



CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

NOVEMBER 2023

LEVEL 3 UNIT 14 – PROBATE PRACTICE

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 November 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

This paper contained a variety of questions which received a mixed response. Candidates generally provided strong answers where the identification of legislation was required. However, candidates are reminded to consider the question carefully in order to formulate the answer and obtain higher marks. On occasions, candidates identified and explained the correct legislation relevant to a question but did not expand on this to apply their knowledge to the case study materials (CSM) (as required by the question) and therefore missed out on additional marks.

Similarly, candidates are encouraged to explain their knowledge of a subject in full, for example, when considering the order of priority, higher marks can be obtained from showing knowledge of the source of the order of priority, as well as setting out the order or priority itself and then applying that knowledge to the case study materials.

Candidates are also reminded to consider the format of the answer, and whether this may be required in the form of a letter or draft will clause.



CANDIDATE PERFORMANCE FOR EACH QUESTION

Question 1(a)(i) Candidates generally answered this question well. Higher marks were obtained for not only identifying the rules set out by *Banks v Goodfellow* but applying them to the specific details of the CSM.

(ii) Candidates were able to outline the test for capacity. Higher marks were available for those who went on to apply the test to the case study materials.

(b)(i) The question required candidates to identify that there was no valid Will, and the reasons for this.

(ii) Candidates generally answered the question well, outlining the applicable statute and order of priority and then applying to the case facts. Take care to ensure that correct sums are used dependant on the date of death.

(c) Candidates needed to expand on their answer to obtain higher marks, especially in relation to the possibility of undue influence and the need to keep careful attendance notes, not just a letter of wish.

Question 2(a) Candidates were able to identify that form IHT400 was the correct form to make the application but did not expand enough on why this was correct in relation to the date of death and the ownership of foreign assets.

(b) Take care to identify the correct statute and not become confused between order of entitlement to the estate and entitlement to the grant. Higher marks were available for those who listed the order of priority correctly and applied this to the facts provided in the CSM.

2(c) This was answered well across the board. Take care to consider the transfer of jointly owned property.

Question 3(a) Candidates were required to identify the gifts as PETS and explain the potential tax implications should Hardeep die. Candidates should consider the use of the annual exemption, the effect any further gifts made during his lifetime may have and to identify and explain the seven-year rule.

(b) The question required candidates to identify the way in which a suitable clause of a gift to children and their issue per stirpes should be drafted for inclusion in a Will.

(c) Candidates were able to identify the benefit of including a letter of wish with a will where its contents may be contentious. Candidates should take care to ensure that suitable attendance notes are also kept, both at the time of receiving instructions and at execution, confirming that he was seen alone.

(d) Take care to use the correct format when required to answer in the form of a letter. Candidates correctly identified the need for the testator to sign in the presence of two witnesses. Higher marks were available for candidates who explained that witnesses shouldn't be beneficiaries under the Will and reminded the client not to attach anything to the Will.

SUGGESTED POINTS FOR RESPONSE

NOVEMBER 2023

LEVEL 3 UNIT 14 – PROBATE PRACTICE

Question Number	Suggested Points for Responses	Marks (Max)
1(a)(i)	<p>In order to make a valid will a person must have mental capacity. Under the test in <i>Banks v Goodfellow</i> a person must understand:</p> <ul style="list-style-type: none"> • The nature of his act and its effect (the fact that he is making a Will) • The extent of his estate • Any claims which he ought to have regard (even if he doesn't intend to make provision for those people) • In this case Colin clearly does not understand the extent of his estate <p>He is also unable to recall those whom he should consider (his wife, Abigail and his granddaughter Georgia)</p>	5
1(a)(ii)	<p>The MCA 2005 says that a person lacks capacity if he is unable to</p> <ul style="list-style-type: none"> • make a decision for himself because of an impairment of, or a disturbance in the functioning of the mind or brain • Understand information relevant to the decision • Retain that information • Use or weigh that information as part of the decision making process (• Communicate his decision • Capacity is presumed • Colin is not able to retain information relevant to the decision • His inability to understand or retain information with regards to the value of his estate and the extent of his family suggests that he is also not able to understand information relevant to the decision • And is therefore also unable to use or weigh that information as part of the decision making process 	7
1(b)(i)	<ul style="list-style-type: none"> • The will is revoked by Colin's marriage to Abigail • In accordance with Wills Act 1837 <p>A will is revoked by the testator's later marriage or civil partnership</p>	2



