



THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

UNIT 14 – LAW OF WILLS AND SUCCESSION*

Time allowed: 3 hours 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.
- **All questions carry 25 marks. Answer FOUR only of the following EIGHT questions. This question paper is divided into TWO sections. You MUST answer at least ONE question from Section A and at least ONE question from Section B.**
- Write in full sentences – a yes or no answer will earn no marks.
- **Candidates may use in the examination their own unmarked copy of the designated statute book: Blackstone's Statutes on Property Law 2016–2017, 24th edition, Meryl Thomas, Oxford University Press, 2016.**
- 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 following CILEX qualifications: **LEVEL 6 CERTIFICATE IN LAW** and the **LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW AND PRACTICE**

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SECTION A
(Answer at least one question from this section)

1. Analyse the extent to which the rule in *Banks v Goodfellow* (1870) and the rule in *Parker v Felgate* (1883) are still relevant when considering a person's capacity to make a will.
(25 marks)

2. Critically evaluate the extent to which the formalities in s.9 Wills Act 1837 are undermined by the doctrines of:

(a) *donatio mortis causa*; **(16 marks)**

(b) incorporation by reference. **(9 marks)**

(Total: 25 marks)

3. Legacies in wills may be classified as being specific, general, or demonstrative.

Analyse the effect of the classification of legacies in relation to ademption, abatement, and payment of income and interest.

(25 marks)

4. Analyse how the rules contained in s.24 and s.34 Wills Act 1837 have been used by the court to interpret how gifts in a will should be applied.

(25 marks)

Turn over

SECTION B
(Answer at least one question from this section)

Question 1

You are consulted by Joe Osborne and Sharon Platt with regard to the administration of the estate of Lawrence Todd. They give you the following information:

- Lawrence died on 1 December 2016. He was a very organised man and kept his personal papers in a bureau to which only he had a key. He had made it known that his will, which he had written himself, was kept in the bureau. Despite a thorough search, his will has not been found.
- Lawrence was divorced from Wendy in 2002. They had a son, Adrian, who died in a climbing accident on 30 September 2016. Adrian had no children.
- Lawrence's parents are both dead.
- Sharon Platt was the half-sister of Lawrence. She has no children.
- Yvonne was the sister of Lawrence. Yvonne, who died in 2005, was married to Joe Osborne. Yvonne had a son, Ben, now aged 22, from a relationship before her marriage to Joe. Yvonne and Joe had a son, Ethan, who died on 15 December 2016, aged 17. Ethan was cohabiting with Fiona, and they had a daughter, Natasha, aged 2 months.
- Ralph was the elder brother of Lawrence and died in 2005. He was married to Verity and they had two children, Gareth and Kevin.
- Gareth died in the climbing accident with Adrian. He was married to Phoebe and they had a child, Celine, aged 4. Phoebe is pregnant with their second child.
- Kevin is adopted and is aged 16.

Advise Joe and Sharon on the following:

- (a) the entitlement, if any, of each of Lawrence's relatives to share in his estate;
- (19 marks)**
- (b) who is entitled to take out a grant of representation to Lawrence's estate.

(6 marks)
(Total: 25 marks)

Question 2

Tony Croft died recently, having made a will appointing his son Daniel as his executor. The will includes the following gifts:

- 3 I give £36,000 to my nephew Zach
- 4 I give £12,000 each to my nieces Sunita and Yasmin
- 5 I give my house 40 Water Street, Bedford, to my son Daniel
- 6 I give my flat in Llandudno free of mortgage to my sister Lucy
- 7 I give the residue of my estate to my daughter Ellie'

Daniel informs you that he has collected together details of his father's estate. The house in Bedford has been valued at £300,000, and is subject to a mortgage of £60,000. The flat in Llandudno has been valued at £100,000, and is subject to a mortgage of £40,000.

The value of Tony's other assets comprising his personal effects, savings and car is £100,000. He has credit card debts and other liabilities amounting to £50,000.

Daniel tells you that he and his sister Ellie intend to pay for their father's funeral from their own money.

