

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 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 PRACTICE**

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

1. (a) Explain the entitlement of a 'child' of a deceased to claim financial provision under the Inheritance (Provision for Family and Dependants) Act 1975.

(12 marks)

- (b) Critically analyse the approach of the Court to claims made by adult children with reference to case law.

(13 marks)

(Total: 25 marks)

2. "The Court of Chancery created the doctrine of mutual wills in order to remedy the unconscionable revocation of a will in certain circumstances."

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

Identify and discuss, with reference to case law, the requirements which must be satisfied for the doctrine to apply and the circumstances in which and the property over which the Court will impose a constructive trust.

(25 marks)

3. A testator not only has to have the mental capacity to make a will, but also knowledge of and approval of the contents of the will.

- (a) Discuss with reference to case law the rules relating to knowledge and approval of the contents of a will.

(12 marks)

- (b) Consider the effect of mistakes in a will and explain by what means they can be rectified, illustrating your answer by reference to case law.

(13 marks)

(Total: 25 marks)

4. Identify and explain the statutory powers given to personal representatives and evaluate their adequacy for carrying out the administration of an estate, considering when it might be appropriate to extend those powers by express provision in a will.

(25 marks)

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

Question 1

Paul (aged 40) and his brother Robert (aged 38) died as a result of a road accident two months ago. The car, which Robert was driving, appears to have left the carriageway, crashed into a stone wall and caught fire. A passing police patrol later found the burnt out wreckage. Both Paul and Robert were dead. No other vehicle appears to have been involved and no witnesses have come forward.

Paul had no children and is survived by his wife Ann, who seeks your advice. Despite saying he would do so, Paul never made a will. Paul is also survived by a step-daughter Jane (aged 22), who is Ann's daughter from a previous relationship.

Robert is survived by his wife Gladys and their daughters – Margaret (aged 18) and their recently adopted daughter, Belinda (aged 2). Robert had made a will appointing Gladys as his executor and sole beneficiary.

Paul and Robert are also survived by their half-sister, Susan (aged 45), the daughter of their father from his first marriage. Susan has no children. The parents of Paul and Robert died some years ago.

Ann has become ill and has been confined to bed as a result of the shock of Paul's death. She says that she is unable to cope with administering Paul's estate herself. Her sole concern is that she is able to remain living in the house which her husband had bought (in his sole name) prior to their marriage, and in which they lived throughout their married life. The house is valued at £550,000 and it is mortgage free.

Paul has personal possessions valued at £10,000 and investments in his sole name with a total value of £200,000.

You are not required to consider any possible claims that might be made under the Inheritance (Provision for Family and Dependents) Act 1975.

(a) Explain who is entitled to take out a grant of representation to Paul's estate if Ann is unable or unwilling to do so.

(8 marks)

(b) Explain how Paul's estate will be distributed.

(9 marks)

(c) Explain how Ann can ensure that she can continue to live in the house.

(8 marks)

(Total: 25 marks)

Question 2

Albert Parker, a bachelor who has just died, validly executed his homestead in 2005. His neighbours Robert and Sylvia Booth acted as his witnesses. Albert's will includes the following clauses:

- "3.(i) I give my property 'Blackacre' to my brother John
- (ii) I give my collection of paintings to my brothers Frank and [REDACTED]
- (iii) I give my shares in ABC plc to my friends Adam Finch and Petula Simm equally
- (iv) I give ~~£10,000~~ ^{£20,000} to my nephew George R.B. S.B.
- (v) I give ~~£5,000~~ ^{£10,000 A.P} to my nephew Harry R.B. S.B.
- (vi) I give ~~[REDACTED]~~ ^{£5,000} to my niece Janet
4. I give my property 'Blackacre' to my trustees to hold upon trust for my brother John for his life and after his death to his children and if more than one in equal shares
5. I give the residue of my estate to my brothers Frank and William"

All the amendments are made in Albert's handwriting and are made in ink, except for the amendments to Clause 3(iii) which are made in pencil.

- (a) Discuss the effect of the alterations in Clause 3 of Albert's will. **(16 marks)**
- (b) Explain how the property 'Blackacre' will be dealt with. **(9 marks)**
- (Total: 25 marks)**

Turn over

Question 3

Toby died in January 2012. In 1994 he executed a valid will that he had himself and which contained the following provisions:

“

- (i) I give my property 'Whiteacre' to my sons Stuart, Ian, and Ben equally
- (ii) I give the 10 acre plot of land that I own in Kempston to my brother Jack
- (iii) I give £5,000 to each of the children of Ian and Ben who reach 21 years of age
- (iv) I give £2,000 to all my nephews and nieces who reach 21 years of age
- (v) I give £100,000 to my daughter Sophie
- (vi) I give £5,000 to my friend Angela
- (vii) I give the monies held in my Bedfordshire Bank account to my cousin Roger
- (viii) I give everything else that I own to my wife Sybil ”

Toby is survived by his wife Sybil and his sons Ian and Ben. His son Stuart died in 1998 and he is survived by his wife (they had no children). His daughter Sophie died in 2004.

At the time of his death, Toby had four grandchildren

- Helen (Ian's daughter) aged 25
- Lucinda (Sophie's daughter) aged 21
- Alan aged 16 and William aged 10 (Ben's sons)

Toby also had three nephews and nieces at the time of his death; Sarah aged 21, Rose aged 18, and Mark aged 4. Since Toby's death another niece, Anna has been born. These are all Jack's children.

Angela died in 2006 and she is survived by her husband and two children.

In 2007 Toby gave an option to purchase the 10 acre plot of land in Kempston to Property Developments Ltd, exercisable within 4 months of his death. The Company gave notice to exercise the option during March 2012.

During 2010, Ian and Ben acting as their father's attorneys under an enduring power of attorney, closed Toby's Bedfordshire Bank account and some other accounts, in order to invest the proceeds in a deposit account with another bank to earn more interest. At the time they were not aware of the contents of their father's will.

Explain fully how Toby's estate will be distributed.

(25 marks)

Question 4

Jawad, a bachelor has handwritten his will and it includes the following provisions:

- “ My Will made this 24th December 2011 by Jawad Khan
- (i) I wish my friend Tahir Bhatti to pay all my debts
 - (ii) I give £5,000 to Tahir Bhatti in recognition of his friendship and kindness and continuing assistance
 - (iii) I give £10,000 to each of the charities referred to in any list placed in an envelope with this will
 - (iv) I give the remainder of my estate to my nephews and nieces equally

Witnessed and signed by: T.Bhatti

R. Jones ”

Jawad did not sign his name at the foot of the will. He died in April 2012 and Tahir has consulted you for advice.

Tahir tells you that he and Jawad were lifelong friends. He tells you that they were sitting next to each other at a dinner last Christmas when Jawad produced a document which he asked him to sign. After he had done so, Jawad put it back in his pocket.

Tahir mentions that as the dinner was ending, Jawad said he needed another witness to the document and immediately went to the far end of the table where Ronald Jones was sitting. Although he could not hear what was said, he tells you that he saw Jawad take the document out of his pocket and Ronald then signed the document.

Tahir also tells you that during February 2012 Jawad came to see him and produced a sealed envelope marked “Will” for him to look after while Jawad was in hospital.

After Jawad’s death, Tahir opened the envelope and found it contained Jawad’s will, this being the document he and Ronald had signed at the dinner, and an undated list written in Jawad’s handwriting containing the names and addresses of six charities.

Advise Tahir whether Jawad’s will has been validly executed. Assuming that it has, advise Tahir on his position and how he should distribute Jawad’s estate.

(25 marks)

End of Examination Paper

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