

CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JANUARY 2022

LEVEL 6 – UNIT 14 – 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, the candidates showed a good level of understanding of the areas of law covered by this unit. Some had clearly done their homework whilst a few struggled with content on their answers to award full marks.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Section A

Question 1 – Comprised of 2 parts and carried a total of 25 marks

(a) and (b)

Most candidates chose this as one of the questions to answer in section A. Most answered the question with ease scoring 50% + of the marks. Overall, all this question proved to be popular with lots of case law and statutes cited.

Question 2 – comprised of 2 parts and carried a total of 25 marks

(a) and (b)

This question was not as popular as question 1 and those that answered it failed to get full marks. This was a weak area for the candidates.

Good attempt by those that chose this question.

Question 3

This was a single question and carried 25 marks. Most candidates chose this question and the majority of them answered it well with a handful who failed to cite case law or statute.

Question 4

This was a single question and carried 25 marks. Again, most candidates chose this question and the majority of them answered it well with a handful who failed to cite case law or statute.

Section B

Question 1 – comprised of 3 parts and carried a total of 25 marks

(a)

Most candidates chose this as one of the questions to answer in section B. Most answered the question with ease scoring 50% + of the marks. Candidates struggled to use the term letters of administration with Will annexed with the majority using the term 'Grant' instead of letters of administration.

(b)

Most candidates were able to correctly explain the impact on the gifts but very few cited any case law.

(c) A good attempt at this question but it was the weakest of the three parts to this question.

Overall all this question proved to be popular with lots of case law and statutes cited.

Question 2

This was a single question which carried 25 marks.

This question was not popular with the candidates with only a handful choosing to answer it. Those that did made a good effort but did not achieve maximum marks.

Question 3

This was a single question which carried 25 marks.

This was also a popular question and answered very well. Lots of statutes and case law cited.

Question 4

This was a single question which carried 25 marks.

Again, this was a popular question and answered very well. Not many statutes or case law cited.

SUGGESTED POINTS FOR RESPONSE

LEVEL 6 – UNIT 14 – LAW OF WILLS & SUCCESSION

SECTION A

Question Number	Suggested Points for Responses	Max Marks
1(a)	<ul style="list-style-type: none"> • Reference to s9 Wills Act 1837(WA) as amended by s17 Administration of Justice Act 1982 (AJA). • A Will must be in writing in ink or pencil In the Goods of Adams [1872] • Can be on any material Hodson v Barnes [1962] • Be in any language Kell v Charmer [1856] • Explanation of the definition of ‘signature’ Re Cook [1960] • The position of the ‘signature’ Wood V Smith [1993] and Weatherhill v Pearce [1995] • Signature ‘made or acknowledged’ in the presence of two witnesses Casson v Dade [1781] Sherrington v Sherrington [2005] • Requirements of the witnesses’ signatures Payne and Another v Payne [2018] • Reference to privileged Wills as an exception to these formal requirements s11 WA, In the Estate of Stanley [1916], Re Wingham [1949], Re Stable [1919], In the Estate of Knibbs [1962] and In the Estate of Rapley (Deceased) [1983] • Reference to other factors that could affect the validity of a Will for example: <ol style="list-style-type: none"> a. Force or fear b. Fraud Re Edwards [2007] Wilson v Joughlin [1866] Vaughan and Others v Vaughan [2002] c. Undue influence Hall v Hall [1868] • Reference to age ie 18 years. • Discussion of “presence” and case e.g. Brown v Skirrow • Attestation clause 	19
1(b)	<ul style="list-style-type: none"> • Reference to s1 Mental Capacity Act 2005 (MCA) and the two stage test a. A person must be assumed to have capacity unless it is established that they lack it and a person is not to be treated as unable to make a decision merely because they have made an unwise decision • S2 MCA provides that a person lacks capacity if at the material time they are unable to make a decision because of an impairment of the mind 	6

