Chartered Institute of Legal Executives (CILEX)

Paralegal Apprenticeship End-Point Assessment

Wills and Probate Practice

Timed assessments

Sample assessment materials – sample model responses

Introduction

Sample model responses

The following sample model responses have been produced to support apprentices with preparing for their timed assessments.

The responses provided are a suggestion and other acceptable valid responses will be accepted.

Please note that the word count recommendations in the tasks are given as a guide. We do **not** negative mark if the word count goes above or below the recommendation.

In order to get the most out of these samples model responses, we recommend apprentices should:

- familiarise themselves with the grading criteria in the assessment plan, especially the distinction requirement
- carry out the research as stated in the advance materials
- sit the sample tests — you can do this as many times as you like.

TA1 – Task

This task requires you to produce a report based on the information provided by Sinead in the memorandum below. The memorandum will outline to you the content of the report and key information that you will need to include.

You should refer to the advance materials you were previously issued (also attached below), which outline the relevant facts and suggested legal sources for this client.

Internal memorandum

To: Paralegal
From: Sinead Albright
Client: Eileen Caldicott
File Reference: SA/{this year}/121/Caldicott

Further to my previous memorandum to you regarding this client, you now need to write a report providing the details of your findings, a conclusion applicable to the case and recommendations from the research you have previously carried out.

In particular, can you please prepare a report showing your findings and conclusion on the following.

Findings

By referring to the relevant legislation and case law, the report must explain the following.

- Requirements for valid execution of wills and codicils.
- The ways in which a valid will may be revoked.
- The effect of a previously valid will being invalidated or revoked, without a new valid will being made.
- The meaning of intestacy and an explanation of who would receive an inheritance under the intestacy rules.

Conclusions

Based on your research findings, applying relevant legislation and case law, explain the following.

- On the basis of the information provided, whether the documents described as 'codicils' are likely to have been validly executed.
- Whether the client's current will is likely to have been revoked, with evidence from the known facts of the matter to support your conclusion.
- The impact on the client should she die intestate and an overview of the family members likely to inherit in these circumstances.

It would be helpful if you could conclude with your suggestions as to the most suitable advice for us to give to the client, based upon the law and practice that you have researched.

Your report should relate only to the issues that I have asked you to research. Your report should be at least 1250 words.

As I will be using this to advise the client, you must ensure that your report is structured logically and not provided as bullet points. It is also important for you to check your spelling, punctuation and grammar.

All legislation and case law included in the report must be explained in your own words to show understanding of the research that you have undertaken.

You must ensure that at the end of your report, for billing purposes you provide the amount of time taken.

Thank you.
Sinead Albright
Partner

Model response

Introduction

Further to instructions received from Sinead Albright in the matter of Eileen Caldicott, this report will set out research findings on the law and practice as relevant to the valid execution of a will and codicil, revocation of wills and the effect of revocation, and an explanation of intestacy and the order of beneficiaries under the intestacy rules.

The report will conclude as to how the research applies to Mrs Caldicott's current will and codicils and her personal circumstances.

Findings

Valid execution of a will

A will is a formal document setting out a person's wishes and decisions about what should happen to their money, property and possessions after their death. A person making a will is known as a testator.

For a will to be valid, the law requires that it be properly *executed*. This means that it is in the correct format, properly signed and witnessed. The requirements for execution are set out at s9 Wills Act 1837. The statute states that no will is valid unless:

(a) it is in writing, signed by the testator or by some other person in their presence and by their direction;

(b) it appears that the testator intended by their signature to give effect to the will;

(c) the signature is made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and

(d) each witness either attests and signs the will or acknowledges their signature in the presence of the testator but not necessarily of any other witness.

In circumstances where a testator is physically able to read their will and sign it themselves, then the practical arrangements for valid execution are that the testator and two suitable witnesses come together, usually in the same room, and both witnesses watch as the testator signs their will. Then, each witness signs the will in the presence of the other witness and the testator.

It should be noted that, under s15 Wills Act 1837, a witness who stands to benefit from the will they attest will lose the gift intended for them, as the gift becomes void.

The law is clear that s9 Wills Act 1837 must be followed to the letter, as confirmed in Burgess v Penny and Another [2019], however, in response to restrictions in place relating to the COVID-19 pandemic, for wills made between 31 January 2020 and 31 January 2024, 'presence' has been extended to include virtual presence such as by video call (The Wills Act 1837 (Electronic Communications)(Amendment) Order 2022).

