

## INSTITUTE OF LEGAL EXECUTIVES

### UNIT 21 – PROBATE PRACTICE\*

**Time allowed: 3 hours plus 15 minutes reading time**

#### Instructions to Candidates

- You have been provided with a clean copy of the case study materials for you to use in this examination.
- You have **FIFTEEN** minutes to read through this question paper and the case study materials 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 paper or in your answer booklet during this time if you wish.
- **All questions are compulsory. You must answer ALL the questions.**
- Write in full sentences – a yes or no answer will earn no marks.
- **Candidates may use in the examination their own unmarked copy of the designated statute book: Blackstone's Statutes on Property Law 2010-11, M Thomas, Oxford University Press, 2010**
- 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 6 CERTIFICATE IN LAW, LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW AND PRACTICE** and the **LEVEL 6 DIPLOMA IN LEGAL**

## Question 1

### Mrs Betty Dawes

Reference: Question relates to **Documents 1 and 2** of the case study materials.

Mr Wu has now seen Mrs Betty Dawes to discuss her will and you sat in on their meeting.

- (a) Write a memorandum to Mr Wu explaining how you would deal with each of the following matters by telling him whether the existing provision is still appropriate, or not, as the case may be. If you think the relevant provisions need changing in some way, you must explain your reasoning. Mr Wu is not expecting you to produce a redraft of any clauses, although you may do so if it will assist any explanation you give him.

**Note that Mr Wu does not want you to consider any other aspect of the existing will apart from these specific matters.**

- (i) Since making her will in 1999, Mrs Dawes has two more grandchildren, with one born in 2001 and the other in 2007. She had five grandchildren when she made the will, the eldest of whom had her 18th birthday in September 2009. She wants all her existing grandchildren, including any others born before she dies, to share £15,000 when they reach 18.
- (ii) As a result of Gilbert's death, she now wants the gift of her home to go to his only child, Florence. She is the grandchild who reached 18 in September 2009.
- (iii) Following a burglary last year, some of her jewellery was stolen. She intends to replace the stolen items with the proceeds of her insurance claim but probably not until she has bought her new home. She still wants all the jewellery that she has to go to Sheila Martin.

**(12 marks)**

- (b) When Mrs Dawes came to see you, her hand was in a plaster cast following a bad hand injury. Since she is unable to hold a pen properly, she agreed to your suggestion that when her new will is ready, someone from your firm should sign it on her behalf.

- (i) Draft a suitable attestation clause on the basis that Simon Khan will sign the new will on her behalf when she next comes to the office to see him in connection with her house sale.
- (ii) Simon has dealt with the execution of wills before and is aware of the usual formalities but he is not familiar with the procedure if he signs on someone's behalf. He also needs reminding of what he must do if Mrs Dawes should want any minor amendments made to the will before it is signed. Write a brief memo to Simon Khan explaining what he must do, and any precautions he must take, to safeguard the validity of the will.

**(12 marks)**

**(Total: 24 marks)**

## Question 2

### Catherine Evans and Harold Evans deceased

Reference: Question relates to **Documents 3 and 4** of the case study materials.

Mr Wu has looked at the estate accounts (**Document 4**) provided to your client, Catherine Evans, by The Boyce Jones Partnership. He has also just received a telephone message from Catherine asking some specific questions about the accounts. Mr Wu wants you to call her back later today but before you do so, he would like your views on the following matters, some of which relate to the points she has raised while others are to see what you think about issues that he feels should be taken up with The Boyce Jones Partnership on Catherine's behalf.

Draft a memorandum to Mr Wu covering each of the following matters.