	<ul style="list-style-type: none"> • S2(3) MCA provides that mental capacity cannot be established just by reference to the person's age, condition or aspect of their behaviour which might lead to others making unjust assumptions about their capacity • Reference to the test applied to determine testamentary capacity as set out in Banks V Goodfellow and the test requiring the testator to understand a) that they are making a Will which would come into effect on their death and not some other document b) the extent of their property and c) the claims that may be brought against their estate. 	
Question 1 Total:		25 marks

Question Number	Suggested Points for Responses	Max Marks
2(a)	<p>Responses could include:</p> <ul style="list-style-type: none"> • The duties of Personal Representatives (PRs) generally consist of collecting in the assets s25 Administration of Estate Act 1925 (AEA) • Pay the debts and liabilities of the deceased including funeral and testamentary expenses using assets which are available to them as defined by s32 AEA Re Tankland [1942] considering claims under I(PFD)Act 1975 • And to distribute the estate to the beneficiaries entitled to it • The PRs have the same powers as Trustees as follows: • The powers to sell, mortgage or charge personal property s39 AEA 1925 • To appropriate any part of the estate in or towards the satisfaction of any gift s41 AEA 1925, Re Phelps [1980] • To appoint a trust corporation or two to four persons as trustees of a minor's property s42 AEA 1925 • To apply income for the maintenance, education or benefit of a minor beneficiary whether the minors has a vested or contingent interest the capitals and there is no requirement to accumulate the income s31 Trustee Act 1925 (TA 1925) • To apply the whole of the capital for the advancement or benefit of a beneficiary who has a vested or contingent interest in the capital s32 TA 1925 • To make any kind of investment that could be made if they were absolutely entitled to the property s3 Trustee Act 2000 (TA 2000) Daniel and Another v Tee and Others [2016] • To delegate certain powers to an agent such as a solicitor, stockbroker or banker ss11-23 TA 2000 • Power to carry on a business Re Crowther [1985] • Duty of care to exercise such care and skill as is reasonable in the circumstances s1 TA 2000 • The power to insure assets s34 Trustee Act 2000 • 	13

2(b)	<p>Responses should include:</p> <ul style="list-style-type: none"> • The PRS must take reasonable steps to ascertain the debts payable by the estate as failure to do so could render them personally liable • Reference to the three types of liability as follows: • Misappropriation of estate assets where the PR uses the assets for their personal use Re Morgan [1881] • Maladministration for example applying estate assets in the incorrect order or incurring unreasonable expense or wasting assets • Failure to safeguard assets for example failing to insure property • In order to gain protection from the claims of creditors or beneficiaries of which they may not be aware of, PR's must advertise in the way set out in s27 TA 1925 which requires an advert be placed in the London Gazette and local newspapers to where the testator lived Re Benjamin [1902] • The Will may contain a clause restricting the liability of the PRs to wilful wrongdoing Re Armitage v Nurse [1998] • Reference to relief under s61 ta 1925 granted by the court 	12
Question 2 Total:		25 marks

Question Number	Suggested Points for Responses	Max Marks
3	<p>Responses could include:</p> <ul style="list-style-type: none"> • Reference to the law of intestacy being found in AEA 1925 as amended and the Intestates' Estates Act 1952 (IEA 1952) and ITPA 2014 • When a person dies wholly or partially intestate, their assets become subject to a statutory trust under s33 AEA 1925 • The PRs hold all the assets held under s33 AEA 1925 on trust with the power to sell • Subject to the payment of funeral expenses, and debts the PRs must distribute the estate in accordance with s46 AEA 1925. • Reference to the surviving spouse or civil partner taking priority as a beneficiaries that any other family member • If the testator leaves a surviving spouse (SS) or civil partner (CP) and no issue, then the SS or CP will inherit the whole estate on the presumption that most testator's give priority to their spouse or CP in their Wills reference to Law Commission Report • Discuss if this is fair and reasonable ie short marriage • s46(2A) AEA 1925 states the SS or CP must survive the testator by 28 days before they can inherit • If the testator dies leaving a SS or CP and where there is issue then the SS or CP will inherit: 	25

