

**LEVEL 3 - UNIT 14 – PROBATE PRACTICE  
SUGGESTED ANSWERS – JANUARY 2017**

**Note to Candidates and Tutors:**

The purpose of the suggested answers is to provide students and tutors with guidance as to the key points students should have included in their answers to the January 2017 examinations. The suggested answers do not for all questions set out all the points which students may have included in their responses to the questions. Students will have received credit, where applicable, for other points not addressed by the suggested answers.

Students and tutors should review the suggested answers in conjunction with the question papers and the Chief Examiners' reports which provide feedback on student performance in the examination.

**Question 1**

- (a) This is a specific gift to Mark, who has predeceased Billy. This means the gift fails or lapses, and therefore falls back into residue.
- (b) 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 2002 gift to Natalie is outside the 7 year rule and so is not brought back into account.

The 2016 gift of £10,000 to Annie is within 7 years and so will be taken into account. It can, in part, be covered by Billy's annual exemption which is £3,000 per year, but as one unused year's exemption may be carried forward, a total of £6,000 can be deducted from this gift, leaving a balance of £4,000. This has the effect of reducing the nil rate band by that amount.

- (c) Following a request for a HMRC reference to include on the forms, Form IHT 400 is required along with supplementary pages, and any payment of tax due (either a cheque or payment organised directly from a bank or building society account). Finally form IHT 421 is needed.
- (d) Joe and Karen should publish statutory notices (or "s.27 Trustee Act 1925 notices"). These should appear in both the London Gazette and a newspaper local to where the deceased lived, or owned property. These notices call for creditors and claimants to come forward within 2 months. They protect PRs against personal liability for debts and claims of which they are not aware, and for which, without the notices, they would carry permanent personal liability.

## Question 2

- (a) In order to be valid a Will must comply with s.9 Wills Act 1837. It should be signed by the testator in the joint presence of two or more witnesses, and this is where this note fails the test as Tom has only one witness, namely Josh.
- (b) This answer should be set out as a draft letter using client-friendly terms. It needs to cover the following:

Because Tom did not leave a valid Will he is said to have died intestate. This means that his estate will be divided in accordance with certain legal rules, known as intestacy rules.

In the absence of any spouse or issue, Tom's estate will be divided between his surviving siblings, (i.e. brothers and sisters), or if a sibling has died before him, to their children if they have any.

So, one third will pass to Matthew, and one third to Lydia. The share that would have passed to David will pass to his two children Bernard and Angus equally.

- (c) As there is no valid Will, a grant of letters of administration is appropriate. Entitlement is governed by rule 22 NCPR (Non Contentious Probate Rules) 1987. The first category applicable in this estate is 'brothers and sisters of the whole blood and issue of any who have predeceased', which means that Matthew, Lydia, Bernard and Angus are all equally entitled, although only one need apply as there is no minor beneficiary.
- (d) To calculate inheritance tax on the estate, all assets are added together less debts to find the net estate. From this is deducted the nil rate band (currently £325,000) and tax at the rate of 40% is paid on the balance.

## Question 3

- (a) Delay could result in a negligence claim if Geraldine dies before her Will is complete, even though we are not aware of any life threatening illness. The firm owes a duty of care to Geraldine to make sure her wishes are carried out, but also to her potential beneficiaries who would receive nothing on intestacy.
- (b) Here, candidates needed not only to set out the test, but also to offer some explanation for each element of this test.

The testator should understand -

- The nature and effect 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;
- The claims to which she ought to have regard. This 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.

- (c) There are a number of ways of drafting these clauses; the wording should be clear, and there is no need to quote known precedent.
- (i) I appoint the partners at the date of my death in the firm Kempstons Manor House Bedford MK42 7AB or such other name as it may use or such other firm as shall have succeeded to and carries on its business to be the executors and trustees of this Will and I direct that no more than two such partners shall prove my Will
  - (ii) after payment of my debts funeral and testamentary expenses I give to my good friend Doris Kane all the residue of my estate or if this gift to her fails then to her son Tristan Kane
- (d) We know that Geraldine owns the house in Devon jointly with her sister Alice, but we do not know on what basis. If the house is held as beneficial tenants in common, Geraldine's share will form part of her estate and pass to her beneficiaries. If it is held as beneficial joint tenants then it will pass to Alice automatically on Geraldine's death.

It is important to make sure that Geraldine understands how the joint property passes on death and that she has considered whether this is what she wants to happen.