



## THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

### UNIT 8 – LAW OF WILLS & SUCCESSION\*

**Time allowed: 1 hour and 30 minutes 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.
- **This question paper is divided into TWO sections. You must answer ALL the questions from Section A. There are three scenarios in Section B. You must answer the questions relating to ONE of the scenarios from Section B ONLY.**
- Write in full sentences – a yes or no answer will earn no marks.
- 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 **CILEx LEVEL 3 PROFESSIONAL QUALIFICATIONS** and **LEVEL 3 LEGAL SERVICES KNOWLEDGE QUALIFICATIONS**

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## SECTION A

### (Answer ALL questions in Section A)

1. Identify **four** reasons why a person might make a Will. **(4 marks)**
  
2. Identify **three** different ways in which property can pass without a formal Will. **(3 marks)**
  
3. Explain the benefit to personal representatives of including a receipts clause in a Will. **(1 mark)**
  
4. Describe the circumstances in which a legacy will abate. **(3 marks)**
  
5. Explain the effects of divorce on a Will. **(4 marks)**
  
6. Explain how a surviving spouse can exercise a right to continue to live in a house solely owned by their spouse who has died intestate. **(2 marks)**
  
7. Explain how an executor may renounce their entitlement to act as an executor. **(3 marks)**
  
8. Identify which grant of representation should be applied for, where there is one executor able and willing to act. **(1 mark)**
  
9. Explain the circumstances in which the Probate Registry may require an affidavit of due execution. **(5 marks)**
  
10. Identify the specific requirements for a surviving cohabitee to be able to make a claim under the Inheritance (Provision for Family and Dependants) Act (IPFDA) 1975. **(4 marks)**

**(Total Marks for Section A: 30 marks)**

**Turn over**

## SECTION B

**(There are three scenarios in Section B. Answer the questions relating to ONE of the scenarios ONLY)**

### Scenario 1

Ben and Zara married in 2010.

Ben died of a heart attack in April 2019. He had made a Will in 2009, prior to getting married to Zara. At the time of his death, Ben and Zara had three children: Peter (aged 6), Harry (aged 4), and Kate (aged 2).

When Ben died, he had the following assets:

- £300,000 in investments which he inherited from his parents;
- a bakery shop worth £250,000, held as a sole trader;
- a free-standing bread-slicing machine;
- a delivery van used for the bakery business;
- a coin collection worth £20,000;
- two sports cars, each worth in the region of £25,000.

Ben and Zara also owned a house in their joint names worth £400,000. They had no other joint assets.

Under the terms of his Will, Ben left the following legacies:

- 'My business to my brother Wayne';
- 'My coin collection to Zara'.

He then provided for the residue of his estate to be divided as follows:

- 75% to Zara;
- 15% to various cancer charities (as both his parents had died of the disease);
- 10% to any children that he might have, upon them reaching the age of 25.

In the event that Zara predeceased Ben, he left Zara's share to any children that he might have, upon them attaining the age of 25.

Under the Will, Ben named Zara and his friend Tasneem as executors.

On looking through Ben's papers, Zara found the Will, although it was damaged. Zara believes that this was done accidentally when they were moving house, and the Will got torn when they were packing and unpacking papers and documents.

## Scenario 1 Questions

1. Explain how Ben's Will may have remained valid after Ben married Zara.

**(6 marks)**

2. (a) Explain the rules relating to revocation of Wills by destruction.

**(6 marks)**

- (b) Applying those rules, explain whether you think that the Will made by Ben was revoked.

**(4 marks)**

**(Total: 10 marks)**

**Assume, for the rest of the Scenario 1 questions, that Ben's Will has not been revoked by destruction and remained valid at the date of his death.**

3. (a) Explain what type of legacy the gift of the coin collection to Zara constitutes.

**(3 marks)**

- (b) Advise Wayne which assets he would be entitled to from Ben's estate.

**(3 marks)**

**(Total: 6 marks)**

4. Explain which administrative clauses would make the following gifts made by Ben easier to deal with:

- (a) the gift of his business to Wayne;

**(4 marks)**

- (b) the residuary gifts to the cancer charities.

**(4 marks)**

**(Total: 8 marks)**

**(Total Marks for Scenario 1: 30 marks)**

**Turn over**

## **Scenario 2**

Afolabi married Iris in September 2019. This was his second marriage, following the death of his first wife several years earlier.

