

Unit 21



<b>Title:</b>	<b>Probate Practice</b>
<b>Level:</b>	<b>6</b>
<b>Credit Value:</b>	<b>15</b>

<b>Learning outcomes</b>	<b>Assessment criteria</b>	<b>Knowledge, understanding and skills</b>
<b>The learner will:</b>	<b>The learner can:</b>	
<b>1 Understand the importance of risk management in probate practice</b>	<p><b>1.1</b> Identify the client and relevant other parties to whom a duty of care is owed</p> <p><b>1.2</b> Explain the nature and extent of the duty of care</p> <p><b>1.3</b> Identify circumstances in which risk management is a particular concern</p> <p><b>1.4</b> Analyse a given legal situation on risk management in probate practice in order to offer practical advice and assistance</p>	<p><b>1.1</b> Client - will making, the testator; estates, personal representatives (PRs): duty of care – will making and estates, client and beneficiaries</p> <p><b>1.2</b> Client – in contract and tort; beneficiaries – statute and relevant case law: eg, <i>Ross v Caunters (1980)</i>; <i>Clarke v Bruce Lance &amp; Co (1988)</i>; <i>White v Jones (1995)</i></p> <p><b>1.3</b> Elderly/very ill clients; Solicitors’ Code of Conduct 2007 (SCC), eg, “third party” instructions, Rule 2.01 (c) and (d); potential conflict of interest (SCC Rule 3); confidentiality (SCC Rule 4); record keeping and complying with <i>Larke v Nugus (2000)</i> letters; advice to PRs and/or beneficiaries on investment</p> <p><b>1.4</b> Analysis of a complex scenario to offer advice and assistance, eg, drafting paragraphs for letters to clients and internal memoranda</p>
<b>2 Understand what will happen to a client’s property on death if it is not effectively dealt with by their will/codicil</b>	<b>2.1</b> Explain the entitlement to any estate not effectively disposed of by the will/codicil	<b>2.1</b> s33(1) Administration of Estates Act (AEA) 1925 (as amended); Part IV AEA 1925 (as amended); rights of surviving spouse/civil partner (including

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	<p><b>2.2</b> Explain property that passes on death independently of the terms of a valid will or operation of the intestacy rules</p> <p><b>2.3</b> Analyse a given legal situation on what will happen to a client's property on death if not dealt with by their will/codicil in order to offer practical advice and assistance</p>	<p>elections available to them); issue; other relatives; the Crown; meaning of "statutory trusts"</p> <p><b>2.2</b> Property that does not pass to PRs but is part of the estate for inheritance tax (IHT) purposes; property that does not pass to PRs and is also not part of the IHT estate</p> <p><b>2.3</b> Analysis of a complex scenario to offer advice and assistance, eg, drafting paragraphs for letters to clients and internal memoranda</p>
<p><b>3 Understand how a successful claim under the Inheritance (Provision for Family and Dependants) Act 1975 may affect distribution under the terms of a will and/or operation of the intestacy rules</b></p>	<p><b>3.1</b> Explain the law relating to any such claim for financial provision</p> <p><b>3.2</b> Analyse a given legal situation on how a successful claim may affect distribution of an estate in order to offer practical advice and assistance</p>	<p><b>3.1</b> Inheritance (Provision for Family and Dependants) Act 1975 (as amended (I(PFD)A) and relevant case law; time limit; categories of applicant; failure to make reasonable financial provision; guidelines which court takes into account in determining this and the type of order (if any) to make; orders made against deceased's net estate</p> <p><b>3.2</b> Analysis of a complex scenario to offer advice and assistance, eg, advising the client on the likelihood of a successful claim in a given situation</p>
<p><b>4 Understand the requirements in English law for the creation of a valid will/codicil</b></p>	<p><b>4.1</b> Explain the necessary capacity to make a will/codicil</p> <p><b>4.2</b> Explain the requirement of the testator's intention</p> <p><b>4.3</b> Explain the relevant formality</p>	<p><b>4.1</b> Rules in <i>Banks v Goodfellow (1870)</i> and <i>Parker v Felgate (1883)</i>; Mental Capacity Act 2005; burden of proof and presumptions that may apply</p> <p><b>4.2</b> Knowledge and approval; burden of proof and presumptions that may apply; position where testator blind/ illiterate/will is signed on behalf of testator, or there are suspicious circumstances</p> <p><b>4.3</b> s9, Wills Act 1837 (as amended); burden of</p>

