



CHIEF EXAMINER REPORT

JANUARY 2024

LEVEL 6 UNIT 21 – Probate Practice

The purpose of the suggested points for responses is to provide candidates and Training Providers with guidance as to the key points candidates should have included in their answers to the January 2024 examinations.

The suggested points for responses sets out points that a good (merit/distinction) candidate would have made.

Candidates will have received credit, where applicable, for other points not addressed in the suggested points for responses or alternative valid responses.

Chief Examiner Overview

Many candidates appeared to have prepared well for this examination and there were some very pleasing responses. However, other candidates appeared to have large gaps in their knowledge. Candidates should be prepared to answer questions on all parts of the specification and the pre-release material is prepared to help candidates to identify and research topics prior to the examination being sat. Candidates are reminded to make full use of the pre-release material to focus their revision.

There were many detailed answers from candidates who explained their answers fully, but other candidates merely identified topics showing understanding of basic principles but failed to add a detailed explanation, which is expected of them at level 6..

Candidates who did less well in the examination also often repeated facts from the case study material without explaining why this was relevant to their answer and without explaining the law their application was based on resulting in assertion which was not creditworthy.

Candidate Performance and Suggested Points for Responses

It is noted that the low numbers of candidates taking the Level 6 exams limits the scope for constructive feedback to be given and for firm conclusions to be reached. Therefore, feedback on candidate performance is limited.

Question 1a	17 marks
<p>Candidates would often neglect to recognise that Ben had made lifetime gifts by giving irregular of money to Chris and David but that these were likely to be considered gifts out of income. Most candidates did recognise that agricultural property relief would be available but failed to explain how this would apply to Ben's estate in detail and they did not go on to consider that business property relief would be available for assets not covered by agricultural property relief.</p> <p>Candidates should also recognise that exemptions and reliefs should be utilised before consideration of the nil rate band and the residential nil rate band as this would have led them to realise that consideration of the residential nil rate band was not necessary, although limited credit was given for it. It is also very important for candidates to recognise that the nil rate band is not an exemption but that the first £325,000 is taxed, although at 0%.</p>	
Suggested Points for Response:	
<ul style="list-style-type: none"> • On Ben's death there is a deemed transfer of value of all the assets he was beneficially entitled to before his death. • Inheritance tax is chargeable on this transfer cumulated with any chargeable lifetime transfers made in the previous seven years <p><u>Lifetime transfers</u></p> <ul style="list-style-type: none"> • The only lifetime transfers which Ben could be argued to have made were the sums of money which Ben gave Chris and David and the payment of the utility bills for the cottage in which Chris lived. • However, these are most likely to be seen as exempt (under s21 IHTA 1984) to the extent to which they are made out of the normal / habitual expenditure of Ben. • This is provided that they were made out of Ben's income, which they appeared to be because he used the agricultural subsidy and wheat sales' money he received to pay the money to Chris and David, • and it was surplus income so that it left him with enough income to maintain his usual standard of living. There is no indication that Ben was using anything other than income to pay the utility bills nor that he could not maintain his usual standard of living even though he grumbled about the increased cost of the bills. • To the extent that any of these sums of money or bills were not paid out of income the annual exemption (under s19) of £3,000 could also be set off against the payments in each tax year. Any unused annual exemption from one tax year could also be carried forward to the next tax year if necessary. <p><u>Transfer of value on death</u></p> <ul style="list-style-type: none"> • As Ben did not leave anything to Edith under his Will the spouse exemption will not be available • Agricultural property relief (under ss115-124A IHTA 1984) is available for the agricultural value of agricultural property which includes agricultural land and pasture • Agricultural value assumes the property has a perpetual covenant in the deeds limiting the land to only agricultural use. • with certain land and buildings occupied in association with the agricultural property, which can include a farmhouse, farm buildings and cottages. • This relief could cover not only the value of the 120 acres of land in Primrose farm but also the farmhouse, outbuildings and barns and the farm workers cottage totalling £1,750,000. 	

