



## THE CHARTERED 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 2012-2013, 20<sup>th</sup> edition, Meryl Thomas, Oxford University Press, 2012**
- Candidates must comply with the CILEX 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 CILEX 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. Critically analyse how the general principles relating to the rules of construction and the admission of extrinsic evidence can assist the Court in determining what the testator intended.

**(25 marks)**

2. "A will is, by its very nature, revocable by the testator until his death."

Parry and Kerridge: The Law of Succession 12<sup>th</sup> Edition 2009.

- (a) Analyse by reference to case law how the rules relating to revocation by destruction have been applied by the Court.

**(17 marks)**

- (b) Explain the effect of the doctrine of conditional revocation in determining whether a testator has revoked his will, illustrating your answer by reference to case law.

**(8 marks)**

**(Total: 25 marks)**

3. (a) Analyse the circumstances in which a person can act as an executor even though not named or referred to by the testator in the will.

**(12 marks)**

- (b) Critically evaluate the circumstances in which it would be appropriate for the Court to pass over an executor named in a will.

**(13 marks)**

**(Total: 25 marks)**

4. Analyse why the classification of legacies in a will is important in deciding when legacies adeem or abate and also in deciding the amount of income/interest payable to a beneficiary.

**(25 marks)**

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

**Question 1**

Adam, who has recently died, made a handwritten will in the following terms:

*'My will by Adam Lazenby,*

1. I appoint my friends John and Mary Tomlinson as my executors.

2.1 I give £1,000 each to John, Mary and their son Trevor.

*£10,000 JT*

2.2 I give ~~£5,000~~ to my brother Mark.

2.3. I give [redacted] to my sister Rosie.

*Honda*

2.4. I give my [redacted] motorbike to my brother Frank.

3. I give everything else that I own to my nephews and nieces.

Signed: *John Tomlinson*

*Mary Tomlinson'*

John and Mary come to seek your advice upon Adam's will. They tell you that they remember Adam calling at their home one evening and asking them to witness his will. Both remember going into their dining room with Adam, and Adam putting his will on the table and saying that he had written it that day.

John explains to you that he signed at the bottom of the will where Adam indicated, and also initialled the crossing out in clause 2.2 while Mary had gone into the kitchen to make them all a drink. Mary says she did not see John sign, but recalls signing the will at the place pointed to by John, directly under his signature. At that moment, Adam was in the conservatory taking a call on his mobile telephone. When he finished his call, John and Mary tell you that Adam said 'that's a good job done' as he placed the will in an envelope and put it inside his jacket pocket.

Having read over Adam's will, neither John nor Mary can recall seeing the amendments to clauses 2.3 and 2.4, although they recognise the wording 'Honda' is in Adam's handwriting.

(a) Advise whether Adam's will has been validly executed.

**(12 marks)**

(b) Advise John and Mary on how the bequests in clause 2 should be dealt with, assuming the will is valid.

**(13 marks)**

**(Total: 25 marks)**

**Turn over**

## Question 2

Duncan died several months ago leaving his entire estate by his will to Flora, and also appointed her as his executor. They owned their home as beneficial joint tenants.

Duncan owned a small boatbuilding yard; he was a sole trader with two employees, a carpenter called Hamish and a part time bookkeeper called Marie.

The yard has a value of £300,000 and Duncan has personal belongings and assets valued at £25,000. To date, Flora is aware that Duncan had the following liabilities and debts:

- (i) A mortgage on the yard to Lomond Bank Plc of £325,000.
- (ii) Funeral expenses of £3,500.
- (iii) Unsecured overdraft with Munro Bank Plc of £5,000.
- (iv) One month's salary of £1,500 owing to Hamish.
- (v) Two weeks' salary of £600 owing to Marie.
- (vi) Unsecured debts of about £10,000 owing to business creditors.
- (vii) Unsecured loan of £5,000 repayable to Flora.
- (viii) Arrears of Income Tax of £1,000.

