

**LEVEL 3 - UNIT 8 –LAW OF WILLS & SUCCESSION
SUGGESTED ANSWERS – JUNE 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 June 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. A cohabitee has no direct entitlement under the intestacy rules.
2. A legacy is a gift of personal property. It will abate where an estate is solvent but there are insufficient funds to pay all of the legacies in full.
3. Section 46(2A) provides that the surviving spouse or civil partner must survive the intestate for a period of 28 days beginning with the day the intestate dies.
4. Categories of claimants, under the Inheritance (Provision for Family and Dependents) Act (IPFDA) 1975, are:
 - spouse/civil partner;
 - former/spouse/civil partner who has not re-married;
 - child/child of the family;
 - other person maintained immediately before death;
 - surviving cohabitee.
5. Clauses to be included in a Will if the testator owns a business are:
 - power to continue to run the business for as long as the PRs think fit;
 - power to use assets other than those in use at date of death;
 - indemnity for the PRs against personal liability;
 - power to employ staff and managers to run the business;
 - clause saying who is to inherit the business.
6. The effects of divorce on a Will are that any appointment of a former spouse as executor or trustee takes effect as if the former spouse had died, and any property given under the Will to the former spouse passes as if the former spouse had died on the date of the divorce or decree of nullity.

7. A person would be deemed to be unable to make a decision for himself under s.3(1) of the Mental Capacity Act (MCA) 2005 if he is unable to understand the information relevant to the decision, unable to retain that information, or unable to use or weigh that information as part of the process of making the decision, or unable to communicate his decision, whether by talking, using sign language or any other means.
8. A Grant of Administration with Will annexed applies if there is a valid Will and there is no executor named in the Will at all; or the executor has died before obtaining a grant; or the executor named does not want to act and is prepared to sign a Renunciation of Probate.
9. The chain of representation would be broken by an executor dying intestate, a testator failing to appoint an executor in a Will, or a sole executor failing to accept the office.
10. If the Will is accidentally burnt by the testator when under the influence of alcohol, it is not revoked under s.20 Wills Act (WA) 1837. The reason for this is that the testator does not have the necessary testamentary intention to revoke the Will. Under r15 NCPR 1987, the registrar would require an affidavit of plight and condition to explain the rips shown in the will as this would suggest an attempt by the testator to destroy the will.

SECTION B

Scenario 1 Questions

1. (a) Mary, the widow, is entitled to apply for a Grant of Letters of Administration (intestacy). She is automatically entitled to the personal chattels i.e. the household contents and the designer watch. 'Personal chattels' is defined by s.3 Inheritance and Trustees' Powers Act 2014 as including 'any tangible moveable (i.e. non-land) property other than money, business assets or assets held solely as an investment.' It would not, therefore, include the paintings since these were acquired purely as an investment. The bank accounts held in John's sole name and the shares would also not pass to Mary as personal chattels.
- (b) Under s.3 Inheritance and Trustees' Powers Act 2014, Mary is entitled to a statutory legacy of £250,000 and half of the residue outright.

In monetary terms this means she will be entitled to £695,170-£250,000 @ 50% = £222,585. Added to the statutory legacy of £250,000 this means that Mary will receive £472,585.

2. (a) Provided that the house Mary is living in is the family home, she can require the administrators to transfer her late husband's house to her in satisfaction of her share in the estate. The administrators have power to appropriate the family home towards the satisfaction of Mary's entitlement in the estate under s.41 Administration of Estates Act 1925. This must be done within 12 months of the date of the issue of the Grant of Letters of Administration. The power under s.41 AEA (1925) can only be used where the value of the family home is less than or equal to the sum Mary was due to inherit. If there is a difference at the date of appropriation, then the widow will have to pay equality money to make up the difference.
- (b) Since 'The View' was the family home of John, and Mary was living in it, she can require the administrators to appropriate it to her. As the house is worth more than her entitlement, Mary will need to make up the difference in value between £500,000 - £472,585 out of her own resources before the house can be transferred into her name.

The value of the house is calculated at the date of appropriation, not the date of death.

3. Normally a Will is revoked by a subsequent marriage under s.18 WA 1837. This still applies even if the person whom the testator has married is the person named in the Will. A general intention to marry at some point in the future is not sufficient. However, this rule is avoided if the Will is made 'in expectation of marriage'. Under s.18(3) WA 1837, the testator/testatrix must specify that s/he anticipates being married to a named person, and that his/her Will is not to be revoked by his/her marriage to that named person.

Scenario 2 Questions

1. Testamentary capacity must be an issue, as the testator is taking a lot of medication, so the solicitor will need to be extra cautious. Given the facts, there will be not enough time to obtain medical evidence from a suitably

qualified doctor. The Will would have to be prepared and the medical evidence can then be obtained after the Will has been signed.

