



Foundation Stage: Professional and Legal Skills - Legal Research (F6)

SAMPLE ASSESSMENT 1

First live assessment – January 2022

Note: The formatting of this assessment may appear differently when transferred onscreen.

The following sample assessment links to the Professional and Legal Skills module.

This assessment will be sat:

- Online
- Using remote invigilation

Remote invigilated assessments can be taken in any undisturbed location, with good internet connection.

Time allowed: 2 hours and 30 minutes

Instructions to candidates:

- The assessment is closed book
- The task must be completed electronically using the assessment software provided.
- All documentation will be available in the candidates onscreen document library. These documents may be viewed alongside the questions using 'split-screen' functionality.

This assessment is graded pass/fail and carries 40 marks in total.

Notional pass threshold – 60%.

SECTION A

24 marks

Research process and methods - Carrying Out Legal Research

Question 1

1 mark

Select the three answers that best describe the main reasons why legal research is used in practice in a specialist area:

- A** To find case law to support a legal argument
- B** To identify proper case citations and correct references to statutes
- C** To find relevant secondary legislation
- D** To identify relevant primary legislation
- E** To gain a general understanding of the area of law

X
X
X

Question 2

1 mark

In legal practice the best description of when research is used is:

- A** When a client initially contacts a firm in preparation for a first meeting
- B** When time is not of the essence, as research can be time consuming
- C** When a claim is going to be issued or a dispute raised with another lawyer
- D** When there is an understanding about the problem, but more detailed knowledge is required.

X

Question 3

1 mark

Which of the following is a secondary source?

- A** The Family Procedure (Amendment) Rules 2020
- B** Megarry & Wade, The Law of Real Property
- C** Regina v Thomas (Dean) [2020] EWCA Crim 117
- D** The Employment Rights Act 1996

X

Question 4

1 mark

You need to check what delegated powers are held by the National Trust.

Identify the best two sources from the list below to start researching this query:

- A** The Governance Handbook for the National Trust
- B** The National Trust Acts 1907 – 1971
- C** The National Trust Annual Report
- D** The Charities (National Trust) Order 2005

X
X

Research process and methods - Statute and Statutory Instruments

Review the extract from The Inheritance (Provision for Family and Dependents) Act 1975 and answer the questions below.

Question 5

1marks

Complete the following extract from the long title of the Inheritance

(Provision for Family and Dependents) Act 1975:

An Act to make fresh provision for empowering the c) court to make orders for the making out of the a) estate of a deceased person of provision for the spouse, former spouse, child, child of the family or f) dependant of that person; and for matters connected therewith.

- a) estate
- b) executors
- c) court
- d) ward
- e) property
- f) dependant

Question 6

1 mark

Identify when the Inheritance (Provision for Family and Dependents) Act 1975 came into force.

- A 4 July 1976
- B 19 April 1976
- C 1 April 1976
- D 12 November 1975

X

Question 7

1 mark

Identify the date when the Inheritance (Provision for Family and Dependants) Act 1975 was given Royal assent.

A 12 November 1975

B 21 November 1975

C 12 October 1975

D 1 April 1976

X

Question 8

1 mark

Identify the territories to which the Inheritance (Provision for Family and Dependants) Act 1975 did not extend when it was originally enacted.

A Wales and Scotland

B The Commonwealth

C Northern Ireland and Wales

D Scotland and Northern Ireland

X

Question 9

1 mark

Identify which Act amended Section 1(1A) allowing claims to be made by unmarried partners.

- A** The Law Reform (Succession) Act 1995
- B** The Civil Partnership Act 2004
- C** The Inheritance and Trustee Powers Act 2014
- D** The Estates of Deceased Persons (Forfeiture Rule and Law of Succession) Act 2011

X

Question 10

1 mark

Select from the list the legislation which has made changes to the Inheritance (Provision for Family and Dependants) Act 1975.

- A** The Civil Partnership Act 2004;
- B** The Civil Partnership (Opposite-sex Couples) Regulations 2019
- C** The Criminal Justice Act 2003
- D** The Crime and Courts Act 2013;
- E** The Family Law Act 1996
- F** The Charities Act 2006

X
X
X
X

Question 11

1 mark

Which best describes the general purpose of regulations?