Flora has been administering the estate but now asks for advice upon the following:

- (a) How should she deal with the payment of the liabilities and debts of Duncan's estate?  
**(16 marks)**
- (b) Her potential personal liability if she does not deal correctly with the payment of the liabilities and debts, and how she could protect herself if more debts emerge at a later date.  
**(9 marks)**

**(Total: 25 marks)**

### Question 3

Percy died intestate two months ago.

Percy's first wife, Susan, died in 2004 and by that marriage he had a son, William aged 26, and two daughters Jennifer, who died in 2010, and Kirsty aged 17. Kirsty is married to Tom.

William has a son, Simon aged 7. Jennifer is survived by a daughter, Amy aged 8, and a son, Glen aged 6.

Percy is survived by his second wife, Vanessa, and their son, Damien aged 4.

Vanessa was divorced from her first husband, Ronald, and she has a daughter, Lucy aged 15 from that marriage.

Percy died as a result of a violent attack by his son, William, during a heated argument. William has been charged with murder.

At the time of his death Percy owned the following assets in his sole name:

House valued at £325,000.

Personal possessions worth £50,000.

A vintage Rolls Royce car (which Percy hired out for weddings) worth £125,000.

A Porsche sports car (which Percy used himself and occasionally hired out) worth £75,000.

Collection of miniature paintings valued at £100,000.

Photographic and film making equipment valued at £15,000.

Bank accounts with balances of £30,000.

Stocks and shares valued at £110,000.

Following the attack, Percy said to Vanessa and Kirsty, "I do not want William to receive anything when I die. I want you, Kirsty, to have my collection of paintings which are stored in a security box at my bank, the key for which you will find in the top drawer of my desk and which I want you to take. I also want Lucy to have all my photographic and film equipment."

Advise on how Percy's estate will be distributed, specifying the nature and extent of each beneficiary's entitlement, including any additional rights Vanessa may exercise.

**NOTE:** A precise calculation of the entitlement of each beneficiary is **NOT** required.

**(25 marks)**

**Turn over**

#### Question 4

Omar made a will in 2006 following the death of his wife. He appointed his nephew, Javed and his niece, Sunita as his executors and left them his entire estate except for some charitable legacies. Omar's will was prepared for him by his longstanding solicitor.

Due to his declining health, Omar had recently moved into a bungalow rented from the local council, and was being assisted by professional carers prior to his death two months ago, aged 89 years.

You are consulted by Omar's niece and nephew and they produce to you a photocopy of a handwritten will dated 15th October 2012 made by Omar. The will appoints one of his professional carers, Molly, as his sole executor and includes gifts to charities and £25,000 each to Molly and to her husband Donald. The remainder of the estate is left to Javed and Sunita.

Javed produces to you the will made by Omar in 2006 which he kept for his uncle, the only difference in the later will being the change of executor and inclusion of the legacies to Molly and Donald. Javed draws your attention to Omar's signature and how it has changed. He tells you that as Omar was suffering from Parkinson's Disease his handwriting had become very shaky. Javed says he doubts the signature on the later will is his uncle's.

Sunita tells you that as her uncle's sight was very poor he usually asked her to write letters for him to sign. Javed and Sunita tell you that Molly has confirmed that she wrote out Omar's will at his request. Sunita comments that one of the witnesses is another professional carer but they cannot decipher the name of the second witness.

Javed and Sunita say that they saw Omar on a regular basis and that their uncle often seemed to be very confused, but he also had good days. Omar's doctor visited him regularly. Neither Javed nor Sunita can understand why their uncle changed his will without telling them. They tell you that their uncle's estate is worth around £100,000 and they ask your advice.

Advise Javed and Sunita of the principles which the Court would apply to determine whether or not the will made by Omar in 2012 was valid, and upon the likelihood of that will being admitted to probate.

**(25 marks)**

**End of Examination Paper**

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