



Association of Taxation Technicians

Examination

November 2005

PRINCIPLES OF LAW

ANSWERS WITHOUT MARKS

Answer 1.1

A Will is a written direction and instruction by which a person expresses his requirements and wishes as to the devolution of his property after his death.

No particular form of words is necessary and wills may be typed, printed or written by hand.

However the Wills Act 1837 sets out the formal requirements which must be followed when drawing up a will.

1 A will must be in writing

2 A will must be signed by the testator who makes it and the testator's signature must be witnessed by two persons who are present together when the will is signed by the testator

3 The attesting witnesses and their spouses cannot benefit under the will (unless there are at least 2 further independent witnesses). If an attesting witness marries a beneficiary after the date of the will, this will not invalidate the bequest

4 The testator must be sui juris (legally competent). Therefore a minor cannot make a valid will. A person of unsound mind can make a valid will during a lucid interval.

5 The testator must intend the will to be operative as a testamentary disposition (disposing of his assets after his death).

Answer 1.2

Adviser and Co

1 Any Street

Any Town

Date

Dear Mr Hector

Re: Your Testamentary Affairs

I refer to our recent meeting and write as promised to set out the advice given.

You asked me whether you needed to make a new will in order to make an additional bequest to Chris.

A will can be modified without being fully rewritten. This can be done by completing a Codicil, which is in effect, an appendix to the will. It will have to be written, signed and witnessed in accordance with the formalities applicable to a full will, but can change as little or as much of your original will as you wish.

Your 2002 will is still valid, despite your divorce from Hilda. However, any gifts to Hilda in the will will no longer be effective (unless there was a clear intention in the will that the gifts would remain valid after divorce). If Hilda were appointed to be your executor under the will, that appointment will also fail.

In the circumstances you may prefer to revoke (cancel) your 2002 will and draw up a new one.

Your 2002 will can be revoked by destruction (if you tear it up or burn it for example, or if you write

a letter stating that you wish it to be revoked, and that letter is signed by you and witnessed by 2 witnesses).

However, the 2002 will will be revoked automatically on your marriage to Valentina, as marriage automatically revokes an existing will (unless the will states that it is made in contemplation of marriage to a specified person).

The 2002 will may also be revoked by a later will which expressly or by implication revokes all further wills.

As you do not know how long it will be before you and Valentina marry, my advice to you is to draw up a new will now, making all bequests that you wish to retain from your 2002 will, adding in the new bequest to Chris, and making any other changes you require. It would be safest to include a clause specifically revoking all earlier wills to avoid any uncertainty. As you intend to marry Valentina in the future, that can be stated in the will so that the will would remain effective after your marriage to her.

I trust this answers your queries. If you would like to proceed then please do not hesitate to contact me.

Yours sincerely

A.D.Visor

Answer 2

1. A public company may offer securities to the public, provided that it observes the detailed rules and regulations set down in the Financial Services and Markets Act 2000, the Public Offers of Securities Regulations 1995 and CA 1985. These require a public company to issue a prospectus, a document which gives minimum essential information to potential purchasers
If the shares are to be listed on the official list of the London Stock Exchange, the company must also comply with Stock Exchange Rules. Alternatively, where the shares are to be admitted to trading on the Alternative Investment Market (AIM) the company must comply with the AIM Rules.
2. Shares in other companies are transferable in accordance with the provisions of the Articles of Association. A family, or the initial members of a company, may wish to retain control of a private company. In such cases the Articles are likely to contain clauses restricting the right to transfer the shares. These may take the form of:
 - (i) an absolute power vested in the directors to refuse to register a transfer, or
 - (ii) a right of pre-emption (first refusal) granted to existing members when another member wishes to transfer his shares.
3. If a public company issues shares for a non-cash asset, that asset must be independently valued to ensure that the company is receiving an asset of a value at least as great as that of the shares issued in return. A private company need not obtain a report on the value of non-cash consideration received as payment for shares. .

4. This generally requires a special resolution of members and CA 1985 sets out a number of other formalities which must be observed.

5. Organisation considerations – some companies prefer to have separate activities in separate subsidiaries for organisational reasons.
 Regulatory issues – Some overseas jurisdictions require foreign-owned businesses to be operated through local subsidiaries. Legislative provisions may require certain activities to be carried on through separate companies.
 Limited liability - A company may have a new risky venture so advised to operate it through a newly incorporated subsidiary, so that assets within the original group would not be threatened by failure of the new venture.
 Costs – the more companies there are in the group, the greater the costs.