- A** Regulations assist in the implementation of parts of an Act
- B** Regulations explain the procedures to follow
- C** Regulations bring sections of Acts into force
- D** Regulations ensure Acts are followed

X

Question 12

1 mark

Identify from the list the two pieces of secondary legislation which amended the Inheritance (Provision for Family and Dependents) Act 1975:

- A** The Civil Evidence Act 1995 (Commencement No 1) Order 1996
- B** The Civil Partnership Act 2004 (Commencement No 2) Order 2005
- C** The Civil and Criminal Legal Aid (Amendment) Regulations 2018
- D** The Civil Courts (Amendment) Order 2019
- E** The Births, Deaths, Marriages and Civil Partnerships Records Regulations 2016

☒☒

Research process and methods - Case Law

Review this extract from the judgment in *Ilott v The Blue Cross and others* [2017] and answer the questions below:

Question 13

1 mark

The report of the *Ilott* case states at paragraph 29 that the Court of Appeal decision was reported on in the All England Law Reports - ALL ER. Identify from the list below 3 other recognised law reports from England & Wales:

A	Times Law Report – TLR	X
B	Boundary Disputes Weekly Reports - BDWR	
C	Criminal Law Review – CLR	
D	Modern Law Review – MLR	
E	Matrimonial Law Reports – MLR	X
F	Monthly Law Review - MLR	
G	Family Law Reports – FLR	X

Question 14

1 mark

Identify the judge who gave the lead judgment in the Supreme Court case of *Ilott v The Blue Cross and others*:

A Lord Neuberger

B Lady Hale

C Lord Kerr

D Lord Clarke

E Lord Wilson

F Lord Sumption

G Lord Hughes

X

Question 15

1 mark

Identify the name of the judge at first instance:

- A** Mrs Justice Eleanor King
- B** District Judge Million
- C** Lord Wilson
- D** Penelope Reed QC

X

Question 16

1 mark

What reliance did Lord Hughes place on the *case of In re Hancock, deceased* [1998] 2 FLR 346 in respect of a claimant having a moral claim under the Inheritance (Provision for Family and Dependents) Act 1975?

- A** It is necessary for the deceased to have been reasonable for the Act to apply
- B** There is no requirement for a claimant to have a moral claim
- C** A claimant with a qualifying relationship (such as a son or daughter) can prove they have a moral claim under the Act
- D** It is necessary for the deceased to have behaved reasonably and for a claimant to have a qualifying relationship to make a moral claim

X

Question 17

1 mark

Identify the two neutral citations in the document for the Iott case.

- A** [2016] 1 All ER 932
- B** [2015] EWCA Civ 797
- C** [2014] EWCA Civ 567
- D** [2015] EWCA Civ 546
- E** Hilary Term [2017] UKSC 17 On appeal from: [2015] EWCA Civ 797
- F** Michaelmas Term [2017] UKSC 17 on appeal from: [2015] EWCA Civ 797

X
X

Question 18

1 mark

The test for making reasonable financial provision was set out by Oliver J in re Coventry [1980] Ch 461 and restated by the Supreme Court in Iltott. The best way to summarise the test is:

- A** A testator is at liberty to leave their estate to whomever they wish, provided they consider anyone with a potential claim.
- B** The court is at liberty to decide who is entitled to an estate, regardless of the intentions of the testator.
- C** The reasonableness of a testator in deciding who is left their estate is the relevant factor.
- D** If a testator disposes of their property and it produces an unreasonable result the court can make an order for an applicant's maintenance.

X

Secondary sources

Review the extract from a Guardian article reproduced in your supplementary materials and answer the questions below: -

Question 19

1 mark

The article is a secondary source. The source would be useful where you wanted:

- A** An overview of some general and legal issues.
- B** A source to help you verify your conclusions
- C** An appropriate practical guide to approach a problem
- D** A precedent to set out your findings.

X

Question 20

1 mark

What stage of the proceedings had the Ilott case reached when the article was written?

A Supreme Court

B Court of Appeal

C High Court

D County Court

X

Question 21

1 mark

The article states that the court found that Heather Ilott's mother, "... had acted in an "unreasonable, capricious and harsh" way towards her." Identify the potential risk of relying on this type of statement in a secondary source.

A A quote used in these circumstances may not be accurate, or it may be taken out of context from the primary source.

