

27 January 2022
Level 6
LAW OF WILLS AND SUCCESSION
Subject Code L6-14

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 2021-2022, 29th edition, Meryl Thomas, Oxford University Press, 2021.**
- 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 at least one question from this section)

1. Describe, with reference to statute and case law:

(a) the formal requirements that must be complied with in order to make a valid Will or Codicil, including any other factors that could affect the validity of a testamentary document;

(19 marks)

(b) the rules relating to testamentary capacity as set out in, but not limited to, the Mental Capacity Act 2005.

(6 marks)

(Total: 25 marks)

2. Explain, with reference to statute and case law:

(a) the duties and powers of personal representatives in the administration of an estate;

(13 marks)

(b) the liability of personal representatives and what steps they can take to protect themselves from liability.

(12 marks)

(Total: 25 marks)

3. 'The surviving spouse or civil partner will automatically inherit the estate in the absence of a Will.'

Critically assess the above statement, using statute and case law to illustrate your answer.

(25 marks)

4. Critically analyse, with reference to statute and case law, the ways in which a Will can be revoked.

(25 marks)

SECTION B

(Answer at least one question from this section)

Question 1

Faye Parsons died in August 2021, having validly executed her Will in 2009.

Faye appointed her husband, Raymond, as her sole executor. Raymond died in 2011. Faye's Will does not appoint any replacement executors.

Faye's Will includes the following clauses:

1. I give my property at 31 High Trees Road London SE14 2LB to my daughter Yvonne free of all mortgages or charges secured thereon.
2. I give my property at Apple Tree Cottage Conwy LL32 5DF in Wales to my daughter Elizabeth.
3. I give my wedding and engagement rings to my dear friend Mary.

£20,000

4. I give the sum of ~~£10,000~~ to my brother William.
5. I give the remainder of my estate after payment of all my debts, liabilities, funeral and testamentary expenses to my husband Raymond but if he dies before me then to my children Yvonne and Elizabeth absolutely.
6. I declare that s.33 of the Wills Act 1837 will apply to the provisions of my Will.

Yvonne seeks your advice on her mother's Will. She explained that when her mother became ill, she reviewed her Will and decided to increase the legacy to her brother William from £10,000 to £20,000. In Yvonne's presence, Faye crossed out the number £10,000 and wrote £20,000 above it using a black pen. She did not initial the amendment. Faye asked Yvonne to make sure that William receives £20,000. William has survived Faye.

Yvonne also confirmed that shortly after her mother amended the gift to William, Yvonne's sister Elizabeth died. Elizabeth left a daughter Nina, now aged 38.

When Faye went into a care home, she sadly lost her engagement ring and, despite Yvonne's best endeavours, the ring was never found. Mary has survived Faye.

Faye's assets at the time of her death included the property she owned in Wales in her sole name, valued at £90,000 with no mortgage. It is currently rented to a couple who have been living in the property for almost 12 months.

Turn over

31 High Trees was also in Faye's sole name. It is valued at £350,000 but there is equity release secured on the property of £50,000. Faye was selling the property before she died and had exchanged contracts on the sale but had not yet completed.

In addition to funeral expenses, Faye left unpaid care home fees of £12,000 and her estate is required to repay an overpayment of her widow's pension of £1,800. Faye's estate is not subject to Inheritance Tax.

Advise Yvonne on:

(a) who is entitled to apply for grant of representation to Faye's estate and the type of grant available to them;

(5 marks)

(b) the validity of each of the gifts referred to in Faye's Will;

(13 marks)

(c) the rules relating to the payment of Faye's debts and liabilities.

(7 marks)

(Total: 25 marks)

Question 2

In 2019, George Scott instructed his solicitor to draw up a Will for him, appointing his son Brian as his executor and trustee. George died last month.

George's Will included the following provisions:

1. I give the sum of £10,000 to each of my grandchildren alive at the date of my death.
2. I give my stamp collection to my grandson James Scott.
3. I give my apartment at 54 Queensway London to my son.
4. I give the residue of my estate to my wife.
5. I have not made any provision in my Will for my son Peter Scott because I have had no contact with him since his mother died.

