

Title:	(Unit 21) Probate Practice
Level:	6
Credit Value:	15

LEARNING OUTCOMES	ASSESSMENT CRITERIA	KNOWLEDGE, UNDERSTANDING AND SKILLS
THE LEARNER WILL:	THE LEARNER CAN:	
1. Understand the importance of risk management in probate practice	1.1 Identify the client and relevant other parties to whom a duty of care is owed	1.1 Client (will making)-the testator. Client (estates)-personal representatives (PRs) and (possibly) beneficiaries. Duty of care (will making and estates) - client and beneficiaries.
	1.2 Explain the nature and extent of the duty of care	1.2 Client– in contract and tort. Beneficiaries – under statute and tort. relevant case law: eg: <u>Ross v Caunters</u> (1980); <ul style="list-style-type: none"> • <u>Clarke v Bruce Lance & Co</u> (1988); • <u>White v Jones</u> (1995); • <u>Feltham v Bouskell</u> (2013); • <u>Pead v Prostate Cancer UK and Others</u> (2023).

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<p>1.3 Identify circumstances in which risk management is a particular concern.</p>	<p>1.3 Elderly/very ill clients;</p> <ul style="list-style-type: none"> • SRA Code of Conduct and Handbook requirements; • examples: 'third party' instructions, instructions affected by duress and undue influence; • potential conflict of interest; • confidentiality; • domicile/residence/assets overseas; • record keeping and complying with <u>Larke v Nugus</u> (1979) letters; • advice to PRs and/or beneficiaries on investment; • customer due diligence; • Money Laundering Regulations 2017. • General Data Protection Regulation (EU)2016/679 (GDPR).
<p>1.4 Analyse a given legal situation on risk management in probate practice in order to offer practical advice and assistance</p>	<p>1.4 Analysis of a complex scenario to offer advice and assistance, eg: drafting paragraphs for letters to clients and internal memoranda. Display of awareness of due diligence including money laundering obligations in the context of probate practice.</p>

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<p>2. Understand what will happen to a client's property on death if it is not effectively dealt with by their will/codicil</p>	<p>2.1 Explain the entitlement to any estate not effectively disposed of by the will/codicil</p>	<p>2.1 S33(1) administration of estates act 1925 ('AEA1925') (as amended);</p> <ul style="list-style-type: none"> • Part IV AEA1925 (as amended), ss45 - 52; • rights of surviving spouse/civil partner (including election as to matrimonial home); • issue; • other relatives; • the Crown; • meaning of 'statutory trusts'; • rights of cohabitantes (if any)
	<p>2.2 Explain property that passes on death independently of the terms of a valid will or operation of the intestacy rules</p> <p>2.3 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>2.2 Property that does not pass to prs but is part of the estate for inheritance tax ('IHT') purposes;</p> <ul style="list-style-type: none"> • property that does not pass to PRs and is not part of the estate for IHT purposes; • joint tenancy; • nominated property; • <i>donatio mortis causa</i>; • pensions and life policies. <p>2.3 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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<p>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</p>	<p>3.1 Explain the law relating to any such claim for financial provision</p>	<p>Inheritance (Provision for Family and Dependents) Act 1975 ('I(PFD)A 1975') (as amended) and relevant case law;</p> <ul style="list-style-type: none"> • time limit; • categories of applicant; • failure to make reasonable financial provision; • guidelines to be taken into account by court in determining claims and type of order (if any) to make; • types of order which can be made against deceased's estate. • <u>Ilott v Mitson</u> (2017) • relevant case law
	<p>3.2 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>3.2 Analysis of a complex scenario to offer advice and assistance, eg: advising a testator, PRs or potential applicant on the likelihood of a successful claim in a given situation.</p>
<p>4. Understand the requirements in English law for the creation of a valid will/codicil</p>	<p>4.1 Explain the necessary capacity to make a will/codicil</p>	<p>4.1 Physical and mental capacity;</p> <ul style="list-style-type: none"> • rules in <u>Banks v Goodfellow</u> (1870) and <u>Parker v Felgate</u> (1883); • ss 1, 2 and 3 Mental Capacity Act 2005; • burden of proof and presumptions that may apply; • other relevant case law e.g. <u>Pearce v Beverley</u> (2013); • <u>Simon v Byford</u> (2014) • <u>Key v Key</u> (2010). • <u>Lonsdale v Teasedale</u> (2021) • <u>Baker v Hewston</u> (2023)
	<p>4.2 Explain the requirement of the testator's intention</p>	<p>4.2 Knowledge and approval;</p> <ul style="list-style-type: none"> • 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; • relevant case law eg: <u>Gill v Woodall</u> (2010); • <u>Hawes v Burgess</u> (2013).

