

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 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 PRACTICE** and **LEVEL 3 PROFESSIONAL DIPLOMA IN LAW AND PRACTICE**

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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. There is a rebuttable presumption that a testator who executes a will does so with knowledge and approval of its contents. Identify **two** situations where this presumption does **not** apply. **(2 marks)**
3. Why is it important to include a revocation clause in a will? **(3 marks)**
4. Explain the statutory power of advancement under s32 Trustee Act 1925. When drafting a will, what additional provision might you include to extend this power? **(5 marks)**
5. A testator makes a will leaving a gift to his wife. What effect does their later divorce have on that gift? **(3 marks)**
6. Explain the term 'partial intestacy' and give **one** example of how it might arise. **(2 marks)**
7. Describe **two** differences between an executor and an administrator. **(2 marks)**
8. When is a grant of letters of administration appropriate? **(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. Under the order of beneficial entitlement on intestacy, outline what a surviving spouse can expect to receive from an estate worth around £600,000 where the deceased also left children. **(4 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

Bernard Bose made a will in March 2001. It appears to be validly executed and contains the following provisions:

- “1. I Bernard Bose of 5 Joshua Road Oxford declare that this is my last will and I revoke all my former wills
2. I appoint my son Albert Bose to be my sole executor
3. I give the sum of £5000 to my grandson Daniel Bose when he reaches the age of 21
4. I give the remainder of my estate to my son Albert”

Bernard had two sons:

Albert, who is mentioned in the will and is the father of Bernard’s only grandchild, Daniel, who is currently 11 years old, and

William who is unmarried and has no children.

Bernard’s wife, Mariette, died 15 years ago. He never remarried but had formed a close relationship with Irena, a lady he met through his local Church in 2005. Irena moved in to Bernard’s house in October 2008 where they lived as husband and wife until Bernard’s death in December 2011.

Following Bernard’s death. Irena found an old empty envelope on the back of which Bernard had written the following note:

“I wish to include William in my will as well – he is to share equally the remainder of my estate with his brother Albert. The rest of the will is still valid.

Dated 7 April 2003”

The envelope is signed by Bernard, and also Malcolm and Sarah Tibbings, who Irena says were Bernard’s next door neighbours at that time.

Bernard had been aware that he was very ill and knew that he was dying. A few days before he died he gave to Sophia, Albert’s wife, a very valuable necklace which had belonged to Mariette. He told Sophia that he had always wanted her to have it saying “I won’t have another opportunity to give this to you so you must take it now – I’d like to know you have something from me before I go”.

Scenario 1 Questions

1. (a) Set out the essential conditions for making a valid 'Donatio Causa' (deathbed gift).

(3 marks)

- (b) Applying these conditions, explain whether or not Sophia may keep the necklace (quote **one** relevant example from case law to illustrate your answer).

(7 marks)

(Total: 10 marks)

2. Identify the type of legacy contained in clause 3 of the will and explain whether or not the legacy will take effect.

(5 marks)

3. Albert says he does not think that the note on the envelope is of any importance as it does not 'look official' but William says that it is a new will. Explain the importance of the note and what effect it will have in this case.

(7 marks)

4. Irena tells you that she relied on Bernard financially and is now not able to support herself. She wishes to make a claim for financial provision from the estate under the Inheritance (Provision for Family and Dependants) Act 1975.

- (a) Under which category should she apply and why?

(5 marks)

- (b) Identify the standard of provision and the factors the court will apply when considering her claim.

(3 marks)

(Total: 8 marks)

(Total Marks for Scenario 1: 30 marks)

Scenario 2

Jonah qualified as a solicitor in 1972 and was in practice for the next 20 years. Having taken early retirement he decided to learn to paint, and by the late 1990s he was a reasonably successful artist.

In March 2001, he decided he needed to make a will, never having done so before. He did not want to go to the trouble of visiting a solicitor to make his new will so wrote one out himself one morning while working in the studio he shared with two other artists. Not having any paper to hand, he wrote his will out on the back of one of his paintings.