	<ul style="list-style-type: none"> • All of the personal chattels of the testator as defined by s55(x) AEA 1925 Discuss the definition of this Business assets and Re McCulloch • A statutory legacy of £270,000 plus interest • One half of the residue the other half passes to the issue of the testator • Discuss provisions in relation to the family home- passing by survivorship if held as joint tenants but if in sole name of testator or as tenants in common, there is a right to appropriate family home within 12 months of grant of representation home will be valued at date of appropriation equality money may need to be paid- issue will be extent to which home is an asset of estate and money available to spouse • Reference to other cases include Kane v Radley-Kane and Others [1998], Re Collins [1975], Re Reynolds [1966], Re Crispin's Will Trust [1974] • Reasoned conclusion 	
Question 3 Total:		25 marks

Question Number	Suggested Points for Responses	Max Marks
4	<p>Responses should include:</p> <ul style="list-style-type: none"> • Express revocation s20 Wills Act 1837 (WA) • Merely describing a document as the last Will does not constitute express revocation Kitcat v King [1930] • The revocation does not have to be in the Will but can appear in a separate document Re Durance [1872] • Destruction of the physical Will does not always result in it being revoked especially if it was destroyed by accident (eg in a house fire or accidental damage) Re Booth [1926] • Reference to s20 WA and the requirements that must be fulfilled for a Will to be revoked by destruction: • The Will must be destroyed by burning, tearing or otherwise destroying Cheese v Lovejoy [1877] • By the testator or in the presence of the testator and by their direction In the Goods of Dadds [1857] • Crossing out of the testator's and witnesses' signature can constitute destruction In The Estate of Adams [1990] • The intention to revoke must be present when destruction takes place although intention is presumed if there is no evidence of actual intention (eg Will sent to client by solicitor to revoke) Gill v Gill [1909] • The testator must have the same mental capacity at the time of revoking the Will as when they first made it Brunt v Brunt [1873] • Reference to presumption as to revocation if the Will was found in a mutilated condition whilst in the testator's possession 	25

	<p>Lambell v Lambell [1831] or the Will was known to be in the possession of the testator but cannot be found at death Welch v Philips [1836]</p> <ul style="list-style-type: none"> • Reference to a Will being revoked on marriage s18 WA 1837 as amended by s18 Administration of Justices Act 1982 (AJA 1982) and civil partnership Marriage (Same Sex Couples) Act 2013 • to overcome this Wills can be made in expectation of marriage or civil partnership s18(3) & s18(4) WA 1837 • But if marriage does not take place with the person named but someone else then the Will shall be revoked Court and Others v Despallieres [2009] • Reference to divorce, nullity & dissolution of civil partnership not revoking a Will Re Sinclair [1985] • Reasoned conclusion 	
Question 4 Total:		25 marks

SECTION B

Question Number	Suggested Points for Responses	Max Marks
1(a)	<p>Responses should include:</p> <ul style="list-style-type: none"> • Identifying that the appointment of Raymond as sole executor failed because he died before Faye • The type of grant available to Yvonne is called Letters of Administration (with Will annexed) • And that in the absence of a substitute executor, application must be made for administration of the estate with will annexed • The order of entitlement to make the application is set out in r20 Non-Contentious Probate Rules 1987 (NCPR 1987) • Residuary beneficiaries are entitled to take out the grant of representation and in this case that would be Yvonne she is referred to as an Administrator • Reasoned conclusion 	5
1(b)	<p>Responses should include:</p> <ul style="list-style-type: none"> • Identifying the gifts as specific legacies pecuniary legacies and residuary legacies and that income and interest (ie rental) income is payable to the beneficiary from the date of death • Clause 1. This is a specific gift which is defined as a particular existing item from the assets belonging to the deceased Bothamley v Sherson [1875] the gift fails due to ademption because it was subject to a contract for sale Re Sweeting (Deceased) [1988] Lawes v Bennett [1785] the property will be subject to the sale and on completion the net proceeds of sale will pass under clause 5. • Clause 2. This is a specific gift which on the face of it lapsed because Elizabeth predeceased Faye s33 WA overrides this and 	13