	<p>requirements</p> <p><b>4.4</b> Analyse a given legal situation on these requirements in order to offer practical advice and assistance</p>	<p>proof and effect of including a suitable attestation clause</p> <p><b>4.4</b> Analysis of a complex scenario to offer advice and assistance, eg, drafting paragraphs for letters to clients and internal memoranda</p>
<b>5 Understand the principles of construction of a will/codicil</b>	<p><b>5.1</b> Explain the court's approach to the construction of a valid will/codicil</p> <p><b>5.2</b> Explain the effect of the different types of gift that may be found in a will</p> <p><b>5.3</b> Explain the causes and consequences of failure of such gifts</p> <p><b>5.4</b> Analyse a given legal situation on these principles of construction in order to offer practical advice and assistance</p>	<p><b>5.1</b> Ascertaining testator's intention, ie, presumptions applied and how these may be rebutted; admissibility of extrinsic evidence; date from which will speaks; omitting, changing and supplying words; class gifts and class closing rules; gifts to "children"</p> <p><b>5.2</b> Specific, general, demonstrative, pecuniary and residuary gifts; doctrine of incorporation by reference</p> <p><b>5.3</b> Ademption; lapse; uncertainty; s15 Wills Act 1837 (as amended); gifts for illegal or immoral purpose or contrary to public policy</p> <p><b>5.4</b> Analysis of a complex scenario to offer advice and assistance, eg, drafting paragraphs for letters to clients and internal memoranda</p>
<b>6 Understand the principles relating to the revocation or alteration of a will/codicil</b>	<p><b>6.1</b> Explain the possible causes and extent of revocation of a will/codicil</p> <p><b>6.2</b> Explain the effect of alterations and obliterations in a will/codicil</p> <p><b>6.3</b> Analyse a given legal situation on these principles relating to revocation and alteration in order to offer practical advice and assistance</p>	<p><b>6.1</b> Marriage/civil partnership; divorce or nullity/ dissolution or nullity of civil partnership; later will/codicil; destruction; conditional revocation</p> <p><b>6.2</b> s21 Wills Act 1837; conditional revocation; consequences of invalid alterations</p> <p><b>6.3</b> Analysis of a complex scenario to offer advice and assistance, eg, drafting paragraphs for letters to clients and internal memoranda</p>
<b>7 Understand the taxation principles relevant to will drafting and associated tax</b>	<p><b>7.1</b> Explain the principles of the charge to inheritance tax (IHT) and its calculation</p>	<p><b>7.1</b> Transfers of value; chargeable transfers; excluded property; dispositions not transfers of</p>

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<p><b>planning measures</b></p>	<p><b>7.2</b> Explain the basic principles of income tax, capital gains tax (CGT) and IHT applying to trusts (post-Finance Act 2006)</p> <p><b>7.3</b> Explain appropriate opportunities for basic IHT planning in lifetime and in the will</p> <p><b>7.4</b> Analyse a given legal situation on the relevant taxation principles and planning measures in order to offer practical advice and assistance</p>	<p>value; potentially exempt transfers (PETs); lifetime transfers that are chargeable when made (LCTs); gifts with reservation of benefit (GROBs); occasions of charge to tax; cumulation; taper relief; liability and burden</p> <p><b>7.2</b> Income tax: liability of trustees, liability of beneficiaries; CGT: on creation, subsequent liability of trustees and beneficiaries; IHT: on creation, subsequent chargeable events</p> <p><b>7.3</b> Use of exemptions and reliefs; PETs; trust policies; issues relating to gifts to spouses/civil partners; issues relating to gifts to minors; use of trusts; interaction with CGT</p> <p><b>7.4</b> Analysis of a complex scenario to offer advice and assistance, eg, drafting paragraphs for letters to clients and internal memoranda</p>
<p><b>8 Understand the elements of will drafting</b></p>	<p><b>8.1</b> Identify relevant background information required on taking instructions</p> <p><b>8.2</b> Explain the structure and contents of the will required to meet the client's needs</p> <p><b>8.3</b> Explain arrangements for execution</p>	<p><b>8.1</b> Client's personal details, including any previous will; details of family and any dependants; size and nature of client's estate, including "expectations" and any existing cumulative total for IHT and any PETs; some assessment of the estate of any spouse/civil partner</p> <p><b>8.2</b> Commencement and revocation; appointment of executors and trustees; appointment of guardians (if appropriate); issues relating to specific and pecuniary gifts; issues relating to residuary gifts; issues relating to gifts to charities etc; substitutional gifts; use of survivorship clauses; extension/limitation of administrative powers; date and attestation clauses</p> <p><b>8.3</b> Generally; precautions where capacity and/or knowledge and approval may be an issue</p>

