CHARTERED INSTITUTE OF LEGAL EXECUTIVES

CHIEF EXAMINER COMMENTS WITH SUGGESTED ANSWERS

SEPTEMBER 2020

LEVEL 6 - UNIT 21 – 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 September 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

The September 2020 examination paper was a challenging paper which covered 80% of the learning outcomes in the Unit Specification. Congratulations to those candidates who passed the exam and those that did not should be encouraged and supported to re-sit. Weaker candidates showed lack of knowledge, skills and very poor preparation in some areas of the examination paper.

Any area of the learning outcomes can be covered. It was clear that some candidates had cherry picked which areas to learn and were then at a disadvantage in the exam.

General Advice to Candidates

• Prepare for at least 80% of the learning outcomes.

• Prepare thoroughly and give sufficient time for preparation. Candidates are encouraged to revise thoroughly prior to the exam. Attempt timed past papers. Plan a structure that suits but make sure there is a plan in place.

Candidates are encouraged to test their plan in their preparation.

• Read the questions thoroughly. Candidates are encouraged to manage their time particularly where questions are split into parts. Always attempt all questions. Candidates should spend less time giving background information and focus on the key points particularly if they are running out of time. If necessary, use bullet points.

• Candidates should use the reading time to carefully read, understand, select and plan the questions they are strongest in. Consider answering your strongest question first.

• Candidates should always address as many issues as they can in a structured, clear and coherent manner. Address how the law applies to the facts in the question given – if no application is given marks are lost. If writing short introductions and conclusions, where necessary, ensure they contain relevant points not already repeated.

• It is possible to get a good mark on the tax question by breaking down the question and applying the law even if the calculations are incorrect. Please ensure that you show your working for the tax calculations. Even though this is continually highlighted candidates are still failing to do this.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Question 1

This question asked candidates to interpret a will and tested their knowledge on who can take out a grant of representation. 1(b) was answered better than 1(a). If advising a client on the intestacy rules it is important to advise about statutory trusts and when they might apply. Otherwise there is a danger of distributing to the wrong people.

Question 2

This question tested candidates' knowledge on the various grounds to challenge a Will. There was nothing in the case study that indicated Section 9 of the Wills Act 1837 had not been complied with. Knowing where the burden of proof lies is essential if advising in this area. This was the best answered question. In part b, many candidates thought a will would override any nomination.

Question 3

This question looked at tax. 3(a) was answered significantly better than 3(b). 3(b) required candidates to look at the different rates of tax to be able to advise the client.

Question 4

This question looked at various areas. 4(a) was poorly answered with nearly half of candidates receiving only one or no marks. Knowing when and why a

full inheritance tax account is not required is needed to carry out the administration of estates. 4(d) was the best answer in this question.

SUGGESTED ANSWERS

LEVEL 6 - UNIT 21 – PROBATE PRACTICE

Question 1(a)

The doctrine of conditional revocation applies to Yosef's Will. The revocation of the Will by destruction was conditional on Barbara inheriting under the intestacy laws. As this condition is not, as a matter of law, satisfied then the Will has not been revoked. There is a partial intestacy as Yosef has left a valid Will, but it fails to dispose of all his property.

Barbara will receive her £30,000 legacy under the Will and the intestacy rules will apply to the undisposed of property (s.49 (1) Administration of Estates Act 1925). Part IV of the Administration of Estates Act 1925 governs who inherits under the intestacy rules. Yosef has no spouse or issue nor parents. His brothers have predeceased him without issue, and he has no brothers or sisters of the half blood. His grandparents are also likely to have predeceased. This means that any brothers and sisters of the whole blood of one of Yosef's parents or the issue of such people on the statutory trust are likely to be the first category where someone alive inherits. Otherwise any aunts and uncles of the half blood or their issue inherit.

Statutory trust means that all members of the class of relatives concerned take equally and the issue of any class members who predecease Yosef take per stirpes on attaining the age of 18 or marrying or forming a civil partnership earlier (s.47 Administration of Estates Act 1925). Illegitimate persons are treated in the same way as those born legitimate when determining entitlement (s.18 Family Law Reform Act 1987).

