

CASE STUDY MATERIALS

January 2011
Level 6
PROBATE PRACTICE
Subject Code L6-21

ilex

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INSTITUTE OF LEGAL EXECUTIVES

UNIT 21 – PROBATE PRACTICE*

CASE STUDY MATERIALS

Information for Candidates on Using the Case Study Materials

- This document contains the case study materials for your examination.
- In the examination, you will be presented with a set of questions which will relate to the case study materials. You will be required to answer all the questions on the examination paper.
- You should familiarise yourself with the case study materials prior to the examination, taking time to consider the themes raised in the materials.
- You should take the opportunity to discuss the materials with your tutor/s either face to face or electronically.
- It is recommended that you consider the way in which your knowledge and understanding relates to the case study materials.

Instructions to Candidates Before the Examination

- You will be provided with a clean copy of the case study materials in the examination.
- You are **NOT** permitted to take your own copy of the case study materials or any other materials including notes or text books into the examination.
- In the examination, candidates must comply with the ILEX Examination Regulations.

Turn over

* This unit is a component of the following ILEX qualifications: **LEVEL 6 CERTIFICATE IN LAW, LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW AND PRACTICE** and the **LEVEL 6 DIPLOMA IN LEGAL PRACTICE**

ADVANCE INSTRUCTIONS TO STUDENTS

You work in the Private Client Department of Kempstons, The Manor House, Bedford, MK42 7AB.

Your supervising partner and head of department is Marcus Wu.

You arrive at work to find the following awaiting your attention:

- DOCUMENT 1 - Memorandum re: Betty Dawes**
- DOCUMENT 2 - Will of Betty Dawes**
- DOCUMENT 3 - Email re: Catherine Evans and Estate of Harold Evans deceased**
- DOCUMENT 4 - Estate Accounts Harold Evans deceased**
- DOCUMENT 5 - File Note: Mr Raymond Henderson and Mrs Kay Henderson**
- DOCUMENT 6 - Will of Raymond Henderson**
- DOCUMENT 7 - Raymond Henderson and Kay Henderson - Information extracted from the file**



DOCUMENT 1

Memorandum

From: Simon Khan (Property Department)

To: Private Client Department

Re: Betty Dawes, Estuary View, Brunnel Road, Tamarside, TH5 7DF

This is a new client to the firm from whom we have received instructions for the sale of Estuary View. She is a widow and is selling her home in order to move back to the north-east of England to be nearer her two daughters. Matters are quite advanced in her sale and we expect to exchange with the buyer in the next couple of weeks.

She lost her husband about 15 years ago and her only son Gilbert died last year after a sudden illness. He lived close to Mrs Dawes but she feels that since his death there is little to keep her in Tamarside and so she wants to move closer to the rest of her family. As yet she has not found a new home in the north-east but says she will be living in her fully furnished holiday home in west Wales until she does so. It's a very small property, worth around £130,000, which she and her late husband bought in 1962 and where each year she now spends several weeks in the summer months. In view of her age (75) she does not want to rush into buying something that might turn out to be unsuitable as she can't bear the thought of having to move house yet again in later life. She will have about £250,000 from the sale of Estuary View and she plans to spend around that amount on her new home once she has found what she is looking for.

Mrs Dawes said that she wants us to review her will, not just because she is selling Estuary View but there have been some other changes in her circumstances including the recent death of her son. She left me a copy of her last will made in 1999 (see **Document 2** attached) and I said that someone from the Private Client Department would be in touch with her to arrange an appointment to take further instructions.

Will of Betty Dawes

THIS WILL is made by me **BETTY DAWES** of Estuary View, Brunnel Road, Tamarside, TH5 7DF.

1. Revocation

I revoke all earlier Wills.

2. Appointment of Executors

2.1 I appoint my son GILBERT DAWES and my daughters SHEILA MARTIN and WENDY MACPHAIL as the Executors and Trustees of this my Will.

2.2 The expression "my trustees" means my personal representatives and the trustees of this Will and of any trust that might arise under it.

3. Funeral Directions

I wish my body to be cremated.

4. Gift of Money

I give £15,000 to such of my grandchildren as survive me and reach 18 years of age.

