

2022 UNIT SPECIFICATION

Title:	(Unit 14) Law of Wills & Succession
Level:	6
Credit Value:	15

Learning outcomes	Assessment criteria	Knowledge, understanding and skills
The learner will:	The learner can:	
1. Understand the formal requirements for making a valid will or codicil	1.1 Define the statutory rules relating to the formal requirements to make a will 1.2 Analyse how these statutory rules have been applied through case law	1.1 Clear and accurate understanding of s9 Wills Act (WA)1837, as amended by s17 Administration of Justice Act (AJA)1982. 1.2 To be considered ‘in writing’, use of language/code, on any material, relevance of use of pencil and ink; <ul style="list-style-type: none"> • “signed” by Testator (T) and intention to be signature; • relevant case law, eg: <u>Hodson v Barnes</u> (1926), <u>In the Goods of Adams</u> (1872), <u>Re Cook</u> (1960), <u>Re Chalcraft</u> (1948), <u>In the Goods of Savory</u> (1851), signature by another person, Law Com ‘<i>Making a will</i>’ 231 proposes other person unable to benefit; • “intended to give effect” to the will, position of T’s signature;

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		<ul style="list-style-type: none"> • relevant case law, eg: <u>Wood v Smith</u> (1993), <u>Weatherhill v Pearce</u> (1995); • signature “made or acknowledged” before two witnesses, physical and mental presence of T, eg: <u>Casson v Dade</u> (1781), <u>Barrett v Bem</u> (2012); • meaning of acknowledgement, meaning of presence of witnesses, capacity of witnesses, witness/beneficiary and effect of s15 WA 1837, Law Com ‘<i>Making a will</i>’ 231 proposal: extend rule to cohabitants & other family members, position of witnesses’ signatures; • relevant case law, eg: <u>Gunstan</u> (1882), <u>Weatherhill v Pearce</u> (1995), <u>Couser v Couser</u> (1996), <u>Brown v Skirrow</u> (1902); • attestation clause not necessary, affidavit evidence and presumption if no evidence available, evidence of date of will; • relevant case law, eg: <u>Corbett v Newey</u> (1996), <u>Ahluwalia v Singh</u> (2011). Law Com ‘<i>Making a will</i>’ 231 proposes courts given “dispensing power”.
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	<p>1.3 Compare the exceptions to these formal requirements</p>	<p>1.3 Form of privileged wills;</p> <ul style="list-style-type: none"> • intention to take effect on death only requirement; T's status, at sea or actual military service, does not exclude minors; • consideration of relevant case law, eg: <u>Re Stable (1919)</u>, <u>In the Estate of Knibbs (1962)</u>, <u>Re Wingham (1949)</u>, <u>Re Jones (Deceased) (1981)</u>, <u>In the Estate of Rapley (1983)</u>, <u>Ayling v Summers and Others (2009)</u>; • Law Com '<i>Making a will</i>' 231 proposal of retention; • incorporation by reference, consideration of the three requirements (in existence, referred to as existing, and identified); relevant case law, eg: <u>University College of North Wales v Taylor (1908)</u>; • <i>donatio mortis causa</i>, consideration of the three requirements; • contemplation of death, conditional on death, delivery (parting with dominion)) and relevant case law, eg: <u>Re Craven's Estate (No.1) (1937)</u>, <u>Wilkes v Allington (1931)</u>, <u>Birch v Treasury Solicitor (1951)</u>, <u>Sen v Headley (1991)</u>, <u>Vallee v Birchwood (2013)</u>, <u>King v Chilton Dog Rescue (2014)</u>.
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	<p>1.4 Apply an understanding of the formal requirements to make a valid will to a given situation</p> <p>1.5 Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>1.4 Application of the requirements to a complex scenario.</p> <p>1.5 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.</p>
<p>2. Understand the rules relating to capacity to make a valid will or codicil</p>	<p>2.1 Explain the rules relating to mental capacity to make a will</p> <p>2.2 Analyse how these rules have been applied through case law and the effect of failure to comply with these rules</p>	<p>2.1 Consideration of age: Law Com '<i>Making a will</i>' 231 proposal reduce to 16;</p> <ul style="list-style-type: none"> • mental state of T and testamentary capacity, the rule in <u>Banks v Goodfellow</u> (1870) and the three stage test; • Mental Capacity Act 2005 and relationship with case law, eg: <u>Key v Key</u> (2010), <u>Re Wison (Deceased)</u> (2013), <u>Elliot v Simmonds</u> (2016), <u>Walker v Badmin</u> (2014), <u>Simon v Byford</u> (2014); Law Com '<i>Making a will</i>' 231 proposal to replace <u>Bank v Goodfellow</u> test with MCA 2005. <p>2.2 Relevant case law, eg: <u>Battan Singh v Amirchand</u> (1948), <u>Ewing v Bennett</u> (2001), <u>Cartwright v Cartwright</u> (1793);</p> <ul style="list-style-type: none"> • the time at which capacity is tested, the rule in <u>Parker v Felgate</u> (1883) <u>Perrins v Holland</u> (2010); • the burden of proof and relevant case law, eg: <u>Vaughan v Vaughan</u> (2002); • presumptions if will rational and mental state continues;