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	4.3	Explain the relevant formality requirements	4.3	S9 wills act 1837 (as amended); <ul style="list-style-type: none"> • burden of proof and effect of including a suitable attestation clause. • Wills Act 1837 (Electronic Communications) (Amendment) (Coronavirus) Order 2020 • Covid-19: Law Society Guidance on remote witnessing of wills • <u>sangha v sangha (2023)</u>
	4.4	Analyse a given legal situation on these requirements in order to offer practical advice and assistance	4.4	Analysis of a complex scenario to offer advice and assistance, eg: drafting paragraphs for letters to clients and internal memoranda.
5. Understand the principles of construction of a will/codicil	5.1	Explain the court's approach to the construction of a valid will/codicil	5.1	General principles of construction; <ul style="list-style-type: none"> • need to consider factual background when construing will; • ascertaining testator's intention, ie: presumptions applied and how these may be rebutted; • admissibility of extrinsic evidence under s21 Administration of Justice Act 1982 ('AJA 1982'); • date from which will speaks; • omitting, changing and supplying words under s20 AJA 1982; • class gifts and class closing rules; • gifts to "children" and other relatives by description; • relevant case law eg: <u>Marley v Rawlings</u> (2014).
	5.2	Explain the effect of the different types of gift that may be found in a will	5.2	Specific, general, demonstrative, pecuniary and residuary gifts; <ul style="list-style-type: none"> • doctrine of incorporation by reference.

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	5.3	Explain the causes and consequences of failure of such gifts	5.3	Ademption; <ul style="list-style-type: none"> • lapse and failure to satisfy a contingency; • uncertainty; • s15 Wills Act 1837 (as amended); • gifts for illegal or immoral purpose; • forfeiture; • disclaimer; • effect of Estates of Deceased Persons (Forfeiture Rule and Law of Succession) Act 2011. • relevant case law
	5.4	Analyse a given legal situation on these principles of construction in order to offer practical advice and assistance	5.4	Analysis of a complex scenario to offer advice and assistance, eg: drafting paragraphs for letters to clients and internal memoranda
6. Understand the principles relating to the revocation or alteration of a will/codicil	6.1	Explain the possible causes and extent of revocation of a will/codicil	6.1	Marriage/civil partnership; <ul style="list-style-type: none"> • divorce or nullity of marriage/dissolution or nullity of civil partnership; • later will/codicil; • destruction; • s20 Wills Act 1837; • conditional revocation.
	6.2	Explain the effect of alterations and obliterations in a will/codicil	6.2	S21 Wills Act 1837; <ul style="list-style-type: none"> • conditional revocation; • consequences of invalid alterations.

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	6.3	Analyse a given legal situation on these principles relating to revocation and alteration in order to offer practical advice and assistance	6.3	Analysis of a complex scenario to offer advice and assistance, e.g.: drafting paragraphs for letters to clients and internal memoranda.
7.		Understand the taxation principles relevant will drafting and associated tax planning measures	7.1	Explain the principles of the charge to inheritance tax (IHT) and its calculation
			7.1	Transfers of value; <ul style="list-style-type: none"> • chargeable transfers; • excluded property; • dispositions which are not transfers of 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 and rates; • domicile/residence • exemptions and reliefs; • nil rate band; • transferable nil rate band; • residence nil rate band; • quick succession relief; • taper relief; • liability and burden.
	7.2	Explain the basic principles of income tax, capital gains tax (CGT) and IHT applying to trusts (post-Finance Act 2006)	7.2	Income tax: liability of trustees, liability of beneficiaries; <ul style="list-style-type: none"> • CGT: on creation of trust, subsequent liability of trustees and beneficiaries; • IHT: on creation of trust, subsequent chargeable events.

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	<p>7.3 Explain appropriate opportunities for basic IHT planning in lifetime and in the will</p>	<p>7.3 Use of exemptions and reliefs;</p> <ul style="list-style-type: none"> • exemptions and reliefs; • PETs; • trust or assigned policies; • issues relating to gifts to spouses/civil partners/cohabitees; • issues relating to gifts to minors; • use of trusts; • interaction with CGT.
	<p>7.4 Analyse a given legal situation on the relevant taxation principles and planning measures in order to offer practical advice and assistance</p>	<p>7.4 Analysis of a complex scenario to offer advice and assistance, eg:</p> <ul style="list-style-type: none"> • drafting paragraphs for letters to clients and internal memoranda.
<p>8. Understand the elements of will drafting</p>	<p>8.1 Identify relevant background information required on taking instructions</p>	<p>8.1 Client's personal details, including any previous will;</p> <ul style="list-style-type: none"> • details of family and any dependants; • size and nature of client's estate, including 'expectations' assets outside UK and any existing cumulative total for IHT and any PETs; • some assessment of the estate of any spouse/civil partner/cohabitee.

