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| **Leicester De Montfort Law School**  **Legal Practice Course**  **Wills and Administration of Estates**  **Small Group Session 3: Administration of the Estate**  **Pre Session Quiz - Answers** |

1. Which type of grant would you apply for if the deceased died without leaving a will?
2. Grant of probate
3. Grant of letters of administration
4. Grant of letters of administration with will annexed

Answer b.

A grant of probate is applied for when there is a will with a named executor who is willing/able to act. A grant of letters of administration with will annexed is applied for when there is a will and either no executor is appointed or there is no executor willing/able to act.

1. We only refer to a grant of representation when there is a will. True or false?

Answer false. A grant of representation is a collective term which covers all types of grants. We only refer to it when we do not need to refer to a specific type of grant.

1. Janet dies and in her will leaves a gift of £5,000 to her brother, Michael. Michael died 3 years ago leaving a wife and two children. Amy is 19 and Ethan is 15. Janet names her husband, Ian as her residuary beneficiary. Who will receive the £5,000?
2. Michael’s wife
3. Amy
4. Amy and Ethan but Ethan’s share will be held upon trust
5. Ian

Answer d. Janet has left a gift to her brother who has pre deceased her. Michael is not Janet’s issue and therefore the gift cannot be saved by S33. The gift lapses and falls into her residuary estate.

1. Janet also left a gift in her will of £50,000 to her daughter, Isla. Isla died last year leaving a husband, Nathan, and one daughter, Ava, aged 19. Who will receive the £50,000?
2. Isla
3. Nathan
4. Ava
5. Ian (the residuary beneficiary)

Answer c. Janet’s gift to Isla is a gift to her (Janet’s) issue. S33 applies and passes the gift to Isla’s daughter, Ava.

1. Janet’s will stated “I leave my emerald ring to my niece, Eleanor” Janet lost the emerald ring whilst on holiday last year. Which of the following is correct?
2. The PRs have to buy an emerald ring to give to Eleanor.
3. The gift is a general gift
4. Eleanor will receive any other jewellery Janet may own
5. The gift is a specific gift and will adeem

Answer d. As to property, the will speaks from the date of death, subject to contrary intention – S24 Wills Act. As Janet says “my emerald ring”, this is an example of contrary intention. By saying “my” she is referring to the emerald ring she owned at the date the will was made. As she no longer owns it at death the gift adeems.

1. Janet’s will also left “100 shares in Leisure Plus Limited” to her nephew, Henry. When she died Janet did not own any shares in Leisure Plus Limited although she did own shares in a number of other companies. Which of the following is correct?
2. The PRs have to buy 100 shares in Leisure Plus Limited to give to Henry.
3. The PRs will give the other shares Janet owns at her death to Henry.
4. The gift adeems
5. This is a pecuniary legacy

Answer a.

1. Janet’s will also left “my collection of Laadro figurines” to my niece, Bethany. At the time the will was made Janet owned 24 figurines. When she died, she owned 20 figurines after breaking 4 of them whilst dusting. Which of the following is correct?
2. The PRs have to buy an additional 4 figurines to give to Bethany
3. The gift adeems
4. Bethany will receive the 20 figurines
5. This is a demonstrative gift

Answer c. Although the gift says “my”, as the collection is capable of increase or decrease Bethany will receive all the figures owned at death.

1. Janet also left a gift of “£10,000 from my account with the Hinckley & Rugby Building Society” to her grandson, Samuel. When Janet died the account only contained £6,000, although she did have over £100,000 in a variety of other accounts. Which of the following is correct?
2. Samuel receives £6,000
3. Samuel receives £10,000
4. The gift adeems and Samuel gets nothing
5. This is a general gift

Answer b. This is a demonstrative gift (a gift from a specific source). As such, it does not adeem and the PRs will make up the full £10,000 by taking the extra £4,000 from the residuary estate.

1. Which of the following is correct?
2. S41 Administration of Estates Act (AEA) gives PRs the power of appropriation which means they can give any of the deceased’s assets to any of the beneficiaries in the will.
3. S41 AEA gives the PRs the right to give any asset not specifically bequeathed to any beneficiary without requiring the consent of that beneficiary
4. S41 AEA gives the PRs the right to give any asset not specifically bequeathed to another beneficiary, provided that beneficiary consents
5. S41 AEA requires the PRs to obtain the consent of the residuary beneficiaries if they want to use their power of appropriation.

Answer c. S41 gives PRs the power of appropriation. They can take any asset not specifically bequeathed and give it to one of the beneficiaries in full or partial satisfaction of their gift, provided the beneficiary consents to the appropriation.

1. A will leaves a gift of “50,000 to Evie Wood”. Evie is aged 15 when the testator dies.

Which of the following is correct?

1. Evie’s gift is a vested gift
2. Evie’s gift is a contingent gift
3. Evie’s gift will be held on statutory trust until she reaches 18
4. If Evie dies before she reaches 18 the £50,000 will fall back into the testator’s estate.

Answer a. This is a vested gift as there is no condition attached to it. Although Evie is under 18 and cannot receive the money herself, it is still treated as hers. If she died before reaching 18, the £50,000 would pass to Evie’s estate.

