

CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JANUARY 2022

LEVEL 3 – UNIT 14 – PROBATE PRACTICE

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 2022 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

As far as examination technique is concerned, 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 most 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 student that they are stating the obvious it is often necessary to include as part of the advice, basic information which a student may take for granted.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Question 1

This question was in three parts. It carried a total of 24 marks and tested the candidates' knowledge and application of the rules relating to the administration of an estate.

(a)

Asked candidates to explain how the estate would be distributed. This was generally well answered, with most candidates demonstrating an understanding and the ability to apply the intestacy rules. A few candidates set out the intestacy rules without applying them to the facts and some referred to the NCPR, which were not relevant as this question relates to the distribution of the estate rather than the entitlement to the grant of representation.

Some candidates missed the fact that Erica was a sibling of the half blood and would therefore not be entitled to anything.

(b)

Asked candidates to explain which grant of representation would be appropriate and who would be entitled to apply for it. This was fairly well answered and where there was an overlap with (a) marks were apportioned accordingly. Most candidates identified the correct form as a grant of letters of administration. Some candidates wrongly referred to rule 20 NCPR and a missed the fact that Erica was a sibling of the half blood and would therefore not be entitled to apply.

(c)

Asked candidates to identify what 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 the relevant documents and forms.

Question 2

This question was in four parts. It carried a total of 25 marks and tested the candidates' knowledge of mental capacity and the provisions of the Wills Act 1837.

(a)

Nearly all candidates answered this correctly and were able to explain that Petra's marriage revoked her will and refer to the correct provision of the Wills Act.

(b)

Asked 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.

(c)

Required the candidates to recognise that the holiday home is jointly owned and to explain the difference between a joint tenancy and tenancy in common. Most candidates were able to do this but not all were able to explain the implications of the type of ownership for Petra's estate.

(d)

Asked candidates to explain the legal formalities for valid execution of a will. This was answered well, with most candidates both explaining and applying the relevant requirements in s.9 of the Wills Act. Weaker candidates did not include all relevant detail such as specifying that the witnesses have to sign in the presence of the testator, or that a spouse of a beneficiary should not be a witness.

Question 3

This question was in four parts. It carried a total of 21 marks and tested the candidates' knowledge of professional conduct, will drafting, Inheritance tax and the Inheritance Provision for Family and Dependents Act (IPFDA).

(a)

Required candidates to identify the fact that instructions must not be taken from a third party and that the client should be contacted directly. This was mostly well answered.

(b)

Asked candidates to draft the clause for the appointment of a gift or residue. In some instances, the answers to this question lacked sufficient detail and failed to consider all the elements required in the clause. Some candidates wrongly referred to s.33 of the Wills Act which does not apply to a gift to siblings.

(c)

Asked candidates to explain the tax consequences of the gifts made during the Testator's lifetime. There were some good answers but not all candidates identified or explained the fact that lifetime gifts are potentially exempt transfers. Most candidates had some understanding of the seven-year rule but again it was not always clearly explained or applied to the facts. Some answers were generic rather than fact specific. Not all candidates identified that the gift to charity was exempt.

(d)

Required candidates to identify the possibility of a claim under the IPFDA. Many candidates wrongly referred to s.27 of the Trustee Act, which protects PRs from unknown creditors or beneficiaries. Simon is known to the PRs.