B The secondary source is not considered to be an appropriate source from which such a quote can be used.

C This type of quote adds little to the overall understanding of the complexity of the subject.

D Where a secondary source contains too many direct quotes the message can be lost and it can be confusing.

X

Question 22

1 mark

Identify the most authoritative source referred to in the article

- A** P Collinson
- B** Claire Hewitt
- C** Janice Booth
- D** Lady Hale
- E** H Ilott

X

Question 22

1 mark

You are instructed by the children of Mabel Bell (deceased) who, in circumstances like that of Sybil Booth, also left a significant sum of money to a charitable private school.

From the list below, identify three key words or phrases in the article that would provide the best starting point for a key-concept search?

- A** Undue influence
- B** Inheritance disputes
- C** Testamentary capacity
- D** Reasonable financial provision
- E** Wills
- F** Undue pressure

X
X
X

Question 23

1 mark

Based only on the information provided in the article identify the most effective first step to research the law affecting the case of Mabel Bell (deceased), before advising her relatives.

- A** Review the case of *Ilott v The Blue Cross* and others using a practitioner textbook and write a summary of the most important points
- B** Find the Inheritance (Provision for Family and Dependants) Act 1975 using the legislation.gov.uk website and review the provisions carefully
- C** Identify key words from the article and check online resources such as Lexis Nexis or Current Law
- D** Search for legal practitioners' journals or articles on testamentary freedom using online resources such as Lawtel or the Law Society website

X

SECTION B

16 marks

Research analysis and reporting

Background

You are a paralegal employed by the firm of Kempstons of the Manor House, Bedford, MK42 7AB. Your supervising lawyer is Mr John Hedley, who is a partner in the firm. Mr Hedley has asked you to conduct research on a client's case and sent you the following memo.

Memorandum

To: Paralegal

From: J Headley

Client: New instructions

File reference: New matter

I received a call from Abbie Braidey, the widow of Colin Braidey, who had been diagnosed with cancer 18 months ago and has recently died. He remained alert until his death. A few months before his death Colin Braidey formed a relationship with the nurse who was caring for him. Unbeknown to Abbie Braidey, his wife of 10 years, Colin Braidey changed his will weeks before his death leaving his entire £2 million estate to the charity the nurse worked for. The signature on the will appears to be that of Colin Braidey and it has been witnessed by two people. I will be meeting the client tomorrow to discuss the legal position.

To help me advise this client, I would like you to carry out research on the following:

- The key requirements for creating a valid will, including the formalities and the requirements about capacity of a testator (the person who makes the will).
- The circumstances when a party can make a claim on an estate where they are not provided for in a will.
- Some basic information on the way gifts to charities are treated by the courts.

I would like you to prepare a report using the Research Report Template.

Below are some links to various legal materials which will help you to complete your report:

- The Wills Act 1837
- Banks v Goodfellow [1870]
- The Inheritance (Provision for Family and Dependents) Act 1975
- Ilott v The Blue Cross and others [2017]
- Guardian Article

Task Instructions

This task requires you to produce a **report using the research report template**.

The template contains questions which you should read carefully and only answer after referring to all the materials provided in the document library (onscreen assessment).

Instructions to candidates: - ONLY USE THE MEMORANDUM AND SUPPLEMENTARY MATERIALS PROVIDED WHEN PREPARING YOUR REPORT.

<u>RESEARCH REPORT TEMPLATE OVERVIEW</u>
<u>INTRODUCTION</u> <u>Question 1 [Answer]</u>
<u>A) REQUIREMENTS FOR CREATING A VALID WILL</u> In carrying out my research into the formalities for executing a will, I found the following: <u>Question 2 [Answer]</u>
<u>B) TESTAMENTARY CAPACITY</u> In respect of mental capacity, the main source is: <u>Question 2 [Answer]</u> I direct you to the following passages: <u>Question 3 [Answer]</u> The test for mental capacity therefore requires that the testator: <u>Question 4 [Answer]</u>
<u>C) WHO CAN CLAIM ON THE ESTATE</u> The following people can make a claim on the estate: <u>Question 4 [Answer]</u> It should be noted that in <i>Ilott v The Blue Cross and others</i> [2017]: <u>Question 5 [Answer]</u>
<u>D) GIFTS TO CHARITIES</u> To gain a better understanding of the way in which the courts consider gifts to charities, I would advise looking at: <u>Question 6 [Answer]</u>
<u>E) CONCLUSIONS</u> Applying the research, I have undertaken, I would advise the following: <u>i) Formalities</u> <u>Question 7 [Answer]</u> <u>ii) Capacity</u> <u>Question 8 [Answer]</u> <u>iii) Claiming on the Estate</u> <u>Question 9 [Answer]</u>

Question 1 – Introduction

2 marks

Choose the most appropriate introduction to insert into the Research Report.

