



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 2013-2014, 21st edition, Meryl Thomas, Oxford University Press, 2013.**
- 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**

Question 1

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

Your predecessor in the Private Client Department prepared the following draft will for Crystal based on her instructions in **Document 1**.

Draft will of Crystal Wong

"THIS IS THE WILL of me Crystal Emerald Wong of The Woodlands, Lumley Way, Lumley, Surrey.

1. I appoint my brother and Kempstons solicitors to be my executors.
2. I give my house free of any mortgage to my brother Simon George Lee of The Firs Borough Road Stafford, Staffordshire.
3. I give my astronomical equipment to my colleagues Vincent Tse and Tanveer Mahmood to share.
4. I give my ordinary shares in VIM plc to my sister Alice Joan Timpson of 3 Crimea Road, Stafford, Staffordshire.
5. I give the remainder to my husband but if he shall predecease me I give this to my children.

Signed by Crystal Wong

And then by us"

- (a) Write the contents only of a memo to Amanda Gray explaining any alterations, additions or omissions you would make before a draft is sent to the client.

Do not re-draft any existing clauses or draft any new clauses.

(20 marks)

In 2005, Crystal gave £20,000 to her nephew Martin. In 2010, Crystal gave him a further £40,000 followed by another gift of £35,000 in 2012. Crystal has confirmed that she has not made any other lifetime gifts.

- (b) Calculate how much of the nil rate band is remaining to set against Crystal's estate on her death.

(5 marks)

Crystal has asked you to advise her on some lifetime tax planning to minimise her IHT liability on death.

- (c) Write a brief memo to Amanda Gray outlining the main actions Crystal could consider in the immediate future.

(5 marks)

(Total: 30 marks)

Question 2

Reference: Question 2 relates to **Documents 3 and 4** of the case study materials.

Your supervising partner Amanda Gray informs you that Frederick Carter, a long-standing client of the firm, has just died. His wife Dora Carter died in 1995. Frederick and Dora have three adult children, Mary, Brian and Carol. Frederick married again in 2005 and his second wife, Alison Carter has raised the following questions in respect of her late husband's estate. You have a copy of Frederick's will dated 24 June 1990.

- (a) Write a memo explaining whether Frederick's estate will be distributed in accordance with his will. You should also identify which of Frederick's assets form part of the free estate and the total value of the free estate. You do **not** need to explain who will inherit these assets in this question.

(5 marks)

- (b) Draft a statement to be included in a letter to Alison Carter explaining who will inherit her late husband's estate and showing your calculation as to how much each person will inherit.

Your calculation does **not** need to take the amount of inheritance tax into account.

(10 marks)

- (c) Draft a short memorandum detailing the assets which are not part of the free estate and explain who will inherit each asset and why this is the case. Additionally, please include a short explanation as to whether any of these assets are available without obtaining a grant.

(5 marks)

Amanda tells you that Alison is absolutely devastated by her husband's death and is finding it difficult to function effectively on a day-to-day basis. Frederick and Dora's son Brian contacted Amanda last week explaining that his stepmother Alison was concerned that she had not made a will and wanted everything to be left to Brian apart from a small legacy of £5,000 to Mary and Carol; would Amanda please draw up a will on this basis and he would call into the office and collect it next week.

- (d) Write a brief memo to Amanda to be included in a letter to Brian outlining the position in respect of his request.

(5 marks)

(Total: 25 marks)

Question 3

Reference: Question 3 relates to **Document 5** of the case study materials.

Mrs Field has an appointment to see Amanda Gray tomorrow. She is very anxious and has emailed Amanda with a little more information and some questions on which she would like some advice.

Extract from email from Anne Field to Amanda Gray re estate of Simon Green:

'Amanda, I am emailing you with further relevant information about the relationship between Simon and Jerry. After buying the hotel, Simon only paid Jerry pocket money of £80 a week plus a small sum towards his other expenses. Jerry managed the hotel for Simon, who had become seriously ill. Shortly before Simon died, Jerry told him that he, Jerry, deserved more money for all the work he did. Simon replied, "It'll all be yours one day". Simon told Jerry that he would make a will leaving the Sea View Hotel to Jerry, but did not do so before his death earlier this year.

I have a copy of Simon's will which I will send you – it is very straightforward, dated June 2010 (although there is no day, just the month and year) and I am sure it was validly executed. The will appoints me as his only executor and apart from small legacies of £1,000 each to both Leo and Jerry, Simon left all his estate to the Musician's Benevolent Society, which he supported for many years, and which I know is a well-respected and officially registered charity. Simon's net estate is quite substantial and is valued at about £725,000.

As the sole executor, I am becoming increasingly concerned about the calls I am regularly receiving both from Simon's former wife Deborah and Jerry Bruntwood. I would very much appreciate your help and advice.'

Amanda believes there is a statute which has some bearing on this and would be grateful if you would look into this and write a memo to her in response to the two specific issues raised below:

- Deborah believes that she can make a claim for herself and also on behalf of Andrew Green against Simon's estate as they are not provided for in the will.
- Jerry has also been in touch with Anne on the basis that he has only been left £1,000 in the will. Anne requires our advice in respect of any potential statutory claim Jerry may have.

(a) Advise each person on:

- (i) the grounds for a claim
- (ii) the category each claimant would fall into and
- (iii) the chances of success.

(20 marks)

(b) Is there any cause for concern that, when the will was signed, no day was added, only the month and year?

(5 marks)

Question 4

Reference: Question 4 relates to **Document 6** of the case study materials.

