

**CHIEF EXAMINER COMMENTS WITH
SUGGESTED POINTS FOR RESPONSES**

JANUARY 2021

LEVEL 3 - UNIT 8 – LAW OF WILLS & SUCCESSION

Note to Candidates and Learning Centre Tutors:

The purpose of the suggested points for responses is to provide candidates and learning centre tutors with guidance as to the key points candidates should have included in their answers to the January 2021 examinations. The suggested points for responses sets out a response that a good (merit/distinction) candidate would have provided. Candidates will have received credit, where applicable, for other points not addressed by the marking scheme.

Candidates and learning centre tutors should review the suggested points for responses in conjunction with the question papers and the Chief Examiners' **comments contained within this report**, which provide feedback on candidate performance in the examination.

CHIEF EXAMINER COMMENTS

Whilst the cohort was a small one, the results were encouraging showing an increase in standards despite such difficult times.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Section A

Question 1

Well answered with the majority stating that a codicil amends a Will in some way. Stronger candidates went on to say that in all other respects the Will remains the same.

Question 2

Most gained at least two marks by saying that the presumption does not apply if the testator is illiterate or blind.

Question 3

A few omitted to specify that the soldiers, airmen, members of HM Naval or Marine forces have to be in actual military service, thereby losing marks.

Question 4

The majority made reference to payments to a child's parent or legal guardian, that it provides a valid discharge to the personal representatives thereby gaining maximum marks. Since there were only two marks available for this question most candidates obtained full marks.

Question 5

Some good answers; better prepared candidates said that the application to waive must be made within three months of conviction.

Question 6

A handful of candidates mistakenly referred to divorce and others did not know that judicial separation has no effect on a Will.

Question 7 Nearly every candidate got this right.

Question 8

Some mixed responses with not all candidates appreciating that this provision gives personal representatives the authority to apply or utilise income from the estate.

Question 9 A well answered question.

Question 10 Another well answered question.

Question 11

Very few attained full marks for this question. Whilst the majority recognised the need for the three signatures, candidates did not state the general presumption that unattested alterations are regarded as having been made after the Will and as such are invalid.

Question 12

Some weaker candidates just wrote six months without adding when the six months applies from.

Section B**Scenario 1****Question 1**

Most candidates knew that witnesses do not have to know the contents of a will, they must be competent i.e., adults, not blind or mentally disordered. In addition, most recognised that if a beneficiary witnesses a Will then they cannot receive the gift named in the will. Stronger candidates went on to say

that if a beneficiary witnesses a Will then the part of the Will not giving a gift to that beneficiary remains valid.

On the whole most candidates scored reasonable marks for this question.

Question 2(a)

Some more pleasing responses here. The majority said that destruction can be by burning tearing or otherwise destroying as in Cheese v Lovejoy (1877). They then said that the testator must destroy the will himself or someone else may do it for him in his presence and by his direction. Better answers illustrated this with cases such as Re Kremer (1965).

Question 2(b)

On average candidates scored three marks for this question by saying that Rafael was intoxicated when he tried to revoke his Will and that a drunken intent is not enough to revoke a will.

Few mentioned that Rafael had also made a mistake that his Will left his entire estate to Luis and this also could have prevented Rafael from having intention to revoke the Will. Nonetheless, most arrived at the correct conclusion that Rafael did not have intention to revoke the will.

Question 3(a)

Nearly every candidate knew that an affidavit of plight and condition would be required.

Question 3(b)

Typically, candidates scored three marks for this question. They said that an affidavit was needed to explain why the will had a pencil line across it. Then they added it was necessary to show that the pencil line was not an attempt to revoke the will. Stronger candidates referred to R14 NCPR 1987 and that an affidavit is needed whenever there is any "obliteration, interlineation or other alteration".

Only a handful said that the person signing the affidavit is usually the person who finds the will; or that it can be someone who has knowledge of the reason why the will has the line across it and is torn.

Scenario 2

Question 1(a)

By now candidates are thoroughly familiar with mental capacity and the tests outlined in Banks v Goodfellow (1870) and the Mental Capacity Act 2005 (MCA 2005). High marks were achieved for this question.

Question 1(b)

Surprisingly few candidates mentioned the Golden Rule, the necessity of a detailed attendance note or Winifred's advanced age.

Question 2(a)

Most candidates achieved excellent marks for this question mentioning ademption and the requirement that the item must be owned by the testatrix at the date of death.

Question 2(b)

The majority scored adequate marks and pointed out that the legacy was vested, that the beneficiaries share equally, and that Evelyn was born after the testatrix died.

