



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

January 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. Critically analyse the ways in which the validity of a Will can be challenged with reference to case law.

(25 marks)

2. (a) Critically analyse the ways in which a Will can be revoked with reference to case law.

(20 marks)

(b) Critically evaluate mutual Wills with reference to the circumstances in which they can be revoked.

(5 marks)

3. Critically evaluate whether the intestacy rules provide sufficient financial provision for a surviving spouse with reference to case law.

(25 marks)

4. (a) Critically analyse, with reference to case law, the relationship between the test of mental capacity in Banks v Goodfellow [1870] and the Mental Capacity Act 2005.

(20 marks)

(b) Analyse any conflict caused by Parker v Felgate [1883].

(5 marks)

SECTION B

Answer at least one question from this section.

Question 1

In 2007, Jane Foley duly executed a home-made Will, in which she appointed her cousin, Sam, to be her executor. Jane's Will contained the following gifts:

- '(i) I leave to my son George my classic car.
£20,000 JF
- (ii) I leave ~~£10,000~~ to my daughter, Lisa.
£3,000
- (iii) I leave ~~£1,000~~ to my oldest friend, Rochelle.
- (iv) I leave 'Lake View', my holiday cottage in Windermere, to my favourite niece, Felicity.
- (v) My residuary estate to my husband, Norman, and should he predecease me, to my grandchildren upon them reaching the age of 18'.

All the alterations are in Jane's handwriting. The figure '£20,000' in clause (ii) as well as the initials 'JF', are written in pencil. The other alteration is written in ink.

The two witnesses to Jane's Will do not recall seeing the alterations when they signed her Will.

Jane died two months ago. Her husband, Norman, died in 2018. Jane did not remarry.

George has two children. One aged 19 the other aged 17.

Although Jane had no daughters, she regarded Lisa as her daughter and would often refer to her in that way.

Her estate includes two classic cars: a Bentley and a Jaguar. Jane told Sam before she died that she wanted George to have the Bentley.

Three years before Jane died, she granted her friend, Oliver, an option to purchase 'Lake View', exercisable within three months of her death. Last week, Oliver contacted Sam, informing him that he (Oliver) was exercising the option to purchase.

Advise Sam as to the validity and effect of each of the gifts in Jane's Will.

(25 marks)

Turn over

Question 2

Yasmin Davidson died recently. She had made a Will appointing her husband, Peter, as her executor.

The estate includes:

Two properties: one in London and one in Oxford. The house in Oxford, valued at £958,000, is owned as joint tenants with her husband without mortgage. The flat in London is valued at £600,000 subject to a mortgage of £400,000. The flat in London is in Yasmin's sole name.

Yasmin has savings and personal effects totalling £60,000 in her sole name. She has credit card debts of £20,000.

The funeral costs are estimated to be £6,000. The costs of administration of estate are approximately £8,000.

Yasmin's Will said as follows:

1. I give my flat in West Norwood, London, to my granddaughter Keisha.
2. I give £10,000 each to my sons, Thomas and Elijah.
3. I give the residue of my estate to my husband, Peter.'

- (a) Advise Peter on the rules governing how the debts and liabilities should be settled depending on whether the estate is solvent or insolvent.
(5 marks)
- (b) Advise Peter how the payment of Yasmin's debts and liabilities will affect the entitlement of the various beneficiaries.
(15 marks)
- (c) Explain how Keisha would be affected if the gift of the flat was first subject to the debts and liabilities of the estate being paid.
(5 marks)

(Total: 25 marks)

Question 3

Callum died two weeks ago. He left a professional Will dated December 2013. Although Callum did not have any health concerns, he had read in the newspaper about long lost relatives unexpectedly appearing to make claims on estates. This was particularly disconcerting to Callum, as he had a brother, Quentin, who lived in Australia. Callum had fallen out with Quentin many years before and had not spoken to him since. Therefore, to be robust in putting his Will in place, Callum obtained a capacity assessment from his GP, which he provided to his solicitor to hold on file with the solicitor's attendance note.

In his Will, Callum left only residual gifts in an equal split to The Dog's Trust, and to his best friend Saad. Saad is the sole executor of the estate. Callum had told Saad that he believed his brother had died in 2015, although he did not explain to Saad how he knew this.

Callum was a landlord and owned 20 properties, which he rented out on assured shorthold tenancies. A number of these properties have mortgages on them. The Will contains no provision giving Saad express powers in respect of these properties.

Additional to this, Saad has found two unsecured loans and credit card debts totalling £35,000.

Advise Saad of his duties and obligations when acting as executor of the estate, of the risks involved and of how he might protect himself from risk, including relief that can be granted by the court.

(25 marks)

Turn over

Question 4

Barbara passed away in May 2022 at the age of 55. Searches have taken place but none of Barbara's family members are able to find a Will, nor after conducting searches with solicitors, have they received any evidence of Barbara ever making a Will. There was an old piece of paper found with Barbara's financial documents that stated:

'I wish for my son to be looked after on my death.'

This note was signed by Barbara but not witnessed.

Barbara was unmarried but had lived with her partner, Stephen, for eight years.

When she was only 17, Barbara had a son, Matthew, who she gave up for adoption. Barbara had reconnected with her son within the last two years, and they had developed a relationship. They would visit each other fortnightly and had spent the last Christmas together.

Barbara died leaving two sisters: Alison and Heather. Alison is Barbara's half-sister from their mother's previous marriage, although Barbara treated her no differently to Heather.

Barbara's brother, Ivan, passed away three years before Barbara. He died leaving two children, a son named Oliver, and a daughter named Unity. Oliver is 23 and Unity is 17.

Barbara's estate comprised two properties, one which she owned as tenants in common with Stephen, valued at £525,000. The other was an investment property in Norwich owned in her sole name, valued at £350,000. The properties are valued at £875,000 combined. Only the property owned with Stephen is mortgaged, with the current amount being £220,000.

Barbara's personal effects are valued at £33,000, and her financial assets in savings, shares and other investments total £417,000.

- (a) Explain, with reference to the rules of intestacy, who will inherit Barbara's estate. **(17 marks)**
- (b) Advise who is the most appropriate person to take out the Grant of Representation and explain to that person their powers and obligations under Section 33 of the Administration of Estates Act 1925. **(8 marks)**

(Total: 25 marks)

End of the examination