



## THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

### UNIT 14 – LAW OF WILLS AND SUCCESSION\*

**Time allowed: 3 hours 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.
- **All questions carry 25 marks. Answer FOUR only of the following EIGHT questions. This question paper is divided into TWO sections. You MUST answer at least ONE question from Section A and at least ONE question from Section B.**
- Write in full sentences – a yes or no answer will earn no marks.
- **Candidates may use in the examination their own unmarked copy of the designated statute book: Blackstone's Statutes on Property Law 2020-2021, 28th edition, Meryl Thomas, Oxford University Press, 2020.**
- 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 following CILEX qualifications: **LEVEL 6 CERTIFICATE IN LAW and the LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW AND PRACTICE**

**SECTION A**  
**(Answer at least one question from this section)**

1. There is a rebuttable presumption that a person with testamentary capacity who validly executes a will does so with knowledge and approval of its contents.

Critically analyse the circumstances in which this presumption may be rebutted and explain what must be proved to achieve this.

**(25 marks)**

2. Critically evaluate whether the intestacy rules provide sufficient financial provision for a surviving spouse.

**(25 marks)**

3. Analyse:

(a) how an intention to revive a will can be demonstrated and the effect of revival of a will;

**(15 marks)**

(b) how s.21 Administration of Justice Act 1982 has changed the rules on the construction of wills.

**(10 marks)**

**(Total: 25 marks)**

4. 'When administering an estate with substantial debts and few assets, great care is needed at the outset to establish whether the estate is solvent or insolvent.'

Critically evaluate this statement.

**(25 marks)**

**SECTION B**  
**(Answer at least one question from this section)**

**Question 1**

Roger Smith's accountant had produced a typewritten will for him in August 2020 at Roger's specific request. The will is as follows:

My Last Will by *Roger Smith* *Roger Smith*

1. I wish to be cremated.
2. I appoint my friend Peter Barker to act as the executor of this my will.
3. I give all the monies in my Aimwise current account to my dear friend Ethel Giles.
4. Everything else I have is to go to my nieces and nephews but only when they are 21 and not before then.

Dated 16<sup>th</sup> day of August 2020

Witnessed by

*Susan Johnson*      *Jonathan Johnson*

Roger then asked Susan and Jonathan, his neighbours, to come into his large back garden to witness his will. Using the garden table to lean on, he tried to sign the document, but was overcome with arthritic pain. Susan leapt to the rescue and steadied his hand as he signed the will. Susan then signed the will herself, as witness. Then Roger beckoned Jonathan to approach from the other side of the lawn, to sign as second witness. At that moment, Roger's dog, which he had locked in the kitchen, started to bark loudly. Roger rushed away to try to silence it. When he returned, he found that Jonathan had already signed.

He thanked both of his neighbours and waved goodbye.

Three months later, Roger died peacefully in his sleep. The executed will was discovered among his papers, with a list of all his bank accounts and other investments.

Roger had three nieces and two nephews at the time of his death. One nephew is 24, but the nieces and the other nephew are younger, with ages ranging from 4 to 14. A further niece was born in December 2020.

Advise Peter Barker whether Roger's will is likely to have been validly executed and, if so, of the effect of the gift of residue.

**(25 marks)**

## Question 2

Sinead O'Donoghue died of cancer last month, leaving a duly executed will, dated October 2019 and appointing her two brothers, Daniel and Harold, as her executors.

Sinead's estate includes her house, 'The View', valued at £700,000 but subject to a mortgage of £120,000, her household contents and personal effects of £5,000 and her bank account balances of £12,500.

In addition to her household contents and personal effects, Sinead owned a 10-year-old blue Ford Fiesta motor vehicle, valued at £970. As at the date of death, she had credit card balances of £4,200. The funeral costs are estimated to be £4,000 and the other administration costs, including legal fees, are estimated to be £9,000.

Sinead's homemade will includes the following bequests:

1. I leave 'The View' to my brother Daniel O'Donoghue
2. I leave my car to my brother Harold O'Donoghue
3. I leave the sum of £5,000 to my friend Anita Scott
4. I leave the sum of £5,000 to my friend Rachel Gordon
5. I leave my entire residuary estate to NHS Charities.