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8.2 Explain the structure and contents of the will required to meet the client's needs	8.2 Commencement and revocation; <ul style="list-style-type: none"> • appointment of executors and trustees and remuneration (if appropriate); • appointment of guardians (if appropriate); • funeral and other requests (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.
8.3 Explain arrangements for execution	8.3 Generally; <ul style="list-style-type: none"> • precautions where capacity and/or knowledge and approval may be an issue.
8.4 Analyse a given legal situation on will drafting in order to offer practical advice and assistance.	8.4 Analysis of a complex scenario to offer advice and assistance, eg: drafting clause(s) for inclusion in will; <ul style="list-style-type: none"> • critique of will and amending errors in drafting; • guidance as to requirements for execution of will.

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9. Understand the law and practice relating to the issue of grants of representation	9.1 Explain the nature and effect of the principal types of grant	9.1 Evidential significance; • confirmation of title of executors; • conferment of title on administrators.
	9.2 Identify when a grant is not necessary to deal with property of the deceased	9.2 Property not passing to PRs on death (as identified in 2.2 above); • small sums due to estate; • Administration of Estates (Small Payments) Act 1965.
	9.3 Explain entitlement to the appropriate grant in a particular case	9.3 Rule 20 Non-Contentious Probate Rules 1987(NCPR): Probate, Letters of administration or Letters of administration with will annexed; • Rule 22 NCPR: simple administration; • administration <i>de bonis non</i> ; • chain of representation; limited or special grants.
	9.4 Explain issues affecting appointment of PRs	9.4 Capacity; • position where there are several claimants; • number; • renunciation / power reserved.
	9.5 Explain the nature and effect of caveats and citations, and use of standing searches	9.5 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.

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	9.6	Explain the initial practical steps to be taken on receipt of instructions to prepare an application to obtain a grant	9.6	Action needed to deal with any perceived 'difficulties' with will; <ul style="list-style-type: none"> • 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; • identification and valuation of assets and liabilities.
	9.7	Analyse a given legal situation on the issuing of grants of representation in order to offer practical advice and assistance.	9.7	Analysis of a complex scenario to offer advice and assistance, eg: drafting paragraphs for letters to clients and internal memoranda.
10. Understand the powers and duties of PRs	10.1	Explain the fundamental duties of PRs	10.1	S25 AEA 1925 as amended; <ul style="list-style-type: none"> • s1 Trustee Act 2000; • liability for breaches of duty.
	10.2	Explain the exercise of administrative powers of PRs	10.2	Fiduciary nature; <ul style="list-style-type: none"> • 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.

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	10.3 Analyse a given legal situation on the powers and duties of PRs in order to offer practical advice and assistance	10.3 Analysis of a complex scenario to offer advice and assistance, eg: drafting paragraphs for letters to clients and internal memoranda.
11. Understand the requirements of his Majesty's Revenue and Customs (HMRC)	11.1 Identify whether or not the estate is an 'excepted estate' for IHT purposes 11.2 Explain the completion of the appropriate return of estate information/IHT account 11.3 Explain the funding and payment of tax due	11.1 Definition of excepted estate; 'low value' and 'exempt' excepted estates; <ul style="list-style-type: none"> • IHT (Delivery of Accounts) (Excepted Estates) Regulations 2021 in force on 1.1.22 • IHT 205 no longer used 11.2 Form IHT400 (including appropriate Schedules) and calculation of tax due; <ul style="list-style-type: none"> • Schedule IHT402 where appropriate; • duty to submit correct information and to submit Corrective Account where necessary. 11.3 Eg: funds in deceased's bank accounts (form IHT423); <ul style="list-style-type: none"> • 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 obtained using Form IHT422); • payment by use of instalment option.

