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| **Leicester De Montfort Law School**  **Legal Practice Course**  **Wills and Administration of Estates**  Small Group Session 2  Pre-Session Quiz - Answers |

**Q1. Which of the following grounds affect the validity of a will?**

**Choose all that apply.**

1. Lack of testamentary capacity
2. Incorrect execution in line with Section 9 Wills Act 1837
3. Lack of knowledge and approval of the contents of the will
4. Undue influence

**Answer- All the above grounds affect validity of the will. In addition, fraud and the operation of the forfeiture rule is also relevant albeit outside the scope of this module.**

**Q2. The Wills Act 1837 Section 9 states that a will ‘must be in writing’.**

**What does this mean?**

1. The will must only be handwritten in ink.
2. The will must only be in typed writing and can be produced on any material.
3. The will must only be handwritten in ink and can only be produced on paper.
4. The will must be in writing and this can be handwritten, in ink, pencil or typed in electronic form and it can be produced on any material, ideally paper.

**Answer 4**

**Q3. What does the Wills Act 1837 Section 9 require in relation to the testator’s signature and intention to make a will?**

1. Only the testator can sign the will, and this must be a signature which the testator intended to give effect to the will.
2. Only the testator can sign the will, and this can be a signature or a mark, such as thumb print which the testator intended to give effect to the will.
3. The testator can sign the will, or it can be signed by some other person in the Testators presence and the testator must intend the signature to give effect to the will
4. The testator can sign the will, or it can be signed by some other person, this does not need to be in the testator’s presence as long as the testator intends the signature to give effect to the will.

**Answer 3**

**Q4. How many witnesses are required to be present at the same time the testator signs or acknowledges his signature?**

1. Two or more
2. Three or more
3. One
4. No witnesses are required

**Answer 1**

**Q5. In relation to the witnessing of the will, which of the following statements are true?**

1. After attesting to and witnessing the signature of the testator to the will, the witnesses must attest the will by signing and acknowledging their signature in the presence of the testator, but not necessarily in the presence of the other witness
2. It is not essential for any of the witnesses to see the testator sign the will if the witnesses sign together.
3. After attesting to and witnessing the signature of the testator to the will, each witness must attest the will by signing and acknowledging their signature in private away from the testator and the other witness.
4. None of these options are correct.

**Answer 1**

**Q6. Section 9 of the Wills Act states “no form of attestation is required” What is the impact if the attestation is not included?**

1. There is no impact. The Probate Registry will not question the matter.
2. The Probate Registry cannot presume that the testator knew and approved of the contents, there is a need for an affidavit of due execution, usually provided by the witnesses to the will.
3. The Probate Registry cannot presume that the testator knew and approved of the contents, there is a need for an affidavit of plight and condition.
4. The will is invalid.

**Answer 2**

**Q7. Which of the following is a correct standard Attestation clause?**

1. “Signed by the said testator”
2. “Signed by the said testator in our joint presence and then by us in his presence”
3. “Signed by the testator and then by us the witnesses”
4. Signed by the testator and then by witness one and thereafter by witness two”

**Answer 2**

**Q8. In what circumstances will the Court not presume knowledge and approval? Choose all the options that apply**.

1. If the Testator is deaf, dumb, blind and/or illiterate.
2. If the Testator cannot speak or write or is paralysed.
3. If the circumstances surrounding execution are suspicious e.g. a beneficiary preparing a will without independent legal advice being provided to the testator.
4. The will is alleged to have been signed by another person for the deceased at his direction.

**Answer-All. The Court will require evidence, usually in the form of affidavit of knowledge and approval, to convince them that the testator knew and approved of the contents of the will.**

**Q9. How should amendments in a will be executed in order to ensure they are valid? Choose the best answer**

1. The amendment should be initialled by the testator.
2. The amendment should be initialled by the testator and one witness.
3. The amendment does not need to be initialled by anyone.
4. The amendment should be initialled by the testator and two witnesses in accordance with Section 21 of The Wills Act.

**Answer 4**

**Q10. What should a commencement in a will state?**

1. The fact it is the last will of the testator to show intention to make a will, confirm the testators name and address and provide space for the date, although the date can be at the beginning or end of the Will.
2. The name and date of birth of the testator only
3. The name and address of the testator only
4. A commencement is not required; it serves no purpose at all.

