

CASE STUDY MATERIALS

June 2013
Level 6
PROBATE PRACTICE
Subject Code L6-21



CHARTERED INSTITUTE
OF LEGAL EXECUTIVES

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UNIT 21 – PROBATE PRACTICE*

CASE STUDY MATERIALS

Information for Candidates on Using the Case Study Materials

- This document contains the case study materials for your examination.
- In the examination, you will be presented with a set of questions which will relate to the case study materials. You will be required to answer all the questions on the examination paper.
- You should familiarise yourself with the case study materials prior to the examination, taking time to consider the themes raised in the materials.
- You should take the opportunity to discuss the materials with your tutor/s either face to face or electronically.
- It is recommended that you consider the way in which your knowledge and understanding relates to the case study materials.

Instructions to Candidates Before the Examination

- You will be provided with a clean copy of the case study materials in the examination.
- You are **NOT** permitted to take your own copy of the case study materials or any other materials including notes or text books into the examination.
- In the examination, candidates must comply with the CILEX Examination Regulations.

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* 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**

ADVANCE INSTRUCTIONS TO CANDIDATES

You work in the Private Client Department of Kempstons, The Manor House, Bedford, MK42 7AB (DX BD345987).

Your supervising Chartered Legal Executive and head of department is Marcus Wu.

You arrive at work to find the following awaiting your attention:

- DOCUMENT 1** Attendance Note taken from Margaret Sangster dated 14 May 2013 Re: Clifford Sangster and New Will
- DOCUMENT 2** Will of Clifford Sangster dec'd dated 26 February 2009
- DOCUMENT 3** Email dated 14 May 2013 Re: Susan Christie (client ref PD/Christie1276) – Steven Pickering dec'd
- DOCUMENT 4** Email dated 14 May 2013 Re: Mrs Madge Fisher

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DOCUMENT 1

Attendance Note taken from Margaret Sangster dated 14 May 2013**Re: Clifford Sangster dec'd and New Will**

I have taken instructions from Margaret Sangster who came to see me following the recent death of her husband, Clifford, on 3 April this year. He was 68 and suffered a fatal heart attack. She wanted some reassurance about her financial position and she also thinks it is time she made her own will.

She is 65 and they were married in 1983 after their respective first marriages had ended in divorce in the 1970s.

Clifford had two daughters and a son from his first marriage (see his will for their names – **Document 2**).

Margaret says his original will is held by Garbons at their Chester office, as in clause 2 of the will, and they will no doubt be dealing with the estate.

She told me that most of the assets, apart from the house and some investments (mainly fixed interest bank and building society savings accounts), were held in their joint names (but need to check). The house at 42 Riddles Way in Warrington was owned by Clifford alone and it is where they have lived ever since they got together. She believes he held stocks and shares worth around £300,000 – largely acquired from the proceeds of sale of his sports shop business in 2008. Additionally, he also owned a small holiday villa in Spain – hence there is also a Spanish will and Margaret says she believes this will leaves the villa to his three children.

Margaret used much of her own divorce settlement to buy a holiday cottage in Pembrokeshire, which she and Clifford later used on many occasions. The holiday cottage has also been used by his children and Margaret's twin daughters from her first marriage. However, Margaret now feels she has little use for the holiday cottage herself and is thinking of either selling it or passing it on to her daughters.

Apart from a few thousand pounds in bank accounts and the holiday cottage, she has little else to her name and so hasn't made a will. However, as a result of Clifford's death I have informed her that she will now become the sole owner of any assets held jointly with Clifford and so she ought to consider making a will. She may also have other entitlements – she believes Clifford had a life assurance policy, though she is not sure whether that pays out directly to her or to his estate. She may also be entitled to his residuary estate under the will.

In terms of Clifford's will, she had assumed that she gets the whole estate subject to the pecuniary legacies in favour of his three children because that is what he had told her (and also what she believes his children have understood as the position). However, when she read the will, she was not entirely clear about the wording of clause 4.1 – and I'm not clear either; was it intended to give her an absolute or life interest? I also think there is something odd about the ultimate gift in clause 4.4.

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I asked Margaret why the will was executed at Garbons' Manchester office. Clifford was dealing with the office in Chester. She said that the will was made around the time she and Clifford were due to take a short break in the holiday villa in Spain but on the morning they were due to fly out from Manchester, Clifford realised he had not signed his will. There wasn't time on the day of the flight to go into Chester to sign and so Garbons arranged to have the will ready at their Manchester office so that Clifford could call in first thing to sign it on their way to the airport.

I have written to Garbons to confirm that we have been instructed by Margaret and to ask for some information about the estate. I have specifically asked how they propose to interpret clause 4.1 of the will and what sort of interest it gives her. I have also pointed out that clause 4.4 seems to be incomplete.

I await their response with much interest and, if necessary, I may want you to do some further work on this matter.

