



THE CHARTERED 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, 2012-2013 20th edition, M 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**

So that Mr Wu is briefed for a further meeting with Patricia and David tomorrow, write him a memorandum dealing with each of the following:

- (a) (i) Calculate (with explanation) the inheritance tax on the estate on the basis of the present information. Explain whether any further information, beyond that already provided, must be obtained before the exact amount of any inheritance tax can be determined. **(6 marks)**
- (ii) Local estate agents have advised that Poacher's Cottage is best suited to a sale by public auction but that any sale should be deferred until July this year when the property should fetch a better price. Mr Wu will need to discuss with Patricia and David the tax implications if they follow the estate agent's advice.

So that you can explain to Mr Wu the consequences, he asks you to assume that Poacher's Cottage is sold at auction in July for £30,000 more than the value on which the estate's liability to inheritance tax was initially determined (assume this value to have been the agent's initial suggestion of £250,000).

In your memorandum, explain to Mr Wu how such a sale in July might affect the initial determination of the inheritance tax liability and also whether there could be any capital gains tax implications. **(8 marks)**

- (b) With regard to the amendment and additional wording written on the face of the will by Teresa, explain to Mr Wu in your memorandum whether it will affect the application for the grant of probate and what additional documentation (compared to what is usually required) he might have to provide to the probate registry.

(Do not deal in this part (b) with anyone's beneficial entitlement under the will as you are asked to consider this in part (c)). **(7 marks)**

- (c) Mr Wu anticipates that Patricia and David, as executors, will instruct him to pay half the residue to Christine because they believe this was clearly Teresa's wish.

Explain in your memorandum whether Patricia and David, and possibly Mr Wu, face any risks in doing this and, if so, whether Mr Wu should advise they take any particular precautions before doing so. **(9 marks)**

(Total: 30 marks)

Question 2

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

Note to Candidates: This question, like Question 1, relates to the estate of Teresa Meredith (Documents 1 and 2 in the Case Study Materials). However, if you wish, you can attempt this question before Question 1 because it does not depend on you first having read and/or answered Question 1.

Patricia and David have obtained a grant of probate to the will of Teresa Meredith (see **Document 2**) and have asked Mr Wu about certain matters arising in the administration of the estate.

Write paragraphs for inclusion in a letter to Patricia and David dealing with each of the following:

- (a) With regard to clause 3 of the will, explain to them:
- (i) who exactly is entitled, and to how much, and in particular whether Christine's son, Zak, is entitled to share in the legacy of £60,000 bearing in mind that he was adopted after the date of the will;

(7 marks)

and

- (ii) whether or not the share can either be paid to each nephew now, or to their parent(s) before they reach 18 so that the parent(s), rather than Patricia and David, hold the share of the money.

(7 marks)

- (b) Since the death, David's accountancy firm has carried out work relating to the administration of the estate (for example, providing information about the value of Rosewood Antiques and finalising Teresa's income tax liability up to the date of her death).

Explain whether David, or his firm, can claim anything from Teresa's estate for such work.

(6 marks)

(Total: 20 marks)

Question 3

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

Mr Wu has received a letter from Mrs Gabriella Sarson, the widow of Steven Sarson, asking about certain aspects of the estate accounts (**Document 4**) and also raising a question concerning her own will.

Draft paragraphs for inclusion in a letter from Mr Wu to Mrs Sarson dealing with each of the following points she has raised.

- (a) She says her financial adviser has advised her to sell the shares in Ladfield plc which have been transferred to her as part of her entitlement to residue. These shares have risen in value since the date of her husband's death and she notes from the estate accounts that when the Morrisco plc shares were sold, the gain was exempt from capital gains tax.

She wants to know if any gain she makes when she sells the Ladfield plc shares will also be exempt.

(6 marks)

- (b) She wants to know if she will have to pay any income tax on the estate income of £2,350 which is due to her or whether tax has already been paid.

(6 marks)

- (c) She does not understand why the accounts make no reference to 63 Coleman Close, Slaybridge which she and her husband jointly owned.

Similarly, she thinks the accounts ought to say that she received £20,000 under the terms of an assurance policy which her husband had taken out several years ago on his own life for her benefit. She says this is the amount the insurance company (Standard Life) paid to her after Mr Wu had sent the company a copy of her husband's death certificate and a claim form which she had signed.

She says she is concerned that the omission of these two items does not fully explain what she has inherited from her husband.

(5 marks)

- (d) In thinking about her own will, which Mr Wu made for her shortly after her husband's death, she realises that when she signed it, she wrote her name as 'Gabby Sarson' rather than 'Gabriella Sarson' which is the name on her birth certificate. Also, the will does not mention her wish to be cremated.

She wants to know if there might be a problem with her signature and whether she should make a codicil expressly stating her wish to be cremated.

(5 marks)

(Total: 22 marks)

Question 4

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

Mr Wu intends to ask Thomas Mattu to come into the office to see him before drafting his will. He feels he needs further information from Thomas and also that Thomas needs advice on the options available.

- (a) With regard to the proposed legacy of £20,000 to each of his three children Una, Sylvia and Kenneth, write a memorandum to Mr Wu suggesting what further information he should require from Thomas so that he can draft this provision.

(7 marks)

- (b) Mr Wu will suggest two options to Thomas regarding the way the residue (including the house) is left in his will so as to provide a home and financial support for Lucinda:

- Option A is to give Lucinda a life interest in the residue and provide for the remainder to pass to his children (or grandchildren then living in default) when she dies;
- Option B is to create a discretionary trust of the residue with Lucinda, his children and all present and future grandchildren being named as potential beneficiaries. Thomas would then give the firm (as his executors and trustees) a letter of wishes stating that they should permit Lucinda to live in the house and that they should also pay her the income from any investments in the residue, in preference to any other beneficiary, during her lifetime.

Write a memorandum to Mr Wu explaining the **inheritance tax** consequences of both Options. For each, deal with the way in which inheritance tax will be charged on Thomas's estate when he dies and subsequently when Lucinda dies (assuming they die in that order).

Note to Candidates - You are required only to advise Mr Wu about inheritance tax and no credit will be given for discussing other taxes.

(14 marks)

- (c) Assume that having considered both options, Thomas decides on Option A because he wants Lucinda to have the security of a right to income and occupation of the home, rather than relying on his trustees' discretion. However, he realises there may come a time after his death when her needs may be met from other sources and he is concerned about his children still then having to wait until she dies before inheriting the residue.

Write a further memorandum to Mr Wu so that he can address Thomas's concern, suggesting what could be included in the will to bring Lucinda's life interest to an end, either in whole or in part, before she dies.

(7 marks)

(Total: 28 marks)

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