

CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JANUARY 2023

LEVEL 6 UNIT 21 – 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

The question paper proved to be a good test of the candidate's knowledge of the law and its application. There was a range of performances but on the whole most candidates performed well.

The question paper provided a thorough test of the candidates' knowledge of the law, and it was clear what was being asked in the questions.

Where questions were awarded more marks they required more detailed answers, and on the whole this was achieved.

Candidates seem to be surprised when they were asked to draft a letter and some people ignored this and provided a simple narrative instead.

The best answers were where candidates wrote with sufficient detail and set out their answers clearly with headings and separate paragraphs for each point.

There were situations where candidates ran out of time, and some left the answer blank which was unwise. others gave a bullet point summary.

Questions 1(a) and 2(b) were allocated 20 marks each. There were a variety of answers over all the main points and candidates took note of the level of detail which was required.

The questions required candidates to show a good knowledge of the law and to apply this to the facts as given in the case study.

The question paper required candidates to show application of a good knowledge and understanding to a range of different practical scenarios.

CANDIDATE PERFORMANCE FOR EACH QUESTION

1(a) This question had a 20-mark allocation and was answered well in general. Some answers were too brief and failed to draw any conclusions and there were also some answers where candidates did not back up what they were saying with case examples from common law or statute.

1(b) This was more of a simple factual question and was dealt with well.

1(c) Once again candidates got the main points and answered this well.

2(a) This question was more challenging as it required a good knowledge of the law and its application to the facts.

2(b) The standard of answers was mixed here.

3(a) Overall standard to the answers given was good. This was a basic tax calculation, but it was answered well. A few candidates got the calculation wrong, but some credit was given for their workings out.

3(b) As stated above this answer was very mixed. Some candidates had not read the question and simply produced a list of reminders rather than a letter. Also, most candidates showed a poor knowledge of the contents of this form even though it comes up very frequently in practice. Candidates should be familiar with its contents.

4(a) There was a range of answers for this part question. The main problem here being that the question was asking specifically about the powers of investment and how to achieve compliance and not asking about the trustees' power of advancement.

4(b) This was a question which has been asked before about protecting a personal representative when sorting out the deceased's debts. Generally speaking it was answered well.

One common error was where candidates got the name of the gazette, where the national advert should have been made, wrong. This was the London Gazette.

4(c) This was not answered very well - the question requires application of the law where a receipt for a legacy for a minor could be provided by someone with parental responsibility for the child.

SUGGESTED POINTS FOR RESPONSE

JANUARY 2023

LEVEL 6 UNIT 21 – PROBATE PRACTICE

Question Number	Suggested Points for Responses	Marks (Max)
1(a)	<p>The risks are as follows: capacity of clients, Mr Price being partially sighted, intention of the clients and proof of knowledge and approval of wills, the fact you must see them at home and not in the office and whether there is a potential claim against Mr Price’s estate as his children will not be included in his will.</p> <p>Capacity</p> <p>Physical capacity they are both over 18 and so no issues here.</p> <p>Mental capacity: there are issues here with capacity for both clients - apply the rule in <u>Banks v Goodfellow 1870</u> and the <u>MCA 2005</u> and then decide whether you need to obtain a medical report and take it from there.</p> <p>On the facts there appears to be more of an issue with Mr Price as he is not very forthcoming during the meeting, and you know he has an existing condition.</p> <p>Once you are satisfied that the report raises no concerns proceed with the matter.</p> <p>Partial eyesight</p> <p>The problem here is ensuring that Mr Price can read can approve the will that you send to him and so in him case you may well have to read it out to him to make sure it accords with his wishes.</p> <p>Credit to be given for pointing out Mr Price has problems with his eyesight and the attestation clause will need amending and 2 witnesses are required her.</p> <p>Home visit</p>	20



