



Examiner's Comments

13 SUCCESSION

September 2025 Examinations

The exam was comprised of three questions. Candidates were required to answer all three questions. The questions were not of equal value.

Question 1 (total 40 marks with each section being worth 10 marks).

- (i) This question was designed to test students' knowledge of the rules for formal validity (s 6) and the use of the dispensing power (s 8) when s 6 requirements are not met. S 8 requires a document, purporting to be a will, about which the deceased had finality of intention. It also tested the effect of marriage on a will.
- (ii) This question asks the student to explain how the estate would be distributed on intestacy. This included knowing who would take and why, which items mentioned would be included in the intestate estate and which would not, and similarly what the surviving spouse would take if there were children who were not the issue of the spouse.
- (iii) This question tested issues concerning revocation and alterations of a will. Revocation can take place through s 11, and s 8, and the attempted removal of a signature might be considered in respect of alteration and obliteration.
- (iv) This question tested both rectification and construction of the will. Rectification under s 27 requires a clerical error and a clear idea of what should replace the matter sought to be rectified. Construction of this will would only require armchair evidence and may be easier if the error was not regarded as clerical.

Question 2 (total 20 marks with each section being worth 10 marks)

- (i) This question concerned family provision - the jurisdictional requirements of eligibility, what considerations go to the question of whether adequate and proper provision has been made, and if not, what would be adequate and proper in light of s 60. It also examined the issue of estrangement.
- (ii) This question examined the area of statutory wills ss 18 ff. Students were expected to show that they understood the requirements of lack of capacity and the different categories used to determine what the testator might have wanted if they had not been incapable. It also considered some policy matters such as in whose interest the application might be made. The steps taken to do this had to be considered and likelihood of approval established.

Question 3 (20 marks)

This question sought to examine students' knowledge of the process of administration of the estate, in particular the construction of the will, the effect that would have on what property was part of the estate, how the rules for types of gift interact with the rules for the payment of debts and legacies, and finally who would get what after all these rules had been applied.

Characteristics of poor or average responses

Very poor or average responses lacked detail in their application of the law to the facts, so that they stated the law but did not link it well to the facts so that their conclusion was understandable. Their stating of the law did not allow for the nuance or range of cases which might have been discussed in deciding what the law was. Poorer answers usually managed to refer to legislation, but could miss this, and often failed to refer to case law at all.

This group also made some fundamental mistakes – even confusing joint tenancy and tenancy in common, or leaving out steps which were clearly spelled out in the law eg re rectification.

Characteristics of very good or excellent responses

Excellent answers clearly understood the breadth of framework of the law they were considering, and used statutory interpretation and analysis of caselaw to give very authoritative answers. This included a sophisticated interpretation of the law, but also an application of the law to the detail of the facts which was very persuasive. If they made mistakes they tended to be minor.

Common mistakes

Apart from those mentioned above common mistakes in the papers included:

- For s 8 not establishing what the definition of a document is.
- Failing to discuss construction at all in Q1(iv). Armchair evidence.
- In intestacy question not understanding that Emily's death meant that Lily would take her share (per stirpes)
- Failing to divide the value of the house W lives in and the mortgage when deciding what is in the estate in Q1(ii)
- Failing to refer the construction of the statute for the purpose of determining what were personal effects' s 101.
- Not noticing that in Q 3 Maria is not necessarily dead. Good papers stated that they assumed she had died.
- Few people in Q 3 mentioned s 42 re residue.