

THE CHARTERED 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 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 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 CILEx qualifications: **LEVEL 3 CERTIFICATE IN LAW AND PRACTICE**, **LEVEL 3 PROFESSIONAL DIPLOMA IN LAW AND PRACTICE**

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SECTION A

(Answer ALL questions in Section A)

1. What is a codicil?
(3 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 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)
4. Explain the effect of s33 Wills Act 1837.
(5 marks)
5. What effect would the marriage of a testator have on his will?
(3 marks)
6. Explain the term 'partial intestacy' and give **one** example of how it might arise.
(2 marks)
7. Can an executor refuse his appointment and if so how?
(4 marks)
8. When is a grant of letters of administration with the will annexed appropriate?
(2 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 **three** possible orders the court may make when making an award to a successful applicant under the Inheritance (Provision for Family and Dependents) Act 1975.
(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

Ajay died last month aged 98. In May 2011, he suffered a stroke which left him unable to speak or walk. The stroke did not affect his ability to deal with his finances though, which he did right up until his death. Ajay was able to communicate effectively by writing down what he wanted to say.

In August 2011 Ajay made a new will. As a retired accountant he had been used to dealing with wills in his working life and so decided to draft the will himself which reads as follows:

"I Ajay Parmar of 33 River Drive Kempston declare that this is my last will and I revoke any former wills.

I appoint my son Sahib to be my executor and I leave all I have to him

Signed *Ajay Parmar*

Dated 3 August 2011

Witnessed *Walter Goodfellow*
Gloria Goodfellow"

With the will Ajay had left a complete list of all his assets and debts, and a list of contact details for all his family and close friends.

Walter and Gloria were Ajay's next door neighbours at the time he made his will. Unfortunately, they were both killed in a skiing accident in 2012. Their daughter, Barbara, was also present when the will was signed and has provided information about what happened on that day.

Barbara can recall that Ajay had invited her and her parents to call round for a cup of tea and when they were all in the room he had asked Walter and Gloria (by writing a note) if they would witness his will for him. He took out the document, signed and dated it and then handed it to Walter who also signed it before passing it to Gloria to do the same while Walter went into the kitchen to make the tea. Gloria signed in front of Ajay and handed the will back to him.

Scenario 1 Questions

1. (a) Set out the formal requirements to make a will.

(6 marks)

- (b) Apply these formal requirements to the facts of the scenario to explain why Ajay **has** made a valid will.

(6 marks)

(Total: 12 marks)

2. Explain which affidavit the Probate Registry will require in support of an application for a grant of probate in this case, and identify who should provide this.

(5 marks)

3. In order to make a valid will a testator must also have mental capacity.

Apply the following two tests to discuss whether or not you believe Ajay had such capacity:

- (a) the test set out in *Banks v Goodfellow* (1870);

(7 marks)

- (b) the test set out in the Mental Capacity Act 2005.

(6 marks)

(Total: 13 marks)

(Total Marks for Scenario 1: 30 marks)

Scenario 2

Bronwen made a valid will in April 2009. After the revocation clause, appointment of Kempstons as executors it contained the following three gifts:

“Clause 3

I give the following gifts

1. To my daughter Megan the sum of £50,000 to be paid from the proceeds of sale of my house, Hill Top, Spring Lane, Kempston
2. To my son Huw a sports cruiser or other boat of his choice to the value of £50,000
3. To my daughter-in-law Antonia the sum of £400,000 for her lifetime and on her death for her daughter Lillie”

The will goes on to leave the remainder of her estate to be split equally between Megan and Huw. It also contains a number of administration clauses but nothing to widen her executors’ powers to deal with a business.

After the will had been correctly signed, Bronwen sent a copy to her solicitor for safe keeping and stored the original with her other important papers in her desk drawer. In January 2011 Bronwen decided to sort through this drawer which was too full and untidy. During her clearing out she found her will and, believing it to be the copy of the original, she burnt it in the fireplace with the other papers she was throwing away.

Bronwen died in May 2013. She left an estate worth over two million pounds which included her house (Hill Top) and her successful garden centre and plant supply business.

She was survived by Megan (who is 46), Huw (who is 42), Antonia (who is the widow of Bronwen’s late son Toby) and Lillie (who is 6 and is Antonia and Toby’s only child and Bronwen’s only grandchild).

Scenario 2 Questions

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

(6 marks)

- (b) Apply the rules of revocation to Bronwen's will and explain why her actions in January 2011 did **not** revoke her will.

(4 marks)

(Total 10 marks)

2. Identify and explain the types of gifts contained in clause 3:

- (a) to Megan;

(4 marks)

- (b) to Huw;

(5 marks)

- (c) to Antonia and Lillie.

(7 marks)

(Total: 16 marks)

3. There is no administrative clause in the will extending the executors' powers to deal with Bronwen's garden centre business.

Explain what powers they do have to deal with this business following her death.

(4 marks)

(Total Marks for Scenario 2: 30 marks)

Scenario 3

Roger died two months ago. He left an estate worth around £1,750,000 which included:

- Church Farm Barn, Kempston valued at £300,000 where he lived with his wife, Maud
- A substantial portfolio of stocks and shares
- Significant cash investments
- A collection of rare watercolour paintings

All assets are held in Roger's sole name.

Roger and Maud, who had been married for 55 years, had three children:

Norbert, who is 42 and married to Doris. They have no children. Norbert is a financial planning consultant to a large law firm and earns a significant income;

Henry, who is 39, unmarried and has no children. Henry is currently unemployed but hopes to find work soon; and

Veronica, who died last year. She left a husband, Joe, and two children Ingrid (who is 23) and Benson (who is 21). Both Ingrid and Benson are currently studying at university.

Despite a careful search, the family has been unable to find a will.

Following Veronica's death there were a number of family arguments and, as a result, Maud is no longer on speaking terms with both Norbert and Henry. They have not been in touch with her since their father's death and have indicated that they simply want their shares of the estate as quickly as possible.

Maud was diagnosed with a degenerative illness six months ago. It has progressed slowly and at present she needs only limited care at home. The doctors' prognosis is that she should be able to lead a reasonably full life for some years before the illness becomes too much.

Maud has not been in paid employment since she married Roger and has no income. However she has £60,000 in a bank account. Roger always looked after the finances and made sure Maud had some money for housekeeping and spending on herself.

Scenario 3 Questions

1. (a) What can Maud expect to receive from the estate and why?
(8 marks)
- (b) Explain how the rest of the estate will be distributed.
(7 marks)
(Total: 15 marks)

2. Maud is worried that she may have to leave Church Farm Barn, where she has lived for most of the 55 years she was married to Roger, so that it can be sold and the money split between the family, or find that she does not own the whole of the house in which she lives.

Explain how she can be sure of receiving the whole of the house so that she remains in control of her home.

(6 marks)

3. Maud is also concerned about not having enough money from Roger's estate to cover the cost of her care as her illness progresses.

(a) Explain whether, why and when she might be able to make a claim against the estate for further financial provision.

(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 Maud's claim.

(6 marks)

(Total: 9 marks)

(Total Marks for Scenario 3: 30 marks)

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