LAW ANGELS

WILLS AND ADMINISTRATION OF ESTATES

SQE 1 PREP

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PREFACE

The law of succession sits at the poignant intersection of a client's final wishes and the practical realities of distributing their legacy. It is a practice area that demands a unique blend of technical precision, deep empathy, and rigorous procedural knowledge. This textbook is designed to guide you through the entire lifecycle of an estate, from the initial instructions for a will to the final distribution of assets, providing a clear and compassionate roadmap through this sensitive area of law.

Our approach is built on a simple belief: to excel in succession law, you must understand the profound responsibility of giving effect to a client's intentions, both during their life and after. We have therefore structured this text to be more than a procedural guide. It deconstructs the formalities of will drafting, the complexities of intestacy, and the detailed administration process, highlighting the legal principles and potential pitfalls at every stage. You will find a consistent focus on validity, interpretation, and the fiduciary duties owed to beneficiaries.

The SQE1 assessment and future practice require a deep, application-based knowledge of this field. This book is tailored to that challenge. We integrate key statutes, such as the *Wills Act 1837* and the *Administration of Estates Act 1925*, and pivotal case law not as historical artefacts, but as living instruments that determine real-world outcomes. Practical drafting tips, exemplar clauses, and case studies based on common scenarios are woven throughout to transform your understanding from theoretical knowledge to practical, client-ready skill.

Our goal is to equip you with the confidence and competence to advise clients on their legacy, navigate the probate process, and administer an estate with diligence and care. The following pages will provide the clarity, depth, and ethical foundation you need to serve your clients with excellence in one of the most personal areas of legal practice.

Welcome to the law of succession. The work is detail-oriented and often emotionally charged, but there are few legal roles more important than honouring a life and securing a family's future.

Law Angels

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The development of this textbook was a significant endeavor, and we extend our sincere gratitude to the collective efforts that made this publication possible.

At Law Angels, we are fortunate to be supported by a dedicated team whose commitment to legal education and excellence is the cornerstone of our work. The collaborative spirit, legal expertise, and tireless effort of our entire organization were instrumental in shaping this text from concept to completion.

We also extend our appreciation to the broader legal community. The insightful feedback from our academic and practitioner reviewers greatly enhanced the accuracy and clarity of the material. Their contributions, offered in a spirit of scholarly collaboration, have been invaluable in ensuring this resource meets the rigorous demands of the SQE curriculum.

We are also thankful for the unwavering support from our personal networks, whose understanding provided the foundation that allowed this project to thrive.

It is our privilege at Law Angels to contribute to the education of future solicitors, and we hope this text serves as a reliable guide for the next generation of legal professionals.

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GLOSSARY OF KEY TERMS

A

Ademption: The failure of a specific gift because the item no longer exists in the testator's estate at the time of death.

Administration Period: The time between a person's death and the final distribution of their estate, during which executors manage the estate's affairs.

Appropriation: The right of a surviving spouse or civil partner to claim the family home or a specific asset from the estate in satisfaction of their inheritance entitlement.

Attestation: The act of witnessing the signing of a will to confirm that proper execution requirements are met.

Attestation Clause: A statement at the end of a will confirming that it was signed by the testator in the presence of witnesses who also signed in the testator's presence, thereby satisfying statutory requirements.

Attested Copy: A certified copy of a will used in probate proceedings when the original is unavailable.

B

Beneficiary: A beneficiary is any individual, organisation, or entity who is entitled to receive a gift or benefit under a will. Beneficiaries can receive specific items, sums of money, shares of property, or a share in the residue of the estate.

Bona Vacantia: The doctrine under which property of a person who dies without heirs passes to the Crown or Duchy.

C

Codicil: A supplementary document that makes changes or additions to an existing will without replacing it entirely. It must comply with the same formalities as a will to be valid.

Cohabitant: A person who lives with another in a long-term relationship but lacks automatic inheritance rights under intestacy unless provided for in a will.

Contingent Interest: An interest that will only vest when certain conditions are fulfilled, such as reaching a specified age.

D

Deed of Variation: A post-death document that allows beneficiaries to alter the distribution of an estate to achieve fairer or tax-efficient outcomes, provided all affected parties agree.

Demonstrative Gift: A monetary gift directed to be paid from a specific source, such as a bank account. If that source fails, it is payable from the general estate.

Dependent Relative Revocation: A legal principle where revocation of a will or clause is conditional upon a new will being valid. If the new will fails, the earlier one may be revived.

Disclaimer: The formal refusal of a beneficiary to accept a gift, causing it to fall into residue or intestacy.

E

Estate Administration: The process of collecting, managing, and distributing the deceased's property according to the terms of the will or intestacy laws.

Executor: This is the person or people appointed by the testator in the will to ensure their instructions are properly carried out. Their responsibilities include applying for a grant of probate, collecting and valuing the deceased's assets, paying debts and taxes, and distributing the estate according to the terms of the will.

F

Forfeiture Rule: The principle that a person cannot benefit from the estate of someone they unlawfully killed.

