



## CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JANUARY 2022

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 2022 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

Overall, it was felt that the paper performed well with a good spread of candidates attempting all three scenarios.

Scenario 2 covered testamentary capacity and was not the most popular question on the paper. This was deliberate policy on the part of the chief examiner who has felt that questions on capacity are too predictable. Mixing the question with a Family Provision question successfully differentiated candidates who had a pre-planned answer.

As always, questions that have not been set before produce less high performing responses. There were however very few weak candidates overall.



## CANDIDATE PERFORMANCE FOR EACH QUESTION

### Section A

#### Question 1

Well-answered, as expected.

#### Question 2

A fair response.

#### Question 3

A handful of candidates incorrectly stated that the maximum number of executors was 2 instead of 4.

#### Question 4

Some confusion here between ademption and abatement.

#### Question 5

The effects of marriage on a Will were known by the majority.

#### Question 6

A few candidates omitted to mention that Arthur's parents were the first category of persons entitled to inherit.

#### Question 7

The common weakness here was to confuse section 31 TA 1925 with section 32 TA 1925 and fail to specify that section 31 relates to income.

#### Question 8

This question earned maximum marks for the majority.

#### Question 9

Candidates may have scored more highly on this question had they given a relevant example of when an affidavit of due execution would be needed e.g., if the testator's signature is erratic.

#### Question 10

Some candidates lost a mark here for omitting to say that the six months applies from the date when the grant of probate or letters of administration is extracted.

## Section B

### Scenario 1

#### Question 1(a)

Here most candidates knew that the Will was automatically revoked by marriage. Stronger candidates used the word “automatically”.

#### (b)

Again, some excellent answers with the better prepared candidates mentioning the case of Sallis v Jones (1936)

#### Question 2(a)

Very few candidates realised that the musical instruments would not pass to the surviving spouse. Since Olivia was a professional musician, these would qualify as business assets.

#### (b)

The average mark for this question was 2 out of 4. For full marks candidates needed to say that Ethan would inherit absolutely because he has reached the age of 18.

#### Question 3(a)

It was disappointing to note that some candidates thought that Sarah and Ethan would apply together for the grant of Letters of Administration.

#### (b)

Well responded to in the main.

### Scenario 2

#### Question 1(a)

The average score here was 6 out of 7 showing how well-versed candidates are with the ruling in Banks V Goodfellow.

#### (b)

Not so well answered, with poor application to the facts of the scenario. Whilst candidates could recite the test set out in the Mental Capacity Act 2005, few questioned her memory in saying that her niece and nephew may well have visited her, but she had forgotten.

#### Question 2(a)

Most candidates knew how the maintenance standard would be assessed.

**2(b)**

On the whole, a good response although some candidates did not mention that Jonathan would not be able to lodge a claim as he was not financially maintained by Ethel prior to her death.

**Scenario 3**

**Question 1(a)**

All candidates were able to state the meaning of the term intestate and referred to the statutory trust.

**Question 2**

The responsibilities of an administrator were fully understood by candidates.

**Question 3**

Whilst most candidates knew that the surviving spouse would be entitled to apply for the grant only the stronger candidates referred to R22 NCPR 1987.

**Question 4**

Excellent response to this question of what passes to the surviving spouse under the intestacy rules. A few answers were spoilt by stating the statutory is £250,000 instead of the increase amount of £270,000 with effect from February 2020.

**Question 5**

Weaker candidates thought that the wife is entitled to the marital home as of right or failed to appreciate that her entitlement from the estate is less than the value of the house. A common weakness was to think that the wife only needed to have half the value of the house to inherit it.

**SUGGESTED POINTS FOR RESPONSE**

**LEVEL 3 - UNIT 8 - LAW OF WILLS & SUCCESSION**

**SECTION A**

Question Number	Suggested Points for Responses	Max Marks
1	<ul style="list-style-type: none"><li>To avoid distribution according to the intestacy rules and control what happens to their property when they die</li><li>To specify who they want to be executors/appoint professional executors.</li><li>To make specific gifts of property/heirlooms</li><li>To make gifts to charities/to people who have helped them in their lifetime/friends.</li><li>To appoint testamentary guardians for minor children</li><li>To include wishes as to burial/cremation/organ donation</li></ul>	5

