LEVEL 3 - UNIT 8 – WILLS AND SUCCESSION
SUGGESTED ANSWERS – JANUARY 2018

Note to Candidates and Tutors:

The purpose of the suggested answers is to provide candidates and tutors with guidance as to the key points candidates should have included in their answers to the January 2018 examinations. The suggested answers do not for all questions set out all the points which candidates may have included in their responses to the questions. Candidates will have received credit, where applicable, for other points not addressed by the suggested answers.

Candidates and tutors should review the suggested answers in conjunction with the question papers and the Chief Examiners' reports which provide feedback on candidate performance in the examination.

SECTION A

1. Privileged Wills can be made by soldiers or airmen in actual military service. Members of HM Naval or marine forces in actual military service or a mariner or seaman at sea may also make privileged Wills.

2. A general legacy is a gift of an unspecified item. It is part of a general description and is undisguised from other property fitting the same description.

3. If a person dies without leaving a Will, he is said to die intestate. The PRs must obtain a Grant of Letters of Administration.

4. S.7(1) Administration of Estates Act (AEA) 1925 creates a chain of representation by the automatic transfer of the office of executor on the death of the original executor. It may be broken by an executor dying intestate, a testator failing to appoint an executor in a Will or an executor failing to accept office.

5. A gift in a Will might lapse where the beneficiary dies before the testator and no substitutional gift was made, or where the gift was made to a spouse or civil partner and the marriage/civil partnership ended before the testator's death. S.33 Wills Act (WA) 1837 may save the gift if it is to the testator's children.

6. A Will can be revoked in writing by an express an intention to revoke it, which complies with the formalities in s.9 WA 1837.

7. A surviving co-habitee of a mixed-sex or same-sex couple can make a claim under the Inheritance Provision for Family and Dependants Act (IPFDA) 1975, if he/she were living in the same household as the deceased as at the date of death, as his/her spouse or civil partner. They must have been living together in the same household for a period of two or more years prior to

the death, s.1(1A) – (1B) IPFDA 1975. The claim must be made within six months of the date of the Grant of Representation.

8. Divorce does not revoke a Will. The effect of the divorce is as if the former spouse had died. Any gifts to the former spouse will fail and any appointment of the spouse as executor will no longer apply.

9. An affidavit of due execution will be requested under R12 Non-Contentious Probate Rules (NCPR) 1987, where it appears to the Registrar or District Judge that there is some doubt regarding the due execution of a Will, there is no attestation clause or the attestation clause is insufficient.

10. Personal chattels include any tangible moveable property (i.e. non-land) other than money or securities for money, business assets or assets held solely as an investment. S.3 Inheritance and Trustees' Powers Act 2014 sets out a new modern definition of chattels.

SECTION B

Scenario 1 Questions

1. (a) The formal requirements to make a valid Will are laid down in s.9 WA 1837 (as amended by Administration of Justice Act (AJA) 1982). The Will must be in writing and signed by the testator or testatrix, or signed by another for the testator at his direction. The testator must sign his Will or make his mark to take effect as a signature. Then the testator must either sign or acknowledge his signature in the presence of two adult witnesses. Both witnesses must sign in the presence of the testator, although they do not necessarily need to sign in the presence of each other.

   (b) The attestation clause describes the process by which the Will was signed, and to make it clear that the necessary formalities have been followed. The inclusion of an attestation clause is not strictly necessary, although it raises the presumption of due execution. If an attestation clause is not included a witness may need to swear an affidavit of due execution under Rule 12 NCPR 1987, confirming that the correct formalities of signature by testator and witnesses were followed.

   (c) In this scenario, Betty Walker has made a valid Will because the Will is in writing and signed by Betty herself. The start of the Will 'This is the last Will and Testament of Betty Walker' and/or the attestation clause, show that Betty intended to make a Will. There is an attestation clause that raises the presumption that the Will was validly executed, as it says that execution of the Will by Betty was 'in our joint presence and then by us in hers'. Fred Brown or Joan Brown either witnessed Betty's signature at the same time, or Betty acknowledged her signature in their presence, before they each signed. Had Betty signed the Will on her own it would still be valid if she then acknowledged her signature in the presence of Fred and Joan Brown as in Couser v Couser (1996). If Fred and Joan Brown had not been present when Betty signed, or when the witnesses added their signatures, then the Will would be invalid as in Re Whelen (2015).

2. As Albert has pre-deceased Betty, her estate would pass to her children equally. Jennifer Walker would therefore receive half of the estate. Under s.33 WA 1837, Neil Walker's half share passes to his child Heather Skinner. S.33 only applies to issue of the testator, but it is the case here, as Heather is a direct descendant of Betty Walker. There is no contrary provision expressed by the Will to the effect that s.33 WA 1837 is not to apply.

