



## **CHIEF EXAMINER REPORT**

**JUNE 2026**

**LEVEL 6 UNIT 21– PROBATE PRACTICE**

The purpose of the report is to provide candidates and training providers with guidance as to the key points candidates should have included in their answers to the June 2026 examinations.

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

Candidates will have received credit, where applicable, for other points not addressed.

## Chief Examiner Overview

Candidates need to revise the whole of the syllabus and pay close attention to the topics that appear to be relevant from the pre-release case study material. It was very clear that some candidates only had an overview of the learning outcomes of the Probate Practice specification.

Candidates should note that where the command word in a question is a description all that is required is a description of the relevant legal rules and the answer does not require any application of the facts of the scenario.

It was noticeable that in a number of questions candidates wasted time discussing matters that the question did not ask for e.g Q1b, Q2c and Q3b (see more detail in the report).

## 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 may be limited.

### Section A

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| Question 1a                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 11 marks |
| Candidates must ensure that they answer the question that has been asked. In this case, some responses focused on the advice they might give to the client, rather than explaining the methods that could be used to update the will, which was the specific requirement of the question.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |          |
| Suggested Points for Response:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |          |
| <ul style="list-style-type: none"><li>• The changes to the legacies in Albert and Barbara's Wills and Codicils could be made by either making a new Will or by making a second Codicil to their existing Wills</li><li>• A Codicil is a testamentary document which adds to or amends the terms of a Will without revoking the whole of the original Will and it is usually less expensive than making a new Will</li><li>• A Codicil is best used for minor changes to a Will including adding to or amending legacies in a Will as Albert and Barbara want to do</li><li>• It is very important to word the revocation clause in a Codicil so that it only revokes the parts of the earlier Will and any Codicils to it that are intended to be revoked</li><li>• Albert and Barbara will only want to revoke the amount of the legacies left for Elsie and Frank in their Codicils in addition to inserting a higher legacy for them and adding an additional legacy for Greg</li><li>• Even if they revoke the whole of the 1997 Codicil and replace it with a new Codicil the 1997 Codicil must be retained and sent to the Registrar on an application for Probate of each Will</li><li>• However, making a new Will makes the testamentary dispositions clearer and more straightforward being in a single document</li><li>• The revocation clause can revoke all previous Wills and Codicils and the three legacies can be clearly set out for the new amount of £25,000</li><li>• And fewer documents will be needed when making an application for Probate</li><li>• In addition the opportunity could be taken to consider whether the administrative clauses in the existing Will are suitable and up to date and / or whether any other changes should be considered for inheritance tax purposes</li><li>• In conclusion new Wills would be more suitable for Albert and Barbara than making second Codicils as their testamentary dispositions would be less complicated / clearer in one document rather than three</li><li>• Although considering Albert's mental capacity it might be easier to prove he understood the nature and effects of a short codicil than a whole new Will</li></ul> |          |

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| Question 1b                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | 9 marks |
| Candidates should read the entire question carefully, including all sub-parts, to ensure that their responses are relevant to the specific requirement being assessed. Some candidates included information that was more appropriate to question 1(c), rather than focusing on describing the tests required in this part of the question.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |         |
| Suggested Points for Response:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |         |
| <ul style="list-style-type: none"> <li>• Mental capacity to make a Will or a Codicil is assessed under the <b>Banks v Goodfellow 1870</b> test whereby a testator must understand the nature of his act and its effects; the extent of his property; and the claims on his estate he ought to be aware of. The testator must also not be suffering from any insane delusions which affect the terms of his Will</li> <li>• Under s1(2) <b>Mental Capacity Act 2005</b> (MCA 2005) a person is presumed to have capacity unless it is established that they lack capacity</li> <li>• And, under s2(1) <b>MCA 2005</b> a person is said to lack capacity in relation to a specific matter if at the material time they are unable to make a decision for themselves because of an impairment of or a disturbance in the functioning of the mind or the brain</li> <li>• S3(1) sets out that a person is unable to make a make a decision for themselves if they are unable to understand the information relevant to the decision and to retain, use or weigh that information to communicate their decision</li> <li>• The case of <b>Baker v Hewston 2023</b> held that the <b>Banks v Goodfellow</b> test was the test to use when assessing testamentary capacity</li> <li>• But also, that rules one to three of <b>Banks v Goodfellow</b> are information relevant to understand a decision under s3(1) of the <b>MCA 2005</b></li> </ul> |         |