	<ul style="list-style-type: none"> <li>To mitigate application of inheritance tax rules/exemptions and reliefs on death</li> </ul>	
<b>2</b>	<p>Under S3 (1) MCA 2005 a person is unable to make a decision for himself if they are unable:</p> <ul style="list-style-type: none"> <li>To understand the information relevant to the decision</li> <li>To retain that information</li> <li>To use or weigh that information as part of the process of making the decision; or</li> <li>To communicate his decision</li> </ul>	<b>4</b>
<b>3</b>	<ul style="list-style-type: none"> <li>A maximum of four executors can be named on the Grant of Probate</li> </ul>	<b>1</b>
<b>4</b>	<ul style="list-style-type: none"> <li>Ademption means that a specific gift will fail</li> <li>If the subject matter is no longer owned by the testator at the date of death</li> <li>Only applies to specific gifts</li> <li>Reference to Durrant v Friend (1852)</li> </ul>	<b>3</b>
<b>5</b>	<ul style="list-style-type: none"> <li>A marriage or civil partnership would automatically revoke a Will</li> <li>Unless the Will was specifically drafted in contemplation of marriage</li> <li>S18 Wills Act 1837</li> </ul>	<b>2</b>
<b>6</b>	<ul style="list-style-type: none"> <li>S46 Administration of Estates Act 1925</li> <li>Arthur's parents</li> <li>Brothers and sisters of the whole blood or the issue of such siblings</li> <li>Brothers and sisters of the half blood or their issue</li> <li>Grandparents</li> </ul>	<b>4</b>
<b>7</b>	<ul style="list-style-type: none"> <li>S31 of the Trustee Act 1925 says that:</li> <li>Trustees may utilise income</li> <li>For the maintenance, education and benefit of a minor</li> <li>Any surplus income must be accumulated</li> <li>Income can be paid out as the trustees see fit</li> <li>Reference to S8 ITPA 2014</li> </ul>	<b>4</b>
<b>8</b>	<ul style="list-style-type: none"> <li>There is a valid Will but:</li> <li>There is no executor named in the Will</li> <li>The executor has died before extracting probate</li> <li>The executor does not wish to act</li> </ul>	<b>3</b>
<b>9</b>	<ul style="list-style-type: none"> <li>An affidavit of due execution would be required where:</li> <li>The will does not contain an attestation clause</li> <li>R12 NCPR 1987</li> <li>Any relevant example such as testator's signature after witness signatures, testator's signature is erratic, testator is blind or illiterate</li> <li>Other circumstances where there are doubts about execution of the Will</li> </ul>	<b>3</b>
<b>10</b>	<ul style="list-style-type: none"> <li>The claim must be lodged within six months of the date of issue of the grant of probate or letters of administration</li> </ul>	<b>1</b>
<b>Section A Total:</b>		<b>30 marks</b>

Section B - Scenario 1

Question Number	Suggested Points for Responses	Max Marks
1(a)	<p><u>Identification</u></p> <ul style="list-style-type: none"> <li>• S 18 WA 1837</li> </ul> <p><u>Justification</u></p> <ul style="list-style-type: none"> <li>• states that a Will is automatically revoked by a marriage or civil partnership</li> </ul> <p><u>Exemplification</u></p> <ul style="list-style-type: none"> <li>• So, Olivia’s marriage to Sarah revokes her Will dated 17th March 2018.</li> </ul>	3
1(b)	<p><u>Identification</u></p> <ul style="list-style-type: none"> <li>• Under S 18 (3) Wills Act 1837</li> <li>• a Will is not automatically revoked on marriage or civil partnership if it is made</li> <li>• “in contemplation or expectation of marriage”.</li> </ul> <p><u>Justification</u></p> <ul style="list-style-type: none"> <li>• Clause 2 is an attempt to make a Will that is not revoked by a subsequent marriage or civil partnership.</li> <li>• Sarah is not specifically named in the Will</li> <li>• However, for this to apply, the Will must be specific and name the person that the testator expects to marry in the future</li> </ul> <p><u>Exemplification</u></p> <ul style="list-style-type: none"> <li>• a general intention to marry is insufficient.</li> </ul> <p><b>Sallis v Jones (1936)</b> which contained a clause in contemplation of marriage which was not explicit enough.</p>	7
<b>Question 1 Total:</b>		<b>10 marks</b>
2(a)	<p><u>Identification</u></p> <ul style="list-style-type: none"> <li>• Olivia has died without leaving a valid Will or Olivia has died intestate</li> <li>• S46 AEA 1925 as amended by Inheritance and Trustees Powers Act 2014 govern the distribution</li> </ul> <p><u>Justification</u></p> <ul style="list-style-type: none"> <li>• Sarah as surviving spouse</li> <li>• Is entitled to the personal chattels</li> <li>• Personal chattels means any tangible property other than money</li> <li>• business assets</li> <li>• or assets held solely as investments</li> <li>• A statutory legacy of £270,000</li> <li>• Personal possessions contents valued at £5,000</li> <li>• Under S55 AEA 1925 or s3 Inheritance and Trustees’ Powers Act 2014</li> <li>• Reference to 28 day survivorship period</li> </ul> <p><u>Exemplification</u></p> <ul style="list-style-type: none"> <li>• This would include the items of jewellery</li> <li>• And a one-half share of the remainder</li> <li>• Absolutely</li> <li>• the musical instruments are classified as business assets</li> </ul>	10

