

## CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JUNE 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 June 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

It was felt that this cohort were weaker than in previous sittings with no exceptional candidates. There was a lack of knowledge of the intestacy rules and how they apply to surviving spouses/civil partners.

Surprisingly, section B question 3 covering Family Provision claims under the I (PFD)A 1975 was poorly answered.

On a more positive note, candidates did well in explaining how the rules work under section 24 of the Wills Act 1834 so far as beneficiaries of wills are concerned.

## CANDIDATE PERFORMANCE FOR EACH QUESTION

### Section A

#### Question 1

Most achieved a mark although a few were too vague referring to the intestacy rules without going on to say that under these cohabitants have no entitlement.

#### Question 2

Mainly good responses.

#### Question 3

Most achieved at least 2 of the three marks available.

#### Question 4

Poorly answered. The majority did not appreciate that this relates only to the children of the testator.

#### Question 5

Mixed responses- some confused this with divorce.

#### Question 6

Well answered although some did not say in equal shares to gain full marks.

#### Question 7

Surprisingly, not well answered.

#### Question 8

Well answered.

#### Question 9

Few referred to the executor with power reserved not being named on the grant or able to apply later for a grant in his name.

#### Question 10

Some excellent responses.

#### Question 11

Well answered.

## **Question 12**

The majority of candidates do not appreciate the more generous provision granted to the surviving spouse. Rather worrying.

### **Section B**

## **Question 1**

Few gained strong marks for this. A common limitation was not emphasising that renunciation is an all or nothing thing and that the executor must also renounce rights to letters of administration with will annexed.

## **Question 2**

Mixed responses with lack of explanation of what power reserved means.

## **Question 3**

Better responses with the majority of candidates knowing the rules regarding intermeddling.

## **Question 4 (a-e)**

Most candidates scored highly on all parts of this question.

## **Scenario 2**

Questions on Banks V Goodfellow are always popular and elicit good responses. Of the three scenarios this one undoubtedly attracted the highest marks.

**Question 1** (a) and (b) well answered.

## **Question 2**

Only the stronger candidates applied the law to Frederick's case.

## **Question 3**

Again lack of application with some candidates just paraphrasing Section 9 of the Wills Act 1837.

## **Question 4(a)**

Not all candidates spotted the need for a minor's receipt clause and even those that did omitted to comment that this makes the administration of the estate smoother.

### **Question 4(b)**

Some better answers were tempered by a lack of knowledge of what the STEP provisions are or of the Trustee Act 2000.

### **Scenario 3**

#### **Question 1**

A great number of candidates still mention that the statutory legacy is £250K. Few mentioned the need to survive 28 days to inherit.

**Question 2(a)** The majority of candidates failed to mention that the maintenance standard of provision would apply here.

#### **Question 2(b)**

Most knew about the six-month time limit although a handful either did not say where this applies from or incorrectly said six months from the date of death.

#### **Question 2(c)**

Whilst most referred to the future financial needs of David only the stronger candidates went on to say that David's needs should be balanced against those of the other beneficiaries.

#### **Question 2(d)**

Lack of application.

#### **Question 3**

Some mixed responses. Some failed to mention the marital home and whether the surviving spouse can inherit this. Given the importance of the intestacy rules and that these areas have been tested in very recent sessions this is disappointing.

