

**CHIEF EXAMINER COMMENTS WITH SUGGESTED ANSWERS**

**JANUARY 2020**

**LEVEL 3 - UNIT 14 – PROBATE PRACTICE**

**Note to Candidates and Learning Centre Tutors:**

The purpose of the suggested answers 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 2020 examinations. The suggested answers set out a response that a good (merit/distinction) candidate would have provided. The suggested answers do not for all questions set out all the points which candidates may have included in their responses to the questions. Candidates will have received credit, where applicable, for other points not addressed by the suggested answers.

Candidates and learning centre tutors should review the suggested answers 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 most important that candidates read through all the questions in the examination paper very carefully before starting to write their answers. This will ensure that they have a clear understanding of all the issues being raised before they commence their answers.

It is also important that when answering the questions, candidates should pay attention to the specific instruction set out in the question. This is relevant to ensure that the question is properly answered both in terms of content and format. Similarly, if the question asks the candidates to provide an explanation of a specific point, then they should provide the explanation for that particular point rather than give a wider answer that may be too general in nature. In particular, candidates should apply the law to the facts of the particular scenario.

Candidates should also consider the number of marks available for each part of each question. This will give some indication of how much content and detail a particular question requires. It will also give them an indication of how much time they should spend on a particular question.

Candidates should remember that this is a practical examination. As such it will often include questions requiring candidates to provide advice to clients. When giving their advice, candidates should assume that the examiner, like a client, may not have any prior knowledge of the topic upon which the advice is being sought. Therefore, although it may seem to the candidate that they are stating the obvious, it is often necessary to include as part of the advice, basic information which a candidate may take for granted.

## CANDIDATE PERFORMANCE FOR EACH QUESTION

### Question 1

This question was divided into four parts. It carried a total of 28 marks and tested the candidates' knowledge of legacies and probate procedure.

Part (a) asked candidates to explain the type of legacy contained in the Will. This was answered well, with almost all candidates obtaining all the available marks.

Part (b) asked candidates to explain which grant of representation was appropriate in this case and explain who is entitled to apply for it. Again, most candidates identified the correct form as a grant of letters of administration with the Will annexed and were able to explain why it was appropriate. However, many candidates wrongly stated that entitlement was governed by Rule 22 Non-Contentious Probate Rules (NCPR) instead of Rule 20.

Part (c) asked candidates to identify the appropriate form that should be sent to HM Revenue & Customs and explain why. Almost all candidates answered this correctly with most able to explain and apply the relevant factors for choosing this form.

Part (d) asked candidates to identify the steps needed to complete the administration. Many candidates answered this question well and achieved full marks. However, some misread the question and outlined the steps necessary to obtain the grant.

### Question 2

This question was in four parts. It carried a total of 23 marks and tested the candidates' knowledge of mental capacity and will drafting.

Part (a) asked candidates to set out and explain the tests in Banks v Goodfellow. This was very well answered with candidates able to identify the tests, although not all explained them.

Part (b) asked candidates to set out and explain the tests in the Mental Capacity Act 2005. Again, although many candidates identified the tests, not all referred to both parts under s.2(1) and s.3(1).

Part (c) asked candidates to draft the clause for the appointment of Kempstons as executors. In some instances, the answers to this question lacked sufficient detail and failed to consider all the elements required in the clause.

Part (d) asked candidates whether a clause could be included in the Will where instructions were received from a third party. Most candidates identified the fact that instructions must be taken from the client, but not all recognised the risk of undue influence.

### **Question 3**

This question was in three parts. It carried a total of 19 marks and tested the candidates' knowledge of the issues relating to validity of Wills and intestacy.

Part (a) asked candidates to explain why the Will was invalid. This was answered well, with most candidates correctly explaining why the Will was not valid and achieving all the available marks.

Part (b)(i) asked candidates to explain how the estate would be distributed. The candidates were able to identify that this was an intestacy and to explain the intestacy rules in the context of the scenario. Some candidates set out the intestacy rules without applying them to the facts, and weaker candidates failed to appreciate that the share of the child who had predeceased the intestate would pass to her children.

Part (b)(ii) asked why the estate would be distributed in this way. Again, most candidates identified that the intestacy rules applied and were able to refer to the relevant statute.

Part (c) asked candidates to identify the documents to be submitted to the probate registry. This was well answered, however weaker candidates referred to the oath rather than the statement of truth.