Codicils; overview and valid execution

A codicil is a supplementary document used to make alterations to an original will. They are usually only recommended to make minor changes to a will. Codicils can also be used to revoke a will.

Importantly, codicils must be executed in the same way as a will, that is, in accordance with the requirements of s9 Wills Act 1837 set out above.

Codicils carry with them significant risks. As a separate testamentary document, if they are not stored with the will the executor may be unaware of their existence. Also, wills can become less clear as multiple codicils are made, and there is a risk that the instructions in multiple codicils will contradict each other.

Revocation and the effect of revoking a will

Marriage, Civil Partnership and Divorce

Under s18(1) Wills Act 1837, a will is automatically revoked by marriage or civil partnership. There are some exceptions, including where a will is made *in contemplation of marriage or civil partnership.*

Under s18A Wills Act 1837, any appointment of a spouse as an executor will become invalid after divorce. In addition, any gifts to the now ex-spouse are treated as though the beneficiary has pre-deceased the testator, but the rest of the will remains valid.

Revocation by later will or codicil

Provided the later document (will or codicil) has been properly executed in accordance with s9 WA 1837, then it will revoke the earlier will entirely. Usually, the later will is drafted to include some wording to the effect of "I hereby revoke all earlier wills and testaments…" to make clear that this is the testator's intention. This is set out at s20 WA 1837.

Revocation by destruction

Under s20 Wills Act 1837, the sole act of destruction of a will is insufficient to revoke it; there must also be intention to destroy it. Specifically, s20 WA 1837 provides:

- No will or codicil, or any part thereof, shall be revoked otherwise than as aforesaid … or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

The testator must therefore destroy the will themselves, or instruct someone else to destroy it for them, with the intention of revoking the will. This is to safeguard against accidental or malicious destruction which could prevent the testator's wishes from being given effect.

As set out at s20, destruction of a will can take various forms. In Cheese v Lovejoy [1877], the court did not accept that crossing through clauses with a pen and writing a phrase "this is revoked" was sufficient destruction. The requirement for destruction and intention to destroy was also underlined in the judgement with the summary *'all the destroying in the world without intention will not revoke a will, nor all the intention in the world without destroying: there must be the two.'*

Where the signature or some other vital part of a will has been destroyed, but the rest of the document remains intact, the court will treat the entire will as having been destroyed as confirmed in Hobbs v Knight [1838].

The testator may intend to revoke only part of the will. As seen in Re Everest [1975], if only a non-vital part is destroyed, the court will treat the testator as only having intended to revoke that part, and the remainder of the will deemed valid. However, where parts of a will are crossed out and annotated or replaced with alternative text in attempt to 'revoke' that part of the will, s21 Wills Act 1837 states that the alteration will be invalid unless the amendment is executed by both testator and witnesses (and initialled by all). Where there is no such execution, the will is treated as though no amendment was made, and any alteration/replacement text ignored.

Effect of invalidating or revoking a will

Where non-vital parts of a will have been destroyed, the remainder of the will can be admitted into probate. If a vital part of the will has been destroyed, such as the signature of the testator, the entire will is deemed destroyed and will not be accepted into probate.

Where the entire will is destroyed (and the testator had intention to destroy), the will is deemed revoked. Should there be no later will, the deceased will be deemed to have died intestate.

Intestacy; meaning of intestacy and the intestacy rules

A person who dies without leaving a valid will is called *intestate*. Their estate, that is any money, property and possessions held at the time of death, are distributed after their death in accordance with various statutory rules known as 'the intestacy rules', set out under the Intestates' Estates Act 1952 and the Administration of Estates Act 1925.

S46 Administration of Estates Act 1925 sets out the order in which blood relatives of the intestate (deceased person) will inherit. This order is as follows:

- Spouse or civil partner
- The deceased's children (known as their *issue*) and direct descendants
- Parents
- Brothers and sisters of the whole blood
- Brothers and sisters of the half blood
- Grandparents
- Uncles and aunts of the whole blood
- Uncles and aunts of the half blood
- The Crown

Conclusions

Whether the 'codicils' to Mrs Caldicott's will have been validly executed

As set out above, the documents referred to as codicils should have been executed in accordance with s9 Wills Act 1837. This required the documents to have been in writing, signed by Mrs Caldicott and two witnesses. Based on the client's instructions, the codicils appear to have been signed by Mrs Caldicott as the testator and one witness, her friend Margaret. She also suggests that Margaret is a beneficiary under at least one of the codicils.