Afolabi had daughters from his first marriage: Nadine, who is aged 22, and Vana, aged 15. He had no children from his second marriage.

Afolabi had recently been unwell and this resulted in his being admitted to hospital. He was suffering from heart problems and kidney failure and was on a number of drugs to manage the pain. He got tired easily as a result.

While Afolabi was in hospital, he asked his friend, Oliver, to ensure that everything was in order. He told Oliver what he had and asked Oliver to write a Will for him, which Oliver did.

In the Will, Afolabi gave his designer watch to Nadine and then one half of his estate to Iris and the other half of his estate to be divided equally between his two daughters. In addition, he named Oliver as executor.

The Will was signed and dated by Afolabi in the presence of Oliver and Oliver's wife, who each signed, in Afolabi's presence, as witnesses.

As Iris does not drive, Afolabi told Nadine that if he died, he would like her to have his car and he gave her the car keys.

Afolabi died two months later.

## Scenario 2 Questions

1. Explain the following tests for capacity to make a Will:

(a) the test in Banks v Goodfellow (1870);

**(3 marks)**

(b) the test set out in the Mental Capacity Act 2005.

**(4 marks)**

**(Total: 7 marks)**

2. Explain whether or not you believe Afolabi had testamentary capacity at the time he made his Will, using the two tests identified in Question 1 above.

**(5 marks)**

**Assume, for the rest of the Scenario 2 questions, that Afolabi had testamentary capacity at the time he made his Will.**

3. (a) Briefly set out the rules relating to the formal requirements to make a Will.

**(5 marks)**

(b) Explain why the Will written for Afolabi by Oliver is valid, taking those rules into account.

**(4 marks)**

**(Total: 9 marks)**

4. (a) Discuss whether the gift of the car to Nadine is valid.

**(5 marks)**

(b) Advise Nadine what the position would have been, if Afolabi no longer owned the watch when he died.

**(4 marks)**

**(Total: 9 marks)**

**(Total Marks for Scenario 2: 30 marks)**

**Turn over**

### **Scenario 3**

James was 33 years old when he died recently.

His parents were Robert, who died in 2018, and Daphne, who died five years ago. After Daphne died, Robert met Gwyneth, who already had a 3-year-old daughter, Carys. Robert and Gwyneth got married in 2017.

In addition to his stepsister, Carys, James had two brothers, Mark (aged 30) and Steve (aged 23), together with a sister, Ellie (aged 16).

James had been in a relationship with Lucy (aged 32) for three years; they lived together, but were not married. They did not have any children.

Lucy had always got on very well with Ellie so, after Robert's death, Lucy had suggested that Ellie could live with her and James, as Gwyneth wanted to move back to Wales. Ellie found it difficult to live with her new stepmother, Gwyneth, who doted on Carys. Ellie didn't want to have to move school and try to make new friends either.

James's estate consists of the following:

- current account containing £400 held jointly with Lucy;
- a savings account containing £200,000;
- a car worth £7,000;
- a house owned in his sole name worth £450,000.

James and Lucy had considered making Wills, but had never actually done so, as they felt they were too young.

Last month, James was involved in a car crash and he died shortly after.

Lucy works part-time as a shop assistant, and does not have any savings of her own. She has continued to look after Ellie, who still lives with Lucy in James's house.



### Scenario 3 Questions

1. Explain how James's estate will be dealt with and who will inherit his assets.

**(8 marks)**

2. Explain:

- (a) who can be the personal representatives of James's estate;

**(4 marks)**

- (b) what powers, if any, the personal representatives have, in order to deal with James's estate before the grant of representation is issued.

**(2 marks)**

**(Total: 6 marks)**

**Assume that Lucy makes a successful claim for reasonable financial provision against James's estate under the Inheritance (Provision for Family and Dependents) Act 1975.**

3. (a) Explain what would constitute 'reasonable financial provision' for Lucy.

**(3 marks)**

- (b) Explain the factors that the court would take into account, in deciding what would be reasonable financial provision for Lucy.

**(10 marks)**

**(Total: 13 marks)**

4. Explain how the entitlement to the estate would have changed, if Lucy and James had instead been married without children.

**(3 marks)**

**(Total Marks for Scenario 3: 30 marks)**

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