If there are no family alive within the above categories, then Yosef's estate passes Bona Vacantia to the crown. Barbara does not inherit under the intestacy rules as she is not a blood relative.

(b)

A grant of letters of administration with Will annexed will be required. The order of entitlement to such a grant is governed by Rule 20 Non-Contentious Probate Rules 1987. As there is no executor nor trustee of residue, the person entitled is any person entitled to a share in the undisposed of residue. As a legatee Barbara is further down the order of priority under Rule 20.

As there is only a copy of the Will available, an application needs to be made to the Probate Registry for an order allowing probate of the copy Will (Rule 54 Non-Contentious Probate Rules 1987).

The Grant is usually limited until the original or a more authentic copy of the Will is proved. An affidavit by Barbara as to the facts relating to the destruction will be needed to rebut the presumption of revocation by destruction and also an affidavit of due execution of the original Will - although this latter requirement can be waived by the Probate Registrar.

Question 2(a)

Pierre could challenge the Will on the grounds that Noel did not have mental capacity to make the 2020 Will. The common law test is <u>Banks v Goodfellow</u> (1870) and is used to determine if a person has testamentary capacity. The testator must understand that he is making a Will to dispose of property when he dies, understand the extent of his property and understand the claims to which he ought to have regard. In addition, he must not be suffering from insane delusions which affect the terms of the Will.

Noel was suffering from a delusion that he had been abandoned – which may have affected the terms of the Will (<u>Kostic v Chaplin</u> 2007). The burden of proving the existence of capacity starts with Debra and Edgar as the propounders of the Will, but where the Will is duly executed and appears rational then the court will presume capacity. Then the evidential burden shifts to Pierre to raise a real doubt about capacity. Given his father's diagnosis there should be sufficient medical evidence to raise a real doubt and therefore the burden will fall on Debra and Edgar to establish capacity.

Noel must also have known and approved the content of the Will. The burden of proving intention lies with Debra and Edgar. Usually this causes no difficulties, but here there are suspicious circumstances because Edgar prepared the Will and so Debra and Edgar will need to remove the suspicion to have the Will admitted to probate (<u>Wintle v Nye</u> (1959) or <u>Franks v Sinclair</u> (2006)). Pierre may also be able to challenge the Will on the ground of undue influence –his father may have been coerced into making a Will that he did not want to make.

(b)

There is a limit of £5,000 on friendly society nominations. The nomination must be in writing attested by one witness and made by someone over the age of 16. A nomination is not revoked by a later Will. Payment is made direct to the nominee on production of the death certificate.

Question 3(a)

The transfer of value arises on your father's death and relates to everything in the inheritance tax ('IHT') estate to which he was beneficially entitled before death.

Property passing under the Will to you:
Cash
BP Shares
90% share in Acacia Avenue

Work out value transferred:

	£	£
Cash	260,000	
BP Shares	45,000	
90% share in Acacia Avenue	380,000	
		<u>685,000</u>
Less debts		
Funeral	6,000	
Other debts	8,000	<u>14,000</u>
Value transferred	(before reliefs)	**<u>671,000</u>**

Take account of any exemptions and reliefs.

Calculate tax taking into account the appropriate rate.

The £10,000 lifetime gift to the Labour Party is exempt under s.24 Inheritance Tax Act 1984.

The gift of the business shares to you was a potentially exempt transfer ('PET') which at the time qualified for business property relief ('BPR'), but as you no longer own the shares the lifetime gift of them has become chargeable.

Deducting the £3,000 IHT annual exemption for 2016-2017 and the £3,000 for 2015-2016 means that £131,000 of your father's nil rate band is left available.

The £3000 lifetime gift to Linda is covered by the IHT annual exemption for 2017-2018.

The £250,000 lifetime gift to you was a potential exempt transfer which has become chargeable. Deducting the remaining nil rate band of £131,000 and the £3,000 annual exemption for 2018-9 means that £116,000 of the gift is now taxable at a rate of 40% = £46,400. It does not matter that you no longer have this cash.

