

**LEVEL 3 - UNIT 14 – 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 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) The gift to David Hodges is a specific legacy of Alexander's car. That means that, in order to take effect, it must form part of Alexander's estate at the date of death. As it does not, the gift fails or 'adeems' and David will receive nothing (i.e. neither the car nor any substitute gift).
- (b) This type of grant is appropriate because there is a valid Will but the executors have predeceased the testator and so are unable to act. There is no appointment of substitute executors in the Will.

The entitlement to apply is governed by r.20 Non Contentious Probate Rules (NCPR) 1987. In the absence of any trustee of residue, both William and Stephen are entitled to apply as the two people entitled to the residue.

- (c) 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 gifts to Ben and Sam are outside the 7 year rule so they are not brought back into account.

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

Note that Taper relief will not apply. In addition, the normal expenditure out of income will not apply.

- (d) Following a request for an HMRC reference to include on the forms, Form IHT 400 is required, along with any supplementary pages and any payment of tax due, in the form of either a cheque or direct payment from a bank or building society. Finally, Form IHT421 is also needed.

## Question 2

- (a) Here candidates should not only have set out the test, but also offered some explanation for each element of the test. For example:

### Banks v Goodfellow (1870)

The testator should understand:

- the nature and effect of his act. In other words, that he is making a Will and what that means;
  - the extent of his property. Although he does not need to know the exact details of all his property, he should have a general idea of whether he has a house, is rich or poor etc.;
  - the claims to which he ought to have regard. This means that he ought to be able to bring to mind people who he might reasonably expect to consider as beneficiaries, even if he then decides not to include them.
- (b) There are a number of ways of drafting this clause – any wording will suffice provided it is clear and does the job and there is no need to quote a known precedent. A suitable example would be:

'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 my Will and I direct that no more than two such partners shall prove my Will.'

The candidates may also consider inserting a charging clause in the Will

- (c) (i) It is important to recognise that there is a third party assisting with instructions who is a beneficiary, which may suggest a risk of undue influence. The fact that Chidike is weak may suggest concern about his capacity, but may also indicate that he is frail and, given his age and state of health, there is a risk of a negligence claim if he should die before the Will is executed.
- (ii) Important steps to take here would be:
- to ensure that you see Chidike alone, to ensure that instructions are obtained directly from the client rather than from the third party;
  - meeting with client (at home/hospital) to ensure accurate instructions are obtained which reflect testator's wishes and to check capacity;
  - to take a full attendance note of the meeting and of the execution of the Will;
  - to check Chidike's mental capacity with a written report from his doctor;

- to proceed with speed given Chidike's physical health. E.g. relevant case: Feltham v Bouskell (2013).
- consider arranging for medical staff to witness the Will, if possible;
- refuse to continue acting if in doubt as to capacity or there is evidence of undue influence.

### Question 3

- (a) In order to be valid, a Will must comply with the formalities set out in s.9 Wills Act 1837. This requires a Will to be in writing and signed by the testator, which in this instance it is. It must be signed or acknowledged by the testator in the presence of two witnesses and the witnesses must then sign in the presence of the testator. This is where Marjorie's attempt to make a valid Will fails, because she signed in the presence of only one witness and only one witness signed the Will. There is no attestation clause and therefore no presumption of due execution.
- (b) Marjorie has died intestate, so her estate will be divided in accordance with the intestacy rules. Distribution is governed by s.46 Administration of Estates Act 1925 (as amended by the Inheritance and Trustees' Powers Act 2014).

Provided Nigel (as Marjorie's spouse) survives Marjorie by 28 days, he will receive all her personal chattels (including her car and jewellery) and a statutory legacy of £250,000. The remainder will be divided into two equal halves - one for Nigel absolutely, the other to be divided equally between Christina and Edward who will each take a vested interest as they are both over the age of 18.

Marjorie's mother will have no entitlement under the intestacy rules (because of surviving spouse and children). Nor will her grandchildren.

- (c) Nigel should publish statutory notices (also known as s.27 Trustee Act 1925 notices). These appear both in the London Gazette and a newspaper local to where the deceased lived or owned property. These notices give notice of the intention of the personal representative ('PR') to distribute the estate and call for any creditors and claimants to come forward within 2 months. After that period has expired, the notices protect the PR against personal liability for debts and claims of which he was not aware and for which, without the notices, he would carry permanent personal liability. However, beneficiaries are not protected and so creditors may still seek to claim from beneficiaries who have received assets from the estate (even a beneficiary who acted as PR).