

**LEVEL 6 - UNIT 21 – PROBATE PRACTICE  
SUGGESTED ANSWERS – JANUARY 2018**

**Note to Candidates and Tutors:**

The purpose of the suggested answers is to provide candidates and tutors with guidance as to the key points candidates should have included in their answers to the January 2018 examinations. The suggested answers set out a response that a good (merit/distinction) candidate would have provided. The suggested answers 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 by the suggested answers.

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

**Question 1(a)**

A Grant of Probate will be relevant where there is a valid Will, which appoints executors who survive the deceased. Here, David's Will appointed executors, one of whom survives him. However, a Will must have been validly executed and here, there is no clear attestation clause and so there is no presumption of due execution. An affidavit of due execution from the witnesses will therefore be required in order to establish the validity of David's Will.

A Grant of Letters of Administration will be relevant where there is no valid Will. This will be the case here, if David's Will is found to be not in fact valid. Such a grant is issued to the deceased's next of kin who apply - r.22 Non-Contentious Probate Rules 1987 sets out the order of entitlement. Joshua, as a surviving brother, and Caroline's children will be entitled to apply, but not Gloria.

The practical steps in applying for a grant are that the application must be made to the Probate Court using correct the correct form of Oath (i.e for executors or administrators), accompanied by:

- the original Will duly marked plus two A4 copies (if applicable)
- an affidavit of due execution (if applicable)
- the correct IHT form (if applicable)
- the correct fee.

**Question 1(b)**

The semi-detached house on The Horseshoe valued at £500,000 was owned by David jointly with Joshua on a beneficial joint tenancy basis. This property will not therefore fall into the estate of David for administration purposes. This is

because the property passes by survivorship to Joshua, as the surviving beneficial joint tenant.

The remaining house contents, valued at £10,000, were held by David on a beneficial joint tenancy basis with Joshua. Again, these will not fall into the estate of David and will instead pass to Joshua by survivorship.

The assets in the estate are distributed as follows:

1. Collection of antique furniture passes to Tom (Clause 2(a) of the Will).
2. Vinyl record collection passes to Ken (Clause 2(b) of the Will).
3. London bridge painting. As Mary predeceased the testator, the gift under Clause 2(c) of the Will lapses. This item passes to Gloria under Clause 3(d). In the absence of this clause, the item would otherwise fall into the residuary estate.
4. Items of clothing, shoes and watches including the Mercedes Benz car passes to Gloria under Clause 2(d).
5. Pecuniary legacy of £5,000 to Caroline under Clause 3 of the Will lapses as she predeceased the testator, and falls into the residuary estate.
6. Pecuniary legacies of £1,000 to Tom and Ken take effect under Clause 4. The pecuniary legacy of £1,000 to Mary lapses and falls into the residuary estate.

The gift of residue under Clause 5 fails because David's mother Sarah predeceased him. Therefore, the gift of residue passes on intestacy under the statutory trusts (s.47 AEA 1925).

### **Question 1(c)**

The residuary estate comprises the following:

	<b>£</b>
1. A current account with Natwest bank	4,000
2. A savings account with Natwest bank	20,800
3. Quoted stocks and shares	700,000
4. An unpaid retirement pension	900
	<hr/>
	<b>725, 700</b>
Less the pecuniary legacies of £1,000 to Tom and Ken	(2,000)
	<hr/>
	<b><u>723,700</u></b>

As David's mother Sarah has predeceased David, the residuary estate falls to be distributed under the intestacy rules (on a partial intestacy).

There is no surviving spouse, issue or parents and therefore David's brother Joshua and sister Caroline of the whole blood take on the statutory trusts.

Joshua takes a vested interest in a ½ share (£361,850) and the other ½ share (£361,850) is divided equally between Caroline's surviving children who are all adults and take a vested interest of £180,925 each.

### **Question 2(a)**

The property at 3 Kirkwood Park, Hull was owned jointly by Thomas and Christiana as beneficial joint tenants. Where a property is owned in joint tenancy and one of the joint tenants dies, under the rule of survivorship the ownership of the property passes to the surviving joint tenant(s).

