



THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

UNIT 8 – LAW OF WILLS AND SUCCESSION*

Time allowed: 1 hour and 30 minutes plus 15 minutes' reading time

Instructions to Candidates

- You have **FIFTEEN** minutes to read through this question paper before the start of the examination.
- **It is strongly recommended that you use the reading time to read this question paper fully.** However, you may make notes on this question paper or in your answer booklet during this time, if you wish.
- **This question paper is divided into TWO sections. You must answer ALL the questions from Section A. There are three scenarios in Section B. You must answer the questions relating to ONE of the scenarios from Section B ONLY.**
- Write in full sentences – a yes or no answer will earn no marks.
- Candidates must comply with the CILEx Examination Regulations.
- Full reasoning must be shown in answers. Statutory authorities, decided cases and examples should be used where appropriate.

Information for Candidates

- The mark allocation for each question and part-question is given and you are advised to take this into account in planning your work.
- Write in blue or black ink or ballpoint pen.
- Attention should be paid to clear, neat handwriting and tidy alterations.
- Complete all rough work in your answer booklet. Cross through any work you do not want marked.

Do not turn over this page until instructed by the Invigilator.

* This unit is a component of the **CILEx LEVEL 3 PROFESSIONAL QUALIFICATIONS** and **LEVEL 3 LEGAL SERVICES KNOWLEDGE QUALIFICATIONS**

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SECTION A

(Answer ALL questions in Section A)

1. Identify **four** reasons why a person might make a Will. **(4 marks)**

2. Where a person has made a Will, give **three** examples of when property may pass on their death, other than under that Will. **(3 marks)**

3. Explain why it is important to include a revocation clause in a Will. **(3 marks)**

4. Eric died last month. In his Will he left £5,000 to his son Simon. Simon died in 2015, leaving an adult child.

Explain what will happen to the legacy. **(5 marks)**

5. Explain the circumstances in which a Will may **not** be revoked on the later marriage of the testator. **(4 marks)**

6. When does a full intestacy arise? **(1 mark)**

7. Identify any **five** tasks an executor should undertake in the period before the grant of probate is applied for. **(5 marks)**

8. Which is the appropriate type of grant where there is a valid Will but no executor willing and able to act? **(1 mark)**

9. Explain why the Probate Registry will request an affidavit of plight and condition where a Will has been torn in half. **(1 mark)**

10. Identify **three** types of order that the court may make following an application under the Inheritance (Provision for Family and Dependents) Act 1975. **(3 marks)**

(Total Marks for Section A: 30 marks)

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SECTION B

(There are three scenarios in Section B. Answer the questions relating to ONE of the scenarios ONLY)

Scenario 1

Maria and Rolph married in 1962. During their long marriage they had three children, namely Kurt, Brigitta and Friedrich:

Kurt, who is 40, is married to Louisa. They have no children and live in Birmingham.

Brigitta, who is 42, is divorced from her husband Hans. She has no children and lives in Bedford.

Friedrich died in 2016. He left a wife, Elsa, and two children, Sophia (who is now 18) and Gretle (who is now 10). Sophia is currently away at university in Warwick. Gretle attends a local school for children with special needs, as she has learning difficulties. This is a private school and the fees, which Elsa pays, are around £12,000 per year.

Maria made a Will in 1990, by which she left everything to her husband, Rolph, or in the event that he predeceased her, one half to Kurt, one quarter to Brigitta and one quarter to Friedrich.

Following Friedrich's death in November 2016, Maria reviewed her Will. She was then unhappy that the estate would be split unequally between her surviving children if her husband died before her and so, preferring to have no Will at all, she tore up the Will. To be sure that it was completely destroyed, she then burnt it on the fire in her sitting room.

Maria has now died. She and Rolph always kept their finances separate, both having received significant inheritances from their parents. Maria now leaves an estate (in her sole name) worth around £800,000, which is made up of stocks and shares, cash in a building society, and her jewellery which is valued at £5,000. The only joint asset is the house where she and Rolph lived, which is worth around £350,000.

While clearing out her papers, Rolph has found a photocopy of Maria's 1990 Will.

Scenario 1 Questions

1. (a) Describe the rules relating to revocation by destruction. **(7 marks)**

(b) Apply the rules you have described above to Maria's Will and explain why her actions in 2016 successfully revoked her Will. **(3 marks)**
(Total: 10 marks)

2. Given that Maria has died intestate, and ignoring any potential claims under the Inheritance (Provision for Family and Dependents) Act 1975:

(a) explain what Rolph can expect to receive from Maria's estate and why; **(7 marks)**

(b) explain how the rest of Maria's estate will be distributed. **(6 marks)**
(Total: 13 marks)

3. The personal representatives have now received the grant of letters of administration in Maria's estate.

Explain the statutory powers available to them to use Gretle's share of the estate for her benefit until she is old enough to have it outright. **(7 marks)**

(Total Marks for Scenario 1: 30 marks)

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Scenario 2

Cedric Brown died in December 2016, leaving an estate worth around £250,000. This included the house in which he lived (Hedgehog Cottage) and a building society account with a small balance of around £500.

