

**CHIEF EXAMINER COMMENTS WITH
SUGGESTED ANSWERS**

JANUARY 2021

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 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

The January 2021 examination paper was a challenging paper which covered a broad range of learning outcomes from the Unit Specification. The paper provided a thorough and robust test of the candidates' knowledge, understanding and application of the law in practice, relevant to the different scenarios.

Congratulations to those candidates who passed the exam and those who 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.

In the examination, any part of the learning outcomes can be included. It is not possible to question spot in advance, although 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 any 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 learning, revision and recall structure that suits. 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.
- There are no marks on offer for merely repeating the question.
- Candidates should use the reading time to carefully read, understand, select and plan the questions in which they are strongest. Always consider answering your strongest question first, to get some marks in place, calm nerves and build confidence for the remainder of the paper.
- 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. At Level 6 it is not sufficient to make vague references to the relevant law. Full statutory references are necessary. If writing short introductions and conclusions, 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 for the tax calculations. Even though this is continually highlighted some candidates are still failing to do this.
- Case Study Materials are released weeks in advance of the examination. Candidates are encouraged to ensure that they thoroughly review these materials in advance of the examination; the reading time in the examination session is not sufficient to review these materials from scratch and prepare to answer the questions in the examination paper.
- Candidates are reminded that they cannot rely solely on the information contained in the Case Study Materials. The examination paper will also include questions which could not possibly be foreseen from the Case Study Materials. It is important to understand, and to be able to apply to, the questions all of the relevant knowledge required in the Unit Specification.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Question 1(a)

This question required candidates to apply the rules of intestacy under the Administration of Estates Act 1925. Many candidates answered this question well. Weaker candidates were mistaken as to the amount of the statutory legacy and did not understand the relevance of Cindy being survived by both her spouse and issue in terms of the distribution of the estate. When dealing with the statutory legacy, very few candidates referred to the addition of interest to that sum, or that the statutory legacy is paid free of tax and costs. Whilst many candidates gave correct information regarding the statutory trust, they were not credited due to a lack of reference to statutory provision and/or a failure to fully explain the circumstances in which a contingent, and subsequently a vested, interest would arise.

Many candidates appear not to appreciate that Alix had survived Cindy by one day and the consequent effect that this had on the distribution of Cindy's estate. Consequently, this had an effect on the performance of those candidates in the next question.

1(b)

This question continued to test the candidates' knowledge of the application of the rules of intestacy, now applied to the estate of Alix. Most candidates correctly identified the operation of the right of survivorship, in favour of Robert, in relation to the property 45 Quinn Road. Once again, some candidates were weak in the explanation of the statutory trust and the operation of section 47.

Those candidates who calculated the amount due to each beneficiary, net of inheritance tax, were awarded marks accordingly. Unfortunately, in calculating the tax liability, a number of candidates failed to appreciate the relevance of the value of the jointly held property.

Question 2(a)(i)

This question looked at inheritance tax. Generally, candidates were strong in calculating the loss to Harry's estate on the gift of the mirror, the availability of the charity exemption, the use of annual allowances and the calculation of the taper relief. Candidates were weaker in identifying which exemptions and reliefs were not available to Harry's estate. In particular, reference to the availability of the Residence Nil Rate Band was poor, with very few candidates making reference to the value of Harry's estate being less than £2 million.

Calculation of the tax liability was generally well handled. A number of candidates did not correctly calculate the estate rate. Most candidates appreciated the need to apportion the total tax liability between the estate and the trust fund. A number of candidates did not reference Simon's liability to pay the tax arising on the failed potentially exempt transfers.

(a)(ii)

This question was not well answered. Very few candidates had a clear understanding of the time scales involved. Many candidates were confused as

to the time scale for delivery of the IHT account and the time scale for payment of IHT, in order to keep interest charges to a minimum.

Question 2(b)

This question required candidates to advise on the rights of Harry's estate to receive the legacy given under Bill's will. This question was not answered well. Candidates needed to understand the importance of Ernie's duty to administer Bill's estate correctly; the importance of the order in which the deaths had occurred; the time frame for payment of the legacy; the addition of interest in the event of non-payment; and the remedies available to Simon as Harry's executor. Very few candidates scored highly in this question, with those who did having a full grasp of the issues involved.

Question 3(a)

This question required candidates to advise on the distribution of Katie's estate, taking account of the terms of her will and the composition of her estate at the date of death. The candidates who scored well on this question were those who took a methodical approach to setting out their advice, taking each gift/beneficiary in turn.

