

INSTITUTE OF LEGAL EXECUTIVES
UNIT 14 – LAW OF WILLS AND SUCCESSION*

Time allowed: 3 hours 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.
- **All questions carry 25 marks. Answer FOUR only of the following EIGHT questions. The question paper is divided into TWO sections. You MUST answer at least ONE question from Section A and at least ONE question from Section B.**
- 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 2010-2011. 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 PRACTICE**

SECTION A
(Answer at least one question from this section)

1. In the recent case of *Scammell v Farmer* (2008) it was suggested that the test of mental capacity under s3 Mental Capacity Act 2005 is 'a modern restatement of the test propounded in *Banks v Goodfellow* (1870)'.

Consider this view, comparing the relevant provisions of the 2005 Act with the rules on mental capacity to make a will laid down by case law.

(25 marks)

2. 'In general, formalities can be justified by the need to provide reliable evidence of a person's testamentary intentions'.

Parry and Kerridge: *The Law of Succession*, 12th Edition, 2009.

Critically consider the extent to which this is undermined by the rules relating to:

- (a) *donationes mortis causa* (DMC)

(13 marks)

- (b) privileged wills.

(12 marks)

(Total: 25 marks)

3. In a recent consultation paper, the Law Commission stated that cohabitants, on the face of it, are at a disadvantage compared with spouses and civil partners under the Inheritance (Provision for Family and Dependents) Act 1975.

Critically compare the position of spouses and civil partners, on the one hand, and cohabitants, on the other hand, under the provisions of the 1975 Act and relevant case law, highlighting any disadvantages faced by cohabitants.

(25 marks)

4. The Wills Act 1837 provides a number of different ways in which a will may be revoked.

Critically consider the rules on revocation of wills and evaluate the importance of the role played by intention to revoke.

(25 marks)

StudentBounty.com

SECTION B
(Answer at least one question from this section)

Question 1

Vince died six months ago. A year before his death, he executed a valid will which he had drafted himself and which contained the following provisions:

- '(i) £20,000 to my elder sister Karen
- (ii) £40,000 to my younger brother William
- (iii) £20,000 to my cousin Jane
- (iv) 100 ordinary shares in Kempston plc to my dearest friend Ivan
- (v) whatever remains to my wife Yana'

Vince and Karen were killed by William and it is unclear which of them died first. William has just been convicted of their manslaughter by reason of diminished responsibility. Yana died a month before Vince. Vince has two cousins named Jane, both of whom are claiming the £20,000 legacy. One of the cousins visited Vince regularly but he had not seen the other one for many years.

Vince is survived by his daughter Anita (now aged 50), who is married and has a son Ben (now aged 23). Vince's son Colin died in an accident two years ago. Colin left a widow, Fay, and two children, Dave (now aged 20) and Ellen (now aged 16). Vince also had a son Zack (now aged 55), who was adopted as a baby by a childless couple.

Two months before his death, Vince sold the 100 ordinary shares in Kempston plc which he had owned for three years. At his death, Vince solely owned building society accounts with balances totalling £70,000, bank accounts with balances totalling £20,000 and personal possessions valued in total at £10,000.

Explain fully how Vince's estate will be distributed. You should state the nature and extent of each person's entitlement and assume that Vince had no other relatives than those mentioned.

A precise calculation of the entitlement to the estate to be taken by the various beneficiaries is not required. You are not required to discuss any possible claims which might be made under the Inheritance (Provision for Family and Dependents) Act 1975.

(25 marks)

Turn over

Question 2

Fi and Goran are executors under the will of Henry, who died last year, of his estate on trust for his nephew Ian and niece Kylie if they reach the age of 20. Ian has just reached 20 and Kylie is 15. Henry's homemade will contained no administrative provisions.

When collecting the assets at the end of last year, Fi and Goran, at Ian's request, did not collect a debt of £4,000 owed to Henry by Ian's elderly godmother Lorna. The debt became statute-barred in February 2011.

Fi and Goran took £500 each from the estate as they had heard that executors could charge for their time.