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	<p>2.3 Explain the rules relating to knowledge and approval of the contents of a will</p> <p>2.4 Analyse the effect of failure to comply with these rules</p>	<ul style="list-style-type: none"> • insane delusions and the effect on whole or part of the will; • relevant case law, eg: <u>Dew v Clark</u> (1826), <u>Wharton v Bancroft</u> (2011), <u>Williams v Wilmot</u> (2012), <u>Burgess v Hawes</u> (2013). <p>2.3 Rebuttable presumption of knowledge and approval;</p> <ul style="list-style-type: none"> • circumstances in which such presumption does not arise: blind or illiterate T, suspicious circumstances, beneficiary preparing will; • relevant case law, eg: <u>Guardhouse v Blackburn</u> (1866), <u>Barry v Butlin</u> (1838), <u>Wintle v Nye</u> (1959), <u>Fuller v Strum</u> (2002); • time at which knowledge and approval is required; • rules on burden of proof, relevant case law, eg: <u>Sherrington v Sherrington</u> (2005), <u>Schrader v Schrader</u> (2013). <p>2.4 Mistake as to whole or part of will, limit of the court's willingness to intervene;</p> <ul style="list-style-type: none"> • relevant case law, eg: <u>Marley v Rawlings</u> (2014), <u>Re Phelan</u> (1972), <u>Collins v Elstone</u> (1893); • court's discretionary powers of rectification, s20 AJA 1982, clerical errors and failure to understand instructions, relevant case law, eg:
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	<p>2.5 Explain the meaning of force, fear, fraud and undue influence</p> <p>2.6 Analyse the effect these may have on the validity of a will</p>	<p><u>Sprackling v Sprackling</u> (2008), <u>Austin v Woodward</u> (2011), <u>Kell v Jones</u> (2013);</p> <ul style="list-style-type: none"> disappointed beneficiary's use of rectification to mitigate damage. <p>2.5 The meaning of force or fear;</p> <ul style="list-style-type: none"> burden of proof and lack of presumptions; meaning of fraud and examples through relevant case law; meaning of undue influence and the distinction between persuasion and intolerable pressure; relevant case law, eg: <u>Hall v Hall</u> (1868); different from <i>inter vivos</i> gifts as no presumption of undue influence, eg: <u>Parfitt v Lawless</u> (1872); other illustrative case law, eg: <u>Carpeto v Good</u> (2002); solicitor's duty when taking instructions and relevant case law, eg: <u>Killick v Pountney</u> (2000), <u>Royal Bank of Scotland v Etridge</u> (2001), <u>Gill v Woodall</u> (2010), <u>Schrader v Schrader</u> (2013). <p>2.6 The effect is refusal of probate as not considered act of T;</p> <ul style="list-style-type: none"> may be of whole will or in part (eg failure of legacy) depending on extent of influence.
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	<p>2.7 Apply an understanding of the rules relating to capacity to a given situation</p> <p>2.8 Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>2.7 Application of the rules to a complex scenario.</p> <p>2.8 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.</p>
<p>3. Understand the legal principles relating to legacies and devises</p>	<p>3.1 Explain the effect of various types of legacies and devises</p>	<p>3.1 Specific legacies, approach of courts in construing;</p> <ul style="list-style-type: none"> • relevant case law, eg: <u>Re Rose</u> (1949); • general legacies; • demonstrative legacies, definition as in <u>Ashburner v Macguire</u> (1786), nature both specific and general; • pecuniary legacies; • residuary legacies and rule in <u>Allhusen v Whittell</u> (1867); • devises; • type of legacy and effect of order for payment of debts, abatement; • rules on the payment of income and interest on different types of legacies, including Apportionment Act 1870, and Trusts (Capital and Income) Act 2013.