	<p><b>8.4</b> Analyse a given legal situation on will drafting in order to offer practical advice and assistance</p>	<p><b>8.4</b> Analysis of a complex scenario to offer advice and assistance, eg, drafting clause(s) for inclusion in will; critique of will and amending errors in drafting</p>
<p><b>9 Understand the law and practice relating to the issue of grants of representation</b></p>	<p><b>9.1</b> Explain the nature and effect of the principal types of grant</p> <p><b>9.2</b> Identify when a grant is not necessary to deal with property of the deceased</p> <p><b>9.3</b> Explain entitlement to the appropriate grant in a particular case</p> <p><b>9.4</b> Explain issues affecting appointment of PRs</p> <p><b>9.5</b> Explain the nature and effect of caveats and citations, and use of standing searches</p> <p><b>9.6</b> Explain the initial practical steps to be taken on receipt of instructions to prepare an application to obtain a grant</p>	<p><b>9.1</b> Evidential significance; confirmation of title of executors; conferment of title on administrators; circumstances in which a grant may require amendment or revocation</p> <p><b>9.2</b> Property not passing to PRs on death (as identified in 2.2 above); small sums due to estate</p> <p><b>9.3</b> Rules 20 and 21 Non-Contentious Probate Rules 1987(NCPR): Probate or Letters of administration with will annexed; Rule 22 NCPR: simple administration; administration <i>de bonis non</i></p> <p><b>9.4</b> Capacity; position where there are several claimants; number; renunciation / power reserved</p> <p><b>9.5</b> Caveats: Rule 44 NCPR; warnings; subsequent procedure: citations, ie, Rules 46 – 48 NCPR; types; procedure on issue; subsequent procedure: standing searches, ie, where applicant wishes simply to be warned of the issue of a grant</p> <p><b>9.6</b> Eg, action needed to deal with any perceived “difficulties” with will; action needed if a will/codicil is lost or accidentally or mistakenly destroyed; identifying type of grant needed and proposed PRs; identifying sources of interim financial assistance that may be available if needed by deceased’s family; registering death;</p>

	<p><b>9.7</b> Analyse a given legal situation on the issuing of grants of representation in order to offer practical advice and assistance</p>	<p>valuation of assets and liabilities</p> <p><b>9.7</b> Analysis of a complex scenario to offer advice and assistance, eg, drafting paragraphs for letters to clients and internal memoranda</p>
<p><b>10 Understand the powers and duties of PRs</b></p>	<p><b>10.1</b> Explain the fundamental duties of PRs</p> <p><b>10.2</b> Explain the exercise of administrative powers of PRs</p> <p><b>10.3</b> Analyse a given legal situation on the powers and duties of PRs in order to offer practical advice and assistance</p>	<p><b>10.1</b> s25 AEA 1925 as amended; s1 Trustee Act (TA) 2000; liability for breaches of duty</p> <p><b>10.2</b> Fiduciary nature; statutory powers and relevant case law, ie, relating to delegation; investment; maintenance of minors; advancement of capital; appropriation; receipts for minor's property; insurance; running deceased's business; settling claims by or against the estate; purchase of land: express powers, ie, extensions/modifications to statutory powers commonly found in wills</p> <p><b>10.3</b> Analysis of a complex scenario to offer advice and assistance, eg, drafting paragraphs for letters to clients and internal memoranda</p>
<p><b>11 Understand the requirements of Her Majesty's Revenue and Customs (HMRC)</b></p>	<p><b>11.1</b> Identify whether or not the estate is an "excepted estate" for IHT purposes</p> <p><b>11.2</b> Explain the completion of the appropriate return of estate information/IHT account</p> <p><b>11.3</b> Explain the funding and payment of tax due</p> <p><b>11.4</b> Analyse a given legal situation on the requirements of HMRC in order to offer practical advice and assistance</p>	<p><b>11.1</b> IHT (Delivery of Accounts) (Excepted Estates) Regulations 2004 (as amended)</p> <p><b>11.2</b> Form IHT 205; Form IHT400 (including appropriate Schedules) and calculation of tax due; Schedule IHT402 where appropriate; duty to submit correct information</p> <p><b>11.3</b> Eg, funds in deceased's bank accounts (Schedule IHT423); bank loan; loan from beneficiary; sale of assets; payment of tax due on delivery of the account (online or by cheque using IHT reference number with Schedule IHT422)</p> <p><b>11.4</b> Analysis of a complex scenario to offer advice and assistance, eg, in submitting Form IHT 205;</p>