Many candidates were able to correctly advise on the distribution of the estate. However, they failed to support that advice by reference to, and correct application of, statutory provisions. The partial intestacy arising on the failure of the residuary gift under the will and the operation of section 33 Wills Act 1837 was often misinterpreted.

(b)

This question tested the knowledge of candidates on who can take out a grant of representation to Katie's estate. Most candidates correctly identified the need for a grant of letters of administration with the will annexed and that Rule 20 NCPR 1987 was relevant.

Many candidates were able to identify Donna as one of the persons entitled to apply to be appointed as administrator. A large number of candidates did not understand that her entitlement arose under the partial intestacy, not simply as being a person entitled to share in the residuary estate. Very few candidates made reference to section 114 Senior Courts Act 1981 regarding the need for at least two administrators to be appointed.

Question 4(a)

This question tested the knowledge of candidates on potential applications under the Inheritance (Provision for Family and Dependants) Act 1975. The candidates who scored well in this question were those who took each potential applicant in turn and applied a methodical approach to the applicants' potential rights and factors which the court would consider.

Most candidates correctly identified the potential applicants, although some candidates considered that Barbara, who had predeceased Omar, continued to have a right of claim against his estate.

Many candidates were weak on the application of the common guidelines under section 3(1) and also the additional guidelines under section 3(2)

applying to Susan and Elizabeth. Only a few candidates were able to make proper application of the law in relation to Ian's epilepsy and private school education.

Very few candidates made reference to the standard of financial provision which could be made available to any of the applicants.

Only one or two candidates noted that the court would also consider the needs and resources of the original beneficiary, Nicholas.

4(b)

This question asked candidates to set out the nature of the orders which the court could award in a claim under the I(PF&D) Act 1975. A number of candidates sought to do so by reference to each of the potential applicants identified within the question, although this was not a prerequisite of the question. Most candidates were able to identify at least two or three of the different types of orders that could be made.

However very few candidates made reference to the effective date of the order nor the fact that the order would be made against the net value of the estate.

(c)

This question was not well answered. It required candidates to advise on the most tax efficient way in which Nicholas could settle potential claims under the I(PF&D) Act 1975. Although most candidates correctly identified that Nicholas could complete an instrument of variation, very few candidates explained the conditions that would apply in order to make that variation tax efficient. In particular, candidates were weak on reference to section 142 inheritance Tax Act 1984 and the conditions regarding the period within which the variation should be signed and the fact that the variation must be entered into not for money or money's worth.

SUGGESTED ANSWERS

LEVEL 6 - UNIT 21 – PROBATE PRACTICE

Question 1(a)

The distribution of Cindy's estate will be governed by the intestacy rules (Part IV Administration of Estates Act 1925). Robert is treated as the surviving spouse and it does not matter that they have been living apart. However, he must survive Cindy by 28 days to inherit. The definition of spouse does not include cohabitants or fiancés and so John is not entitled to anything under the intestacy rules.

As both a spouse and children survived Cindy, Robert as spouse is entitled to the personal chattels absolutely. This term is defined by Section 55(1)(x) Administration of Estates Act 1925 and means tangible movable property. The Range Rover, diamond engagement ring, koi carp and household contents go to Robert. The van and dog grooming tools were used solely for business and so do not fall within the definition of personal chattels.

Robert also receives a statutory legacy of £270,000 free of tax and costs, with interest from the date of death until payment.

Robert receives one half of the remaining residuary estate.
 $£411,000 - £270,000 = £141,000$. Robert is therefore entitled to another £70,500.

Cindy's issue are entitled to the other half of the residuary estate (£70,500) on the statutory trusts Section 47 Administration of Estates Act 1925. There is no survivorship period for issue. As Alix survived Cindy Alix's estate receives £35,250.

Mia and Anna receive Daniel's share between them which is £17,625 each.

Mia and Anna's inheritances are contingent on reaching 18 or marrying or forming a civil partnership under that age. If Mia or Anna die without attaining a vested interest leaving issue then their issue will take the estate under the statutory trusts otherwise it will pass to the survivor of them.

Cindy's interest in 45 Quinn Road Lincoln passes to Robert and Alix by survivorship. There is no survivorship period.

John inherits the £5,000 in the joint bank account by survivorship.

1(b)

Alix's interest in 45 Quinn Road Lincoln passes to Robert, by survivorship, so he now owns it outright.