3. Jennifer Walker may apply for a grant of probate to Betty's estate. If she does not wish to act, she can renounce as executrix of the Will. To renounce she must sign a written renunciation which is filed at the Probate Registry. Alternatively, if she so wished, Jennifer could have power reserved to her. In either event, Heather will then apply for a grant as a residuary beneficiary under the Will. Heather's application would then be for a Grant of Letters of Administration with Will annexed.

Scenario 2 Questions

1. (a) S.20 WA 1837 covers revocation of a Will by destruction. S.20 WA 1837 defines destruction as burning, tearing or otherwise destroying the same. The testator must have the necessary intention to destroy the Will and must either destroy the Will himself; or another may do it for him, but it must be destroyed in his presence.

   (b) Applying these facts to this scenario the Will is not effectively destroyed, as the testator is drunk, so does not have true intent to revoke the Will. This is similar to Cheese v Lovejoy (1877), where the Will was not revoked, as the testator's act was not enough so that destruction was not complete. In this case it was held that there was not sufficient intention to revoke the Will.

2. Before the Probate registrar will admit Tom's Will to probate, he will require an affidavit of plight and condition under rule 15 NCPR 1987. This should explain why the tears or marks were present on the Will. Affidavits of plight and condition are usually lodged by the person finding the Will, or having knowledge of the circumstances. In this case, the appropriate person to swear the affidavit would be Adele.

3. (a) The gift of 'my Ractier watch' is a specific legacy, since the item has been clearly identified in the Will. The doctrine of ademption applies to specific legacies. This means that the gift will fail if its subject matter no longer forms part of the testator's estate at the date of his death.

   (b) Peter would not be entitled to anything from Tom's estate because the legacy would adeem, as the Ractier watch was no longer part of Tom's estate when he died. As the gift to Peter was a specific legacy, he would not be entitled to the replacement Loxer watch and the executors would not have to purchase a Ractier watch for him.

4. If the Will was not admitted to probate, s.46 AEA 1925 would govern the administration of Tom's estate on intestacy. In the absence of a surviving spouse, the estate would pass to Tom's children on the statutory trusts. This means that the estate passes to Tom's children equally on attaining 18, or marrying or entering a civil partnership before then. As Noah is Tom's only child he will be entitled to the entire estate, which will be held on trust for him until he is 18, or marries or enters into a civil partnership before then.

Scenario 3 Questions

1. The term 'intestate' means that someone has either died without leaving a Will, or any Will they made is invalid. All of the property of an intestate is made subject to a statutory trust under s.33 AEA 1925 (as amended by the Trusts of Land and Appointment of Trustees Act (TLATA) 1996). Under the statutory trust, all funeral and administration expenses, debts etc. are paid before the net estate/residue is distributed to the beneficiaries.

2. The administrator would be responsible for ensuring that the deceased's assets are gathered in and the creditors are paid in full. The balance is then distributed to the beneficiary entitled under the intestacy rules. Final estate accounts showing the assets of the estate, expenses and distributions must be prepared by the administrator and exhibited to the court on oath, if the court requests this.

3. The rules setting out who is entitled to apply to be an administrator of an intestate's estate are found in r22 NCPR 1987. The order of priority follows that of the order of the beneficial entitlement to the estate. Aakar has never married, entered a civil partnership or had any children and both of his parents have died before him. The next category of people entitled to apply is brothers and sisters of the whole blood. Padman, as Aakar's brother, appears to fall into this category as the only family member.

4. If Aakar owes a further £5,000, the estate will be insolvent, which means that his assets are less than his liabilities. The debts would then have to be settled in a strict order (as set out in Administration of Insolvent Estates of Deceased Persons Order (AIEDPO) 1986), until the assets run out. The order for payment is firstly secured debts are paid, which in this case will be the mortgage on Raj Rise. Next, funeral and testamentary expenses are paid, which would include the £3,800 bill from Rest in Peace Funeral Directors and the administration expenses of £2,000. After specifically preferred debts and preferred debts, which Aakar does not seem to have, the ordinary debts are paid. This would include Aakar's White Horse overdraft of £1,500, his credit card bills and the payday loan for £5,000 which would reduce proportionately.

5. If Padman does not want to act, it is important that he does not carry out any acts that will prevent this. If he does, he will be deemed to have accepted the role of administrator by intermeddling. Intermeddling does not include humane acts. Paying for Aakar's funeral, or looking after Cuddles the cat, are acts of kindness and will not be regarded as intermeddling. It is only if Padman pays any of Aakar's bills, or deals with any of his assets that he can be forced to take out a grant.