



CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

LEVEL 3 UNIT 14 – PROBATE PRACTICE

JUNE 2023

Note to Candidates and Learning Centre Tutors:

The purpose of the suggested points for responses is to provide candidates and learning centre tutors with guidance as to the key points candidates should have included in their answers to the June 2023 examinations. The suggested points for responses sets out a response that a good (merit/distinction) candidate would have provided. Candidates will have received credit, where applicable, for other points not addressed by the marking scheme.

Candidates and learning centre tutors should review the suggested points for responses in conjunction with the question papers and the Chief Examiners' **comments contained within this report**, which provide feedback on candidate performance in the examination.

CHIEF EXAMINER COMMENTS

Examination technique throughout this paper was generally good. Candidates should take care to write all details relating to an answer in their script. This is a practical paper and therefore answers should be written in a manner that would be suitable for a lay person who has no prior knowledge of the subject.

Questions should be read carefully to ensure that they are answered concisely. Time and marks can be lost where a question or scenario is misread, and information is provided which is not relevant to the scenario.

Candidates are encouraged to take care in reading the pre-released materials, ensuring that all facts are identified. For example, in Q1(b) some candidates did not pick up that the property, Westwood House was inherited jointly by James and his sister, and spent time discussing the transfer of ownership of Westwood House was in James' sole name.



Similarly, candidates should take care when considering the appropriate legislation required when applying for a grant, such as in 1(c) where several candidates identified R22 NCPR as the appropriate authority when considering the appropriate party to apply for a Grant of Letters of Administration with the Will Annexed, rather than R20 NCPR.

Candidates generally answered questions well where common legislation is used and applied, such as Q2(b) which required an explanation of Banks v Goodfellow and MCA 2005 and Q3a s9 WA which required consideration of the validity of a 'will'.

Candidates are also encouraged to consider the number of marks available for each element in order to consider the complexity of the answer required.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Question 1

This question was divided into four parts. It carried a maximum of 20 marks and tested candidates' knowledge of suitable witnesses to a will, the distribution of jointly owned assets, the correct grant required to administer an estate, entitlement to the grant and additional documents which may be required.

(a)

This question asked candidates to consider the effect of a beneficiaries spouse acting as a witness to the Will. This question had mixed results. Many candidates picked up easier marks, explaining that the gift was not valid in accordance with the Wills Act and why. Few picked up further marks for considering that the witness was still a competent witness and so the Will remained valid, or that the Will could be saved if there was an additional witness.

(b)

This question required candidates to identify the joint ownership of a property, to consider whether it was owned jointly as joint tenants or tenants in common and how this would impact the gift in the Will. A few candidates failed to notice that the case study materials (CSM) stated that the property was owned jointly, and this was reflected in the answers provided. Those that did pick this up generally were able to explain the two possibilities and how this would impact the gift in greater detail than those who also considered the possibility of sole ownership.

(c)

This question required candidates to identify the type of grant required in the circumstances and to explain why. A large proportion of candidates picked up full (or high) marks for this question. Those who did not, generally, had incorrectly deemed the Will in question to be invalid, which altered the relevant legislation to be followed and in turn meant that that higher marks were not available.



1(d)

This question asked candidates to explain what the Probate Registry would require to prove the Will, given that it is damaged. Again, most candidates achieved higher marks here, with Candidates explaining that an affidavit of plight and condition would be required to explain the damage to the will and that there was no intention to revoke. Candidates generally failed to pick up that a damaged will can be explained in a PA1P preventing full marks for many.

Question 2

This question required candidates to consider to whom a duty of care is owed when making a Will and the risks associated with this, the tests considered when assessing mental capacity, the potential effect of lifetime gifts and the structure of a clause appointing a law firm to act as executors. This question was divided into four questions and carries a maximum of 25 marks.

