

INSTITUTE OF LEGAL EXECUTIVES
UNIT 8 – LAW OF WILLS & 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 the question paper fully.** However, you may make notes on the question paper or in your answer booklet during this time, if you wish.
- **The 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 in Section B ONLY.**
- Write in full sentences – a yes or no answer will earn no marks.
- Candidates must comply with the ILEX 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 ball point 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 ILEX qualifications: **LEVEL 3 CERTIFICATE IN LAW AND**

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SECTION A

(Answer ALL questions in Section A)

1. Identify **two** ways in which a person may change their will.
(2 marks)
2. Identify **two** situations where the formal requirements of s9 Wills Act 1837 are **not** required to make a valid gift on death.
(2 marks)
3. Explain the meaning of the term 'specific gift' and show how it is distinguished from a general gift.
(3 marks)
4. Explain the effect of s33 Wills Act 1837.
(5 marks)
5. Identify **two** ways in which a will can be revoked.
(2 marks)
6. Explain the difference between intestacy and partial intestacy.
(4 marks)
7. Where one of a number of executors chooses to have power reserved to them, what is the effect of this?
(2 marks)
8. Arnold has died leaving a valid will in which he appoints Bernard, Charles and Daniel to be his executors. As Bernard died three years ago, and Charles has renounced his right to act, what type of grant of representation is appropriate here?
(1 mark)
9. Under what circumstances would the Probate Registry ask for an affidavit of due execution?
(3 marks)
10. Name **three** categories of people who can make a claim under the Inheritance (Provision for Family and Dependants) Act 1975.
(3 marks)
11. If a person dies intestate, their spouse does not inherit immediately, even though an adult child does. Explain why this is.
(3 marks)

(Total Marks for Section A: 30 marks)

SECTION B

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

Scenario 1

Alvin died in December 2010 having made a valid will dated 3 June 2002. The following is an extract from his will showing the substantive provisions:

"I Alvin Anderson of 17 Pike Drive, Bedford, MK42 5TY declare that this is my last will and revoke all former wills and testamentary dispositions made by me

1. I appoint my friends Matthew Tanner of 19 Pike Drive, Bedford, MK42 5TY and Ravi Sindar of 5 The Pytle, Bedford, MK2 6RR to be executors and trustees of this will
2. I give to each of my friends the said Matthew Tanner and Ravi Sindar the sum of £5,000 regardless of whether or not they act as my executors
3. I give to my godson Simon Temple of 5 Station Rise, Weybourne, Norfolk, NR25 7HH the sum of £10,000 to be paid from my Bedford Building Society account number 485772
4. I give to my goddaughter Tania Temple of 5 Station Rise aforesaid the sum of £5,000 provided she reaches the age of 18
5. I leave the rest of my estate to my brother Cliff Anderson of Stardust House, The Lane, Bedford, MK42 3RR absolutely"

Matthew died in 2003 leaving a wife, Deborah, but no children. Ravi died last year, unmarried and with no children. Both Simon and Tania survived Alvin. Simon is 22 years old and Tania is 16. Cliff died in 2007 leaving a wife, Sonia, and two children, Fin (who is now aged 7) and Hal (now aged 5).

Alvin never married and had no children. His parents died many years ago and his only other relatives are his two surviving brothers, Jim Anderson and David Anderson.

Alvin's estate is worth around £500,000 and includes his house 17 Pike Drive, and a number of bank and building society accounts, but none with the Bedford Building Society.

Scenario 1 Questions

1. Explain how the residuary estate will be distributed.
(9 marks)
 2. Identify and describe the types of legacies contained in **clauses 2 and 3 only** of the will and explain whether or not each will take effect.
(8 marks)
 3. Explain what type of grant of representation is appropriate here and who should apply for it.
(8 marks)
 4. (a) Identify the type of legacy to Tania contained in clause 4 of the will.
(2 marks)

(b) What will happen to this legacy:
 - (i) while Tania is under 18 years old;
(1 mark)
 - (ii) if Tania dies before she is 18 years old?
(2 marks)
- (Total: 5 marks)

(Total Marks for Scenario 1: 30 marks)

Scenario 2

In 2005 Jennifer made a simple home made will by which she left all her estate to her husband, Brian, and appointed him her sole executor. In 2006 she made a codicil which added some legacies to each of her three children and appointed a friend to be an executor with Brian.