- Ben's estate would qualify for the full relief as Ben had been occupying the property for agricultural purposes for the two years immediately before his death
- And the farming operation was run from the farmhouse.
- The estate would also be entitled to a 100% reduction in value of the agricultural value of the property as Ben had the right to vacant possession of it on his death,
- And the right to obtain vacant possession of the farm workers cottage Chris lived in as Chris did not have a tenancy agreement and did not pay rent.
- The value of the four bedroomed farmhouse is most likely to qualify for the relief as it would not appear to be disproportionately large for the land farmed and it was directly occupied by Ben who was farming the land.
- The outbuildings and barns would qualify to the extent that they were used for the agricultural business run by Ben and there is no indication that they were used for any other purpose and Chris occupied the farm workers cottage and worked on the land (in agriculture) for Ben so the value of this would also qualify for APR.
- Business property relief (under ss103-114 IHTA 1984) will also be available for business property owned by Ben to the extent that it is not covered by agricultural property relief.
- It is available at 50% on the farm machinery that was owned by and used by him in the business (for at least two years ending immediately before his death).
- Ben's farm machinery was worth £136,000, so £68,000 will attract business property relief.
- It is unlikely that Ben's Residential Nil Rate Band of £175,000 will be required to be offset against the value of the farmhouse, provided certain conditions are met, as it should be covered by agricultural property relief.
- The remainder of Ben's net estate would also be entitled to be taxed at 0% on the first £325,000 of his estate, his (nil rate band)
- and as the remainder would be less than this amount, after the other exemptions and reliefs were deducted, there is unlikely to be any Inheritance Tax payable on the estate.
- The spouse exemption will be available for any provision made for Edith under an order under the Inheritance (Provision for Families and Dependants) Act 1975
- Or a qualifying Deed of Variation of Ben's Will
- Consideration of the case law, e.g. Excs of Lady McKenna v HMRC 2006 with regard to agricultural property relief and the farmhouse.
- Consideration of the conditions that apply to the use of a residential nil rate band, including the fact that the net estate is less than £2 Million so does not exceed the taper threshold.

Question 1b	6 marks
<p>Most candidates knew the main duty owed by PRs and were given credit for other duties although the question specifically asked only for the main duty. It is important for candidates to know the statutory powers that apply if a will does not extend those powers.</p>	
<p>Suggested Points for Response:</p>	
<ul style="list-style-type: none"> • Under s25 Administration of Estates Act 1925 (AEA 1925) Chris' main duty as a PR is to collect and get in Ben's real and personal estate and administer the proceeds according to law and the terms of the Will. • Chris will have to rely on the statutory powers given to PRs in the Trustee Act 1925 (TA 1925) and the Trustee Act 2000 (TA 2000) as Ben's Will did not give him any specific powers nor did it extend the statutory powers. • The general rule is that a PR does not have authority to carry on the deceased's business other than with the aim of selling it as a going concern. • During that time Chris could only use any assets Ben was using in the farming business, so not the money in Ben's savings account unless Ben used this money for the business too. • If Chris exceeded his powers / failed to carry out his duties he may be subject to an action for devastit making him personally liable to beneficiaries and creditors for any losses they suffered as a result, although as the sole beneficiary of Ben's estate this would not be an issue. • Otherwise, if a loss was made by anyone else, he might need to rely on relief under s61 TA 1925 under which the court can relieve him from full or partial liability on the basis that he acted honestly, reasonably and ought fairly to be excused, • Or that the claimant had agreed to or encouraged him to exceed his powers, as Edith and or David would most likely have wanted him to continue to run the farming business. • Reference to s44 AEA 1925 and the executor's year • Reference to Edith and / or David being potential beneficiaries / having claims against the estate under the Inheritance (Provision for Family and Dependents) Act 1975 (I(PF&D)A 1975) • Reference to an agreement being reached between Edith and / or David that Chris should be released from liability as PR, although they would also have to be aware of what breach(s) this might cover. • Duty to keep accounts and present them to the court if required. 	

Question 1c	5 marks
<p>Marks were awarded for pairs of schedules identified (usually by the correct name) and candidates should not assume that the mere identification of five schedules without explaining their content as applied to Ben would suffice to gain the five marks available for the question.</p>	
<p>Suggested Points for Response:</p>	
<ul style="list-style-type: none"> • IHT 403, gifts and other lifetime transfers of value. • If the total value of the money given to Chris and David exceeded £3,000 in any tax year / it includes information to demonstrate that the gifts were made out of surplus income as Chris will want to claim this exemption • IHT 405 houses, land, buildings and interests in land. • This includes all of Primrose Farm with the farmhouse being included separately in box 7 as Ben's main residence (and details of whether any property had been let or if it has been sold since death). • IHT406 bank and building society accounts. • Details of Ben's Agriculture Bank current and savings accounts will be given here (as they were held in his sole name and had credit balances in them). • IHT407 household and personal goods. • Ben's personal effects will be included here as a global figure (£8,000) as they appear to be low value items. • IHT413 business or partnership interests and assets. • This is needed as Ben owned a business and business property relief is being claimed for the farm machinery. • IHT414 agricultural relief • This is needed as the relief will be claimed in respect of Primrose Farm, it will need to include a plan showing the location and extent of the farm. • IHT421 probate summary • This form gives details of Ben's assets that became the property of Chris as his PR / that Chris requires a Grant of Probate in respect of (and will be sent directly to HMCTS by HMRC on receipt of the IHT400). • IHT435 claim for the residence nil rate band • It will only be required if the farmhouse is not covered by agricultural property relief, as the farmhouse is a residence that is closely inherited. • Explanation of reasons why certain schedules are not required, e.g. A schedule is not required for liabilities nor for cash in the house as these are included in the IHT400. 	