5. Gifts of Property

5.1 I give my house to my son GILBERT DAWES.

5.2 I give my jewellery and collection of silverware to my daughter SHEILA MARTIN.

5.3 I give my china and paintings to my daughter WENDY MACPHAIL.

5.4 I give the rest of my household contents and personal possessions to my said daughters to be divided between them as they see fit and in the event that they cannot agree on any items then those items shall be sold and the proceeds dealt with in accordance with the rest of my Will.

6. Definition of my Estate

In my Will where the context so admits "my Estate" shall mean.

6.1 All my property of every kind wherever situate.

6.2 The money investments and property from time to time representing all such property.

7. Administration of My Estate

My Trustees shall hold my Estate upon trust to retain postpone or sell it and will:-

- 7.1 Pay any debts funeral and testamentary expenses.
- 7.2 Satisfy all gifts of specified property referred to in my Will.
- 7.3 Satisfy all gifts of money in my Will.
- 7.4 Deal with the residue of my Estate as I now direct.

8. Gift of Residue

I give the residue of my Estate to such of them my daughters SHEILA MARTIN and WENDY MACPHAIL as shall survive me and if both shall survive me then in equal shares.

Dated *5 May 1999*

Signed by the testatrix in our joint) *Betty Dawes*
presence and then by us in hers)

A Els (Alex Els) Groundsman

Daphne Reynolds (Daphne Reynolds) Practice Manager

*Both of 76 Station Road,
Tamar side, Tamarshire TH1 L98*

Email from Mr Wu**Date: 1 December 2010****Re: Catherine Evans – Estate of Harold Evans deceased**

Yesterday, I saw a new client, Catherine Evans. She is the widow of Harold Evans who died just over a year ago aged 73. Harold Evans's estate is being dealt with by The Boyce Jones Partnership, a firm of solicitors in Port Ryan in South Wales.

Although Harold Evans had made a will soon after divorcing his first wife in 2000, it was automatically revoked when he married Catherine in 2007. Consequently, Harold died intestate and those who benefit are Catherine (his second wife), an adult son (Raymond Evans) and two minors (Tracy and Stella Morgan) who are the children of Harold's late daughter, Gillian Morgan, who died three years ago.

Catherine told me she felt she was never properly accepted as a member of Harold's family by his children because they believed she was the cause of the break up of his first marriage. Since she did not get on well with Raymond, she decided to renounce her right to become an administrator of Harold's estate and consequently the grant was extracted by Raymond and Gillian Morgan's husband.

The Boyce Jones Partnership has now sent Catherine a set of estate accounts (see **Document 4**), saying that the administration can now be finalized once she approves them. She would like us to look over the accounts on her behalf before doing so. I shall, of course, have a look at the accounts myself, but I would like you to read through them to see if there is anything we need to bring to Catherine's attention or take up with the Boyce Jones Partnership on her behalf.

Catherine also told me that she had some concerns. The main one appears to be that Harold told her he had another son as a result of a relationship with a woman he met whilst working in Australia as a young man in the early 1960s. He said the son's name was Gary but that he has not had any contact with him (or his mother) since 1966 when Harold returned to England. Catherine recalls Harold telling her that a letter he had received from Gary's mother shortly after he arrived back in England had said that she and Gary were starting a new life together with a man she had met and whom she hoped to marry. Catherine's concern is that she does not think that Raymond or his co-administrator know about Gary.

Her other concern was that there might be some unpaid debts which have not yet come to light. She is worried as to who might be liable for these if they have to be paid.

Incidentally, Catherine has discussed the appropriation of shares mentioned in the accounts with her financial adviser and so does not want us to provide any advice on that aspect. She confirms that the shares in question have already been transferred to her.

DOCUMENT 4

ESTATE ACCOUNTS

IN THE ESTATE OF HAROLD EVANS DECEASED

FORM OF AUTHORITY AND DISCHARGE

We authorise the Administrators of Harold Evans deceased to pay the amounts shown in these accounts, being the final amounts due to us. We approve these accounts and agree that their compliance with this request shall be in full satisfaction of all our claims against them as the personal representatives of Harold Evans.