G

Golden Rule: A best practice guideline for solicitors drafting wills for elderly or seriously ill clients, requiring that a medical practitioner confirm the testator's capacity to reduce challenges based on lack of capacity or undue influence.

Grant of Probate: The legal document issued by the probate court confirming the authority of the executor to administer the deceased's estate and distribute assets according to the will.

Grant of Representation: A general term encompassing both grants of probate and letters of administration, providing legal authority to administer the estate.

I

Inheritance Tax (IHT): The tax charged on the value of a person's estate at death, with various exemptions and reliefs available under the *Inheritance Tax Act 1984*.

Intestacy: This occurs when a person dies without a valid will, or if the will does not dispose of their entire estate (partial intestacy). In such cases, the estate is distributed according to statutory intestacy rules, which may not reflect the deceased's wishes and can result in unintended outcomes.

L

Lapse: The failure of a gift because the beneficiary dies before the testator, unless *section 33 Wills Act 1837* applies to pass it to the beneficiary's descendants.

Legacy: A gift in a will can be money, items, or property. It could be a specific gift (an identified item), a general gift (money or something not specifically identified), or a residuary gift (whatever is left after all debts and other gifts).

Letters of Administration: The legal authority granted by the probate court to administer the estate of a person who has died intestate or where no executor is named in the will.

Lifetime Chargeable Transfer (LCT): A transfer made during a person's lifetime that is immediately chargeable to inheritance tax, typically to a trust.

N

Nil-Rate Band: The portion of an estate's value exempt from inheritance tax, currently £325,000 for most individuals.

P

Partial Intestacy: The situation where part of an estate is undisposed of by a will and is therefore distributed under the intestacy rules.

Pecuniary Gift: A gift of a fixed sum of money payable from the general assets of the estate rather than from a specific fund.

Per Capita Distribution: A method of distributing an estate equally among all surviving beneficiaries at the same generational level, rather than by branches.

Per Stirpes Distribution: This is a method of distributing an estate among a deceased person's descendants. Under this system, each branch of the family receives an equal share. If a beneficiary has died before the testator, their share is not redistributed among surviving beneficiaries but instead passes to their children in equal portions.

Personal Chattels: These are tangible, movable possessions owned by the deceased that are not used for business or investment purposes. This category includes household furniture, cars, clothing, jewellery, and personal effects but excludes cash, stocks, shares, or property held for commercial use.

Personal Representatives (PRs): The collective term for executors and administrators responsible for collecting the estate's assets, paying debts, and distributing the estate to beneficiaries.

Potentially Exempt Transfer (PET): A lifetime gift that becomes exempt from inheritance tax if the donor survives for seven years after making it.

Privileged Will: A special type of will made by soldiers in active service or mariners at sea, which may be valid even if it does not meet ordinary formalities under *section 11 Wills Act 1837*.

R

Reasonable Financial Provision: The standard by which the court assesses whether a dependant has been adequately provided for under the *Inheritance (Provision for Family and Dependants) Act 1975*.

Rectification: The court's power to correct a clerical error or failure to express the testator's true intention under section 20 of the Administration of Justice Act 1982.

Residence Nil-Rate Band: An additional inheritance tax allowance available when a main residence passes to direct descendants.

Residuary Beneficiary: The individual entitled to receive the residue of the estate after all prior obligations and specific gifts are fulfilled.

Residuary Estate: The remainder of a testator's property left after debts, taxes, and specific gifts have been settled.

Residuary Gift: A gift of everything left in the estate after all debts, expenses, and other gifts have been paid.

Revocation: This is the legal cancellation of a will. It can occur intentionally by making a new will or by physically destroying the old one with the intention of revoking it. Certain life events, such as marriage or civil partnership, can also automatically revoke a will. Upon revocation, a will has no legal effect.

S

Specific Gift: A gift of a precisely identified item owned by the testator at the time of the will, which fails if the item no longer exists when the testator dies.

Statutory Trusts: When a beneficiary named in a will is under the age of 18, their inheritance is usually held on statutory trust until they reach the age of majority. Until then,

they have a contingent interest, meaning they will receive the gift only when they attain the age of 18. Once they reach 18, their interest becomes vested, and they are entitled to take possession.

Survivorship Clause: A clause requiring a beneficiary to survive the testator by a specified period, commonly 28 days, to inherit under the will.

T

Testamentary Capacity: The mental ability of a person to make a valid will, requiring understanding of the nature of the act, the extent of their property, and the claims of potential beneficiaries.

Testamentary Intention: The testator's conscious decision that the document should operate as their will upon death.

Testator/Testatrix: The testator (male) or testatrix (female) is the individual who creates a will. This person sets out their wishes regarding how their property, money, and possessions should be distributed after death.

Trustee: A person appointed to manage property held in trust for beneficiaries according to the terms of the will or statutory trust.

U

Undue Influence: Coercion or manipulation so severe that it destroys a testator's free will, rendering a will invalid.