Question 2a**18 marks**

This question was answered well by many candidates. Some candidates could have achieved higher marks by fully applying facts of the case study materials to the s3 guidelines. This was a question in which use of the designated statute book would have assisted candidates, especially with respect to the standard of financial provision and should have enabled all candidates to achieve a pass mark.

Suggested Points for Response:Potential Claimants

- All potential applicants need to be included in one of the categories in s1(1) I(PF&D)A 1975
- And the claim is made on the basis that Ben's Will does not make reasonable financial provision for them.
- Edith will have a claim as the spouse of Ben
- David will have a claim as a child of Ben

Standard of Provision

- Under s1(2)(a) Edith is entitled to such financial provision as would be reasonable in all the circumstances for a spouse to receive
- Whether or not it is required for her maintenance.
- Under s1(2)(b) David is entitled to such financial provision as would be reasonable in all the circumstances of the case for him to receive for his maintenance.

Guidelines

- Firstly the court considers if the existing provision (lack of provision) made by Ben is reasonable or not by taking into account the guidelines set out in s3(1) namely
- The financial needs and resources of the applicants (Edith and David)
- and any beneficiary (Chris)
- Primrose Farm which Chris has inherited is the main resource of Ben's estate and has always been the main source of income for all three of them. None of them appear to have any other resources beyond Edith's state pension.
- Ben's moral obligations towards all three of them
- Even though both Chris and David are adults Ben was maintaining them in return for their labour on the farm and he could not have built up his own resources without the continuing contributions of all three of them.
- The size and nature of Ben's net estate
- Ben's net estate is substantial (£1,975,000). It includes the farmhouse and the farm workers cottage so there are two accommodation units, as well as the land and machinery used in the farming business, and around £80,000 in savings
- The physical or mental disability of any applicant or beneficiary
- Although Edith tires easily she does not appear to have any disability, however, David has learning difficulties and is likely to have little ability to earn a living outside the farm especially given his age and social isolation.
- Any other relevant matter including the conduct of the applicant or any other person which the court considers relevant in the circumstances.
- There has been no 'bad' conduct from Edith, Chris or David to take into account.
- The court will also consider the s3(2) guidelines when considering Edith's application namely
- Edith's age and the duration of her marriage to Ben
- Edith is 79, so elderly, and her marriage to Ben was a long one, 56 years. Any combination of two of these points for each mark, so could also be one law applied (e.g. duration)
- Edith's contribution to the welfare of the family
- Edith's contribution has been substantial as not only has she looked after Ben but she is having to continue to look after David one of their children.
- The financial provision that Edith might reasonably have expected on dissolution of the marriage rather than the death of Ben.

Conclusion

- Edith would have an extremely good claim against Ben's estate and the court is likely to make substantial provision for her
- David would also have a good claim even though he was an adult because of his disabilities and dependence on his parents
- However, the court would still need to balance these claims against Chris' need to be able to continue to run the farm as a going concern which provides the accommodation and income for all of them.

Question 2b

5 marks

This question was answered very well and over half the candidates achieved full marks. Candidates should know that it is a Deed of Variation that is required and not just a Variation.

Suggested Points for Response:

- Chris should sign a deed of variation
- To avoid a Potentially Exempt Transfer
- Chris can only vary his entitlement once so one deed must cover both transfers of value if appropriate.
- So it is treated as if Ben and not Chris made the transfer of value to Edith and / or David
- Provided that all the conditions which are set out in s142 Inheritance Tax Act 1984 are met.