**Answer 1**

**Q11. In respect of the revocation clause in a will, which of the following statements are correct?**

1. A revocation clause should always be included to show intention to make a will.
2. A revocation clause serves no purpose and does not need to be included in a will; a later will always revokes the entirety of a previous will.
3. A will is not valid unless a revocation clause is included.
4. A revocation clause should always be included to show that any previous will or codicil is no longer valid. If one is not included any later will impliedly revokes an earlier will/codicil but only to the extent that the later will is inconsistent with the earlier provisions

**Answer 4**

**Q12. The test for testamentary capacity to execute a valid will is found in Banks v Goodfellow 1870. What must the testator satisfy? Choose the points that apply**

1. The testator must understand the nature of making a will and its effects
2. The testator must understand the extent of their property of which they are disposing
3. The testator must be able to comprehend and appreciate the claims to which they ought to give effect
4. Have no disorder of the mind that perverts their sense of right or prevents the exercise of their natural faculties disposing of their property by will

**All the answers apply.**

**Q13. You are a Solicitor and have been provided with instructions to prepare a will for Derek Smith who is 75. Derek had capacity at instruction stage, and he has approved the draft you have prepared. Derek signed his will several months after it had been prepared, at which point it was accepted that he lacked capacity, but that he executed the will believing that it reflected his earlier instructions. Derek has died and the validity of the will has been challenged on the grounds of capacity. What case and its principles may assist to declare the Will as valid?**

1. Banks v Goodfellow (1870)
2. Illot v Mitson (2015)
3. Re Simpson (1977)
4. Parker v Felgate (1883) later upheld in Perrins v Holland and others (2010)

**Answer 4**

**Q14. You take will instructions for a client whose capacity may be questioned by a disgruntled family member that is written out of the Will. Choose the best legal guidance to follow in this situation.**

1. You should get another Solicitor to give you an opinion on the client’s capacity
2. You should get a family member that knows the testator well to give an opinion on the client’s capacity.
3. The will should be witnessed or approved by a medical practitioner. A report on the client’s capacity is also advisable.
4. The law does not provide any guidance on this point, you should not act.

**Answer 3**

**Q15. Where staple or paper clip marks on a will suggest another document has been attached to the will, which of the following affidavits is required by the Probate Registry upon application for a Grant?**

1. Affidavit of due execution
2. Affidavit of knowledge and approval
3. Affidavit of plight and condition
4. Affidavit of identity

**Answer 3**

**Q16. What is the primary use of a codicil?**

1. It is a testamentary document that is executed by the testator to modify, delete, qualify or revoke provisions contained in an existing will. It is usually used for minor changes.
2. It is a testamentary document that must always be prepared alongside a will.
3. It is an expression of wishes to an executor which is not legally binding.
4. The law does not recognise a codicil as a valid testamentary document since 2014.

**Answer 1**

**Q17. A codicil must be executed as a valid testamentary document. Which of the following statements are true?**

1. A codicil only needs signing by the testator, it does not need witnessing.
2. It must be in writing and executed to satisfy the criteria set out in Section 9 of the Wills Act.
3. A codicil does not need signing by anyone including the testator; it can just be stapled to the will.
4. It must be signed by the testator and witnessed by the same witnesses to the will.

**Answer 2**

**Q18. Your client wants you to send their will out for execution and they propose that the spouse of a named beneficiary can witness the will. Is this an issue?**

1. There is no issue arising with this at all, the will and gift to the attesting witness or their spouse is valid.
2. The gift to the attesting witness or their spouse will be void but the rest of the will is valid.
3. The whole will is void except for the appointment of the executors and guardians.
4. The entire will is void

**Answer 2. See Section 15 of the Wills Act. Gifts to beneficiaries who are attesting witnesses are void. If the attesting witness is the spouse of the beneficiary, this gift is also void.**

**Q19. A will is valid and comes into effect from what time?**

1. The date it is executed in accordance with section 9 of The Wills Act
2. It is only valid from the date of execution and comes into effect immediately during the lifetime of the deceased.
3. It is valid as soon as the will is drafted even if it remains unsigned.
4. Valid from the date of execution but it crystallises and comes into effect on the death of the testator.

**Answer 4**

**Q20. Your client made a will in which an amendment that was made was not executed correctly in line with section 21 of the Wills Act. The client then makes a codicil which is executed in line with Section 9 of the Wills Act. What impact does this codicil have on the amendment in the will?**

1. No impact, the gift to Roger as a beneficiary and witness is still invalid, s15 Wills Act.
2. The correctly executed Codicil republishes the gift in the will and the gift to Roger is now valid.
3. There was no issue with the gift to Roger in the first place.
4. The codicil revokes the whole of the will.

**Answer 2. The codicil republishes the will and the gift to Roger (which failed due to section 15 Wills Act) is now valid.**