

## Unit 8



<b>Title:</b>	<b>Law of Wills and Succession</b>
<b>Level:</b>	<b>3</b>
<b>Credit Value:</b>	<b>7</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 concept of a will and codicil</b>	<b>1.1</b> Explain a will and codicil as distinct from other legal documents	<b>1.1</b> Document disposing of assets only taking effect on death; can be revoked at any time; in a prescribed form, ie, s9 Wills Act 1837 as amended (WA); codicils can make minor alterations; prepared and executed in same manner as a will.
<b>2 Understand the requirements for making a valid will or codicil</b>	<p><b>2.1</b> Explain the rules relating to the formal requirements to make a will</p> <p><b>2.2</b> Describe the rules relating to capacity to make a will and intention</p>	<p><b>2.1</b> s9 WA: no need for a formal attestation clause; in writing, eg: <i>Hodson v Barnes</i>; appropriately signed and witnessed, eg: <i>Couser v Couser</i>, <i>Wood v Smith</i>; the effect of s15 WA and the beneficiary acting as witness.</p> <p><b>2.2</b> Mental capacity and the rule in <i>Banks v Goodfellow (1870)</i>; the test for capacity under s3 (1) MCA 2005 and its impact; cases such as, eg: <i>Scammell v Farmer</i>; presumptions of capacity; precautions with the vulnerable client; knowledge and approval of the content of the will; issues where the testator is blind, illiterate or where another signs on their behalf.</p>

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	<p><b>2.3</b> Explain when formal requirements to make a will are not required</p> <p><b>2.4</b> Apply an understanding of the requirements for making a will/codicil to a given situation</p>	<p><b>2.3</b> Rules relating to privileged wills: s11 WA; consideration of “actual military service”; Donatio Mortis Causa (deathbed gifts); the 3 conditions.</p> <p><b>2.4</b> Application to a scenario.</p>
<b>3 Understand the main clauses commonly found in wills</b>	<p><b>3.1</b> Explain the purpose and effect of the main operative and administrative clauses found in wills</p> <p><b>3.2</b> Explain the purpose and effect of the various types of legacies and devises found in wills</p> <p><b>3.3</b> Apply an understanding of the main clauses and legacies in wills to a set of given facts</p>	<p><b>3.1</b> Revocation; appointment of executors: professional executors, mentally capable person over 18, number of executors; appointment of guardians; extended powers of investment, insurance, maintenance and advancement, appropriation, receipt clauses and power to continue a business; attestation.</p> <p><b>3.2</b> Specific, general, pecuniary, demonstrative, residuary legacies; contingent and vested gifts to children; substitutionary gifts.</p> <p><b>3.3</b> Application to a scenario.</p>
<b>4 Understand the circumstances in which gifts in a will might fail</b>	<p><b>4.1</b> Explain the rules relating to the way in which different types of legacies and devises fail both at common law and by statutory rules</p> <p><b>4.2</b> Apply an understanding of the circumstances in which gifts in a will might fail to a given situation</p>	<p><b>4.1</b> Ademption, lapse (s33 WA exception); abatement and the statutory order of payment of debts: s34(3); Administration of Estates Act 1925 (AEA); forfeiture: common law rule and statutory relief under Forfeiture Act 1982.</p> <p><b>4.2</b> Application to a scenario.</p>
<b>5 Understand the ways in which a will can be revoked</b>	<p><b>5.1</b> Explain the rules relating to revocation by destruction</p>	<p><b>5.1</b> s20 WA: definition of destruction; must have physical destruction by testator, eg: <i>Re Kremer and Cheese v Lovejoy</i>; intention required and accidental destruction will not be effective.</p>

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	<p><b>5.2</b> Explain how a later will or document may revoke an earlier will</p> <p><b>5.3</b> Explain the rules which apply to wills following marriage or civil partnership, and divorce or dissolution</p> <p><b>5.4</b> Apply an understanding of revocation to a given situation</p>	<p><b>5.2</b> By express revocation within the new will; by someone writing declaring an intention to revoke – s20 WA.</p> <p><b>5.3</b> s18 WA: will is revoked on marriage or civil partnership; wills made “in expectation of marriage”, eg: <i>Sallis v Jones</i>; S18A WA: effect of divorce or dissolution on gifts and appointments of the former spouse or civil partner.</p> <p><b>5.4</b> Application to a scenario.</p>
<p><b>6 Understand the statutory rules relating to entitlement to property on intestacy</b></p>	<p><b>6.1</b> Define intestacy and partial intestacy</p> <p><b>6.2</b> Describe the operation of the statutory trust of land</p> <p><b>6.3</b> Explain the order of beneficial entitlement on intestacy</p> <p><b>6.4</b> Explain the special rules which apply to spouses/civil partners</p>	<p><b>6.1</b> Intestacy exists where there is no will, or the will is invalid; contrast with partial intestacy, i.e. where there is a valid will which fails to deal with part of the estate.</p> <p><b>6.2</b> s33 AEA: imposes trust of land on estate to pay funeral and administration expenses, settle debts and distribute in accordance with statutory entitlement.</p> <p><b>6.3</b> s46 AEA contains order of entitlement on intestacy: spouse/civil partner, children and issue, parents, brothers and sisters (of the whole and then half blood), grandparents, uncles and aunts (of the whole and then half blood), The Crown; statutory legacy to spouse/civil partner, chattels.</p> <p><b>6.4</b> s46(2A) AEA: 28 day survivorship period imposed between spouses/civil partners; in outline only an understanding of the power for PRs to appropriate family home to spouse/civil partner in satisfaction of their share.</p>