- a) We are looking at assisting a client who has a wills problem.
The purpose of this report is to research the following key areas of the law: -
- Requirements relating to the signing of a Will;
 - The test for mental capacity;
 - Who can make a claim against a Will;
 - Information on charities.
- b) I have carried out some research for a new client to be advised on.
The purpose of this report is research and summarise the law relating to: -
- The requirements relating to the signing of a new Will;
 - The legal test for mental capacity;
 - Who can make a claim on an estate, where they are not provided for in a Will;
 - Gifts to a charity, courts, how do they react?
- c) You have asked me to carry out some background legal research before you meet with the client.
The purpose of this report is to research and summarise the law relating to:
- The requirements relating to the signing of a Will;
 - The legal test for mental capacity;
 - Who can make a claim on an estate where they are not provided for in a Will;
 - How the courts treat gifts to charities.
- d) As requested, the research the client needed on this complex area of law is below.
The purpose of this report is to research and summarise the following key areas of the law:-
- The requirements relating to the signing of a Will;
 - The legal test for mental capacity;
 - Who can make a claim on an estate where they are not provided for in a Will;
 - The Wills Act 1837
 - Banks v Goodfellow [1870]
 - The Inheritance (Provision for Family and Dependants) Act 1975
 - Illott v Mitson [2017]
 - Charities Act 2011

Question 2 – Requirements for Creating a Valid Will

1 mark

Which of the following best summarises the legal formalities usually applicable to executing a Will?

- a) A will does not necessarily have to be in writing, although it would be the best way of ensuring it is correct, and the testator must sign or acknowledge their signature in front of two witnesses.
- b) The legal requirements relating to the signing of a Will by the testator are that it must be in writing and signed or acknowledged by the testator in front of at least two witnesses.
- c) To ensure that a Will is properly executed, the Will is likely to be in writing, it must be signed or acknowledged by the testator in front of at least two witness.
- d) When executing a will, the legal requirements require the will to be in writing and it needs to be signed or acknowledged by the testator in front of at least one witness.

Question 3 – Testamentary Capacity

1 Mark

Identify the most appropriate source to use to ascertain the legal test for the mental capacity of a testator:

- a) [Banks v Goodfellow \[1870\]](#)
- b) Wills Act 1837
- c) The Inheritance (Provision for Family and Dependants) Act 1975
- d) *Ilott v The Blue Cross and others* [2017]

Question 4 - Testamentary Capacity

1 Mark

Using the source from your answer to question 3, identify the two extracts from those reproduced below which are most relevant to the test for capacity:

Ratio:

(a) ... The question is whether the testator was capable of having such a knowledge and appreciation of facts, and was so far master of his intentions, free from delusions, as would enable him to have a will of his own in the disposition of his property, and act upon it.'

(b) ... English law gives testators 'absolute freedom' in the disposal of their property. However the court pointed to 'a moral responsibility of no ordinary importance. . the instincts and affections of mankind, in the vast majority of instances, will lead men to make provision for those who are the nearest to them in kindred and who in life have been the objects of their affection.'

(c) ... To disappoint reasonable expectation of this kind is to 'shock the common sentiments of mankind, and to violate what all men concur in deeming an obligation of the moral law'. English law 'leaves everything to the unfettered discretion of the testator' on the assumption that 'the instincts, affections and common sentiments of mankind may safely be trusted to secure, on the whole, a better disposition of the property of the dead' than stereotyped and inflexible rules. The court considered the test for testamentary capacity.

(d) ... 'It is unnecessary to consider whether the principle of the foreign law or that of our own is the wiser. It is obvious, in either case, that to the due exercise of a power thus involving moral responsibility, the possession of the intellectual and moral faculties common to our nature should be insisted on as an indispensable condition.