## **SUGGESTED ANSWERS**

### **LEVEL 3 - UNIT 14 – PROBATE PRACTICE**

#### **Question 1**

(a) This is a specific legacy to Jay. However, the gift will adeem because the necklace is no longer part of Mari's estate at the time of her death. Jay will, therefore, receive nothing and will not be entitled to the insurance monies.

(b) A grant of letters of administration with the Will annexed is appropriate because, although Mari died leaving a valid Will, there is no effective appointment of executors, because her parents have both predeceased.

Entitlement is governed by rule 20 Non-Contentious Probate Rules (NCPR) 1987. There are no residuary legatees or devisees holding in trust for any other person (category 1); therefore the second category applies, being any other residuary legatee or devisee.

The residue passes to Nicholas, and Heledd's daughters, Sioned and Tesni who are all equally entitled to apply. Only one need apply as there is no minor interest.

(c) Form IHT205 is appropriate here because the estate falls within the 'excepted estate' rules.

These rules apply here because:

- the gross estate is less than the current nil rate band for Inheritance Tax;
- there is no foreign property within the estate;
- there is no settled/trust property within the estate (i.e. there were no assets held in a trust from which Mari was receiving a benefit exceeding £150,000);
- Mari has not made any lifetime gifts or PETs;
- she has not made any gifts with a reservation;
- she was domiciled in the UK at the date of her death.

(d) There are a number of tasks that could be required when the grant has been received. Steps might include:

- Checking that the grant is correct.
- Registering the grant with the various asset holders together with authorities to close the accounts/transfer etc.
- Publishing s.27 notices.
- Paying debts and legacies once sufficient money has arrived.
- Finalising the IHT position and applying for a clearance certificate.
- Accounting to HMRC for any administration income and paying any income tax.
- Drawing up estate accounts.
- Distributing the rest of the estate.
- Closing the file and sending it to storage.

## Question 2

(a) Here, candidates needed not only to set out the common law test in Banks v Goodfellow (1870), but also to offer some explanation for each element of this test:

The testator should understand -

- The nature and effect of the act. In other words that she is making a Will and roughly what this means;
- The extent of her property. Although she does not need to know exactly what she owns, some general idea of whether she is rich or not, owns a house or not etc;
- The moral claims to which she ought to have regard. This means she ought to be able to bring to mind people who she might reasonably expect to consider as beneficiaries, even if she then decides not to include them.

(b) In order to make a valid Will a person must have mental capacity. The test under the Mental Capacity Act (MCA) 2005 provides that a person lacks mental 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 process of making that decision;
- communicate his decision.

(c) There are a number of ways of drafting these clauses – any wording provided it is clear and does the job will suffice, and there is no need to quote a known precedent. The following elements are required:

I appoint the partners at the date of my death in the firm Kempstons Manor House Bedford MK42 7AB or such other name as it may use or such other firm as shall have succeeded to and carries on its business to be the executors and trustees of this Will and I direct that no more than two such partners shall prove my Will.

A charging clause will also be required.

(d) Instructions must come from the client (Sofia) directly and a meeting should take place with her. The instructions should not come from a third party (Luciana), especially when the third party stands to benefit from the instructions, as this may indicate undue influence. Therefore, it would not be appropriate to accept the instructions from Luciana.

### **Question 3**

(a) In order to be valid, a Will must comply with the requirements of s.9 Wills Act 1837. It should be signed by the testator in the joint presence of two or more witnesses. Here, the Will fails to satisfy these requirements as Ralph has only one witness.

(b)(i) Provided Fiona survives Ralph by 28 days, she will receive all his personal chattels and a statutory legacy of £250,000. Fiona and Ralph are estranged but not divorced. The remainder will be divided into two equal halves - one for Fiona absolutely (1/2), the other to be divided equally between Ralph's children, Zack (1/4) and Teresa's daughters, Wanda (1/8) and Vera (1/8), who are entitled to Teresa's share. Aaron will not be entitled to anything.

Vera is under 18, so her share will be held on the statutory trusts until she reaches 18 or marries/enters into a civil partnership (if earlier).

(b)(ii) Ralph has died intestate so his estate will be divided in accordance with the intestacy rules. Distribution is governed by s.46 Administration of Estates Act 1925 as amended by the Inheritance and Trustees' Powers Act 2014.

(c) The following will need to be submitted:

- Statement of Truth signed by the administrator;
- Probate Summary Form IHT 421;
- Court fee.