios in Section B. You must answer the questions relating to ONE of the scenarios from Section B ONLY.**
- Write in full sentences – a yes or no answer will earn no marks.
- Candidates must comply with the CILEx Examination Regulations.
- Full reasoning must be shown in answers. Statutory authorities, decided cases and examples should be used where appropriate.

Information for Candidates

- The mark allocation for each question and part-question is given and you are advised to take this into account in planning your work.
- Write in blue or black ink or ballpoint pen.
- Attention should be paid to clear, neat handwriting and tidy alterations.
- Complete all rough work in your answer booklet. Cross through any work you do not want marked.

Do not turn over this page until instructed by the Invigilator.

* This unit is a component of the **CILEx LEVEL 3 PROFESSIONAL QUALIFICATIONS** and **LEVEL 3 LEGAL SERVICES KNOWLEDGE QUALIFICATIONS**

SECTION A

(Answer ALL questions in Section A)

1. Explain what is meant by a 'codicil'.
(3 marks)
2. Describe **three** situations when the presumption that a testator has the intention to make a Will does not apply.
(3 marks)
3. Describe who can make a privileged Will.
(4 marks)
4. Explain the effect of a receipt clause in a Will.
(2 marks)
5. Explain the forfeiture rule and the exception to that rule.
(4 marks)
6. Explain the effect of judicial separation on a Will.
(2 marks)
7. Describe what is meant by 'intestacy'.
(1 mark)
8. Explain the provisions of s.31 of the Trustee Act 1925.
(3 marks)
9. Describe **three** differences between an executor and an administrator.
(3 marks)
10. State the type of grant required if there is no Will.
(1 mark)
11. Explain the presumption applied by the court with regard to an alteration to a Will.
(3 marks)
12. State the normal time limit for lodging a claim under the Inheritance (Provision for Family and Dependents) Act 1975.
(1 mark)

(Total Marks for Section A: 30 marks)

SECTION B

(There are three scenarios in Section B. Answer the questions relating to ONE of the scenarios ONLY)

Scenario 1

In March 2020, Rafael Martinez drew up his own Will at home, as follows:

This is the last Will of me Rafael Martinez of Flat 4 Kempston Manor Kempston MK42 7AB

1. I revoke all previous Wills made by me
2. I appoint my mother Isabella Martinez and my father Miguel Martinez as my executors and give the rest of my estate to them
3. If my parents go before me, then everything is left to my brother Luis Martinez

Signed *Rafael Martinez*

Signed by the above-named Rafael Martinez as his last Will in our presence and then by us in his

Dated 30 March 2020

Witnessed by *Pauline Smith John Smith*

Rafael invited his elderly next-door neighbours, Pauline and John Smith, into his back garden, to witness his Will. He told them: 'I studied law as part of my degree, so I know all about Wills. You are not mentioned in my Will, so you will not lose out by signing. All I need you to do is to watch me sign, then each sign your own bit.'

Rafael signed the Will, and Pauline and John together witnessed his signature, before signing themselves.

At the time of making the Will, Rafael was very close to his only brother, Luis. Every Sunday morning, Rafael and Luis played golf, then went for lunch at their parents' house.

Two months after signing the Will, Rafael was speaking with his brother Luis on his phone and had an argument with him. At the time of the argument, Rafael was watching the horseracing on television and was intoxicated, after drinking a lot of whisky. Thinking that his Will gave his entire estate to his brother, Rafael drew a big line in pencil across it and tore the document in half, muttering: 'Now he's not getting anything'.

In December 2020, after a short illness, Rafael died suddenly. He left an estate worth £350,000, including his flat at Kempston Manor, Kempston, Bedford. When clearing the flat, Luis found the two halves of the Will that Rafael had pushed under his sofa and forgotten about.

Scenario 1 Questions

1. Explain the requirements for a person to act as a witness to a Will and the effect of those requirements.

(7 marks)

2. (a) Explain how a Will can be revoked by destruction.

(9 marks)

- (b) Explain whether Rafael's Will has been validly revoked.

(6 marks)

(Total: 15 marks)

3. Assume, for the purposes of this question, that Rafael's Will is valid.

- (a) Describe what type of evidence the probate registry would then require in respect of the Will.

(1 mark)

- (b) Explain why this evidence would be required.