V

Vested Interest: A beneficiary's fixed, enforceable right to property under a will, which is not subject to any condition.

1

ESSENTIALS FOR THE PROPER EXECUTION OF WILLS

Estate administration is the process of managing everything someone leaves behind after they pass away. This includes paying any Inheritance Tax (IHT), clearing outstanding debts, settling final expenses (including funeral costs), and making sure the remaining assets go to the people entitled to them. It's not just about paperwork; the Personal Representatives also handle real-world matters like arranging funerals and securing property.

Wills are interpreted based on the intention of the testator as expressed in the will itself. The court will try to understand what the testator meant, using the plain and ordinary meaning of the words unless there's strong evidence to suggest otherwise. This includes reading the will as a whole and giving effect to its overall structure and purpose.

1.1 Why Wills Matter and What Happens When Someone Dies

A will is a legal document that lets a person, the testator, decide who gets their assets after death. If someone dies without a valid will, the law (intestacy rules) decides who inherits, which may not match their wishes. A valid will provides certainty, avoids family disputes, and can save money and time for those left behind.

Wills also appoint executors, guardians for children, and set out funeral wishes. If the will is invalid or unclear, families can face costly court cases.

1.2 Types of Gifts in a Will

A legacy is a gift left to someone in a will, most commonly referring to personal property, such as money, jewellery, or shares. However, the term is often used more broadly to include gifts of real property (land or buildings) as well. Technically, a gift of real property is called a devise, while a gift of personal property is a legacy or bequest, but in practice, "legacy" is frequently used to cover both kinds of gifts. The types of gifts that could be contained in a will are as follows.

1. **Residuary Gift**

   This is gifting everything remaining after debts, funeral expenses, and administration costs, and all other gifts are paid. It ensures that any remaining assets such as money, property, investments, or personal belongings not otherwise mentioned in the will are distributed according to the testator's wishes.

   For example: "I give the rest of my estate to my brother, Alex." Alex will receive all assets not specifically gifted to someone else.

2. **General Gift**

   A general gift refers to a bequest that is not tied to any particular item or fund, but rather to a type or quantity of assets that could come from anywhere in the estate. The executors are responsible for obtaining or providing the item described if the testator does not already own it at death. They are payable from the general assets of the estate and are often used for items like shares, bonds, or other fungible property.

   For example: "I give 200 shares of Tesla Inc. to my cousin, Maria."

3. **Specific Gift**

   A specific gift refers to a clearly identifiable item of property that the testator owns at the time the will is made and intends to leave to a named beneficiary. The gift only takes effect if the item still exists and is owned by the testator at death. If it has been sold, lost, or given away before then, the gift fails and the beneficiary receives nothing in its place. For example: "I leave my 18-carat gold watch to my niece, Sophie."

4. Pecuniary Gift

This is a gift of a fixed sum of money to a person or organisation, payable from the general assets of the estate rather than from any specific fund or item. It can be used to provide for family, friends, or charities, and it does not depend on the existence of any particular asset. Pecuniary gifts are normally paid before residuary gifts. For example: “I give £5,000 to my friend, Priya.”

5. Demonstrative Gift

This is a monetary gift linked to a specific source or fund for its payment. It combines elements of both a specific and a general gift. The testator identifies a sum of money to be paid and specifies where it should come from; for example, a particular bank account or investment.

If the named fund or account exists at the time of the testator’s death and contains enough money to cover the amount specified, the payment is made directly from that source, and the gift is treated as specific.

However, if the fund or account no longer exists or does not contain sufficient money when the testator dies, the unpaid balance is taken from the general estate, and in that case, the gift is treated as general. This ensures that the beneficiary still receives the intended amount even if the particular source identified in the will is no longer available. For example: “I give £1,000 to my colleague, Tom, to be paid from my Halifax savings account.”

1.3 What makes a Will Valid (Three Pillars)

Upon death of a person, the first step is to check whether the deceased made a valid will. If a valid will exists, the individual is said to have died "testate." In this case, their estate will be distributed according to the instructions laid out in the will. If no valid will exists, the person is "intestate," and statutory rules will determine who inherits the estate.

A will is only valid if the requirements of Capacity, Intention and Formalities are complied with.

1.3.1 Formalities

This means the will must be signed and witnessed correctly. *Section 9 Wills Act 1837* provides that:

1. **The Will must be in Writing**

A valid will must be set out in writing. The law imposes no strict rules on the material or format used; thus, it may be handwritten, typed, written in Braille, or even produced in shorthand. The testator's intentions must be clearly expressed in a tangible, readable form. Examples of wills "in writing" include handwritten, typed, or solicitor-prepared documents that are printed and signed on paper. Even a will written in ink on ordinary paper or parchment is valid if properly signed and witnessed. The key requirement is that the will exists in a permanent physical form capable of bearing original signatures to ensure authenticity and reliability.

Although "in writing" does not necessarily require a physical sheet or traditional medium, an electronic will stored only on a computer is invalid because it lacks the permanence and verifiable execution required by law. Unlike a signed paper document that can be witnessed and preserved, a digital file can be altered or deleted without detection. Therefore, under current UK law, purely electronic wills do not satisfy the statutory formalities and have no legal validity.