(e) ... It is essential to the exercise of such a power (of making a will) that a testator shall understand the nature of the act and its effects; shall understand the extent of the property of which he is disposing; shall be able to comprehend and appreciate the claims to which he ought to give effect

Question 5 – Testamentary Capacity

1 Mark

Identify from the following list the correct four criteria to be applied to ascertain mental capacity to make a Will:

- a) Must be capable of making a valid will
- b) Must understand that they must make provision for their family members
- c) Must understand the nature of the act
- d) Must have knowledge and appreciation of the facts
- e) Must not have a mental illness
- f) Must understand the extent of the property to be disposed of
- g) Must appreciate the claims to which he ought to give effect
- h) Must understand that there is absolute freedom to dispose of property

Question 6 – Who Can Claim on the Estate

1 Mark

Identify three categories of person from the following list who may be able to make a statutory claim on the estate:

- a) Anyone being related to the deceased
- b) Anyone being wholly maintained by the deceased
- c) Any spouse
- d) Any previous spouse who has remarried
- e) Any child of the deceased
- f) A parent of the deceased, if no other surviving close relative

QUESTION 7 - Who Can Claim on the Estate

1 Mark

Which of the following correctly summarises the decision of the Court in *Ilott v The Blue Cross and others* [2017]:

- a) The testator is not at liberty to leave a legacy to charities where family members have not been considered in the original will.
- b) Members of the family who have not been left a legacy are at liberty to make a claim on the estate, but there is no guarantee they will be successful.
- c) Moral claims of family members are more important than the statutory requirements that they should fall within a designated category.
- d) Statutory considerations aside, the testator has a moral duty to leave a legacy to charities, regardless of whether that charity benefited from the testator in the past.

Question 8 – Gifts to Charities

2 Marks

Rank the following sources in priority order in terms of how valid they would be to a paralegal researching the law on gifts to charities:

- a) Newspaper Articles
- b) A ten-year-old textbook on charity law
- c) Data on the number of successful legacies made to charities
- d) A blog from a barristers' chambers specialising in charity law

A blog from a barristers' chambers specialising in charity law
A ten-year-old textbook on charity law
Newspaper Articles
Data on the number of successful legacies made to charities

Question 9 – Formalities (Conclusion)

2 Marks

In respect of the validity of Colin Braidey's will, which of the following is the best answer:

- a) The formalities have been complied with and therefore the will is valid. This means that any challenge to the validity of the will is unlikely to be successful and would be very expensive to contest.
- b) The will is invalid as the formalities have not been complied with. Despite the will being in writing, there is no evidence to suggest that the document was executed correctly.
- c) The will appears to conform to the requirements of having been signed by the testator and there are two witness signatures on the document. It is, therefore, likely to be valid.
- d) The will is unlikely to be valid. The formalities do not appear to have been complied with unless it can be shown that the witnesses signed the will in the presence of each other.
- e) The will is valid because it complies with all the formal requirements. Therefore the will cannot be challenged.

Question 10 – Capacity (Conclusion)

2 Marks

Applying the Banks v Goodfellow test to Colin Braidey’s capacity to make a valid Will, identify the correct advice:

- a) The test on capacity appears to have been met. Banks v Goodfellow [1870] relates solely to mental capacity. It does not relate to physical illness, unless it has a direct effect on the testator’s mental capacity.
- b) Colin Braidey was ill at the time he made the will. Applying the test in Banks v Goodfellow [1870], his illness meant that he was not capable of making the decisions necessary to enable him to make a valid will.
- c) Colin Braidey was ill at the time he made the will. His relationship with the nurse shows that his illness had affected his ability to make decisions, and so he did not have capacity to make the will according to the test in Banks v Goodfellow [1870].
- d) Colin Braidey’s relationship with the nurse affected his ability to think clearly. Therefore, under Banks v Goodfellow [1870] he will not have had the capacity to make a valid will.
- e) Following Banks v Goodfellow [1870], it is clear that a testator needs to be physically capable of making a will. As Colin Braidey’s illness did not physically prevent him from making a will, it is, therefore, valid.