		IHT400, including Schedules and the calculation of IHT; and Schedule IHT402 if appropriate
<b>12 Understand the requirements of the court</b>	<p><b>12.1</b> Explain the nature and essential purposes of oaths in support of an application for a grant of representation</p> <p><b>12.2</b> Explain the requirements for an oath for Executors/Administrators with will annexed/Administrators/Administrators <i>de bonis non</i> to support an application for the appropriate grant</p> <p><b>12.3</b> Explain the need for, and nature of, further affidavit evidence that may be required by the court</p> <p><b>12.4</b> Identify the final steps leading to the lodging of the papers at the selected Registry</p> <p><b>12.5</b> Analyse a given legal situation on the requirements of the court in order to offer practical advice and assistance</p>	<p><b>12.1</b> Affidavit evidence, ie, to identify deceased and applicant(s) for grant; to establish the title of the applicant(s); in the case of letters of administration, to account for those having a better right to apply</p> <p><b>12.2</b> Dealing appropriately with the various requirements of the court</p> <p><b>12.3</b> Rules 12 – 16 NCPD</p> <p><b>12.4</b> Swearing/affirming oath; lodge this with - will (if any); if an excepted estate - IHT 205, otherwise probate summary (receipted IHT421); any further supporting documents; probate fees</p> <p><b>12.5</b> Analysis of a complex scenario to offer advice and assistance, eg, drafting appropriate oath using printed pro forma; drafting paragraphs for letters to clients and internal memoranda</p>
<b>13 Understand the law and practice relating to the administration and distribution of the estate</b>	<p><b>13.1</b> Explain the protection available to PRs against claims</p> <p><b>13.2</b> Explain the collection/realisation of assets</p> <p><b>13.3</b> Explain payment of debts (solvent</p>	<p><b>13.1</b> By unknown beneficiaries/creditors; missing beneficiaries/creditors; against applications under I(PFD)A 1975; in relation to leasehold interests; future and contingent liabilities; for unpaid IHT on lifetime gifts</p> <p><b>13.2</b> Registration of grant; prioritising the collection of sums due to the estate; practical constraints on sales of assets</p> <p><b>13.3</b> Secured creditors; unsecured creditors, ie,</p>

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	estate)	statutory order; marshalling; contrary provision in will
	<b>13.4</b> Explain payment of debts (insolvent estate)	<b>13.4</b> Secured creditors; unsecured creditors; ie, bankruptcy order (cannot be varied by testator); protection of PRs
	<b>13.5</b> Explain post-death changes affecting distribution of the estate	<b>13.5</b> In addition to an order under I(PFD)A 1975, disclaimers and variations; IHT and CGT consequences
	<b>13.6</b> Explain payment of legacies	<b>13.6</b> Specific gifts; pecuniary legacies; abatement; appropriation; receipts; position where beneficiary is a minor
	<b>13.7</b> Explain income tax liability of PRs	<b>13.7</b> Deceased's income arising before death; income of the administration period; position of beneficiaries
	<b>13.8</b> Explain liability for capital gains tax (CGT) for PRs	<b>13.8</b> On gains made by deceased in lifetime; on disposals made in the course of administration; in relation to transfers to "legatees"; position of beneficiaries
	<b>13.9</b> Explain the ascertainment and distribution of residue	<b>13.9</b> Finalising and discharging liability for income tax and CGT of the deceased and for the administration period; finalising and discharging IHT liability of deceased and the estate; special rules for CGT and IHT purposes where land/quoted securities sold within 4 years/12 months of death for less than probate value; corrective accounts; certificates of discharge; recovery of IHT for the benefit of the residuary estate from those who bear its burden; administration expenses, ie, reasonable funeral expenses; legal costs; fees of other professionals; remuneration; payment of legacies; preparation of estate accounts

	<p><b>13.10</b> Explain beneficiaries' right to compel due administration</p> <p><b>13.11</b> Explain remedies available to beneficiaries</p> <p><b>13.12</b> Analyse a given legal situation on the administration and distribution of the estate in order to offer practical advice and assistance</p>	<p>(income, capital and distribution accounts; commentary); discharge of PRs and transfer of assets; assents</p> <p><b>13.10</b> Date for payment of entitlement under will/intestacy</p> <p><b>13.11</b> Administration proceedings; actions to recover "loss", ie, personal action against PRs; tracing; personal action against recipients of estate assets</p> <p><b>13.12</b> Analysis of a complex scenario to offer advice and assistance, eg, drafting paragraphs for letters to clients and internal memoranda</p>
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<b>Additional information about the unit</b>	
Unit aim(s)	To accredit a broad and detailed understanding 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)	N/A
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	Available to all Awarding Bodies to award credit (shared)
Availability for delivery	1 September 2009

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