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	<p>3.2 Analyse the rules which govern the way in which different types of legacies and devises fail both at common law and by statutory rules</p>	<p>3.2 Ademption, changes in substance, contrast cases such as <u>Re Clifford</u> (1912) and <u>Re Slater</u> (1907), effect of republication, the doctrine of conversion, options to purchase, the rule in <u>Lawes v Bennett</u> (1785), lapse, effect where gift is to joint tenants/tenants in common/members of a class, substitutional gifts, survivorship clauses, statutory presumption of order of deaths, exceptions to doctrine of lapse, s33 WA 1837 and expression of contrary intention, relevant case law, eg <u>Rainbird v Smith</u> (2012) cf. <u>Hives v Machin</u> (2017);</p> <ul style="list-style-type: none"> • divorce or dissolution, s18A WA 1837; • uncertainty, subject matter, objects, relevant examples from case law; • s15 WA 1837 beneficiary/their spouse or civil partner witness, effect of later codicil, other exceptions including s1 Wills Act 1968; • public policy, principle set out in <u>Gray v Barr</u>(1971), forfeiture, relevant case law, eg: <u>Re Crippen</u> (1911), <u>Re DWS (Deceased)</u> (2001); • and awareness of effect of Forfeiture Act 1982; • changes made by Estates of Deceased Persons (Forfeiture Rule and Law of Succession) Act 2011.
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	<p>3.3 Explain the incidence of pecuniary legacies</p> <p>3.4 Apply an understanding of the principles relating to legacies and devises to a given situation</p> <p>3.5 Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>3.3 The rules relating to estates where there is no undisposed of property, the rules in <u>Greville v Brown</u> (1859) and <u>Roberts v Walker</u> (1830);</p> <ul style="list-style-type: none"> • rules where there is undisposed of property, effect of the amended s33(2) Administration of Estates Act (AEA)1925. <p>3.4 Application of understanding to a complex scenario.</p> <p>3.5 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.</p>
<p>4. Understand the way in which a will can be revoked</p>	<p>4.1 Analyse how the rules relating to revocation by destruction have been applied through case law</p>	<p>4.1 Provisions in s20 WA 1837;</p> <ul style="list-style-type: none"> • definition of “burning tearing or otherwise destroying”; • destruction by another; • relevant case law, eg: <u>Cheese v Lovejoy</u> (1877), <u>Adams</u> (1990), <u>Hobbs v Knight</u> (1838), <u>Re Everest</u> (1975) <u>In the Goods of Dadds</u> (1857); • incomplete intended destruction as in <u>Perkes v Perkes</u> (1820); • consideration of intention, capacity, accidental destruction, rebuttable presumption of revocation where will in T’s possession cannot be found/is found mutilated;

