



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. Critically analyse the position of 'children', including adult children, making an application for financial provision from the deceased's estate with reference to relevant case law and the changes made by the Inheritance and Trustees' Powers Act 2014.

(25 marks)

2. (a) Critically analyse the surviving spouse's entitlement to the matrimonial home on a total intestacy, including any effect the amendments made by the Inheritance and Trustees' Powers Act 2014 may have.

(18 marks)

- (b) Explain the statutory trust, where there are surviving issue entitled on intestacy.

(7 marks)

(Total: 25 marks)

3. Critically analyse how the courts determine a contrary intention to s.24 Wills Act 1837, and explain the relationship between s.24 and s.34 Wills Act 1837.

(25 marks)

4. Critically analyse the following two exceptions to the statutory formalities required to execute a valid will:

- (a) privileged wills;

(15 marks)

- (b) donatio mortis causa.

(10 marks)

(Total: 25 marks)

Turn over

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

Question 1

In 2010, Alice, aged 65, visited her solicitors and duly executed a simple will, which left all her estate, 'equally between my two loving daughters, Belinda and Catherine'.

In 2015, Alice, then aged 70, suffered a heart attack, which left her progressively weak and in poor health. The following week, Belinda, a spinster, insisted that she would move in with her mother, as Catherine, married with two young sons called Muhammad and Noah, lived 50 miles away.

One month later, Belinda moved into Alice's home to care for her mother. Catherine visited Alice whenever she could and remained close to her mother throughout Alice's life. Alice had set up a trust fund for Muhammad and Noah, when they were born.

Alice became increasingly dependent on Belinda for her daily needs and care, while Belinda became increasingly impatient with her mother. Belinda often angrily reminded Alice of the sacrifice that she had made in caring for her and that she would be homeless when Alice died. On several occasions, Belinda scolded Alice for not doing as she had asked. Eventually, to avoid upsetting Belinda, and for the sake of a quiet life, Alice just went along with whatever Belinda said.

In March 2017, Belinda arranged for a new will writer, Joseph, to visit Alice and draw up a will. During the meeting, Alice told Joseph that this was her last will and she wished to leave the house to Belinda, because of the sacrifices she had made, and her 'small' residuary estate equally between Belinda and Catherine. She also explained that as she had previously set up a trust fund for her 'two grandchildren, Muhammad and Noah', she would not include them in her will.

In April 2017, Joseph returned, and Alice duly executed the will, which contained an express revocation clause. The attestation clause confirmed that the will was read to Alice and that she knew and understood its effect and it was duly executed.

Alice died last month.

Last week, Belinda informed Catherine of the new will. Catherine was shocked, as Belinda had not previously mentioned the will and the house was Alice's only significant asset, valued at £500,000. Joseph's file notes confirm that during both visits Alice was alone, rational and coherent.

Advise Catherine.

(25 marks)

Question 2

In 2000, Desmond Nelson duly executed a homemade will, in which he appointed his brother Finlay as his executor. Desmond's will contains the following gifts:

- '(1) To my wife our family home at Southill Manor, Kempston, Bedfordshire, but if she predeceases me then to my daughter, Hannah.
- (2) To my sister Julie £2,000 Treasury Stock 1.5% 2025 and to my brother Finlay £3,000 Treasury Stock 3% 2047 now standing in my name.
- (3) My Rembrandt painting to my niece Lena.

Mercedes Coupé

- (4) To my brother Finlay my ~~Audi car~~

£10,000

- (5) To my sister Olga [REDACTED]
- (6) My Rembrandt painting on trust for my niece Lena for her life and after her death to her children in equal shares absolutely.
- (7) To my two sons William and Robert my residuary estate equally.'

Desmond died two months ago. Desmond was married to Yasmin at the date of the will, but they subsequently divorced in 2017. Desmond had not remarried. In 2014, Desmond sold all the Treasury Stock in clause (2). All the alterations are in Desmond's handwriting and are in ink. The witnesses do not remember seeing any of the alterations in clause (4) or clause (5) at the time the will was executed.

Last month, Lena and her only child, India, were involved in an aeroplane crash while they were travelling to Singapore. India died instantly. Lena survived the crash, but died a week later.

Robert is Desmond's son from a brief affair he had while he was married to Yasmin.

Advise Finlay as to the validity and effect of each of the gifts in Desmond's will.

(25 marks)

Turn over

Question 3

Sara consults you concerning the administration of her partner George Kenwood's estate. Sara provides you with the following information:

- George died nine months ago as a result of a house fire. George was unmarried and had no children. Some of George's financial records were destroyed in the fire.
- George left a simple valid will, which appointed his brothers, Quentin and Paul, as his executors. He left a £50,000 legacy to Paul's daughter, Mary, who is aged 12, and his residuary estate to Sara.
- Sara was shocked to discover that George had appointed his two brothers as executors. Relations between her and his brothers have always been very difficult. They have never accepted Sara as a family member.
- Paul, who is in financial difficulties, has been dealing with George's estate on his own, since Quentin is currently serving a 12-year prison sentence. Paul has paid off two credit card debts owed by George and insists that these were the only debts. He has refused to take part in any further administration of George's estate and has stopped all forms of communication with Sara.
- Although Sara is unfamiliar with George's financial affairs, she has concerns about the extent of George's debts, particularly as she knows that before his death he took out a loan of £20,000 from a finance company. But she does not know the specific details of the company.

Sara has discovered that a grant of representation has not been taken out for George's estate.

Advise Sara:

- (a) on the steps she could take to ensure that a grant of representation is taken out, so that the administration of George's estate can proceed;

(13 marks)

- (b) on the steps she could take as a personal representative to protect herself from claims made by creditors, if debts materialise at a later date.

(12 marks)

(Total: 25 marks)

Question 4

In 2016, Zachary Cox made a homemade will, which contained the following:

I appoint my dear friend Umberto as my Executor

1. My residuary estate to my niece Jane Murphy

Signed by me **Zachary Cox**

Umberto Parsons

Quinta Staines'

Zachary died two months ago.

At the time the will was made, Zachary, Quinta and Umberto were in Zachary's ground-floor bedroom. Zachary was suffering from hand tremors, caused by a relapse of multiple sclerosis, which made it difficult for him to write or to hold onto things. As Zachary was writing out his will, he dropped the pen several times. Umberto, who could not bear to watch Zachary struggling any longer, rushed to his aid and, without any discussion, picked up the pen and wrote Zachary's full name. Thereafter, Quinta left the room and Umberto signed his own name. Zachary felt that he needed fresh air, so he walked through the open patio doors and sat outside in the garden. Quinta returned, picked up the will and signed it.

Zachary had two surviving nieces, one called Jane Anne Murphy and the other called Natalie Jane Murphy. Two days before Zachary wrote his will, Zachary argued with Jane Anne Murphy and after that they had no contact with each other. Natalie Jane Murphy, who was always very close to Zachary, states that Zachary told her, a few weeks before he died, that he had left her (Natalie Jane Murphy) a 'significant gift' in his will.

Advise Umberto:

- (a) whether the execution of Zachary's will is valid; **(13 marks)**
- (b) whether the gift in Clause 1 would be valid if the will itself was held to be valid. **(12 marks)**

[NOTE: Do not discuss any capacity issues concerning Zachary in your answers]

(Total: 25 marks)

End of Examination Paper

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