The documents do not, therefore, appear to have been validly executed in accordance with s9 Wills Act 1837.

Revocation of Mrs Caldicott's current will

Mrs Caldicott has not remarried since her husband, Ted, died 5 years ago. Her will has not, therefore, been revoked by marriage.

Based on the instructions provided, Mrs Caldicott does not appear to have made a new will revoking her previous will. She has, however, added numerous documents which she describes as 'codicils' to the will. In addition, she has taken the following steps in relation to the original will:

- Made amendments to the will by crossing out text in relation to legacies to her son, Luke and replacing the executor by initialling an amendment
- Stapled additional documents ('codicils') to the will, removing the staple and some of these documents at a later date and re-stapling the remaining documents to the will

We must consider whether the actions taken by Mrs Caldicott amount to destruction of the will. Following Cheese v Lovejoy [1877], there must be destruction of the will going beyond merely crossing out text as well as the intention to destroy. By replacing clauses with various amendments, and adding supplementary documents to the will, it does not appear that Mrs Caldicott intended to destroy her will and she does not appear to have destroyed it within the definition of destruction at s20 Wills Act 1837.

However, following Re Everest 1975, by crossing out text in the will and making amendments and alterations to the will, in the absence of valid execution, she may have invalidated the instructions she intends to be followed after her death. Furthermore, by stapling and removing staples, the client runs the risk of her will not being accepted into probate, as it will not be objectively clear that all documents remain attached to the will.

Should her will not be accepted as valid, Mrs Caldicott would be treated as intestate.

Impact of intestacy

Following the intestacy rules set out above, as Mrs Caldicott's spouse, Ted, has predeceased her, her entire estate will pass to her three sons, Jack, Luke and Callum equally.

If Jack, Luke and Callum were to predecease Mrs Caldicott, and leave no issue themselves, the estate would follow the order at s46 Administration of Estates Act 1925 to any surviving parent(s) or sibling(s) and potentially her nieces. We would need further instructions from Mrs Caldicott on her family tree and the size of her estate to advise on how her estate would devolve.

Billing record

Research time 2 hours [20 units] Report preparation 1.5 hours [15 units]

TA2 – Task 1

You have been given a task via email from Sinead in relation to your client (see below).

A copy of the advance materials is attached, see below.

Once you have completed Task 1, please move on to Task 2.

Internal email

To: Paralegal
From: Sinead Albright
Client: Eileen Caldicott
File reference: SA/{this year}/121/Caldicott

Thank you for the report you prepared in this matter, it was very useful in preparing for my meeting with the client next week.

I would like to reply to Mrs Caldicott on some points raised in her email, as well as identifying some points of concern based on the instructions received so far in order to manage her expectations.

Please draft an email to Mrs Caldicott addressing the following points.

- Explain, with reference to relevant legislation and professional conduct requirements, why we are unable to proceed with drafting the will, or accept payment into our client account, until the client provides her roof of ID.
- Explain to the client why we are recommending that a new will be drafted.
- Explain, with reference to relevant legislation and case law, the requirements and tests for capacity when making a new will.
- Explain the circumstances in which a claim might be made under the Inheritance (Provision for Family and Dependants) Act 1975, and the relevance of this given the client's son Luke's estrangement.
- Advise that client of the practical step that she could take, alongside drafting a new will, to support and explain the instructions in her will in relation to Luke's inheritance.

As always when writing to the client, please ensure that the tone of your email is appropriate and be aware that the client is not familiar with the law and so you will need to write clearly so that they understand your explanation of the law. As usual, please pay particular attention to correct spelling, punctuation and grammar, and your presentation.

You should include a short introduction to set out the purpose of your email and a suitable ending. Your email should be at least 900 words.

The client has also asked us to update them on the **costs incurred in this matter so far**. Please provide the client with a brief overview of your time records for this task and outline any potential timing considerations, moving forward, that they will need to be aware of.

