

CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JUNE 2021
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 June 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

It is 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.

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 student may take for granted.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Question 1

This question was in three parts. It tested the candidates' knowledge of mental capacity and will drafting.

(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.

(b)(i)

Asked the candidates to explain what provisions should be included in the will for the blind testator. This was generally well answered with most candidates recognising the need to amend the attestation clause.

(ii)

Asked the candidates to explain the execution of the will. Again, this was well answered.

There was some overlap between (i) and (ii) and marks were apportioned accordingly.

(c)

Asked the candidates to identify the key points that should be included in the clause in the will leaving a gift to charity. On the whole the answers to this question were good however some lacked any detail beyond the name, address and charity number.

Question 2

This question was in three parts. It tested the candidates' understanding of testamentary provisions and procedure when receiving a grant of representation.

(a)

Asked the candidates to explain the type of legacy contained in the will and whether it would take effect. This was answered well, with almost all candidates recognising that the gift would fail and explaining why. Many candidates obtained all the available marks.

2(b)

Asked the candidates to explain which a 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 the fact that the surviving executor was able to apply for it. Weaker candidates failed to identify that there was a surviving executor, opting instead for a grant of letters of administration with the will annexed.

Many went on to discuss renunciation and the non-contentious probate rules (NCPR) which were not relevant to this question.

(c)

Asked the candidates to identify seven steps to complete the administration of the estate. This was very well answered with many candidates scoring high marks.

Question 3

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

(a)(i)

Asked the candidates to explain how the estate would be distributed. Whilst this was well answered, many candidates missed that this was a partial intestacy although they understood that the intestacy rules applied. Some candidates set out the intestacy rules without applying them to the facts. Again, 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.

(ii)

Asked the candidates to explain why the estate would be distributed as per (a)(i). This was fairly well answered with some overlap between (i) and (ii) where marks were apportioned accordingly.

(b)

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.

(c)

Asked the candidates to identify the documents to be submitted to the probate registry. This was well answered.

SUGGESTED POINTS FOR RESPONSES
LEVEL 3 – UNIT 14 – PROBATE PRACTICE

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 June 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	Max Marks
Q1(a)	<p>The testator should understand -</p> <ul style="list-style-type: none"> • The nature and effect of the act • That she is making a will and what this means; • The extent of her property. • Not exactly what she owns but some general idea of whether she is rich or not. • The moral claims to which she ought to have regard. • Be able to bring to mind people who might reasonably expect to benefit even if she then decides not to include them. 	6
Q1(b)(i)	<ul style="list-style-type: none"> • Intention (Knowledge and approval) not presumed • Because Testator is blind • attestation clause should be included • stating that they are blind • that the will has been read out to them before signature • That Testator approved the contents of the will 	6
Q1(b)(ii)	<ul style="list-style-type: none"> • Before signing the will, it must be read out to the Testator • by someone independent • to ensure that T understands and approves the content • The witnesses should be present when the Will is read out to the Testator • The Testator/client should be seen alone 	4
Q1(c)	<p>The Clause should contain the following:</p> <ul style="list-style-type: none"> • Full name • and address of charity; • charity number; • a receipt clause by the person appearing to be the treasurer, secretary or other officer; • If charity ceases to exist permission for executors to pay the legacy to any other charity of their choice which performs similar functions to the intended beneficiary. 	6

	<ul style="list-style-type: none"> • If charity amalgamates/changes its name gift should be paid to the new charity. • Gift stated to be for general charitable purpose. 	
Question 1 Total: 22 marks		
Question Number	Suggested points for responses	Max Marks
Q2(a)	<ul style="list-style-type: none"> • This is a specific legacy to Gina. • The gift is void. • Gina witnessed the will. • As a beneficiary she should not witness the will • a witness cannot benefit from a will he has witnessed under • S15 Wills Act 1837 • Gift valid if more than 2 witnesses 	6
Q2(b)	<ul style="list-style-type: none"> • A grant of probate is appropriate • because Alice died with a valid will • appointing executors. • Two executors were named in the will. • One has predeceased. • The surviving executor Gina can take the grant. • The fact that Gina witnessed the will does not invalidate her appointment • one executor can act even though there is a minority- Louisa 	8
Q2(c)	<ul style="list-style-type: none"> • Checking that the grant is correct. • Registering the grant with the various asset holders together with authorities to close the accounts/transfer etc. • Publishing s.27 Trustee Act 1925 notices. • Paying debts and legacies once sufficient money has arrived. • Accounting to HMRC for any administration income and paying any income tax. • Drawing up estate accounts. • Distributing the rest of the estate. 	7
Question 2 Total: 21 marks		

Question Number	Suggested points for responses	Max Marks
Q3(a)(i)	<ul style="list-style-type: none"> • Tina has a valid will • The residuary beneficiary has predeceased • Callum will receive a gift of £500 • Yolande will receive a gift of £500 • The residue will be distributed in accordance with the intestacy rules • Tina has no spouse or issue • Tina's parents have predeceased • The next category are her siblings • The residue will be divided into thirds • 1/3 to Richard • 1/3 to Ian • 1/3 to Callum • because Barrie has predeceased 	10
Q3(a)(ii)	<ul style="list-style-type: none"> • The Will is valid so the specific gifts will take effect. • The residue of Tina's estate will be divided in accordance with the intestacy rules. • This is a partial intestacy because the residuary beneficiary has predeceased • Distribution is governed by s.46 AEA 1925 • as amended by the Inheritance and Trustees' Powers Act 2014. • Tina's step-children will receive nothing 	5
Q3(b)	<ul style="list-style-type: none"> • Form IHT205 is appropriate here • Because the estate falls within the excepted estate rules. • The gross estate is less than the current nil rate band for IHT. • There is no foreign property within the estate. • There is no settled/trust property within the estate. • Tina has not made any lifetime gifts or PETs. • She has not made any gifts with a reservation of benefit • She was domiciled in the UK at the date of her death. 	8
Q3(c)	<p>List the following</p> <ul style="list-style-type: none"> • PA1P • Original Will • 2 x copies of will • IHT205 • Court fee 	4
Question 3 Total: 27 marks		