

CASE STUDY MATERIALS

January 2017
Level 6
PROBATE PRACTICE
Subject Code L6-21



THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

UNIT 21 – PROBATE PRACTICE*

CASE STUDY MATERIALS

Information for Candidates on Using the Case Study Materials

- This document contains the case study materials for your examination.
- In the examination, you will be presented with a set of questions which will relate to these case study materials. You will be required to answer **all** the questions on the examination paper.
- You should familiarise yourself with these case study materials prior to the examination, taking time to consider the themes raised in the materials.
- You should take the opportunity to discuss these materials with your tutor/s either face-to-face or electronically.
- It is recommended that you consider the way in which your knowledge and understanding relate to these case study materials.

Instructions to Candidates Before the Examination

- You will be provided with a clean copy of the case study materials in the examination.
- You are **NOT** permitted to take your own copy of the case study materials or any other materials including notes or text books except a Statute Book, where permitted, into the examination.
- In the examination, candidates must comply with the CILEx Examination Regulations.

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* This unit is a component of the following CILEx qualifications: **LEVEL 6 CERTIFICATE IN LAW, LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW AND PRACTICE** and the **LEVEL 6 DIPLOMA IN LEGAL PRACTICE**

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ADVANCE INSTRUCTIONS TO CANDIDATES

You are a trainee lawyer and work in the Private Client Department of Kempstons, The Manor House, Bedford, MK42 7AB (DX BD345987).

Your supervising Chartered Legal Executive and head of department is Marcus Wu.

You arrive at work to find the following awaiting your attention:

- DOCUMENT 1** Letter from Pearl Harris dated 30 December 2016 concerning Roseanne Black deceased and David Black deceased
- DOCUMENT 2** Roseanne Black's Will dated 3 June 2010
- DOCUMENT 3** David Black's Will dated 23 September 2015
- DOCUMENT 4** Email from Marcus Wu dated 30 December 2016 re: Vera Kirkwood deceased
- DOCUMENT 5** List of Assets and Liabilities of Vera Kirkwood deceased
- DOCUMENT 6** Letter from Yolanda West dated 30 December 2016 concerning her great-aunt, Isabelle West
- DOCUMENT 7** Isabelle West's Will dated 1 November 2016
- DOCUMENT 8** Email from Marcus Wu dated 30 December 2016 re: Frank Fisher deceased

DOCUMENT 1

LETTER FROM PEARL HARRIS

30 December 2016

Dear Mr Wu

My friend, Roseanne Black, was killed in a car accident on 15 December 2016. Roseanne's husband, David, had a serious drink problem, and they separated four years ago. They had not yet taken any steps to obtain a divorce. David was 20 years older than Roseanne, and they had no children. David had been married before. His first wife died in 1985, leaving everything to him.

Roseanne made a will in 2010. She intended to make a new Will following the separation but failed to do so.

David committed suicide on 12 December 2016. His brother, Tom, is his closest surviving relative. Tom has given me a copy of David's Will, made in 2015, which leaves everything to Roseanne provided she survives him by 28 days and, if she does not, to Tom's two children, Sonja and Natalia.

Tom says David was living in rented accommodation and had about £800,000 in various bank accounts in his sole name. He had nothing else of any value and does not appear to have had any major debts.

Roseanne had investments and money in various bank accounts – about £700,000 in all. After the separation, Roseanne and David sold their house and split the proceeds. Roseanne bought a flat for £300,000 with her share. I asked the local estate agent what it is worth now and he said he would market it at £450,000.

Roseanne's personal possessions, including her jewellery, are worth about £30,000. As far as I know, there is nothing else. She will probably have a credit card bill but I'm not expecting it to be very large.

GardenAid is an incorporated registered charity that Roseanne was very fond of.

I know Roseanne altered her Will last year to give Magenta, (my daughter and Roseanne's goddaughter), a legacy. We discussed the fact that it might not be legally effective and she said she would get some professional advice. I know that she did not get round to it.

Tom and I would like to come and see you for guidance, as we cannot work out how to deal with the two Wills.

Tom is particularly concerned about the fact that his two children are only 16 and 14 years old.

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I am worried about the fact that all of Roseanne's jewellery was stolen in 2006 when the house was burgled. She used the insurance money (£30,000) to buy replacement items (which include a three-stone diamond ring costing £9,000).

Tom says you will want to know about lifetime gifts in case there is an inheritance tax liability.

David made no lifetime gifts other than small ones at Christmas and birthdays. His first wife made no significant lifetime gifts either.

Roseanne gave Magenta £31,000 in May 2013. This is the only gift she made other than small gifts below £250 and an annual donation to GardenAid of £10,000 a year. She started those payments in 2006, so has paid £100,000 in total to that charity.

Once we have received the funeral account and gathered details of any other assets and liabilities, we would like to arrange an appointment with you to discuss the next steps.

Yours sincerely

Pearl Harris

DOCUMENT 2

THIS IS THE LAST WILL AND TESTAMENT of me Roseanne Amanda Black of 3A, Southmead Way, Bristol.

