

THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

UNIT 8 – LAW OF WILLS AND 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.

SECTION A

(Answer ALL questions in Section A)

1. Identify **five** reasons why a person would make a Will. *(5 marks)*

2. State **four** circumstances in which a person would be deemed unable to make a decision for themselves under s.3(1) of the Mental Capacity Act 2005. *(4 marks)*

3. State the maximum number of executors who can be named in a Grant of Probate. *(1 mark)*

4. Describe the term 'ademption' in relation to legacies. *(3 marks)*

5. Describe the effect that a later marriage or civil partnership has on a Will. *(2 marks)*

6. Arthur, a widower, had no issue and died intestate. State **four** categories of persons entitled to inherit his estate. *(4 marks)*

7. Describe the rules found in s.31 of the Trustee Act 1925. *(4 marks)*

8. Explain the circumstances in which a grant of 'Letters of Administration with Will annexed' would be required. *(3 marks)*

9. Describe when an affidavit of due execution would be required. *(3 marks)*

10. State the time limit for making a claim under the Inheritance (Provision for Family and Dependents) Act 1975. *(1 mark)*

(Total Marks for Section A: 30 marks)

SECTION B

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

Scenario 1

In March 2018, Olivia Pennyman, a professional musician, researched Wills on the internet and then typed and printed off her own Will. Olivia then asked two friends in her orchestra to act as witnesses to her Will, which reads as follows:

1. I Olivia Pennyman declare that this is my last Will.
2. I do not intend that this Will is revoked by any future marriage.
3. If I am not married then my estate is to pass to my niece Charlotte Richards.

Signed

Olivia Pennyman

Dated 17 March 2018

Witnessed by *Julie Smith*
Roger Smith

During the summer of 2021, Olivia met Sarah and, after a whirlwind romance, they were married on 17 August 2021. The wedding was a very modest affair, as Olivia's only relative was her son Ethan (aged 19 years) from her previous marriage.

Immediately after the wedding, Sarah sold her modest flat and moved into Olivia's three-bedroomed stone cottage, called 'The Red House'.

Unexpectedly, Olivia died from cancer on 15 December 2021. She left an estate worth £536,000. The estate comprised:

- 'The Red House' valued at: £425,000
- musical instruments: £6,000
- jewellery: £900
- other personal possessions: £4,100
- jointly held bank account with Sarah: £100,000.

At the date of Olivia's sudden death, 'The Red House' was still in Olivia's sole name. Sarah has decided to sell 'The Red House' and buy another flat. For sentimental reasons, she would like to keep Olivia's jewellery collection, which she had often admired.

Turn over

Scenario 1 Questions

1. In relation to Olivia's Will:

(a) explain why the Will has been revoked;

(3 marks)

(b) explain what Olivia was trying to achieve by clause 2 and why it is not effective, using **one** example from case law to illustrate your answer.

(7 marks)

(Total: 10 marks)

2. (a) Explain what Sarah is entitled to receive from the estate and why.

(10 marks)

(b) Describe how the rest of the estate will be distributed.

(4 marks)

(Total: 14 marks)

3. (a) Explain who is entitled to apply for the grant of 'Letters of Administration'.

(3 marks)

The administration of the estate is proceeding well, but the grant of 'Letters of Administration' has not yet been issued. A buyer has been found for 'The Red House' and the personal representative wishes to complete the sale as quickly as possible.

(b) Describe why the personal representative cannot sell the house yet.

(3 marks)

(Total: 6 marks)

(Total Marks for Scenario 1: 30 marks)

Scenario 2

Ethel Owens made a Will eight months after a diagnosis of dementia. She bought a 'Write your Own Will Pack' from her local newsagents and wrote out her Will. She then asked her two neighbours to act as witnesses. There are no doubts regarding the execution of the Will, which reads as follows:

1. This is my last Will and testament.
2. I appoint as my executor and trustee my friend Mildred Gordon.
3. I give all my estate to the Castlefield Cattery.

