

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 LAW AND**

Question 1

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

Mr Wu would like you to do some work on the file of William Fitzpatrick

- (a) Draft paragraphs for inclusion in a letter to William explaining how inheritance tax would be calculated and who would bear it, assuming he died shortly after making a will that gave effect to his wishes and all the beneficiaries named in the will survived him to take their entitlement.

You may include any calculations in your letter that you think will assist your client in understanding your explanation.

(In this question, do **not** discuss how any inheritance tax liability might be avoided or reduced through tax planning)

(10 marks)

- (b) A trainee at the firm has prepared the following draft of William's will based on his instructions given at the meeting with Mr Wu.

Draft will of William Fitzpatrick

"I, WILLIAM FITZPATRICK of 8 Long Miles, Fairway, Somerset declare this to be my last will dated 2012.

- 1 I APPOINT the partners in the firm of Kempstons, Solicitors ('my Trustees') to be my trustees
- 2 I GIVE all my personal belongings house contents and my car and £5,000 to my girlfriend Sarah Jennings
- 3 I GIVE £20,000 each to my brothers Adam Fitzpatrick and Edward Fitzpatrick and to my niece Helena Fitzpatrick
- 4 Subject to the payment of my debts funeral and testamentary expenses and any legacies given by this will or any codicil hereto I GIVE the rest of my estate ('my Residuary Estate') to my sister Irene Winterbottom but if she predeceases me then I give my Residuary Estate to Cancer Research UK (registered charity number 1089464)

SIGNED by William Fitzpatrick
and then signed by
us in his presence

}

"

Explain in a memo to Mr Wu whether you would make any amendments or additions to the trainee's draft will. You should explain the alterations you would make and the reasons for them.

You are **not** required to draft any new clauses or redraft any existing parts of the will.

(10 marks)

- (c) Explain in a memo to Mr Wu whether it is possible for Tobias to make an application under the Inheritance (Provision for Family and Dependents) Act 1975 and so challenge the distribution of the estate as set out in the will.

Confine your memo to an explanation of his eligibility (or otherwise) to make a claim and what he would be claiming for.

Do **not** consider the likely outcome of any claim if he could make one.

(5 marks)

- (d) William has been told by his financial adviser that he should have his Longlife Term Assurance Policy written in trust or assigned to a 3rd party so that the proceeds are no longer payable directly to him. William says that if this is advisable, he would consider writing it in trust for, or assigning it to, Irene since she would be his intended residuary beneficiary under the will.

Write a **brief** memo to Mr Wu explaining the reasons why the financial adviser might have suggested doing this now. Also point out any potential disadvantage of following his financial adviser's advice.

(5 marks)

(Total: 30 marks)

Question 2

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

Mr and Mrs Blacker are due to attend at your offices today for their meeting with Mr Wu to discuss their wills.

- (a) When Mr Wu arrived for work there was a voicemail message left for him by Mr Blacker.

Mr Blacker said that Mrs Blacker is not able to attend because she felt unwell when she woke up this morning and so she does not think she should leave the house. Mr Blacker has asked whether she needs to attend the meeting, in which case a new date can be arranged, or whether it is alright if he attends by himself. In the message, he said that she was quite OK about not coming to the meeting today because she always leaves financial matters and decisions to him anyway.

Mr Wu has emailed you to ask how he should reply to Mr Blacker.

Write a memo in reply to Mr Wu explaining whether he should proceed with today's meeting or whether it should be cancelled and a new time arranged when both Mr Blacker and his wife can attend.

(6 marks)

Assume for the rest of Question 2 that Mrs Blacker feels well enough later in the day and both Mr and Mrs Blacker do in fact attend the meeting with Mr Wu as arranged.

- (b) Mr and Mrs Blacker say they received a letter in 2009 from Garbons, the solicitors who made their current wills, suggesting they should now make new ones simply leaving everything to each other because the transferable nil rate band makes the use of nil rate discretionary trusts "completely unnecessary".

Mr and Mrs Blacker explain that they still want to benefit each other on the first death and then on the survivor's death everything is to go equally to Louise and Andrew (or to their children in default) as currently stated in clauses 4.2 and 4.3 of their current wills.

Draft paragraphs for inclusion in an advice letter to Mr and Mrs Blacker explaining how the use of nil rate trusts would have effected an inheritance tax saving in their existing wills **and** whether Garbons are right to say they are now "completely unnecessary".

(14 marks)

- (c) Mr and Mrs Blacker also say they would like to help Andrew and Louise with the education of the grandchildren. In particular, Andrew's children are teenagers and approaching the time when they will be thinking about university. They say they would probably want to pay their university fees when the time comes but would in any event like to leave each of the grandchildren a legacy (to take effect on the survivor's death) of, say £10,000 each.

