

Unit 14



Title:	Probate Practice
Level:	3
Credit Value:	7

Learning outcomes	Assessment criteria	Knowledge, understanding and skills
The learner will:	The learner can:	
1 Understand the principles of risk management in probate practice	<p>1.1 Distinguish a client from a third party conveying instructions</p> <p>1.2 Identify circumstances in which risk management is a particular concern</p> <p>1.3 Describe the parties to whom a duty of care is owed</p> <p>1.4 Apply an understanding of risk management in probate practice to a given situation</p>	<p>1.1 Dealing with relatives or other professionals seeking to represent or assist the testator or other client who is elderly/infirm/has difficulties communicating.</p> <p>1.2 Very elderly/ill client – importance of acting quickly; blind/illiterate testator; suspicion of lack of capacity or undue influence.</p> <p>1.3 Wills: duty to testator and beneficiary; estates: duty to personal representatives and beneficiaries.</p> <p>1.4 Application to a scenario.</p>
2 Understand how to determine testamentary capacity and intention	<p>2.1 Describe the criteria for testamentary capacity</p> <p>2.2 Explain the significance of testamentary capacity</p>	<p>2.1 The three point test in <i>Banks v Goodfellow (1870)</i>; the test for capacity under s3(1) Mental Capacity Act 2005 and its impact; cases such as eg <i>Scammell v Farmer</i>.</p> <p>2.2 An outline of: rules regarding the creation of a valid will; both mental capacity and intention</p>

This specification is for 2012 examinations

	<p>2.3 Describe the procedures for determining capacity and intention</p> <p>2.4 Apply an understanding of testamentary capacity and intention to a given situation</p>	<p>must be present along with knowledge and approval of the content of the will if the person propounding the will is to prove it is valid; note in outline presumptions of capacity; note that a will is invalid if capacity or intention is lacking.</p> <p>2.3 When is it necessary to obtain medical evidence and from whom; contents of letter to Doctor requesting opinion; rules of confidentiality between lawyer and health professionals; importance of careful attendance note at time of instructions and execution.</p> <p>2.4 Application to a scenario; eg, draft the contents of letter to Doctor re testamentary capacity; devise a checklist following <i>Banks v Goodfellow</i> test.</p>
3 Understand how to take instructions for a will	<p>3.1 Describe necessary preparatory measures</p> <p>3.2 Identify the information to be obtained from a testator</p> <p>3.3 Apply an understanding of how to take instructions to a given situation</p>	<p>3.1 Importance of taking clear instructions preferably face to face; importance of clear attendance note; use of checklists; verify capacity where appropriate; take precautions to preclude possibility of undue influence.</p> <p>3.2 Eg Size of estate; composition of family; importance of IHT planning, with examples; jointly held assets; specific/general/residuary gifts – age contingencies and substitutional provisions; details of any dependants; choice of executors, choice of guardians, funeral directions.</p> <p>3.3 Application to a scenario.</p>
4 Understand the provisions which can be included in a will	<p>4.1 Identify the more common operative clauses found in a will</p>	<p>4.1 Name and address; revocation clause; funeral directions; appointment of Executors, guardians; types of legacy (specific, general, pecuniary, demonstrative); residuary gifts</p>

This specification is for 2012 examinations

	<p>4.2 Explain when administration clauses are needed</p> <p>4.3 Apply an understanding of these provisions to a given situation</p>	<p>(outright or as a life interest); and how these gifts might fail, ie ademption, lapse and the effect of s33 WA 1837; attestation.</p> <p>4.2 Administrative clauses for investment, maintenance, advancement, business; receipts; guardians; Trustee Act 2000 obviates need for most administrative powers.</p> <p>4.3 Application to a scenario; eg, draft a basic will from a given set of instructions, using non-technical terminology.</p>
5 Know how a will must be executed	<p>5.1 Use the criteria of s9 Wills Act 1837 (as amended) to evaluate validity of will execution in given circumstances</p> <p>5.2 Apply this understanding of the execution of a will to a given situation</p>	<p>5.1 In writing and signed by testator; signed or acknowledged before two witnesses; who sign or acknowledge before testator but not necessarily before each other; implications of s15 Wills Act 1837; form of attestation clause and need to adapt in special circumstances (ie, a blind testator).</p> <p>5.2 Application to a scenario.</p>
6 Understand the rules of intestacy	<p>6.1 Describe the circumstances under which total and partial intestacy arise</p> <p>6.2 Apply the order of beneficial entitlement on intestacy in given cases of total or partial intestacy</p>	<p>6.1 An outline of: intestacy arises when there is no valid will; will may have been revoked by marriage/entry into civil partnership; will may be invalid; compare with partial intestacy where will does not dispose of entire estate; assets undisposed of by will.</p> <p>6.2 Application to a scenario; from a given set of family details (with or without a spouse/civil partner) use s46AEA 1925 list of entitlement to identify the beneficiaries and the shares they will receive.</p>
7 Understand the basic principles of inheritance tax (IHT)	<p>7.1 Describe how lifetime gifts may be assessed for IHT on death</p>	<p>7.1 Annual allowances; spouse/civil partner/charity exemptions; PETs.</p>

