



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 2017-2018, 25th edition, Meryl Thomas, Oxford University Press, 2017.**
- 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**

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

1. 'A will is, by its very nature, revocable by the testator until his death.'

(Parry and Kerridge: The Law of Succession, 13th edition, 2016)

(a) Critically analyse how the rules for the revocation of a will by destruction have been applied through case law.

(18 marks)

(b) Explain the doctrine of conditional revocation.

(7 marks)

(Total: 25 marks)

2. (a) Critically analyse the relationship between the common law mental capacity test and the Mental Capacity Act 2005 with reference to relevant case law.

(17 marks)

(b) Explain whether the rule in *Parker v Felgate* (1883) is a justifiable departure from the general rule when testators must have mental capacity.

(8 marks)

(Total: 25 marks)

3. Analyse when liability for breach of a devastavit may arise against a personal representative and how they may be relieved or protected from liability.

(25 marks)

4. Critically analyse how the statutory rules concerning alterations to wills have been applied through case law.

(25 marks)

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

Question 1

Nicholas, aged 70, was an entrepreneur in the jewellery business. He died last week from malaria, which he had developed during a business trip to Africa a few months ago.

In 2007, after the death of his wife, Patricia, Nicholas had made a valid will, leaving his entire estate to their 'two children, Alexandra and Francesca'.

Alexandra died in 2016, survived by her husband Simon and their two children, Evie, now aged 19, and Theo, now aged 8.

Francesca, aged 32, is alive and has one son, Calum, aged 2.

In 2012, Nicholas met Maximus. After a whirlwind romance, Nicholas entered into a civil partnership with Maximus. Maximus had a biological son, Dillon, whom Nicholas adopted in 2015. Dillon is aged 12.

Nicholas has no other surviving relatives.

At his death, Nicholas owned a house, which he purchased as a family home for himself, Maximus and Dillon to live in. The house is valued at £950,000 and is owned by Nicholas and Maximus as beneficial joint tenants.

During his trip to Africa, Nicholas had purchased a rare diamond bracelet, valued at £1.2 million. Nicholas kept the bracelet in his safe at home, but the week before he died, he had arranged for private viewings with well-known jewellers, with a view to a closed bid sale the following week.

Maximus is distraught at Nicholas's death and has asked Francesca to sort everything out.

Advise Francesca:

(a) who is entitled to inherit Nicholas's estate and how it will be distributed;
(19 marks)

(b) who is entitled to take out the grant of representation to Nicholas's estate.

(6 marks)

(Total: 25 marks)

Question 2

Valerie, aged 55, a very wealthy businesswoman, died two weeks ago. Valerie left a net estate of £2.5 million and a will, executed four weeks before she died, in which she left her entire estate to a charity. The will appointed her mother, Helen, as her executor.

When Valerie was 16 years old, she had had an illegitimate daughter, Georgina. Helen, Valerie's mother, raised Georgina as her own. Valerie rarely saw Georgina, although she provided a modest sum towards her upkeep when Georgina was a minor.

Valerie was married to Bob for 35 years and they had one son, Rory, who lives in Brighton as an artist. Valerie treated Rory with contempt. She often told Bob that Rory was not in her will, since he was a 'complete waste of space'.

One year ago, Bob discovered that Valerie was having an affair with Ian and he moved out of the family home, which was in Valerie's sole name. He is currently residing in a hostel.

Helen seeks your advice, as she believes the following persons are now considering the possibility of bringing claims against Valerie's estate:

- Bob, Valerie's husband, aged 60, who is unemployed and unable to afford a home. During the entire marriage, Bob stayed at home and cared for the family, so that Valerie could concentrate on building up her business empire.
- Rory, Bob and Valerie's only child, aged 34, who last week had a motorbike accident, which has left him severely disabled and unlikely to be able to work for the rest of his life.
- Georgina, Valerie's illegitimate daughter, aged 39, who receives state benefits to supplement her minimum wages as a part-time cleaner and lives in temporary accommodation with her 6-year-old son, Lucas.
- Ian, Valerie's boyfriend, aged 35, who moved in with Valerie when Bob left. He lived with her rent-free and received a small monthly sum from Valerie to supplement his income. However, these arrangements ceased two months before her death when Ian won £800,000 on the lottery and moved out into a house he purchased.

Advise Helen of the possibility of each of the above making a claim under the Inheritance (Provision for Family and Dependents) Act 1975 (as amended), their chances of success, if any, and, if so, the likely court order in each case.

(25 marks)

Turn over

Question 3

In 2010, Eloise, who was blind, executed her will. The two witnesses to her will were her friends Nathan Collins and Katherine Mann. The will did not contain an attestation clause, and Eloise signed the will 'your loving mother, friend and servant'. The will appeared to be validly executed.

Eloise's will appointed her eldest daughter, Zelda, as executor and contained the following gifts:

- (2) I leave £5,000 out of my National Life bank account to my granddaughter Winifred.
- (3) I leave my beloved 007 to Zelda's husband.
- (4) I leave £10,000 to Nathan Collins.
- (5) I leave my cottage in Cornwall to be sold and the proceeds to be shared equally between the persons whose names may be found on any piece of paper headed "Cornwall Cottage Testamentary Gift" signed by me and left in my desk drawer.
- (6) My residuary estate to such of my two children Yolanda and Zelda as shall survive me and if more than one in equal shares absolutely'.

Eloise died last month and Zelda seeks your advice. Zelda informs you that; Winifred is the only child of Yolanda, who died nine months ago; and that at the date of Eloise's death, her National Life bank account had a balance of £2,000.

Zelda explains that in her mother's business as a vintage car dealer, the staff use numbers as codes to represent the collection of cars and that '007' represents the Lotus car that Eloise had purchased for herself.

She mentions that three years ago she (Zelda) divorced Xander, her first husband to whom she had been married for 20 years. Zelda got married for the second time last year, to Umberto.

Zelda also explains that in Eloise's desk drawer, she has found a piece of paper entitled 'Cornwall Cottage Testamentary Gift', signed by her mother and dated 2009, which provides a list of names of persons who are to receive the proceeds of her Cornwall cottage.

Advise Zelda as to the validity of the will and how she should deal with the gifts in clauses 2-6.

(25 marks)

Question 4

Oliver Croft, a wealthy bachelor, died last month, leaving a duly executed will, which appoints his sister Quinn as executor.

Oliver's estate includes: a country house called 'Brightlands', which is valued at £600,000 and is subject to a mortgage of £100,000; and a luxury motor yacht, 'Morning Cloud', moored in Cornwall, which is valued at £300,000 and is subject to a mortgage of £50,000. Oliver's other remaining assets, including personal possessions, total £200,000. He has debts and liabilities, mostly in the form of credit cards, amounting to £35,000. Quinn believes that the funeral and administration costs will total £15,000.

Oliver's will includes the following gifts:

1. I leave Brightlands to my sister Quinn free of mortgage
2. I leave Morning Cloud to my dear and loyal friend Venus
3. I leave £56,000 to my niece Lindsey
4. I leave £7,000 each to my cousins Sunita and Jonah
5. My residuary estate to my brother Finlay'.

Oliver's will does not include any other provisions relevant to the payment of his debts and liabilities.

Advise Quinn in what order the assets of her brother's estate should be used to pay the debts and liabilities of the estate and the gifts under the will.

(25 marks)

End of Examination Paper

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