2. **The Will must be Signed by the Testator or Another**

The testator must sign the will to make it legally effective. Any form of signature is acceptable so long as the testator intends it to represent their name or identity. The signature could take the form of a thumbprint. In ***Re Estate of Cook*** [1960] 1 All ER 689, a will signed, "Your loving mother" was upheld as valid. Where the testator is unable to sign due to illness or physical incapacity, another person may sign on their behalf, provided the act is done in the testator's presence and at their express direction, verbal or through a gesture.

3. **The Signature must Prove the Intention to Give Effect to the Will**

It is not enough that the document merely bears a signature; the testator must have intended their signature to give legal effect to the will. The presence of a name or mark on a document will only be treated as a valid signature if it demonstrates an intention to execute the will.

4. Two Witnesses must be Present at the Same Time To see the Signature

To be valid, the testator's signature must be either made or acknowledged in the presence of two witnesses, who must both be present at the same time. This requirement exists to reduce the risk of fraud, coercion, or undue influence. The witnesses must be able to see or have an unobstructed view of the testator signing and must be aware that the testator is signing a document. Where the testator has already signed, they may later acknowledge the signature before both witnesses, which also satisfies the legal requirement

5. The Witnesses must Sign the Will in the Testator's Presence.

After the testator signs or acknowledges their signature, both witnesses must sign the will in the presence of the testator, though it is not necessary for the witnesses to sign in each other's presence.

6. Witnesses should not be Beneficiaries

There are no formal conditions regarding the witnesses' qualifications. However, if a witness or their spouse or civil partner is a beneficiary under the will, the will itself remains valid, but the gift to that witness fails in accordance with *s.15* of the *Wills Act 1837*.

7. Video Witnessing of Wills

In response to COVID-19 pandemic, temporary legislation was introduced to allow video witnessing of wills in real time. The amendment to *s.9* of the *Wills Act 1837* provided that, for wills made between 28 September 2020 and 31 January 2024, the term "presence" could include presence by means of videoconference or other visual transmission. This provision applied only to wills personally signed by the testator. All parties, the testator and the two witnesses, must clearly see and hear one another throughout the signing process. Each witness was required to physically sign the will, in the virtual or physical presence of the other.

The person trying to use the will in probate must prove its validity. A person challenging the will, for lack of capacity or undue influence, must provide convincing evidence.

If there's an "attestation clause", the court will usually accept it unless there's strong evidence otherwise. An attestation clause is a statement in the will about how it was signed e.g. "Signed by the testator in our joint presence". If a will does not contain an attestation clause, the person seeking to have it admitted to probate must provide evidence that the required formalities were properly observed, could be by calling one of the witnesses to testify.

Without that clause, the court will demand sworn evidence of execution, handwriting verification, or judicial review which will involve costs

1.3.2 Testamentary Capacity

The person making a will must be old enough and of sound mind**.** The minimum age of capacity is 18 years old. (with rare exceptions).

The case of ***Banks v Goodfellow*** [1870] LR 5 QB 549 established factors to determine whether a testator had the mental capacity to make a valid will. Testamentary capacity means the testator must, at the time of making the will,

- understand they're making a will.
- know the nature and value of their property.
- understand persons who might have a claim to the gifts (family, dependants).

If someone is very elderly, ill, or has a history of confusion or dementia, special care must be taken to ensure the person can take such decisions themselves

The general rule is that testators must have capacity at the time of executing the will. However, an exception was established in ***Parker v Felgate*** [1883] 8 PD 171, that a will may still be valid where the testator loses mental capacity before signing it if the testator had capacity when giving the initial instructions for the will to a solicitor, who then drafts the document in line with those instructions. Nonetheless at the time of execution, the testator must understand that they are signing a will that accurately reflects the instructions they previously gave.

Solicitors do not have to prove the mental capacity of their clients for it is generally presumed that a testator had mental capacity, and the burden of proving otherwise rests on the party challenging the validity of the will.

When a solicitor is preparing a will for an elderly or seriously ill testator, the testator and solicitor should follow what is known as the "Golden Rule." The Golden Rule requires that when a solicitor is instructed to prepare a will for an aged testator or one who is seriously ill, the solicitor should arrange for a medical practitioner, preferably the testator's own doctor, to witness the will or to satisfy themselves and record that the testator has the required testamentary capacity.

Purpose of the Golden Rule

- To protect the testator's wishes from later being challenged on the grounds of lack of testamentary capacity, undue influence, or fraud.
- To protect the solicitor from professional negligence claims.
- To provide independent evidence of capacity at the time of execution.

Example:
Mrs. Smith is 93 and a little forgetful, but when she makes her will, she can clearly describe her family and her property. Her solicitor brings in her GP, who confirms she knows what she's doing. This helps prevent disputes later.

1.3.3 Intention; Knowing and Approving the Will

The testator must mean the document to be their will, not just notes or a draft.

