

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 2011-2012, Meryl Thomas, Oxford University Press, August 2011.**
- 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

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

Claudia Wilson's funeral has now taken place and Ronald Chapman ('RC') and Marjorie have made an appointment to see Mr Wu on Friday afternoon this week to discuss the administration of her estate.

Shortly after his initial meeting with Mr Wu on 4 January, RC found out that Jones and Rathbone, a firm of solicitors in Wimsford, held a will for Claudia which she made on 1 April 1990. RC showed a copy of Claudia's death certificate to a trainee at the firm but the trainee was not prepared to release the will to RC. The trainee said that his firm acted for Brian Wilson and so he insisted that RC must also provide a written authority from him, otherwise his firm would be in breach of duty to their client by releasing the will without it. He did, however, give RC a photocopy of the will (see below) and RC has already sent this to Mr Wu so that he can look at it prior to the meeting on Friday.

The trainee at Jones and Rathbone did check that his firm held no other papers or documents on behalf of Claudia.

Photocopy will of Claudia Wilson:

“**THIS IS THE LAST WILL** of me Claudia Wilson of Trelawney Rise, Peddlefold Lane, Wilminton, Bedford MK26 7HN which I make this *First day of April* One thousand nine hundred and ninety.

- 1 I revoke all former wills.
- 2 I appoint as my executors my husband Brian Wilson and my brother Ronald Chapman.
- 3 I give a legacy of £15,000 to each of my brother Ronald Chapman, my sister Phyllis Moody and my sister Betty Jones.
- 4 I give the rest of my estate after payment of all my debts, funeral and testamentary expenses in equal shares to my husband Brian Wilson and my daughter Marjorie Wilson.

Signed by me in the presence of) *Claudia Wilson*
 two witnesses who then both)
 signed in my presence)

Janice Richards

Faheem Ahmed

Both clerks at Jones and Rathbone, Solicitors, Wimsford, Bedfordshire.”

So that Mr Wu is prepared for his meeting on Friday with RC and Marjorie, prepare a memorandum to him dealing with each of the following questions which he sees as important. Where appropriate, deal with any specific assets referred to in the list which RC had previously made (**Document 2** in the Case Study) and, if necessary, use the valuations provided in the list.

- (a) Giving reasons, was the trainee at Jones and Rathbone correct in saying that Brian Wilson's authority is needed before they can release Claudia's will to RC?

(6 marks)

- (b) Ignoring the effect of inheritance tax at this stage, what is the basis on which entitlement to the property in RC's list should be determined and who is beneficially entitled to it?

(10 marks)

- (c) How will the inheritance tax that is due as a result of Claudia's death be calculated and who must pay it?

You do **not** have to produce a calculation but you may do so if you think it will assist your explanation.

Note: Mr Wu does not want you to explain when or how the tax must be paid.

(14 marks)

(Total: 30 marks)

Question 2

Reference: Question relates to **Document 3** of the case study material.

After reading the letter from Matthew Coleman (**Document 3**), Marcus Wu asks you to write him a memo dealing with each of the following matters so that he is prepared for his interview with the client which is to take place first thing tomorrow.

- (a) Relying solely on the information in Matthew's letter, does it reveal any potential ground(s) for challenging the validity of the will? If so, briefly explain the ground(s) to Mr Wu and what would need to be proved and where the burden of proof would fall.

(7 marks)

- (b) Apart from any further information which Matthew might be able to provide, what can Mr Wu do now to find out more about the circumstances in which the 2008 will was made?

(5 marks)

- (c) If further information leads Mr Wu to suggest to Matthew that he could challenge the validity of his father's last will, what immediate steps should Mr Wu advise Matthew to take to protect his position, giving reasons?

(5 marks)

- (d) Mr Wu realises that a full and further investigation of the facts might actually suggest there is little hope of Matthew successfully challenging the validity of his father's 2008 will. However, Mr Wu feels that as a child of the deceased, there is still the possibility of him making a claim under the Inheritance (Provision for Family and Dependants) Act 1975.

In your memorandum, explain to Mr Wu what further information he would like Matthew to provide before being able to advise fully on whether such a claim is likely to meet with success.

(7 marks)

(Total: 24 marks)

Question 3

Reference: Question relates to **Document 4** of the case study material.

Mr Wu will shortly be seeing Simon Potter and Miranda Rogers to take instructions for their wills. He told you about this couple in his memorandum of 20 December 2011. He has some suggestions to make to them about their wills but he would like some guidance from you so that he is prepared for his meeting.

Write a memorandum to Mr Wu dealing with each of the following.

