

CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES**JANUARY 2022****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 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

Overall, the candidates showed a good level of understanding of the areas of law covered in all the questions.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Question 1 - This question comprised of three parts, the five parts and carried a total of 26 marks.

(a)

Asked about the nature of lifetime mortgages. This question was answered well by most of the candidates.

(b)

Asked candidates to provide two advantages of a lifetime mortgage. This was answered well by most candidates

The answers to (a) and (b) crossed but marks were awarded.

1(c)

Asked candidates to give example of two welfare benefit available and whilst most mentioned Attendance Allowance, the majority did not get full marks. Reference was made to disabled facilities grant which was not in the mark scheme.

(d)

Asked candidates to explain the process of registering an EPA. This was mostly well answered although some obvious answers were missed, and a lot of unnecessary information given instead.

(e)

Asked candidates to explain what the attorneys can do once the EPA has been registered. Most candidates correctly answered this question.

Overall, this question was the answered well by the candidates.

Question 2

This question was divided into two parts and carried a total of 14 marks. The question tested the candidates' knowledge of Statutory Wills and Living Wills.

(a)

Asked candidates to explain what the Court of Protection will look at when considering an application for a Statutory Will. The candidates answered this question well but not all made reference to the case or statute in the MS.

(b)

Asked candidates to explain the nature of a Living Will. Most candidates answered this question well and some gave additional information to qualify for an extra mark under the marking scheme or other relevant point.

Overall, this question was the answered well by the candidates.

Question 3

This question was divided into five parts and carried a total of 30 marks. The question tested the candidates' knowledge on a variety of the Learning Outcomes of the Unit Specification.

(a)

Asked candidates to explain the Capital Gains Tax. Most candidates scored highly in this question but not all the marks were awarded.

(b)

Asked candidates to consider the tax on lifetime gifts. Most candidates scored highly in this question.

(c)(i)

asked candidates to explain the non-tax disadvantage of the gift. Most recognised it was a deprivation of asset but only one mentioned the other marks.

(c)(ii)

Asked candidates to explain the tax disadvantage of the gift. Most recognised it was a GROB but no reference was made to CGT.

(d)

Asked candidates to explain the difference between PALPA and HWLPAs. That that were familiar with LPAs answered the question well.

(e)

Asked candidates to set out the test in Banks v Goodfellow. This was not answered correctly by most candidates who omitted at least one of the stages of the test relating to the disorder of the mind.

SUGGESTED POINTS FOR RESPONSE

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

Question Number	Suggested Points for Responses	Max Marks
1(a)	<ul style="list-style-type: none">• Lifetime mortgages are available to people over the age of 55.• 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.	8
1(b)	<ul style="list-style-type: none">• Margaret retains ownership of her home• Margaret can continue to occupy the property• It provides Margaret with the capital she needs to update her home	2
1(c)	<ul style="list-style-type: none">• Council Tax single occupancy reduction• Winter fuel payment• Attendance Allowance if Margaret's care needs become worse	2

1(d)	<ul style="list-style-type: none"> • The EPA is registered with the Office of the Public Guardian • Completing application form EP2PG • Margaret must be served notice of the registration application • At least three other relatives must also be notified • Notices are served using forms EP1PG • Margaret's brother must be notified • Margaret's grandchildren must be notified • Sarah does not need to notify herself but will count towards the three people to be notified • Application form and original EPA sent to the OPG/Court • With registration fee 	8
1(e)	<ul style="list-style-type: none"> • Sell Margaret's property • Buy property for Margaret • Access Margaret's bank accounts • Spend Margaret's money on Margaret • Make all financial decisions for Margaret • Make gifts on Margaret's behalf which Margaret made herself 	6
Question 1 Total:		26 marks

Question Number	Suggested Points for Responses	Max Marks
2(a)	<ul style="list-style-type: none"> • The Court of Protection (COP) must be satisfied that it is in Margaret's best interest to grant permission for a Statutory Will to be made on her behalf. • As defined in s.4 MCA 2005 • Takes Margaret's views into account – past and present. • The objective test applied by the COP. • In establishing whether it would be in Margaret's best interest to allow a Statutory Will to be made for her • Reference made to NT V FS and others (2013). 	4
2(b)	<ul style="list-style-type: none"> • An advance decision is legally binding • An advance decision sets out the person's wishes about the kind of medical treatment they wish to receive should they not have the capacity to express their views at a later date • An advance decision allows one to refuse any medical treatment • Must be made when of sound mind • To take effect when of unsound mind • The advance decision need not be in writing • unless the decision is to refuse life-sustaining treatment which must be in writing • Advance decisions cannot promote or facilitate suicide or euthanasia or • refuse basic care, such as warmth and shelter • refuse food and drink by mouth • demand care the doctors consider inappropriate 	10
Question 2 Total:		14 marks

Question Number	Suggested Points for Responses	Max Marks
3(a)	<ul style="list-style-type: none"> • Capital Gains Tax is payable on the net gain. • The gain is the difference between the sale price and the purchase price. • The net gain divided between Michael and Sarah at the higher or lower rate if they are basic or higher rate tax payers and no longer at top slice of their incomes • They can deduct incidental costs from the gain such as estate agents or and solicitors fees • They can claim their annual exemptions on the gain. • Reference to the rate of tax as 18% or 28% for residential purposes. 	6
3(b)	<ul style="list-style-type: none"> • Identification of gift as a Potentially Exempt Transfer. • Explanation that if Michael or Sarah die 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 3 - 7 years of the gift. • The Annual Gifting Allowance of £3,000 each. • That their previous tax years' gifting allowances can be carried forward one year. • That the clients must not retain a benefit from the monies they gift away. 	6
3(c)(i)	<ul style="list-style-type: none"> • The gift will be subject to the deprivation of asset rules. • Judith will have no security to continue living in the property • The asset will belong to Sarah • And lost if she got divorced • Or became bankrupt 	3
3(c)(ii)	<ul style="list-style-type: none"> • The gift will be a Gift with Reservation of Benefit for Inheritance Tax purposes • The transfer is a deemed disposal for Capital Gains Tax • Meaning that CGT is payable on any gain in value from purchase price and value at date of transfer 	3
3(d)	<ul style="list-style-type: none"> • A Property & Affair LPA allows the attorney to deal with property and financial affairs • Including buying and selling property • and operating bank accounts. • A Health & Welfare LPA allows decisions to be made regarding medical treatment • As well as all welfare decisions • Including life sustaining treatment. • The health and welfare one can only be used if the donor has lost capacity to make those decisions. • The Property & Affairs LPA can be used with the donor's consent • And if the donor loses capacity • The LPAs are only valid once registered • The LPAs require a Certificate Provider • There is an option to appoint replacement attorneys. • Attorneys can be appointed to act jointly or jointly and severally 	8

	<ul style="list-style-type: none"> • The donor can state preferences and instructions about the use of the LPAs 	
3(e)	<ul style="list-style-type: none"> • Judith must understand the nature of the act. • Understand the extent of her property which she is disposing of. • Be able to comprehend the claims that can be made against her estate. • Not suffer from any disorder of the mind. 	4
Question 3 Total:		30 marks