



F11 - Working in Wills and Probate

Foundation Stage

2025-2026

F11: Working in Wills and Probate

The aim of this module is to give you an overview of the law relating to wills and estate administration in practice. You will consider the key aspects of taking will instructions from a client and administering a deceased client's estate. You will apply your knowledge to practical scenarios.

The module covers:

1. Formalities for making a will
2. Will Drafting
3. Beneficial entitlement
4. Structure and contents of a will
5. Alteration and revocation of wills
6. Intestacy
7. Applying for the grant of representation
8. Estate administration
9. Claims against an estate
10. Communication with Internal and External Clients

Learning Outcomes

By the end of this module, you will be able to:

1. Describe the law relevant to wills and estate administration
2. Understand the risks in relation to will drafting and identify best practice to mitigate those risks
3. Identify the options available to a client and the consequences of those options to be able to draft a will
4. Appreciate when wills can be validly altered or revoked
5. Explain and apply the intestacy rules
6. Plan and manage an estate administration
7. Appreciate the claims that can be made against an estate
8. Identify situations that give rise to conflicts of interest, issues of professional ethics or other issues under the SRA Code of Conduct and the CILEX Code of Conduct

Candidates are expected to know the basic differences of the law in Wales as well as the law in England where they differ.

Details of updates included in 2025-2026 Module Specification

- 7: Amending:
 - 'Taking instructions from the PR' to 'Taking instructions from the PR (including AML requirements)'
 - 'Identifying and contacting beneficiaries' to 'Identifying (including AML requirements) and contacting beneficiaries'

1. Formalities for making a will	In a wills and probate department, you need to understand the law underlying the validity of wills. a) Testamentary capacity • Test for testamentary capacity - Banks v Goodfellow (1870) • Intention to make a will • Burden of proof - Key v Key [2010] • Capacity to execute a will - Parker v Felgate (1883) • The golden rule • Obtaining a report on capacity from a medical professional b) Format and structure of a Will • s.9 Will Act 1837 - writing, intention to give effect, signed and witnessed • Attestation clause • s.9 Will Act 1837 - privileged wills c) Knowledge and Approval • Presumption in favour • Absence of presumption - deaf testator, inability to write, blind, illiterate, directed another to sign on their behalf, English not testator's first language. d) Undue influence • Pressure exerted to overpower the free will of a testator
2. Will Drafting	When working in a wills and probate department, you will be taking will instructions. You need to understand the purpose of making a will, the options available to a client and identify best practices to mitigate risk. a) Purpose of a Will • Direct where assets should pass (avoid the intestacy rules) • Choose who administers your estate - executors • Appointing guardians • Appointing trustees • IHT planning b) Will Instructions • Taking instructions from your client • Assessment of testamentary capacity • Third party referrer, family members • Recognising and avoiding conflicts of interest • Recognising duress and undue influence • Duty of care - White v Jones [1995] c) Risk management • Face to face meetings • Use of checklists • Attendance notes

	• Sending the client a draft will with clear explanatory letter • Capacity report • Deadlines • Seeking supervision d) Overview of Foreign Property • Does the client have foreign property ○ How it passes on death ○ Implications of making a will where an existing foreign will exists e) Assets that pass independently of a will or intestacy • Examples - life insurance, death in service payments etc • Who will inherit the asset • Jointly owned assets – joint tenants in equity v tenants in common • When severance of a joint tenancy is required
3. Beneficial entitlement	When preparing a will for a client, you need to understand and explain the different types of beneficial entitlement and the rules surrounding gifts. a) Legacies • Specific, general, demonstrative, and pecuniary legacies • s.24 Wills Act 1937 • Vested v contingent • Certainty of objects and subject matter • Class gifts • Gifts to minors • Gender recognition • Surrogacy and fertilisation treatment • Letters of wishes b) Failure of gifts • Lapse • Ademption • Commorientes rule – s.184 LPA 1925 • s.33 Will Act 1837 • s.15 Wills Act 1837 • Uncertainty • Abatement • Illegal, immoral, or contrary to public policy • Disclaimer c) Testamentary trusts • Uses • The role of trustees • Discretionary v fixed interest trusts

4. Structure and contents of a will

When drafting wills, you will need to understand the structure of a will, options available to a client, and highlight any potential risk or conflict.