They must know and approve the contents of the will at the time of execution. If someone else prepares the will especially a main beneficiary, this can be suspicious, and the court may look for extra proof that the testator agreed.

The burden of proving intention is upon the person affirming the validity of the will.

Rebuttable Presumption of Knowledge and Approval

There is a general presumption, unless proven otherwise, that a testator who had mental capacity made the will with full knowledge and approval of its contents. Anyone contesting the will must demonstrate that the testator lacked genuine intention, by proving that the will was made under fear, fraud, undue influence, or mistake.

There is no presumption where:

- The testator is blind or illiterate, or the will was signed by another person. In such cases, proof the will was read aloud or its content explained helps show they understood.
- The circumstances are suspicious, for instance, where the will is prepared by a major beneficiary of the will. In ***Barry v Butlin*** [1838] 12 E.R. 1089, court held that where a will is made under suspicious circumstances, the burden lies on the propounder to prove that the testator knew and approved of the contents, and the will represents the testator's true intention. In the more recent case of ***Fuller v Strum*** [2002] 1 WLR 1097, court restated that knowledge and approval must be proved beyond mere formalities when suspicion arises.

The basis for which the testator's knowledge and approval is contested includes mistake, force or fear; undue influence or duress; or fraud.

Red Flag Example:

If a will leaves everything to the person who wrote it, especially if others expected to inherit, the court will be cautious. There needs to be evidence the testator agreed and wasn't pressured.

1.3.4 What Happens If the Rules Aren't Followed?

- If the will isn't signed or witnessed properly, it is invalid and the estate passes by intestacy, as though the will was never created.
- If a beneficiary acts as a witness, only their gift fails, not the whole will.
- If a will looks suspicious (e.g., written by a beneficiary, or made when the testator was very ill), the court may require more proof it was genuine.

1.3.6 Privileged Wills

This is an exception to the rules on the validity of a will. There is no need for a testator in such circumstance to be above 18 years of age and the requirement of *s.9 Wills Act 1837* does not apply to privileged wills.

Privileged wills are made by military personnel on active service and mariners at sea. *Section 11 Wills Act 1837* provides that such wills may be valid in any form, even an oral declaration, as long as the person intended to dispose of their property after death. For example, in 1981 a soldier on active duty declared, "If I don't make it, make sure Anne gets all my stuff." His oral statement was upheld as a valid will, transferring all his property in favour of his fiancée.

1.3.7 Can Courts Rectify Wills?

Courts may correct a will's wording. This authority exists solely to ensure that the testator's true intentions, as at the time the will was made, are properly reflected. Under *s. 20 of the Administration of Justice Act 1982*, rectification may be granted where a clerical error or a failure to understand the testator's instructions by the solicitor who prepared the will has led to the document not expressing the testator's actual intent.

Simple mistakes such as a typing or wording error, or a drafting error where the solicitor misunderstood the testator's directions can be amended by the court to be in accordance with the testator's original intention. However, the court cannot rewrite or add new provisions to the will, nor can it make assumptions about what the testator might have intended.

1.4 Challenging a Will (Key Grounds)

Where a will appears to have been validly executed, it can still be challenged and potentially set aside if certain vitiating factors are proven. The burden of proof lies on the person contesting the will. To defeat a will that appears validly executed by a capacious testator, a challenger must prove one of the following grounds:

- **Coercion or Violence:** Where the testator was subjected to actual violence, threats, or intimidation that compelled them to sign or make the will against their will, such coercion invalidates the will because it destroys the testator's freedom of choice.

- **Undue Influence:** This involves coercion or manipulation so extreme that the testator's free will is overborne. Mere persuasion, appeals to emotion, or advice are insufficient. Allegations of undue influence demand strong, corroborating evidence; unfounded claims risk cost penalties. In ***Gill v Woodall*** [2010] EWCA Civ 1430, the will of a wife who had left her entire estate to a religious organisation, excluding her husband was set aside based on evidence of psychological domination and coercion by her husband at the time of making the will, which prevented her from exercising her free will.
- **Mistake:** If any part of the will was included without the testator's knowledge or approval, that clause is treated as a mistake and struck out. When words are omitted, misplaced, or incorrectly written, the court can remove or correct those specific errors under its rectification powers so that the will aligns with the testator's true intention. Also, an error about the legal effect of a clause does not amount to a mistake that can void the will. A misunderstanding of the law, even if it leads to an unintended outcome, will not justify the court in rewriting or disregarding the clause.
- **Fraud:** This occurs when the testator is deceived or misled into signing the will or including certain provisions based on false representations or concealment of facts. Fraud can include forging a signature or tricking the testator into signing a document they did not realise was a will.

Example:
David, 90, left everything to Yvonne, his carer, who also wrote his will. His niece, Ruth, argues he didn't know or approve it. Because Yvonne drafted the document, she must prove David's informed approval. If she does, Ruth would then need solid proof of coercion to succeed and her costs exposure is high if she cannot.