As Alix died intestate and was not married or in a civil partnership her estate is held for any surviving issue on the statutory trusts imposed by Section 47 Administration of Estates Act 1925. Her entire estate is held for Molly as she Alix's only issue and this is contingent on her reaching 18 or marrying or forming a civil partnership under that age. The fact that she is adopted is irrelevant.

If Molly dies without attaining a vested interest leaving issue then her issue will take the estate under the statutory trusts. If there are no such issue then the share will pass under Alix's intestacy and go to Robert as her surviving parent.

Alix's estate passing under the intestacy rules consists of £35,250 from her mother and the bank account

Question 2(a)(i)

Work out value transferred

	£	£
Cash	200,000	
33 Ash Road	150,000	
35 Shire Road	250,000	
Mirror	30,000	
Jewellery	<u>15,000</u>	
Gross estate		645,000

Less debts		
Funeral	6,000	
Other debts	3,000	
Mortgage	20,000	<u>29,000</u>
Net Value transferred (before reliefs)		<u>616,000</u>

No spouse or charitable exemption is available.

Your father has his residential nil rate band available because his estate is worth less than £2 million at the date of death and assets of some kind are "closely inherited" by you as his lineal descendant. As 33 Ash Road is worth less than the maximum residential nil rate band of £175,000 then only £150,000 available.

The gift of the mirror to you was a potentially exempt transfer which has become chargeable. The loss to his estate was £60,000. Taking off the £3,000 annual allowance for 2013-2014 and the £3,000 for 2012-2013 means that £54,000 is subtracted from your father's nil rate band (£271,000 nil rate band remaining).

The £10,000 gift to Save the Children is exempt under the charity exemption.

The £300,000 gift to you was a potentially exempt transfer which has become chargeable. Taking off the remaining nil rate band of £271,000, and the £3,000 annual allowance for 2015-2016, and the £3,000 annual allowance for 2014-2015 leaving £23,000 taxed at 40 per cent resulting in IHT of £9,200 on this gift.

You are liable for the tax on this gift.

Taper relief is available as over three years since gift to reduce the amount of IHT payable. As the transfer was made between 4-5 years before your father's death only 60% of the IHT is payable = £5,520.

The Will Trust was set before 22 March 2006 and as Harry was entitled to the income from it, he had an interest in possession and there is a charge to IHT on his death.

Chargeable transfer on Harry's death:

Harry's (net) estate (before reliefs)	£616,000
Settled Property	<u>£1,000,000</u>
	£1,616,000

No nil rate band is available as this has been used up by the failed lifetime gifts.

Take off residential nil rate band = £1,616,000 - £150,000 = £1,466,000

£1,466,000 x 40% = £586,400

Apportioning the IHT bill – the estate rate

Estate rate is £586,400 (total tax bill)
£1,616,000 (total chargeable estate)

Trust will pay $\pounds 1,000,000 \times \frac{\pounds 586,400}{\pounds 1,616,000} = \pounds 362,871.29$

You will pay $\pounds 616,000 \times \frac{\pounds 586,400}{\pounds 1,616,000} = \pounds 223,528.71$

Total tax payable = $\pounds 586,400.00$

2(a)(ii)

A personal representative has a duty to deliver the IHT account within 12 months after the end of the month in which the death occurred – 30 November 2020 or within three months of becoming personal representative if this happens later. IHT is due six months after the end of the month in which the death occurred and interest runs from that date – 31 May 2021. The requirement to pay IHT on delivery only applies to tax on non-instalment property for which personal representatives are liable.

(b)

Harry's estate is entitled to receive the legacy because there is a fiduciary duty to distribute the estate in accordance with Bill's Will. It does not matter that Harry has died before receiving the gift. A pecuniary legatee is entitled to interest from the date on which the legacy is payable. In the absence of any contrary direction in the Will a legacy is payable at the end of the executor's year. The interest payable (if not prescribed in the Will) is that which would be applied by the court. As Ernie refuses to pay then Simon needs to commence a claim under CPR Part 64. This will be a personal action against him as Bill's executor to get the court to order payment of the $\pounds 5,000$ plus interest.

Question 3(a)

The $\pounds 100,000$ gift to Zoe still takes effect although she and Katie were divorced, as they were divorced before the Will was signed so Section 18 Wills Act 1837 does not apply.

The gift of BP shares is a general legacy – it does not adeem even though no shares are owned. The personal representative must purchase the shares with estate funds or offer the equivalent cash sum to Donna.