The testator must satisfy the tests laid down in Banks v Goodfellow (1870) for the Will to be valid:

- he must have necessary intention to make a Will and know that he is making a Will;
- he must know the extent of his assets but not necessarily the exact value of all that he owns;
- he must be able to understand any moral claims against his estate which he is bound to consider i.e. any family or friends who might expect to inherit under his Will;
- he must be free from any 'insane delusions' which could affect the terms of his Will;
- the necessary formalities must be met, i.e. the attestation clause must reflect the fact if he is unable to sign, or if someone needs to read the Will to him, and the testator must sign the Will first before any witnesses. Hospital staff will not act as witnesses, so the solicitor will need to take another member of staff with him to act as the second witness.

It is very important that the Will is prepared as soon as possible as the solicitor may be held negligent for not making the Will quickly enough, as in Hooper v Flynnmore (a firm) (2001). The solicitor needs to ensure the instructions reflect the testator's wishes and not those of his relatives. The Solicitor preparing the Will owes a duty of care to both the testator and beneficiaries of the estate.

2. (a) Barbara might make a claim against the estate under the Inheritance (Provision for Family and Dependents) Act 1975. She might lodge a claim on the grounds that she was being partly maintained by David immediately before his death s.1(1)(e); provided that David was paying a substantial contribution towards her reasonable needs s.1(3). From the information given, David was partly maintaining Barbara because he had been paying her utility bills for the last four years and, since the utility bills would be a large part of Barbara's expenditure, they would probably be seen as a substantial contribution.
 - (b) The matters the court will take into account are the financial needs of Barbara, the needs and resources of Karen as the beneficiary of the estate, the obligations David had towards Barbara and Karen, the size and nature of his estate, any other relevant circumstances s.3(1) including the length of time and basis on which David maintained Barbara, the extent of his contribution, and if so, to what extent, David had assumed responsibility for Barbara's maintenance s.3(4).
3. According to s.1(1) of IPFDA 1975, a spouse or former spouse can bring a claim for financial provision against the estate. Since Karen is a surviving spouse, who has not remarried, this would apply to her. However, many former spouses are unable to make a claim as the family court will have barred them doing so as a result of the family arrangements on divorce. The Court would take into account the monies Karen received on her divorce from David, her age, the duration of the marriage and any contribution by Karen to David's family's welfare. If she is barred from claiming as a former spouse, Karen can claim as a cohabitee, and in this

instance the court will take into account that they have lived together as cohabitantes for 10 years since their divorce.

Scenario 3 Questions

1.
 - (a) The necklace is a specific legacy as shown by the description, by the use of the word 'my'. The legacy will adeem/fail as it was not owned by Neelam at the date of death. A similar situation arises in Durrant v Friend (1852).
 - (b) The legacy to Tanvir, however, is a general legacy. These gifts have not been specifically described and the word 'my' has not been used. Ademption does not apply to general gifts. This means that the legacy would not fail and the PRs will have to purchase a lawnmower and gardening spade if not owned by Neelam at the date of death.
 - (c) The pecuniary legacy to Jane Green will fail, under s.15 WA 1837, as she was a witness to the Will.
2. The gifts to Neelam's granddaughters are gifts of residue, which means that they will receive one half of each of the monies that are left in Neelam's estate after payment of all her debts, funeral expenses, the legacies left in the will and the costs of administering the estate including any other testamentary expenses. The gifts are contingent i.e. subject to each attaining 25 years of age. If either of them dies before they attain 25, their gift will fail and a partial intestacy will arise. Until Elina and Iram reach the age of 25, their share of the money will be held in trust for them.
3.
 - (a) Tanvir and Ramani, who are the executors, will also act as the trustees. The trustees would be able to pay out of income for education or driving lessons. Section 31 of the Trustee Act (TA) 1925 gives trustees the discretion to use all or part the income from the estate for the maintenance, education and benefit of the minor. If the child is under 18, they may pay the income to his or her parent or legal guardian. Any surplus income not used must be accumulated. Trustees are limited by s.31 TA 1925, as amended by s.8 Inheritance and Trustees Powers Act (ITPA) 2014, to pay income as 'they think fit'. An amended version of s.31 in ITPA 2014 gives complete discretion to trustees.
 - (b) Section 32 TA 1925 (as amended by s.9 Inheritance and Trustees Powers Act 2014) allows trustees absolute discretion to pay/advance capital to a beneficiary before he is entitled. Such payments must be made for the 'advancement or benefit' of the child, which is a wide ranging concept meaning setting up the child in life. Prior to IPFDA 1975, only up to 50% of the share of capital could be advanced. Section 32 TA 1925 was often extended by a clause in the will to give trustees wider discretion and flexibility. Section 9 ITPA 2014 removed this 50% restriction. Therefore, the executors would be able to use the capital to buy a car or pay for education for Elina and Iram.