At the date of his death, Cedric's current account with the bank was overdrawn by around £2,000. He had an outstanding personal loan of around £5,000 and owed around £600 on his credit card. All of these debts are accruing interest.

Cedric had made a valid Will in 2002, which reads as follows:

"I Cedric Brown of Hedgehog Cottage High Road Kempston declare this is my last Will and I revoke all others made by me previously

1. I appoint my good friend Adelaide Stitch to be my executor
2. I give to my nephew Sebastian Brown the sum of £20,000 for his lifetime and on his death to his daughter Lily Brown
3. I give to my god-daughter Evangeline MacDonald the sum of £5,000 provided she attains the age of 18
4. I give to my friend Phyllida Partridge my Bose widescreen television
5. I give the rest of my estate to my niece Tora Brown

Signed *Cedric Brown* 8 August 2002

Witnesses *M McFee*
 B Blatherwick"

Shortly before he died, Cedric had made a claim on his contents insurance policy to replace his Bose widescreen television, which had been stolen during a burglary. The insurance company has just paid a cheque to Adelaide Stitch for £5,000 in settlement. Adelaide has used this money to pay off the bank overdraft and the credit card debt.

Cedric is survived by Adelaide, Sebastian, Lily, Evangeline (who is now 15), Phyllida and Tora, and also by his two witnesses.

Scenario 2 Questions

1. Identify the type of legacy to Phyllida contained in clause 4 of the Will and explain whether or not this will take effect.

(5 marks)

2. Identify the type of gift to Sebastian and Lily contained in clause 2 of the Will and explain how it will take effect.

(7 marks)

3. Identify the type of gift left to Evangeline contained in clause 3 of the Will and explain what will happen to this gift if Evangeline dies before she is 18.

(5 marks)

4. Adelaide has said that she does not wish to act as executor, either now or in the future.

(a) Describe how an executor avoids taking up their appointment.

(4 marks)

(b) Explain whether or not Adelaide can avoid her appointment.

(3 marks)

(Total: 7 marks)

5. Explain what affidavit evidence the Probate Registry might require on application for the grant of representation and identify who should provide this affidavit.

(6 marks)

(Total Marks for Scenario 2: 30 marks)

Turn over

Scenario 3

Dorothy Gale died in December 2016, aged 87, leaving an estate worth around £500,000, including her house.

In May 2016, Dorothy decided to make a Will, as she had been unwell and felt she ought to get her affairs in order. She talked things through with a friend, Tim Woodman, before writing out the Will herself, which was then validly executed. She appointed her friends, Tim Woodman and Leo Smithers, to be her executors and left all her estate to her son, Oliver. Tim and Leo have confirmed they are both willing to act as executors.

Although Dorothy had made a reasonable recovery from her illness, it had left her frail. She continued to have health issues up until her death, the worst symptoms being her constant tiredness and inability to walk far.

Because her son Oliver lives in America, and is not easily contactable, at the same time as making her Will, Dorothy wrote out a list of all her assets, along with a list of all her family and friends so that her executors would know who to contact on her death. Dorothy continued to accurately update this list, the last time being a month before her death.

At the end of November 2016, Dorothy was particularly unwell and was admitted to hospital, where she later died in early December.

While in hospital, Dorothy's grandson, Henry Gale, visited her regularly. During one of these visits, Dorothy told Henry she wanted him to have her house when she died. She told him that she felt very ill and that she was unlikely to survive long. She handed to Henry her house keys, and told him that the deeds for the house were in a metal box in her spare bedroom. Dorothy agreed with Henry that, if she recovered and was able to return to her home, he would hand back the keys and deeds.

Scenario 3 Questions

1. In order to make a valid Will, a testator must have mental capacity. Apply the following two tests to explain whether or not you believe Dorothy had such capacity:
 - (a) The test set out in Banks v Goodfellow (1870).
(7 marks)
 - (b) The test set out in the Mental Capacity Act 2005.
(7 marks)**(Total: 14 marks)**

Assume for the purposes of the remaining questions that Dorothy **did** have mental capacity.

2.
 - (a) Identify the essential conditions for making a valid *donatio mortis causa* (deathbed gift).
(3 marks)
 - (b) Applying these conditions to the facts of the scenario, explain whether or not Henry can keep the house. Use **one** relevant case to illustrate your answer.
(8 marks)
 - (c) Explain in what other ways Dorothy might have made a gift of her house to Henry, to take effect on her death.
(3 marks)**(Total: 14 marks)**
3. Explain which grant of representation is appropriate in this estate.
(2 marks)

(Total Marks for Scenario 3: 30 marks)

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