

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

June 2022

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 2021-2022, 29th edition, Meryl Thomas, Oxford University Press, 2021.***
- You must comply with the CILEX Exam Regulations – Online Exams at Accredited Centres/CILEX Exam Regulations – Online Exams with Remote Invigilation.

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SECTION A

Answer at least one question from this section.

1. Explain, with reference to case law, the rules on the burden of proof that apply when trying to establish knowledge and approval of the contents of a Will.

(25 marks)

2. 'No will or codicil, or any part thereof, shall be revoked otherwise as aforesaid, or by another will or codicil executed in manner herein-before required, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is herein-before required to be executed...'
(s20 Wills Act 1837)

Critically assess other ways in which a Will or Codicil may be revoked, using statute and case law to illustrate your answer.

(25 marks)

3. "Section 11 Wills Act 1837, as amended by the Wills (Soldiers and Sailors) Act 1918, removes all Will-making formalities for those who can prove that, at the time at which the disposition is made, they fall within one of two privileged categories"

Critically analyse, with reference to case law and statute, the two privileged categories referred to in this statement and how the Courts deal with testamentary intention and revocation in relation to these categories.

(25 marks)

4. (a) Critically evaluate, with reference to case law, the relationship between the common law test for mental capacity to make a Will and the test of capacity under the Mental Capacity Act 2005.

(17 marks)

- (b) Critically evaluate, with reference to case law and statute, the rule in Parker v Felgate (1883) and analyse whether it is an acceptable departure from the general rule as to when testators must have mental capacity to make a Will.

(8 marks)

(Total: 25 marks)

SECTION B

Answer at least one question from this section.

Question 1

In 2005 Matthew Wright executed a homemade Will, in which he appointed his sister Gail as his executor. Matthew is a widower. Matthew's Will is as follows:

My last Will by Matthew Wright *M·W*

1. This Will revokes all previous Wills made by me.
2. I wish to be buried with my late wife Jayne.
3. I appoint my sister Gail Taylor to be my executor.
4. I give all the tools I own at the date of my death to my dear friend Roger Davies.
5. I give £10,000 to my nephew Keith Taylor.
6. I give everything else to my stepdaughter Barbara Turner.

Dated 15th March 2005 and witnessed by

Signature: *Eddie Jones*

Full name: *EDDIE JONES*

Address: *24 BEECH AVENUE
LONDON
SW2 1RYS*

Occupation: *Builder*

Signature:

Full name: *THOMAS BAKER*

Address: *62 ROSE AVENUE
LONDON
SW2 4LP*

Occupation: *Doctor*

Matthew wrote the Will and asked his neighbour, Eddie, and his friend, Thomas, if they could witness his signature. The day before he executed his Will, Matthew injured his hand playing tennis. As a result, Matthew found it difficult to hold a pen so when he signed at the top of the Will, he signed his initials instead of his normal signature.

Eddie then signed his name as one of the witnesses and passed the Will to Thomas to sign. Thomas printed his full name but forgot to sign. All three completed their part in the presence of each other.

Thomas said he had to rush back to work as he had patients in half an hour. Just as Thomas had left, Matthew noticed that Thomas had only printed his name on the Will and that Thomas had not signed his name. Matthew ran outside to see if he could catch Thomas before he left but Thomas was already in his car. Thomas did not have time to stop and promised Matthew that he would pop by the next week to sign his name.

Time went by and both Matthew and Thomas forgot about the Will and Thomas never got round to signing the Will.

Turn over

Matthew's sister Gail died two years later, in 2007. Matthew died last year.

Explain, with reference to case law and statute, whether Matthew's Will is valid and if so, who would be entitled to apply for grant of representation and the type of grant available to them.

(25 marks)

Question 2

Quincy King married Olivia in 1998. They divorced in 2019 but remained good friends. They have a daughter together called Amy.

Quincy made a Will in 2015 and, immediately after the divorce, Quincy made some amendments to his Will using a black pen. Quincy also left a handwritten note with his Will stating that he would still like Olivia to inherit his estate because he blames himself for the breakdown of their marriage.

£30,000 QK, DJS, JR

1. I give ~~£20,000~~ to my best friend Charles Batten.

£1,000

2. I give ~~£500~~ to St Keith's Church where my daughter was christened.
3. I give my flat in London, which I inherited from my late father, to my brother Xavier.
4. I give my designer watch collection and my car to [REDACTED]
5. I give the residue of my estate to my wife Olivia and my daughter Amy.