1.5 Invalid/Ineffective Testamentary Gifts

Where a will itself is valid, individual gifts within it may fail for various reasons. When a gift fails, its value normally falls into the residuary estate, passing to the residuary beneficiary. If the failed gift is part of the residue itself, it creates a partial intestacy, and that portion of the estate is distributed under the intestacy rules.

1. Forfeiture

Under the forfeiture rule, no person may benefit from the estate of someone they unlawfully killed. This applies to inheritance under wills, intestacy, or survivorship. A killer is treated as having predeceased the deceased, allowing substitution by their issue.

In ***Cleaver v Mutual Reserve Fund Life Association*** [1892] 1 QB 147, the court laid down the forfeiture rule as a public policy principle that a person who unlawfully kills another cannot benefit from the victim's estate or insurance policy. *Fry LJ* stated, "It is against public policy that a man should be allowed to take advantage of his own wrong."

In line with the principle, a son who murdered his mother could not inherit her estate under intestacy in the case of ***Re Sigsworth*** [1935] Ch 89.

However, under the *Forfeiture Act 1982*, courts can grant relief in the interest of justice. In ***Ninian v Findlay*** [2019] EWHC 297 (Ch), where a wife who assisted her terminally ill husband's suicide was allowed to inherit because her actions were motivated by care rather than malice.

2. Ademption

A specific gift is adeemed if the testator no longer owns the item at death, e.g., if it was sold, given away, or destroyed. If the asset changes form but remains substantially the same (e.g., company shares renamed after a merger), the gift may survive. However, if replaced with something new like a different car, the gift is usually considered adeemed.

3. Divorce or Dissolution

Under *ss.18A–18C Wills Act 1837*, if a testator's marriage or civil partnership is dissolved or annulled after the will is made, any gift or appointment in favour of the former spouse or partner is treated as if that person died on the date of the divorce. This rule only applies after a legal dissolution, not mere separation.

4. Lapse

A gift lapses if the beneficiary dies before the testator. The property then falls into residue unless the will includes a substitutional gift. The doctrine of lapse was reaffirmed in ***Re***

Rowland [1962] EWCA Civ J0523-1; when a beneficiary under a will dies before the testator, the gift to that beneficiary fails or "lapses", unless the will provides otherwise

For gifts to children or descendants, *s.33* of the *Wills Act 1837* prevents lapse; if a child dies before the testator but leaves living descendants, the gift automatically passes to those descendants (*per stirpes*).

Also, if two people die together and the order of death cannot be determined, *s.184 Law of Property Act 1925* presumes the older died first. In ***Hickman v Peacey*** [1945] A.C. 304, the House of Lords considered what happens when two or more people die together (in this case, in the course of bombing during WWII) and there is no evidence as to who died first. The court applied *s.184* of the *Law of Property Act 1925*, confirming that where the order of deaths is uncertain, the law presumes that deaths occurred in order of seniority, the younger is deemed to have survived the elder.

Wills may also include survivorship clauses, requiring beneficiaries to outlive the testator by a specified period (e.g., 28 days for spouses).

5. Uncertainty

A gift fails if the subject matter or recipient cannot be identified from the wording of the will. The court will attempt to interpret the testator's intention or use its rectification powers, but if the meaning remains unclear, the gift fails. However, an exception exists for charitable gifts where the testator's intention to benefit charity is clear.

6. Disclaimer

A beneficiary may refuse (disclaim) a gift, causing it to fall into residue or intestacy. A disclaimer treats the beneficiary as if they predeceased the testator, so their issue can inherit under *s.33 Wills Act 1837*. However, once a gift is accepted or enjoyed, it can no longer be disclaimed.

7. Beneficiary as Witness

By virtue of *s.15 Wills Act 1837*, if a beneficiary or their spouse or civil partner witnesses the will, their gift fails, though the will itself remains valid. This rule exists to ensure

witnesses are impartial. However, if there are other valid witnesses, or the beneficiary's signature is unnecessary for execution, the gift still stands. Moreover, a later codicil witnessed by different people can revive the gift.

1.6 Types of Property that Bypass a Will

1.6.1 Property Held in a Trust

If the deceased only had a benefit from a trust, not full ownership, it is dealt with under trust rules, not the will. Assets held under a trust of which the deceased was a life tenant pass to the remainderman under the trust, not passing according to the life tenant's will.

A beneficiary's total inheritance may include both succession-estate distributions and excluded-asset entitlements. For example, a surviving joint tenant of a £400,000 house receives the full property by survivorship (worth £400,000), plus any intestacy share (e.g., statutory legacy and residue).

1.6.2 Retirement Accounts/ Pension Plans with Named Beneficiaries

Trustees of the pension fund pay a lump sum, often based on the employee's salary at the date of death, to the family members or dependants they select at their discretion. The deceased employee's expression of wishes, though not legally binding, guide the trustees on who they would prefer to receive the benefit.

These pension benefits do not form part of the employee's personal estate, as they are not owned by the employee during their lifetime. Consequently, the payment is made outside the terms of any will and is not governed by intestacy laws.