Upon the death of Christiana, the property therefore passed to Thomas under the rule of survivorship.

The gift of the property 3 Kirkwood Park, Hull passes to Jimmy Platt under the first codicil.

Thomas and Christiana also purchased a property known as the Boathouse in 1998 as beneficial tenants in common in equal shares.

The gift of Thomas' interest in the property at the Boathouse therefore passes to Jimmy under clause 2 of the Will (NB: the effect of the second codicil is to be ignored for the purposes of this question).

Richard Platt receives Thomas' collection of paintings under Clause 3. Jimmy Platt receives Thomas' collection of shoes and watches under Clause 4.

The gift of the residual estate to Christiana Platt under Clause 5 fails as she is predeceased (and Thomas and Christiana were divorced so the Will takes effect as though she had predeceased by virtue of s18 A Wills Act 1837 (as amended by s 3 Law Reform (Succession) Act 1995). Therefore any appointment of the former spouse as executor or trustee were revoked and any gift in the Will to the former spouse lapses.

The provisions of s18 A Wills Act 1837 (as amended by s 3 Law Reform (Succession) Act 1995) are subject to any contrary intention expressed in the Will. It should be noted that the execution of the codicil in 2017 republishes the Will. However, the republished codicil does not expressly state Thomas' intention to give the remainder of his estate to Christiana notwithstanding the limited revocation. A codicil is a testamentary instrument, which is executed in the same way as a Will, and which supplements the terms of an existing will. This means that the residuary estate under Clause 5 falls to be distributed under the intestacy rules (a partial intestacy).

Thomas left no surviving spouse. The residuary estate passes to all his children in equal shares; they are all over 18. The illegitimate children are treated in same way as Jimmy as the legitimate child for this purpose (s.18 Family Law Reform Act 1987). Christiana's other children have no entitlement under this partial intestacy.

A divorce revokes any bequests to a previous spouse or civil partner and their appointment as trustee or executor of a Will. A previous spouse or civil partner is treated as if they are dead at the time of the decree absolute. The remainder of the Will remains valid.

Christiana's appointment as an executor was revoked at the time of the divorce in 2000 and would remain revoked after the republished Will in 2017. From the



### Question 2(c)

Christiana Platt died without leaving a Will. Therefore, she died intestate and her property will be distributed in accordance with the statutory intestacy rules in the Administration of Estate Act 1925.

Christiana was only engaged to be married to Boris Clarke - she therefore died without leaving a surviving spouse. Christiana had four children Jimmy, Dawn, Henry and Anna.

Thomas and Christiana purchased the Boathouse in 1998 as beneficial tenants in common in equal shares. The Boathouse is valued at £50,000. Christiana's half share of the boathouse goes into her estate, as the rule of survivorship does not apply.

Christiana's estate will be distributed to all her children Jimmy, Dawn, Henry and Anna in equal shares.

Henry died four months after he divorced his wife Steph in 2015. There is no surviving spouse. Henry's share is therefore divided equally between his surviving children Callum, Felicity and Liam.

### Question 3(a)

On death, there are two categories of assets that are exempt from inheritance tax (IHT). The first category consists of assets that pass to the deceased's spouse or civil partner.

However, restrictions apply where the spouse/civil partner of the deceased is domiciled outside the UK. It is irrelevant whether the assets pass directly to the spouse/civil partner or whether they pass to a trust from which the spouse/civil partner is entitled to benefit.

The lump sum payable by the trustees of ABC International Plc pension scheme does not fall into the estate. Instead, Helen was nominated to receive the £75,000.