	<ul style="list-style-type: none"> <li>• And will therefore fall within residue</li> </ul>	
<b>2(b)</b>	<u>Consideration</u> <ul style="list-style-type: none"> <li>• The other one-half share of residue</li> <li>• Will pass to Olivia's son Ethan</li> </ul> <u>Exemplification</u> <ul style="list-style-type: none"> <li>• Absolutely</li> <li>• Since he has reached 18</li> </ul>	<b>4</b>
<b>Question 2 Total:</b>		<b>14 marks</b>
<b>3(a)</b>	<u>Consideration</u> <ul style="list-style-type: none"> <li>• A surviving spouse is entitled to apply for the grant of letters of administration</li> </ul> <u>Exemplification</u> <ul style="list-style-type: none"> <li>• Under R 22 NCPR 1987</li> <li>• Sarah as surviving spouse is therefore entitled to apply</li> </ul>	<b>3</b>
<b>3(b)</b>	<u>Identification</u> <ul style="list-style-type: none"> <li>• An administrator's power derives from the grant of letters of administration</li> </ul> <u>Justification/Exemplification</u> <ul style="list-style-type: none"> <li>• And they have no legal authority to deal with the estate until the grant is issued</li> </ul> <u>Conclusion</u> <ul style="list-style-type: none"> <li>• So Sarah will not be able/have legal authority to sell the house yet.</li> </ul>	<b>3</b>
<b>Question 3 Total:</b>		<b>6 marks</b>
<b>Scenario Total:</b>		<b>30 marks</b>

**Section B - Scenario 2**

Question Number	Suggested Points for Responses	Max Marks
<b>1(a)</b>	<p>Under <i>Banks v Goodfellow</i> (1870) Ethel must:</p> <p><u>Justification</u></p> <ul style="list-style-type: none"> <li>• Understand the nature of the act</li> </ul> <p><u>Exemplification</u></p> <ul style="list-style-type: none"> <li>• which is proven by the fact that she purchased a do it yourself Wills pack</li> <li>• She must understand the extent of her estate as shown by her telling Mildred that her estate was worth approximately £800-£900K</li> <li>• The extent of moral claims on her estate</li> <li>• Ethel knows who her family are but has chosen not to leave anything to either Jonathan, Rachel or Gwendoline</li> </ul> <p><u>Conclusion</u></p> <ul style="list-style-type: none"> <li>• Ethel probably will be deemed to have capacity under <i>Banks V Goodfellow</i></li> </ul>	<b>7</b>
<b>1(b)</b>	<p>Under the Mental Capacity Act 2005 :</p> <p><u>Justification</u></p> <ul style="list-style-type: none"> <li>• Ethel must understand the nature of the act</li> </ul> <p><u>Justification/exemplification</u></p> <ul style="list-style-type: none"> <li>• Which she does as she wrote out her own Will</li> <li>• She can communicate the act</li> <li>• As shown by her discussions with Mildred</li> <li>• There is no evidence that Ethel can retain, use or weigh up information</li> <li>• She may have forgotten that Gwendoline has arthritis</li> <li>• It may be the case that her niece and nephew have visited but she has forgotten</li> <li>• The fact that Jonathan and Rachel expected to inherit implies that they could have still been in contact at the end of Ethel's life</li> <li>• Ethel may not have capacity under MCA 2005</li> </ul>	<b>8</b>
<b>Question 1 Total:</b>		<b>15 marks</b>
<b>2(a)</b>	<ul style="list-style-type: none"> <li>• Any claims for financial provision from the estate will be assessed using the maintenance standard of provision</li> </ul> <p><u>Justification</u> the court will consider:</p> <ul style="list-style-type: none"> <li>• The applicant's needs and resources</li> <li>• The deceased's obligations towards the applicant</li> <li>• The size of the estate</li> <li>• The applicant's conduct</li> </ul> <p><u>Exemplification</u></p> <ul style="list-style-type: none"> <li>• Any other relevant circumstances</li> </ul>	<b>5</b>