Responses could include the conditions to be met. The conditions are that:

- The deed of variation must be signed within two years of Ben's death
- It must be in writing and not be made for money or money's worth; and
- It must contain a statement that s142(1) applies.
- An explanation of why

Question 3a	10 marks
<p>It appeared from answers that identification and verification was dealt with before candidates had contact with clients, however, there are many firms where initial compliance is the responsibility of the fee earner, and candidates should be able to deal with compliance if the need arises. Candidates appeared to wasted time by including information which was relevant to question 3b and not relevant to due diligence.</p>	
<p>Suggested Points for Response:</p>	
<p><u>Introduction</u></p>	
<ul style="list-style-type: none"> • Lawyers must comply with regulations to defeat money laundering by reporting any suspicious activity and by having high standards of due diligence on their clients. • Money laundering is a process whereby the financial proceeds of criminal activities are changed so as to appear to come from legitimate sources. 	
<p><u>Proceeds of Crime Act 2002 (PCA 2002)</u></p>	
<ul style="list-style-type: none"> • The PCA 2002 sets out a disclosure regime for people working in a regulated activity which includes the administration of estates. • Non-disclosure of any knowledge or suspicion is a criminal offence. • The disclosure is made to the firm's money laundering reporting officer who then decided whether to make a formal disclosure / suspicious activity report (SAR) to the National Crime Agency • If an SAR is made the firm should not act on a client's instructions without the consent of the NCA • And must not notify the client that a SAR has been raised. 	
<p><u>Money Laundering Terrorist Financing and Transfer Of Funds Regulations 2017 (MLR 2017)</u></p>	
<ul style="list-style-type: none"> • Customer due diligence is required by the MLR 2017 in order to help firms to spot suspicious activity and involves an identification and verification regime. • Identification of a client requires finding out the name and address of the client • Verification is seeing evidence which supports the identification, including photographic evidence containing their name, such as a valid passport or driving licence and • evidence of their address, such as from a recent utility bill or bank statement • Before accepting instructions from the appropriate PRs of Ikbir's estate sufficient identification evidence must therefore be checked. • Reporting and due diligence is also required in respect of beneficiaries of estates • And suspicious activity might include a beneficiary wanting to avoid the authorities from finding out about an inheritance so as to avoid losing a benefit / the benefits of a bankruptcy search against a beneficiary. • A conflict of interest check should always be made before accepting instructions • Due diligence will include seeing Ikbir's original death certificate • A letter of engagement (client care letter) should also be sent to the client setting out who will be responsible for the file in your office, a description of the retainer, the estimated costs as far as you can, and the complaints procedure in your office. • The processing of personal information including identification and verification evidence is subject to General Data Protection Regulation and the Data Protection Act 2018 • The personal information / data must be kept in a form that allows the identification of individuals for no longer than is necessary for the purposes for which the data is processed. 	

Question 3b

18 marks

A number of candidates wrote answers that were not detailed enough or wrote about matters that would not be considered at the initial interview or the actions to be taken immediately after it.

Suggested Points for Response:

Who the instructions come from

- You need to obtain a copy of Ikbir's death certificate which is formal confirmation of the date and the fact of his death.
- It will be needed to be registered with asset holders before they will send any information to you and to obtain property passing outside the will
- You will need to find out if Ikbir made a Will and if so you will need to obtain the original Will.
- If there is a Will you will need to examine the original to ensure it appears to be validly executed and that it has not been revoked as far as you can ascertain.
- You will also need to check whether executors have been appointed as it is the executors who are entitled to administer Ikbir's estate if there are any and instruct solicitors to do so.
- You will owe a duty of confidentiality to any executors not to disclose the contents of any Will without their consent.
- If there does not appear to be a valid Will or there are no named executors able and willing to act you will need to consider who can be appointed administrators.
- Under R20 NCPR (where there is a Will) and r22 NCPR (where there is no Will) 1987 entitlement to act as PR usually follows the beneficial interests to the estate.
- You should also check that there does not appear to be any conflict of interest between the PRs and the beneficiaries of the estate if they are not the same.

Ikbir's family and dependants

- You need to ascertain whether Ikbir had any other children than Keerat and whether he had any other dependants.
- This is important because if there is a Will you will need to check whether anyone who is not a beneficiary under it may have a claim against the estate,
- And if there is not a Will who might be entitled to the estate under the intestacy rules