Once he had finished writing out his will he signed and dated it. He then took the painting with the will on the back through to the next door studio where his two fellow artists, Ken and Leo, were working. He showed them the will, saying "I've signed my will, could you two also sign as witnesses please?" Ken and Leo were busy with their own work but said they would be happy to sign it later. Jonah left the will on his easel and went out to deliver some new paintings to a local gallery. When he got back, Ken and Leo had both signed underneath his signature, telling him they had signed at the same time when they had stopped work for lunch.

Jonah has now died. He had never married and had no children. Both his parents died some years ago but he did have four sisters:

Amanda is the eldest. She is married with one child, Bill, who is four.

Cecilia has never married, and has no children.

Fiona is the youngest and lives nearby with her two children, Ivy and Hannah (who are seven and five respectively). She is divorced from her husband, Nigel.

Dana, his fourth sister, died in 2003. She was married to Eric and had two children, Samuel (who is 18) and Thomas (who is 14).

Also within the family is Michael, who is the child of Jonah's mother by her first marriage. Michael grew up with Jonah and his sisters and has always been treated as their brother.

Scenario 2 Questions

1. What are the formal requirements to make a will?

(4 marks)

2. Explain, using **one** example of relevant case law, why Jonah has failed to comply with the formal requirements to execute a valid will.

(10 marks)

3. (a) As Jonah has died intestate, explain how his estate will be distributed between his sisters.

(7 marks)

(b) Why will Michael not share in the distribution of the estate?

(2 marks)

(Total: 9 marks)

4. Explain who is entitled to apply for the grant of letters of administration.

(5 marks)

5. The administration of the estate is proceeding well but the grant of letters of administration has not yet been issued. However, the proposed personal representatives tell you that they have found a buyer for Jonah's house who wants to proceed quickly and the personal representatives intend to sign the contract for the sale of the house straightaway.

Explain why they cannot do this yet.

(2 marks)

(Total Marks for Scenario 2: 30 marks)

Scenario 3

Farokh died in November 2011. He had made a will through his local solicitor 10 years earlier. The following is an extract showing the operative provisions:

"I make the following gifts and legacies:

- (a) To my son Hans my house 7 The Drive Kempston
- (b) To my daughter Nina a new sports car up to the value of £40,000
- (c) To my son Karl the sum of £40,000

I give the remainder of my estate after the payment of all debts funeral and testamentary expenses to my son Luka"

Farokh's net estate is worth around £250,000 and consists of a building society account, a small balance in a bank current account and a few personal effects of little financial value. Farokh did not own a car.

Farokh had moved into a care home in 2009. He sold his house, 7 The Drive, shortly afterwards. The money from the sale of the house was paid into his building society account and much of it has been used to pay care home fees.

Karl died in 2008 following a long illness. He left a wife, Charlotte, and two children, Flora (who is now 8) and Jill (who is now 6).

Nina died in 2010. She had never married although had lived with her partner, Simon for 15 years. Nina had no children but Simon had one child from a previous relationship, Marcus, who is now 21.

Luka and Hans both survived their father. Both are married but neither have children.

Farokh has no other surviving family.

Shortly before Farokh died he telephoned his solicitor's office and asked the secretary to whom he spoke to tear up his will as it was no longer up to date. He told her that it was so out of date that it would be better if he had no will at all. The secretary he spoke to did as Farokh asked and shredded the will before disposing of it in the secure office waste system. Farokh's solicitor later wrote to him to ask him to confirm in writing his instructions to destroy the will, but Farokh did not confirm his instructions.

Scenario 3 Questions

1. State the rules relating to revocation of a will by destruction.
(6 marks)

2. Apply the rules of revocation to Farokh's will and explain why he did not revoke his will in 2011, using **one** example of relevant case law.
(6 marks)

3. Identify what type of legacy has been left to each of the following children, and in each case explain whether or not it will take effect:
 - (a) Hans;
(4 marks)
 - (b) Nina;
(4 marks)
 - (c) Karl
(5 marks)**(Total: 13 marks)**

4. How would the estate have been distributed if Farokh had successfully revoked his will in 2011?
(5 marks)

(Total Marks for Scenario 3: 30marks)

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