Signed:Raymond Evans	Dated.....
Signed:Anthony Morgan	Dated.....
Signed:Catherine Evans	Dated.....

SUMMARY OF EVENTS

Harold Evans, late of 25 High View Road, Port Ryan, died on 2 December 2009 intestate. Letters of Administration were granted out of the District Probate Registry at Bristol on 2 March 2010 to his son Raymond Evans and to his son-in-law Anthony Morgan. Catherine Evans, the widow of Harold Evans, renounced her right to Letters of Administration.

After payment of debts, funeral and testamentary expenses the net estate is distributed under the Administration of Estates Act 1925 Part IV (as amended). As surviving spouse, Catherine Evans (having survived 28 days) receives personal chattels absolutely; a statutory legacy of £250,000; and a life interest in half the residue. Subject thereto, the residue is taken by the issue of Harold Evans on the statutory trusts imposed by the 1925 Act. One half of the residue is payable to Raymond Evans absolutely and the other half is held by the trustees of Harold Evans for Tracy Morgan and Stella Morgan being the minor children of Gillian Morgan, the late daughter of Harold Evans who predeceased him on 23 August 2007. The respective interests of Tracy and Stella will vest on reaching the age of 18 or marrying or entering into a civil partnership if earlier.

Catherine Evans, Raymond Evans and the trustees of Harold Evans have agreed to take by way of appropriation certain assets in satisfaction of their entitlements. Details are contained in the relevant Beneficiary's Account.

No inheritance tax (IHT) is payable because the property passing to Catherine Evans is exempt and the value of the rest of the estate is within the IHT nil rate band. The administrators are not aware of any lifetime transfers made by Harold Evans that might have been relevant to the calculation of IHT on his estate.

HAROLD EVANS DECEASED - ESTATE CAPITAL ACCOUNT¹ – see note below

ASSETS AT PROBATE VALUE	£	£
Clothing and personal possessions	5,000.00	
Collection of tin plate model railway items	2,500.00	
Nissan Qashqai car reg. GU59 OOF	9,000.00	
Quoted shares (as Schedule 1 annexed)	399,324.00	
Longevity Life Assurance Company Policy No 5637892 payable to the estate	35,000.00	
HSBC Bank, Market Street, Port Ryan Deposit account No EV196321 inc interest to date of death	20,294.00	
National Savings Certificates	30,000.00	
Arrears of pension	2,200.00	
Aviva private health care subscription refund	120.00	
GROSS ESTATE FOR PROBATE PURPOSES		503,438.00
<u>Add</u> Net increase in quoted share values as at 1 December 2010 taken as date of appropriation (see Schedule 1 annexed)		125,332.00
GROSS ESTATE		628,770.00
<u>Less</u> Debts (see Schedule 2 annexed)	(109.00)	
Funeral expenses	(3,200.00)	(3,309.00)
NET ESTATE		625,461.00
<u>Less</u> Administration expenses (see Schedule 3 annexed)		(5,203.00)
<u>Balance to Distribution Account:</u>		<u>620,258.00</u>

NOTE TO ACCOUNTS:

- 1 Other assets held jointly by Harold Evans and Catherine Evans passed to Catherine Evans by survivorship and so are not mentioned in the accounts.

HAROLD EVANS DECEASED – CAPITAL DISTRIBUTION ACCOUNT

		£	£
From Capital Account			620,258.00
Catherine Evans:	Personal Chattels absolutely:		
	Clothing and personal possessions	5,000.00	
	Collection of tin plate model railway items	2,500.00	
	Nissan car	9,000.00	
	Statutory Legacy	<u>250,000.00</u>	
		<u>266,500.00</u>	(266,500.00)
Residue			<u>353,758.00</u>
Trustees of Harold Evans deceased	One half on trust for the benefit of Catherine Evans for life		176,879.00
Raymond Evans	One quarter absolutely		88,439.50
Trustees of Harold Evans deceased	One quarter on the statutory trusts for the benefit of Tracy Morgan and Stella Morgan		<u>88,439.50</u>
			<u>353,758.00</u>