Thank you.
Sinead Albright
Partner

Model response

Dear Mrs Caldicott,

Your will and testamentary documents

I write regarding the above matter and to introduce myself as [apprentice], assistant paralegal to Sinead Albright with whom you met recently to discuss your instructions. Ms Albright has asked me to write to you to confirm some information in advance of your meeting with her next week which I set out below.

Proof of identification before we commence work

Please be advised that we will require your proof of identification and proof of address before we can begin work on your matter or accept any payment into our account. I understand that you have previously instructed the firm in relation to your property purchase, however it will be necessary for us to re-confirm your identify as some time has passed since your previous transaction. I would therefore like to offer you an explanation as to why we have requested these documents.

As a firm, Hedley, Smith & Cutler are regulated by the Solicitors Regulation Authority and all members of the firm are required to comply with the SRA Standards and Regulations Code of Conduct 2019. Principle 7.1 of the Code requires that we follow the law and regulation governing the way we work, and principle 8.1 requires that we identify who we are acting for in a matter.

Further, in accordance with legislation such as the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, we are required to demonstrate that we have verified the identity of our clients, that is we have proof that the client is who they say they are, to reduce the risk of money laundering, which all law firms face.

To ensure that there are no delays in progressing your instructions, please ensure that you bring the required documentation to your meeting with Ms Albright next week.

Our recommendation to draft a new will

We appreciate that you have an existing will, and that you spent time and effort drafting various codicils to supplement your will and reflect your current wishes. We must, however, share with you our concerns about the validity of the documents, and the risk that they will not be admitted into probate.

There are risks associated with making amendments to an existing will and adding to your instructions by codicil. This can make your will unclear and difficult for an executor to follow. Furthermore, as codicils are separate documents, there is a risk that they will become detached and lost, preventing your instructions from being carried out. Some of the amendments you have made may, legally speaking, be invalid. There are requirements set out in s20 Wills Act 1837 regarding making such amendments, and previous decisions in similar circumstances such as in the cases of Cheese v Lovejoy [1877] and Re Everest 1975, both of which concerned wills which has been crossed out and otherwise amended.

Given the concerns we have set out above, it is our recommendation that a new will be drafted which can clearly set out all your instructions in one document. We will ensure that you are given advice and assistance to ensure that your will is properly executed and valid, so that your wishes can be followed.

Making a new will; the tests for 'capacity'

The law requires that any person making a will has *testamentary capacity*. Briefly, this means that they have both the physical and mental capability to make a will. Physical capability means that the person must be over 18. There are statutory and common law 'tests' to establish whether someone has mental capacity to make a will, which we will set out below.

We mention testamentary capacity as it can become a key issue if a will is challenged after the death of the testator, that is the person who made the will. This type of challenge can arise where the will contains surprising or unexpected instructions. Your decision to exclude your son, Luke, from your will could come as a surprise to him, and so we recommend that testamentary capacity is considered and fully documented to deal with any potential challenge after your death.

As mentioned above, there are some 'tests' that the courts apply when determining whether a testator had capacity. The leading test, from case called Banks v Goodfellow [1870], requires that the testator:

1. Must appreciate the nature and consequences of making a will;
2. Must understand the extent of his or her property;
3. Should consider any moral claims to their estate, such as expectations of their immediate family; and
4. Must not be affected by any disorder of mind or insane delusion.

In addition to this test, the Mental Capacity Act 2005 states that capacity is assumed unless proved otherwise, and the testator musty be able to understand *all information relevant to the decision*, including any foreseeable consequences because of their decisions.

Therefore, should you instruct us to prepare a new will, we intend to document our application of the above tests to ensure that there is evidence to show that you do indeed have testamentary capacity in the event of any challenge to your will.

Claims against your will brought by dependant relatives

Even in the case of a clear and valid will, it is possible for claims to be made against an estate by relatives of the deceased who feel that they have not been given sufficient financial provision (money) under the will. Such claims are brought under the Inheritance (Provision for Family and Dependants) Act 1975.

Under this Act, claims for financial provision can be made by various relatives including a child of the deceased. Furthermore, such claims are not limited to children under 18. There have been numerous cases involving adult children making such claims against the estate, even where that child is estranged as in Ilot v Mitson [2011], where an estranged adult daughter was awarded £50,000. No doubt you will appreciate the relevance of the law in this area considering your son, Luke's, estrangement and your decision to leave no legacy to Luke in your will.