Quick succession relief is available in relation to Herbert's inheritance from Frieda. Frieda's death was between three - four years ago and so the reduction amounts to 40% x £128,000 = £51,200. Therefore there is no tax to pay on this lifetime transfer and there is £4,800 QSR remaining which may be put against the chargeable estate.

Chargeable estate
passing under the Will: £671,000

No nil rate band is available here, as it has already been used in relation to the lifetime gifts as above.

£671,000 x 40% = £268,400

Total IHT payable on death: £268,400 - £4,800 QSR = £263,600.

3(b)

The BP Shares (as quoted shares) are qualifying investments. If sold by you as personal representative ('PR') within 12 months of the date of death for less than their market value at death, a claim can be made to substitute the lower sale price for the market price, recalculate the IHT and get a refund. It is possible to claim capital gains tax ('CGT') loss as PR, but at 20% rather than 40% - so this is not advisable and there is no information that another asset has increased in value. If you assent the shares to yourself as beneficiary, you can set the loss against any gain you have made in a personal capacity in relation to your other assets. Losses are first set against gains of the current tax year and unused losses can be carried forward. In this instance, it would appear to be better to claim the IHT refund on behalf of the estate, as your personal CGT rate will be only 20% or 28%, compared to a 40% rate for IHT.

Question 4(a)

To be a low value excepted estate, there must be no liability for IHT (because the gross value of the estate does not exceed the ordinary nil-rate band - £325,000). No account is taken of any available Residence nil-rate band ('RNRB').

The gross value of Quentin's estate includes his share of jointly owned assets, specified transfers and specified exempt transfers. If there are trust assets they must be in a single trust and their gross value must not exceed £150,000. Foreign assets must have a gross value not exceeding £100,000. There must have been no chargeable transfers made in the 7 years prior to death, apart from specified transfers not exceeding £150,000. Quentin must have made no gifts with a reservation of benefit ('GROBs').

For the above purposes, 'specified transfers' means lifetime gifts of cash, quoted shares or securities, land and household and personal goods.

Agricultural property relief ('APR') and BPR are ignored when calculating the size of the estate.

When calculating the £150,000 limit for chargeable transfers, the following can be deducted – small gifts exemptions, annual exemptions, marriage/civil partnership exemptions and normal expenditure out of income is limited to £3,000 per year.
If Quentin had made any exempt lifetime gifts (e.g. to a spouse or charity) then their value must be added to value of estate to see if it is still below the nil-rate band.

Quentin must have died domiciled in the UK.

(b)

Hannah wishes to renounce as executor and she can do this as long as she has not intermeddled with the estate. She must do this in writing.

Hannah can disclaim her entitlement as a beneficiary under the Will. The right to disclaim is lost if she has already accepted any benefit. Hannah needs to indicate her intention to disclaim (either orally or in writing) to Quentin's PRs. Section 2 of the Estates of Deceased Persons (Forfeiture Rule and Law of Succession) Act 2011 will then apply and (as there is a Will) Hannah is treated as dying immediately before Quentin. The terms of Quentin's Will mean that Donald then inherits all of the residuary estate.

(c)

Donald is a minor and a minor cannot take out a grant. A grant of letters of administration with the Will annexed would be issued to Donald's mother, Tia. This would be a limited grant durante minore aetate (i.e. a grant with the Will annexed limited during Donald's minority). Once Donald attains majority, he must apply for a cessate grant and the original limited grant will cease. As there is a minor beneficiary, administration should normally be granted to two individuals, unless the court considers it expedient to appoint a sole administrator (it will probably not in this case as he inherits the entire

residuary estate). As there is only one parent to take a grant, if deemed necessary, Tia could nominate a person to act as co-administrator.

4(d)

As Quentin owns no Centrica shares, the PRs must purchase the shares with the estate funds or offer an equivalent cash sum to Sandra. She has been left a general legacy, as the subject matter is not distinguished in the Will from property of a similar type.

The gift to Peter is a demonstrative legacy (Ashburner v Macguire 1786) because it relates to a specified bank account. This means that the gift does not adeem even though the specified account has been closed. The gift will instead be paid out of residue.