



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**

Question 1

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

Mr Wu has had a reply to the letter he wrote to Garbons regarding the estate of Margaret Sangster's husband. Their letter states:

"We confirm we act for the executors of the late Clifford Sangster. As you know Mr Sangster's daughters, Elizabeth and Lorraine, are appointed co-executors with this firm. We anticipate that the writer and one of the other partners will be applying for the grant with the daughters.

For your information, our enquiries to date suggest the value of the assets in his free estate in the UK, excluding the main residence and chattels, amounts to less than £300,000 and so, after allowing for debts and administration costs, we anticipate the pecuniary legacies will require approximately a further £50,000 if they are to be funded without the need for a sale of the house. We would assume Mrs Sangster wishes to avoid a sale of the house and so we should be grateful to hear what you have to say by way of a solution.

Amongst Mr Sangster's papers is correspondence with Liberty Life Assurance Company relating to policy No 34567X. This suggests that this policy has been written in trust for the sole benefit of Mrs Sangster and the death benefit now payable to her is £80,000. However, we have not been able to locate the policy and the daughters have suggested it may be somewhere in the house. No doubt you will wish to follow this up with your client.

As regards your query over the gift of residue, we have to admit some responsibility here. We first saw Mr Sangster about his will on 10 December 2008. At that meeting he said he was not certain whether to give his wife a life interest or an absolute interest in residue because of concern about making provision for his three children. At a second meeting in early January 2009, after the sale of his business had just been completed, he said he could now afford to give substantial legacies to his three children and so he was virtually certain that he could give an absolute interest in residue to his wife. Our notes show he wanted to go home and discuss the matter with his wife and then he would call us back. He did call us back by telephone a few days later and confirmed the interest as absolute.

Unfortunately, it seems the final version of the draft was not amended in clause 4.1 to show an absolute interest. No doubt this would have been spotted had it not been for the rush to send the will to our Manchester office so that he could sign it on the way to the airport. We have full file notes recording everything and are satisfied that he intended the residuary gift to be absolute. We have also discussed this with the two daughters and they are in agreement.

As regards the lack of a charity name in clause 4.4, this again was the result of the rush to execute the will. Mr Sangster had told us he wanted MENCAP as the named charity (on account of having a nephew who is disabled) but this was not carried through into the final draft. However, this no longer matters because the provisions of 4.4 cannot now apply in any event."

- (a) Write the contents only of a memo to Mr Wu suggesting how he should respond to Garbons about what the firm has said in relation to the draft of clause 4.1 in Mr Sangster's will. Your memo should also contain an explanation to Mr Wu as to whether Garbons are correct in saying clause 4.4 can no longer apply.

(8 marks)

- (b) In the meantime, Mr Wu proposes to send a copy of Garbons' letter (as shown on previous page) to Mrs Sangster, along with his own letter explaining some of the points mentioned in it.

Draft paragraphs for inclusion in the letter to Mrs Sangster from Mr Wu:

- (i) explaining why there may be a problem over the funding of the pecuniary legacies and why Garbons are saying the house might need to be sold;
- (ii) suggesting to her how a sale of the house could be avoided;
- (iii) **briefly** informing her of anything she could do, or at least threaten to do, with a view to securing a greater entitlement to the estate.

(18 marks)

(Total: 26 marks)

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Question 2

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

Note to Candidates: This Question 2 continues the work on behalf of Mrs Sangster in Question 1. However, you may choose to answer Question 2 before you answer Question 1 since it is not dependent on you having attempted Question 1 first.

Apart from matters concerning her late husband's estate, Mrs Sangster has considered giving her Pembrokeshire holiday cottage to her two daughters now rather than in her will. She does not think she will want to visit the holiday cottage as much as before and she feels that if her daughters have it now, they can perhaps earn some rental income by letting the property, as well as using it themselves.

She also thinks it might reduce any potential tax on her own estate when she dies. Mr Wu had already estimated that taking account of what she has already and what she stands to take on her husband's death, the total value of her estate for tax purposes, if she died now, would be in the region of £700,000. The holiday cottage would account for about £150,000 of this amount.

- (a) Write the contents of a memorandum to Mr Wu drawing his attention to:
- (i) the relevant inheritance tax and capital gains tax advantages and disadvantages if Mrs Sangster gave the holiday cottage away to her daughters now rather than in her will;
 - (ii) any difference there might be in respect of each of these taxes if, instead of making an outright lifetime gift to her daughters, she transferred the holiday cottage to trustees during her lifetime to hold on discretionary trusts for her daughters and their respective children.

(13 marks)

- (b) Mrs Sangster's daughters have between them four children who are currently in the age range of 9 to 13. She wants to give each of them a legacy of £50,000 to be held in trust until they are aged 21 but so that the legacy can be used for their education, if necessary, before then.