The $\pounds 6,000$ gift to the eldest child, lapses (fails) – the gift speaks from the date of execution. The gift is construed as a gift to Xavier as he fulfilled the description at the date of the Will and he has predeceased Katie.

The gift of the life insurance to Louise adeems because the policy is already held in trust due to the lifetime transfer and therefore is not something that Katie can leave in her Will. Donna and Edward are still trustees holding it for Ursula.

The amendment of the gift to Ursula is not valid as Section 21 Wills Act 1837 applies – two witnesses are needed. As the original wording is apparent – that is decipherable by "natural means" the original amount of $\pounds 10,000$ is admitted to probate.

Hannah receives whatever jewellery Katie owned at the date of death – she does not inherit the painting nor the insurance proceeds. This is because of Section 24 Wills Act 1837 where unless there is a contrary intention the Will speaks and takes effect as if it had been executed immediately before Katie's death.

The residuary gift to Nigel lapses because he did not survive Katie. There is no substitutional provision in the Will if Nigel should predecease her and Section 33 Wills Act 1837 does not apply to the unborn baby as Nigel was not her child or remoter issue. This means that there is a partial intestacy and the lapsed residuary gift passes under the intestacy rules. Katie was not survived by a spouse, civil partner, issue or parents. As her only sibling Sienna predeceased her - Sienna's issue therefore inherit on the statutory trusts and so Donna inherits 50% as a vested interest and Tess 50 % (on attaining 18 or marrying or forming a civil partnership under that age. If Tess dies before then without issue then Donna inherits the entire residuary estate.

3(b)

An application for a grant of letters of administration with the Will annexed will need to be made as the sole executor predeceased. The persons entitled to the grant are listed in Rule 20 Non-Contentious Probate Rules 1987. Here the residue is undisposed of and Donna is one of the people entitled. Section 114 Senior Courts Act 1981 states that as there is a minor beneficiary (Tess) two administrators are needed. Donna can nominate a suitable person to act as co-administrator.

Question 4(a)

The starting point is to see if a potential applicant is in one of the categories of claimants in Section 1(1) Inheritance (Provision for Family and Dependents) Act 1975.

Susan may have a claim as a former spouse who has not remarried, but the terms of the divorce need to be checked as they may preclude an inheritance act claim.

Elizabeth may have a claim as she has been a cohabitee for the whole of the period of two years prior to Omar's death in the same house as Omar and as his wife. It does not matter that they were not sharing a bedroom or having sexual relations (Re Watson 1999).

Chris and Ian can make a claim against the estate as children of the deceased. It does not matter that they are illegitimate.

Julie has no claim as a maintained person as she was paid full consideration for her care.

A court has to first ask if the applicant's existing provision (and here the Will makes no provision other than for Nicholas) is reasonable or not. To establish this the court needs to take account of all fact and guidelines:

Common guidelines s3(1):

- Financial needs and resources of the applicant, the beneficiary (and we have been given no information about Nicholas's needs and resources) and any other applicant
- Omar's moral obligations

- The size and nature of the estate
- Conduct – including payment of Ian’s school fees
- Lifetime provision made
- Physical or mental disability of any applicant or beneficiary. Here, Ian’s epilepsy will be something that the court will take account of.

For Susan and Elizabeth, the additional guidelines apply, as detailed in Sections 3(2) and 3(2) A: the duration of the marriage/relationship, age of the applicant and the applicant’s contribution to welfare (including the nursing by Elizabeth).

For Ian the manner in which he was being or might be expected to be trained is relevant and so the cost of his private school education needs to be taken into account.

If a court decides reasonable financial provision has not been made then it considers whether provision should now be made and, if so, what form of provision.

As Omar left no spouse or civil partner then Section 1(2)(b) applies – the standard of financial provision is that which would be reasonable in all the circumstances of the case for the applicant to receive for maintenance.

4(b)

The court can make various orders and they are deemed effective from the date of death – periodical payments, lump sum payment, transfer of property, setting up of a trust, acquiring property for transfer or settlement and variation of marriage settlements.

Orders are made against the net estate.

(c)

Nicholas should sign a deed of variation and by meeting all the conditions of Section 142 Inheritance Tax Act 1984 then it is treated as if Omar and not Nicholas made the transfer of value to the claimants. The conditions are that it must be signed within two years of the date of death, be in writing and not made for money or money’s worth and contain a statement that Section 142(1) applies.