	<ul style="list-style-type: none"> <li>Reference to <b>s3 (1) I (PFD) A 1975.</b></li> </ul>	
<b>2(b)</b>	<p><u>Consideration</u></p> <ul style="list-style-type: none"> <li>People who were being maintained by the deceased.</li> <li>Immediately before the death of the deceased can bring a claim for financial provision.</li> <li>As can spouses, cohabitantes and children</li> </ul> <p><u>Justification/exemplification</u></p> <ul style="list-style-type: none"> <li>Under the <u>Inheritance (Provision for Family and Dependents) Act 1975</u></li> <li>The only category that Jonathan, Rachel and Gwendoline may be able to use is that of having been maintained by Ethel immediately before her death</li> <li>Although Jonathan has recently lost his job and may need help to support himself and his children</li> <li>There is no evidence that Ethel had been maintaining him before her death</li> <li>Ethel had been paying Rachel's car loan over the two years prior to her death.</li> <li>And she had been paying for Gwendoline's care needs prior to her death.</li> <li>Which is evidence of financial maintenance for both Rachel and Gwendoline</li> <li>Jonathan would not be eligible to make a claim against Ethel's estate</li> <li>But both Rachel and Gwendoline were being financially maintained so would be eligible to make a claim</li> </ul>	<b>10</b>
<b>Question 2 Total:</b>		<b>15 marks</b>
<b>Scenario Total:</b>		<b>30 marks</b>

### Section B - Scenario 3

Question Number	Suggested Points for Responses	Max Marks
1	<ul style="list-style-type: none"> <li>An intestate is someone who has died without leaving a valid Will.</li> <li>s33 AEA 1925 deals with an intestacy or partial intestacy</li> <li>Effect is that the estate is converted into money</li> <li>All the property of the deceased</li> <li>Is subject to a statutory trust</li> <li>Under the statutory trust all funeral and administration expenses, debts etc, are paid</li> <li>Before the balance is distributed to those entitled under the statutory order</li> <li>As set out in S46 of The Administration of Estates Act (AEA 1925).</li> </ul>	5
2	<p>The administrator is responsible for acting according to the statutory rules</p> <ul style="list-style-type: none"> <li>Including collecting in all of the deceased's assets</li> <li>Paying debts and bills</li> <li>Before distributing the estate in accordance with the rules in AEA 1925</li> <li>Preparing final estate accounts</li> <li>detailing assets, expenses and distributions</li> <li>Credit for any pre-grant responsibilities</li> </ul>	5
3	<ul style="list-style-type: none"> <li>The surviving spouse</li> <li>Is first in the order of priority to apply</li> <li>Contained in R22 NCPR 1987</li> <li>Kiran is entitled to apply as surviving spouse</li> <li>Kiran, however, does not have to apply and can renounce</li> <li>Kiran will receive the monies in the jointly held bank accounts</li> <li>By the rules of survivorship/irrespective of the intestacy rules</li> <li>The household contents valued at £3,300</li> <li>The motor vehicle worth £1,300</li> </ul>	5
4	<ul style="list-style-type: none"> <li>Both of which fall within the definition of chattels as defined in s55 AEA 1925</li> <li>But not the van which is classed as a business asset</li> <li>As substituted by S3 <b>Inheritance and Trustees' Powers Act 2014</b></li> <li>Kiran will receive a statutory legacy of £270,000</li> <li>Half of residue outright</li> <li>Or <math>£393,713 - £270,000 = £123,713 / 2 = £61,856</math></li> </ul>	7
5	<p><u>Identification</u></p> <ul style="list-style-type: none"> <li>Kiran can use the powers of appropriation</li> <li>In s41 AEA 1925</li> <li>To take the house as part of her entitlement in the estate</li> <li>Provided she outlives Saad by 28 days</li> </ul> <p><u>Justification/exemplification</u></p> <ul style="list-style-type: none"> <li>However, as the value of the home is more than she is entitled to</li> </ul>	8

	<ul style="list-style-type: none"> <li>• She will need to pay “equality money” from her own financial resources to make up the difference</li> <li>• The family home can be transferred to Kiran since she was resident in it at the date of Saad’s death</li> <li>• Time limit for appropriation under Sch 2 IEA 1952 is 12 months from the date of the grant of letters of administration</li> <li>• Court has discretion to extend this time limit</li> </ul> <p><u>Conclusion</u></p> <ul style="list-style-type: none"> <li>• During this period the house can only be sold with Kiran’s consent</li> </ul>	
<b>Scenario Total:</b>		<b>30 marks</b>