- a) Commencement
 - Identifying the testator
 - Extended to include foreign property
 - Made in contemplation of specific marriage/civil partnership
- b) Revocation
 - Avoidance of multiple valid wills
- c) Appointment of executors and trustees
 - Lay v professional
 - Responsibility
 - Conflicts
- d) Guardians
 - Parental responsibly
 - Joint Guardians
 - Choice of guardians
 - Willingness to act
- e) Legacies
 - Specific, general, demonstrative, and pecuniary legacies
 - Burden of Tax
 - Vested v contingent
 - Expenses - transport and insurance
- f) Gifts to the draftsman
 - Professional Conduct
 - Law Society Guidance
- g) Charitable gifts
 - Identification
 - Overview of cy-près doctrine
 - Tax benefits (exempt, 36% rate)
- h) Residuary gifts
 - Provision for payment of debts and legacies
 - Direction re payment of inheritance tax
 - Vested v contingent
 - Substitutional gifts
 - Longstop clause
- i) Administrative Powers
 - Trustee Act 2000
 - Receipt clause – charity and infant
 - Business

	• Investment • s.31 and s.32 Trustee Act 1925 and modifications • Standard Administrative Provisions • STEP administrative provisions j) Survivorship clauses k) Charging clauses • Purpose l) Attestation clauses • Standard and special
5. Alteration and revocation of wills	A testator may wish to alter or revoke their will. You may also come across invalid alterations or revocations on a testator's death, therefore you need to be able to recognise such cases and advise a client accordingly. a) Alterations to Wills • Extrinsic evidence • s.21 Wills Act 1837 • Interpretation of a will • Incorporation by reference - doctrine of incorporation • Rectification - s.20 Administration of Justice Act 1982 b) Codicil • Content of a codicil • The risks of making a codicil • Formalities c) Revocation of Wills • s.18 Will Act 1837 - by marriage/civil partnership • s.18A Will Act 1837 - effect of divorce/dissolution of civil partnership • Revocation by a later will or codicil • s.20 Wills Act 1837 - destruction • Intention to revoke • Lost and destroyed wills and the presumption of revocation
6. Intestacy	Where a person dies intestate, you will need to be able to explain and apply the intestacy rules, identifying who is entitled to the estate. a) Intestacy • The difference between intestacy and partial intestacy • How to avoid a partial intestacy • The order of beneficial entitlement – s.46 Administration of Estates Act 1925 • The statutory trusts – s.47 Administration of Estates Act 1925 • Entitlement to a grant under the Non-Contentious Probate Rules 1987 • Two administrators needed if there is a minor interest

	• Right of spouses/civil partners to require PR to appropriate the matrimonial home to them in part or full satisfaction of their entitlement under the Intestates' Estates Act 1952, Schedule 2 • Bona vacantia
7. Applying for the grant of representation	There are many aspects to an estate administration. You will need to plan the estate administration, including identifying who can act as personal representative, advising what their duties are and what protection is available to them, and apply for the grant of representation. a) Initial steps • Who can act as personal representatives ○ Rule 20 NCPR 1987 ○ Rule 22 NCPR 1987 ○ Executors – not willing or able, renunciation and power reserved, and chain of representation s.7 AEA 1925 • Duties of a PR – s.25 Administration of Estate Act 1925 • Protection available to personal representatives – s.27 Trustee Act 1925 ○ when adverts can be placed – executor v administrator • Taking instructions from the PR (including AML requirements) • Valuing the estate - writing to asset and liability holders (including settling the deceased's pre-death tax position) • Registering the estate (if necessary) with HMRC • Identifying (including AML requirements) and contacting beneficiaries • Missing beneficiaries ○ Tracing agent/genealogist ○ Missing Beneficiary Insurance ○ Application to court – Re Benjamin Order b) Grants of representation • Grant of probate, grant of letters of administration, grant of letters of administration with will annexed c) Inheritance tax • Valuing the estate • Reliefs, exemptions, and allowances • Calculating inheritance tax • Paying inheritance tax ○ Timescale ○ Options – direct payment scheme, instalment option, loans for PRs or beneficiaries, grant on credit ○ Advising executors of HMRC interest rates. d) Application procedure • Excepted estates v non-excepted estates • Professional v personal • Online v paper