The amendment to clause 1 was made at the time Quincy signed his Will and DJS and JR are the initials of his two witnesses.

Quincy died in December 2021. His executor is his brother Xavier. Quincy is survived by Olivia and Amy.

Quincy sold his flat in London in 2020 to raise money to clear the debts he was left with after his divorce. Quincy also had lots of outstanding credit cards and loans, which he took out at the time of the divorce, including a mortgage on the property he was living in at the time of his death. Despite his debts, Quincy's estate is solvent and after the debts have been deducted, his net estate is worth £525,000.

Advise Xavier on:

- (a) the validity of each of the gifts made by Quincy including the effect of the alterations to clauses 1, 2 and 4;

(10 marks)

- (b) the rules relating to the payment of Quincy's debts and liabilities;

(6 marks)

- (c) his liability as executor and what steps he can take to protect himself from liability.

(9 marks)

(Total: 25 marks)

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Question 3

Sabrina Patel died three weeks ago. She was 71 years old and a widow. Sabrina made a validly executed homemade Will in 2017 and appointed her sister Leila as her executor.

The Will includes the following clauses.

1. I give all the items of jewellery I own at the date of my death to my children.
2. I give all the money I have in my ABC Bank account to my grandchildren.
3. I give my house to my husband.
4. I give the residue of my estate to my children.

Leila explains that Sabrina and her husband Ahmed got married in 1970 and that Ahmed died in 2000. They had three children together, Zain, Priya and Darius.

Prior to meeting and marrying Ahmed, Sabrina had another child who she called Fariba. Sabrina gave Fariba away when she was six months old because Sabrina was unable to look after her at the time as she was only young herself. A few years before Sabrina died, she managed to track Fariba down and learnt that Fariba was brought up by her father and that they were both living in Canada with Fariba's husband and their two children. Sabrina did not have a relationship with Fariba before she died.

In addition to Fariba's two children, Sabrina has five other grandchildren. Her son Zain has one child and a stepchild. Her daughter Priya has two children who are adopted. Her son Darius has one child.

After Ahmed died, Sabrina told Leila that she would never get married again. In 1990 she met Hussein and they were in a relationship together when Sabrina died. Despite Hussein proposing to Sabrina on many occasions, Sabrina was certain she did not want to get married even though she called Hussein her husband.

Sabrina left a handwritten letter with her Will explaining the wishes set out in her Will. Throughout the letter she refers to Hussein as her husband.

Explain, with reference to case law and statute, the rules of construction that the Court will use in ascertaining Sabrina's expressed intention in relation to the gifts in her Will.

(25 marks)

Question 4

Ian and Belinda have been in a relationship for over two years. Ian does not have any children of his own but treats Belinda's two adult children Simon and Uma as his own.

Ian has a well-paid job and pays for everything for himself and Belinda. Belinda does not work.

Ian's parents have both died. He is one of three children. His elder sister Yoldana died three years ago of cancer leaving behind her two sons, Will and Nick. Ian's younger brother William is still alive and lives in America with his partner and their two children. Ian also had a half-sister Vicky who was the daughter of his late mother from her first husband.

Before Ian met Belinda, he made a Will leaving the residue of his estate to Yoldana and William and appointing them both as his executors. Just before he died, Ian had arranged a surprise trip for him and Belinda to Paris where he was going to propose to her. Ian had decided he wanted to leave his estate to Belinda and made an appointment to see his solicitor to make a new Will. Prior to the meeting, Ian intentionally destroyed his Will because he wanted to leave everything to Belinda. Ian sadly died a few days before the appointment and trip to Paris.

Ian and Belinda owned the property they lived in called Hill Trees as joint tenants. The property is worth £12m. Ian had savings in his sole name worth £25,000 and he and his brother William owned their late parents' cottage in Wales as tenants in common in equal shares. Ian's share of this property was worth £300,000.

Explain, with reference to case law and statute:

- (a) how Ian's estate will be distributed and to whom;

(15 marks)

- (b) whether Belinda is entitled to make a claim against Ian's estate under the Inheritance (Provision for Family and Dependents) Act 1975 and, if so, what factors the Court will take into account when considering her claim.

(10 marks)

(Total: 25 marks)

End of the examination

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