



## 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 2012-13, 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. "The Court has no power to admit to probate a ... will which is invalid under s9 Wills Act 1837."

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

Explain the requirements of s9 Wills Act 1837, and evaluate by reference to case law the approach taken by the Courts to give formal effect to the will.

**(25 marks)**

2. A testator may revoke a will prior to his death.

Evaluate the rules which apply to the methods of revocation and critically assess the extent to which an intention to revoke is necessary.

**(25 marks)**

3. Explain and critically analyse how the rules of construction determine the membership of a class of beneficiaries where the testator's intentions are unclear from the will.

**(25 marks)**

4. Personal Representatives have a duty to collect and get in the assets of the deceased.

(a) Consider when, and to what extent, property in which the deceased had an interest devolves on an executor or administrator.

**(12 marks)**

(b) Critically analyse the statutory duty of the Personal Representatives to collect and get in the real and personal estate of the deceased.

**(13 marks)**

**(Total: 25 marks)**

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

**Question 1**

Christopher has died recently as a result of a car accident, leaving a net estate of £850,000, including a home valued at £350,000 which was in the joint names of himself and his wife Victoria as tenants in common in equal shares.

Before Christopher's death, he and Victoria had decided to live apart after 27 years of marriage.

For the year before his death he had been living with Jessica in a flat worth £185,000 which was in his sole name, together with their infant daughter Rebecca, and Jessica's own son Steven.

Unknown to Victoria, within one month of their separation, Christopher had made a new will leaving his estate to three charities. In the will he explained that he was not leaving anything to Victoria or their son Michael because of the unhappiness they had both caused him during recent years.

Claims are being considered under the Inheritance (Provision for Family and Dependents) Act 1975 by or on behalf of the following people:

- Victoria, aged 54, who has not worked full time since Michael was born, but who looked after the home and had helped Christopher in the past to build his business by entertaining his clients. She has little capital of her own and no pension, but has recently found some part time work.
- Michael, aged 25, who lives in rented accommodation and had until one year ago worked for his father on a low wage, but has since been unemployed.
- Jessica, aged 40, who lives in the flat bought by Christopher with her son Steven and baby Rebecca. Jessica has not worked since the birth of their daughter and relies solely upon state benefits.
- Rebecca, aged 6 months.
- Steven, aged 20, who is in his first year at University, and to whom Christopher had been making cash payments from time to time.

Advise Christopher's executors upon the possibility of each of the above making a claim under the Inheritance (Provision for Family and Dependents) Act 1975, and the factors the Court would take into account when considering such claims.

**(25 marks)**

**Turn over**

## Question 2

Desmond Fisher, a widower who died three months ago, validly executed in 1992. The will is handwritten and includes the following clauses:

- "1. I appoint my sons John, Harry and Richard as the executors of this my will*
- 2. I give £5,000 to my friend Irene Smith*
- £2,000 DF*
- 3. I give £1,000 to my friend Yvonne Connor*
- 4. I give all my shares in Lakeside Engineering to my cousin Trevor Brown*
- 5. I give my Jaguar car to the Bedford Motor Museum*
- Albert Peters*
- 6. I give my collection of Roman coins to [REDACTED]*
- 7. I give £100,000 to be divided equally between the named individuals in a sealed letter in my handwriting I shall place with my will*
- 8. I give the remainder of my estate after payment of all my funeral testamentary and administration expenses to those of my said sons as shall survive me and if more than one in equal shares"*

Desmond's son, Richard, instructs you that his father was a very private man and rarely discussed his finances. He tells you that he found the will in his father's desk together with a sealed envelope containing an undated letter naming four individuals in his father's handwriting. He also mentions that all of the amendments are in his father's handwriting.

Richard tells you his brother John died in 1996, and his brother Harry died in 2011. John had no children, and Harry had two children, Eric and Samantha. He also says that Irene Smith has recently died leaving a daughter, Melody. Richard explains that Lakeside Engineering amalgamated with another company many years ago and was then acquired by Waterworld Engineering Co. Ltd who issued debenture stock to his father.