Tony's will does not include any other provisions relevant to the payment of his debts and liabilities.

Advise Daniel in what order the assets of his father's estate should be used to pay the debts and liabilities of the estate.

(25 marks)

Turn over

Question 3

Isabella Ribeiro died in August last year, having validly executed her will in 2002. Her daughter Amanda and her son Owen are her executors. The will of Isabella includes the following clauses:

- £20,000 I Ribeiro*
- 3 I give ~~£10,000~~ to my sister Ester
- 4 I give ~~£2,000~~ to my friend Henry Jones
- £10,000 I Ribeiro*
- 5 I give XXXXXXXXXX to my brother-in-law Samuel
- 6 I give my portfolio of shares to my cousin Felipe
- 7 I give the remainder of my estate after payment of all my funeral and testamentary expenses to such of my children Amanda, Owen, Gabriela and Nathan as shall survive me and if more than one in equal shares absolutely'

Amanda and Owen seek your advice on their mother's will. They confirm that the amendments to clauses 3 and 5 are in their mother's handwriting. All the amendments to the will are in ink.

They tell you that Felipe has not been heard of for more than ten years. He was a bachelor and last known to be living in Brazil. Despite them making numerous enquiries and advertising in papers here and in South America, his whereabouts are still unknown and they think he may no longer be alive. The portfolio of shares given to him by Isabella is worth approximately £100,000.

They also inform you that Gabriela died in 2005, leaving a son, Bruno. Nathan is their younger brother. They know his address, but they are estranged from him.

Advise Amanda and Owen on the following:

- (a) the effect of the alterations in clauses 3, 4 and 5 of Isabella's will;
(10 marks)
- (b) the steps they could take to protect themselves before distributing the share portfolio;
(9 marks)
- (c) the division of the residuary estate.
(6 marks)
- (Total: 25 marks)**

Question 4

Olivia, aged 57, died on 27 November 2016 after a short illness, leaving a net estate of £500,000. Olivia made a will in 2010 after her divorce from Derek. She appointed her father, Charles, as her executor. The will includes legacies of £50,000 to both of her children, Jessica and Martin. The remainder of her estate passes in equal shares to two charities of which Olivia had been a long-standing supporter.

Charles informs you that, in a letter written by Olivia in 2010 and placed with her will, she explained to Jessica and Martin that due to the great distress they had caused her at the time of her divorce from Derek, she had decided to reduce their entitlement and give them legacies as opposed to a share of the residue. Charles also tells you that during last year, the relationship between Olivia and Jessica had improved, but she remained estranged from Martin.

You are told by Charles that following the divorce, Olivia and Derek reached a financial settlement on a clean break basis.

Subsequently, in 2013, Olivia formed a relationship with Ivor, who has a 15-year-old daughter, Holly. The relationship, although it had been tumultuous at times, had continued until Olivia's death.

Charles believes that claims are being contemplated against Olivia's estate by or on behalf of the following:

- Jessica, who is Olivia and Derek's daughter, aged 28. She lives alone and has been unemployed for the past two months. Her sole income at present is Jobseeker's Allowance.
- Martin, who is Olivia and Derek's son, aged 26. He lives alone and is confined to a wheelchair due to injuries he suffered in a car accident in 2014. He is entirely reliant on state benefits.
- Ivor, aged 46, who had been in a relationship with Olivia since 2013. She had been cohabiting with Ivor since August 2014, when he had moved into Olivia's home. In 2016, Ivor was serving a six-month prison sentence. He was released two months early, in September 2016, so that he could care for Olivia. Ivor is unemployed and in debt.
- Holly, who has lived at Olivia's home since August 2014, and has been partly maintained continuously by Olivia since that time. Holly's mother has made irregular payments towards her maintenance.

Advise Charles of the potential entitlement of each of the above applicants under the Inheritance (Provision for Family and Dependants Act) 1975 (as amended) and of the likelihood of their claims being successful.

(25 marks)

End of Examination Paper

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