Question 3(a)

Renunciation and the requirement for this to take effect were understood by the candidates.

Question 3(b)

Answers for this question were poor; only the stronger candidates said that Claire does not appear to have intermeddled, then quoted Long and Fever v Symes and Hannam (1832).

Scenario 3

Question 1

Whilst this question was not as popular as the others, it did produce some pleasing scripts. The majority of candidates knew that the Will dated 17/08/2018 is automatically revoked by Sarah's marriage, that Sarah should have made a new will in contemplation of her marriage to Graham and that a general intention to marry is not sufficient. Exceptional candidates mentioned Sallis Sallis v Jones (1936).

Question 2(a)

Again, some good answers outlining that the surviving spouse inherits personal chattels which includes tangible movable property. Land, business assets and investments are excluded from this definition. Some said that the painting by the rival artist is an investment so will not pass to Graham. However, not all candidates commented that the art materials and unsold paintings will not pass to Graham.

Question 2(b)

It was encouraging to note that candidates fully appreciate the surviving spouse's entitlement under intestacy. A common failing is omitting to say that the surviving spouse must outlive the deceased spouse for a period of 28 days.

Question 3

Candidates who chose this question recognised that Graham could require the personal representatives to appropriate the house to him in satisfaction of his interest in the estate, without the need for the consent of the other beneficiaries. Further marks were obtained for pointing out that Graham's

entitlement is more than the value of the house, the request must be made within 12 months from the date of the grant of letters of administration; during this 12-month period PRs can only sell the house with Graham's consent. For this question most candidates attained 5 out of the available 7 marks.

SUGGESTED POINTS FOR RESPONSES

LEVEL 3 - UNIT 8 – LAW OF WILLS & SUCCESSION

The purpose of this document is to provide candidates and learning centre tutors with guidance as to the key points candidates should have included in their answers to the January 2021 examinations. The Suggested Points for Responses do not for all questions set out all the points which candidates may have included in their responses to the questions. Candidates will have received credit, where applicable, for other points not addressed.

Candidates and learning centre tutors should review this document in conjunction with the question papers and the Chief Examiners' reports which provide feedback on candidate's performance in the examination.

Section A

Question Number	Suggested Points for Responses	Marks (Max)
Q1	<p>An explanation that makes reference to the following points</p> <ul style="list-style-type: none"> • A document prepared and signed in accordance with same rules as a Will • Makes some alteration to a gift in a Will • Any other relevant example such as change of executors • Specifies that in all other respects the will remains the same 	3
Q2	<p>An explanation that makes reference to the following points</p> <ul style="list-style-type: none"> • It appears that the testator cannot read/illiterate • If the testator is blind • If another person signs on behalf of the testator • Suspicious circumstances • Any other relevant example 	3
Q3	<p>An explanation that makes reference to the following points</p> <ul style="list-style-type: none"> • Soldiers and airmen in actual military service • Mariners or seamen at sea • Members of HM naval or marine forces in actual military service • Who are also over the age of 14 	4

Q4	<p>An explanation that makes reference to</p> <ul style="list-style-type: none"> • Allows payments of income or capital • To minor beneficiary's parent • Or legal guardian • Provides a valid discharge to the personal representatives 	2
Q5	<p>An explanation that makes reference to</p> <ul style="list-style-type: none"> • A person who unlawfully kills another cannot benefit from that person's death • An exception is provided by the Forfeiture Act 1982 • Courts can waive the rule either partially or completely • including voluntary manslaughter and or not guilty by reason of insanity special verdicts • Relief must be in the interests of justice • Application to waive must be made within three months of conviction • Mention of any one relevant case 	4
Q6	<p>An explanation that makes reference to the following points</p> <ul style="list-style-type: none"> • No effect on will • Spouse can still take benefit under the will 	2
Q7	<p>An explanation that makes reference to the following</p> <ul style="list-style-type: none"> • No valid will or no will • in place at date of death 	1
Q8	<p>An explanation that makes reference to the following points</p> <ul style="list-style-type: none"> • Trustees can apply or utilise income from the estate • For maintenance, education and benefit of the minor • Income can only be applied if reasonable • Any surplus income must be accumulated • S8 Inheritance and Trustees' Powers Act 2014 (ITPA 2014) 	3
Q9	<p>An explanation that makes reference to the following points</p> <ul style="list-style-type: none"> • Executor's authority is derived from the will itself whereas administrators authority derives from the grant • Executor is the deceased's choice; administrator is from statutory list • Sole executor may extract grant where estate has life or minor interest bit in intestacy cases there must be two administrators 	3