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| Question 1c                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 10 marks |
| This question required considerable application to the facts of the scenario and many candidates answered this question reasonably well.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |          |
| Suggested Points for Response:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |          |
| <ul style="list-style-type: none"> <li>• In view of Albert's age, 87, and that he is very forgetful now</li> <li>• It would be advisable to obtain a medical report from Albert's GP to confirm his mental capacity to make a Will</li> <li>• This will involve Albert agreeing to the GP providing the report and to paying the fee which it will involve.</li> <li>• The GP must be given a summary of the <b>Banks v Goodfellow</b> criteria, with a summary of Albert's assets and the changes he is proposing to make to his Will / the main gifts in his Will</li> <li>• Kempstons should also follow 'the golden rule' ( <u>Kenward v Adams</u> 1975), so that they discuss Albert's previous Will with him and his reasons for wanting to change it in the absence of Barbara who will have influence over him</li> <li>• Kempstons will then keep full file notes of all meetings with Albert involving him giving instructions for and signing any new Will / Codicil which will be disclosed to the court in the event of the Will / Codicil being disputed (under s122 Senior Courts Act 1981)</li> <li>• In the event of the Will / Codicil being disputed the GP's report and following the Golden Rule are not evidence of Albert's testamentary capacity but they are helpful to a court where capacity is an issue</li> </ul> |          |

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| Question 2a                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 10 marks |
| There was a mixed performance on this question. However, the main reason for lower marks was a lack of knowledge and understanding relating to gifts in Wills.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |          |
| Suggested Points for Response:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |          |
| <ul style="list-style-type: none"> <li>• Under clause 3 of Hakim's Will Imani will be entitled to all of his estate</li> <li>• Provided she is still married to Hakim at the time of his death</li> <li>• Provided she pays his debts, funeral and testamentary expenses</li> <li>• If Imani fails to survive Hakim then the gift to her will lapse</li> <li>• And in clause 6 there is a condition that Imani must survive Hakim by 28 days, or she will be treated as having predeceased him</li> <li>• The first condition that any issue of Hakim must meet to benefit under his Will is that Imani must have failed to survive Hakim (by 28 days)</li> <li>• Hakim's issue are his children and remoter descendants, if any</li> <li>• <u>Clause 5 is a class gift</u> to 'such of my children as survive me and attain the age of 21 years and the class closes at the date of his death</li> <li>• Any child of Hakim's who is alive at the date of his death or who is <i>en ventre sa mere</i> and is later born alive is a potential member of this class</li> <li>• So, this includes any child of Hakim's who is born after his will is executed and not just his children, Jamal and Kalila, who are alive at that time</li> <li>• The gift is also a contingent class gift as any issue would have to live to be 21 years old to be entitled to share in the residue</li> <li>• The only way that remoter issue than Hakim's children could benefit from Hakim's estate would be if one (or more) of Hakim's children had died either before his death or before attaining 21 years of age</li> <li>• The remoter issue would still have to live to be 21 years old to attain a vested interest in Hakim's estate</li> </ul> |          |

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| Question 2b                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 8 marks |
| This question required the candidates to compare the statutory rules with those set out in the Will which candidates found challenging.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |         |
| Suggested Points for Response:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |         |
| <ul style="list-style-type: none"> <li>• Clause 7 generally concerns the powers Hakim and / or Imani's Trustees would have if there is a beneficiary to their estates who has not yet satisfied the contingency of reaching 21 years of age</li> <li>• Clause 7a concerns the power of Trustees to apply capital to beneficiaries of Hakim and / or Imani and the statutory powers are contained in s32 Trustee Act 1925</li> <li>• One difference between the two is that s32 allows capital to be applied for both the advancement and benefit of a beneficiary, whereas clause 7a only covers application of capital for the benefit of a beneficiary</li> <li>• An advancement is described as a substantial payment that could set the beneficiary up in life, (e.g. any example such as to buy a car to enable them to travel to work or to pay university fees) but this could also be interpreted as a benefit to the beneficiary</li> <li>• The similarities are that there is no limit on the amount of capital that can be advanced to the beneficiary, provided that it does not exceed the amount of capital that is payable to the beneficiary if they attain a vested interest</li> <li>• That any capital monies advanced to the beneficiary are to be deducted from the final amount of capital paid to the beneficiary when they do reach 21 and that nothing needs to be repaid if the beneficiary dies before they attain a vested interest</li> </ul> |         |

