Note to Candidates and Tutors:

The purpose of the suggested answers is to provide students and tutors with guidance as to the key points students should have included in their answers to the June 2011 examinations. The suggested answers do not for all questions set out all the points which students may have included in their responses to the questions. Students will have received credit, where applicable, for other points not addressed by the suggested answers.

Students and tutors should review the suggested answers in conjunction with the question papers and the Chief Examiners’ reports which provide feedback on student performance in the examination.

SECTION A

1. A codicil is a testamentary instrument which normally makes minor changes to a will. To be valid, it must be signed in the same way as a will.

2. Intention will not be presumed where the testator cannot read his own will. Additional steps will need to be taken to show knowledge and approval, for example the will being read over to the testator. The attestation clause would also need to be adapted to record this fact.

3. A demonstrative legacy is a general gift from a specific fund. Unlike specific gifts it will not adeem. If there are insufficient funds in the specific fund the balance will be paid from residue.

4. Where an estate is solvent, but there are insufficient funds to pay all legacies, gifts within the same category will be reduced proportionately and this is called abatement. There is a statutory order in which gifts abate (s34(3) AEA 1925).

5. Marriage automatically revokes a will under s18 Wills Act 1837, unless the will is made in expectation of it.

6. A spouse in such a situation can expect to receive all the deceased’s personal chattels, a statutory legacy of £450,000 and one half of the remainder outright.

7. An executor who chooses to have power reserved to him does not act as an executor under the original grant of probate, but can apply to act as executor at some point in the future should he wish.

8. Where there is a valid will, but no executors able or willing to act, a grant of letters of administration with the will annexed is appropriate.
9. An affidavit of plight and condition would be needed to show that the burn mark was not an attempt at revocation by the testator.

10. The courts are able to award to a successful applicant periodical payments, lump sum awards or a settlement award.

**SECTION B**

**Scenario 1 Questions**

1. s20 Wills Act 1837 governs this area and defines revocation by destruction as “burning, tearing or otherwise destroying” the will. The destruction must be by the testator or someone in their presence and at their direction. The testator must also have intention to revoke their will.

Here, Samantha’s intention to revoke her will is present, but the act of physical destruction is not. She has not destroyed the will sufficiently. A case which illustrates this point would be Cheese v Lovejoy 1877 where the testator crossed through parts of his will and wrote on the back of it “all these are revoked”. It was held that the will was not sufficiently destroyed to be revoked.

2. As there is a valid will, and one executor who is willing and able to act, the appropriate grant is a grant of probate.

3. s18A Wills Act 1837 states that any gift in a will to a former spouse of the testator will pass as if that spouse had died at the date of the divorce i.e. decree absolute. So, here Harvey receives nothing and the residue passes in accordance with the substitutionary clauses in the will.

This means that the estate would have passed to Samantha’s three sisters but two have predeceased. Elise had no children so her share falls back into residue which will now be divided into two. Fiona’s now one half share passes to her two children equally following the substitutionary gifts in the will and Giselle, who has survived, receives the other one half share.

4. This is a pecuniary legacy. As there is no precondition it is a vested gift and passes to Colin absolutely on Samantha’s death as he has survived her. If Colin should die before reaching 18, the gift will form part of his estate and pass to his beneficiaries, presumably on intestacy.

**Scenario 2 Questions**

1. (a) As Ivor did not make a will, his estate will be divided in accordance with the rules of intestacy which are governed by s46 Administration of Estates Act 1925. Given the size of the estate and the composition of Ivor’s family Jackie will not receive all of it.

   Jackie can expect to receive all Ivor’s personal chattels, a statutory legacy of £250,000 and one half of the remainder of the estate as a life interest.

   (b) The half of the remainder of the estate not taken by Jackie (and the balance of her life interest on her death) will pass to Ivor’s children on statutory trusts which means it will be divided equally between those who survive Ivor (or the issue of those who have not) on attaining 18 or marrying before that age.
So the remainder of the estate will be divided into three equal shares. One each for Karl and Louise and the third will pass to Olivier’s two children equally as Oliver has predeceased Ivor.

2. Rule 22 NCPR governs who is permitted to apply for a grant of letters of administration. As Jackie does not wish to act the next category would be children of the deceased. As there is a life interest two applicants are needed so both Karl and Louise should apply.

3. Jackie as spouse has the right to require the Personal Representatives to appropriate the matrimonial home to her.

She must apply to the Personal Representatives within 12 months of the grant of letters of administration for them to appropriate the home to her in settlement of part of her share of the estate. The value of the house is within her share of the estate so she will not need to pay equality money.

**NB** Appropriation of the matrimonial home to Jackie under s41 Administration of Estates Act 1925 will not work here as it requires the consent of the beneficiaries and this is unlikely to be forthcoming from the granddaughters.

4. (a) Jackie may be able to make a claim under the Inheritance (Provision for Family and Dependants) Act 1975. A surviving spouse she falls into a category of applicant under the Act. She must make her claim within 6 months of the date of the grant.

(b) The standard of financial provision the courts will apply when dealing with a claim from a spouse will be such financial provision as is reasonable in all the circumstances irrespective of whether it the sum is needed for maintenance.

Scenario 3 Questions

1. Following the rules set out in s9 Wills Act 1837, Patrick’s will is in writing and should be signed or acknowledged in front of two independent witnesses, here Quentin and Rose. Patrick has signed in front of Quentin not Rose. Instead, his words to Rose when she came back into the room are an acknowledgement of his signature which is sufficient under s9.

Both witnesses then need to sign in Patrick’s presence, but not necessarily in each others. Here, Quentin and Rose have both signed in front of Patrick separately, and the fact that Rose did not see Quentin sign is irrelevant.

A relevant case here would be Couser v Couser 1996 where the female witness was present when the testator signed but the male witness was not. The woman protested strongly to the testator about the validity of the signatures that were made before the male witness had arrived and her protests and the behaviour of the testator in pointing to his signature in front of the male witness were held to be sufficient acknowledgement to make the execution valid under s9.

2. An affidavit of plight and condition is needed under r14 NCPR because of the alteration which has not been signed and witnessed. In such circumstances there is a rebuttable presumption that the alteration is made after execution and is therefore invalid.
Also, the affidavit should also deal with the staple mark which might be evidence that there was a further document attached to the will which is now missing eg a codicil.

3. Susan’s gift is a specific legacy which will adeem because it does not form part of the estate at the date of Patrick’s death.

Valerie’s gift is a pecuniary legacy but as the beneficiary has predeceased it will lapse and fall back into the residuary estate.

4. Tobias has predeceased and his share would normally lapse. However, as he is a child of Patrick s33 Wills Act 1837 applies which saves the gift by passing it on to Tobias’s issue. David will receive his father’s share of the estate.