

**LEVEL 3 - UNIT 14 – PROBATE PRACTICE  
SUGGESTED ANSWERS – JUNE 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 June 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) (i) A Will is revoked by the testator's later marriage (Wills Act 1837). Therefore, Samantha's 2012 marriage to Martin revoked her 2010 Will.
- (ii) Without a Will Samantha will die intestate. This means that her estate will be divided under the intestacy rules. In the absence of any spouse or issue, Samantha's estate will be divided between surviving siblings of the whole blood, i.e. brothers or sisters. Therefore, one half will pass to Colin and one half to Louise.
- (b) Form IHT 205 is appropriate here. This is because the estate falls within the excepted estate rules. This means that the gross estate is less than the current nil rate band for Inheritance Tax (IHT), there is no foreign property within the estate and there is no settled property/trust property within the estate. Samantha has not made any lifetime gifts or PETs, or made any gifts with a reservation of benefit. She was domiciled in the UK at the time of her death.
- (c) A grant of letters of administration is appropriate in this case because Samantha's Will has been revoked by her marriage so that she has died intestate and there are no executors. The regulations as to entitlement are 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', which means that Colin and Louise are equally entitled, although only one need apply as there is no minor interest.
- (d) There are a number of tasks that could be required when the grant has been received, including:
- 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 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;
- closing the file and sending it to storage.

## Question 2

- (a) (i) In order to make a valid Will a person must have mental capacity.

The test in Banks v Goodfellow (1870) states that a person must understand:

- the nature of the act of making a Will;
- the extent of the property they own (even if only in general terms);
- any claims to which he ought to have regard, even if he decides not to make provision for them.

In this case, Kabir seems unsure about the nature and effect of making a Will, possibly confusing it with a Power of Attorney.

He does not understand the value of money or have any idea of what he owns. He did not remember that he owned the two houses or that he had any savings.

He remembers that he has a daughter but cannot recall his brothers or grandson, so would not be able to consider them as potential beneficiaries.

- (ii) The test under the Mental Capacity Act 2005 says that a person lacks mental capacity if he is unable to make a decision for himself because of an impairment of or disturbance in the functioning of, the mind or brain and he is unable to:

- understand information relevant to the decision;
- retain that information;
- use or weigh that information as part of the process of making that decision;
- communicate his decision.

Here, although Kabir can communicate, he is not able to remember information about the conversation he was having with Mr Hooper and this suggests he cannot retain information.

His inability to understand the nature of the Will, the value of money or to whom he is related suggests that he is not able to understand information relevant to the decision in question, i.e. making a Will which involves financial matters.

It would not be possible to comply with Jamil's request because instructions must come from the client directly and not a third party. Kabir is the client not Avani or Jamil.

- (b) This is especially true in this case because the third party's son stands to benefit from the instructions and this may amount to undue influence.

In addition, the test for mental capacity to make a Will in most cases is at the date of the signing of the Will. So meeting Kabir will allow his capacity to be checked. It will also ensure that accurate instructions are obtained, which reflect his wishes.

### Question 3

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. However, taper relief may be available if Harold survives more than 3 years.

- (a) In this case, the 2006 gift to Lindsay and the 2009 gift to Maria are outside the 7 year rule and so will not be brought back into account.

The 2016 gifts to Debbie and James are within 7 years and so will be taken into account if Harold dies within 7 years of making the gifts. They can, in part, be covered by Harold's annual exemption which is £3,000 per year, but as one unused year may be carried forward, a total of £6,000 can be deducted from this gift, leaving a balance of £19,000. This has the effect of reducing the nil rate band by that amount.

- (b) There are a number of ways to draft this clause - any wording provided it is clear and works will suffice. Something along the following lines:

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.

A charging clause will also be required.

- (c) Answers should be in a letter format and relevant to the client. It needs to cover the following:

- Harold should read the Will and check it is correct and reflects his instructions.
- He then needs to make sure that two independent witnesses are present and stay in the room for the duration of the Will signing.
- The witnesses must not be beneficiaries named in the Will or married/civil partners to the beneficiaries named in the Will.
- Harold then signs and dates the Will in ink.
- The witnesses must see Harold sign the Will.
- Each witness then signs where indicated and adds their name and address.
- The Will must then be returned to us.
- It is important that nothing is pinned, stapled or otherwise attached to the Will.