1. Which of the following is correct? There may be more than one correct answer.
2. Evie’s gift can be held on trust by the PRs
3. S42 AEA allows the PRs to appoint other trustees to hold Evie’s gift until she reaches 18
4. Evie’s gift will be held on statutory trust
5. Evie’s parents could give a receipt for the £50,000 and the PRs could pay the money to them

Answer a,b and d. As Evie’s gift is vested options a,b and d are available. The money is not held on a statutory trust as this is not an intestacy.

1. A will leaves a gift of “25,000 to Jackson Stoker upon reaching the age of 18 years”. Jackson is aged 15 when the testator dies.

Which of the following is correct?

1. Jackson/s gift is a vested gift
2. Jackson’s gift is a contingent gift
3. Jackson’s gift will be held on statutory trust until she reaches 18
4. If Jackson dies before he reaches 18 the £25,000 will fall into his estate.

Answer b. This is a contingent gift as there is a condition attached to it. If he died before reaching 18, the £25,000 would fall back into the testator’s residuary estate.

1. Which of the following is correct?
2. Jackson’s gift must be held on trust by the PRs
3. S42 AEA allows the PRs to appoint other trustees to hold Jackson’s gift until he reaches 18
4. Jackson’s gift will be held on statutory trust
5. Jackson’s parents could give a receipt for the £50,000 and the PRs could pay the money to them

Answer a. As Jackson’s gift is contingent the PRs must hold it on trust themselves until Jackson reaches 18. This is because if he doesn’t reach 18, they will need to distribute the money to the testator’s residuary beneficiaries. The money is not held on a statutory trust as this is not an intestacy.

1. When a person dies, the PRs must vest the deceased’s assets in the beneficiaries. What does vest mean?
2. Hand over the asset
3. Pass legal ownership of the asset in the beneficiary
4. Hand over the asset and get a receipt
5. None of the above

Answer b. Legal ownership is passed to the beneficiary in different ways depending upon what the asset is. For example, legal ownership of shares is passed to the beneficiary by sending the share certificate and a signed stock transfer form to the company in which those shares are owned. The company then updates its register of members to show the name of the beneficiary as owning the shares.

1. Which of the following are correct? There may be more than one correct answer.
2. S31 Trustee Act 1925 allows trustees to make an early payment of the trust income to a beneficiary
3. S31 Trustee Act 1925 allows trustees to make an early payment of the trust capital to a beneficiary
4. S32 Trustee Act 1925 allows trustees to make an early payment of the trust capital to a beneficiary
5. S32 Trustee Act 1925 allows trustees to make an early payment of the trust income to a beneficiary

Answer a and c

1. In his will, Charles leaves 100 shares on trust for Simon upon reaching the age of 21. Simon is 16 when Charles dies. Which of the following is correct? There may be more than one correct answer.
2. The trustees can use their power of maintenance to pay any income earned on those shares for the benefit of Simon before he reaches 21
3. The trustees can use their power of maintenance to pay the capital for the benefit of Simon before he reaches 21
4. The trustees can use their power of advancement to pay the capital for the benefit of Simon before he reaches 21
5. The trustees can use their power of advancement to pay any income earned on those shares for the benefit of Simon

Answer a and c.

S31 gives trustees the power of maintenance which allows them to make an early payment of the trust income for a beneficiary

S32 gives trustees the power of advancement which allows them to make an early payment of the trust capital for a beneficiary

1. Amy is the beneficiary of a trust which holds “8,000 shares on trust for Amy, contingent upon her reaching the age of 21”. Amy is 17. Which of the following is correct?
2. Amy can have 3,000 shares advanced for her benefit now and she will then receive 8,000 shares when she reaches 21.
3. Amy can only have 4,000 shares advanced for her benefit before she reaches 21.
4. Amy can have up to all of the 8,000 shares advanced for her benefit before she reaches 21
5. The power of advancement is not available for Amy because her gift is contingent

Answer c. Trustees can advance up to all of the capital for the advancement or benefit of a beneficiary. It does not matter that the gift is contingent. Any capital that is advanced before Amy is 21 must be brought into account. This means that if 3,000 shares were advanced now, she would only get 5,000 shares when she is 21.

1. Amy is the beneficiary of a trust which holds “£10,000 on trust for Amy, contingent upon reaching the age of 21”. Amy is 17. Which of the following is correct? There may be more than one correct answer
2. The trustees can use the income generated on the £10,000 and pay it over for Amy’s maintenance, education or benefit
3. The trustees can only pay over half of the income generated for Amy’s maintenance, education or benefit
4. The trustees cannot use their power of maintenance because Amy’s gift is a contingent pecuniary legacy
5. The trustees would have been able to use their power of maintenance if Amy’s gift had been shares provided the income was to be used for her maintenance, education or benefit

Answer c and d. Trustees can use their power of maintenance to make an early payment of the trust income for the beneficiary’s maintenance, education or benefit. The power is not available for contingent pecuniary legacies which is what the gift is. If the gift was shares, this would not be a pecuniary legacy and so the power of maintenance would be available.

When considering the powers of maintenance & advancement it is helpful to consider the following key points:

**S31** is the power of **maintenance**

Allows an early payment on the trust **income**

The income must be used for the beneficiaries **maintenance, education or benefit**

The gift must carry the **intermediate income**. **Contingent pecuniary legacies** do not and so the power of maintenance is not available on those gifts, subject to a few exceptions.

**S32** is the power of **advancement**

Allows the early payment of the trust **capital**

The capital must be used for the beneficiaries **advancement or benefit**

Up to **all** of the capital can be advanced

Any capital advanced must be **brought into account**