Question Number	Suggested Points for Responses	Marks (Max)
1(b)(ii)	<ul style="list-style-type: none"> • Without a valid Will, Colin will die intestate. • This means that the estate will be distributed in accordance with legal rules • Contained in the Administration of Estates Act 1925 • As amended by the Inheritance and Trustees' Powers Act 2014 • Abigail, as Colin's spouse, will receive a fixed sum of £270,000 (plus interest) • All of the personal chattels • 50% of the remaining estate outright • The remaining half of the estate will be divided equally between Dexter and Ewan 	8
1(c)	<ul style="list-style-type: none"> • Instructions must come directly from a client • And not a third party • Especially when a third party stands to benefit from the instructions • as this may indicate undue influence • The firm could risk a negligence claim if steps are not taken to see the client in person to take instructions • if the will is challenged at a later date <p>Colin may be considered not to have capacity to make a will in any case</p>	5
Question 1 Total:27 marks		
2(a)	<ul style="list-style-type: none"> • Form IHT400 is the appropriate form to send to HMRC • Together with an IHT421 • And supplementary pages • Together with form PA1A • Although the estate is below the IHT threshold • It is not an excepted estate • Because Remmy has foreign assets <p>And the death occurred after 1st January 2022</p>	6

Question Number	Suggested Points for Responses	Marks (Max)
2(b)	<ul style="list-style-type: none"> • A Grant of Letters of Administration • because there is no valid Will • entitlement to the grant is governed by r22 Non Contentious Probate Rules 1987 • which sets out the order of priority • there is no surviving spouse • there is no issue • there are no surviving parents • Next on the list is full-blood siblings • Mira and Nathaniel are entitled to apply for the grant 	7
2(c)	<ul style="list-style-type: none"> • Check that the Grant is correct • Register the Grant with asset holders together with authority to close accounts and transfer assets • Wait 6 months before distribution in case of I(PFD(A) claim • Publish s27 notices • Pay debts and liabilities • Pay legacies • Complete transfer of Remmy's share in 324 High Street to Steve • Prepare Estate Accounts • Distribute the residue of the estate • Close the file 	6
Question 2 Total: 19 marks		
3(a)	<ul style="list-style-type: none"> • Lifetime gifts are PET's • This means that they will be brought back into account when calculating inheritance tax on death if they were made less than 7 years before death • If Hardeep was to die in the next 7 years, the three gifts of £20,000 will be brought back into account • £3000 will be covered by Hardeep's annual exemption • Plus one year which can be carried forward • A total of £6000 may be deducted from the gifts • leaving a balance of £54,000 to be brought back into account • Reducing the NRB by that amount • If Hardeep was to survive for 7 years, the gifts would not be taken into account • Taper Relief may apply depending on the date of Hardeep's death and whether any further gifts are made prior to death • If Hardeep makes any further gifts during his lifetime, these would need to be taken into account too 	8

Question Number	Suggested Points for Responses	Marks (Max)
3(b)	<ul style="list-style-type: none"> • I GIVE the residue of my estate • After paying any debts and expenses • To such of my children Imogen Price Jasper Price and Leonie Price as survive me and attain the age of 21 years • and if more than one in equal shares absolutely • but if any such child or children shall die before me or before the age of 21 years • leaving a child or children living at or born after my death who attain the age of 21 years <p>then such child or children shall take and if more than one in equal shares such share as his her or their children would otherwise have taken had he or she attained a vested interest</p>	5
3(c)	<ul style="list-style-type: none"> • A careful attendance note should be kept of the meeting • Confirming that Hardeep has considered provision for his daughter, Sian, in his will • And that he was seen alone • A further note should be taken at the time of execution • Hardeep may also wish to include a personal note with his will, explaining to Sian why he has made the decision not to make provision for her in his Will • Sian may make a claim against the estate, but is unlikely to be successful as she is not maintained by Hardeep 	3
3(d)	<p>The answer should be set out in an easy format to follow -</p> <ul style="list-style-type: none"> • Hardeep should read over the will to check it is correct and reflects his wishes • Then he needs to make sure that there are two independent witnesses present • Who stay in the same room for the duration of signing the Will • These must not be people named in the Will, or married or in a civil partnership with anyone named in the Will • The witnesses must be over 18 • The witnesses do not need to know the contents of the Will • Hardeep should sign where indicated, in ink and date the Will • Both witnesses must see Hardeep sign • The witnesses must then sign where indicated and add their names and address • in Hardeep’s presence • The will should be returned to us <p>Care should be taken not to pin, staple or in any other way attach anything to the Will</p>	8
Question 3 Total: 24 marks		