1. I REVOKE all former Wills.
2. I APPOINT my husband, David Black, and my friend, Pearl Harris of 3 Park Crescent, Birmingham, as my executors (my Trustees).
3. I GIVE my three-stone diamond engagement ring to my goddaughter Magenta Harris of 3 Park Crescent, Birmingham.
4. If my husband, David, survives me by 28 days, subject to the above gifts I GIVE my entire estate (my Residuary Estate) to him. If he predeceases me or fails to survive me by 28 days or if this gift fails for any other reason I GIVE my Residuary Estate to my Trustees ON TRUST to sell it (with power to postpone sale) and after payment of debts, tax, funeral expenses and legacies to DIVIDE my Residuary Estate into two halves and to pay one half to Pearl Harris and the other half to GardenAid.
5. [Suitable administrative provisions are included in the will. They are not reproduced as they are not relevant for the examination.]

Signed by me *Roseanne Amanda Black* on 3 June 2010

In our joint presence and then by us in hers

Fred Williams
4B Wessex Drive
Bristol
Driving Instructor

Esther Williams
4B Wessex Drive
Bristol
Secretary

I give £25,000 to Magenta Harris

Signed: Roseanne Amanda Black 8/2/16

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DOCUMENT 3

WILL OF DAVID RORY BLACK

THIS IS THE LAST WILL AND TESTAMENT of me David Rory Black of 3 Middle Lane, Bristol.

1. I REVOKE all former Wills.
2. I APPOINT my brother Thomas Black as my executor.
3. If my wife, Roseanne, survives me by 28 days I GIVE my entire estate (my Residuary Estate) to her. If she predeceases me or fails to survive me by 28 days or if this gift fails for any other reason I GIVE my Residuary Estate to my brother Thomas to pay my debts, tax, funeral expenses and to hold the balance on trust for such of his two children, Sonja and Natalia, as reach 21 and equally if more than one.

Signed by me **David Rory Black** on 23 September 2015

In our joint presence and then by us in his

Kieran Menzies

4 Rennies Avenue

Bath

Teacher

Agatha Menzies

4 Rennies Avenue

Bath

Publisher

Email from Marcus Wu (marcus.wu@kempstons.co.uk)**To: Trainee****Date: 30 December 2016****Re: Vera Kirkwood deceased**

Edward Kirkwood came to see me this morning. His mother, Vera Kirkwood, died last week, aged 78. She was a widow. Edward's father, John, died 10 years ago, leaving everything to Vera.

Edward brought in his mother's Will, which is a simple home-made document. It appears to be properly executed and there is no reason to doubt its validity.

Vera appointed John and Edward as executors and left everything to John. There was no substitutional gift. Vera never made another Will.

Vera and John had two children. However, many years before Vera and John met, Vera had an illegitimate child, Annabel, who was adopted by a married couple. Twenty years ago, Annabel contacted Vera and they had continued meeting on a regular basis. Annabel has two children, Freya and Harald, whom Vera also saw regularly.

Apart from Annabel and her children, Vera's family is as follows:

- Her son, Edward, who has a son, William, aged 25.
- Her daughter, Briony, who died last year. Briony had two sons, Geoffrey, aged 38 and Colin. Colin died last year in a climbing accident. Colin had two daughters, Katharine and Zara. Katharine is now aged 12 and Zara is aged 10.

Edward wants to know what will happen to his mother's estate, given that her Will does not successfully dispose of her property.

He is willing to take out a grant of representation and administer the estate if he is entitled to do so, and would prefer to do so alone as he hates 'having to make decisions by committee'. He is anxious to know whether Annabel has any inheritance rights.

Edward brought in a list of his mother's assets (**Document 5**). He is anxious to get a grant as quickly as possible, so that assets can be sold.

I gave him preliminary advice which I will follow up with a letter. I will want you to help me further.

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Assets and Liabilities of Vera Kirkwood deceased

Assets	£
3 Beech Drive, Saffron Walden CB10 4BH*	400,000
Bank accounts including interest to date of death	120,950
Various holdings of quoted shares	170,000
Pension arrears	<u>2,500</u>
TOTAL	<u>693,450</u>
Liabilities	
Funeral (estimate)	2,500
Credit card bill	1,400
Utilities	<u>1,550</u>
	<u>5,450</u>

* The Valuer says he is confident that this is the correct current valuation. However, the market is showing signs of 'softening' and he warned that if the sale is delayed, it may be necessary to accept a lower figure.

Lifetime Gifts

Neither Vera nor her husband made any lifetime gifts which are relevant for inheritance tax purposes.

DOCUMENT 6

Letter from Yolanda West

30 December 2016

Dear Mr Wu

My great-aunt, Isabelle West, has just died in hospital from pneumonia, aged 90. I am her only living relative. She never married. You may recall that you made a Will for her 10 years ago, which appointed me as executor and left her estate half to me and half to the Royal Society for the Protection of Birds. She was a very keen bird watcher. I believe you have the original Will.

