

**LEVEL 3 - UNIT 8 –LAW OF WILLS AND SUCCESSION
SUGGESTED ANSWERS – JANUARY 2017**

Note to Candidates and Tutors:

The purpose of the suggested answers is to provide students and tutors with guidance as to the key points students should have included in their answers to the January 2017 examinations. The suggested answers do not for all questions set out all the points which students may have included in their responses to the questions. Students will have received credit, where applicable, for other points not addressed by the suggested answers.

Students and tutors should review the suggested answers in conjunction with the question papers and the Chief Examiners' reports which provide feedback on student performance in the examination.

SECTION A

1. There are a number of reasons why a person might make a Will, including the following:
 - Unsuitability of the intestacy rules
 - The need to appoint guardians for minor children
 - The wish to appoint executors of choice rather than rely on administrators appointed by the court
 - Preference for professional executors
 - To mitigate inheritance tax
 - To protect vulnerable beneficiaries with trust arrangements
2. Where a person has a Will, three examples of when property may pass other than under that Will are:
 - under a DMC (*Donatio Mortis Causa*)
 - under a codicil
 - property passing by survivorship
3. A later Will revokes an earlier one only to the extent it is inconsistent. This may mean that the whole earlier Will is revoked, but this might not be clear, so for the avoidance of doubt, a revocation clause should therefore be included.
4. Under s.33 Wills Act 1837, where a testator leaves in his Will a gift to his child or remoter issue, if that child dies before him (as here) the gift will pass to the child or issue of the deceased beneficiary.
5. Where a Will states that it is made in expectation of marriage, and the testator intends that the Will should not be revoked, the expected marriage must be to a particular person who must be named in the Will.

6. A full intestacy arises where a person dies without leaving a valid Will.
7. Candidates could identify a number of steps which relate to a period before the grant of probate is issued (i.e. not collecting assets or paying debts etc.) for example:
 - obtaining valuations of assets
 - identifying debts in the estate
 - notifying relevant offices of the death in order to stop pension payment etc.
 - ensuring the deceased's house is secure and insured
 - placing s.27 Trustee Act 1925 notices if possible
 - collecting information about lifetime gifts
8. The appropriate grant is the grant of letters of administration with the Will annexed.
9. The Probate Registry will request an affidavit of plight and condition where a Will has been torn in half, as this might indicate an attempt by the testator to revoke the Will.
10. Following an application under the Inheritance (Provision for Family and Dependents) Act 1975 the court may make various orders; for example periodic payments, a lump sum order, a transfer of property or a settlement order. Candidates needed to set out only three such orders.

SECTION B

Scenario 1 Questions

1. (a) This area is governed by s.20 Wills Act 1837. The definition of revocation is by destruction by 'burning, tearing or otherwise destroying' the Will by the testator or someone in her presence and at her direction. The testator must also intend to revoke the Will.

(b) Here, Maria clearly intended to revoke the Will. In addition, she tore and then burnt the Will, which complies with the need for proper physical destruction of the Will, and she did this herself.
2. (a) Section 46 Administration of Estates Act 1925 governs this area, as amended by the Inheritance and Trustees Powers Act 2014.

Maria is survived by her husband and children and the types of family who survive her will make a difference to the way in which the estate is divided.

Rolph will receive Maria's personal chattels, a statutory legacy of £250,000 and one half of the remainder of the estate outright (i.e. no longer as a life interest).

- (b) The half not passing to Rolph will pass to Maria's children on the statutory trusts, which means to them equally, provided that if any of them have predeceased then their share passes to their children per stirpes on attaining 18.

So, Kurt and Brigitta receive one third each. Friedrich's one third share passes to Sophia and Gretle equally. As Gretle is a minor, her share will be held on trust by the PRs until she is 18.

3. Statutory powers have been amended by Inheritance and Trustees Powers Act 2014. Under s.31 Trustee Act 1925, PRs are able to use the income produced by the money invested for Gretle for her benefit during her minority at their unfettered discretion. They may also use up to the whole of the capital for her benefit.

Scenario 2 Questions

1. The legacy to Phyllida is a specific gift because it is an item identified and referred to in Cedric's Will. As this does not form part of the estate at the date of death (because it has been stolen), it will fail (or adeem).
2. This is a pecuniary legacy given under a life interest. This means that Sebastian is entitled to the income from this gift for his lifetime only and on his death the capital passes to Lily.
3. This is also a pecuniary legacy but in addition it is contingent. This means that Evangeline must not only survive Cedric, she must also reach 18 before she has any entitlement to the money. If Evangeline died before she reached 18, the gift would fail and pass back to Cedric's residuary estate.
4. (a) An executor may **renounce** their entitlement to act as an executor under section 5 Administration of Estates Act 1925. They must do so in writing, and this will form part of the application for the grant of probate.

- (b) In order to renounce, Adelaide must not have “intermeddled” or she will not be able to renounce. As Adelaide has begun to deal with the assets in the estate (collecting insurance money and paying debts) she may not be able to renounce.
5. An affidavit of due execution is needed under rule 12 NCPR 1987. This is because there is no attestation clause which, although not needed to make a valid Will, does raise the presumption of due execution.

The affidavit should be made by one of the witnesses to the Will – N McFee or B Blatherwick.

Scenario 3 Questions

1. Note: This question required candidates to be able to apply these tests, using relevant information from the scenario to make basic conclusions about Dorothy’s capacity. The question did not require candidates to conclude correctly, but to show an understanding of the rules.
- (a) Under Banks v Goodfellow (1870), Dorothy must have understood the nature of the act, which she must have done because she deliberately drafted the document herself. She needed to know what she owned; which she seemed to do as she made a list of all her assets and debts. She also needed to be able to consider any moral claims on her estate; since she also made a list of all her family and friends she could clearly bring them to mind, although this doesn’t necessarily mean she considered each as a potential beneficiary.
- (b) Under the Mental Capacity Act 2005, as above, Dorothy appeared to understand relevant information as she made a list and drafted her own Will. We can assume that she could retain this information and use it in making decisions, because she was so independent when making her Will and was able to talk it through with Tim. There is nothing to suggest she could not communicate effectively – she was able to hold a conversation about her Will with Tim before drafting her Will.
2. (a) To be a valid *donatio mortis causa* (DMC) the gift:
- Must be made in contemplation of death;
 - Must be contingent on death;
 - The donor must part with some dominion over the property before death – there must be some delivery of the subject matter.
- (b) Dorothy knew she was very ill and from her words was not expecting to live, so she has fulfilled the first condition. The gift also seems to have been conditional on death as Dorothy and Henry agreed he would hand the keys back if she recovered, which fulfils the second condition. Dorothy not only handed over her house keys to Henry but also told him where to find the title deeds and gave him access to this storage box, so the third condition is fulfilled.

The most relevant case here would be Sen v Headley (1991) which dealt with the gift of a house.

The conclusion here must be that Henry may keep the house.

- (c) To make a gift of the house to take effect on death, Dorothy needed to either make a new Will including this gift, or make a codicil to include the gift, which would be executed in the same way as a Will and read alongside it.
3. The correct grant of representation in this estate is a grant of probate because there is a valid Will and there are surviving executors willing to act.