



CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JANUARY 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 January 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

It is important that candidates read through all of the questions in the examination paper, in conjunction with the case study, very carefully before writing their answers. This will ensure that candidates have a clear understanding of the issues being raised before beginning the paper.

It is also important for candidates to consider the number of points available for each question, which can be used as a guide as to the amount of time and detail a question requires.

Candidates would also find it beneficial to pay attention to the specific instructions set out in each question. This will ensure that the question is answered in the correct format and with the correct response. For example, if the question requires an answer in the form of a letter to a lay person, steps should be taken to ensure that a lay person would be able to understand the contents. Similarly, if the question asks candidates to explain a particular point, they should take care to answer that particular point, rather than to generalise their answer.



CANDIDATE PERFORMANCE FOR EACH QUESTION

Question 1(a)

Candidates were asked to identify the type of gift contained in the Will and to explain whether the gift would take effect and why. Candidates should take care to ensure that they recall the information provided in the case study in full and apply it to the question. In this case, a number of candidates did not note that the recipient of the gift had predeceased the testator, or that the relationship meant that s33 Wills Act was not appropriate in this example.

1(b)

This question asked candidates to consider the IHT implications of lifetime gifts. This question was generally answered well. Candidates achieving higher marks were able to demonstrate the use of the annual gift allowance and carry over from a previous year, as well as recognising that the remaining value of the gift is deducted from the NRB.

1(c)

This question asked candidates to explain the purpose of form PA1P in the form of a letter. Candidates are reminded that the question required an answer in the format of a letter to clients. It should be assumed that clients are not familiar with the forms required to apply for a grant. Higher marks could be obtained by providing more detail around the contents of the PA1P, such as checking that names and addresses are correct and identifying that Lewis was not able to take up his role as executor.

1(d)

Candidates were asked to consider which statutory notices should be published, where they should be published and the effect if the notices weren't published. This was answered well, with most candidates able to explain the reasons notices are necessary. To achieve higher marks, candidates should be aware that statutory notices should be published in the Gazette paper local to where the deceased lived, or had any business or property interests. Many candidates were able to identify that the PR's would continue to be personally liable for any debts but did not provide enough detail as to the extent of that liability.

Question 2(a)

This question specifically covered the test for capacity under the MCA. Candidates should take care not to confuse this test with the test under Banks v Goodfellow. Additional points were gained for recognising that the two tests should be used in conjunction in order to consider capacity to make a Will.

2(b)

Many candidates scored full marks on the first part of this question. Candidates should take care to be specific in relation to the gift, making it clear that it is a gift to be given in the Will, not a lifetime gift or an expression of wish. The second part of the question was generally answered well. To achieve higher marks, candidates should take care to recognise the potential for a change in name or amalgamation of a charity, to include a substitution of that charity should it have ceased to exist, and to add a receipt clause to discharge executors from their responsibility.

2(c)

Candidates were asked to consider the steps which should be taken to protect the testator, beneficiaries and firm preparing the Will. Candidates should recognise the need for keeping accurate records to protect themselves and those to whom they have a duty of care. Higher marks were awarded to those who recognised the need to follow the Golden Rule and obtain further medical evidence if in doubt.

Question 3(a)

This question required candidates to consider the validity of a Will. Candidates on the whole provided good clear answers and reasoning.

3(b)

This question asked candidates to explain the distribution of an estate on intestacy. Generally, this question was answered well, achieving high marks. Take care to recall that s46 AEA 1925 was amended by the Inheritance and Trustees' Powers Act 2014 (1) and the need for a spouse to survive the deceased by 28 days.

3(c)

The first part of the question asked candidates to consider the tax implications on any assets which came to light after a grant of probate is obtained. In some instances, the answers contained insufficient detail as to the procedure to correct the tax position.

The second part of the question asked candidates to explain the steps which need to be taken to complete the administration of the estate. A large number of candidates scored high marks in this question and were able to identify the steps which would be taken to complete the administration of an estate.