- Clause 7b concerns the power of Trustees to apply income from the beneficiaries share of capital to the beneficiary as they think fit, or for their maintenance, education or benefit under s31 Trustee Act 1925
- One major difference is that under s31 the income must be paid to the beneficiary when they reach 18 years of age and they do not have a vested interest, but clause 7b substitutes the age of 21 for 18 so the Trustees still have a discretion and not an obligation whether or not to apply the income for the benefit of the beneficiary
- Clause 7c is clearly stated to allow any type of investment and this is the same as the powers of investment under s3 Trustee Act 2000
- The main benefit of including such clauses in a Will are to make it clear on the face of the Will to both beneficiaries and the testator what powers the Trustees are to have rather than relying on statutory powers

| Question 2c                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | 7 marks |
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| It was noticeable in this question that some candidates spent time discussing matters that were not required by the question. A significant number provided detailed explanations of the s9 formalities, rather than focusing on the steps that should be taken to address the issue with Hakim's signature. Candidates should ensure that they tailor their answers to the specific requirements of the question.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |         |
| <b>Suggested Points for Response:</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |         |
| <ul style="list-style-type: none"> <li>• Under s9 Wills Act 1837 a will must be signed by the Testator to be valid and it must appear that the Testator intended by their signature to give effect to the Will</li> <li>• This is usually evidenced by an attestation clause</li> <li>• And if the Will has been professionally prepared the court will presume Testator's intention</li> <li>• It might therefore be prudent to amend the attestation clause to reflect that Hakim is signing by his mark</li> <li>• And a full attendance note of the circumstances of execution should be kept explaining the effect of Hakim's injury at the time of signing his Will, perhaps signed by the witnesses to Hakim's signature</li> <li>• So that an affidavit of due execution under r12 Non-Contentious Probate Rules 1987 (NCPR 1987) can refer to this if the Probate Registrar should require one</li> </ul> |         |

| Question 3a                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | 10 marks |
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| This question required application of IHT nil rate bands and IHT residential nil-rate bands and many candidates answered this question reasonably well.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |          |
| <b>Suggested Points for Response:</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |          |
| <ul style="list-style-type: none"> <li>• The figure of £1 million assumes that a person who dies has full use of the first £325,000 being taxed at 0% / the nil rate band (NRB)</li> <li>• A full residential nil-rate band (RNRB) of £175,000</li> <li>• And that they can make use of unused transferrable NRB and unused transferable RNRB from a spouse</li> <li>• Noreen does appear to have a full £325,000 NRB to use as she has not made any lifetime gifts</li> <li>• However, Noreen has never been married so her estate will not be entitled to any transferable nil rate bands</li> <li>• For Noreen's estate to be able to claim the RNRB her residence must be closely inherited</li> <li>• As Noreen's estate is worth less than £2 million the taper threshold will not affect the claim</li> <li>• As the residence has no minimum period of ownership and does not need to be the Noreen's main residence it could potentially be claimed on either her home in Bedford or the flat in Falmouth</li> </ul> |          |

- To be inherited the property must pass under a Will, the intestacy rules or by survivorship and if Noreen leaves her estate to Quincy in her Will this condition will be satisfied
- However, to be closely inherited the residence must pass to a lineal descendant (such as a child or grandchild) and Quincy is Noreen's niece so will not qualify as a lineal descendant
- Therefore, Inheritance Tax at 40% will be payable on all of her net estate over £325,000

#### Question 3b

10 marks

Candidates found this question challenging. A number of candidates overlooked CGT uplift on death, which is an important consideration in Probate Practice. A significant number of candidates discussed inheritance tax (IHT) instead of focusing on CGT, and as a result did not address the specific requirements of the question.

#### Suggested Points for Response:

- Capital Gains Tax (CGT) is payable if a chargeable person / UK resident disposes of chargeable assets making a chargeable gain
- The death of a person is not a disposal so there will be no CGT payable on Noreen's death if she continues to own the house and the flat until she dies
- And there will be an automatic uplift of the acquisition value of the properties to the valuation as at the date of death
- If Noreen either sells or gives away one of her properties in her lifetime she will dispose of a chargeable asset
- A chargeable gain arises where the sale value, less sale expenses, exceed the purchase price / acquisition value, plus the costs of acquisition

#### **Selling the house and moving into the flat:**

- If Noreen sells her house and makes a chargeable gain she will be able to claim the main residence allowance (Principal Private Personal Residence) as it has been occupied by her as her main residence throughout her period of ownership and no CGT will be payable on the sale

#### **Giving the flat to Quincy:**

- Noreen's acquisition value of the flat is its 2024 probate value of £525,000
- She did not have any acquisition expenses as the flat was left to her free from (taxes and) costs of transfer
- If Noreen gives the flat to Quincy this will be treated as the disposal of a chargeable asset at the value of the asset at the date of transfer
- If the flat is worth £590,000 when Noreen gives / transfers it to Quincy she will have made a chargeable gain of £65,000, less the legal costs of making the transfer
- She will be able to deduct her annual CGT allowance, of £3,000 from this making the gain £62,000
- CGT is currently taxed as the top slice of a chargeable person's income so Noreen's income for the year of transfer must be calculated, and it appears that she is currently a basic rate taxpayer (her income is £22,500 plus interest on her savings, less her personal allowance of £12,570)
- The £62,000 will be added to her income above the ICT income threshold and then the amount of the gain on top of the income but below the higher rate threshold (of £50,270) will be taxed at 18%
- And the amount of the remainder of the gain will be taxed at 24%
- Noreen will not be able to make use of the main residence allowance (Principal Private Personal Residence Allowance)