HAROLD EVANS DECEASED - ESTATE INCOME ACCOUNT

	£
<u>Dividends</u>	
Quoted shares (see Schedule 4 annexed)	3,297.00
<u>Interest Received</u>	
HSBC Deposit account no EV196321	53.00
<u>Balance</u> to Catherine Evans as life tenant of half of residue	<u>3,350.00</u>

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BENEFICIARY'S ACCOUNT – MRS CATHERINE EVANS

	£	£
Balance due - Estate Capital Distribution Account	266,500.00	
Balance due - Estate Income Account	<u>3,350.00</u>	
		<u>269,850.00</u>
<u>Represented by</u>		
<u>Retained by you</u>		
Clothing & personal possessions	5,000.00	
Collection of tin plate model railway items	2,500.00	
Nissan car	9,000.00	16,500.00
<u>Transferred to you</u>		
Quoted shares – (valued at 1 December 2010 being the date of appropriation)		
10,000 Ladfield plc at 500p per share	50,000.00	
8,000 BLA plc ord at 475p	38,000.00	
100,000 Minervere plc ord at 150p	150,000.00	238,000.00
BALANCE now due to you by cheque		<u>15,350.00</u> <u>269,850.00</u>

BENEFICIARY'S ACCOUNT – RAYMOND EVANS

	£	£
Balance - Estate Capital Account		<u>88,439.50</u>
<u>Represented by</u>		
<u>Transferred to you</u>		
Quoted shares – (valued at 1 December 2010 being the date of appropriation)		
55,000 Minervere plc ord at 150p		82,500.00
BALANCE now due to you by cheque		<u>5,939.50</u> <u>88,439.50</u>

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BENEFICIARY'S ACCOUNT – TRUSTEES of HAROLD EVANS DECEASED
for the benefit of Catherine Evans for life

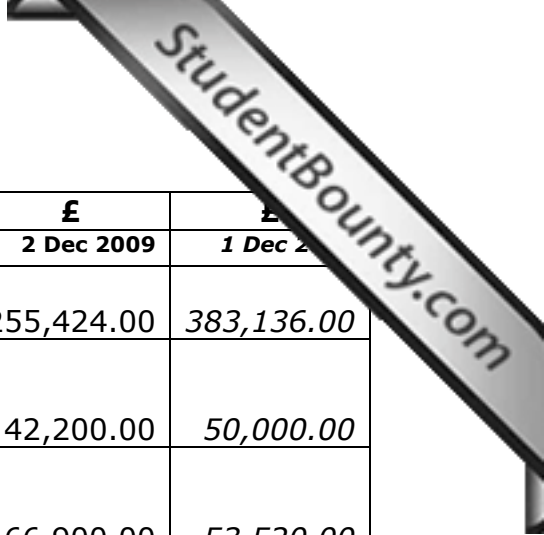
	£	£
Balance due - Estate Capital Account		<u>176,879.00</u>
<u>Represented by</u>		
<u>Transferred to you</u>		
Quoted shares – (valued at 1 December 2010 being the date of appropriation)		
45,424 Minervere plc ord at 150p		68,136.00
22,300 Morrisco plc ord at 240p		53,520.00
BALANCE now due to you by cheque		<u>55,223.00</u>
		<u>176,879.00</u>

BENEFICIARY'S ACCOUNT – TRUSTEES of HAROLD EVANS DECEASED
for the benefit of Tracy Morgan and Stella Morgan on statutory trusts

	£	£
Balance due - Estate Capital Account		<u>88,439.50</u>
<u>Represented by</u>		
<u>Transferred to you</u>		
Quoted shares – (valued at 1 December 2010 being the date of appropriation)		
55,000 Minervere plc ord at 150p		82,500.00
BALANCE now due to you by cheque		<u>5,939.50</u>
		<u>88,439.50</u>

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SCHEDULE 1: QUOTED SHARES

	£	£
	2 Dec 2009	1 Dec 2010
255,424 Minervere plc ord at 100p (150p at 1 Dec 2010 – see below)	255,424.00	383,136.00
10,000 Ladfield plc ord at 422p (500p at 1 Dec 2010 – see below)	42,200.00	50,000.00
22,300 Morrisco plc ord at 300p (240p at 1 Dec 2010 – see below)	66,900.00	53,520.00
8,000 BLA plc ord at 435p (475p at 1 Dec 2010 – see below)	<u>34,800.00</u>	<u>38,000.00</u>
	<u>399,324.00</u>	<u>524,656.00</u>
Net Gain as at 1 December 2010 being the date of appropriation to beneficiaries	<u>125,332.00</u>	