SUGGESTED POINTS FOR RESPONSE**LEVEL 3 – UNIT 14 – PROBATE PRACTICE**

Question Number	Suggested Points for Responses	Max Marks
1(a)	<ul style="list-style-type: none"> • Adrian has died intestate so his estate will be divided in accordance with the intestacy rules. • Distribution is governed by s.46 AEA 1925 • as amended by the Inheritance and Trustees' Powers Act 2014. • In the absence of any spouse or issue, • Adrian's estate will be divided between his surviving siblings of the whole blood, • or if a sibling has died before him, to their children if they have any. • So ½ to Fiona. • The ½ that would have passed to David will pass to his children Betty and Christopher • in equal shares. • Erica will not be entitled to anything • All beneficiaries are over 18 so their share will vest 	10
1(b)	<ul style="list-style-type: none"> • A grant of letters of administration is appropriate because Adrian has died intestate. • Entitlement is governed by rule 22 NCPR 1987. • The first category applicable in this estate is 'brothers and sister of the whole blood.' • Fiona is entitled • However, Fiona may not be able to apply if she has lost capacity • In which case Betty and Christopher could apply • as the issue of any deceased brother or sister of the whole blood 	8
1(c)	<ul style="list-style-type: none"> • Following a request for HMRC reference to include on the forms, • Form IHT 400 is required • along with supplementary pages • IHT is likely to be payable because the estate exceeds the nil rate band. • The residence NRB does not apply. • Transferrable NRB may be available • and any payment of tax due, either a cheque or direct payment from a bank or building society. • Finally, form IHT421 is needed 	6
Question 1 Total:		24 marks

Question Number	Suggested Points for Responses	Max Marks
2(a)	<ul style="list-style-type: none"> • The 2014 Will is invalid. • A will is revoked by the testator's later marriage. • (S.18 Wills Act 1837) • Petra's marriage to Quentin was 2016 • Therefore took place after the date of 2014 Will. 	4
2(b)	<p>The testator should understand-</p> <ul style="list-style-type: none"> • the nature and effects 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, has a house or not etc • And the moral claims to which she ought to have regard, • Which 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. • The Testator must be free from any delusion • Provisions of the MCA 2005 should also be considered 	6
2(c)	<ul style="list-style-type: none"> • Petra and Walter were jointly left the house by Quentin • we do not know on what basis (i.e. JT or T in C). • If the house was left to them as held as tenants in common, Petra's share will pass to her estate • And ultimately to her residuary beneficiaries (Rita and Serena). • If it is held as beneficial joint tenants, then it will pass to Walter automatically on Petra's death and will not form part of her estate. 	5
2(d)	<ul style="list-style-type: none"> • Petra should read the Will and check it is correct and reflects her instructions. • She then needs to make sure that two adult witnesses are present • The witnesses must not be beneficiaries named in the Will • or married/civil partners to the beneficiaries named in the Will. • Petra then signs • and dates the Will in ink. • The witnesses must see Petra sign the Will. • Each witness then signs where indicated and adds their name and address. • In the presence of Petra • The Wills Act 1837 (Electronic Communications) (Amendment) (Coronavirus) Order 2020 • Enables witnesses to be present by video • The testator and witnesses must have a clear view of each other and sign the same document • Return will to be checked 	10
Question 2 Total:		25 marks

Question Number	Suggested Points for Responses	Max Marks
3(a)	<ul style="list-style-type: none"> • Instructions must come from the client directly not from a third party • Mr Andrews must contact Dev Patel directly • to confirm that the letter accords with his wishes • Credit any other valid points eg. ID 	3
3(b)	<ul style="list-style-type: none"> • after payment of my debts, funeral and testamentary expenses, • I give to my Brother Vihaal Patel • and my sister Fazia Chabra • the residue of my estate in equal shares • provided that if either predeceases me • then their child will inherit their share • and if more than 1 in equal shares absolutely. 	7
3(c)	<ul style="list-style-type: none"> • Lifetime gifts are potentially exempt transfers (PETs). • This means that they will be brought back into account when calculating inheritance tax on death if they were made less than 7 years before the date of death. • In this case the gift to Krishna is outside the 7-year rule so will not be brought back into account. • The gifts to Arjun and Rohan are within 7 years • but will be covered by Dev's annual exemption of £3,000 per year • and one unused year may be carried forward, • This has the effect of reducing the nil rate band by that amount • Gifts to local charities are exempt so no IHT is payable on them 	9
3(d)	<ul style="list-style-type: none"> • If there is a risk of any claims under the IPFDA executors should wait six months from the issue of the grant before distributing • If they do so they will be protected from personal liability 	2

Question 3 Total:

21 marks