(a)

Candidates were asked to consider why a will should be prepared promptly given the scenario. The majority of candidates identified that a duty of care is owed to the client and his potential beneficiaries. Further marks were available for considering that not acting promptly may result in a negligence claim, considering a presumption of capacity, that the testator may lose capacity, or that the potential beneficiaries might receive nothing if the will is not amended in a timely manner. There was no real pattern to where candidates picked up further marks.

(b)

This question required candidates to consider the tests for mental capacity to make a Will, including the rules set out in *Banks v Goodfellow* and the MCA. This was answered well across the board. It is, however, an answer which is learnt and re-written without the need for specific application to individual facts.

(c)

Lots of marks were picked up in this question, the main point that was missed was the application of the annual allowance and one year carry over (with candidates applying this to both gifts rather than only one, as is required). Candidates also generally failed to consider that this was advice regarding gifts made by someone still living. Only a few considered that the client may live long enough for the gifts not to be taken into account.

(d)

This question required candidates to draft the clause appointing Kempstons to act as executors. Basic marks were picked up for appointing Kempstons. Higher marks were obtained by those who considered the finer details of the clause adding in 'no more than two partners to act' or 'succeeds to and carries on its business'.

Question 3

This question is divided into five elements and carries a maximum of 25 marks. This question required candidates to consider the requirements for a valid will, the process of applying for a Grant when there is no valid will, the relevant IHT form for a death pre 2022 and how estate assets should be obtained and distributed.

(a)

Most candidates picked up full marks in this question, identifying that the Will was not witnessed in accordance with S9 WA and therefore was not valid.

(b)

Required candidates to explain the process for obtaining a grant where there is no valid will. Many candidates picked up full marks here. Those who did not generally missed finer details such as updated legislation, gift to be divided 'per stirpes' and the importance of beneficiaries being over 18.

(c)

This question required candidates to consider why an IHT205 was the appropriate tax form in this case. Candidates generally knew basic detail of what constitutes an excepted estate but were unable to provide a sufficient explanation of all of the elements required when considering the appropriate IHT form, such as the date of death, whether there were any lifetime gifts or the deceased's domicile at the date of her death.

(d)(i)

Candidates needed to explain how to use the grant to obtain the estate assets. Many provided an answer that you send a copy to the asset holders. Higher marks were available for considering that this should be an office copy, that a signed authority would be required and a request of where funds should be sent.

(ii)

This question required candidates to consider who the estate assets should be distributed to. Most were aware that debts should be paid before legacies, that these details should be included in the estate accounts and that receipts should be obtained. Higher marks were obtained for explanation of the correct waiting periods due to S27 notices or potential I(PFD)A and order that debts and legacies should be paid in.

SUGGESTED POINTS FOR RESPONSE**LEVEL 3 UNIT 14 – PROBATE PRACTICE**

| Question Number | Suggested Points for Responses | Marks (Max) |
|-----------------------------------|---|-------------|
| 1(a) | A beneficiary or his spouse is a competent witness And so the validity of the will is not affected by Oscar Brown acting as a witness However, under s15 Wills Act 1837 Susan will lose her gift under the will because her husband has acted as a witness to the Will If there had been a third witness, the gift would have taken effect | 4 |
| 1(b) | James and Clare were both left the house by their parents Mr Webber needs to establish on what basis (joint tenants or tenants in common) If the house was held as tenants in common, James's share will pass to Penny under the Will If it is held as beneficial joint tenants, then the property passes to Clare automatically on James's death and will not form part of his estate | 5 |
| 1(c) | A grant of letters of administration with the will annexed Is appropriate as there is a valid Will But no executor able or willing to act Entitlement to the grant is governed by the r 20 Non Contentious Probate Rules 1987 In the absence of any trustee of residue David Vaughn and Richard Cooper are entitled to apply for the grant As two of the people entitled to the residue Kelly is a minor | 7 |
| 1(d) | The registrar will need to be convinced that there was no intention for James to revoke the Will This can be explained as a witness statement in the PA1P or may require an affidavit of plight and condition | 4 |
| Question 1 Total: 20 marks | | |