SCHEDULE 2: DEBTS

Water Authority – balance of water charges	76.00	
Port Ryan Council – council tax arrears	<u>33.00</u>	<u>109.00</u>

SCHEDULE 3: ADMINISTRATION EXPENSES

Probate Court fees	60.00	
S 27 Trustee Act 1925 Advertisements: London Gazette	55.00	
Port Ryan Standard	58.00	
Commissioner’s fees	14.00	
Valuation of model railway collection	46.00	
The Boyce Jones Partnership legal fees	<u>4,970.00</u>	<u>5,203.00</u>

SCHEDULE 4: DIVIDENDS

Minervere plc	1,833.00	
Ladfield plc	564.00	
Morrisco plc	686.00	
BLA plc	<u>214.00</u>	<u>3,297.00</u>

File Note: Mr Raymond Henderson and Mrs Kay Henderson

A news item on local radio over the weekend reported the death on 1 January 2011 of Raymond Henderson – a long standing client for whom we recently made a will. He was killed in a car accident when he and his wife were returning from a New Year's Eve party. His wife, Kay, was seriously injured and was taken to Kempston Royal Infirmary where her condition, I understand, is critical.

Attached to this file note is a copy of the will we made for Mr Henderson dated 5 November 2010 (see **Document 6**). The original will is in the office safe, as is the will of his wife which is dated the same day and is a "mirror" of her husband's will.

I have also attached a summary of the information (see **Document 7**) gathered from Mr and Mrs Henderson prior to making their wills. Obviously, it is not up to date but it will tell you a great deal about the family situation and their assets. When we took instructions for the wills, we discussed some tax planning issues. They were not particularly interested in doing anything immediately to mitigate any future tax liability but said they would give it some thought and talk to us again after Christmas.

I have sent my condolences to Mr Henderson's daughters, who are also clients of the firm, and I shall attend Mr Henderson's funeral once the date has been fixed. No doubt I will be seeing the daughters to discuss the implications of what has happened.

At this stage I would like you to consider the attached documents with a view to assisting me later with the issues that will inevitably arise.

Will of Raymond Henderson dated 5 November 2010

This is the last will of me **RAYMOND HENDERSON** of 2 Highfield Road, Halden, Bedfordshire MK43 5RG

- 1 I revoke** all former wills and testamentary dispositions made by me
- 2 If my wife KAY HENDERSON** survives me by twenty-eight days I give her my whole estate and appoint her my sole executrix but if not the following provisions of my will shall apply
- 3 I appoint** my daughters **ANGELA WILSON** and **ESTHER HENDERSON** (in my will called "my Trustees" which expression shall where the context so admits include the trustee or trustees for the time being of any trusts arising under my will) to be my executors and trustees
- 4 I give** all my estate to my Trustees upon trust to pay my debts funeral and testamentary expenses including all inheritance tax on property passing under my will and to hold the balance ("my Residuary Estate") on the following trusts:
 - (a) to pay my Residuary Estate to such of my said daughters **ANGELA WILSON** and **ESTHER HENDERSON** as are living at my death and if more than one in equal shares provided that
 - (b) if either of my said daughters shall die before me or before attaining a vested interest in my Residuary Estate leaving a child or children living at her death, such child or children shall provided they attain the age of 18 take by substitution and if more than one in equal shares the share of my Residuary Estate which his her or their parent would have taken had she survived me to attain a vested interest
- 5 My Trustees** shall have the following powers in addition to their powers under the general law:
 - (a) So long as my Trustees are at least two in number or a trust corporation to raise capital to any extent not exceeding the expectant or presumptive share of any individual so as to pay or apply it for the benefit of any one or more of my beneficiaries and I leave it within the discretion of my Trustees whether any such beneficiary shall on the distribution of my estate or of any part thereof have to bring into account all or any part of the capital paid or applied
 - (b) To apply or accumulate income in accordance with section 31 Trustee Act 1925 but subject to the variation that my Trustees may apply income for the benefit of a beneficiary as they think fit and without the restrictions imposed by the proviso to sub-section (1)
 - (c) To sell, mortgage or charge any asset forming part of my estate as if they were an absolute beneficial owner