Ikbir's assets and liabilities

- You will need to get details of all of Ikbir's assets and liabilities due at the date of his death
- by making sure you ask the PRs for any property deeds or documents or details of any tenancy agreement, any building society passbooks, share certificates, his bank details and details of any online accounts or investments as well as any cash he had (Two needed for mark).
- As Ikbir was still working you will need to find out if he was an employee of the shop he worked in or whether he ran it as a sole trader or in partnership with anyone else. If this was the case you will need details of the latest accounts and any accountants employed by the shop.
- When registering the death with Ikbir's bank you should also ask them if they are holding any items in safe custody for him such as property title documents or share certificates
- and a list of any standing orders and direct debits that come out of his accounts which will help you to check his liabilities.
- You should use the local authority 'Tell us Once' service to register Ikbir's death which will automatically notify HMRC for his tax position, the Department for Work and Pensions (DWP) for state benefits and the local authority for council tax and associated benefits and housing benefit if relevant.
- It may be necessary to place s27 Trustee Act 1925 adverts in the London Gazette and local newspapers to advertise for unknown creditors or claimants of Ikbir's estate to protect the PRs
- It may also be necessary to instruct professional valuers to value any freehold or leasehold property Ikbir owns or any business interest he may have in the shop for the purposes of preparing an Inheritance Tax Account 400, especially if any Inheritance Tax will be due.
- You will also need to check whether Ikbir owned any assets which will pass outside his estate such as property owned as a joint tenant, nominated property (credit any other relevant property)

- Finally, you will need to check whether Ikbir had made any lifetime gifts or other transfers, especially those made in the last seven years as these will be relevant for Inheritance Tax purposes.

Other matters to consider

- You will need to consider the beneficial entitlement to Ikbir's estate under any Will or the intestacy rules and whether it is appropriate to let the main beneficiaries know of their entitlement or whether it would be better to wait until the position is more certain.
- You should also consider whether Leshva needs any immediate provision made for her (and any dependants). This could be from joint bank accounts but also from life assurance policies and pension policies if Ikbir had any.
- If there is a Will you should check whether it included any instructions for funeral arrangements
- You also need to check the insurance position for any buildings Ikbir owned and for his personal possessions, including any car insurance.

Responses could include:

- You might need to consider giving advice as to how Leshva can avoid being a PR of Ikbir's estate if she does not want to
- And whether there needs to be more than one administrator for Ikbir's estate in the event of an intestacy.
- Details of any issue who have predeceased Ikbir might also be relevant if there are substitutional gifts in a Will, if s33 Wills Act 1837 might apply or for the statutory trusts on an intestacy.
- You could also use the online death notification service set up by the high street banks and other participating financial institutions such as building societies and life insurance companies.
- Any other relevant steps (Could include client care letter).
- Further detailed explanations of any of the above matters.

Question 4a	5 marks
<p>Only limited credit was given to those who mistakenly identified the gift as being specific. The gift of a particular coin in the collection would be specific and therefore indicate s24 should not apply, but a collection is a general gift unless each item within it is specifically identified or other qualifying words attached to the gift.</p>	
<p>Suggested Points for Response:</p>	
<ul style="list-style-type: none"> • Under s24 Wills Act 1837 a Will for the purposes of property speaks and takes effect as if the Will had been executed immediately before the death of the testator unless a contrary intention appears in the Will • If the Will were to bequeath 'my coin collection' to Thea this would be seen as being of a generic gift being described as being capable of increasing or decreasing between the date of execution of the Will and Nigel's death • This would have the consequence of Thea being entitled to whatever coins make up Nigel's coin collection at the date of his death including any new coins which make the collection much more valuable. • However, if the Will were to bequeath 'the coin collection which I now own' to Thea this would be seen as contrary intention meaning it would only apply to the coins that Nigel owned when he made his Will (and the value of any subsequently acquired coins would fall into the residue of his estate). • It would also mean that if that coin collection no longer existed when Nigel died the gift would adeem (terminology) so that Thea would receive nothing (and the value of any subsequently acquired coins would fall into the residue of his estate). • If this is what Nigel wants, he should prepare a list of the coins in his collection at the date of execution of the Will to be kept with it for the avoidance of doubt. • S33 Wills Act 1837 would not apply to the bequest, • So, if Nigel does not want his coin collection to fall into his residuary estate he needs to add an express substitutional gift to cover the event of Thea dying before him whether or not she has children / issue. • Nigel might also want to consider if he wishes to expressly make the gift free from or subject to Inheritance Tax • As s211 IHTA 1984 states that it will be free of tax unless there is an express contrary provision. • (Accept that 'my coin collection' could be seen as a specific legacy subject to the doctrine of ademption) 	