## **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 June 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	Max Marks
Q1	<ul style="list-style-type: none"> <li>There is no automatic entitlement to the assets of a deceased cohabitee under the intestacy rules</li> </ul>	1
Q2	<ul style="list-style-type: none"> <li>Intention will not be presumed where T cannot read and/or sign his own will</li> <li>Additional steps will need to be taken to show knowledge and approval</li> <li>E.g. the will being read over to T</li> <li>Adapt the attestation clause accordingly</li> </ul>	4
Q3	<ul style="list-style-type: none"> <li>Specialist expertise, large or complex estate which only a professional can deal with</li> <li>Conflicts or tensions within the family</li> <li>No family or friends to appoint</li> <li>Many wish to relieve burden for the family</li> <li>Any other sensible suggestion</li> </ul>	3
Q4	<ul style="list-style-type: none"> <li>Direct/lineal descendants</li> <li>of the testator</li> </ul>	2
Q5	<ul style="list-style-type: none"> <li>Decree of judicial separation does not end a marriage/ not a divorce</li> <li>No effect on will/ spouse can take any benefit from the will.</li> </ul>	2
Q6	<ul style="list-style-type: none"> <li>Parents would inherit</li> <li>in equal shares</li> </ul>	2
Q7	<ul style="list-style-type: none"> <li>Advisable to appoint the partners or members of the firm as at the date of death</li> <li>Provision should be made for changes of firm name, amalgamations etc</li> <li>Only two partners should prove the Will or act initially in its trusts.</li> </ul>	3
Q8	<ul style="list-style-type: none"> <li>There is a valid will but no executor named</li> <li>Executor has died before extracting grant</li> <li>Executor does not wish to act</li> </ul>	3
Qu. 9	<ul style="list-style-type: none"> <li>They are not named on the grant</li> <li>But reserve the right to have a new grant issued including them in the future</li> </ul>	2
Qu. 10	<ul style="list-style-type: none"> <li>To account for any amendments or interlineation</li> <li>Or any marks on the will</li> <li>Such as pin or staple holes</li> </ul>	3
Q11	<ul style="list-style-type: none"> <li>An executor dying intestate</li> <li>A testator failing to appoint an executor in a will</li> </ul>	3

	<ul style="list-style-type: none"><li>• A sole executor failing to accept the office</li></ul>	
Q12	<ul style="list-style-type: none"><li>• Financial provision that is reasonable in all the circumstances</li><li>• Regardless of whether that sum is needed for maintenance</li></ul>	2
<b>Total: 30 Marks</b>		

## Section B - Scenario 1

Question Number	Suggested points for responses	Max Marks
Q1	<ul style="list-style-type: none"> <li>• An executor can renounce probate</li> <li>• Under S5 AEA 1925</li> <li>• Must sign a written renunciation of probate</li> <li>• Which is filed at the Probate Registry</li> <li>• Cannot partially renounce/all or nothing thing</li> <li>• Must also renounce right to letters of administration with the will annexed</li> </ul>	5
<b>Question 1 Total: 5 Marks</b>		
Q2	<ul style="list-style-type: none"> <li>• Brenda can have power reserved to her</li> <li>• Meaning that she is not appointed as an executor in the grant of probate.</li> <li>• But she still has the ability to apply for a grant of probate in her name at a later stage.</li> <li>• However, she can't have power reserved to her if there is no other executor able and willing to act.</li> </ul>	3
<b>Question 2 Total: 3 Marks</b>		
Q3	<ul style="list-style-type: none"> <li>• Cannot renounce if carry out any of the acts in winding up the estate</li> <li>• Gathering assets, paying debts or other example</li> <li>• Reference to intermeddling</li> <li>• Such acts can make the person liable as an executor and she can incur personal liability</li> <li>• Acts of kindness/humanitarian acts do not constitute intermeddling</li> <li>• Relevant case e.g. <b><u>Long and Fever V Symes and Hannam (1932)</u></b></li> <li>• Illustration of relevant case example</li> </ul>	6
<b>Question 3 Total: 6 Marks</b>		
Q4(a)	<ul style="list-style-type: none"> <li>• The gift to Brenda is a specific legacy</li> <li>• As shown by the word "my"</li> <li>• It will apply to all handbags owned at the date of death</li> </ul>	3
Q4(b)	<ul style="list-style-type: none"> <li>• The gift to Joanne is a pecuniary legacy</li> <li>• That is a general legacy which is a gift of money out of the general estate</li> <li>• It is a contingent legacy</li> <li>• And will only be paid to Joanne when and if she attains the age of 18</li> </ul>	4
Q4(c)	<ul style="list-style-type: none"> <li>• The gift to Norah is a demonstrative legacy</li> <li>• Being a gift of a general nature</li> </ul>	4

