

**CHIEF EXAMINER COMMENTS WITH
SUGGESTED POINTS FOR RESPONSES**

JANUARY 2021

**LEVEL 3 - UNIT 15 – THE PRACTICE OF LAW FOR THE ELDERLY
CLIENT**

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 2021 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 performed satisfactorily.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Question 1

This question comprised of four parts; the first part being split into two parts. It carried a total of 75 marks.

Part (a)(i) asked the candidates to set out the test in Mental Capacity Act 2005 for determining whether a person lacks mental capacity. Most candidates did not answer this question correctly and made reference to the test for capacity and not testamentary capacity.

Part (a)(ii) asked the candidates to set out the test in Banks v Goodfellow. This was not answered correctly by most candidates, again confusing the test with others.

Part (b) asked the candidates to explain why medical evidence was required. This was mostly well answered although some obvious answers were missed, and a lot of unnecessary information given instead.

Part (c) asked the candidates to identify the forms required when applying for a Deputyship Order and to explain the purpose of each of the forms. Most candidates correctly answered this question but did not achieve full marks.

Part (d) asked the candidates to explain what the Court of Protection should consider if an application for permission was made to make a statutory Will. Most candidates answered this question well but did not achieve full marks.

Overall, this question was the weakest area of knowledge with the candidates.

Question 2

This question was divided into three parts, part (c) being split into two parts and carried a total of 22 marks. The question tested the candidates' knowledge of the benefits available to an elderly client and capital gains tax.

Part (a) asked the candidates to explain the inheritance tax allowances available to spouses. Most candidates answered this question well achieving full marks. However the use of the terminology 'Spouse Exemption' was not used but the exemption described. Marks were awarded despite this and the marking scheme amended to reflect this.

Part (b) asked the candidates to explain the IHT exemptions of the lifetime gift made in the case study. Again, most candidates answered this question well with full marks.

Part (c) (i) asked the candidates to explain the difference between an EPA and an LPA. Most candidates did well in this question, and some included the answer to part (c)(ii) here instead of in part (ii). Marks were awarded despite this.

Part (c) (ii) asked the candidates to explain the circumstances when an EPA and LPA needs to be registered. Same comments as part (ii) apply to this question.

Question 3

This question was divided into three parts, part (a) being split into two parts. It carried a total of 21 marks and tested the candidates' knowledge of the Court of Protection procedure for applying for deputyship orders and Statutory Wills.

Part (a)(i) asked the candidates to list and explain how a lifetime mortgage works. Some candidates achieved the majority of the marks whilst others achieved just a few.

Part (a)(ii) asked the candidates to explain how a lifetime mortgage would be suitable for Fariba. This question was satisfactorily answered by the candidates.

Part (b) asked the candidates to explain what welfare benefit Fariba would be entitled to. Candidates' answers were limited to only one benefit. A lot of marks were missed by candidates failing to mention other benefits.

Part(c) asked the candidates to identify two other welfare benefits Fariba would be entitled to. This question was not answered very well with some candidates using incorrect terminology or stating benefits that do not apply.

SUGGESTED POINTS FOR RESPONSES

LEVEL 3 - UNIT 15 – THE PRACTICE OF LAW FOR THE ELDERLY CLIENT

The purpose of this document 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 Points for Responses 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.

Candidates and learning centre tutors should review this document in conjunction with the question papers and the Chief Examiners' reports which provide feedback on candidate's performance in the examination.

Question Number	Suggested Points for Responses	Marks (Max)
Q1a (i)	An explanation that makes reference to the following facts <ul style="list-style-type: none"> • Reference to section 1 of the Mental Capacity Act 2005. • Presumption of capacity unless the contrary established. • Two stage test. • Stage 1 asks whether a person has an impairment of disturbance of the mind or brain. • Stage 2 asks if that impairment or disturbance means that that person is unable to make a specific decision at any particular time. 	5
Q1a (ii)	An explanation of the test set out in <i>Banks v Goodfellow</i> (1870) <ul style="list-style-type: none"> • The person must understand the nature of the act. • Understand the extent of his/her property which he/she is disposing of. • Is able to comprehend the claims that can be made against his estate. • Does not suffer from any disorder of the mind. 	4
Q1b	An explanation that makes reference to the following facts <ul style="list-style-type: none"> • Reference made that Peter is suffering from memory loss. • That Peter's GP has referred him to the memory clinic. • That Peter has not yet had a diagnosis of what is causing his memory loss. 	6