Over the last few years, my great-aunt became increasingly frail and rather forgetful. She also began to become confused. Back in 2014, I took her to see a geriatric consultant, who confirmed that she was in the early stages of Alzheimer's disease. This was obviously very upsetting for both of us, but the consultant said that modern drugs can slow down the progress of the disease. Great-aunt Isabelle wanted to stay at home for as long as possible, so we agreed that the best thing was to employ a live-in carer. As you know, she was a wealthy woman, so the cost was not a problem.

We appointed a carer called Lillian Scott. She lived in and there were two other women, Naomi Potter and Ursula Ajagbe, who were employed on a part-time basis. Over the last 12 months, I am afraid I came to distrust Lillian. She seemed to be making it difficult for me to see my great-aunt. If I phoned to say I was coming, there was always a reason why it was not convenient. If I turned up unannounced, I was often told that my great-aunt was too ill to see me. On the odd occasions I did see her, I found her increasingly confused. Sometimes she knew me, sometimes she did not.

When I got the news of my great-aunt's death, I went to the house and was horrified to be presented with a copy of a new Will. Lillian said that my great-aunt had told her that she wanted to make a new Will, so they got the name of a solicitor from the internet. The solicitor came to the house and took instructions from my great-aunt and Lillian together. He then posted the Will to my great-aunt with instructions on how to execute it.

I have attached the copy of the new Will to this letter.

Obviously, I am very upset at being cut out of her Will, but I really cannot believe that this is what my great-aunt wanted. Also, it seems impossible that someone who was a lifelong supporter of a charity should leave it out entirely. I think my great-aunt's signature on the new will looks very wobbly and unlike her usual signature. I should add that there is a lot of money at stake. I had a lasting power of attorney for my aunt, so I know her financial circumstances.

Lillian says that my great-aunt was 'on top form' the day she signed the new Will and that the witnesses will confirm this.

My great-aunt had investments of about £800,000. The house is currently worth about £750,000. That value may go up once a decision is made about the route of the new motorway. At the moment, prices are depressed for houses near the two possible routes.

I would like to come and see you for some advice on my options.

Yours sincerely

Yolanda West

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DOCUMENT 7

WILL OF ISABELLE WEST

This is the Last Will and Testament of me Isabelle West of 3 Paddington Gardens, Milton Keynes.

1. I revoke all other Wills.
2. I appoint my carer Lillian Scott as my executor.
3. I give £30,000 to each of Naomi Potter of 4 Hambledon Crescent, Milton Keynes and Ursula Ajagbe of 20A Princes Buildings, Milton Keynes.
4. Subject to the above gifts I give my entire estate to Lillian Scott absolutely.

Signed by

Isabelle West

On 1 November 2016

In the presence of

Naomi Potter of 4 Hambledon Crescent, Milton Keynes. Care Assistant.

Ursula Ajagbe of 20A Princes Buildings, Milton Keynes. Care Assistant.

Email from Marcus Wu (marcus.wu@kempstons.co.uk)

To: Trainee

Date: 30 December 2016

Re: Frank Fisher deceased

Frank Fisher died last month, aged 65. His wife died 10 years ago. His family is as follows:

- his son Oliver, aged 40, who is married and has two children;
- his son Quentin, aged 35, who is married with three children.

I saw Oliver and Quentin yesterday. Their father's Will appointed them as executors and leaves everything to them equally. The Will was prepared by us in 2006, a few months after the death of Frank's wife. It was executed in our office and is valid.

Oliver and Quentin have instructed us to act on their behalf.

Their father's assets consist of:

- his house valued at £500,000;
- a cottage in Suffolk valued at £160,000;
- cash and investments worth £500,000;
- personal possessions of negligible value.

There is also a life assurance policy, which Frank took out four years ago and wrote in trust at that time for his five grandchildren. He paid the premiums from surplus income. The policy will pay out £100,000.

Frank had been living with Xhania for the last five years. Frank was significantly better off than Xhania. She had been living in rented accommodation but moved in with Frank shortly after their relationship began. She is aged 60 and gave up her job as a dental receptionist at that point, so that she would be free to travel with Frank. He paid for everything, as her only income was a small pension from her late husband's employer (approximately £6,000 pa).

Xhania says that Frank promised he would leave her enough money for her to buy herself a home. She is shocked that his Will makes no provision for her and is planning to take legal advice on her 'rights'.

Oliver and Quentin are worried, as they do not want to become embroiled in expensive litigation. If Xhania has a reasonable chance of successfully claiming something from the estate, they would prefer to make provision for her voluntarily, though they would want any arrangement to be as tax-efficient as possible. They are both financially secure so, while they do not relish the idea of giving something to Xhania, they can afford to do so.

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Oliver and Quentin always make gifts on 6 April each tax year to make use of their annual exemptions, but have made no other gifts that are relevant for inheritance tax purposes.

Neither Oliver nor Quentin have made any disposals in the present or previous tax years that are relevant for capital gains tax purposes.

I gave Oliver and Quentin some preliminary advice yesterday. I will want you to assist me in this matter.

End of Case Study Materials