

**CHIEF EXAMINER COMMENTS WITH  
SUGGESTED ANSWERS**

**JANUARY 2021**

**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 2021 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**

Generally, the candidates performed well, and the overall results were pleasing. I have identified what the candidates did well and less well for each question in the next section.

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**

Part(a)(i) asked the candidates to explain the legal formalities for valid execution of a will. This was answered well, with most candidates explaining the relevant requirements in s.9 of the Wills Act.

Part(a)(ii) asked the candidates to explain why the will was not valid. All candidates correctly identified that the will had not been signed by the testator.

Part (b) asked the 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 a number of candidates failed to appreciate that the whole of the estate would pass to the civil partner because the value was below the statutory legacy.

Part (c) asked the candidates to explain the steps an administrator should take to protect the estate from unknown claims and liabilities. This was well answered with most candidates explaining the procedure and implications of publishing a s.27 Trustee Act Notice. Only a small number of candidates stated that publishing in a local newspaper would include the area in West Wales where the deceased owned property. Similarly, few referred to the fact that the PR would not be protected in her capacity as a beneficiary.

### **Question 2**

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

Part (b) asked the 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 the 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) provided the candidates with additional information and in the light of it they were asked whether a clause could be included in the will.

The candidates mostly understood the relevance and implications of this additional information and were able to explain that they could not take instructions from someone who was not their client. However very few explained the need to meet with the client to take her express instructions or to recognise the risk of undue influence.

### **Question 3**

Part (a) asked the 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 (b) asked the candidates to identify 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 probate and were able to explain why it was appropriate.

Part (c) asked the candidates to identify the documents to be submitted to the probate registry. This was well answered however not all candidates referred to the PA1P and very few referred to the requirement for two copies of the will.

## **SUGGESTED ANSWERS**

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

#### **Question 1**

(a) (i) In order to be valid, a Will must comply with the formalities set out in s.9 Wills Act (WA) 1837. This requires a Will to be in writing and signed by the testator. It must be signed or acknowledged by the testator in the presence of two witnesses and the witnesses must then sign in the presence of the testator, but do not need to sign in each other's presence.

(ii) Jessica's Will fails because the testator had not signed the Will.

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

Provided that Monica survives Jessica by 28 days, she will receive all Jessica's personal chattels and a statutory legacy of £270,000. The remainder will be divided into two equal halves - one for Monica absolutely, the other to be divided equally between Holly (who will receive her father, Eric's share on trust), Vaughan and Yasmine.

Willow, Nat and Olivia will receive nothing.

In this case, the value of Jessica's estate falls below the statutory legacy and therefore only Monica will benefit.

- (c) Monica should publish statutory notices (known as s.27 Trustee Act 1925 notices). These appear both in the London Gazette and a newspaper local to where the deceased lived or owned property. This includes the property in West Wales. These notices call for creditors and claimants to come forward within two months. They protect personal representatives against personal liability for debts and claims of which they are not aware and for which, without the notices, they would carry permanent personal liability.

## Question 2

- (a) 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.

In order to make a valid Will a person must have mental capacity.

(b)The test under the Mental Capacity Act 2005 provides that a person lacks mental capacity if she is unable to make a decision for herself because of an impairment of, or disturbance in the functioning of, the mind or brain and she 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 her 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.

Instructions should come from the client (Aisha) directly and a meeting should take place with her. The instructions should not come from a third

party (Saima). 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 Saima.

### **Question 3**

- (a) 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;
- Betty 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.

- (b) A grant of probate is appropriate because Betty died with a valid Will appointing executors. Two executors were named in the Will. Ursula has predeceased Betty. The surviving executor, Timothy, can take the grant.

- (c) The following will need to be submitted:

- Will of Betty Green;
- and a second copy of the Will;
- Form PA1P;
- Form IHT 205;
- Court fee.