| Question Number | Suggested Points for Responses | Marks (Max) |
|----------------------------------|---|-------------|
| 2(a) | <p>S1(2) Mental Capacity Act 2005</p> <p>says that there is a presumption of capacity unless there is evidence to the contrary</p> <p>Delay may result in a negligence claim if Raj dies or loses capacity before his will is complete</p> <p>The firm owes a duty of care to Raj to make sure his wishes are carried out</p> <p>But also to the potential beneficiaries</p> <p>Who would receive nothing, or less than was intended, on intestacy</p> | 5 |
| 2(b) | <p>The GP or specialist should be asked to consider the tests set out in Banks v Goodfellow</p> <p>Understand the nature of the act and its effect</p> <p>The extent of their estate</p> <p>Any moral claims which they ought to consider</p> <p>And the Mental Capacity Act 2005</p> <p>Understand information relevant to the decision</p> <p>Retain that information</p> <p>Weigh the information as part of the decision making process</p> | 6 |
| 2(c) | <p>Lifetime gifts are PETs (correct terminology)</p> <p>Go on to explain what this means:-</p> <p>Apply 7 year rule – all gifts are made within 7 years so will be taken into account</p> <p>But there is a £3,000 annual exemption</p> <p>And one year's exemption can be carried forward</p> <p>So the gifts to Beth and Jack will both be exempt</p> <p>One year's exemption applies to Eli's gift too</p> <p>And one year's exemption can be carried forward</p> <p>Leaving a balance of £4,000</p> <p>Which has the effect of reducing the nil rate band by this amount</p> <p>If Raj lives for a further 6 years, the gift to Eli will have been made more than 7 years prior to death and will not be taken into account</p> | 8 |
| 2(d) | <p>I appoint the partners</p> <p>At the date of my death</p> <p>In the firm of Kempstons Manor House Bedford</p> <p>or such other name as it may use or such other firm which shall have succeeded to and carries on its business</p> <p>To be the executors and trustees of this Will</p> <p>And I direct that no more than two such partners shall prove my Will</p> | 6 |
| Question 2 Total:25 marks | | |

| Question Number | Suggested Points for Responses | Marks (Max) |
|----------------------------------|---|-------------|
| 3(a) | In order to be valid a Will must comply with s9 Wills Act 1837 It should be signed by the testator in the joint presence of two or more witnesses And this is where this note fails, as there are no witnesses | 3 |
| 3(b) | Because Wilma did not leave a valid will, she has died intestate This means that the estate will be divided in accordance with legal rules Under the Administration of Estates Act 1925 which is now amended by the Inheritance and Trustees' Powers Act 2014 In the absence of a spouse Wilma's estate will be divided between her children Or in the case of George, who predeceased Wilma George's children will receive George's share in his place 'per stirpes' (mark for correct terminology) So the estate will be divided as to two shares (or two sixths) for Jayne Two share (or two sixths) for Emilia One share (or one sixth) for each of George's daughters, Nadine and Juliette At the age of 18 | 9 |
| 3(c) | Form IHT205 is appropriate here because: Wilma died before 31 December 2021 The estate falls within the excepted rules Because the gross estate is less than the current nil rate band for IHT There is no foreign property in the estate There is no settled property/trust property within the estate Wilma made no lifetime gifts or PET's She has not made any gifts with reservation of benefit She was domiciled in the UK at the date of her death | 6 |
| 3(d)(i) | Write to each asset holder With an office copy of the grant And form of authority or withdrawal Signed by the Personal representatives | 3 |
| 3(d)(ii) | Wait for s27 notices to expire Delay 6 months in case of I(PFD)A claim Settle debts before making any distribution Pay legacies Obtain receipts from all Record appropriately in estate accounts | 4 |
| Question 3 Total:25 marks | | |