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	<p>4.2 Explain the rules relating to wills which apply following marriage or civil partnership, divorce or dissolution</p> <p>4.3 Explain how a later testamentary document may revoke an earlier will</p> <p>4.4 Explain the rules relating to mutual wills</p> <p>4.5 Apply an understanding of the way in which a will is revoked to a given situation</p>	<ul style="list-style-type: none"> • conditional revocation; • relevant case law, eg: <u>Re Southerden</u> (1925), <u>Re Jones</u> (1976), <u>Re Finnemore (Deceased)</u> (1991). <p>4.2 S18 WA 1837, as amended by AJA 1982 and Marriage (Same Sex Couples) Act 2013, exceptions on expectation of marriage and rules relating to this;</p> <ul style="list-style-type: none"> • effect of divorce or dissolution, s18A WA 1837, as amended by the Law Reform (Succession) Act 1995; relevant case law, eg: <u>Re Sinclair</u> (1985). <p>4.3 The need for express revocation in writing, eg: <u>Re Durance</u> (1872);</p> <ul style="list-style-type: none"> • revocation to the extent that the later document is inconsistent with the first, eg: <u>Pepper v Pepper</u> (1870), <u>Curati v Perdoni</u> (2012). <p>4.4 The equitable doctrine of mutual wills, crystallisation of the floating trust, evidence of mutual intention not to revoke, relevant cases, eg: <u>Dufour v Pereira</u> (1769), <u>Re Cleaver</u>(1981), <u>Re Goodchild</u> (1996), <u>Charles v Fraser</u> (2010), <u>Fry v Densham – Smith</u> (2010).</p> <p>4.5 Application of understanding to a complex scenario.</p>
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	4.6 Critically evaluate a given issue or situation to predict probable legal implications	4.6 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.
5. Understand the effect of alterations contained in a will	5.1 Analyse how the statutory rules relating to the alteration of wills have been applied through case law	5.1 Provisions of s21 WA 1837; <ul style="list-style-type: none"> • presumption alteration made post-execution, exception to this is where alteration is to complete blank spaces, attested alterations admitted; • effect of unattested alterations; • meaning of “apparent”, effect of original wording being “not apparent” (obliteration) and exceptions if unintentional or conditional; • rules on use of extrinsic evidence; • relevant case law, eg: <u>Cooper v Bockett</u> (1846), <u>In the estate of Hamer</u> (1943), <u>Re Itter</u> (1950).
	5.2 Apply an understanding of the rules relating to alteration of a will to a given situation	5.2 Application of understanding to a complex scenario.
	5.3 Critically evaluate a given issue or situation to predict probable legal implications	5.3 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.