In 2007 Jennifer decided she needed a professionally drawn up will so made an appointment with her solicitor. On the 1st of May she went to see her solicitor. She took with her the 2005 will and 2006 codicil and, once she had shown these to her solicitor, she told him to tear them up and throw them away. She said "these are all wrong now, in fact they are so out of date, I would be better off with no will at all". Her solicitor did as she asked and tore up the will and codicil in front of Jennifer. He then continued with the interview to take instructions for her new will.

Unfortunately, although the solicitor sent her a draft will a few days later, Jennifer never approved or signed it (or indeed any other will).

Jennifer died in December 2010 aged 64.

She is survived by her husband Brian, who is 74 and currently recovering from major surgery; her son Michael (aged 44) who is unmarried and has no children; her daughter Katherine (aged 40) who is married to Edward and has no children; and her grandchildren Shirley (aged 17) and Rose (aged 15) who are the children of Jennifer's deceased son Toby. Toby died in 2009, leaving a wife, Iris, who is the mother of Shirley and Rose.

Jennifer's estate is estimated to be worth around £650,000. It includes the house in which she and Brian lived, which she owned in her sole name; bank and building society accounts held jointly with Brian; and a valuable collection of jewellery. She was also the sole proprietor of a small cheese making business which she ran from home and the only business assets appear to be stock and the company van.

Scenario 2 Questions

1. Explain why the events of 1st of May 2007 resulted in Jennifer's will being revoked.

(7 marks)

2. (a) Now that Jennifer has died intestate, explain what Brian will receive from her estate.

(9 marks)

- (b) Explain how the rest of the estate will be distributed.

(5 marks)

(Total: 14 marks)

3. Brian does not wish to act as administrator in the estate. How can he stand down and if he does who should then apply for the grant of letters of administration?

(5 marks)

4. The administration of the estate is proceeding well but you are still not in a position to apply for the grant of letters of administration. The proposed personal representatives tell you that they have found a buyer for Jennifer's house, Brian having moved into the local nursing home to continue his recovery. The proposed personal representatives wish to sign a contract for sale of the house so that they do not lose this buyer.

Explain why they cannot do this yet.

(4 marks)

(Total Marks for Scenario 2: 30 marks)

Scenario 3

In 2008 Brett instructed solicitors to prepare a will for him. The solicitor gave him a draft will for approval. Brett left the draft will on his desk in his study and failed to deal with it for two years.

In December 2010, just before leaving to go on holiday with his friend, Andy, Brett thought he had better sign the draft will, just to make sure he had something in place. He intended to see his solicitor on return from holiday.

Brett signed and dated the draft will just as Andy arrived in a taxi. Brett asked Andy and the taxi driver, Sheila, to come into the house for a few minutes in order to act as witnesses to his will.

Once Andy and Sheila had sat down at the kitchen table Brett showed them the draft will, pointed to his signature and said, "There, I have signed and dated it, you both need to sign underneath".

Andy and Sheila both signed the draft will straightaway. Brett then placed the signed will in an envelope which he left on the kitchen table. Sheila then took them to the airport in her taxi.

The will appoints the partners in Kempstons Solicitors to be executors and leaves all Brett's estate to a local charity which supports adults with learning disabilities. It has a number of administrative clauses but no professional charging clause.

Brett was killed in a skiing accident while on holiday.

Brett's only surviving relatives are his sister Freya (who is 41); and his uncle Darren (aged 72) who is the brother of Brett's deceased father.

For the past five years Freya had been doing Brett's cleaning and laundry for which he paid her an hourly rate.

Darren has been living in a nursing home for the past three years and Brett has been contributing 50% of the monthly cost of his care. Darren has no savings and his only income is his small pension from his former employment in a paper making factory. Brett, who had a good income from his job in marine insurance, was happy to cover a large proportion of the cost of Darren's care when he could no longer live at home on his own. The alternative was to accept the nursing home place funded by local Social Services which was more than thirty miles from Darren's home town.

Brett's estate is worth around £750,000.

Scenario 3 Questions

1. What are the formal requirements to execute a valid will?
(4 marks)
2. Explain, using **one** example of relevant case law, why Brett has complied with the formal requirements to execute a valid will.
(8 marks)
3. Given that there is no professional charging clause in this will, can Kempstons charge for their work in the administration of the estate? Give reasons for your answer.
(3 marks)
4. Darren and Freya have contacted you to say that they will be making separate claims for shares of the estate.
 - (a) Explain whether Freya and Darren might be able to make claims, and if so, why.
(5 marks)
 - (b) When considering Darren's claim what factors will the court take into account and how will they apply them?
(10 marks)**(Total: 15 marks)**

(Total Marks for Scenario 3: 30 marks)

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