- (a) One option for Simon's will would be to give a legacy of £200,000 to Danni, contingent on her reaching 18 and then give the residue of his estate to Miranda absolutely.
- (i) Explain the inheritance tax implications for both Danni and Miranda if he did this;
- (ii) Also, explain if it would make any difference for inheritance tax if he left the residue to Miranda for life with remainder to their children.

Note: In your memorandum consider the position if Simon made a will in these terms now and also following a future marriage to Miranda.

(12 marks)

- (b) Assuming he did leave Danni a legacy of £200,000 contingent on reaching 18, would this money be available to pay for Danni's school fees if Simon died before she had reached 18?

You should explain to Mr Wu whether any statutory provisions might allow this and also suggest how any such provisions might be improved by appropriate wording in his will. You do **not** need to draft the actual words you might suggest including in the will but you may do so if you feel it would assist your explanation.

(8 marks)

- (c) Mr Wu will have to advise on the inheritance tax implications if Miranda dies before Simon. Whilst he realises the spouse exemption will obviously be available if they are married by then, he is concerned about the situation if they are not.

In your memorandum, explain to Mr Wu what might be available to mitigate the potential charge to inheritance tax on her estate if Miranda dies before they are married and leaves everything to Simon absolutely.

(5 marks)

(Total: 25 marks)

Question 4

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

- (a) Helen does not wish to be involved in the administration of the estate. The three children have agreed that Nigel and Avril will obtain the grant of probate and Helen will reserve power. The application will be made to the District Probate Registry at Basset.

Using **Document A** attached to this question paper, draft the oath for executors.

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

(9 marks)

- (b) **List** the items you will need to send to the Registry to obtain the grant.

You only need to list the items. No explanation as to why an item is listed is required.

(6 marks)

- (c) The three children would each like to take some of the existing investments in satisfaction of their shares in residue. Nigel has asked Mr Wu to write to him to explain the capital gains tax consequences if they each take shareholdings to satisfy their respective entitlements. As a financial adviser, Nigel knows when capital gains tax is payable as regards the normal purchase and subsequent sale of investments but he is not clear about the situation when someone inherits shares on death.

Draft paragraphs for inclusion in Mr Wu's letter to Nigel which will clearly explain the capital gains tax consequences if he takes some of the existing investments in satisfaction of his share of residue.

(6 marks)

(Total: 21 marks)

Candidate No:

DOCUMENT A (this relates to Question 4(a))

**Oath for Executors
IN THE HIGH COURT OF JUSTICE**

Extracting Solicitor
Address

Family Division

DX

The*

Registry

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

† If necessary to include an 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 postcode of the deponent(s) and deceased's place of residence, if known.

(1)

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

make Oath and say, ⁽²⁾ that
(1) believe the paper writing now produced to and marked by ⁽³⁾

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

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

(4) "with one, two (or more) codicils", as the case may be.

of

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

who was born on the ⁽⁵⁾ day of
and who died on the day of
deceased,

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

aged years ⁽⁶⁾ domiciled in ⁽⁷⁾

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

and that to the best of knowledge, information and belief there was ⁽⁸⁾
[no] land vested in the said deceased which was settled previously to h
death (and not by h Will ⁽⁴⁾)

(8) Delete "no", if there was land vested in deceased which remained settled land notwithstanding his or her death.

and which remained settled land not withstanding h death

(9) Include the names of the executors who have renounced.

And ⁽¹⁾ further make Oath and say ⁽²⁾
that ⁽⁹⁾

executor(s) named in the said Will ⁽⁴⁾
have renounced probate thereof

Notice of this application has been given to

(10) Delete or amend as appropriate. Notice of this application must be served on all executors to whom power is to be reserved unless dispensed with by a Registrar under Rule 27(3), or unless Rule 27(1A) applies. All executors to whom power is to be reserved should be named.

the executor(s) to whom power is to be reserved, [save

] ⁽¹⁰⁾

Turn over

(11) "I am" or "we are". Insert relationship of the executors to the deceased only if necessary to establish title or identification.

(12) "The sole", or "the surviving", or "one of the", or "are the", or "two of the", etc.

(13) If there was settled land the grant should exclude it. Insert "save and except settled land".

(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.

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

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

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

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

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

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

And ⁽¹⁾ further make oath and say ⁽²⁾
that ⁽¹¹⁾⁽¹²⁾

Execut

named in the said

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

⁽¹⁴⁾ [the gross estate passing under the grant does not exceed ⁽¹⁵⁾ £ and the net estate does not exceed ⁽¹⁶⁾ £ and that this is not a case in which an Inland Revenue Account is required to be delivered]

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

⁽¹⁸⁾ [the gross estate passing under the grant amounts to ⁽¹⁹⁾ £ and the net estate amounts to ⁽²⁰⁾ £ and that this 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.