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- (d) To exercise the power of appropriation conferred by section 69 of the Administration of Estates Act 1925 without obtaining any of the consents required by that section and even though one or more of my Trustees may be beneficially interested
- (e) To invest trust money and transpose investments with the same full and unrestricted freedom in their choice of investments as if they were an absolute beneficial owner and to apply trust money in the purchase with vacant possession or in the improvement or repair of or any freehold or leasehold house or other dwelling or any interest therein and to permit the same to be used as a residence by any person or persons having an interest or prospective interest in my estate upon such terms and conditions from time to time as my Trustees in their absolute discretion may think fit

6 The following directions shall apply to my will:

- (a) None of my Trustees shall be liable for any loss caused by any breach of trust unless caused by their own dishonesty or by their own wilful default
- (b) Any beneficiary who is not proved to have survived me by twenty-eight days shall be treated as having died before me

IN WITNESS where of I have hereunto set my hand this *5th* day of *November* 2010

Signed by the testator in our joint) *Raymond Henderson*
presence and then by us in his)

W A Smythe (*Walter Alexander Smythe*) *Retired Civil Servant*

Sheila Smythe (*Sheila Smythe*) *Beautician*

*Both of 54 Highfield Road,
Halden, Bedfordshire MK43 5RG*

RAYMOND HENDERSON AND KAY HENDERSON

Information extracted from the file relating to their wills dated 5 November 2010

Family Details

Mr H born 22 February 1949
Mrs H born 21 June 1951

Married 23 April 1973; No previous marriages.

Children:

Angela Wilson; born 12 August 1974.
She is married to Anthony.

They have two children –
Selina - born 27 September 2002, and
Jemima - born 14 December 2004.

Esther Henderson; born 5 May 1977.
She is unmarried but living in a stable relationship since January 2007
with Simon Platt.

She has one child –
Heather - born 6 January 2004. Heather's father left Esther soon after
Heather was born. Esther and Heather's father never married and his
whereabouts are unknown.

Esther is currently expecting Simon's child in late March.

Other relatives:

Both sets of parents are dead.

Mr H has one brother and Mrs H has three sisters, all with children.

Full details, if required, are in the office file.

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Mr and Mrs H jointly held:

- 2 Highfield Road. Worth £600,000. Held as beneficial joint tenants;
- Portfolio of quoted shares. Value around £110,000;
- Investment accounts with various banks. Value around £86,000;
- House contents, personal possessions, cars etc. Value around £60,000.

Mr H:

- Life tenant under will trust of his father who died in 1993. The trust fund is worth about £100,000 and is invested in fixed interest stock and bonds. The remainder interest passes to Mr H's brother, Daniel. Gibbs & Co act for the trustees;
- Life policy with Sunrise Assurance maturing in February 2011 (or earlier death) and expected to yield £90,000. On 22 June 2003, he assigned the policy, then worth £63,000, by transferring the benefit equally to Angela and Esther. He continues to pay the premiums;
- Premium Bonds £5,000.

Mrs H:

- Investment accounts (mainly ISAs). Value around £56,000;
- Holiday cottage in Polpenporth, Cornwall, approximate value £200,000, inherited following her late uncle's death in July 2009;
- 5,000 shares in Ravenscroft Engineering Ltd, founded by Mrs H's grandfather. It makes tooling for the building trade and its shares are unquoted. The holding represents a 10% stake in the company given to Mrs H 12 years ago by her father. The remaining shares in the company are held by other members of the Ravenscroft family. The last company balance sheet suggests 5,000 shares are worth £70,000.

Gifts etc:

In addition to assigning the life policy (see above), Mr H gave £30,000 to each of his two daughters on 25 December 2006. Subject to that, neither Mr H nor Mrs H made any lifetime transfers of value for IHT purposes.

END OF CASE STUDY MATERIALS

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