

CHIEF EXAMINER COMMENTS WITH SUGGESTED ANSWERS

JANUARY 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 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

The January 2020 examination paper was a challenging honours level paper. 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 poor preparation in some areas of the examination paper.

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 remember to write legibly and 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. Please ensure that you show your working out for the tax calculations.

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. On the whole it was answered well with a strong performance overall in 1 (b). In 1 (a) there were a number of options open to Jonah. Many candidates forgot that if he renounced as executor, he also needed to renounce under Rule 20 NCPR.

Question 2

This question tested candidates' knowledge on insolvent estates and secured debts and was answered reasonably well. Few candidates appreciated that the funeral costs might be unreasonable.

Question 3

This question tested candidates' knowledge on admitted a copy will, dealing with an unadministered asset and receiving safe receipt to protect the executors. In 3(a) only some candidates highlighted that an order is required because only a copy of the will is available. In 3(b) it was important to highlight that it is not known if grants of probate were taken out to allow the chain of representation and if they were not the necessity of a grant of letters de bonis administratis with will annexed. In 3(c) it was important to protect the executor from any claims by getting safe receipt.

Question 4

This question looked at inheritance tax and the lack of an attestation clause. In question 4(a) candidates did better than in recent papers. The house was a gift with reservation of benefit and then became a potential exempt transfer. It is important not to add the house to the death estate – it has already been gifted and will be taxed before the estate passing under the will. 4(b) was answered well although some candidates went off on irrelevant tangents.

SUGGESTED ANSWERS

LEVEL 6 - UNIT 21 – PROBATE PRACTICE

Question 1(a)

Jonah may feel well enough to take out the Grant of Probate himself. However, it is unlikely that he will live long enough to administer the estate. If he dies leaving a Will, his executor can finish administering the estate without needing to take out a further grant, as there will be a 'chain of representation'.

Jonah could appoint an attorney to take out the grant of letters of administration with Will annexed on his behalf, but on his death the grant ends.

Jonah could renounce both his role of executor and his entitlement under r.20 Non-Contentious Probate Rules 1987 ('NCPR 1987'). Since his residuary interest is vested, he needs to renounce both roles and then any of the legatees could apply for a grant of letters of administration with Will annexed. This is the best option given his health.

(b)

The £100,000 gift to Colin is a vested gift as there is no age contingency. As he survived Ali the £100,000 passes to Colin's father Tim under the intestacy rules which will apply to Colin's estate.

We do not know if Barbara Patel prepared the Will. If she did, then this gives rise to suspicious circumstances and evidence will be required of Ali's knowledge and approval of the clause leaving a substantial amount to Barbara, in order to remove the suspicion (Wintle v Nye (1959)) or Ali may have obtained independent legal advice. If the suspicion cannot be removed, then this gift fails and falls into residue.

The £500 goes to Oliver Kobe because he is the holder of the office of Mayor at the date of death.

All the jewellery falls within the gift to the brother's wife. This is because of s.24 WA 1837, which provides that (unless there is a contrary intention) the Will speaks and takes effect as if it had been executed immediately before Ali's death. Zoe receives the jewellery because she was the first person to fulfil the description of being the wife of Zack.

Donna's two children and also the twins (once born) receive £50,000 each. The class closed when Ali died, and any future children will not receive anything.

£500 goes to Jane as the eldest child. Sue's date of birth for this purpose is the date of her adoption, so although she is treated as a child of Fatima, she is deemed to be the youngest.

The gift of the car fails and falls into residue. This is because the beneficiary (or object) is uncertain as the Will does not specify which godchild is to receive the gift and the executor cannot choose.

The gift of the house fails and falls into residue because the recipient is an illegal organisation. The gift cannot therefore take effect because it is for purposes which are illegal.

Jonah is entitled to all of the income of the residuary estate until his death. As Ester had no children when Ali died the class will not close until Ester's death and at that point Ester's children will share the residue of the estate.

If Ester dies without having children, then there will be a partial intestacy after both her and Jonah's deaths in relation to the residuary estate.

Question 2(a)

Barclays could rely on their security and not prove the debt. By relying on the security, they enjoy priority over all other debts.

They could realise the security by selling the house and if this does not cover the debt (albeit unlikely on the facts in this case), they could prove for the balance as an unsecured creditor.

They can value the security and prove for any balance as an unsecured creditor

They can surrender the security and prove for the whole of the debt as an unsecured creditor.

Overall, the most likely option is that they will rely on the security they enjoy, as that means they will have priority over all other debts of the estate.

(b)

After secured creditors are paid funeral, testamentary and administrative expenses generally take priority over other liabilities. Therefore the £200 to the solicitor, and the executor's £303 and £112 expenses will be paid.

However, only reasonable funeral expenses are allowed and £15,000 might not be assessed to be reasonable.

The statutory bankruptcy order applies no matter how the estate is administered. The order of entitlement is laid down by the Insolvency Act 1986.

The first category is preferential debts. The accrued holiday pay to Gail Smyth of £1500 is in this category. £800 of the £2,000 owed to Gail for work done in the last four months is also in this category.