Amanda Gray has received a phone call from a new client, Sally Maykit, asking for advice about sorting out the estate of her brother William Maykit, who died recently. Sally knows William did not make a will as he told her there was no need as he was not worth much and, anyway, he knew she would inherit everything as she had looked after him so well.

Amanda has explained to Sally about appointing someone to administer her brother's estate and has agreed that Sally and her sister Molly will apply for the grant of letters of administration, although they both have religious objections to swearing an oath.

- (a) Draft the oath for administrators using **Document A** attached to this question paper. The application will be made to the district registry in Bedford.

(10 marks)

Important: Write your candidate number clearly on Document A and attach it securely to the inside of your answer booklet.

Sally and her sister Molly have been recommended by their stockbrokers to sell some of the shares in the investment portfolio as they are at an all-time high. The shares cost William £2,000 fifteen years ago and were valued at £50,000 on his death. There will be a gain of £30,000 if they sell them quickly, which their financial advisor has advised them to do.

Sally and her sister Molly have decided to take their advisor's advice and sell the shares and not consider any other available options.

- (b) Write a memo to Amanda explaining the capital gains tax position resulting from the sale and whether there are any tax efficient steps the administrators could take.

(5 marks)

Sally has made it clear to Amanda that the family have been unsure of her brother Harry's whereabouts for over three years. He was certainly living in the Philippines the last time he contacted them but there has been no further news since then.

- (c) Write a paragraph to be included in a letter to Sally advising her and her sister, as personal representatives, whether they need to take any action before distributing the estate.

(5 marks)

(Total: 20 marks)

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DOCUMENT A

(to be used with Question 4(a))

Oath for Administrators

IN THE HIGH COURT OF JUSTICE

Family Division

Extracting Solicitor
Address

* If necessary to include alias of deceased in grant, add "otherwise (alias name)", and state on Page 2 which is true name and reason for requiring alias.

The

IN the Estate of *

deceased.

(1) Insert I/We and the full name, place of residence and occupation or, if none, description of the deponent(s) adding "Mrs.", "Miss", or "Ms" as appropriate, for a female deponent.

(1) I/We

(2) or "do so solemnly and sincerely affirm".

(3) If exact age is unknown, give best estimate.

of

of

(4) Where there are separate legal divisions in one country, the state, province, etc., should be stated.

(5) Here give the status of deceased "a spinster", "a widower", etc., and where necessary clear off the classes entitled in order of priority to applicant, e.g., "without issue or parent".

of

of

(6) The words which follow clear illegitimate, legitimated (in respect of deaths prior to 4 April 1988) and adopted children and should be deleted if application made by surviving spouse (unless in the special circumstances it is necessary to clear issue) or a child. If appropriate substitute "without" for "or".

Make oath and say that / Solemnly and sincerely affirm that (2)

(7) Complete both blanks. When either such interest arises two grantees may be required unless a trust corporation is applying.

of

(8) Delete "no", if there was land vested in deceased which remained settled land not withstanding his or her death.

formerly of

(9) If there was settled land such land may be included in the scope of the grant, but the settlement must be identified and all the applicants must show that they are also entitled to a grant in respect of the settled land.

who was born on

and who died on the

aged years domiciled in

Intestate⁽⁵⁾ a widow/a spinster/a bachelor/a single man/a single woman

without issue/without parent

(10) Insert "I am" or "we are" as appropriate.

(6) or/without any other person entitled in priority to share in his/her estate by virtue of any enactment

(11) Show applicant's title e.g., "brother of the whole blood and one of the persons entitled to share in the estate".

(7) and that no/a minority and no/a ⁽⁷⁾ life interest arises under the intestacy; and that

(12) If there was settled land and the grant is to include it, insert "including settled land" but, if the grant is to exclude the settled land insert "save and except settled land".

(7) to the best of knowledge, information and belief there was⁽⁸⁾ no land vested in the said deceased which was settled previously to his/her death and which remained settled land not with standing his/her death⁽⁹⁾

(10)

And

the lawful/natural

and

(13) Complete this paragraph only if the deceased died on or after 1 April 1981, and an Inland Revenue Account is not required; the next paragraph should be deleted.

(11) the only person now entitled to the estate/one of the persons entitled to share in the estate of of the said Intestate,

(14) Insert appropriate figure for date of death.

(15) Insert appropriate figure.

(16) Complete this paragraph only if an Inland Revenue Account is required and delete the previous paragraph.

and that⁽¹⁾ I/We will (i) collect, get in and administer according to the law the real and personal Estate of the said deceased:⁽¹²⁾ including settled land/save and except settled land (ii) when required to do so by the Court, exhibit on oath in the Court a full inventory of the said Estate⁽¹²⁾ including settled land/save and except settled land

and when so required render an account of the administration of the said Estate to the Court; and (iii) when required to do so by the High Court, deliver up the grant of letters of administration to that Court; and that to the best of _____ knowledge, information and belief

(13) Complete this paragraph only if the deceased died on or after 1 April 1981. (13)

(14) Insert appropriate figure for date of death. (14)

(15) Insert appropriate figure. (15)

(16) Insert this paragraph if Inland Revenue Account is not required. (16)

net estate (15) £ _____, and the

And that the death of the deceased was recorded in the Register of deaths in the name _____ and the date of birth shown on the death certificate is _____

SWORN by the above named Deponent

at

this

Before me,

A Commissioner for Oaths/Solicitor

SWORN by the above named Deponent

at

this

Before me,

A Commissioner for Oaths/Solicitor

SWORN by the above named Deponent

at

this

Before me,

A Commissioner for Oaths/Solicitor

SWORN by the above named Deponent

at

this

Before me,

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