

25 June 2021
Level 3
LAW OF WILLS AND SUCCESSION
Subject Code L3-8

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. State why it is important for cohabitees to make Wills.

(1 mark)
2. Explain what problems arise if a testator is illiterate and how these can be overcome.

(4 marks)
3. State **three** reasons why a testator would appoint a professional executor.

(3 marks)
4. Identify to whom s.33 Wills Act 1837 applies.

(2 marks)
5. Explain the effect, if any, of judicial separation on entitlement under a Will.

(2 marks)
6. State who should inherit if a single person dies intestate without children.

(2 marks)
7. Explain how, in their Will, a testator should appoint a firm of solicitors as executors.

(3 marks)
8. Identify **three** circumstances in which a grant of letters of administration with the Will annexed would be the appropriate grant of representation.

(3 marks)
9. Explain the effect of an executor having 'power reserved' to him.

(2 marks)
10. Explain the circumstances in which an affidavit of plight and condition would be needed.

(3 marks)
11. Explain how a chain of representation may be broken.

(3 marks)
12. State the surviving spouse standard of financial provision under the Inheritance (Provision for Family and Dependants) Act 1975.

(2 marks)

(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

Elsie Ginley, aged 88, died at the end of May 2021 after a short spell in hospital. Elsie lived in Kempston, Bedford, all her life and she never married or had any children. She left an estate worth around £400,000, including the house in which she lived and money in various bank and building society accounts. Elsie had debts, including an unpaid credit card bill of £890 and a dental bill of £550.

Elsie had made a Will in 2004, which appointed her nieces Brenda Conley, Carol Byrne and Rachel Stewart as her executrices. Carol passed away in 2010, although the remaining two executrices survived Elsie.

Rachel has been able to close one of the bank accounts without producing the grant of probate. The account had a closing credit balance of £5,740, which they used to settle the funeral invoice of £3,600 and the dental bill of £550. There are three other accounts with larger balances, which the bank refuses to close without sight of the grant of probate.

Elsie's Will was correctly executed and left the whole of her estate to various local animal charities, except for four gifts, which appear in the Will as follows:

- '... 3. To my niece Brenda Conley my entire handbag collection
4. To my great-niece Joanne Byrne, the sum of £20,000 when she reaches 18
5. To my good friend Norah Glover the sum of £1,000 from my MoneySmart Bank account
6. To my cleaning lady the sum of £500. ...'

Joanne Byrne, the daughter of Carol, is currently 16 years of age. Elsie had employed a number of cleaners over the years and had recently appointed a new cleaner just before she died.

Scenario 1 Questions

1. Explain how an executor may avoid the appointment.

(5 marks)

Brenda does not wish to act as an executrix at present, due to work commitments. However, she is willing to take up the appointment later, if she is needed.

2. Explain how this can be achieved.

(3 marks)

3. Explain why Rachel may avoid her appointment, as one of the executrices, using one case to illustrate your answer.

(6 marks)

4. Explain:

(a) the type of gift to Brenda;

(3 marks)

(b) the type of gift to Joanne and whether or not this will take effect;

(4 marks)

(c) the type of gift to Norah;

(4 marks)

(d) whether or not the gift to Norah will take effect;

(3 marks)

(e) who will receive the gift of £500.

(2 marks)

(Total: 16 marks)

(Total Marks for Scenario 1: 30 marks)

Scenario 2

Frederick Thomas died in May 2021, aged 80 years.

Frederick made his Will in March 2021, after being on medication to control an infection. Previously, he had always enjoyed excellent health and walked nine miles nearly every day, regardless of the weather. He said that the infection made him realise that he was not invincible, so it was time to make a Will. He asked his friend Manish, an accountant with a local firm, to act as his executor. Then he told Manish, that his estate was worth around £600,000, including his house, his collection of gold coins, and his shares and bank accounts.