As to clause 5 of Sinead's will, she left her residuary estate to the NHS in gratitude for the care she received at her local hospital. Her brothers approved of her decision. Daniel has a thriving business as a car dealer. Harold has sufficient financial resources of his own, but wishes to keep Sinead's car for his daughter, who has recently passed her driving test.

Advise Daniel and Harold of the order in which the assets of their late sister's estate should be used to pay the debts, liabilities and gifts under the will.

**(25 marks)**

### Question 3

Ajay died in July 2019, aged 61. His will, dated 31 March 1998, appointed his brother Devdan to act as his executor. Ajay's estate comprises a house called 'The Stone House' valued at £600,000, bank accounts totalling £37,514, and a collection of antique clocks.

Under the will, there is a specific legacy of the clocks to George, a family friend. The remainder of the estate is to be divided equally between Devdan and his sister Ryna. At the time of making the will, Ajay made Devdan and Ryna aware of the contents.

Ryna is struggling to earn a living, having recently started a new business. She is concerned that she has not received a copy of the will, despite asking Devdan several times. Furthermore, she does not entirely trust Devdan. On passing 'The Stone House' one day, Ryna noticed that Devdan had moved into the property with his wife. When she questioned her brother, he replied that, as the house is far more valuable than his own, he had moved in to keep an eye on it. On her next visit, Ryna noticed that the antique clocks had gone missing, and that Devdan's wife was wearing very expensive designer clothes. Ryna has also discovered that Devdan's own house is being rented out but has not raised this issue with him.

The Grant of Probate has now been obtained, but 'The Stone House' is still not on the market. Devdan says that he has been trying to juggle his own work as a surveyor with dealing with the estate.

Devdan told Ryna that the solicitors he had instructed had been quite slow in producing the probate papers, and when probate was obtained last month, the solicitors realised that the s.27 notices had not been placed; this has now been rectified.

Devdan says that the clocks were not in 'The Stone House' when he first visited it after Ajay's death. He remembers Ajay talking about getting them valued for possible sale, but he has been unable to find any information about this.

Advise Ryna:

(a) of her rights as a residuary beneficiary of the estate in respect of the administration to date;

**(8 marks)**

(b) of the legal implications of Devdan living in the property owned by the deceased;

**(5 marks)**

(c) of any defences that Devdan may raise in response to any challenges concerning his conduct.

**(12 marks)**

**(Total: 25 marks)**

#### Question 4

In September 2015, Oscar instructed his solicitor to draw up a will in favour of his long-term partner Mary. A week after agreeing the draft document, he called into his solicitor's office and signed the original document.

In October 2019, Oscar had a heated argument with Mary, as he thought she was seeing another man behind his back. In a fit of rage, he rang his solicitor and told him to tear the will into tiny pieces. The solicitor immediately acted upon this request. Once Oscar had calmed down, Mary was able to satisfy him that his suspicions were unfounded. Relieved to be reconciled with Mary, Oscar then forgot all about his will.

In March 2016, Mary had made her own will with the same solicitor, after listening to Oscar's glowing praise of his professionalism. After the gift of a legacy of £5,000 to Oscar and £5,000 to her niece Julie, her entire estate was left to a local animal rescue society.

In October 2019, Mary drew up a new will in her own home, rather than going to the expense of using a solicitor again. She did not include an express revocation clause, as she did not appreciate the significance of this. In her new will, she left the same amount to Oscar as before, but excluded the gift to her niece Julie who, she told Gladys her next-door neighbour, was 'now doing very nicely'. After hearing that the local animal rescue society had closed, Mary changed the main beneficiary to 'The Cute Cattery', which provides housing for stray cats. Mary signed the will in front of Gladys.

Oscar and Mary were both killed as the result of a car accident while on holiday in the Alps in August 2020. Oscar died first, then Mary one week later.

(a) State whether Oscar's will was validly revoked.

**(10 marks)**

(b) Explain what evidence the probate registry will require, if an application for a Grant of Probate in Oscar's estate is made, and state why this evidence will be required.

**(5 marks)**

(c) State whether Mary has left a valid will.

**(10 marks)**

**(Total: 25 marks)**

**End of Examination Paper**