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| Question 3c                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 5 marks |
| There was a mixed performance on this question, with the majority of candidates appearing to be underprepared. Candidates should ensure that they revise the entire syllabus.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |         |
| Suggested Points for Response:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |         |
| <ul style="list-style-type: none"> <li>• The executors are not under a duty to deliver any Inland Revenue account nor to pay any IHT due</li> <li>• Until 12 months after the end of the month in which the death occurs</li> <li>• The executors would have the option of paying the IHT due on land (Noreen's properties) by 10 annual instalments</li> <li>• The first of which is due at the same time as the tax would otherwise be due, although interest would also be payable on subsequent instalments</li> <li>• However, Executors should pay any Inheritance Tax due on Noreen's estate no later than six months after the end of the month in which she dies, or interest will be payable</li> <li>• And before making an application for a grant of probate if this is earlier</li> </ul> |         |

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| Question 4a                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 6 marks |
| Many candidates answered this question very well.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |         |
| Suggested Points for Response:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |         |
| <ul style="list-style-type: none"> <li>• As Ryan died intestate a Grant of Letters of Administration will be needed</li> <li>• Entitlement to apply for this grant is set out in r22 Non-Contentious Probate Rules 1987</li> <li>• Ryan did not leave a spouse or civil partner, or any children, or any parents so the first category of people entitled to apply are brothers and sisters of the whole blood</li> <li>• This means that Shona can apply for a grant</li> <li>• But as Tyler is still a minor there must be a minimum of two administrators (s114 Supreme Court Act 1981)</li> <li>• So Shona will need to nominate a suitable person to act alongside her such as her Uncle Usain</li> </ul> |         |

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| Question 4b                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | 8 marks |
| Candidates found this question challenging. Candidates should note that that administrators are not able to place s27 notices until after they have received the grant of letters of administration as they have no authority before that date and they have to ascertain whether any IHT is due before they can apply for a grant.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |         |
| Suggested Points for Response:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |         |
| <p><b>You will need:</b></p> <ul style="list-style-type: none"> <li>• a valuation of 313 Silver Road, Norwich, from a professional valuer</li> <li>• to write to the Norwich Bank to obtain accurate balances on his current and savings accounts as at the date of his death (DoD) plus any interest due to the estate to the DoD and to obtain an accurate balance of the monies outstanding on his mortgage plus details of the interest owing to the DoD</li> <li>• to contact the utility companies (e.g. gas, electricity, phone, Wi-Fi, tv and mobile services, council tax etc) to ascertain whether his accounts are in credit or whether there are any amounts outstanding on his accounts as at the DoD</li> <li>• contact Ryan's employer to see if there are any arrears of wages due to the DoD, whether there is any death in service benefit payable to the estate and (or contact the work pension provider) to ascertain what monies, if any, are payable to his estate from his work pension policy</li> </ul> |         |

- contact Ryan's Life Assurance company to ascertain the value of the policy and check whether it is payable to the estate and check with HMRC whether the estate is due a refund of Income Tax to the DoD. Ryan died early in the tax year so there is probably a refund due
- to check whether Ryan made any lifetime gifts in the last seven years

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| Question 4c                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 6 marks |
| Many candidates answered this question very well.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |         |
| Suggested Points for Response:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |         |
| <ul style="list-style-type: none"> <li>• The beneficial entitlements to Ryan's estate after payment of his debts and funeral and administration expenses are set out in Part IV of the Administration of Estates Act 1925 (AEA 1925)</li> <li>• Ryan was not survived by a spouse or civil partner, issue or parents</li> <li>• So the next category of relative entitled to share his estate is brothers and sisters of the whole blood and the issue of such siblings who have predeceased the deceased on the statutory trusts</li> <li>• Shona is Ryan's sister of the whole blood and is 19 years old, so she has attained a vested interest and is entitled to half of his estate</li> <li>• Tyler is Ryan's brother of the whole blood but as he is only 16 years old / a minor s47 AEA 1925 states that his share will be held on the statutory trusts until he reaches 18 years of age</li> <li>• Which means that if he dies before he reaches 18 years of age and attains a vested interest he will be treated as if he had predeceased Ryan and his presumptive share will devolve on Shona too</li> </ul> |         |