

CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JUNE 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 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

The overall performance of the candidates was good. All of the candidates passed the examination.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Question 1

This question comprised of three parts, the third part being split into three parts.

Part (a) asked the why they believed medical evidence on Mary's mental capacity should be obtained. This question was answered well by most of the candidates.

Part (b) asked the candidates to set out the test in Banks v Goodfellow. This was not answered correctly by the most candidates who omitted the fourth stage of the test relating to the disorder of the mind.

Part (c)(i) asked the candidates to explain the powers an attorney has under a Property & Affairs Lasting Power of Attorney. This was mostly well answered

although some obvious answers were missed, and a lot of unnecessary information given instead.

Part (c)(ii) asked the candidates to explain the powers an attorney has under a Health & Welfare Lasting Power of Attorney. This was mostly well answered although some obvious answers were missed, and a lot of unnecessary information given instead.

Part (c)(iii) asked the candidates to explain when the attorneys can exercise the powers under both types of LPAs. Most candidates correctly answered this question.

Overall this question was the answered well by the candidates.

Question 2

This question was divided into three parts, part (a) being split into three parts. The question tested the candidates' knowledge of home reversion plans, the benefits available to an elderly client and inheritance tax.

Part (a) asked the candidates to explain what a home reversion plan is and the advantages and disadvantages. The candidates answered this question well but some of the answers were given in the wrong sub sections but the marks will still awarded.

Part (b) asked the candidates to explain the which welfare benefits Denzil would be entitled to. Most candidates answered this question well and some made reference to local authority contribution towards their care costs which did not carry any marks.

Part (c) asked the candidates to explain the Inheritance Tax implications for Denzil's estate if he died within seven years or giving his property to his daughter.

Most candidates did well in this question and some included information about transferable nil rate band allowances and residence nil rate band allowances which did not carry marks.

Question 3

This question was divided into three parts. It tested the candidates' knowledge of Capital Gains Tax, the Court of Protection procedure for applying for a Statutory Wills and registering an Enduring Power of Attorney.

Part (a) asked the candidates to explain the Capital Gains Tax consequences for Ahmed and his wife if they sold their rental property. Most clients scored highly in this question.

Part (b) asked the candidates to explain the principles the Court of Protection will apply when considering a Statutory Will for Ahmed. Three candidates scored highly in this question whilst four of them achieved low marks. This may be an area which they found hard on the course.

Part (c) asked the candidates to explain the procedure for registering an EPA. This question was answered well.

SUGGESTED POINTS FOR RESPONSES LEVEL 3– UNIT 15 - THE PRACTICE OF LAW FOR THE ELDERLY CLIENT		
<p>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.</p>		
Question Number	Suggested points for responses	Max Marks
Q1(a)	<ul style="list-style-type: none"> • Reference made that Mary is suffering from memory loss. • That Mary has been referred to the memory clinic. • That Mary has not yet had a diagnosis of what is causing her memory loss. • That Mary did not take part in the conversations at the interview. • That Sally has mentioned that Mary wishes to make a substantial change to her Will. • That Sally spoke on Mary's behalf. • That instructions were not taken from Mary. • Mary's advanced age and frailty could mean she is on medication that could affect her capacity. 	6
Q1(b)	<ul style="list-style-type: none"> • Mary must understand the nature of the act. • Understand the extent of her property which she is disposing of. • Is able to comprehend the claims that can be made against her estate. • Does not suffer from any disorder of the mind. 	4

Q1(c)(i)	<p>Under a Property and Financial Affairs LPA an attorney can:</p> <ul style="list-style-type: none"> • buy and sell property on behalf of the donor, including the donor's home. • operate the donor's bank accounts. • invest the donor's savings. • pay for medical or residential care for the donor. • make small gifts the donor would have made. • unless the donor has placed any restrictions on these powers in the LPA. • any other relevant power 	5
Q1(c)(ii)	<p>Under a Health and Welfare LPA an attorney can:</p> <ul style="list-style-type: none"> • Decide where and with whom the donor should live. • decide who the donor may have contact with. • deal with the donor's personal (rather than financial) correspondence. • consent to or refuse medical treatment. • including to refuse consent to life sustaining treatment. • but only if Part A of the form is signed by the donor / the donor specifically authorised this. • any other relevant power. 	5
Q1(c)(iii)	<ul style="list-style-type: none"> • The attorney can exercise their powers under a LPA P&FA as soon as it has been registered with the OPG. • even if the donor still has capacity. • and they have consented to the powers being used. • unless the donor has placed a restriction on this. • Whereas under a LPA H&W the powers can only be exercised once registered. • and the donor lacks capacity to make the decisions themselves. 	4
Question 1 Total		24 marks