Answer 3

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| 1) | <p>Resulting trust – when the legal title to the property is transferred to others but the beneficial interest reverts to the settlor (or his estate if he is dead). This will occur:</p> <ul style="list-style-type: none"> - when the trust fails - where a trust has been set up but there is money left over after the purpose of the trust has been achieved - where a person purchases a property held in someone else's name <p>Constructive trust - which arises when it would be wrong for the holder of the property to keep the benefit. These are examples of when constructive trusts will arise:</p> <ul style="list-style-type: none"> - persons in a fiduciary position such as trustees or company directors who must account for any profit from their position which the law does not allow them to keep - an agent is accountable to his principal for any profit made without the principal's consent. He must also account for any secret profit or bribe. - partners are accountable under the Partnership Act 1890 to their fellow partners - a mortgagee must account for a surplus on a sale - the owner of a residence must recognise the right of a wife or partner to remain in occupation - where money is lent for a specific purpose which failed | |
| 2) | <p>A discretionary trust is the most flexible form of trust, and it is usually set up by a settlor who wishes property to be used for a group of people but does not wish to specify the precise benefit for each individual member of the group</p> <ul style="list-style-type: none"> - the trustees are the legal owners and control the property - the beneficiaries are either named on the trust deed or identified as a group of people, eg "my children" - the beneficiaries have no absolute right to receive trust income - the trustees have discretion to pay trust income to the beneficiaries, as they think fit - any income which is not paid out can be accumulated - the trustees can also pay the capital of the trust to the beneficiary, and can transfer capital to one or more beneficiaries absolutely <p>A life interest trust or interest in possession trust is where a beneficiary is entitled to use the trust property during his lifetime, but upon his death the trust property passes to other beneficiaries – the remaindermen/fiars</p> <p>A discretionary trust differs from an interest in possession trust in that in an interest in possession the beneficiary has a right to the trust income The trustee has no discretion to accumulate the trust income In an interest in possession the capital should be maintained for the remaindermen/fiars</p> | |

Answer 4.1

Parliamentary supremacy has a number of consequences:-

- 1 Parliament is able to make law as it thinks fit. It may repeal earlier statutes, overrule caselaw or make new law.
- 2 No Parliament can bind its successors. It cannot make laws which cannot be altered or repealed by successor Parliaments.
- 3 The courts are bound to apply the relevant statute law however distasteful it may be to them. But the Judges have to interpret statute law and may find a meaning in a statute which it could be argued Parliament did not intend.

The concept of Parliamentary supremacy was weakened when the Human Rights Act 1988 came into force in October 2000. The courts are under a duty to read and give effect to legislation so that it complies with the European Convention on Human Rights so far as it is possible to do so. The courts do not have the power to strike out legislation where it does not comply with the convention. Instead they have the power to declare the UK legislation incompatible with the Convention. The onus is then on the Government to amend the legislation so that it does comply.

Parliamentary supremacy was also fundamentally affected by the UK's membership of the European Community. The effect of the European Community Act 1972 was to cede Parliament's supremacy on matters in which Community law is intended to have direct effect in member states. This means that the European Union may legislate for the UK and the UK Parliament must enact laws which comply with Community Law.

There are therefore now 2 sources of legislation in the UK- UK law enacted by the UK Parliament and community law derived from the European Union and European Law is applied in priority to domestic law .

Answer 4.2

The 3 procedures are:

- 1 Consultation procedure . The Commission forwards the text to the Council of Ministers which must then consult the European Parliament which delivers an opinion on the proposal . The Council is under no duty to follow the Parliament's recommendation .
- 2 The cooperation procedure . This gives a stronger role to the Parliament. It can make recommendations which the Council may only override by obtaining an unanimous vote for its own version of the text.
- 3 The co decision procedure. This enables the Parliament to veto a piece of legislation. This is a very strong power for the Parliament, giving it increased bargaining power to win compromises from the Council. Parliament does not have the right to force the Council to adopt a measure but it can prevent the adoption of a measure it does not approve of. This procedure permits direct dialogue between the Parliament and the Council 1 and makes adoption of Acts dependant on the approval of both institutions .