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Will of Clifford Sangster dated 26 February 2009

THIS WILL is made by me **CLIFFORD SANGSTER** of 42 Riddles Way, Warrington, Cheshire WA5 2PF.

- 1** I revoke all earlier wills except my Spanish will and I declare this will shall apply only to my property within the United Kingdom.
- 2.1** I appoint as my executors and trustees my daughter **Elizabeth Simonds** and my daughter **Lorraine Pudsey** together with the profit sharing partners at the date of my death in the firm of **Garbons LLP** Solicitors of 29 Chumley Street, Chester, Cheshire CH2 7DN or the firm or incorporated practice which at that date has succeeded to and carries on its practice and the expression "**my Trustees**" means my personal representatives and the trustees for the time being of this will and of any trust that might arise under it.
- 2.2** Any of my Trustees who is engaged in a profession or business may charge for work done by him or by a firm or incorporated practice of which he is a partner in connection with the administration of my estate including work which is outside the ordinary course of his profession or business and work which he could or should have done personally had he not been so engaged.
- 3** I give the following legacies free of tax:
 - 3.1** I give my personal chattels as defined by section 55 Administration of Estates Act 1925 including any car registered in my name at the date of my death to my wife **Margaret Sangster** absolutely
 - 3.2** I give the sum of £100,000 to my daughter **Elizabeth** absolutely
 - 3.3** I give the sum of £100,000 to my daughter **Lorraine** absolutely
 - 3.4** I give the sum of £100,000 to my son **Edward Sangster** absolutely
- 4** I give all my property after payment of my funeral and testamentary expenses debts and any legacies given by this will or by any codicil to it and any tax arising in respect of my death on all gifts in this will or any codicil to it given free of such tax and any tax arising as a result of my death in respect of any transfers or gifts made in my lifetime (in exoneration of the recipient of any such transfer or gift and of any other person who may be liable in respect thereof) ("**my Estate**") to my Trustees to hold as follows:
 - 4.1** For my wife **Margaret** [absolutely] [for life] but if she shall not survive me (or if this gift fails for any reason) to my Trustees upon the trusts and with and subject to the powers and provisions declared and contained in the following clauses
 - 4.2** Subject thereto my Trustees shall hold my Estate upon trust to divide the same into three equal parts and hold these as to:

- 4.2.1** one part for my daughter **Elizabeth** absolutely;
- 4.2.2** one part for my daughter **Lorraine** absolutely;
- 4.2.3** the remaining part for my son **Edward** absolutely.
- 4.3** If any of my children dies (whether or not in my lifetime) before attaining a vested interest in my Estate leaving a child or children living at my death (or born afterwards) then such child or children shall take and if more than one equally between them the part that the deceased child would have taken had that child so survived
- 4.4** If the trusts of any of these parts fail such parts (and any parts which may have accrued to them under this provision) shall accrue equally to and be held on the trusts of the remaining parts which have not failed but if the trusts of all these parts fail my Trustees shall hold my Estate for [charity to be confirmed] and I declare that the receipt of the person professing to be its secretary or treasurer shall be a sufficient discharge to my Trustees.
- 5** My Trustees shall have the following powers in addition to their powers under the general law:
- 5.1** Section 31 Trustee Act 1925 shall apply to the income of my Estate as if the words "as the trustees shall in their absolute discretion think fit" were written in paragraph (i) of subsection (1) thereof instead of "as may, in all the circumstances, be reasonable"
- 5.2** To raise capital to any extent whether or not in so doing they exhaust my Estate and to pay or apply it for the benefit of any one or more of my wife my children or my grandchildren
- 6** Any person who is not proved to have survived me by twenty eight days shall be treated as having died before me.

Dated this *26th* day of *February* 2009

Signed by the testator in our)
joint presence and then by)
us in his) *Clifford Sangster*

Mary Sloan (Mary Sloan) *Sylvia Robinson* (Sylvia Robinson)
Clerks with Garbons Solicitors 19 Boston Street, Manchester M15 7BB

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Email dated 14 May 2013

From: Mr Wu
To: Trainee

Please see email below received from our Property Department. I am very busy today and so can you please drop the client a line to say we shall be pleased to give her the advice she requires as soon we have sight of her uncle's will.

In the meantime you might want to consider any issues resulting from her conversation last night with my colleague in the Property Department.

Email dated 14 May 2013

From: Partner (Property Department)
To: Mr Wu (Private Client Department)
Re: Client - Susan Christie (client ref PD/Christie1276)
- Steven Pickering dec'd

Just as I was leaving yesterday evening, Susan Christie phoned to say she wanted some advice about her late uncle's estate. I completed a house purchase for Susan and her husband last month, which is why she phoned me. Since my knowledge of probate is rather limited, I would have referred her to you - but you had already gone home!!!