1.6.3 Jointly Owned Property with Right of Survivorship

Where the property is owned under joint tenancy, the surviving owner automatically gets the whole asset (e.g. a house, bank account). For example, a house owned jointly by spouses will pass entirely to the survivor, even if the will says otherwise.

However, if owned as "tenants in common," the rule of survivorship does not apply; thus, each person's share goes into their estate and passes via the will/intestacy.

1.6.4 Payable-on-Death (POD) or Transfer-on-Death Accounts

Some bank, savings or investment accounts allow the account holder to name a beneficiary who will automatically receive the funds upon the holder's death without the need for probate. The account remains fully under the owner's control during their lifetime, and they may change or remove the beneficiary at any time. Upon death, the beneficiary typically needs only to present a death certificate and identification to access the funds. This arrangement offers a quick and cost-effective asset transfer, but beneficiary designations should be kept updated as they override conflicting will provisions.

1.6.5 Life Insurance Policies with Named Beneficiaries

Where life assurance policies are placed in trust or assigned to named beneficiary, the payout goes directly to such persons upon the death of the policyholder. The money does not pass through the deceased's estate.

However, if the policy is owned outright by the deceased, the proceeds automatically form part of the estate. In such cases, the payout is handled according to the terms of the will or under the rules of intestacy if there exists no will. If owned outright, the money forms part of the estate and is dealt with under the will/intestacy.

1.7 Key Terms

- **Testator/Testatrix:** The testator (male) or testatrix (female) is the individual who creates a will. This person sets out their wishes regarding how their property, money, and possessions should be distributed after death.
- **Executor:** This is the person or people appointed by the testator in the will to ensure their instructions are properly carried out. Their responsibilities include applying for a grant of probate, collecting and valuing the deceased's assets, paying debts and taxes, and distributing the estate according to the terms of the will.

- **Beneficiary:** A beneficiary is any individual, organisation, or entity who is entitled to receive a gift or benefit under a will. Beneficiaries can receive specific items, sums of money, shares of property, or a share in the residue of the estate.
- **Legacy:** A gift in a will can be money, items, or property. It could be a specific gift, (an identified item), a general gift (money or something not specifically identified), or a residuary gift (whatever is left after all debts and other gifts).
- **Intestacy:** This occurs when a person dies without a valid will, or if the will does not dispose of their entire estate (partial intestacy). In such cases, the estate is distributed according to statutory intestacy rules, which may not reflect the deceased's wishes and can result in unintended outcomes.
- **Revocation:** This is the legal cancellation of a will. It can occur intentionally by making a new will or by physically destroying the old one with the intention of revoking it. Certain life events, such as marriage or civil partnership, can also automatically revoke a will. Upon revocation, a will has no legal effect.
- **Personal Chattels:** These are tangible, movable possessions owned by the deceased that are not used for business or investment purposes. This category includes household furniture, cars, clothing, jewellery, and personal effects but excludes cash, stocks, shares, or property held for commercial use.
- **Statutory Trusts:** When a beneficiary named in a will is under the age of 18, their inheritance is usually held on statutory trust until they reach the age of majority. Until then, they have a contingent interest; that is, they will receive the gift only when they attain the age of 18. Once they reach 18, their interest becomes vested, and they are entitled to take possession.
- **Per Stirpes Distribution:** This is a method of distributing an estate among a deceased person's descendants. Under this system, each branch of the family receives an equal share. If a beneficiary has died before the testator, their share is not redistributed among surviving beneficiaries but instead passes to their children in equal portions.

Example*:* In an estate worth £100,000; there are three children; one predeceased with two children. Each branch is entitled £33,333; the predeceased child's two children share their branch (£16,666 each).

1.8 Conclusion

In conclusion, the administration of an estate depends on having a valid will that reflects the testator's true intentions and meets all legal requirements of capacity, intention, and proper execution. A clear understanding of which assets pass outside the will, such as joint property or trust funds, helps avoid disputes and confusion. Proper drafting, witnessing, and professional guidance by solicitors ensure that the testator's wishes are carried out efficiently, reduce the risk of legal challenges, and uphold fairness and certainty for all beneficiaries.

2

INTESTACY; WHAT HAPPENS WHEN SOMEONE DIES WITHOUT A VALID WILL?

Intestacy occurs when a person dies without leaving a valid will, or when their will does not cover all their assets. In these cases, the distribution of their estate is governed by strict statutory rules designed to follow a fixed family hierarchy. These rules, primarily found in the *Administration of Estates Act 1925 (AEA 1925)*, override any wishes that were not clearly documented in a valid will.

2.1 Types of Intestacy

Total Intestacy: This occurs if the deceased did not leave a will, or if any will made is found to be invalid or have been revoked.

Partial Intestacy: This arises when a valid will exists but it fails to dispose of the testator's assets. This can happen when the will does not include a residuary clause (a provision covering everything left after specific gifts are made) or when a named beneficiary dies before the testator and no substitute beneficiary is appointed. In such cases, the undistributed portion of the estate is dealt with under the rules of intestacy, while the rest of the estate passes according to the valid terms of the will.