Answer 5

1. A number of steps must be undertaken before a company can issue shares.

Authorised share capital:

A company may need to increase its authorised share capital, if it wishes to increase its issued share capital beyond the limit authorised in the Memorandum of Association. Consequently, the level of authorised share capital must first be checked. Provided that the company has the appropriate authority in its Articles of Association , the authorised share capital can be increased by ordinary resolution, but the Articles for Association and any other agreements need to be checked to make sure that there are no restrictions or class rights restricting the passing of a resolution to increase the authorised share capital.

Directors' authority:

It is established practice to delegate to the board of directors the power to allot shares. To do this the directors must be properly authorised, either by the Articles or by a resolution passed in general meeting. As with the exercise of all directors' powers, the power to issue shares and debentures must be exercised bona fide and for a proper purpose.

Other limits on directors' authority:

Whenever shares or options over shares are issued or proposed, the terms of any shareholders' agreement or other agreement must be checked to ensure that such action is not prohibited.

Pre-emption rights on share issues:

If a company proposes to allot shares wholly for cash, CA 1985 generally requires that it first offers those shares to holders of similar shares in proportion to their holdings.

Payment for shares:

A company may issue shares for money or money's worth; it need not receive cash. However, the consideration it receives must not be less than the nominal value of the shares issued, namely the company cannot issue shares at a discount. On the other hand, there is nothing to prevent a company from issuing its shares for more than their nominal value.

2. Dividend restrictions

The rules governing the maintenance of capital are enforced by a number of restrictions on distributions made by a company. Capital (represented by undistributable assets) must be distinguished from realised profits (distributable).

A company is only permitted to make a distribution out of distributable profits, that is, its accumulated realised profits less its accumulated realised losses. Accumulated profits are the balance of realised profits carried forward from year to year. It is therefore not necessary to make a profit every year, provided that the balance of distributable profits after provision for that year's losses is sufficient to meet the distribution. Profits must be realised, that is, a revaluation reserve cannot be distributed.

3. Consequences of unlawful distribution

Any distribution made in contravention of the Companies Acts and, in particular, one which is not covered by distributable reserves is an unlawful or illegal distribution and the company or its liquidator can require repayment by the recipient. The directors may be liable for breach of their fiduciary duties.

4. Directors duties

Fiduciary Position:

The overriding duty on directors is to act honestly, in good faith for the benefit of the company as a whole. Essentially, a director must act bona fide in the interests of the company.

Answer 6

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| 1) | There are three legal estates in land: | |
| | (i) Freehold: this an absolute interest in land and subject to general law the freeholder can do with the land as he wishes. | |
| | (ii) Leasehold: this is a qualified interest in land that is limited in time. The lease will normally contain certain restrictions and covenants and the lease may be subject to forfeiture if they are not complied with. <i>(also award 2 marks if candidate mentions instead of the above the rules on underleases or assignments but to a max of 4 marks for this segment)</i> | |
| | (iii) Commonhold: this is a freehold in common land which: <ul style="list-style-type: none"> - must be owned by a company called a 'commonhold association' - must originally have been a freehold property - the 'commonhold association' will own and manage the common parts - individual parts, or 'commonhold units' are held as freehold by the unit holders <i>(also award 1 mark for each of the following: the constitution of the commonhold association; property can be used for commercial or residential use but not for agriculture; only unit holders can be members of the commonhold association; commonhold is different to the old rules on 'common land' but to a max of 6 for this segment)</i> | |
| 2) | In addition to the legal estates in land there are also legal and equitable interests in land and in the case of registered land there are overriding interests: | |
| | <p>(i) Legal interests: These are limited but include easements (eg rights of way) and charges by way of legal mortgage Legal interests bind the purchaser even if he has no notice of them <i>(give 1 mark if mention that such interests will be noted on the title documents or the Land Registry title but to a max of 4 marks for this segment)</i></p> <p>(ii) Equitable interests: Any other interest will be an equitable interest Which must be protected by registration - in which case it binds every purchaser The following are examples of equitable interests: <ul style="list-style-type: none"> - Restrictive covenants - Beneficial interests: these will be created by an express or implied trust BUT they can be overreached if the purchase monies are paid to two trustees or a trust corporation - Contracts: there are various types of contracts (eg sales, options and pre-emption rights) and these must be registered to be protected </p> <p>(iii) Overriding interests: In the case of registered land there is a class of interests which are not capable of separate registration but which bind a purchaser whether or not he has notice of them. The two most important examples are: <ul style="list-style-type: none"> - the rights of a person in actual occupation; and - leases granted for less than 21 years </p> | |