Further enquiries need to be made with regard to Katherine's life insurance to determine whether it was written in trust under the provisions of s11 of the Married Women's Property Act 1882. It is not clear from the facts whether the life policy was written in trust. Therefore, Katherine's life policy is included in her estate. The assets in Katherine's estate are valued at £600,000, calculated as follows:

	<b>£</b>
House in Fort Picklecombe	380,000
Current account with HSBC Bank	20,000
Santander Bank account	50,000
Quoted stocks and shares (no BPR relief on shareholdings)	100,000
Life insurance policy with General & Legal (assuming life policy is payable to the estate)	40,000
Collection of jewellery	10,000
	<hr/>
	<b>600,000</b>
	<hr/>

Katherine died intestate. As there is no surviving spouse, Helen takes all of Katherine's estate under s46 of the Administration of Estate Act 1925. Rob also died intestate, so Helen will also inherit Rob's house valued at £100,000.

### Nil band rate available to Katherine

The transfer of a nil rate band is available to a spouse who dies on or after 9 October 2007 and was pre-deceased by their spouse. A spouse can make a claim to the extent that it was not utilised on the first death.

Where the whole of the estate on the death of the first spouse passes to the spouse and there have been no lifetime transfers made, there would be double the nil rate band available on the second death. Using the current nil band rate available, the total is £650,000. However, if some of the nil band rate was used by the first spouse, the amount transferrable to the second death is calculated based on the proportion of the nil rate band that was available to the estate of the spouse who died first.

As Katherine made no lifetime gifts, her nil rate band of £325,000 is available in full.

Katherine died after 9 October 2007, which means that she can use any element of Unwin's nil rate band that was not utilised on his death. The nil rate at the time of Unwin's death was £118,000. He used £12,000 of it in relation to the £6,000 gifts to the children. The amount of Unwin's unused nil rate band now available to Katherine is therefore:

$$((£118,000 - £12,000) / £118,000) \times £325,000 = £291,949$$

The total nil rate band available to Katherine is: £291,949 + £325,000 = £616,949. Her estate is within the nil rate band and accordingly taxed at 0%.

### **Question 3(b)**

As Rob died without a Will, rule 22 Non-Contentious Probate Rules 1987 lists the order of people entitled to take out a grant of letters of administration. As there is no surviving spouse, issues or parents, Helen would be entitled to be the administrator of Rob's estate.

An administrator derives their authority from the grant and has no authority to act until the grant is issued.

In accordance with section 19 Trustee Act 1925 (as amended by section 34 Trustee Act 2000), an administrator (as personal representative) has the power to take out a comprehensive insurance policy in respect of land (or any other type of estate asset), to insure for the full value and to pay premiums out of income or capital.

An administrator (as personal representative) has a duty to the estate and beneficiaries to protect the assets comprised in the estate. The personal representative must inform the insurer that the property will be unoccupied, and will need to comply with any special conditions under the policy (e.g. to visit the property regularly).

#### **Question 4(a)**

Dawn died without leaving a Will, which means that Dawn's estate will be distributed in accordance with the statutory intestacy rules in the Administration of Estates Act 1925.

- i) Under the intestacy rules Frank gets:
- ii)
  - a. All personal items and chattels including jewellery: £15,500
  - b. Statutory legacy (tax free): £250,000
  - c. Half of the remainder absolutely
- iii) Under the intestacy rules Paul gets:
- iv)
  - a. The other half of the residue is shared between any children on the statutory trusts. Paul is the only child and as he is an adult, he takes the entirety of this half of the residue and his interest is vested.

Under the intestacy rule, the personal chattels, statutory legacy and half of residue pass to the surviving spouse exempt of IHT. The other half of residue is chargeable in passing to Paul as a non-exempt beneficiary. Note for deaths on or after 1<sup>st</sup> January 1996, spouse or civil partner must survive by 28 days in order to take.

#### **Question 4(b)**

The gift of £40,000 to Paul was made when Dawn was alive. The gift was a Potentially Exempt Transfer (PET). There would have been no IHT paid at the time the gift was made. However, as Dawn died within 7 years, the PET becomes a chargeable transfer for IHT purposes on his death. IHT would now become chargeable at death rates on the net value of the chargeable transfer.

