

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 2010-2011 Eighteenth Edition, M Thomas, Oxford University Press.**
- 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 4 DIPLOMA IN LEGAL**

Question 1

Reference: Question relates to **Documents 1, 2 and 3** of the case study materials.

Mr Wu has now seen Deidre and Montague again after they had made a further search of Paula's papers. Their search revealed no additional assets or liabilities but did establish she had a further source of income from a trust fund set up by her ex-husband at the time of their divorce. The fund is now worth in the region of £100,000 and, under the terms of the divorce settlement, Paula was entitled to a life interest which in recent years had provided a gross income of between £3,000 and £4,000 a year. Following Paula's death, the trust fund reverts to her ex-husband's daughter by a previous marriage. The trustees are her ex-husband's solicitors.

After their initial meeting with Mr Wu, Deidre and Montague discussed the administration of the estate with their brothers. Since Charles and Raymond live further away, they are both agreeable to leaving the administration in the hands of Deidre and Montague if this is what Mr Wu advises. On that basis, Deidre and Montague will act as personal representatives of Paula's estate. Mr Wu is satisfied that Mr and Mrs Beckerton (and if necessary, Deidre) can provide a sufficient affidavit to establish due execution of her will.

- (a) Based on the above information and that already provided (and assuming there is nothing else of relevance), write a memorandum to Mr Wu explaining
- (i) how much inheritance tax will be payable in total as a result of Paula's death; and
 - (ii) who will have to pay it and when it needs to be paid.
- (12 marks)**
- (b) Using the existing information and the blank oath supplied (**Document A**), complete it on behalf of Deidre and Montague. Your application will be made to the Basset District Probate Registry.

Important: Write your candidate number clearly on Document A and attach it securely to your answer booklet.

(10 marks)

- (c) Mr Wu intends writing to Deidre and Montague to confirm what has been discussed, including an explanation of who is entitled to Paula's estate.

Mr Wu therefore wants you to draft paragraphs for inclusion in his letter to the clients which explain the entitlement under **clauses 1 and 2** of the will.

Write your draft on the basis that the validity of Paula's will is accepted by the Probate Registry. Do **not** explain any other clauses of the will or any other aspect of the administration.

(8 marks)

(Total: 30 marks)

Question 2

Reference: Question relates to **Documents 4 and 5** of the case and the accompanying materials.

- (a) Write a memorandum to Mr Wu with your view as to whether Mitchell Foster & Gibbons are correct in what they have told Marigold Fossett and, if not, whether she might be entitled to any redress against anyone.

(8 marks)

- (b) Marigold wishes to consider a claim under the Inheritance (Provision for Family and Dependents) Act 1975.

Write a memorandum to Mr Wu explaining what she could do and briefly summarise her chance of success.

(7 marks)

- (c) Write a memorandum to Mr Wu explaining the most appropriate means of finding out when Mitchell Foster & Gibbons obtain probate of Mr Henderson's will.

(5 marks)

(Total: 20 marks)

Question 3

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

Mr Wu intends to write to Mrs Shirley Williams to answer her queries about the estate accounts of her father, Samuel Kerr.

With that in mind, he wants you to draft paragraphs for inclusion in his letter to Mrs Shirley Williams dealing with each of the following questions she has raised in her letter to him.

- (a) "Why was it necessary for the executors to take out a missing person's indemnity policy as regards the legacy to the nephews and nieces? I realise it is to do with Steven but, as you know, an official investigation into his death by the South African authorities revealed that he was probably dead. The family have given up all hope of ever seeing him again and so what is the policy for?"

(8 marks)

- (b) "I have been told by my accountant that inheritance tax on land can be paid by instalments over ten years and so I want to know why the tax on 8 Gladstone Way is not being paid in this way.

Also, could you explain the amount of the refund of inheritance tax and the basis on which it was obtained following the share sales in April?"

(10 marks)

- (c) "What is the best way for me to give a cash sum of £100,000 from my inheritance to my two adult children?"

(8 marks)

(Total: 26 marks)

Question 4

Reference: Question relates to **Document 8** of the case study materials.

- (a) Louisa has now told Mr Wu that the legacy to the charitable medical research trust is for £20,000 and is to go to Kidney Research UK of Kings Chambers, Priestgate, Peterborough PE1 1FG. Its registered charity number is 252892.

Draft the codicil to give effect to the legacy.

You are not expected to reproduce the exact wording of precedents in your draft, but the structure and language should clearly set out the substance of the provisions of the codicil. Your draft should conclude with a suitable attestation clause.

(10 marks)

- (b) Louisa wants Mr Wu to explain how she will be taxed on the income produced by the life interest trust in her late husband's will.