	<p>the gift will pass to Elizabeth’s daughter Nina instead provided there is no contrary intention in the Will reference to Rainbird v Smith [2012]</p> <ul style="list-style-type: none"> • Clause 3. The gifts of the rings are a specific legacy the gift of the wedding ring to Mary is valid the gift of the engagement ring fails for ademption because it did not form part of Faye’s estate at the date of her death • Clause 4. This is a pecuniary legacy the alteration was made after the Will was executed and therefore s21 WA applied whereby no alteration to a Will is valid after the Will has been executed unless it was done at the same time the Will was executed such alterations should be initialled by the testator and the two witnesses In the Goods of Blewitt [1880] the original figure was not obliterated and so can still be ascertained Faye’s amendment to the gift to William is not valid the gift to William remains as £10,000 • Clause 5. The gift of the residue of the estate to Raymond lapses because he did not survive Faye Elizabeth’s share of the estate will pass to her daughter Nina under s33 WA • Reasoned conclusion 	
1(c)	<p>Responses should include:</p> <ul style="list-style-type: none"> • Identifying that the estate is not insolvent s421 Insolvency Act 1986 (IA) • Faye’s debts are paid in order of priority secured debts first then unsecured debts • Identifying that the equity release is a secured debt of the estate and subject to s35 Administration of Estate act 1925 (AEA) in that the gift to Yvonne is subject to her taking in the mortgage subject to contrary intention as stipulated in the Will and therefore the gift is free of the equity release which is payable out of the residue of the estate however as established in Q1(b) the gift lapses • After the payment of the equity release, Faye’s other unsecured debts (care fees and overpayment of pension) can be paid out of residue • Reference to case law Re James [1947] or Re Gordon or [1940] Re Kempthorne [1930] • Reasoned conclusion 	7
Question 1 Total:		25 marks

Question Number	Suggested Points for Responses	Max Marks
2	<p>Responses should include:</p> <ul style="list-style-type: none"> • The court will look at what George meant to do when he made his will in light of the actual words used Perrin v Morgan [1943] • In contrast however Marley v Rawlings [2014] the court took a different approach and viewed the Will in the same way as a 	25

	<p>commercial contract and looked at what the testator actually intended</p> <ul style="list-style-type: none"> • The function of the court is to interpret the words used by George and not make a Will itself The court will look at the Will as a whole and not just at the issue in hand • The general principle is that the intention of the testator is deduced only from the Will itself to assist the court adopts the rules of construction • Words are firstly given their grammatical meaning In George’s will the use of grandchildren will include legitimate and illegitimate grandchildren s19 Family Law Reform Act 1987 (FLRA 1987) this would include Katherine and Oliver/James Adoption and Children Act 2002 (ACA 2002) but not Harry because he is a step grandson • Secondly the words are given a secondary meaning the court will apply the ‘armchair rule’ when using this way of interpreting the words of George’s Will as set out in Boyes v Cook [1880] which asks you to place yourself so to speak in the testator’s armchair and consider the circumstances by which he was surrounded when he made his will in applying this the word ‘wife’ in George’s Will will include Tina Re Smalley [1929] and the gift to James Scott would be a deemed valid even though James’s legal names is Oliver Charter v Charter [1874] • As a general rule the court do not readily use extrinsic evidence, that is evidence from outside of the Will such as letter of wishes or the George’s personal circumstances as a means of discovering the testator’s intention as this would effectively make s9 Wills Act 1837 redundant However, there are circumstances where the court will allow extrinsic evidence as per the armchair rule and if there is ambiguity for example the gift of 54 Queensway to ‘my son’ such evidence will be taken into account Re Jackson [1933] • However, s21 AJA 1982 allows the court to now use such evidence to resolve a patent ambiguity s21(b) AJA 1982 with reference to these cases when the section was applied Re Williams [1985] Tyrell v Tyrell [2002] Spurling v Broadhurst [2012] in George’s case the court will consider George’s wishes regarding Peter and look at the reasons set out in the letter George has left (to) to decide whether reference to ‘my son’ in clause 3 meant Brian alone • A reasoned conclusion 	
Question 2 Total:		25 marks

