



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 2019-2020, 27th edition, Meryl Thomas, Oxford University Press, 2019.**
- 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**

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

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

(17 marks)

- (b) Explain 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)

2. Critically discuss, by analysis of relevant case law and statute, the ways in which the courts have applied the rules for the revocation of a Will by destruction.

(25 marks)

3. Analyse and discuss, with reference to case law, the ways in which the formalities of s.9 Wills Act 1837 may be avoided by the doctrines of:

- (a) *donatio mortis causa*;

(16 marks)

- (b) incorporation by reference.

(9 marks)

(Total: 25 marks)

4. 'The surviving spouse or civil partner has the primary rights of succession on an intestacy.'

(*Borkowski's Law of Succession*, 3rd edition)

Critically analyse the rules that apply to a surviving spouse or civil partner on intestacy in the light of this statement, using statute and case law to illustrate your answer.

(25 marks)

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

Question 1

Amelia Armstrong died in April 2020, having validly executed her Will in 2012. Her only child died some years ago. Amelia's granddaughter Diana is her executrix. Amelia's Will includes the following gifts:

1. I give ^{£20,000 AA} ~~£2,000~~ to The English Heritage Trust (charity no. 1140351).
2. I give ^{£10,000} ~~£1,000~~ to Kempston Hospital with many thanks for their years of care.
3. I give ^{£5,000 AA} [REDACTED] to my old friend Eliza.
4. I give my holiday home in the Lake District to my old friend Farouch.
5. I give the residue of my estate to be divided equally between such of my grandchildren Ishram, Diana, Geesha and Helena who shall survive me and if more than one in equal shares.'

Diana confirms that the amendments to gifts 1, 2 and 3 in the Will are made in ink and are in Amelia's handwriting.

Amelia's holiday home in the Lake District is currently worth around £500,000. Farouch died last year.

Ishram has not been seen or heard from for the last seven years, since he moved to Australia with the intention of changing his name and becoming a gold miner.

Helena was killed in a car crash last year. She had a surviving son, Jahil, who is now 20 years old.

Advise Diana on:

- (a) the effect of the alterations to gifts 1, 2 and 3 in Amelia's Will;
(10 marks)
 - (b) the steps Diana should take to protect herself before distributing the estate;
(9 marks)
 - (c) the division of the residuary estate.
(6 marks)
- (Total: 25 marks)**

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Question 2

Karen died last month, leaving a large estate. In her Will, made in 2015, she appointed 'my son Leo as the executor of my estate'.

Karen's Will gives one pecuniary legacy to a charity and then leaves the residue of her estate on trust for her partner Mike, for life and 'after his death in equal shares for such of my children as shall survive me'.

The Will contains no administrative provisions.

Karen had three natural children: Leo, Nell and Oliver.

Leo (aged 25) was raised and adopted by Karen's older brother Quinn, because at the time of his birth, Karen was a drug addict and was unable to cope with a baby.

Nell (aged 21) has recently graduated from university but is struggling to find a job. She has asked Leo to advance her £10,000 from the estate in order to start an online retail business.

Oliver (aged 15) is still at school, studying for his GCSEs. He lives with Mike (aged 50) at the family home.

Leo wishes to act as executor and has raised a number of concerns regarding Karen's estate.

Advise Leo on:

- how and when his authority to act in respect of Karen's estate arises;
- how Nell's request should be dealt with;
- the respective positions of himself, Oliver and Mike as beneficiaries of the estate.

(25 marks)

Question 3

Pasha Moldova died recently, having made a valid Will in which he appointed his daughter Reeba as his executrix. The Will includes the following gifts:

3. I give £36,000 to my cousin Scott.
4. I give £12,000 each to my nephews William and Xander.
5. I give my house The Carrick View, Falmouth, to my daughter Reeba.
6. I give my holiday home in Derwent Water free of mortgage to my nephew William.
7. I give the residue of my estate to my daughter Reeba.'

Reeba informs you that she has collected together details of her father's estate.

The house in Falmouth is in need of modernisation and has been valued for probate at £300,000. It has a mortgage secured on it of £60,000.

The holiday house in Derwent Water has a mortgage secured on it of £40,000 and has been valued for probate at £100,000.

The value of Pasha's other assets amounts to a total of £100,000. He has credit card debts and other liabilities amounting to £50,000.

Reeba says that she has already paid for the funeral from her own money and does not want to be compensated for this from the estate. Pasha's Will does not include any other provisions relevant to the payment of his debts and liabilities.

Advise Reeba as to the order in which Pasha's assets should be used to cover the liabilities of the estate.

(25 marks)

Turn over

Question 4

Tina, a successful interior designer, has recently died, aged 75. In 2012, after the death of her civil partner, Tina had made a valid Will, leaving her entire estate to her children, Yvonne and Zac.

Yvonne died in 2016 and was survived by her children, Ursula (now aged 21 years) and Victor (now aged 10 years).

In 2014, Tina had met Bernard, an up-and-coming designer (now aged 50). They married in 2015. Bernard had a daughter, Cerys (now aged 12), who Tina adopted in 2015. Tina has no other surviving relatives.

At her death, Tina owned a house, which she had purchased as a family home for herself, Bernard and Cerys to live in. The house is valued at £1,000,000 and is owned by Tina and Bernard as beneficial joint tenants.

Tina was a prolific art collector and, some years before her death, she had purchased an original oil painting by an important artist. It was recently valued at £800,000. A week before she died, Tina had instructed a local gallery to sell the painting in order to raise funds for an animal shelter she supported. The gallery had arranged for various viewings for prospective buyers and the painting was due to go to a 'sealed bids' auction sale the following week. Tina was intending to then donate the proceeds to the animal shelter.

Bernard is devastated by the loss of Tina and asks for your help in sorting everything out.

Advise Bernard:

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

(19 marks)

(b) who should take out the grant of representation to Tina's estate.

(6 marks)

(Total: 25 marks)

End of Examination Paper

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