	<ul style="list-style-type: none"> <li>• Which is paid out of a specified fund rather than the general estate</li> <li>• If the balance of the specified fund is inadequate to meet the legacy the balance of the legacy must be met from the residue of the estate.</li> </ul>	
Q4(d)	<ul style="list-style-type: none"> <li>• Even if the MoneySmart Bank account no longer exists</li> <li>• Norah will still receive her legacy of £1,000</li> <li>• Which shall instead be paid from the general estate</li> </ul>	3
Q4(e)	<ul style="list-style-type: none"> <li>• Wills speak from the date of execution rather than the date of death as far as beneficiaries are concerned</li> <li>• Unless a contrary intention is present in the Will</li> <li>• The gift of £500 will be paid to the person fitting the description at the date of the Will</li> <li>• This means Elsie's cleaning lady in 2004</li> </ul>	2
<b>Question 4 Total: 16 Marks</b>		
<b>Scenario 1 Total: 30 Marks</b>		

## Section B - Scenario 2

Question Number	Suggested points for responses	Max Marks
Q1(a)	<p>Under the test in <u>Banks v Goodfellow (1870)</u>, the testator should understand</p> <ul style="list-style-type: none"> <li>• The nature and effect of their act</li> <li>• The extent of their property</li> <li>• And the moral claims to which they ought to have regard</li> </ul>	3
Q1(b)	<p>The test under MCA 2005 states that a person lacks mental capacity if</p> <ul style="list-style-type: none"> <li>• they are unable to make a decision for themselves</li> <li>• Because of an impairment of, or disturbance in the functioning of the mind or brain</li> <li>• And they are unable to understand information relevant to the decision,</li> <li>• And retain that information</li> <li>• Use or weigh that information as part of the process of making that decision or</li> <li>• communicate their decision</li> </ul>	5
<b>Question 1 Total: 8 marks</b>		
Q2	<ul style="list-style-type: none"> <li>• Frederick appears to have capacity to make a Will</li> <li>• Even though he is on medication to control an infection</li> <li>• He knows that he needs to make a Will</li> <li>• He appears to understand the information relevant to making a Will and researching it on the internet.</li> <li>• He gave instructions to Manish for the preparation of his Will</li> <li>• He remembers the extent of his estate as shown by his discussion with Manish/he knew that his estate was worth about £600K</li> <li>• He knows who his family are/he able to draw up a Will including gifts for his great nephews and great nieces</li> <li>• He knew that he needed executors to act/he asked Manish to be his executor</li> <li>• He knew that he needed two witnesses to his Will/ he invited his next-door neighbour to act as witnesses.</li> </ul>	7
<b>Question 2 Total: 7 Marks</b>		
Q3	<ul style="list-style-type: none"> <li>• Formal requirements for a valid Will are set out in S9 Wills Act 1837</li> <li>• Frederick has written out the Will</li> <li>• And he has signed and dated the Will</li> <li>• In the presence of his friends</li> <li>• Who both added their signatures as witnesses</li> </ul>	6

	<ul style="list-style-type: none"> <li>• And all three of them were together during the entire signing and witnessing process</li> <li>• The Will appears to be valid</li> <li>• Even though as the Will is homemade, it is unlikely that there will be an appropriate attestation clause.</li> <li>• Giving rise to a presumption of due execution.</li> </ul>	
<b>Question 3 Total: 6 Marks</b>		
Q4(a)	<ul style="list-style-type: none"> <li>• Administration of the estate is easier if a minor receipts clause is included in the Will</li> <li>• To allow payments of capital</li> <li>• The minor's beneficiary's parent or guardian</li> <li>• The clause should state that the parent or guardian can give a valid receipt on behalf of the beneficiary</li> <li>• The inclusion of a receipt clause will discharge the PRs from any further liability as far as that particular gift is concerned</li> <li>• Reference to the statutory powers of advancement under s32 AEA 1925</li> <li>• This now covers the whole of the monies being held in trust for a minor beneficiary.</li> </ul>	5
Q4(b)	<ul style="list-style-type: none"> <li>• A specific charging clause could be included</li> <li>• Enabling Manish to charge for his professional services in acting as executor</li> <li>• The STEP standard provisions include such a clause</li> <li>• TA 2000 authorises reasonable remuneration.</li> <li>• However, it is not available to sole trustees/ would not help Manish if he is the sole executor of Frederick's Will.</li> </ul>	4
<b>Question 4 Total: 9 Marks</b>		
<b>Scenario 2 Total: 30 Marks</b>		