Signed by the said

Ethel Owens

In our presence and then by us both in hers

Dated 17 December 2021

Witnessed by *Jacqueline Hodson*

Arthur Hodson

Ethel told Mildred that she had fallen out with her nephew Jonathan and her niece Rachel, as they did not visit Ethel over Christmas. Ethel said that her sister Gwendoline was not to have anything either, as Gwendoline had forgotten her recent birthday. Ethel told Mildred that she was worth about £800,000. Ethel said that she loved cats and she wanted the local cat rescue centre to inherit everything on her death.

Ethel died on 31 December 2021, leaving an estate valued at £900,000.

When they learned the contents of Ethel's Will, her only surviving relatives, Jonathan, Rachel and Gwendoline, were unhappy.

Ethel's nephew Jonathan has five children and has recently lost his job as an airline pilot.

Ethel had paid the monthly instalments on her niece Rachel's car loan for the past two years. Rachel is worried that she will not be able to afford to keep the car, which she relies on for work.

Ethel's sister Gwendoline has always relied on Ethel to pay for the cost of her carers, who come in to look after her twice a day. Gwendoline suffers from arthritis, which means she is physically unable to perform basic tasks like dressing and bathing.

Turn over

Scenario 2 Questions

1. In order to make a valid Will, a testator must have mental capacity. Explain whether Ethel had the necessary mental capacity under:

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

(7 marks)

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

(8 marks)

(Total: 15 marks)

2. Assume, for the purposes of this question only, that Ethel's Will has now been admitted to Probate.

(a) Explain the standard of provision the court will apply and the factors that the court is likely to take into account in each case.

(5 marks)

(b) Explain whether each of Jonathan, Rachel and Gwendoline may be able to make a successful claim for financial provision against Ethel's estate.

(10 marks)

(Total: 15 marks)

(Total Marks for Scenario 2: 30 marks)

Scenario 3

Saad Afzal died suddenly from a heart attack on 15 May 2021. He had thought about making a Will for 40 years, but had never got round to putting his wishes in writing.

Saad had been married to Kiran for over 40 years, during which time the couple had built up a successful painting and decorating business. Saad and Kiran had a son, Jacob Afzal, and a daughter, Riya Afzal, both of whom are settled and live close by with their young families.

In the last year of his life, Saad had transferred the business to his children, but he still helped out whenever they were busy. He kept the van used in the business for travelling to work in his paint-splattered overalls.

At the time of his death, Saad's assets and liabilities were as follows:

Assets

House called 'Raj Rise' valued at	£450,000
Monies held in sole name in MoneyWise Bank current account	£2,300
Household contents	£3,000
Van used in the business	£6,500
Second-hand private motor vehicle	<u>£1,300</u>
	£463,100

Liabilities

Mortgage on 'Raj Rise'	£60,000
Funeral costs	£4,600
Mobile phone bill	£87
Credit card bill	<u>£100</u>
	£64,787

Net estate: £463,100 - £64,787 = £398,313

The couple also had jointly owned bank accounts with MoneyWise Bank, with credit balances totalling £64,800. All the bank accounts were opened over 20 years ago.

The mortgage on Saad's house was taken out 12 years ago, when he had a conservatory built on the back of the kitchen. Since Kiran had never worked, the house was in Saad's name only, although the couple had always regarded it as their family home. Kiran would like to remain living in the family home, as it holds so many happy memories for her.

Turn over

Scenario 3 Questions

1. Describe the meaning of the term 'intestate' and the effect of s.33 Administration of Estates Act 1925.

(5 marks)

2. Describe the responsibilities of the administrator of an estate.

(5 marks)

3. Explain who is entitled to apply for a grant of 'Letters of Administration' to Saad's estate.

(5 marks)

4. Identify which assets will pass to Kiran under the intestacy rules.

(7 marks)

5. Explain how Kiran can take the house as part of her entitlement in the estate.

(8 marks)

(Total Marks for Scenario 3: 30 marks)

End of Examination Paper