Her uncle, Steven Pickering, died on 1 May and left a short will which is being held by Susan's brother, David Pickering. Unfortunately, Susan does not have a copy but she knows what the will says because David showed it to her at the funeral last week. She recalls the will names her father, Robert Pickering, as sole executor, but he died last year. Robert was also David's father and was Steven's brother. There are no legacies or specific gifts and the whole estate is apparently split three ways, with one third passing to David, another to Susan and the remaining third to Mary, who was David and Susan's sister (as to her death, see below).

David lives in Manchester with his wife, Roma, where he works as an IT consultant (they have no children). He has Steven's will because he is the executor of Robert's estate and he found Steven's will amongst Robert's personal papers.

Susan recently married Clive Christie and they have a young baby, Adele.

Mary died in March this year after a short illness and is survived by her husband, Tom, and her five year old daughter, Emily.

Susan said Uncle Steven never married and had no children or other dependants. His parents died several years ago. He lived alone and was not in any sort of relationship as far as is known. Robert was his only brother and he had no sisters.

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Susan knows that Steven owned the house where he lived but neither she nor David has made any enquiries as to what else he might have had in the way of bank accounts, investments etc. She and David would like to sell the house and then distribute everything as required by the will.

However, she was concerned about who should deal with Steven's estate and who exactly is entitled under the will now that Mary has died. Both she and David assumed Mary's share would now go to her daughter, Emily. I told Susan this might depend on what the will actually says. Although she was shown the will by David, she doesn't recall what it might have said, if it actually said anything at all, about Mary dying before Steven.

I told her to ask David for a copy of the will so that we could properly advise on the entitlement to the estate and who should administer it. Susan said she would let us have the copy of the will as soon as she receives it from David.

Thanks.

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Email dated 14 May 2013

From: Mr Wu
To: Trainee

Re: Mrs Madge Fisher

I am acting in the administration of the estate of Harvey Fisher deceased, who died in December 2012. My clients are his widow, Madge, and their son (and only child of their marriage) Donald, who are the executors named in the will and for whom I obtained probate last month. Subject to a few minor legacies to friends, relatives and a charity, the will provided for his whole estate to pass to Madge absolutely.

Madge is aged 85 and with the amount she stands to inherit from Harvey, when combined with her own property (including the home which was held jointly), her estate currently amounts to around £600,000. This will be within the nil rate inheritance tax threshold when Madge dies, after allowing for transferrable nil rate band from Harvey. That being so, I concluded there was no need to give Madge any advice on tax planning as a result of her husband's death. Obviously, we must keep things under review because there is no reason to think Madge will pass away suddenly. She could live to be 100 and property values in the future might change!

Donald is aged 55 and was recently divorced after leaving his wife. He has (I think) a couple of children who presumably live with their mother (Donald's ex-wife). Donald himself is currently living in Madge's house, which is convenient because he can keep an eye on his mother in the aftermath of Harvey's death. He did tell me he has plans to buy a new house for himself in due course, perhaps when his mother is ready to move into residential care. However, my impression from speaking with Madge is that she feels that time is some way off yet and she is quite happy to remain living in her own home.

When I last met with Madge and Donald a few weeks ago to finalise the grant application, Madge said she assumed she would now need a new will. She brought with her a copy of an existing will made by another firm in 2001, made on the same occasion that Harvey made his last will. After I had read her will, I told Madge that it provides that if Harvey did not survive her, then her whole estate would pass equally to Donald and the Society for the Restoration of Public Buildings, a registered charity. Madge said that was fine because she still wanted to leave her estate in that way but that she would contact me again if she had any further thoughts about changing anything.

Anyway, I have now received an email from Donald, the relevant part of which says:

"Mum has been on at me yet again about changing her will. She has talked on and off about it a number of times since she saw you when we came in to sign Dad's probate papers. Firstly, she has a number of small items in the house including pieces of china, jewellery and bits of furniture which she wants to give to her grandchildren. Her list includes my two children and also her sons children. She has been writing out a list which sets out who is to have what and she is quite adamant that each person must have what they are given rather than choosing what to have.

Secondly, she also says that she wants to give the Society for the Restoration of Public Buildings just £1,000 and leave everything else to me and my two children. Both my parents had quite strong links with the charity, particularly Mum who at one time was on one of its committees and made regular donations to its funds but it seems she has lost interest in it. They still send her a quarterly magazine but she never reads it and usually it goes straight in the recycling bin.

Mum has in fact become increasingly depressed since Dad died, although she has been sleeping better the last few weeks following medication prescribed by her doctor.

Can I make an appointment to bring her round to see you as soon as possible so that she can tell you what she would like to do? It would need to be fairly early in the morning because the pills she is taking tend to make her a bit drowsy after lunch."

I have replied to Donald and arranged for him to bring Madge in at 9.30am on 11 June 2013. I told Donald to make sure Madge brings the list she has written out.

End of Case Study Materials