Write the contents of a memo to Mr Wu explaining whether or not anything should be included in Mrs Sangster's will to ensure the legacies can be used to meet educational needs prior to the children reaching age 21.

(7 marks)

(Total: 20 marks)

Question 3

Reference: Question relates to **Document 3** of the case study materials.

Susan Christie has now received a copy of her late uncle's will from her brother, David. It is a photocopy of the original and she has left it with your receptionist with a brief note saying:

"The lawyer in Manchester acting for David in the administration of our father's estate has said to David that he can be executor of Uncle Steven's estate. This is because David has already obtained probate of our father's will and since father was named as Uncle Steven's executor, David can deal with both estates. This seems logical to me but David said he probably has enough to do sorting out our father's affairs. He wasn't sure he could also do Uncle's estate as well, particularly since he lives in Manchester. I think he is hoping I could do it since I'm "on the spot", so to speak, by living not far from Uncle's house.

Anyway, David has sent me a photocopy of Uncle's will for you to look at – I note it was made before I married and I'm called Susan Pickering. Does that matter?"

The photocopy will is shown below:

Photocopy Will of Steven Pickering dated 27 March 2007

This is the last will of me **STEVEN PICKERING** of 37 Stannier Close, Bedford MK46 7DS retired insurance agent which I make this **Twenty Seventh** day of **March** 2007

- 1 I revoke all former wills
- 2 I APPOINT my brother Robert Pickering as my executor and trustee
- 3 I give my whole estate in equal shares to my nieces Susan Pickering and Mary Wilson and my nephew David Pickering

Signed by the said Steven Pickering) **Steven Pickering**
in our joint presence and then by us)
in his presence)

Mildred Raby (M RABY)
43 Oxten Road
Bedford MK42 5DF Catering Supervisor

Michael Jones (M JONES)
148 Hill Top Road
Bedford MK42 4SD Retired Banker

Mr Wu intends to write to Susan about her uncle's estate and he would like to brief him prior to drafting the letter. In the contents of a memo, explain the following:

- (a) Using the information so far provided by Susan and the copy of the will, explain the basis of beneficial entitlement to Steven Pickering's estate. You should comment on what Susan said in her note about her name.

(8 marks)

- (b) Also, explain to Mr Wu what advice he should give Susan about the person, or persons, who could administer his estate. In dealing with this, you should take the opportunity to comment on what has been suggested by the Manchester lawyer.

(8 marks)

- (c) Mr Wu considers that Susan and her brother may wish to ensure that Mary's daughter, Emily, benefits to the same extent as they do. Consequently, when he writes to Susan, he would like to inform her of possible ways of achieving this.

Explain to Mr Wu how either, or both, of them could ensure Emily benefits from the estate to the same extent as they do but without anyone suffering any adverse tax consequences.

(7 marks)

Now assume that 10 months have passed since Steven Pickering died. Your firm was instructed to extract the grant to his estate and the administration is nearing completion. The total value of the estate was sworn at just over £500,000, most of which was attributable to Steven's house at 37 Stannier Close, professionally valued at £400,000. Inheritance tax was paid on the non-instalment property and the instalment option was exercised in respect of the house.

37 Stannier Close has been on the books of a local estate agent since January this year. Several offers had been made for the property over the last few months but none had come close to the probate valuation. However, yesterday the agent received an offer for £390,000, the highest to date, and both Susan and David want to accept it. They, and the estate agent, believe this offer is unlikely to be bettered in the foreseeable future and since the condition of the property is deteriorating and is costing money to insure, the agent has advised acceptance of the offer.

- (d) Write the contents of a further memo to Mr Wu explaining any inheritance tax or capital gains tax consequences if the house is sold now by the personal representatives at the agreed offer price of £390,000.

(7 marks)

(Total: 30 marks)

Question 4

Reference: Question relates to **Document 4** of the case study materials.

- (a) Mr Wu would like you to set out in the contents of a memo what issues arise if he is to carry out the instructions to make a new will for Madge. You should mention any particular concerns you might have and explain how Mr Wu should address them.

(16 marks)

For the rest of this question, assume that any potential issues and concerns you had in part (a) are, or can be, dealt with appropriately.

- (b) Mr Wu is now thinking about the list of Madge's personal items which he has asked her to bring to the office.

Explain in the contents of a further memo to Mr Wu what options are available to Madge to give effect to her wishes in relation to the gifts of these items to her grandchildren on her death. You should briefly set out the advantages and disadvantages of each option you suggest.

There is no need to consider tax issues when answering part (a) and part (b).

(8 marks)

(Total: 24 marks)

End of Examination Paper