**Your memorandum should contain a sufficiently clear explanation that will assist you when speaking to Catherine, as well enabling Mr Wu to see that you understand the issues raised in each case.**

- (a) Whether or not the estate accounts accurately reflect the amount of the payment due to Catherine in respect of the statutory legacy. **(5 marks)**
- (b) To partially satisfy her capital entitlement, Catherine agreed to take substantial shareholdings which show an increase in value since the day Harold Evans died. She wants to know whether she will have to pay capital gains tax or income tax as a result of these shares having been transferred to her. **(6 marks)**
- (c) Catherine has noted from the estate accounts that the trustees of her life interest have received some shareholdings from the estate together with over £55,000 in cash. Whilst Catherine understands what is meant by a life interest, she needs to know exactly who will be running the trust and whether she has any say in how the trust funds are invested. She would like virtually all the fund invested in the purchase of a holiday flat which is part of a new property development in an Egyptian coastal resort. She has discussed this fully with her own financial adviser who has warned her of the risks associated with overseas developments of this type but she believes the income from the holiday rental market would give her a very high return. Set out in your memorandum what you would tell Catherine in response to her question about the running of the life interest trust and whether she can achieve her wish as regards the investment of the fund. **(10 marks)**
- (d) Whether or not Catherine should be concerned regarding both the possibility that Harold might have another son who is not mentioned in the accounts or that there might be further creditors of the estate. **(7 marks)**

**(Total: 28 marks)**

**Questions 3 and 4 both relate to Raymond Henderson and Kay Henderson**

Reference: Question relates to **Documents 5, 6 and 7** of the case study materials.

**You should answer Question 3 before attempting Question 4**

**Question 3**

It is 18 January 2011 and Mr Wu tells you that he has just received a telephone call from Angela Wilson to say that her mother, Mrs Kay Henderson, died earlier this morning in Kempston Royal Infirmary.

- (a) Mr Wu wants you to write to Angela Wilson and Esther Henderson to explain the distribution of their parent's property given the events that have happened.

Draft paragraphs for inclusion in a letter to the two daughters explaining who is entitled to:

- (i) Raymond Henderson's property; and
- (ii) Kay Henderson's property.

**Ensure you deal with all the assets mentioned in Document 7 and not just the property that might pass under their respective wills.**

However, **do not deal with any liability to inheritance tax at this stage** since you will consider that in part (b) and **do not attempt to explain how the entitlements you identify will be transferred to the beneficiaries.**

**(10 marks)**

- (b) Write a memorandum to Mr Wu explaining the inheritance tax position as a result of:

- (i) Raymond Henderson's death; and
- (ii) Kay Henderson's death.

Mr Wu wants your memorandum to explain how much IHT is payable as a result of both deaths and so it should show clearly how you arrive at the amount of tax, if any, payable for each estate. When making any calculations, use the values in **Document 7** although Mr Wu appreciates that these values were in respect of a time just before the deaths.

**(16 marks)**

**(Total: 26 marks)**

#### Question 4

**Question 4 continues the work on the estates of Mr and Mrs Henderson which you started when answering Question 3. If appropriate, when answering Question 4 you may refer back to the answer you provided in Question 3.**

- (a) Write a further memorandum to Mr Wu explaining to him, with your reasons:
- (i) The extent to which a grant is required to deal with Raymond Henderson's property as mentioned in **Document 7** (including the Sunrise Assurance policy) and if a grant is not required, what is necessary to deal with that property; and
  - (ii) If a grant is required for Raymond Henderson's property, which inheritance tax account or form is required to support the application for it?

**(10 marks)**

- (b) Irrespective of whether or not a grant is required to deal with Raymond Henderson's property, it is apparent to Mr Wu that a grant will be needed for Kay Henderson's estate and that under clause 3 of her will her daughters are appointed as the executors. However, when he met them recently, Angela said that on 5th February she will be going to live in Dubai for a year because her husband is contracted to do some work there.

Draft paragraphs for inclusion in a letter to Angela explaining whether going to live abroad for the next year is likely to cause any difficulties in her being an executor and whether there are any options available to her.

**(6 marks)**

- (c) It is clear to Mr Wu that the memorandum he asked you to write for Question 3(b) ought to show that inheritance tax will be due on Mrs Henderson's death (irrespective of whether any tax is due on her husband's death). However, he believes there may be an opportunity to reduce the tax on Mrs Henderson's estate. He suggests you look at the property she owned when she died and consider whether she herself might have taken action to mitigate the potential liability on her own death. If so, it may be possible for her personal representatives to take the same action now.

Having done as he suggests, write Mr Wu a further memorandum telling him what you think might be possible now.

**(6 marks)**

**(Total: 22 marks)**

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