(7 marks)

(Total: 8 marks)

(Total Marks for Scenario 1: 30 marks)

Scenario 2

Winifred Connor, a widow aged 88 years old, lived in Kempston. She instructed her local solicitor to draw up a Will for her. She told her solicitor that she had been diagnosed with cancer and that the medication she was taking for the pain was making her feel weak and nauseous. Winifred had not previously made a Will.

The solicitor drew up a Will as follows:

This is the last Will of me Winifred Connor of The Laurels, Blackwood Drive, Kempston MK49 7AP

1. I revoke all previous Wills made by me
2. I appoint my son Thomas Connor and my daughter Claire Connor to act as my executors and trustees
3. I give my pearl necklace and matching bracelet to my granddaughter Donna Connor
4. I leave the sum of £10,000 to be shared equally between my grandchildren
5. My residuary estate is to go to my son Thomas Connor and my daughter Claire Connor in equal shares.

Signed by the above-named Winifred Connor
as and for her last Will in our joint presence and then by us in her presence
and in the presence of each other.

Signed *Winifred Connor*

Dated 17 June 2019

Witnessed by *Abhay Patel* *Peter Walker*

At the beginning of December 2020, Winifred died peacefully of cancer. She left an estate worth £400,000, which included her house (where she had lived all her life), a bank current account with a balance of £2,031 at the date of death and numerous antique paintings and ornaments.

At the date of the Will, there were five grandchildren, two of whom are now aged three and seven. After the Will was signed, a further granddaughter, Evelyn Connor, was born.

Claire lives in London and says that she does not wish to act as executor. Her late mother's house is very cluttered, and Claire says it will be difficult for her to make frequent trips to Kempston to clear the property.

Scenario 2 Questions

1. (a) Explain the tests to establish mental capacity to make a Will.
(6 marks)
- (b) Explain how the solicitor should have checked and evidenced mental capacity in Winifred's case.
(4 marks)
(Total: 10 marks)
2. In relation to the legacies in Winifred's Will, explain:
- (a) the effects of the legacy in clause 3 of Winifred's Will and what will happen if the items of jewellery cannot be found;
(3 marks)
- (b) the effects of the legacy in clause 4 of Winifred's Will.
(10 marks)
(Total: 13 marks)
3. (a) Explain the steps that an executor must take, in order to renounce their role.
(3 marks)
- (b) Explain whether Claire can renounce her role as executor of Winifred's estate.
(4 marks)
(Total: 7 marks)

(Total Marks for Scenario 2: 30 marks)

Scenario 3

Sarah Evans wrote out the following Will and asked her two neighbours to act as witnesses:

This is the last Will of me Sarah Evans

1. I revoke all previous Wills made by me
2. I appoint my ex-husband Owen Evans to act as my executor and trustee
3. My residuary estate is to go to my daughter Julie Evans and my sister Rachel Parker in equal shares.

Signed by the above-named Sarah Evans
as and for her last Will in our joint presence and then by us in her presence
and in the presence of each other.

Signed *Sarah Evans*

Dated 17 August 2018

Witnessed by *Jaclyn Henderson, Paul Jones*

At the date of the Will, Sarah had been divorced for several years and her only child, Julie Evans, was aged 19 years.

In early May 2020, Sarah met Graham Rogers online and, after a whirlwind romance, they married in October 2020. Since Sarah already had a large four-bedroomed detached house in a very desirable area, which she had inherited from her own parents, Graham moved in and placed his own small apartment on the market for sale. Sarah was a very talented artist and she owned painting materials worth £2,000 and had unsold work valued at £6,000. She also owned a painting of the seaside by a rival artist, worth £5,000, which she rather grudgingly admitted was better than her own work and would increase in value over time.

In December 2020, Sarah died suddenly. She left an estate worth £1,600,000, including the house worth £400,000 in which she and Graham had lived together briefly. Her other assets include bank accounts in her sole name.

Scenario 3 Questions

1. Explain why Sarah's Will dated 17 August 2018 is now revoked. **(5 marks)**

2. (a) Explain which assets would pass as personal chattels and which would not. **(10 marks)**

(b) Explain what Graham is entitled to receive from the estate in addition to the personal chattels. **(8 marks)**
(Total: 18 marks)

3. Explain how Graham can be sure of receiving the matrimonial home, if he does not wish to return to his apartment. **(7 marks)**

(Total Marks for Scenario 3: 30 marks)

End of Examination Paper