

**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 **four** characteristics of a valid will.  
**(4 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 difference between a vested gift and a contingent gift.  
**(5 marks)**
4. Explain the effect of s33 Wills Act 1837.  
**(5 marks)**
5. Identify **three** ways in which a will can be revoked.  
**(3 marks)**
6. When and how does a full intestacy arise?  
**(3 marks)**
7. What is the effect of an executor having 'power reserved' to him?  
**(2 marks)**
8. When is a Grant of Probate appropriate?  
**(3 marks)**
9. Where a will has staple marks visible in one corner of the document, what type of affidavit will the Probate Registry require on application for the grant of representation?  
**(1 mark)**
10. Identify **two** possible orders the court may make when making an award to a successful applicant under the Inheritance (Provision for Family and Dependents) Act 1975.  
**(2 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

Boris Brambling made a valid will in March 1998. It contains the following provisions:

- “1. I Boris Brambling of 13 Harvey Drive, Bedford declare that this is my last will and I revoke all former wills
2. I appoint my wife Elana Brambling and my brother Sampson Brambling to be the executors and trustees of this will
3. (a) I give to my daughter Rula my gold French antique clock  
(b) I give to my son Gregor 2000 shares in the mining company Trill and Rio plc
4. I give all the remainder of my estate to my wife Elana
5. If the gift in clause 4 fails then I give all my estate to my two children Rula and Gregor equally or to the survivor absolutely if only one survives me”

Boris and Elana married in 1988, Rula and Gregor being born in 1990 and 1992 respectively.

Boris and Elana separated in 2009 and Elana moved in with her elderly father. They divorced in April 2010 and neither remarried. By agreement between them, Boris retained the family home and the savings of around £300,000 they had accumulated during his working life. Elana had no money or property in her own name, and received only £25,000 from Boris.

Boris died in May 2012. He is survived by Elana (who is now 52), both his children and his brother, Sampson, who has said he will act as executor if he is needed.

Boris sold his clock last December to a local antique dealer who still has it displayed for sale in his shop window. Boris has never owned any shares in Trill and Rio, which is a very successful company whose shares are currently worth in the region of £100 each. Boris's estate including his house is worth around £750,000.

Elana is still living in her father's house but as he has now moved into a care home this house will have to be sold to fund his care home fees, leaving her homeless. Elana gave up paid employment when Rula was born and has not been in paid employment since then. Instead, she has been looking after her children and, until the divorce, her husband and the family home full time. Elana has spent most of the £25,000 she received from Boris on their divorce and now has only £9,000 in a savings account and a few personal possessions of no financial value.

### Scenario 1 Questions

1. Although the will is not revoked explain the effect of Boris and Elana's divorce on the will including an outline of how the residuary estate will be distributed.

**(9 marks)**

2. Which is the appropriate grant of representation in this case and why?

**(3 marks)**

3. Identify the types of legacies contained in clause 3 of the will and explain whether or not each will take effect.

**(6 marks)**

4. Elana wishes to make a claim for a share of the estate:

- (a) Explain whether and why she might be entitled to do this.

**(3 marks)**

- (b) Identify **three** of the factors the court is likely to take into account in this case and explain how the court will apply them when considering Elana's claim.

**(9 marks)**

**(Total: 12 marks)**

**(Total Marks for Scenario 1: 30 marks)**

## Scenario 2

Jacob Fraser died two months ago. He had handwritten his own will in which says:

"This is my last will by Jacob Fraser of 17 Aragon Close, Bedford

I cancel and revoke any previous wills I have made

I give everything I own to my girlfriend Karen Marks who lives with me at 17 Aragon Close

Dated 7<sup>th</sup> June 1998

Signed by Jacob Fraser in the presence of two witnesses who then both signed in his.

Signed: Jacob Fraser

Witnessed by: Louise Talbot

Simon Talbot"

The will appears to be correctly executed and valid and there are no other testamentary documents.

Jacob and Karen had four children, Thomas (who is now 20), Rachel (who is now 22) and twins Bailey and Evan (who are 18). Jacob and Karen married in 2000. At the date of his death Jacob, Karen, and their children all lived at 17 Aragon Close which is held in Jacob's sole name. All four children worked for Jacob's company which is a successful advertising and public relations agency run from a rented office a few miles away.