Question 4b	9 marks
<p>This question was answered well by most candidates who recognised that it was both a class gift and a contingent gift, although more detail would have been welcome. Common errors were not recognising that the class gift would close on Nigel's death as Thea had already satisfied the contingency.</p>	
<p>Suggested Points for Response:</p>	
<ul style="list-style-type: none"> • The gift would be a <u>class gift</u> as it is to people who satisfy a general description, in this case being the children of Rory and of Sophia. • There are class closing rules which mean that if either Rory or Sophia had a child after Nigel's death such a child would not be included unless Nigel's Will was clear in showing contrary intention by e.g. referring to 'children whenever born'. • If a potential beneficiary predeceases the testator, then the gift to them will lapse and their share will be divided between the other members of the class. As Samuel died before Nigel his share will be divided between Rory and Sophia's other children and will not pass to either Viv or Samuel's unborn child. • To avoid this Nigel would need to add a substitutional provision by e.g. providing that the issue of any predeceasing member of the class should take the share of their parent (and if more than one in equal shares per stirpes) • In which case Samuel's unborn child would take his share if it was born alive. As Nigel's new Will is going to be made after April 1988 it does not matter that the unborn child will be illegitimate and Nigel will need to express a contrary intention in his Will if he only wants legitimate children to inherit. • The gift is also an immediate contingent class gift because it only applies to those children of Rory and Sophia who reach the age of 21. • If any such child dies before they reach 21 their share will be divided between the others rather than forming part of the deceased child's estate. • Thea is already 21 so she has already satisfied the contingency and would be entitled to a share of the residue. • No other child has reached 21 so their entitlement to a share of Nigel's estate is conditional on them surviving until they are 21 years old. • Wilf is being fostered by Sophia, but he will not be included as a potential beneficiary of Nigel's estate as he is not treated as being a child of Sophia for inheritance purposes. • If Nigel wants him to be included his Will should specifically state that it is to be interpreted as if Wilf is a child of Sophia for the avoidance of doubt. • Zara is the adopted child of Sophia and under the Adoption Act 1976 and the Adoption and Children Act 2002 Zara will be treated as the legitimate child of her adoptive parents. • This is subject to contrary intention so if Nigel does not wish her to benefit from his Will, it should specifically exclude her. • As drafted Thea would be entitled to a one quarter share of Nigel's residuary estate immediately and Zara would be entitled a one quarter share of his estate once she reaches 21. (The Stroke Association being entitled to the other half share of Nigel's residuary estate.) • S33 Wills Act 1837 is not relevant as the residuary gift is not to a child or remoter issue of Nigel. • A contingent class gift closes at the date of death provide at least one person has satisfied the contingency • Or at the date the first person satisfies the contingency after T's date of death if later • Nigel could have avoided this by naming the children individually, although this would have the problem of the Will needing updating if Rory or Sophia had any more children later. • Any other relevant method of avoiding the class closing rules. 	

Question 4c

7 marks

This was a question answered well by the majority of candidates. Limited responses often did not consider all of the options Nigel had to affect a signature that would comply with s9a Wills Act 1837. A number of candidates considered how to comply with witnessing requirements, but this was outside the scope of the question which specifically asked about methods of signature.

Suggested Points for Response:

- S9 (a) Wills Act 1837 says that no Will shall be valid unless it is in writing, and signed by the testator, or by some other person in his presence and by his direction.
- As Nigel's limbs are partially paralysed, he may not be able to sign documents in a recognisable way on his own. If he can, his first option is to sign his Will unaided.
- This would be the best option and provided there is an attestation clause in the Will this will raise a presumption of due execution.
- Another option would be for Nigel to make a mark on the Will on his own by which he intended to give effect to his signature
- in which case the attestation clause should be amended to reflect this.
- Alternatively, Nigel could ask a third party to sign the Will on his behalf
- in which case the attestation clause should be amended to show who signed the Will in Nigel's name in his presence and at his direction.
- It would be acceptable for someone to steady Nigel's hand while he signed but not for Nigel to merely hold the pen and someone to guide his hand / make a discernible contribution to his signature.
- If there was no appropriate attestation clause the registrar could require an affidavit of due execution under r12 Non-Contentious Probate Rules 1987 from a witness to the Will or a disinterested person who was present at the time of execution before the Will could be admitted to probate.
- It would have to deal with any problems such as an extremely infirm or feeble signature that was not covered by the attestation clause and identify Nigel's signature as being in his handwriting.
- Explanation of any relevant case law on signature
- Ability of the registrar to request evidence of the handwriting of the attesting witnesses too.
- Reference to the importance of good file notes covering the circumstances of execution of the Will being kept.