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<p>6. Understand the main principles of construction of wills</p>	<p>6.1 Explain the rules available to the court in ascertaining the testator's expressed intention</p> <p>6.2 Analyse how the rules which allow the courts to use extrinsic evidence of the testator's intention have been applied through case law</p>	<p>6.1 The basic rule, intention as expressed in the will, consideration of factual background;</p> <ul style="list-style-type: none"> • relevant case law, eg: <u>Rowland</u> (1963), <u>Scale v Rawlins</u> (1892) <u>Marley v Rawlings</u> (2014); • ordinary meaning for ordinary words; • technical words given their technical meaning; • relevant case law, eg: <u>Cook</u> (1948); • dictionary principle. <p>6.2 The general rule to exclude extrinsic evidence;</p> <ul style="list-style-type: none"> • exceptions: the armchair principle, the surrounding circumstances; • relevant case law, eg: <u>Thorn v Dickens</u> (1906), <u>Re Fish</u> (1893); • latent ambiguity, not apparent on the face of the will; • relevant case law, eg: <u>Re Jackson</u> (1933); • s21 AJA 1982, covers wording which is meaningless, latent ambiguity and patent ambiguity, will allow evidence of T's intention to resolve (but not create) ambiguity; • relevant case law on s21, eg: <u>Re Williams</u> (1985), <u>Harris v Estate of Cooper (Deceased)</u> (2010), <u>Spurling v Broadhurst</u> (2012), <u>Marley v Rawlings</u> (2014); • <u>Brooke v Purton</u> (2014);
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		<ul style="list-style-type: none"> • awareness of subsidiary principles of construction.
	<p>6.3 Explain the rules relating to the date from which the will speaks</p>	<p>6.3 S24 WA 1837, difference in approach between beneficiaries and property;</p> <ul style="list-style-type: none"> • contrary intention and relevant case law; • s34 WA 1837, rules on republication and revival.
	<p>6.4 Analyse the effect of types of class gift</p>	<p>6.4 The need for class closing rules;</p> <ul style="list-style-type: none"> • definition of immediate, deferred, contingent and deferred contingent class gifts; • gifts of specified amount to a class of people, eg: <u>Pearks v Moseley</u> (1880).
	<p>6.5 Identify whether a gift is absolute or limited and explain the effect</p>	<p>6.5 The construction of successive interests; s22 AJA 1982 presumption re spouses eg: <u>Harrison and Another v Gibson and Others</u> (2006);</p> <ul style="list-style-type: none"> • the rule in <u>Lassence v Tierney</u> (1849).
	<p>6.6 Explain the rules which relate to adopted and illegitimate children</p>	<p>6.6 Adopted children treated as legitimate children of adopter eg: <u>Hardy v Hardy and Another</u> (2013);</p> <ul style="list-style-type: none"> • illegitimate children treated as if legitimate.
	<p>6.7 Apply an understanding of the rules of construction to a given situation</p>	<p>6.7 Application of understanding to a complex scenario.</p>

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	6.8 Critically evaluate a given issue or situation to predict probable legal implications	6.8 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.
7. Understand the statutory rules relating to devolution of estates on intestacy	7.1 Distinguish between intestacy and partial intestacy	7.1 The difference between intestacy (leaving no will, or ineffective or invalid will) or partial intestacy where will does not dispose of whole estate.
	7.2 Explain the operation of the statutory trust of land	7.2 Provisions of s33 AEA 1925, apply to both partial and total intestacy, imposes trust with a power to sell on undisposed estate to deal with funeral and administration expenses, settle debts, distribute correctly.
	7.3 Explain the order of beneficial entitlement on intestacy	7.3 S46 AEA 1925 order and extent of entitlement on intestacy and changes made by Inheritance and Trustees' Powers Act (ITPA) 2014 and The Administration of Estates Act (Fixed Net sum) Order 2020 ; <ul style="list-style-type: none"> • surviving spouse/civil partner; • entitlement of other relatives, issue, parents, brothers and sisters of whole and half-blood, grandparents, uncles and aunts of whole and half-blood, the Crown; • effect of the statutory trusts s47 AEA 1925 and amendments made by Estates of Deceased Persons (Forfeiture Rule and Law of Succession) Act 2011; • rules relating to adopted and illegitimate children.

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	<p>7.4 Explain the special rules which apply to spouses/civil partners</p> <p>7.5 Apply an understanding of intestacy/partial intestacy to a given situation</p> <p>7.6 Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>7.4 Statutory survivorship period;</p> <ul style="list-style-type: none"> • acquisition of the matrimonial home, Sch 2 Intestates' Estates Act 1952, use of equality money, date of valuation for any calculation, care where spouse is sole PR (relevant case law, eg: <u>Kane v Radley-Kane</u> (1998)), circumstances where consent of court is required, compare s41 AEA 1925 ordinary power of appropriation; • meaning of personal chattels, s55(1)(x) AEA 1925 as amended by s3 ITPA 2014 and relevant case law, eg: <u>Re Crispin's Will Trust</u> (1974), <u>Re MacCulloch</u> (1981). <p>7.5 Application of understanding to a complex scenario.</p> <p>7.6 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.</p>
<p>8. Understand the circumstances in which different types of grant of representation may be appropriate</p>	<p>8.1 Explain the purpose of a grant of representation</p>	<p>8.1 To establish the authority of the personal representatives (PRs);</p> <ul style="list-style-type: none"> • to establish the validity of any will or to establish that there is no valid will.