Jacob's estate is worth around £2m and consists of the value of the business, 17 Aragon Close, substantial cash deposits and a portfolio of stocks and shares. He also has three vintage cars kept at 17 Aragon Close which are together worth £500,000.

Also living with Jacob and his family is Daniel, who is the son of Jacob's brother Peter and his wife Lorraine, both of whom died in an accident five years ago. Shortly after his parents' deaths, Daniel came to live with Jacob and Karen on a temporary basis but he has continued to live with them ever since. He is now 15. Although never adopted by Jacob and Karen, Daniel is considered part of the family, and Jacob had paid his school fees. Jacob also hoped he would work for the family business when he was old enough.

Jacob had no other surviving relatives.

## Scenario 2 Questions

1. Explain why the 1998 will is revoked and how revocation might have avoided, using one example of case law to illustrate your answer.  
**(7 marks)**
  
2. (a) Explain what Karen can expect to receive from the estate and why.  
**(8 marks)**  
  
(b) Explain how the rest of the estate will be distributed.  
**(4 marks)**  
**(Total: 12 marks)**
  
3. Identify all those who are entitled to apply for the grant of letters of administration and explain how many can and should apply.  
**(6 marks)**
  
4. Karen is very worried that she will have to leave 17 Aragon Close, where she has lived for more than 20 years, so that it can be sold and the money divided, or find that she does not own the whole of the house in which she lives. Is there any way that she can be sure of receiving the whole of the house so that she remains in control of her home?  
**(5 marks)**

**(Total Marks for Scenario 2: 30 marks)**

### Scenario 3

Murielle Mace decided to make her own will following some wording she found on an internet website. She handwrote the following will:

"I Murielle Mace of Hill Views, Lower End Farm, Bedford declare that this is my last will

I give to my good friends Oliver and Nancy Payne the sum of £500 each out of my Bedford Building Society account with my thanks for all their help over the years

I leave everything else I have to my nephew Pierre Mace of Flat 7, Epsom Apartments, Chiswick High Road, Chiswick, London

If he should die before me then I leave everything else to The Cats' Protection League of 586 High Holborn Road, London

Dated 6 April 2000

Witnessed by:

Oliver Payne

***Nancy Payne***

Murielle died last month. The will's witnesses, Oliver and Nancy Payne have been able to confirm that Murielle wrote out her will in front of them one Sunday afternoon when they were invited to her house for tea. When Murielle had finished writing she dated it and then asked both Oliver and Nancy to sign as witnesses, which they did in front of Murielle and each other.

Oliver Payne has in his possession a photocopy of the 2000 will which Murielle asked him to keep but the original was destroyed by Ruth, Pierre's wife, shortly after Pierre died in 2009. At that time Murielle had just moved into a care home as she had been diagnosed with dementia and was unable to look after herself. Ruth was clearing out Murielle's house for her when she found the will and, deciding that it was no longer valid as Pierre had died, burnt it in the garden with other scrap paper. She did not tell Murielle what she had done in case she upset her.

Murielle's estate is worth around £650,000 and following the sale of her house consists almost exclusively of cash in savings accounts. She does have some personal effects and the account with the Bedford Building Society mentioned in the will still exists with a balance of around £100.



### Scenario 3 Questions

1. Explain, with reference to statute and one example of case law, Murielle's 2000 will was validly executed.

**(9 marks)**

2. (a) Set out the rules relating to revocation of a will by destruction.

**(6 marks)**

- (b) Apply the rules of revocation to Murielle's will and explain why Ruth's actions did not revoke the will in 2009.

**(5 marks)**

**(Total: 11 marks)**

3. (a) Identify and explain the type of legacies to Oliver and Nancy contained in the second paragraph of the will.

**(4 marks)**

- (b) Explain why these legacies will not take effect.

**(2 marks)**

**(Total: 6 marks)**

4. The will lacks an attestation clause. Explain what effect this has on the will and in due course on the application for the grant of representation.

**(4 marks)**

**(Total Marks for Scenario 3: 30 marks)**

**End of Examination Paper**

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