	<ul style="list-style-type: none"> • Chain of representation only applies to executors • Rule of executor de son tort only applies to executors • Only executors can have power reserved • Mention of any other relevant case 	
Q10	Grant of Letters of Administration	1
Q11	<p>An explanation that makes reference to the following points:</p> <ul style="list-style-type: none"> • Presumption that alteration made after the execution of the will • Which means that they are invalid • It can be rebutted if • the three signatures are alongside the amendments • Or there is other evidence such as an affidavit of plight and condition (Reference to any appropriate evidence is sufficient) • Under R14 NCPR 1987 	3
Q12	Six months from the date of issue of the Grant of Representation	1
Section A Total: 30 Marks		

Section B - Scenario 1

Question Number	Suggested Points for Responses	Marks (Max)
Q1	<p>An explanation that makes reference to the following points</p> <ul style="list-style-type: none"> • Witnesses do not have to know the contents of a will • Witnesses must be competent • Examples such as adults, not blind or mentally disordered • If beneficiary witnesses a will they cannot receive the gift named in the will • Nor can the spouse or civil partner of a witness to the Will • S15 WA 1837 • Remainder of will is still valid • Gift to witness beneficiary can be saved if there were two non-witness beneficiaries 	7
<i>Question 1 Total: 7 Marks</i>		
Q2a	<p>An explanation that makes reference to the following points</p> <ul style="list-style-type: none"> • Testator must intend to destroy the will 	9

	<ul style="list-style-type: none"> • Testator must destroy the will himself or someone else may do it for him in his presence and by his direction • Destruction can be by burning tearing or otherwise destroying • Reference to Cheese v Lovejoy 1877 • Reference to Re Kremer (1965) • Illustration of legal points with facts from any of the above mentioned cases • Illustration of legal points with facts from other relevant cases • Testator must either destroy it himself • Reference to S20 WA 1837 	
Q2b	<p>Advice that makes reference to the following points</p> <ul style="list-style-type: none"> • Rafael had drunk a lot of whisky when he tried to revoke his Will and so was intoxicated • A drunken intent is not enough to revoke a will • Rafael had also made a mistake that his Will left his entire estate to Luis and this also could have prevented Rafael from having intention to revoke the Will • Discussion and conclusion as to mistake on intention • The pencil line through the will would not be sufficient to destroy the will • Similar to case of Cheese v Lovejoy (1877) when a line through some clauses in the Will and the words "All these are revoked" written on the back were not enough to destroy the testator's Will; • However, when Rafael tore the Will in half this would be sufficient to destroy the will completely • As envisaged by the inclusion of the word "tearing" in s20 • As a Will can only be revoked if there is both intention to revoke and physical destruction of it 	6
<i>Question 2 Total: 15 Marks</i>		
Q3a	<p>A description that makes reference to the following point</p> <ul style="list-style-type: none"> • Affidavit of plight and condition 	1
Q3b	<p>An explanation that makes reference to the following points</p> <ul style="list-style-type: none"> • R14 NCPR 1987 • Affidavit is needed whenever there is any "obliteration, interlineation or other alteration" • To explain why the will had the pencil line across it • As there is a presumption that this was done after execution of the Will • R15 NCPR 1987 	7

	<ul style="list-style-type: none"> • Necessary to show that the pencil line was not an attempt to revoke the will • Person signing the affidavit is usually the person who finds the will • Or has knowledge of the reason why the will has the line across it/is torn 	
<i>Question 3 Total: 8 Marks</i>		
Scenario Total: 30 Marks		

Section B - Scenario 2

Question Number	Suggested Points for Responses	Marks (Max)
Q1a	<p>An explanation that makes reference to the following points</p> <ul style="list-style-type: none"> • The testator must have sufficient mental capacity • Leading case on capacity is Banks v Goodfellow (1870) • Testator must understand both the act and its consequences; the testator must intend to make a will • The extent of the property to which he is disposing • Any moral claims to which he ought to have regard • Be free from any insane delusions or poisoning of the mind • These requirements are reinforced by the Mental Capacity Act 2005 (MCA 2005) • S2 (1) MCA 2005 states that a person lacks capacity if he is unable to make a decision for himself because of an impairment of, or a disturbance in the functioning of, the mind or brain • Under s3(1) MCA 2005 a person is unable to make a decision for himself if he is unable to understand the information relevant to that decision • to retain that information, to use or weigh that information as part of the process of making the decision 	6
Q1b	<p>An explanation that makes reference to the following points</p> <ul style="list-style-type: none"> • Will draftsman make a clear and full attendance note • If will is made in "normal "circumstances capacity is presumed • Given Winifred's age and medication, medical advice should have been taken by the solicitor • Reference to the golden rule the need to obtain a medical opinion of capacity for aged testator • Application of golden rule to the scenario 	4
<i>Question 1 Total: 10 Marks</i>		