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	<p>8.2 Explain when the various types of grant of representation are appropriate</p> <p>8.3 Explain the circumstances in which a grant may be revoked</p>	<p>8.2 Probate: valid will with appointment of executors able and willing to act;</p> <ul style="list-style-type: none"> • letters of administration with the will annexed: where there is a valid will which does not appoint executors or those appointed executors are unable or unwilling to act; • simple letters of administration: on intestacy where there is no valid will; • special grants: restricted to knowledge of a grant of letters of administration de bonis non, administration is incomplete, there is no remaining PR, there has been a previous grant, there is no chain of representation; • order of priority for taking the grant (rules 20 and 22 Non-Contentious Probate Rules (NCPR) 1987). <p>8.3 May be contentious or non-contentious;</p> <ul style="list-style-type: none"> • grounds include that it ought not to have been made (fraudulent application, better entitled person found, grant made despite caveat or pending proceedings), a subsequent will is discovered or the proved will is found to be revoked or invalid, the person thought to be deceased has not died; • relevant case law, eg <u>Re Wilson (Deceased)</u> (2013).
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	<p>8.4 Analyse the effect of such revocation</p> <p>8.5 Apply an understanding of the appropriate grants of representation to a given scenario</p> <p>8.6 Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>8.4 Consequences: eg: protection of original PR acting in good faith, s27 AEA 1925, protection of person making payment to PR in good faith, s39 AEA and contracts for sale, s37 AEA 1925 and conveyances of land;</p> <ul style="list-style-type: none"> wrong beneficiary's position and limits on tracing actions. <p>8.5 Application of understanding to a complex scenario.</p> <p>8.6 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.</p>
<p>9. Understand the rules governing personal representatives entitlement to a grant of representation</p>	<p>9.1 Explain how executors may become entitled to a grant of representation distinguishing between appointment by will and other methods</p>	<p>9.1 Appointment by will;</p> <ul style="list-style-type: none"> appointment according to tenor; relevant case law, eg: <u>In the Goods of Bayliss</u> (1865), <u>In the Estate of McKenzie</u> (1909); person appointed by will to nominate an executor; chain of representation; executor de son tort, intermeddling, acts of kindness and charity; relevant case law, eg: <u>Pollard v Jackson</u> (1995), effect; limit of four executors (s114(1) Senior Courts Act (SCA) 1981), court's power to appoint additional PR to act with sole executor.

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	<p>9.2 Explain the circumstances in which administrators may become entitled to a grant of representation</p> <p>9.3 Explain the circumstances in which a potential personal representative may avoid appointment or be refused by the court</p> <p>9.4 Apply an understanding of the rules governing entitlement to a grant of representation to a given situation</p>	<p>9.2 Rule 22 NCPR 1987 (simple administration) list of entitlement follows beneficial entitlement on intestacy;</p> <ul style="list-style-type: none"> • rule 20 NCPR 1987 (administration with will annexed) list of entitlement follows order of entitlement under the will; • living beneficiaries are preferred to PRs of deceased beneficiary; • application by a creditor; • limit of four administrators, minimum of two where life interest or minority arises unless court's discretion exercised (s114(2) SCA 1981). <p>9.3 Renunciation, effect of intermeddling, possibility of retraction;</p> <ul style="list-style-type: none"> • power reserved to appointed executors; • s50(1) AJA 1985; passing-over, s116 SCA 1981, discretionary power, exercised on request, relevant case law eg: <u>Re Potter</u> (1899), <u>Re Crippen</u> (1911), <u>Re Steele</u> (2010), <u>Khan v Crossland</u> (2012), <u>Goodman and Another v Goodman and Another</u> (2013), <u>National Westminster Bank v Lucas and Others</u> (2014). <p>9.4 Application of understanding to a complex scenario.</p>
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	9.5 Critically evaluate a given issue of situation to predict probable legal implications	9.5 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.
10. Understand the powers, duties and liabilities of personal representatives	10.1 Explain the statutory administrative powers available to personal representatives	10.1 Powers given under AEA 1925, Trustee Act (TA) 1925 and TA 2000; <ul style="list-style-type: none"> • power to postpone distribution; • power to sell mortgage and lease; • power of investment; • power to purchase land; • power to insure; power to run a business; • power to maintain minors; • power to advance capital; • power to delegate; • the rules relating to appropriation.
	10.2 Analyse their effectiveness in dealing with estate assets	10.2 An understanding that these can be extended and varied by will; <ul style="list-style-type: none"> • property which does not devolve on the PRs; • powers of PRs before grant, position of administrators as opposed to executors.
	10.3 Explain the duties of personal representatives	10.3 Duty to collect assets and administer with due diligence; <ul style="list-style-type: none"> • time at which property devolves upon PRs; • property which will not devolve on PRs; • duty of care introduced by TA 2000.