Lastly, he informs you that he has discovered that shortly before his death, his father had agreed to the sale of his Jaguar car and had been paid a deposit.

Advise Richard how his father's estate should be distributed.

**(25 marks)**

### Question 3

Julius, a bachelor who has recently died, made a valid will appointing his friend Kurt as his executor. Clause 3 of the will contains the following provisions:

"

- (1) I give my house "Blackacre" 12 River Road, Bedford, to my cousin Gavin
- (2) I give my holiday home on Anglesey to my cousin, Zara
- (3) I give legacies of £10,000 each to my friends Heather and Rachel, and £4,000 to my friend Abby
- (4) I give the monies in my savings account with Lomond Bank to my friend Clarissa subject to payment therefrom of any credit card liabilities
- (5) I give my residuary real estate to my friend Dunata
- (6) I give my residuary personal estate to my friend Servet "

Kurt tells you that all of the beneficiaries except Rachel survived Julius, and explains that he has been gathering details of the estate. Blackacre has been valued at £400,000 and is subject to a mortgage of £250,000. The holiday home has been valued at £200,000.

The residuary real estate includes several plots of land on Anglesey one of which is a large plot valued at £150,000. This is the subject of a mortgage of £160,000 which is also secured against the holiday home.

Kurt explains that Julius had about £25,000 in his savings account with Lomond Bank, and other personal and cash assets valued at approximately £1,000.

Julius had credit card liabilities of around £4,500 and a number of other unsecured debts amounting to about £8,000.

Kurt comments that there is no mention in Julius's will of the funeral and administration expenses, and tells you that he has paid the funeral account from the savings account Julius had with Lomond Bank.

Explain in what order Kurt should use the assets of Julius's estate to pay the debts, liabilities, and expenses of his estate.

Assume the will contains no other provisions relevant to the payment of debts, liabilities and expenses.

**You are not required to discuss the payment of any Inheritance tax liability.**

**(25 marks)**

**Turn over**

#### Question 4

Heather Shields consulted her solicitor in February 2012 and gave instructions for the preparation of her will. She had not made a will previously, and told her solicitor that she had decided to make a will now for two reasons. Firstly, due to her age and, secondly, because of the medical diagnosis of the early stages of senile dementia. A draft of the will which had been prepared in accordance with her instructions was sent to her for approval one week later.

One month after giving instructions to her solicitor, Heather suffered a heart attack and lapsed into a coma for six months, only recovering consciousness in August 2012. From that time onwards she was very confused and suffered increasing dementia. She died in March 2013 as a result of a further heart attack, aged 92 years.

After her death, the draft will was found among her belongings at the hospital. It had been signed during October 2012 by Heather in the joint presence of two family friends, Albert and Joan. They have confirmed that when they were visiting Heather, she had taken a document from her bedside cabinet and said it was her will. She had signed it there and then in their presence and asked them to witness her signature. They did so, but did not see the contents of the will. Albert and Joan recall that Heather appeared to know what she was doing, although she had seemed very confused when they had visited her previously and subsequently.

Albert and Joan tell you that they have been informed somewhat to their surprise, that they are the executors named in Heather's will. They tell you that Heather was divorced 30 years ago and has no children. Both her parents are deceased. Heather's brother Frank died in November 2012, and he is survived by his daughter Karen and step-daughter Brenda. Heather's only other sibling of the whole blood, Mary, is alive but has lost her mental capacity and is looked after by her daughter Tanya. Heather's half-sister Rowena died many years ago and she is survived by her children David and Kelly.

(a) Advise Albert and Joan whether Heather's will is valid.

**(16 marks)**

(b) Explain who would be entitled to take out a grant of representation if Heather's will is declared not valid.

**Do not consider any issue of potential negligence on the part of the solicitor consulted in February 2012.**

**(9 marks)**

**(Total: 25 marks)**

**End of Examination Paper**

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