This specification is for 2012 examinations

	<p>7.2 Explain how an estate may be assessed for IHT on death</p> <p>7.3 Apply criteria to a given situation so as to assess whether the estate is excepted or non-excepted</p>	<p>7.2 Nil-rate band; spouse/civil partner/charity exemption; PETs covered by nil-rate band; 40% rate; transferable nil rate band.</p> <p>7.3 Take account of size of estate, nil-rate band and exemptions in determining when an estate is excepted.</p>
<p>8 Understand the rules for submission of Inheritance Tax Accounts to HM Revenue and Customs</p>	<p>8.1 Explain the purpose of an IHT 400, IHT 205 and IHT 421</p> <p>8.2 Explain to whom an IHT 400, IHT 205 and IHT 421 are submitted</p> <p>8.3 Apply an understanding of the rules for submission of accounts to a given situation</p>	<p>8.1 Recognise that an IHT 400 is used in non-excepted estates, and that completion of the form entails calculation of any IHT that may be due; that an IHT 205 is a return of information in smaller estates where no IHT is payable and certain criteria are met.</p> <p>8.2 Procedure for submitting IHT 205, and IHT 400 to HMRC and obtaining stamped/receipted IHT 421.</p> <p>8.3 Application to a scenario; eg, complete an IHT 205 (not an IHT 400); outline the information contained in either of these accounts.</p>
<p>9 Understand how to obtain Grants of Probate and Letters of Administration from the Registry</p>	<p>9.1 Explain the different types of grant and when they are required</p> <p>9.2 Identify the appropriate applicants for a grant of probate, letters of administration and letters of administration with the will annexed</p> <p>9.3 Describe the information required to be completed within the oath form</p>	<p>9.1 Grant of probate – valid will and executors who can act whose authority derives from the will; Letters of administration – no will/intestacy; Letters of administration with the will – will but no executors able or willing to act; in both cases authority to act derives from the grant.</p> <p>9.2 Use of the will to identify executors or rr 20 and 22 NCPR 1987 to identify administrators.</p> <p>9.3 Content of oath; deceased's name, address, date of birth and death, domicile; minority and life interest issues in intestacy; settled land statement; entitlement of applicants; PR's</p>

This specification is for 2012 examinations

	<p>9.4 Describe the procedure for swearing an oath</p> <p>9.5 Identify documents which need to be submitted to the Probate Registry when applying for a grant</p> <p>9.6 Identify when affidavit evidence will be needed</p> <p>9.7 Apply an understanding of how to obtain grants of probate and letters of administration to a given situation</p>	<p>statement of duties; value of estate, excepted estate statement.</p> <p>9.4 Oath fee; oath sworn by solicitor or commissioner for oaths not connected with the firm preparing the oath; will (if any) must be marked.</p> <p>9.5 Sworn oath (with exhibits); court fee; IHT 205/IHT 421; letter indicating number of office copies needed.</p> <p>9.6 Affidavit of due execution; plight and condition.</p> <p>9.7 Application to a scenario; eg, complete oaths for executors and for administrators from given data.</p>
10 Understand how to administer an estate	<p>10.1 Explain how to use the grant to obtain payment of estate assets</p> <p>10.2 Explain how to protect personal representatives from personal liability</p> <p>10.3 Explain how to settle estate liabilities and pay legacies</p> <p>10.4 Explain how to finalise and distribute the residuary estate</p>	<p>10.1 Writing to each asset holder with office copy grant and form of authority or withdrawal form signed by all PRs.</p> <p>10.2 Use of s27 Trustee Act 1925 notices to call for creditors and claimants to come forward and protect PRs' personal liability for unpaid debts and claims.</p> <p>10.3 Wait for s27 notices to expire; delay until 6 months from date of grant in case of IPFD Act claim; settle all debts first and obtain receipts; settle legacies in the will (sums of money and specific items); draft and obtain receipts for each legacy.</p> <p>10.4 Finalise IHT by reporting any amendments (corrective account) and obtaining a certificate of discharge; preparing estate</p>

This specification is for 2012 examinations

	<p>10.5 Apply an understanding of how to administer an estate in a given situation</p>	<p>accounts for PRs' approval; final checks that all debts/legacies have been paid (use of checklists); reporting and settling any administration income tax; paying out residue; drafting and obtaining signed receipts from each residuary beneficiary.</p> <p>10.5 Application to a scenario; eg, drafting accounts for a simple estate from given data; preparing a pre-distribution checklist.</p>
--	---	--

Additional information about the unit	
Unit aim(s)	The learner will understand key concepts, terms and processes in the area of Probate practice
Unit expiry date	31 March 2015
Details of the relationship between the unit and relevant national occupational standards (if appropriate)	This unit may provide relevant underpinning knowledge and understanding towards units of the Legal Advice standards
Details of the relationship between the unit and other standards or curricula (if appropriate)	Courses of study leading towards the achievement of the unit may offer the learner the opportunity to satisfy requirements across a number of Level 3 Key Skill areas; most specifically, Communication, Improving own learning and performance, Problem solving and Working with others
Assessment requirements specified by a sector or regulatory body (if appropriate)	N/A
Endorsement of the unit by a sector or other appropriate body (if required)	N/A
Location of the unit within the subject/sector classification	15.5 Law and Legal Services
Name of the organisation submitting the unit	ILEX (Institute of Legal Executives)
Availability for use	Only available to owning awarding body
Availability for delivery	1 September 2008

This specification is for 2012 examinations