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	<p>10.4 Explain the liability of personal representatives</p> <p>10.5 Explain the ways in which relief might be granted from such personal liability</p> <p>10.6 Explain the methods by which personal representatives might protect themselves from liability</p>	<p>10.4 Loss arising from breach of duty;</p> <ul style="list-style-type: none"> • examples include misappropriation, maladministration, negligence; • usually several liabilities amongst a number of PRs; • liability for the acts of agents. <p>10.5 Relieving provisions in the will;</p> <ul style="list-style-type: none"> • relevant case law, eg: <u>Armitage v Nurse</u> (1998); • relief under s61 TA 1925 granted by the court; • consent or release from beneficiaries; • limitation. <p>10.6 Appropriate use of s27 TA 1925 advertisements;</p> <ul style="list-style-type: none"> • use of searches; • setting aside a fund; • insurance; • application to the court for directions; • the use of <u>Benjamin</u> orders (ie: <u>Re Benjamin</u> (1902)); • application for a decree of presumption of death under Presumption of Death Act 2013: <u>Greathead v Greathead</u> (2017)
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	<p>10.7 Apply an understanding of the powers and duties of personal representatives to a given situation</p> <p>10.8 Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>10.7 Application of understanding to a complex scenario.</p> <p>10.8 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.</p>
<p>11. Understand the rules relating to the payment of debts during the administration of an estate</p>	<p>11.1 Distinguish between a solvent and an insolvent estate</p> <p>11.2 Explain the rules relating to the payment of debts in a solvent estate</p>	<p>11.1 Solvent: assets are sufficient to pay all funeral, testamentary and administration expenses, debts and liabilities;</p> <ul style="list-style-type: none"> • irrelevant that it cannot pay all legacies; • insolvent: assets are insufficient to pay all liabilities as above; • beneficiaries will receive nothing, creditors will not be paid in full. <p>11.2 Part II of Sch I AEA 1925 order in which assets are used to pay debts;</p> <ul style="list-style-type: none"> • debts charged on property and s35 AEA 1925, debts charged on more than one property; • relevant case law, eg: <u>Re Birmingham</u> (1959), <u>Re Neeld</u> (1962), statutory order for unsecured debts, property falling outside the order; • the doctrine of marshalling.