This left a sum of £550,000 to be invested but Fi and Goran know little about investment. They consulted their friend Jay, who works as a security guard at a bank and has made many successful investments after studying financial publications. On Jay's advice, Fi and Goran invested £300,000 from the estate in shares in Crudoil plc. Following a major explosion at an oil field last month, Crudoil plc shares have halved in value.

Whilst on holiday in March 2011, Fi (without consulting Goran) invested £150,000 from the estate in a plot of land in Italy, on which a holiday villa was being built. The Italian developers have now gone out of business and the plot, with its unfinished villa, is worth only £100,000. Fi and Goran have been told that they will be unable to recover any money from the developers.

Fi and Goran instructed Molly (a well respected financial adviser with a good track record in investments) to invest the remaining £100,000. They gave her full written details of the trust and instructions to invest the money in the best interests of the beneficiaries. Molly invested the £100,000 in speculative investments which she believed would quickly double in value but they proved disastrous and are now worth only £25,000.

Ian is demanding his half of the estate and is angry to find that there is far less money than he believes he is entitled to.

Explain any breaches of their duties that Fi and/or Goran have committed; the extent of their respective liability for any losses; and any defences that they or either of them might raise.

(25 marks)

Question 3

Andy died recently, leaving the whole of his estate by will to his wife Beth. He ran a business as a sole trader, which closed down a month before he died. He owned solely owned small office premises from which he ran his business. The office premises are valued at £200,000. Andy left other assets valued at £34,000 in total. So far, Andy's executors have ascertained the following liabilities, although they think it possible that more debts might still come to light:

- (i) a mortgage on the office premises to White Horse Bank plc, on which a sum of £250,000 is currently outstanding
- (ii) funeral expenses of £3,200
- (iii) the final telephone bill for Andy's business, in the sum of £500
- (iv) an unsecured overdraft with Mudland Bank plc on which a total of £8,500 is owing
- (v) the final month's salary, in the sum of £800, owed to Andy's secretary Daisy when his business closed
- (vi) an unsecured debt of £2,000, being money Beth lent Andy shortly before they married
- (vii) an unsecured debt of £1,000 owed to Andy's father Chris.

Advise Andy's executors:

- (a) on payment of these liabilities and distribution of the estate; **(18 marks)**
- (b) on the extent of their potential liability if they do not deal correctly with the debts **and** on any steps they should take in relation to possible debts that have not yet come to light.

(7 marks)

(Total: 25 marks)

Turn over

Question 4

Sunita's homemade will, which was validly executed on 15th September, contained the following provisions:

- '(i) My dear friend Omar will make sure my debts are paid and my wishes carried out
- (ii) I give £1,000 to my cousin Wahid
- (iii) I give £500 each to the five friends whose names are listed in any note found with my will
- (iv) Everything else is to go to my nephew Tanvir (the son of my late sister Parvin) whose father Javed can hold it on trust for him'

Sunita died last month. Her will was found in her safe with many other papers including an unsigned list, dated September 2010, containing five people's names but no other information.

For two weeks after Sunita's death, Omar and his wife Latika took it in turns to feed Sunita's cat until Tanvir took it home with him. One day, while Latika was feeding the cat, Sunita's neighbour Victor handed her an envelope containing £100 in cash. Victor explained that Sunita had lent him £100 when he lost his wallet. Latika decided to take the money to Javed but, on the way, she was mugged and the money was stolen. Omar is so upset about the theft that he feels he cannot play any part in dealing with Sunita's estate.

Sunita's brother Rashed, who had never made a will, died a week after Sunita. Neither Sunita nor Rashed had ever married or had children. Their parents died some years ago. Sunita and Rashed are survived by their brother Mahmud, their half brother Kabir and by their nephew Tanvir, who is aged 14 and is the son of their sister Parvin who died last year.

Explain:

- (a) whether the gifts to the five friends in clause (iii) of the will are valid;
(8 marks)
- (b) Latika's potential liability to the estate;
(5 marks)
- (c) in relation to Sunita and Rashed's estates, in each case the type of grant that would be issued **and** the order in which the relevant people would be entitled to apply for a grant.

(12 marks)
(Total: 25 marks)

End of Examination Paper

© 2011 Institute of Legal Executives

BLANK PAGE

StudentBounty.com

BLANK PAGE

StudentBounty.com