Question Number	Suggested Points for Responses	Max Marks
3	<p>Responses should include:</p> <ul style="list-style-type: none"> • The Inheritance (Provision for Family and Dependants) Act 1975 (1975 Act) allows the court to change the effect of a Will if certain criteria are met • Vickie can bring a claim under the 1975 Act because <ol style="list-style-type: none"> 1. Ursula has not made reasonable financial for Vickie 2. Ursula was domiciled in England at the date of her death 3. As a child Vickie is entitled to bring a claim under s1(c) 1975 Act 4. Although Vickie is an adult, Ursula had a moral duty to provide for her Re Coventry [1979] Re Jennings [1994] 5. It was not Vickie’s fault that the relationship between her and Ursula broke down Re Nahajec (Deceased) [2017] 6. There is nothing to suggest Vickie would waste her award as she will most likely use it towards herself and her son’s care 7. The size of Ursula’s estate is significant to justify the claim • The court will consider whether Ursula has made reasonable financial provision for Vickie and in doing so will apply the two stage process 1. Has the Will made reasonable financial provision for Vickie, the answer is no and 2. What would amount to reasonable financial provision for Vickie Ilott v Mitson [2015] • The court will also look at Vickie’s financial resources and needs now and in the foreseeable future s3 1975 Act eg Vickie’s earning capacity, income, social security benefits and can make an order just to enable Vickie to buy a modest property Graham v Murphy [1996] • The court will also consider the size of Ursula’s estate s3(e) 1975 Act Re Fullard [1981] • The court will most likely award Vickie with a share of Ursula’s estate because although Vickie was not financially dependant on Ursula, the court consider how Vickie is likely to use the money and the beneficial impact it would have on her life • Vickie can make an application under the 1975 Act before a grant of probate has been issued s4 1975 Act as amended by Inheritance and Trustees Powers Act [2014] the application must be issued within 6 months of the date the grant of probate is issued • The court has the power to make a variety of orders eg periodical payments lump sums or transfers of property • Reasoned conclusion 	25
Question 3 Total:		25 marks

Question Number	Suggested Points for Responses	Max Marks
4	<p>Responses should include:</p> <ul style="list-style-type: none"> • With regard to the gift to Zain, Azeem can retain £10,000 of the premium bonds to settle the outstanding loan of £10,000 and then pay the balance to Zain Re Savage [1918] • Azeem would become personally liable to Saeed's trustee in bankruptcy if he pays to him the legacy of £16,000 because all property belonging to a bankrupt vested in the names of the trustees in bankruptcy s306 Insolvency Act 1986 (IA 1986) and should be paid to the trustees and not Saeed • The gift of Hamid's share in the commercial property store will fail because the property was held as joint tenants, and Hamid's share will automatically pass to Dipti by survivorship for Hamid's share to have passed under his Will the property should have been held as tenants in common Page v Page [1728] • The gift at 4 is defined as a 'class gift' Pearks v Mosely [1880] All four of Azeem's children alive at the date of Hamid's death qualify as a beneficiary as well as the one not yet born but was en ventre sa mere at the date of Hamid's death Viner v Francis [1789] the gift to the children over 21 years is an immediate vested gift as they are each entitled to their legacy on Hamid's death Viner v Francis [1789] and gift to the two children under that age and the child en ventre sa mere is a immediate contingent gift Andrews v Partington [1791] as they will become entitled to the legacy if they reach the age of 21 years if not the failed share will pass to the other children who were alive at the date of Hamid's death • Any other valid point • Reasoned conclusion 	25
Question 4 Total:		25 marks