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	<p>11.3 Analyse the effect of varying these rules</p>	<p>11.3 Variation of the order for unsecured debts;</p> <ul style="list-style-type: none"> • relevant case law, eg: <u>Re James</u> (1947), <u>Re Gordon</u> (1940), <u>Re Kempthorne</u> (1930); • methods of showing contrary intention (s35) for debts charged on property.
	<p>11.4 Explain the rules relating to the payment of debts in an insolvent estate</p>	<p>11.4 PRs must follow order of priority which cannot be varied by T, risk of personal liability for superior unpaid debts, limited protection;</p> <ul style="list-style-type: none"> • availability of joint property to cover debts; • order for payment of debts: secured creditors option to rely on security or prove debt in whole or part, funeral testamentary and administration expenses, bankruptcy order contained in Insolvency Act 1986 and Administration of Insolvent Estates of Deceased Persons Order 1986 (preferred, ordinary and deferred debts).
	<p>11.5 Apply an understanding of the rules relating to the payment of debts to a given situation</p>	<p>11.5 Application of understanding to a complex scenario.</p>
	<p>11.6 Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>11.6 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.</p>

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<p>12. Understand the provisions of the Inheritance (Provision for Family and Dependents) Act 1975</p>	<p>12.1 Explain the preliminary requirements of the Act</p> <p>12.2 Analyse the way in which the courts have applied the classification of applicants</p>	<p>12.1 Domicile;</p> <ul style="list-style-type: none"> • time limit for applications; • the applicant falls into one of the categories; • reasonable financial provision has not been made. <p>12.2 Classification of applicants: s1(1) of the Act;</p> <ul style="list-style-type: none"> • spouse or civil partner; • former spouse or civil partner; • relevant case law, eg: <u>Barrass v Harding and Newman</u> (2001) and consideration of financial settlement on divorce; • a person cohabiting with the deceased, position of same sex partners; • relevant case law; • a child of the deceased, definition to include adopted, illegitimate, en ventre sa mère; • relevant case law, eg: on stance re adult • children; • a person treated by deceased as a child of the family; (Ilott v Mitson (2017) UKSC 17 • relevant case law; eg: <u>Re Coventry</u> (1979), <u>Re Abram (Deceased)</u> (1996), <u>Espinosa v Bourke</u> (1999), <u>Re Nahajec (Deceased)</u> (2017); • and person maintained by the deceased immediately before his
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	<p>12.3 Distinguish between the two standards of reasonable provision</p> <p>12.4 Explain the common and particular guidelines available to the court</p> <p>12.5 Explain the types of orders available to the court</p>	<p>death, meanings of maintained, valuable consideration, “immediately before death”;</p> <ul style="list-style-type: none"> • relevant case law, eg: <u>Jelley Iliffe</u> (1981), <u>Gully v Dix</u> (2004), <u>Kaur v Singh Dhaliwal</u> (2014), <u>Swetenham v Walkley</u> (2014). <p>12.3 Reasonable financial provision and the test of reasonableness, relevant case law eg: <u>Ilott v Mitson</u> (2011), (2015) CA & (2017) SC;</p> <ul style="list-style-type: none"> • surviving spouse standard; • ordinary standard; • consideration of changes arising post death. <p>12.4 S3(1) common guidelines, financial resources of applicant/beneficiaries, obligations and responsibilities of the deceased, size and nature of the estate, applicant’s physical or mental disability, any other matter;</p> <ul style="list-style-type: none"> • particular guidelines, as applicable to each category of applicant. <p>12.5 Periodical payments;</p> <ul style="list-style-type: none"> • lump sum payments; • transfers of property; • settlement of property; • acquisition of property; • interim payment order.
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	<p>12.6 Identify the property available for financial provision</p> <p>12.7 Analyse how the provisions of the Act have been implemented by the courts through case law</p> <p>12.8 Apply an understanding of the provisions of the Act to a given situation</p> <p>12.9 Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>12.6 S25 and definition of the “net estate” eg: <u>Goenka v Goenka, Welsh and Others</u> (2014);</p> <ul style="list-style-type: none"> • treatment of joint property eg: <u>Lim v Walia</u> (2014); • anti-avoidance provisions. <p>12.7 Relevant case law relating to each category of applicant.</p> <p>12.8 Application of understanding to a complex scenario.</p> <p>12.9 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.</p>
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Additional information about the unit	
Unit aim(s)	To accredit a broad and detailed understanding of Law of Wills and Succession
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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