	<p>The problem here might be that the clients may be subject to undue influence from the carer and /or each other and so it is important that when you are taking instructions and going through the wills with them you see them alone and that you make full contemporaneous notes to record why they are including the carer and why he is omitting his children.</p> <p><u>Claim against the estate</u> Mr Price is not including his children and you should explain to him that this might leave him open to a claim by them against the estate, he should consider the alternatives for example leaving them something from his estate like a legacy. He should consider making a statement in support of his reasons for omitting them as evidence of his intentions if the matter goes to court.</p> <p><u>Responses should include</u></p> <ul style="list-style-type: none"> . Physical capacity correct assessment . Mental capacity correct assessment . How to deal with Mr Price’s eyesight . The importance of seeing the client in person initially and when signing the wills . The importance of knowledge and approval of the wills <p><u>Responses could include:</u></p> <ul style="list-style-type: none"> . Whether clients could be influencing each other . Looking at their previous wills to see whether it accords with their instructions 	
1(b)	If Mr Price remarries after her death, he can change his will if he wants in favour of his new partner and potentially omit Beatrice from his new will and Beatrice can only make a claim against his estate if she can prove that she was dependent on him and seek a maintenance order from the court	5
1(c)	As stated above you need to ensure Mr Price understands and approves the will before signing it you should also ensure there is a special attestation clause otherwise this can delay obtaining the grant of probate when he dies and the wording of the attestation clause should be that the will has been read over to him by A in the presence of B and that he appeared to understand it and it is has been witnessed by A and B and all 3 of them were present when the will was signed.	5
Question 1 total:30 marks		
2(a)	<p>Rajid’s claim is based firstly on the basis that his mother may have lacked mental capacity when she changed her will. If it is found that she lacked capacity this would render the will null and void.</p> <p>Secondly, her son qualifies as a claimant under the Inheritance (Provision for Family and Dependents) Act 1975 I(PFD)A and is entitled to make a claim for reasonable maintenance from her estate.</p>	20

	<p>We will need to prove that his mother lacked capacity when she changed her will. We will need to investigate the medical history around the time when she instructed her solicitors to prepare her new will especially bearing in mind that she was in a care home at the time she changed it.</p> <p>It is also worth considering if she might have been unduly influenced by her daughters when giving her instructions to the lawyer who prepared it. The onus is on us to prove that the will should be set aside.</p> <p>For a claim under the I(PFD)A the time limit is 6 months from the date that the grant of representation is issued but you can extend this in exceptional circumstances at the discretion of the court.</p> <p>He qualifies as an applicant under s1(1) as a child of the deceased.</p> <p>The next question is should reasonable provision be made to him?</p> <p>Firstly, he receives nothing from the will.</p> <p>Secondly, should any provision be made to him and how much. In 1(2)(b) It sets the standard as being such financial provision that would be reasonable in all the circumstances of the case for the applicant to receive for maintenance. In s3(1) this contains the common guidelines of the court. Ilott v Watson 2017 shows how these guidelines were applied in that case.</p> <p>Conclusion: Given the facts it is likely that the courts will find in his favour taking Rajid's specific personal circumstances into account and especially that he needs somewhere to live and to receive an income until he finds employment.</p> <p>Responses should include</p> <ul style="list-style-type: none"> . Will can be challenged if testatrix lacks mental capacity . Second ground is that that he shouldn't have been excluded . Time limit for the second ground . On what ground is his claim based? . Chances of success <p>Responses can include</p> <ul style="list-style-type: none"> . Grounds for extending time limit for claim . How he will finance his claim 	
2(b)	<p>The fact that her name is mis-pelt in the will won't affect its validity if you can show that this was an error, and that she is the intended beneficiary. The same applies to her address it will be a question of showing that this was her previous address.</p>	5
Question 2 total: 25 marks		