	<ul style="list-style-type: none"> • That Peter did not take part in the conversations at the interview. • That Peter wants to make a substantial change to his Will. • That Dennis spoke on his father's behalf. • That instructions were not taken from Peter alone. 	
Q1c	<p>An explanation that makes reference to the Deputyship application process</p> <ul style="list-style-type: none"> • Application form COP1 needs to be sent to the Court of Protection. • COP1 provides full details of Peter's personal circumstances and the asks for details of the proposed deputies and the order being sought. • Annex Support information form COP1A. • Which contains information about Peter's financial circumstances. • Mental Capacity Assessment form COP3, • Which must confirm that Peter does not have the mental capacity to make financial decisions for himself. • Deputyship Declaration form COP4. • Which the deputies must use to disclose information about themselves and also send to the Court with the application. 	8
Q1d	<p>An explanation that makes reference to the following points</p> <ul style="list-style-type: none"> • The Court of Protection (COP) being satisfied that it is in Peter's best interest to grant permission for a Statutory Will to be made on his behalf. • Consider application of s.4 MCA 2005 when the COP determines if it is Peter's best interests to grant the permission. • Takes Peter's views into account – past and present. • Considers the reasons for the change to his Will. • The objective test applied by the COP. • Reference made to NT V FS and others (2013). 	4
Total: 27 marks		

Question Number	Suggested Points for Responses	Marks (Max)
Q2a	<p>An explanation that makes reference to the following points</p> <ul style="list-style-type: none"> • Spouse exemption. • The transferable Nil Rate Band allowance between spouses. • £325,000 is the current rate of the Nil Rate Band Allowance. • The Residence Nil Rate Band. • £175,000 is the current rate of the Residence Nil Rate Band. • Application of the allowances to the clients' estate. • Allowances are reduced by lifetime gifts made within 7 years of death. 	6

Q2b	<p>An explanation that makes reference to the following points</p> <ul style="list-style-type: none"> • Identification of gift as a Potentially Exempt Transfer. (Full name of Potentially Exempt Transfer). • That the value of the gift is split between George and Christine equally. • Explanation that if the donor / George or Christine dies within 7 years of making the gift. • The money will still form part of their estate for IHT purposes. • Although there is tapering relief • If the death is within 4 - 7 years of the gift. • The Annual Gifting Allowance of £3,000 each. • That their previous tax years' gifting allowance can be carried forward one year. • That the clients must not retain a benefit from the monies they gift away. • Any gifts out of income rather than capital are exempt. 	6
Q2c (i)	<p>An explanation that makes reference to the following points</p> <ul style="list-style-type: none"> • An EPA allows the attorney to deal with your property and financial affairs • buying and selling property • and operating your bank accounts. • But it cannot be used for making decisions about your health and welfare. • Whereas there are now two possible LPAs that can be made to cover property and financial affairs. • And health and welfare which can deal with life sustaining treatment. • Although an LPA (H&W) can only be used to make decisions if the donor has lost capacity to make those decisions. • The LPA is only valid once registered. • The LPA requires a Certificate Provider. • There is no option of appointing a replacement Attorneys in an EPA. • Whereas with an LPA there is an option to appoint a replacement attorney. • To register an EPA, notification must be given to a prescribed list of relatives. • Whereas with an LPA the donor can specify who, if anyone, should be notified on registration. • That it is no longer possible to make an EPA. 	7
Q2c (ii)	<p>An explanation that makes reference to the following points</p> <ul style="list-style-type: none"> • An EPA can be used as soon as it has been executed without being registered. • But must be registered to be used once the donor has lost their mental capacity. • LPAs can only be used once they have been registered with the Office of the Public Guardian (OPG). 	3
Total: 22 marks		

Question Number	Suggested Points for Responses	Marks (Max)
Q3a (i)	<p>An explanation that makes reference to the following points</p> <ul style="list-style-type: none"> • Lifetime mortgages are available to people over the age of 55. • The client remains the owner of the property. • and the lifetime mortgage is charged / secured on the property. • Interest on the amount borrowed is 'rolled up' / added to the amount borrowed so it does not have to be paid regularly. • Interest is charged on the amount received using drawdown option. • The capital amount borrowed is repaid when the house is sold. • or on the client's death. • or when they move out of the home. • The total amount that can be borrowed depends on factors such as the value of the home. • and the age and health of the applicant. • The loan can be taken as a lump sum. • or a drawdown facility can be used. • Taking a mortgage from an Equity Release Council member means that the client is entitled to a no negative equity guarantee. 	10
Q3a (ii)	<p>An explanation that makes reference to the following points</p> <ul style="list-style-type: none"> • She will retain ownership of her home. • It will enable her to remain in her own home. • And provide the extra money she needs. 	3
Q3b	<p>An explanation that makes reference to the following points</p> <ul style="list-style-type: none"> • Attendance allowance at the lower rate. • Provided she has needed help to look after herself / carers to come in for 6 months. • This would increase to the higher rate if she later needs help at night too. • Disabled Facilities Grant of up to £30,000 in England or £36,000 in Wales. • Small Adaptations Grant of up to £1,000. • This is a non-means tested allowance that could be available. • Pension Credit is a means tested benefit, and • The Guarantee Credit element is available to those with a low weekly income. 	6
Q3c	<p>An explanation that makes reference to the following points</p> <ul style="list-style-type: none"> • Council Tax reduction for single occupancy. • Council Tax benefit if in receipt of Pension Credit. • Winter Fuel Payment. 	2
Total: 21 marks		