The next category is ordinary debts – these are all other debts which are not deferred. These will include:

- £1200 for Gail in respect of the balance of her unpaid wages
- £1500 for Qimat as the work was done more than 4 months ago
- Bank loan and Credit card
- Personal Injury Award

As there is not enough money to pay all the ordinary debts they will be paid proportionately.

No interest will be paid on any of the debts from the date of death as there are insufficient funds to do so.

The next category is deferred debts. As Petra is a spouse at the date of death her loan is a deferred debt. It does not matter that Leo wanted her paid first. There is no money for Petra as there are insufficient assets to pay the ordinary debts.

Question 3(a)

An application must be made to the Registrar for an order allowing probate of the copy Will – r54 NCPR 1987. The grant will usually be a limited grant, limited until the original Will is proved. The application must be accompanied by an affidavit of facts to show the Will was in existence and unrevoked on Sienna's death, an affidavit of due execution of the Will and the copy Will.

(b)

If Bob and Pinny both took out grants of probate, then under section 7 Administration of Estates Act 1925 a chain of representation exists and Pinny can sign the paperwork to vest the property in Sienna's name.

We don't know if both Bob and Pinny took out grants of probate. If grants were not taken out, then an application for a grant de bonis non administratis of Andrew's estate will be needed to deal with the property. This is because his executor Bob is dead, and his estate is not fully administered. It will be a grant de bonis non administratis with Will annexed. Rule 20 NCPR 1987 states the order of entitlement and it will be Nelson as the personal representative of the deceased residuary beneficiary (Sienna) that will be entitled to apply.

(c)

The piano can be transferred by manual delivery or assent. The assent does not need to be in writing but given that Zoe is awkward it is safer and more sensible to have the assent in writing.

Ursula cannot give a valid receipt for the jewellery as she is a minor and there is no provision in the Will allowing her to give a receipt as a minor.

Under ss.3 and 5 of the Children Act 1989 parents with parental responsibility are entitled to receive property on their children's behalf if they are absolutely entitled and can therefore give a valid receipt.

If Ursula's parent(s) cannot give a valid receipt, then Nelson could hold the jewellery himself until Ursula is 18 or appoint trustees to receive and hold the jewellery under s.42 Administration of Estates Act 1925 ('AEA 1925').

The bank accounts are transferred by written instructions to the bank accompanied by the grant of probate. The usual practice is to request that the account is closed, and the funds transferred to the personal representative's account. It can then be transferred to Zoe or a cheque raised to pay her.

The house – under s.36(4) AEA 1925. Both Pinny and Nelson need to sign written assents. As the property is registered the assents need to be on Form AS1.

Section 41 AEA 1925 allows Nelson to appropriate the BP shares to David as long as no specific beneficiary is prejudiced. However, the appropriation must be at the value at the date of appropriation rather than death.

Question 4(a)

Property passing under Will:
88 Montpelier Road Peterborough – Flat - £500,000
Cash - £1,000,000
Lloyds Bank shares £20,000

Value transferred: £1,520,000.

Lifetime gift of £50,000 to NPS is exempt as it is a charitable gift and also over 7 years old.

As the trust was created less than 7 years before Tomsk's death and was a chargeable transfer there is a retrospective charge at 40% (with credit being given for the tax paid).

The total loss to his estate was £500,000.

NOTE – if he had wanted the trust to have full £500,000 then the tax he paid would need to be grossed up (this is beyond the scope of this unit).

$£500,000 - £331,000 = £169,000$

$£169,000 \times 40\% = £67,600$

As the trust was created between 3-4 years before death, taper relief is available – this means the liability is reduced to 80% of the tax due

$£67,600 \times 80\% = £54,080$

Tax already paid: $£54,080 - £33,800 = £20,280$ additional tax now payable on the chargeable transfer into the trust.

The additional tax is payable by the trustees of the trust.

The gift of the house was originally a gift with reservation of benefit as Tomsk paid no rent and carried on living in the property. It became a potentially exempt gift (PET) 8 weeks ago, when he started paying rent, but which has now become chargeable as his death makes it a failed PET.

$£500,000 \times 40\% = £200,000$ tax payable on the gift of the house.

The tax is payable by Xena as the recipient of the gift.

NOTE – No annual exemption available when became a PET (this is beyond the scope of this unit). Students not penalised for cumulative error.

10% of Tomsk's estate goes to charity, so the IHT estate rate is 36% for the assets passing under the Will.

Tax on estate = $£1,368,000 \times 36\% = £492,480$ tax payable on the assets passing under the Will.

This tax is payable by Winnie as executor and is paid out of the non-exempt portion of the residue.

If Xena and/or the trustees do not pay their share of the inheritance tax within 12 months, Winnie as executor has a secondary liability to pay their share of the tax.

Question 4 (b)

As there is no attestation clause there is no presumption that the Will was duly executed. Under r.12 NCP 1987 an affidavit of due execution therefore needs to be given by either Robert Ball or Mandy Ball as the witnesses to the Will. If they are both dead, cannot be traced or refuse to give evidence, then Rula could give an affidavit as she was present when the Will was signed.