Peter is one of George's sons from his marriage to Isla. Isla died in 2009 and, shortly after this, Peter moved to Australia with his family. George has lost contact with Peter.

George and Isla's other son is Brian. George and Brian see each other regularly.

Brian has two children, Katherine and Oliver, and a stepson, Harry. George was not fond of Harry, because he was always getting into trouble. Brian and his wife adopted Oliver when he was four years old and he goes by his middle name of James Scott. All his family and friends know this.

George did not remarry after Isla died. George met Tina four years after Isla died and they lived together as husband and wife. George always referred to Tina as 'my wife', even though they were not married. Tina survived George and she does not have any children.

The Will was prepared by a solicitor who attended George in person to take the instructions for his Will. The solicitor's file contains a letter from George, stating that he wishes to leave 54 Queensway to Brian. There is also a letter written by George explaining the reasons for not leaving anything to Peter.

Explain, with reference to case law and statute, the rules of construction that the court will use in ascertaining George's expressed intention in relation to the gifts in his Will.

(25 marks)

Turn over

Question 3

Ursula Webb died last month and her daughter Vickie has come to see you.

Ursula was divorced at the date of her death and her ex-husband, Vickie's father, remarried shortly after the divorce. Ursula left a validly executed Will appointing her son Christopher and his wife Louise (who live independently in Australia and without any financial support from Ursula) as executors and leaving the whole of her estate worth £1.2 million to them to share equally.

Ursula was born in Australia, but she had been living in England for over 50 years.

Vickie explained that she and Ursula fell out when Vickie was 21 years old. At that time, Vickie had a child out of wedlock and Ursula did not approve of this. Ursula disowned Vickie and her child, and they have not seen each other since. Sadly, Vickie's son, Xander, has Down's Syndrome and needs 24-hour care. Vickie is Xander's sole carer and she has had to give up work to care for him. Vickie receives state benefits and lives in a council house. Vickie said that, if she had been left any money by Ursula, Vickie would have used it buy a home for herself and Xander.

The last contact Vickie had with Ursula was in 2016, when Vickie invited Ursula to Xander's 16th birthday party. Ursula rejected the invitation and wrote a letter to Vickie, saying: 'You are no longer my daughter'.

Advise Vickie, with reference to case law and statute, whether she can bring a claim against Ursula's estate pursuant to the Inheritance (Provision for Family and Dependents) Act 1975, explaining your reasons why and the factors that the court will consider.

(25 marks)

Question 4

Azeem comes to see you to discuss the estate of his uncle, Hamid, who died last month. Hamid had appointed Azeem as sole executor of his Will.

Hamid left various gifts in his Will to his family and the residue of his estate to Azeem. Hamid was a widower with no children or financial dependants.

The gifts are as follows:

1. Hamid had £20,000 of Premium Bonds at the date of his death which he left in his Will to his nephew Zain. Azeem has found a note among Hamid's papers dated two years ago, which states that Hamid loaned £10,000 to Zain interest-free. The note had been signed and dated by Hamid and Zain. Before he died, Hamid had confirmed to Azeem that the loan had not been repaid.
2. There is also a gift of £16,000 to Hamid's brother Saeed. Saeed was declared bankrupt three months ago. Saeed has mentioned to Azeem that he will use the legacy to buy himself a brand new car.
3. Azeem explained that Hamid owned a share of a freehold commercial property jointly with his sister Dipti. Hamid and Dipti inherited the property from their parents. A copy of the title deeds confirms that the property was held by Hamid and Dipti as beneficial joint tenants. Hamid has left his share of the property to Azeem in his Will.
4. Hamid also left £100,000 to be divided equally between Azeem's children alive at the date of Hamid's death upon attaining the age of 21 years. Azeem had four children at the date when Hamid died. Two of his children are over 21 and two are under that age. His wife is pregnant with their fifth child, who is due in a couple of months.

Advise Azeem on how he should deal with each of the gifts made in Hamid's Will.

(25 marks)

End of Examination Paper

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