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	11.4 Analyse a given legal situation on the requirements of HMRC in order to offer practical advice and assistance	11.4 Analysis of a complex scenario to offer advice and assistance, eg assessing whether the estate is exempt from tax <ul style="list-style-type: none"> • IHT400, including Schedules and the calculation of IHT; • and other forms if appropriate • identify which trusts you need to register with HMRC and when <p>HMRC – Trust Registration Service</p>
12. Understand the requirements of the court	12.1 Explain the forms used to make an application for a grant of representation	12.1 PA1A and PA1P (paper applications) or online legal statement <ul style="list-style-type: none"> • purposes of forms 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; • to confirm value of estate passing under the grant.
	12.2 Explain the requirements for Executors/Administrators with will annexed/Administrators/Administrators <i>de bonis non</i> to support an application for the appropriate grant	12.2 Dealing appropriately with the various requirements of the court.
	12.3 Explain the need for, and nature of, further affidavit evidence that may be required by the court	12.3 Rules 12 – 16 and 54 NCPR.

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	12.4 Identify the final steps leading to the lodging of the papers at the selected Registry	12.4 Signing statement of truth within PA1A and PA1P or online legal statement <ul style="list-style-type: none"> • lodging of PA1A and PA1P (or online legal statement) with accompanying documents ie: will (if any); • if an excepted estate - no IHT 205 (unless the death was before 1 January 2022) • if taxable estate -(receipted IHT421); • any further supporting documents; • probate fees - now increased • online submission of probate applications through MyHMCTS
	12.5 Analyse a given legal situation on the requirements of the court in order to offer practical advice and assistance	12.5 Analysis of a complex scenario to offer advice and assistance, eg: drafting appropriate form using printed pro forma; <ul style="list-style-type: none"> • drafting paragraphs for letters to clients and internal memoranda.
13. Understand the law and practice relating to the administration and distribution of the estate	13.1 Explain the protection available to PRs against claims	13.1 By unknown beneficiaries/creditors; <ul style="list-style-type: none"> • 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; • s27 Trustee Act 1925; • application to court.
	13.2 Explain the collection/realisation of assets	13.2 Registration of grant; <ul style="list-style-type: none"> • prioritising the collection of sums due to the estate; • practical considerations on sales of assets.

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	13.3 Explain payment of debts (solvent estate)	13.3 Secured creditors; <ul style="list-style-type: none"> • unsecured creditors, ie: statutory order; • marshalling; • contrary provision in will. •
	13.4 Explain payment of debts (insolvent estate)	13.4 Secured creditors; <ul style="list-style-type: none"> • unsecured creditors; ie: bankruptcy order (cannot be varied by testator); • protection of PRs.
	13.5 Explain post-death changes affecting distribution of the estate	13.5 Order under I(PFD)A 1975, disclaimers and variations; <ul style="list-style-type: none"> • IHT and CGT consequences.
	13.6 Explain payment of legacies	13.6 Specific gifts; <ul style="list-style-type: none"> • pecuniary legacies; • abatement; • appropriation; • receipts; • position where beneficiary is a minor.
	13.7 Explain income tax liability of PRs	13.7 Deceased's income arising before death; <ul style="list-style-type: none"> • income of the administration period; • position of PRs/beneficiaries.
	13.8 Explain liability for capital gains tax (CGT) for PRs	13.8 On gains made by deceased in lifetime; <ul style="list-style-type: none"> • on disposals made in the course of administration; • in relation to transfers to 'legatees'; position of PRs/beneficiaries.

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<p>13.9 Explain the ascertainment and distribution of residue</p>	<p>13.9 Finalising and discharging liability for income tax and CGT of the deceased and for the administration period;</p> <ul style="list-style-type: none"> • 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 (income, capital and distribution accounts); • discharge of PRs and transfer of assets; • assents. Preparation and finalising of estate account.
<p>13.10 Explain beneficiaries' right to compel due administration</p>	<p>13.10 Date for payment of entitlement under will/intestacy.</p>
<p>13.11 Explain remedies available to beneficiaries</p>	<p>13.11 Administration proceedings;</p> <ul style="list-style-type: none"> • actions to recover 'loss', ie: personal action against PRs and relief from liability under s61 Trustee Act 1925; • tracing; • personal action against recipients of estate assets.
<p>13.12 Analyse a given legal situation on the administration and distribution of the estate in order to offer practical advice and assistance</p>	<p>13.12 Analysis of a complex scenario to offer advice and assistance, eg:</p> <ul style="list-style-type: none"> • drafting paragraphs for letters to clients and internal memoranda and valuation of estates for probate purposes – land and building, stocks and shares, businesses etc.

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Additional information about the unit	
Unit aim(s)	To accredit a broad and detailed understanding of Probate practice
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	CILEx (The Chartered Institute of Legal Executives)
Availability for delivery	1 September 2009

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