Draft paragraphs for Mr Wu to include in a letter to Louisa informing her how she will be taxed:

- (i) in her capacity as a trustee of the trust fund; and
(ii) as the life tenant.

(7 marks)

- (c) Louisa has decided she would be happy for a substantial part of the trust capital to be advanced to Ian's children. She has in mind letting them have £150,000 each, either in cash or in value to be satisfied by a transfer of some of the shares to them. There are sufficiently extensive powers in Ian's will which allow the trustees to make such capital advances if Louisa consents.

Write a memorandum to Mr Wu explaining if the making of capital advances to Ian's children, in either of the ways contemplated by Louisa, will give rise to a capital gains tax liability.

Mr Wu is merely concerned about capital gains tax and so he does not want you to consider any other aspect or consequence of the advances.

(7 marks)

(Total: 24 marks)

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Document A
(this relates to Question 1(b))

Oath for Administrators with the Will

Extracting Solicitor

IN THE HIGH COURT OF JUSTICE

Address

Family Division

DX

Registry

**Principal* or *District Probate*.
If *District Probate* add
at _____

The*

† If necessary to include alias of deceased in grant, add *otherwise (alias name)* and state below which is true name and reason for requiring alias.

IN the Estate of †

deceased,

(1) *I* or *We*. Insert the full name, place of residence and occupation or, if none, description of the deponent(s). State the post code of the deponent(s) and deceased's place of residence, if known.

(1)

(2) Or *do solemnly and sincerely affirm*.

(3) Each testamentary paper must be marked by each deponent, and by the person administering the oath.

(4) *With one, two (or more) Codicils*, as the case may be.

make Oath and say (2)

that (1) believe the paper writing now produced to and marked by (3)

to contain the true and original last Will and Testament (4)

of †

(5) This should be the date of birth as shown in the Register of Deaths.

of

(6) If exact age is unknown, give best estimate.

deceased,

(7) Where there are separate legal divisions in one country, the State, province, etc., should be stated.

who was born on the (5) day of

(8) Complete both blanks. When either such interest arises, two grantees may be required unless a trust corporation is applying.

and who died on the day of

(9) Delete *no*, if there was settled land vested in deceased which remained settled land notwithstanding his death.

aged years (6) domiciled in (7)

(10) If there was settled land such land may no longer be included in the scope of the grant.

and that (8) minority and (8) life interest arises in the estate of the said deceased; and that to the best of knowledge, information and belief there

(11) Here state manner in which all prior rights are affected, e.g., residuary legatees/devisees must show that no executors were appointed, or that those appointed either died before deceased or survived him and have since died without taking probate, or that they have renounced probate, or have failed to take a grant after being cited so to do (the order authorising a grant to cite being quoted).

was (9) [no] land vested in the deceased which was settled previously to h death (and not by h Will (4)) and

(12) *I am* or *we are* and state title of applicants to the grant, including their relationship to the deceased only if necessary to establish title or identification.

which remained settled land notwithstanding h death (10)

(13) If there was settled land, insert *save and except settled land*.

and (1) further make Oath and say (2)

that (11)

that (12)

; and that

(14) Complete this paragraph only if the deceased died on or after 1 April 1981 and an Inland Revenue Account is not required; the next paragraphs should be deleted.

(1) will (i) collect, get in and administer according to law the real and personal estate (13) of the said deceased; (ii) when required to do so by the Court, exhibit in the Court a full inventory of the said estate, (13) and when so required

(15) The amount to be inserted here should be in accordance with the relevant figure shown in paragraph 1 of the PEP List.

render an account thereof to the Court; and (iii) when required to do so by the High Court, deliver up the grant of letters of administration with Will annexed to that Court; and that to the best of knowledge, information and belief

(16) The amount to be inserted here should be the net value of the estate, rounded up to the next whole thousand.

(14) [the gross estate passing under the grant does not exceed (15) £

(17) Complete this paragraph only if an Inland Revenue Account is required and delete the previous and following paragraphs.

and the net estate does not exceed (16) £

(17) [the gross estate passing under the grant amounts to £

and the net estate amounts to £].

†

(18) Complete this paragraph only if the estate qualifies under paragraph 2 of the PEP List and delete the previous two paragraphs.

(18) [the gross estate passing under the grant amounts to (19) £

(19) The amount to be inserted here is the exact amount of the gross estate.

and the net estate amounts to (20) £

(20) The amount to be inserted here is the exact amount of the net estate.

is not a case in which an Inland Revenue Account is required to be delivered]

SWORN by

the above-named Deponent
at

this day of
Before me,

}
A Commissioner for Oaths/Solicitor.

SWORN by

the above-named Deponent
at

this day of
Before me,

}
A Commissioner for Oaths/Solicitor.

SWORN by

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