Question 11 – Who Can Claim (Conclusion)

2 Marks - Outcome 8f

In respect of our client Abbie Braidey making a claim:

- a) She will be able to make a claim against the estate. She will be successful as she had been married for 10 years to Colin Braidey and she, as his wife, will be entitled to all of the £2 million estate, as per *Ilott v The Blue Cross and others* [2017]. The charity is very unlikely to contest the case.
- b) Unfortunately, Abbie Braidey will not be able to make a claim against the estate of Colin Braidey. Colin Braidey was in a new relationship at the time of his death and therefore, as per *Ilott v The Blue Cross and others* [2017], Abbie Braidey is not entitled to any of the estate. The charity will be entitled to the whole of the estate.
- c) Just because Abbie Braidey was still Colin Braidey's wife at the time of his death, it does not mean that she is a person entitled to make a claim. If successful, she will be entitled to part of the £2 million estate, as per *Ilott v The Blue Cross and others* [2017]. The charity will still get a large part of the estate.
- d) Although Abbie Braidey will be able to make a claim, the case of *Ilott v The Blue Cross and others* [2017] makes it clear that gifts in wills do not have to be left to family. This will be the case particularly as charities have special status in respect of legacies.
- e) She falls within the categories of those who can make a claim, being Colin Braidey's wife. Even though Abbie Braidey is entitled to make a claim against the estate, there is no guarantee that she will be entitled to all of the estate, although regard should be had to the case of *Ilott v The Blue Cross and others* [2017].

COMPLETE REPORT FOR STUDENT REVIEW SEE NEXT PAGE

RESEARCH REPORT

INTRODUCTION

You have asked me to carry out some background legal research before you meet with the client. The purpose of this report is to research and summarise the law relating to: -

- The requirements relating to the signing of a will;
- The legal test for mental capacity;
- Who can make a claim on an estate where they are not provided for in a will;
- How the courts treat gifts to charities.

(Option e)

A) REQUIREMENTS FOR CREATING A VALID WILL

In carrying out my research into the formalities for executing a will, I found the following:

The legal requirements which relate to the signing of a will are that it must be in writing and signed or acknowledged by the testator in front of at least two witnesses.

(Option b)

B) TESTAMENTARY CAPACITY

In respect of mental capacity, the main source is:

Banks v Goodfellow [1870]

I direct you to the following passages:

i) the question is whether testator was capable of having such a knowledge and appreciation of facts, and was so far master of his intentions, free from delusions, as would enable him to have a will of his own in the disposition of his property, and act upon it.'

ii) It is essential to the exercise of such a power (of making a will) that a testator shall understand the nature of the act and its effects; shall understand the extent of the property of which he is disposing; shall be able to comprehend and appreciate the claims to which he ought to give effect

(Options a & e)

The test for mental capacity therefore requires that the testator:

- i) Must understand the nature of the act
- ii) Have knowledge and appreciation of the facts
- iii) Understand the extent of the property to be disposed of
- iv) Appreciate the claims to which he ought to give effect

(Options b,c,e & f)

C) WHO CAN CLAIM ON THE ESTATE

The following people can make a claim on the estate:

- Anyone being wholly maintained by the deceased
- Any spouse
- Any child of the deceased

(Options b,c,e,f,& g)

It should be noted that in *Ilott v The Blue Cross and others* [2017]:

Members of the family who have not been left a legacy are at liberty to make a claim on the estate, but there is no guarantee they will be successful.

(Option b)

D) GIFTS TO CHARITIES

To gain a better understanding of the way in which the courts consider gifts to charities, I would advise looking at:

A blog from a barristers' chambers specialising in charity law
A ten-year-old textbook on Charity Law
Newspaper Articles
Data on the number of successful legacies made to charities

(Options ranked in following order d,a,e,b,c & f)

CONCLUSIONS

Applying the research I have undertaken, I would advise the following:

i) Formalities

The will appears to conform to the requirements of having been signed by the testator and there are two witness signatures, on the document. It is, therefore, likely to be valid.

(Option c)

ii) Capacity

The test on capacity appears to have been met. *Banks v Goodfellow* [1870] relates solely to mental capacity. It does not relate to physical illness, unless it has a direct effect on the testator's mental capacity.

(Option a)

ii) Who can claim?

She falls within the categories of those who can make a claim, being Colin Braidey's wife. Even though Abbie Braidey is entitled to make a claim against the estate, there is no guarantee that she will be entitled to all of the estate, although regard should be had to the case of *Ilott v The Blue Cross and others* [2017].

(Option e)