8. Estate administration	Once you have obtained the grant of representation, you will need to administer the deceased's estate, considering the many factors of an estate administration, including the PR's duty to beneficiaries and best practice. a) On receipt of the grant • Collecting in assets and paying debts • Taking instructions re whether assets are to be sold or transferred • Realising assets – bank accounts, sale of shares, portfolios etc • Income tax, CGT and IHT during the estate administration • The administrative year b) Duty to beneficiaries • Update • Interim estate accounts • Interim distributions • Minor beneficiaries – infant receipt clause, setting up a trust s.42 AEA 1925 c) Finalising the estate • Timing of distribution (best practice - 6 months from grant re I(PFD)A 1975 claims) • Distribute estate according to will or rules of intestacy • Transfer/assent of assets • Appropriating assets – s.41 AEA 1925 • HMRC clearance/deemed clearance • Final estate accounts • Final distribution • Receipts to discharge the PR
9. Claims against an estate	Understand the circumstances in which a person could bring a claim against an estate, and the consequences on the estate administration. a) Validity of will – lack of: • Knowledge and approval • Testamentary capacity • Formalities • Other claims b) Inheritance (Provision for Family and Dependants) Act 1975 • Time limit • Who can bring a claim • What they can claim • Orders awarded by the court c) The effect a claim has on the estate administration • PR to act impartially, beneficiaries to defend claim • Timescale • Managing PR and beneficiary expectations • Distributions from the estate

10. Communication with Internal and External Clients

Communication skills are fundamental to building confidence with clients and peers. You will have to communicate effectively, both orally and in writing, with internal and external clients. This will involve speaking to individuals, listening to what they have to say and noticing the way they respond to the message you are giving them. When you communicate in writing, you must ensure that there are no spelling errors and that the document is grammatically correct.

- a) The importance of effective communication within a legal environment
 - Identify the range of internal and external clients a legal professional will communicate with
 - Identify the ways in which legal professionals communicate with clients and third parties
 - Understand the range and appropriate methods of communication to use with specific clients and third parties
 - Consider the impact of equality, diversity, and cultural difference when working with clients and third parties.
- b) The use of verbal communication to effectively communicate a message
 - Prepare effectively for verbal communication situations e.g. interviews with clients
 - Distinguish between the types of question to be used in different situations
 - Understand the effect tone of voice and language can have on the receiving party
- c) The role non-verbal cues play in effective communication
 - Recognise different types of non-verbal communication
 - Understand the range of non-verbal responses and the effect they can have on the communication process
- d) Actively listening to internal and external clients in order to effectively meet their requirements
 - Accurately receive and interpret messages while communicating
 - Use active listening skills to fully understand the message
- e) The importance of effective and accurate legal writing
 - Understand the effect well written legal correspondence has on those who receive it
 - Be able to effectively take notes upon which others can then base correspondence
 - Be able to recognise correspondence, which is grammatically correct, with no spelling mistakes
- f) Drafting original and precedent forms of communication
 - Understand the importance of the client care letter
 - Understand the required content of the client care letter including terms and conditions
 - Draft a routine letter, email, an attendance note and fill in routine forms.

	g) Professional and ethical considerations • Ensure that clients are served in an ethical and professional way • Understand how to manage risk
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