Q2a	<p>An explanation that makes reference to the following points:</p> <ul style="list-style-type: none"> • Legacy is a specific legacy • As shown by the use of the words “my” • If Winifred no longer owned items at date of death • Legacy will adeem or fail which means no necklace or bracelet at the date of death • Which means that the gift of the necklace and bracelet cannot take effect • No requirement for Thomas and Claire (the named executors) to buy a replacement pearl necklace and bracelet for Claire 	3
Q2b	<p>An explanation that makes reference to the following points</p> <ul style="list-style-type: none"> • The legacy is a vested legacy to grandchildren • Because there are no conditions for the grandchildren to satisfy before they are absolutely entitled to their legacies • Normally, the Will is taken to apply to those beneficiaries alive at the date of signing • Meaning that five grandchildren would inherit • However, the gift here is a class gift to grandchildren • Class closes at the date of Winifred’s death • There is nothing in the will to rebut this • Evelyn will not receive anything under the will because she was born after Winifred died • Exception to this would be if Evelyn was a child en ventre sa mere • Beneficiaries are under so 18 cannot give a valid receipt • Personal representatives therefore need to place funds on trust until each child reaches 18 • If either die before 18, this sum falls into that minor’s own estate 	10
<i>Question 2 Total: 13 Marks</i>		
Q3a	<p>An explanation that makes reference to the following points</p> <ul style="list-style-type: none"> • Personal representative may renounce • S5 AEA 1925 • Must be in writing • Filed at the Probate Registry/ forms part of the probate application • Must not have intermeddled in the estate 	3
Q3b	<ul style="list-style-type: none"> • Claire does not appear to have intermeddled • Illustration of any relevant case e.g. Long and Fever v Symes and Hannam (1832) 	4

	<ul style="list-style-type: none"> • Executor here advertised for claimants in a newspaper • This was held to be intermeddling • Renunciation is absolute; cannot partially renounce • Alternative option is for an executor to have power reserved to him 	
<i>Question 3 Total: 7 Marks</i>		
Scenario Total: 30 Marks		

Section B - Scenario 3

Question Number	Suggested Points for Responses	Marks (Max)
Q1	<p>An explanation that makes reference to the following points</p> <ul style="list-style-type: none"> • Will dated 17/08/2018 is automatically revoked by Sarah's marriage • S18 WA 1837 • Sarah should have made a new will in contemplation of her marriage to Graham • General intention to marry is not sufficient • Graham must be specifically named • Sallis v Jones (1936) 	5
<i>Question 1 Total: 5 Marks</i>		
Q2a	<p>An explanation that makes reference to the following points</p> <ul style="list-style-type: none"> • Surviving spouse inherits personal chattels • S3 Inheritance and Trustees' Powers Act 2014 • Includes tangible movable property • Such as furniture, household contents, car, clothing • Excludes land • Excludes investments • The painting by the rival artist is an investment so will not pass to Graham • The definition of personal assets excludes business assets • This would mean that the art materials and unsold paintings will not pass to Graham • The definition of personal chattels excludes money • The bank accounts therefore would fall into residue 	10
Q2b	<p>An explanation that makes reference to the following points</p> <ul style="list-style-type: none"> • Priority is dealt with under S46 AEA 1925 • As amended by the Inheritance and Trustees Powers Act 2014 • Surviving spouse must outlive the deceased spouse • for a period of 28 days • From the date of death of the deceased spouse 	8

	<ul style="list-style-type: none"> • Graham will be entitled to statutory legacy of £270K from 06/02/2020 • Plus, half of residue outright • Other half of residue will pass to Sarah's daughter Julie absolutely 	
<i>Question 2 Total: 18 Marks</i>		
Q3	<p>An explanation that makes reference to the following points</p> <ul style="list-style-type: none"> • Since Graham was resident in the house at the date of Sarah's death • It is immaterial that his residency was only for a short period • He can require the personal representatives to appropriate the house to him • In satisfaction of his interest in the estate • Without the need for the consent of the other beneficiaries • Julie Evans therefore does not need to agree to his request • Graham's entitlement is more than the value of the house • Request must be made within 12 months from the date of the grant of letters of administration <p>During this 12-month period PRs can only sell the house with Graham's consent</p>	7
<i>Question 3 Total: 7 Marks</i>		
Scenario Total: 30 Marks		