	<b>6.5</b> Apply an understanding of intestacy/partial intestacy to a given situation	<b>6.5</b> Application to a scenario.
<b>7 Understand the role of personal representatives</b>	<p><b>7.1</b> Explain the statutory powers available to personal representatives</p> <p><b>7.2</b> Describe how personal representatives are appointed and how they may avoid appointment</p> <p><b>7.3</b> Explain when the personal representative's power arises and the source of that power</p> <p><b>7.4</b> Describe the tasks they are required to complete</p> <p><b>7.5</b> Apply an understanding of representation to a given situation</p>	<p><b>7.1</b> An outline of the rules found in: s31 Trustee Act 1925 - power to apply income for maintenance, education and benefit of a minor beneficiary; s32 Trustee Act 1925 - power to apply capital for the advancement or benefit of a person who has an interest in capital.</p> <p><b>7.2</b> Executors: appointed by will: testator's choice; may renounce executorship (s5 AEA): intermeddling; power may be reserved to them; administrators: where there is no will or no appointment of executors by the will; appointed by the court in line with r20 or r22 NCPR 1987; may renounce as above.</p> <p><b>7.3</b> Executor's authority obtained from the will; accepts office by making application for grant of probate; administrators derive authority from the grant of letters of administration issued by the court.</p> <p><b>7.4</b> An outline of the following tasks: eg: collect assets; pay debts; distribute the estate in accordance with the will or intestacy; prepare accounts.</p> <p><b>7.5</b> Application to a scenario.</p>
<b>8 Understand the different types of grants of representation</b>	<p><b>8.1</b> Identify the different types of grant</p> <p><b>8.2</b> Explain when each is appropriate</p>	<p><b>8.1</b> Grants of probate, letters of administration and letters of administration with the will annexed.</p> <p><b>8.2</b> Probate: where there is a valid will with</p>

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		<p>executors who are able to act; Letters of administration: on intestacy where there is no will; Letters of administration with the will annexed: where there is a will which either does not appoint executors or those executors are unable or unwilling to act.</p>
	<p><b>8.3</b> Apply an understanding of the grants of representation to a given situation</p>	<p><b>8.3</b> Application to a scenario.</p>
<p><b>9 Understand when further affidavit evidence might be required on application for a grant of representation</b></p>	<p><b>9.1</b> Identify types of affidavit which can be required</p> <p><b>9.2</b> Explain the circumstances in which such affidavit evidence would be appropriate</p> <p><b>9.3</b> Apply an understanding of further affidavit evidence to a given situation</p>	<p><b>9.1</b> Affidavits of due execution and plight and condition.</p> <p><b>9.2</b> Due execution: needed where lack of attestation clause, or other doubt about execution (eg: in the case of a blind or illiterate testator): r12 NCPR 1987; affidavit is by witness or some other person present; plight and condition: some obliteration or alteration needs explanation on timing (ie before or after execution): r14 NCPR 1987; any marks (e.g. staple or pin holes) which may suggest another document was attached; r15 NCPR 1987: any tearing, cutting or burning which might suggest an attempt at revocation.</p> <p><b>9.3</b> Application to a scenario.</p>
<p><b>10 Understand the circumstances in which a family member or other dependant might make a claim on an estate under the Inheritance (Provision for Family and Dependents) Act 1975</b></p>	<p><b>10.1</b> Identify the categories of applicant entitled to make a claim</p> <p><b>10.2</b> Explain the conditions which must be met by such applicants</p> <p><b>10.3</b> Know the main types of court order</p>	<p><b>10.1</b> Spouse/civil partner, child, child of the family, other person maintained immediately before death.</p> <p><b>10.2</b> Application within 6 months of grant; spouse/civil partner standard of proof; maintenance standard of proof.</p> <p><b>10.3</b> Periodical payments, lump sum, or</p>

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	<p>available and the factors the court will take into account</p> <p><b>10.4</b> Apply an understanding of estate claims to a given situation</p>	<p>settlement; the court will consider applicant's age, needs and resources, size of estate and conduct; in case of spouse/civil partner duration of marriage/partnership and contribution to family welfare.</p> <p><b>10.4</b> Application to a scenario.</p>
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<b>Additional information about the unit</b>	
Unit aim(s)	The learner will understand key concepts, terms and processes in the area of Wills and Succession
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 2011

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