He said that he wished his great-nephews and great-nieces to each have the sum of £1,000 and for the residue of his estate to pass to Cancer Research UK, as his wife had died from cancer 20 years ago. Frederick had always been close to his great-nephews and great-nieces.

Frederick wrote out the Will himself, after reading all about Wills on the internet. At this time, he knew the total value of his estate, as he always looked up house and share prices online. He invited his two next door neighbours, Arthur and Sheila, into his back garden where he signed his Will and they then signed in his presence.

After recovering from his infection, Frederick was still frail and he never regained his strength during the final months of his life. In May 2021, Frederick passed away peacefully in his sleep at home. At the time of his death, the ages of his great-nephews and great-nieces ranged between 12 and 28 years old. He had no other surviving relatives.

Scenario 2 Questions

1. Explain the following tests for capacity to make a Will:

(a) the test set out in *Banks v Goodfellow* (1870);

(3 marks)

(b) the test set out in the Mental Capacity Act 2005.

(5 marks)

(Total: 8 marks)

2. Explain, using the two tests from Question 1, whether or not Frederick had testamentary capacity at the time he made his Will.

(7 marks)

Assume, for the purpose of the following question, that Frederick did have the mental capacity to make a valid Will.

3. Explain why Frederick has met the formal requirements to make a valid Will.

(6 marks)

4. Explain any administrative clauses that may appear in the Will and any statutory powers that might assist Manish to:

(a) pay the gifts to any of the great-nephews and great-nieces immediately;

(5 marks)

(b) charge for his services.

(4 marks)

(Total: 9 marks)

(Total Marks for Scenario 2: 30 marks)

Scenario 3

Phillipa and her partner, Yvonne, lived in 'The View', a large house, which they owned as beneficial joint tenants. They had been together for five years, when they entered a civil partnership in February 2007.

Phillipa died suddenly in March 2021, aged 67, after a short illness. Yvonne, who is the same age, was shocked to discover that Phillipa did not leave a Will, although they had discussed making Wills many times over the years. Yvonne had always assumed that Phillipa had 'done the right thing'. Yvonne is worried, because her only income is her state pension.

When she was in her thirties, Phillipa had had a son called David, who lived with his father from the time of his birth. Despite David's father asking her numerous times, Phillipa had refused to marry him. She only saw David at Christmas up until he was 12 years old, and she did not see him after that. David is now 34 years old but has social and mental disabilities, and is only able to find low-paid cleaning jobs. David supplements his income by playing in a local band twice a week, but the amount he earns barely covers the rent on his flat of £300 per month. David has lived on his own since his mid-twenties.

At the time of her death, Phillipa left the following assets:

	£
House known as 'The View': value of Phillipa's share	230,000
Personal items including jewellery	10,000
Bank accounts	33,000
Citi Invest share portfolio	90,000
Private motor vehicle	2,863
Holiday cottage in the Lake District	<u>330,000</u>
Total estate	<u>695,863</u>

If 'The View' had been owned in Phillipa's sole name, the total value of the estate would be £925,863.

Scenario 3 Questions

1. Explain what Yvonne is entitled to receive from Phillipa's estate, in addition to the personal chattels.

(7 marks)

Assume that David makes a claim for reasonable financial provision against Phillipa's estate under the Inheritance (Provision for Family and Dependents) Act 1975.

2. (a) Explain what 'reasonable financial provision' would be for David.

(3 marks)

- (b) State what the time limit would be for David to lodge a claim.

(2 marks)

- (c) Explain the factors which the court should consider, in deciding what would be reasonable financial provision for David.

(5 marks)

- (d) Explain how these factors would be applied in David's application.

(8 marks)

(Total: 18 marks)

3. Explain what the effect on Yvonne's entitlement in relation to Phillipa's estate would have been, if 'The View' had been owned solely by Phillipa.

(5 marks)

[NOTE TO CANDIDATES: You do not need to provide any calculations, unless this will help you to explain your answer.]

(Total Marks for Scenario 3: 30 marks)

End of Examination Paper