There are lifetime exemptions and reliefs available in particular the annual exemption for the year when the PET was made and any unused exemption from the previous year, which can be carried forward. Dawn does not appear to have made any other lifetime gifts, so her unused annual exemptions of £6,000 (£3,000 each in 2014/15 and 2013/14) can be offset against the PET. The chargeable transfer becomes £34,000 (£40,000- £6,000).

Taper relief can only apply where there is IHT payable in respect of the PET.

There was a nil cumulative total prior to the time the PET was made. As the chargeable transfer of £34,000 is within the nil rate band there is no IHT tax is payable. Taper relief is not available.

#### **Question 4(c)**

The first step is to calculate the cumulative total at death. IHT is a cumulative tax and therefore to calculate the tax on any chargeable transfer, the cumulative chargeable transfers on death with all other chargeable transfers within the preceding 7 years must first be determined.

The cumulative total of lifetime transfers at death was £34,000.

The second step is to identify the taxable estate. The 3-bedroom semi-detached property, which Dawn and Frank owned as joint tenants beneficially, would pass

to Frank by survivorship. Dawn's interest is included in her estate for tax purposes.

The third step is to determine what the value of the deceased's estate actually is. With regard to the 3-bedroom semi-detached property, there is a deemed severance of the joint tenancy immediately before death. For calculating tax, Dawn's half share of the value of the house is included in her estate. All other assets owned in Dawn's sole name will be included in her estate. Tax is charged on the net value of the estate, which means that Dawn's funeral expenses amounting to £4,500 is deductible.

For IHT purposes, the net value of Dawn's estate is made up as follows:

		Value £
House ½ share (Spouse exemption)	150,000 (150,000)	-
Shares in Dawn's privately owned business (Business property relief 100% – IHT 413)	500,000 (500,000)	-
Listed non-controlling shares		430,000
50% interest in The RealProperty Partnership (Business property relief 100%)	260,000 (260,000)	-
Premises used wholly by The RealProperty Partnership (Business property relief 50%)	500,000 (250,000)	250,000
Natwest savings account		160,000
Cash		500
A collection of jewellery (Spouse exemption)	7,500 (7,500)	-
Household goods and chattels (Spouse exemption)	7,500 (7,500)	-
Funeral expenses		(4,500)
		<u>836,000</u>

The fourth step is to determine all the other assets in which Frank (as surviving spouse) has an interest under the intestacy rules. Under the intestacy rules, Frank gets the personal chattels (assuming that none of the items are used for business purposes) worth £15,000, a statutory legacy of £250,000 and half of the remainder absolutely ( $£836,000 - £250,000 = £586,000$  divided by 2 = £293,000). This is also covered by the spouse exemption.

The final step is to calculate the IHT payable. Half the balance of the estate, which Paul is entitled to (£293,000), will be liable to IHT.

The first £291,000 will be taxed at 0% (nil rate band £325,000 less £34,000 used on PET).

The tax calculation under s39A IHTA 1984 is not expected because it raises a complex application of IHT relief, which appears not to be within the Unit specification. The tax on 40% that would have been due if s39A IHTA 1984 was not applied is calculated as follows: £293,000 - £291,000 = £2000 x 40% = £800.

The amount Paul will receive without the application of s39A IHTA 1984 is £293,000 - £800 = £292,200.

s39A IHTA 1984 operates to reallocate BPR on business assets that are left to residue against specific legacies.

For completeness, the position after s39A is calculated based on the net amount of any specific gift of BPR property (that is the amount of the gift after the appropriate proportion of BPR has been applied to it).

The formula is : **A x (B/C)** where:

**A** is the gross value of the specific gift

**B** is the value of the estate for IHT **after** the application of any relief, less the value of any specific gifts of BPR before the application of the relief.

**C** is the value of the estate for IHT **before** the application of any relief, less the value of any specific gifts of BPR before the application of the relief.

The Personal Representatives will be primarily liable for the IHT, which will be payable out of the residue. If the PRs fail to pay, HMRC may recover any unpaid IHT from the beneficiaries of the estate in whom the deceased's property became vested after death.