



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. Identify **three** characteristics of a valid will.
(3 marks)
2. Set out the **three** elements of the test in *Banks v Goodfellow* (1870).
(3 marks)
3. Describe a demonstrative legacy and explain the rules relating to it.
(4 marks)
4. State the common law forfeiture rule as it relates to succession law.
(2 marks)
5. Explain why a will might **not** be revoked on the later marriage of the testator.
(4 marks)
6. If a person dies without a valid will, what can a surviving spouse expect to receive from an estate worth around £750,000 where the deceased also had surviving children? There is no joint property.
(4 marks)
7. Under what circumstances is an administrator appointed as opposed to an executor?
(3 marks)
8. When is a grant of probate the appropriate grant of representation?
(2 marks)
9. Under what circumstances would the Probate Registry ask for an affidavit of due execution?
(3 marks)
10. State the spouse standard of financial provision 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

Duncan died last month, aged 56. He had never married, had no children and his parents died many years ago.

Duncan had two brothers and one sister:

Stewart (aged 49), who is married to Hayley. They have three children: Alice (who is 7), Cate (who is 9) and Evie (who is 12). They live in Cornwall, which is many miles from where Duncan lived.

Guy (aged 47), who lives nearby with his civil partner Tony. They have no children.

Bronwen, who died two years ago, leaving her husband Michael and three children: Petra (who is now 19), Rhiannon (who is 17) and Violet (who is 14). Rhiannon married Joshua in December last year.

Duncan made his own will which reads as follows:

"I Duncan McDonald of Brambling Cottage, High Road, Bedford, MK42 5HH declare this is my will and revoke any former wills I have made

I appoint my neighbours Malcolm and Isobel King to be my executors

I give £50,000 to each of my brothers Stewart and Guy

I give the rest of my estate to my sister Bronwen

Signed by me in the presence of my two witnesses who then signed in front of me and each other on 6 May 1998

D McDonald

Martha Smith

Lucy Jones"

The will was properly executed, and is valid.

Isobel died three years ago. Malcolm still lives in the house next door to Duncan but is now very elderly and frail. He has taken in Duncan's dog, Jupiter, and has been looking after him since Duncan died. He also arranged the funeral as Stewart lives many miles away and Guy was on holiday at the time his brother died.

Duncan's estate is worth around £950,000 and includes a piece of land at the back of Brambling Cottage which a local property developer had been interested in buying from him.

Scenario 1 Questions

1. Explain how the residue of Duncan's estate will be distributed. **(10 marks)**

2. Malcolm has decided that he does not wish to act as executor.
 - (a) Explain how and why he can avoid this appointment. **(7 marks)**

 - (b) Explain why a grant of letters of administration with the will is now appropriate here. **(2 marks)**

 - (c) Identify all those who could apply for this grant **and** explain why they are entitled. **(8 marks)****(Total: 17 marks)**

3. The administration of the estate is proceeding well but the grant of representation has not yet been issued. However, the proposed personal representatives tell you that the property developer has been in touch and still wishes to buy the piece of land at the back of Duncan's cottage. They want to proceed as quickly as possible and the personal representatives intend to sign the contract for the sale of the land straightaway.

Explain why they cannot do this yet. **(3 marks)**

(Total Marks for Scenario 1: 30 marks)

Scenario 2

Alwyn died in December 2013. She was a widow, her husband having died more than five years ago.

She had two children: Brian, who is unmarried and has no children, and Charles. Charles died two years ago leaving a son, Dara, who is now aged 4.

Alwyn had a brother, Ed, who also had two children: a daughter, Felicity, who is currently 15, and a son, Graham. Graham died last year leaving a son, Harry, who is now 2.

Alwyn made a will in 2010 which was validly executed. In it she left a number of gifts including the following at clause 3:

"3 To my son Charles the sum of £50,000

To my nephew Graham the sum of £2,000

To my son Brian my freehold property Summer Barn, Little Dunnock, Bedford

To my brother Ed a car

To my niece Felicity the sum of £2,000 when she reaches 18"

Alwyn left an estate worth around £650,000. It included the house in which she lived at the date of her death: 45 High Road, Bedford. She sold Summer Barn in 2012. She did not own a car at her death.

Alwyn had been very ill during 2013 and knew that she was dying. A few days before her death, her brother Ed visited her with his grandson Harry. Alwyn and Ed discussed the holidays they had as children, with their parents in the family caravan.

Alwyn owned a caravan and told Ed she would like him to have it so that he could take Harry on holidays too. She handed to him the key for the caravan and insisted Ed take it saying, "I'm not going to be needing it anymore am I?"

Scenario 2 Questions

1. Identify the contrasting types of gifts contained in clause 3 of the will. In each case explain whether or not they will take effect:

(a) to Charles and Graham;

(7 marks)

(b) to Brian and Ed.

(8 marks)

(Total: 15 marks)

2. Identify the type of gift to Felicity contained in clause 3 of the will and explain what will happen to this gift if Felicity dies before she is 18.

(5 marks)

3. (a) Set out the essential conditions for making a valid *Donatio Mortis Causa* (deathbed gift).

(3 marks)

(b) Applying these conditions to the facts of this scenario, explain whether or not Ed may keep the caravan. Quote **one** relevant example from case law to illustrate your answer.

(7 marks)

(Total: 10 marks)

(Total Marks for Scenario 2: 30 marks)

Scenario 3

Merryn made a will in 2001 which appointed his wife, Rosen, to be his executor and left everything to her or, if the gift to Rosen failed, then to his brother, Piran.

Although the will had been professionally drafted by a lawyer, Merryn chose to sign it at home, following the instruction sheet the lawyer had sent to him.

A few days after receiving the will, while alone in the house, Merryn read through his will, decided he was happy with it, then signed and dated it. He then called in to see his next-door neighbours, Derrick and Lowenna, taking the signed will with him.

Merryn asked Derrick and Lowenna if they would act as witnesses to his will and they agreed. He showed them the will, saying, "Look here you two, I've signed it already."

Derrick then signed the will, while Merryn and Lowenna watched him. Just then the telephone rang and, handing the will to Lowenna, Derrick left the room to answer it. Lowenna then signed the will in front of Merryn.

Merryn sent the will back to his solicitors, where it has been kept ever since.

In 2005 Merryn and Rosen decided to live apart and later that year they divorced.

Despite being advised by the lawyer who dealt with his divorce that he should make a new will, Merryn did not get round to it. He often spoke about the arrangements he had made in his will; his brother told him he ought to at least cancel the will he had, but again Merryn did nothing about it.

Merryn died last month. He was survived by his brother, Piran, and his former wife, Rosen. He had no children.

Scenario 3 Questions

1. (a) Set out the formal requirements to make a valid will. **(6 marks)**
(b) Apply these formal requirements to the facts of the scenario to **explain** why Merryn's will is valid.

Use one example of case law to illustrate your answer.

(10 marks)
(Total: 16 marks)

2. Explain the effect of Merryn and Rosen's divorce on the will. **(10 marks)**

3. Identify the ways in which Merryn could have revoked his will in 2005. **(4 marks)**

(Total Marks for Scenario 3: 30 marks)

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