SUGGESTED POINTS FOR RESPONSE**JANUARY 2023****LEVEL 3 UNIT 14 – PROBATE PRACTICE**

Question Number	Suggested Points for Responses	Marks (Max)
1(a)	This is a specific gift To Lewis, who has predeceased Robert This means the gift fails Mark for proper terminology – Lapse And therefore falls back into residue	5
1(b)	Lifetime gifts are PETs – identify using correct terminology Go on to explain what this means: Apply 7 year rule 2013 Gift to Zac is outside the 7 year rule and is not brought back into account 2021 gifts are both within 7 years and so will be brought back into account These can in part be covered by Robert’s annual exemption which is £3,000 per year But one unused year may be carried forward so a total of £6,000 can be deducted from this gift Leaving a balance of £34,000 Which has the effect of reducing the nil rate band by that amount	8
1(c)	The form PA1P supports your application for a Grant of Probate And is needed by asset holders to release money to the estate It confirms the names and current addresses of the executors and your entitlement to apply for a grant of probate And the details of the deceased And confirms if they were known by any other name The extent of their assets and debts Including whether the estate consists of any settled land (or any other Trust) It will confirm that Lewis has predeceased and therefore cannot take up his position as executor And contains a legal statement which must be signed	6
1(d)(i)	Kimberley and Thomas should publish statutory notices (or s.27 Trustee Act 1925 notices) These appear in the London Gazette And a newspaper local to where the deceased lived, and owned a property or business Or any other place which might be appropriate in the circumstances	4



1(d)(ii)	PR's would remain liable for any debts which arise after the administration is complete They would be permanently for any debts (there is no time restraint) And they would be personally liable after the administration is complete	3
Question 1 total: 26 marks		
2(a)	The test under the Mental Capacity Act 2005 says that a person lacks capacity if he is unable to make a decision for himself Because of an impairment of, or disturbance in the functioning of the mind or brain And he is unable to - Understand information relevant to the decision, Retain that information Use or weigh that information as part of the decision making process Communicate his decision A person is presumed to have capacity This test is usually considered alongside the test in Banks v Goodfellow	6
2(b)(i)	There are a number of ways of drafting the clause – any wording will suffice as long as it is clear I give to each of my granddaughters Rosie Shah and Jasmine Shah the sum of £5,000 Provided that if either or both of them shall die before me (Leaving a child or children living at the date of my death Then such child or children shall inherit in his her or their mother's place	5
2(b)(ii)	The clause should include The full official charity name The registered address and charity number The amount of the legacy (£5,000) To be used for the general purpose of the charity A receipt clause To accept a receipt from a person appearing to be a proper officer of the named charity Permission to pay the legacy to another charity if that charity named ceases to exist... As long as that replacement charity performs a similar function as the intended beneficiary	6

2(c)	<p>Instructions must be obtained direct from the client rather than from the third party</p> <p>Meeting with the client is essential to ensure accurate instructions are obtained which reflect the testatrix's wishes and to check capacity</p> <p>arrange for medical staff to witness will if possible</p> <p>Refuse to continue acting if in doubt as to capacity or there is evidence of undue influence</p> <p>Ensure you see Serena alone</p> <p>Take a full attendance note of the meeting</p> <p>And of the execution of the will</p> <p>Check mental capacity with a written report from a doctor</p> <p>'The Golden Rule' if capacity is uncertain, get evidence</p> <p>Necessary to proceed with speed given her physical health (eg. Relevant case <u>Feltham v Bouskell</u> (2013))</p>	6
Question 2 total: 23 marks		
3(a)	<p>In order to be valid, a will must comply with the formalities set out in s9 Wills Act 1837</p> <p>The witnesses must sign in the presence of the testator,</p> <p>This is where the Will fails as Peter was not present when either of the witnesses signed the Will.</p> <p>All other formalities have been met</p>	3
3(b)	<p>Peter has died intestate</p> <p>and so his estate will be divided in accordance with the rules of intestacy</p> <p>Distribution is governed by s46 AEA 1925</p> <p>which is now amended by the Inheritance and Trustees' Powers Act 2014</p> <p>Provided Edwina survives Peter by 28 days</p> <p>She will receive all his personal chattels</p> <p>and a statutory legacy of £270,000</p> <p>The remainder is divided into two equal halves –</p> <p>one for Edwina</p> <p>One half for Joseph</p>	8
3(c)(i)	<p>Further assets which increase the value of the estate need to be reported to HMRC using a corrective account</p> <p>And any further inheritance tax liability as a result of the value of these assets needs to be paid</p>	2

3(c)(ii)	<p>Check that the grant is accurate and the correct number of copies received</p> <p>Wait 6 months before distribution should any claims be brought against the estate</p> <p>Register the grant with asset holders in order to collect in the assets</p> <p>And arrange for any sums to be paid into a client account</p> <p>Arrange the sale or transfer of assets as appropriate</p> <p>Settle any outstanding debts</p> <p>Publish Statutory Notices</p> <p>Finalise the tax position with HMRC</p> <p>And file a corrective account if necessary</p> <p>Apply for clearance from the Revenue in the form of a letter of certificate</p> <p>Arrange interim distributions if appropriate</p> <p>Settle any outstanding income tax</p> <p>Prepare estate accounts</p> <p>Arrange final distributions from the estate</p>	8
Question 3 total: 21 marks		