## Section B - Scenario 3

Question Number	Suggested points for responses	Max Marks
Q1	<ul style="list-style-type: none"> <li>• Since Phillipa had not made a Will her estate would be distributed under the intestacy provisions applicable where the deceased left a surviving civil partner and child</li> <li>• Set out in s46 AEA 1925 as amended</li> <li>• The deceased left a surviving spouse and child</li> <li>• A civil partner is entitled to the same provision as a spouse.</li> <li>• To inherit Yvonne must survive Phillipa for the period of 28 days beginning with the date of Phillipa's death</li> <li>• Yvonne will inherit Phillipa's half share in "The View" automatically by the rights of survivorship</li> <li>• In addition, she will receive a statutory legacy of £270,000 or higher if increased</li> <li>• Plus one half share of residue absolutely i.e. £270K plus <math>\frac{£183,000}{2} = £91,500</math> to give a total entitlement of £361,500</li> </ul>	7
<b>Question 1 Total: 7 Marks</b>		
Q2(a)	<ul style="list-style-type: none"> <li>• Reasonable financial provision is based on the maintenance standard for a child.</li> <li>• Which will provide David with reasonable money for his maintenance</li> <li>• But this can be more than the bare necessities depending on the actual circumstances of the applicant.</li> </ul>	3
Q2(b)	<p>The time limit for making the claim would be:</p> <ul style="list-style-type: none"> <li>• Six months</li> <li>• From the date of issue of the Grant of Letters of Administration</li> <li>• Unless extended with the leave of the Court</li> </ul>	2
Q2(c)	<ul style="list-style-type: none"> <li>• The financial resources and needs David has now or is likely to have in the future</li> <li>• The financial needs and resources of Yvonne as a beneficiary</li> <li>• The obligations and responsibilities Phillipa had towards David and Yvonne</li> <li>• The size and nature of Phillipa's estate</li> <li>• Any physical or mental disability of David or Yvonne</li> <li>• Any other matter including the conduct of David or any other person that the court considers relevant.</li> </ul>	5
Q2(d)	<ul style="list-style-type: none"> <li>• David has a very limited income, and this is not likely to change in the future</li> <li>• However, he will receive half of the residue of Phillipa's estate which will give him some capital</li> </ul>	8

	<ul style="list-style-type: none"> <li>• At present David’s income barely covers his rent so he needs more income to have a secure home and money for daily living expenses</li> <li>• However, any provision that the court makes for David will reduce the inheritance provision for Yvonne</li> <li>• David is an adult child who would normally be expected to support himself</li> <li>• However, the fact that David has social and mental disabilities must be taken into consideration, meaning that his earning capacity is limited.</li> <li>• Because of this, Phillipa has a moral obligation to provide for David</li> <li>• Finally, the court would take into account Phillipa’s reasons for not having contact with David in the past</li> <li>• And his conduct towards his mother.</li> </ul>	
<b>Question 2 Total: 18 Marks</b>		
Q3	<ul style="list-style-type: none"> <li>• If “The View” was not jointly owned, then it will fall within the residuary estate rather than passing to Yvonne by survivorship</li> <li>• Yvonne will receive the personal possessions which includes the car, £270k and a half share in residue ( ie <math>460K + 33k + 90k + 330k - 270K = £643,000 / 2 + £321,500</math>).</li> <li>• The amount then due to Yvonne under the intestacy rules will be £591,500 (i.e. £270k+ £321,500)</li> <li>• Prs have power to appropriate the home to Yvonne under s41 AEA 1925 since it is less than her share</li> <li>• Yvonne then has the right to require the administrators to appropriate The View to her as satisfaction as part of her share</li> <li>• Since she was resident in “The View” at the date of death.</li> <li>• Value of home is calculated at date of appropriation</li> <li>• Reference to <b>Sch 2 Intestates’ Estates Act 1952</b></li> </ul>	Max 5
<b>Question 3 Total: 5 Marks</b>		
<b>Scenario 3 Total: 30 Marks</b>		