Question Number	Suggested points for responses	Max Marks
Q2(a)(i)	<ul style="list-style-type: none"> • It's a type of equity release. • Giving Denzil tax free cash. • Whereby Denzil would sell his home to the plan provider in return for a lump sum • Or he could sell a percentage of his home to the plan provider. • Denzil will then be given a lease. • So he can occupy the property rent free. • For the rest of his life. • Or until Denzil goes into care. 	5
Q2(a)(ii)	<ul style="list-style-type: none"> • No interest is charged. • Available to those age 65 or over. • There are no monthly payments. • When the property is sold, Denzil will receive his share of the property. • Denzil can still treat the home as his home • There will be no interference from the plan provider 	5
Q2(a)(iii)	<ul style="list-style-type: none"> • The disadvantage of this option is that the plan provider will buy the property for a lot less than its true market value. • If Denzil want to reverse the plan he would have to pay full market value. • Can affect any benefits Denzil receives. • The plan provider will be entitled to any increase in value on the percentage share which it owns rather than Denzil 	2
Q2(b)	<ul style="list-style-type: none"> • Attendance allowance at the lower rate. • Provided he has needed help to look after himself / carers to come in for 6 months. • This would increase to the higher rate if he later need help at night too. • Disabled Facilities Grant of up to £30,000 in England. • or £36,000 in Wales. • Also the 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. 	5
Q2(c)	<ul style="list-style-type: none"> • Identification of gift as a Potentially Exempt Transfer. • if Denzil pays rent to his daughter. • Explanation that if Denzil dies within 7 years of making the gift. • The money will still form part of his estate for IHT purposes. 	8

	<ul style="list-style-type: none"> • Although there is tapering relief if the death is within 4 - 7 years of the gift. • The Annual Gifting Allowance of £3,000. • That his previous tax years' gifting allowance can be carried forward one year. • The gift will be treated as a Gift with Reservation of Benefit if Denzil continues to occupy the property without paying market rent even if he survives the gift by 7 years. • That Denzil must not retain a benefit from the monies he gives away. • Any gifts out of income rather than capital are exempt. 	
	Question 2 Total	25 marks

Question Number	Suggested points for responses	Max Marks
Q3(a)	<ul style="list-style-type: none"> • Capital Gains Tax is payable on the gain. • The gain is split equally between Ahmed and his wife. • The gain is the difference between the sale price and the purchase price. • The net gain is then taxed. • They can deduct incidental costs from the gain. • such as estate agents and solicitor's fees • They can claim their annual exemptions on the gain. • Reference to the rate of tax as 18% or 28%. <p>Gain can be held over.</p>	7
Q3(b)	<ul style="list-style-type: none"> • The Court of Protection (COP) being satisfied that it is in Ahmed's mother's best interest to grant permission for a Statutory Will to be made on her behalf. • Consider application of s.4 MCA 2005. • when the COP determines if it is in Ahmed's mother's best interests to grant the permission. • Takes Ahmed's mother's views into account. • past and present views. • Considers the reasons for the Will. • The objective test applied by the COP • Reference made to NT v FS and others (2013). <p>Any other relevant point.</p>	7
Q3(c)	<ul style="list-style-type: none"> • Reference to the EPA being registered with the Office of the Public Guardian. • And not the Court of Protection. • Application to register the EPA is done using form EP2PG. • Notice must be served on donor personally. • Notice to be served on closest living relatives. • Using form EP1PG. • In this case Ahmed's siblings. • Fee payable on registration. <p>If no objections received within 35 days of notices being served, the EPA will be registered.</p>	7
	Question 3 Total	21 marks