Practical steps to deal with any potential claim by a dependent relative

There are two practical steps that you could take to limit the risk of your will being challenged by Luke, or any other dependent relative, who feels they have not been given sufficient financial provision.

You might consider leaving a small gift in the will for Luke. We can ensure this is subject to a 'no-contest clause'. In this way, any challenge made by Luke under the Inheritance (Provision for Family and Dependants) Act 1975 carries with it the risk that, if he is unsuccessful, he loses the original gift set out in your will.

Alternatively, we recommend that you consider writing a *letter of wishes*, to accompany your will. Less formal than a will or other legal document, the letter of wishes would be a letter, in your own words,

explaining your decision not to leave any of your estate to Luke. The document is confidential and separate to your will, so it is a suitable way of dealing with sensitive information such as this decision.

Billing

Finally, Ms Albright has asked me to update you on the costs incurred in this matter so far. I can confirm that the firm has spent 4 hours on meeting and preparation time so far. Any further work will be charged at the hourly rate set out within our client care letter, charged in 6-minute units of time (being 10 units per hour).

Please do not hesitate to contact myself or Sinead Albright should you have any further queries.

Kind regards,

[Paralegal]

Task 2

You have been given a task, via memorandum, from Sinead in relation to your research.

A copy of the advance materials is attached, see below.

Internal memorandum

To: Paralegal
From: Sinead Albright
Reference: Development work

As you may be aware, I have been asked to give a presentation to students at Milchester Sixth Form College who are considering apprenticeships and careers in law.

As part of my presentation, I intend to cover professional ethics to dispel some of the myths about lawyers that young people tend to pick up from popular television shows!

Please assist me by preparing some presentation notes covering the following. Make sure you refer to any relevant legislation and professional conduct rule.

- How law firms and their staff are regulated.
- Some examples of the regulatory requirements we are bound to follow.
- A brief explanation of what is meant by the term 'money laundering', the risks posed to a law firm and the ways in which we try to reduce risks.

Please ensure that the presentation notes are as engaging as possible, and suitably drafted for our intended audience of interested sixth formers with no legal training. Your notes should be at least 300 words.

Thank you.
Sinead Albright
Partner

Model response

Professional Ethics: how law firms such as Hedley, Smith & Cutler are regulated

Our Regulators

We are regulated by the SRA. Some of our staff are members of CILEX and are therefore also regulated by CILEX Regulation.

Both the SRA and CILEX Regulation issue Codes of Conduct. These are the professional conduct rules with which we must comply. Some examples are:

Confidentiality

Have you ever wondered whether a lawyer is required to keep all their client's secrets?

It is true that Outcome 5.12 of the CILEX Regulation Code of Conduct 2019 and Principle 6.3 of the SRA Code of Conduct require that we keep the affairs of our current and former clients confidential.

We would be in breach of our regulatory requirements if we were to discuss our client's case while it is ongoing, or after it is concluded, without the client's permission.

There are some important exceptions where the law will require us to disclose information to relevant authorities or to the Court, especially where criminal activity is involved. A lawyer's primary and overriding duty is to the court, not their client. Outside of these exceptions, we must ensure our client's affairs are kept confidential.

Acting honestly and with integrity

Do lawyers have to do everything their client asks of them?

Although a lawyer must act in their client's best interests, as mentioned above a lawyer's overriding duty is to the court, and there are clear rules governing how we collect evidence in a client's case. Principles 2.1 and 2.2 of the SRA Code of Conduct forbid a legal representative from misusing or tampering with evidence, or seeking to influence evidence by, for example, trying to persuade a witness to give evidence in support of their client. Outcome 3.1 of the CILEX Regulation Code of Conduct requires members to be honest in all their dealings and in all financial matters.

So, if a client asks their lawyer to 'pay off' or bribe a witness for example, the lawyer must refuse.

Money Laundering

The term 'money laundering' is used to describe the process by which money made illegally, such as through dealing drugs or selling stolen goods, is not 'laundered' or 'cleaned' by being paid into a legitimate account, such as a law firm's client account, and then being used in transactions such as property purchases to be passed off as legitimate money.

Law firms are at significant risk of being used to facilitate money laundering and must be vigilant to ensure that they do not become implicated in criminal activity.

We actively try to reduce this risk by ensuring that we verify the identity of our clients by insisting on photographic ID and proof of address before we act for them. This is a requirement under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.