<p>3(a)</p>	<p>The tax is payable 6 months from end of the month of the date of death which is 31 July 2022.</p> <p>Lifetime Gifts £3000 - this equates to is the annual exemption no tax consequences 50000 in shares this will fall back into estate for tax purposes as gift made within the last 3 years. Deduct £6000 from the gift of shares as you are entitled to 2 years annual exemption amounting to £6000 therefore £44000 is to be added back into the estate -</p> <p>Estate on death</p> <table border="0"> <tr> <td>Gross taxable estate</td> <td style="text-align: right;">£930,000</td> </tr> <tr> <td>Less liabilities</td> <td style="text-align: right;">66,000</td> </tr> <tr> <td>Net estate</td> <td style="text-align: right;">864,000</td> </tr> </table> <p>Less:</p> <table border="0"> <tr> <td>Nil rate band carried forward from his wife's estate</td> <td style="text-align: right;">325,000</td> </tr> <tr> <td>Robert's nil rate band</td> <td style="text-align: right;">325,000</td> </tr> <tr> <td></td> <td style="text-align: right;">650,000</td> </tr> <tr> <td></td> <td style="text-align: right;">£214,000</td> </tr> </table> <table border="0"> <tr> <td>Plus, (gift of 44,000 above)</td> <td style="text-align: right;">44,00</td> </tr> <tr> <td>Taxable estate</td> <td style="text-align: right;">£258,000</td> </tr> </table> <p>Tax calculation 258,000 @ 40% is 103,200</p> <p>Response should include:</p> <ul style="list-style-type: none"> . Calculation of the gross estate . Calculation of the net estate . Calculation of the tax payable 	Gross taxable estate	£930,000	Less liabilities	66,000	Net estate	864,000	Nil rate band carried forward from his wife's estate	325,000	Robert's nil rate band	325,000		650,000		£214,000	Plus, (gift of 44,000 above)	44,00	Taxable estate	£258,000	<p>15</p>
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<p>3(b)</p>	<p>Dear Gareth</p> <p>I am now preparing the form required by the probate registry in order to obtain from them the grant of probate.</p> <p>I have completed the first page of the form as I have this information.</p> <p><u>Section A</u> Please can you supply me with your full name and postal address Your telephone number and email address.</p> <p><u>Section B</u> This section deals specifically with your brother.</p> <ul style="list-style-type: none"> . May I have his full name address and date of birth and date of death . Please confirm that he lived permanently in the UK . Was Robert legally adopted in the family and the same applies to other family members? . Please confirm his marital status you told me that he was widowed . Was there any land or property settled before they died, and which remained settled after they died . Do you know if your brother made any subsequent wills by way of a codicil or otherwise and do you know if he made a will outside the UK and whether he married or entered a civil partnership after he made the will. . Please can you give me list of all relatives that survived him and their relationship to him. <p>There now follows some questions about inheritance tax. I have completed the figures for this based on the information you have provided.</p> <p>The final part of the form is like a statement made by you and I will go through this with you before you sign it.</p> <p>Please let me know if you have any questions about this letter.</p> <p>I look forward to hearing from you soon with the information I have requested. Once this is to hand, I can finish completing the form and can then send it to you for signature.</p> <p>Yours sincerely,</p> <p>Name of trainee lawyer</p>	<p>10</p>
<p>Question 3 total:25 marks</p>		

<p>4(a)</p>	<p>There are several investment powers contained in the Trustee Act 2000(TA).</p> <p>This act imposes duties on personal representatives / trustees which apply here as the will makes no specific provision</p> <p>In this case the Trustees will need to consider powers of investment as a trust is created here in the will giving the deceased's partner a lifetime interest in her estate</p> <p>S3 Trustee Act states that the trustees (who are Kempstons) can make any kind of investment as if they were absolutely entitled</p> <p>S4 sets out the standard investment criteria</p> <p>S1 TA imposes a duty to exercise such care and skill as is reasonable in the circumstances</p> <p>S8 allows you to acquire land in the UK and when this has happened you can deal with it as if you were the owner.</p> <p>Given the facts the trustees will be well advised to seek advice from an independent financial adviser to ensure that the funds are invested in such a way as to tie in with the will and that the appropriate level of risk and diversification is achieved.</p>	<p>10</p>
<p>4(b)</p>	<p>The PR'S need to protect their position and they should be advised to make the necessary statutory advertisement to ensure that all debts and liabilities including tax have been paid otherwise they may be personally accountable. They should issue a Notice in a local newspaper where the deceased lived and in the London Gazette.</p>	<p>5</p>
<p>4(c)</p>	<p>The executors can pay the legacy to the Max's parent/guardian - there is a statutory power under the Childrens Act 1989 for them to provide such a receipt. The record will be a receipt which you will ask the parent or guardian to sign.</p>	<p>5</p>
<p style="text-align: right;">Question 4 total:20 marks</p>		