They note their current wills provide for their grandchildren to take at 25 if they become entitled to residue and so they have decided 25 would be the right age for the legacies as well. However, they are concerned the grandchildren might be in need of the legacy money earlier than age 25 to help with their education.

Draft further paragraphs in the letter to Mr and Mrs Blacker explaining how the legacy money could be made available to meet the grandchildren's educational needs before they reach age 25.

(8 marks)

(Total: 28 marks)

Question 3

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

Mr Wu has received a reply from the Department of National Savings & Investments which confirms Keith Barlow's holding of National Savings Certificates. Their probate value is £10,455.

He has also now received a letter from the solicitors who dealt with the estate of Dolores Barlow who died on 5 November 1996.

Part of it reads as follows:

"In her will, Dolores Barlow left a legacy of £40,000 free of tax to Jonathan Weeks who was Dolores's son by her first marriage. Subject to that, she left the net residue of her estate to Keith. The attached estate accounts* show the amount of the net residue taken by Keith was £117,768, though of course this does not include her interest in any property she held jointly with Keith. This included their home at 23 Hooly Bush Road, in respect of which we had the Land Register amended to show Keith as the sole registered proprietor.

Unfortunately, we did not keep a copy of the IHT account submitted at the time but the notes on our file suggest that apart from the legacy to Jonathan, Dolores made no other use of her nil rate band".

***NOTE TO CANDIDATES** – the estate accounts referred to are **not** reproduced for the purposes of the examination and you may assume there is no further information beyond that contained in the extract from the letter which may be relevant to any question you are asked.

- (a) Given the information you now have since he drafted Form IHT 205 (**Document 6** in the case study materials), write a memo to Mr Wu to explain:
- (i) if Keith's estate can still be dealt with as an excepted estate despite the gift to Donald in 2006 and the valuation of his holding of National Savings Certificates; and also
 - (ii) whether any additional, or alternative, IHT forms will require completion before an application is made for a grant to Keith's estate.

(12 marks)

- (b) Assume now it is four months since Mr Wu obtained a grant of probate under Keith's will on behalf of Janice and Lesley. The debts have all been paid. Mr Wu is now seeking their instructions regarding certain assets in the estate.

Janice and Lesley have said that they would like the house at 23 Hooly Bush Road transferred to them so that they each have an interest in the property which they can deal with in their own wills.

Explain in a memo to Mr Wu what needs to be done next to transfer the title of the house to Janice and Lesley in the way they intend.

(5 marks)

- (c) As regards Keith's quoted shares, Janice and Lesley would like all of them sold as soon as possible and the proceeds divided equally between them as they both have uses for the money. A stockbroker has advised that the shares have increased in value by approximately £15,000 since Keith died.

Mr Wu tells you that rather than Janice and Lesley selling the shares as executors whilst they still hold them in that capacity, it might be to their advantage to first transfer the shares to themselves as beneficiaries and then sell them.

Draft paragraphs for inclusion in a letter to Janice and Lesley to explain why the sale should be dealt with in this way.

(5 marks)

(Total 22 marks)

Question 4

Reference: Question relates to **Documents 7 and 8** of the case materials.

Mr Wu is due to have his further meeting with William and Adam about Frederick's estate. He is aware that in that meeting he will probably need to advise them about the possibility of an application for probate based on a copy of Frederick's will if the original cannot be found. He would therefore like you to brief him on what might be required.

- (a) In anticipation of his meeting with William and Adam, write a memo to Mr Wu explaining whether an application could be made to have a copy of Frederick's will admitted to probate on the basis that the original will cannot be found.

In your memo, you should consider the evidence needed to support such an application in light of the facts as they are known prior to the forthcoming meeting **and** the chances of the application being successful.

(9 marks)

Now assume that William and Adam duly attend the meeting with Mr Wu later today to discuss Frederick's estate.

They tell Mr Wu that there is still no trace of the will prepared for him by Jarred & Co despite an extensive search of his house. Also, enquiries of Frederick's bank have not revealed any further information.

Mr Wu advises them to proceed on the basis that Frederick died intestate.

[Note to Candidates: Do **not** assume that this advice was necessarily given as a result of what you may have said in your memo written in answer to part (a)]

William explains that whilst he is happy to administer Frederick's estate if required, he does not need to inherit any of his property. Instead, he would like his entitlement to pass according to the way he believes Frederick would have wanted in his will.

- (b) Write a memo to Mr Wu explaining:
- (i) whether William can administer Frederick's estate and, if so, whether he needs to have the consent of Marjorie or Samantha or give either notice;
 - (ii) whether William can disclaim his entitlement under Frederick's intestacy in order to achieve what he wants or if there is an alternative. Mr Wu does **not** want you to advise him on tax consequences of a disclaimer or any alternative.

(11 marks)

(Total: 20 marks)

End of Examination Paper