In such cases, the deceased is said to have died intestate, meaning their estate is distributed according to the rules of intestacy set out in the *Administration of Estates Act 1925*.

Under these rules, the law determines who inherits the estate based on the deceased's family relationships, giving priority to spouses or civil partners, followed by children, and then more distant relatives if no immediate family exists. Friends, unmarried partners, or charities cannot inherit unless specifically named in a valid will.

2.2 Hierarchy of Beneficiaries in Intestate Estates

The distribution of an intestate person's estate follows a statutory hierarchy designed to reflect what the law assumes most people would wish to happen sometimes referred to as the "average will" model, which was developed after recommendations from the *1924 Royal Commission on the Law of Intestacy*. The rules are set out in the *Administration of Estates Act 1925*, as amended, and they determine how the estate is divided among surviving relatives in a strict order of priority.

1. **Spouse or Civil Partner**: The surviving spouse or civil partner takes first priority, provided they survive the deceased by at least 28 days. Depending on whether there are children or other descendants, the spouse may inherit the entire estate or receive a (a fixed sum set by law) plus a share of the remainder.
2. **Issue (children, grandchildren, great-grandchildren)**: If the deceased left children or other direct descendants, they inherit after the spouse. The estate is divided per stirpes, meaning each branch of the family receives an equal share through representation, for example, if a child has died, their share passes to their own children). A deceased's issue includes adopted children and children born through lawful surrogacy arrangements.
3. **Parents of the deceased**: If there is no surviving spouse, civil partner, or issue, the estate passes to the deceased's parents in equal shares. Where both parents are alive, they share the inheritance equally; if only one parent survives, that parent receives the entire estate.
4. **Full-blood Siblings**: If the deceased's parents have both died, the estate is distributed equally among the brothers and sisters of the full blood, those who share both the same mother and father as the deceased.

5. **Half-blood Siblings**: Where there are no surviving full-blood siblings, the estate passes to the deceased's brothers and sisters of the half-blood, those who share only one parent, either the mother or the father.

6. **Grandparents**: If no spouse, descendants, parents, or siblings survive, the estate next devolves upon the deceased's grandparents in equal shares.

7. **Uncles and Aunts of Full-blood:** If there are no surviving grandparents, the estate passes to the deceased's uncles and aunts, with preference given to those of the full-blood, those who share both parents with the deceased's own parent.

8. **Uncles and Aunts of Half-blood:** If there are no surviving full-blood uncles or aunts, the estate passes to uncles and aunts of the half-blood, that is, those who share only one parent with the deceased's own parent. They inherit equally among themselves.

9. ***Bona Vacantia***: If the deceased leaves no surviving relatives within the categories listed above, the estate is deemed ownerless property (*bona vacantia*) and passes to the Crown, or, in certain areas, to the Duchy. If none of the above relatives exist, the estate passes as bona vacantia to the Crown or n certain jurisdictions to the Duchy of Lancaster or the Duchy of Cornwall.

This hierarchical system ensures that the estate is distributed in an orderly and predictable way. However, certain classes of persons such as unmarried partners, friends, and stepchildren do not inherit under the intestacy rules, which highlight the advantages of executing a valid will.

It is important to note that the intestacy rules function on an "all or nothing" principle, meaning that once a relative from a particular category qualifies to inherit, the more distant relatives are automatically excluded from receiving anything.

2.2.1 Issue's Entitlement: Statutory Trusts and Per Stirpes Distribution

Under *s.47 AEA 1925*, children alive at the time of the testator's death inherit directly. Minors or those not married or in a civil partnership hold their share as a contingent interest, which becomes a vested interest on turning 18 or marrying. If a child predeceases the intestate, their

own children inherit their parent's share equally. This method of inheritance where each branch of the family takes an equal share of the estate, rather than each individual is known as per stirpes or "by branch" inheritance).

Example: For example, imagine Mr. Adam dies intestate, leaving three children, Jade, Matt and Ruby. Before his death, Matt had already died, leaving two children of his own, Josh and Abigail.

Under the per stirpes rule, the estate would first be divided into three equal shares, one for each of Mr. Adam's children. Jade and Ruby would each receive one-third of the estate directly. The remaining one-third, which would have gone to Matt, is instead shared equally between his children, Josh and Abigail, who each take one-sixth of the total estate.

2.3 The Administration Process

Upon death, all the deceased's property both real (land, buildings) and personal (money, possessions) vests automatically in the Personal Representatives (PRs) on a statutory trust under *s.33 AEA 1925*. The PRs have a legal duty to settle funeral, administrative and testamentary expenses and any outstanding debts and taxes, including Inheritance Tax (IHT) using available cash and proceeds from sale of assets. They are to satisfy any pecuniary legacies if partial intestacy applies.

Once these liabilities are cleared, the remaining assets known as the residuary estate are distributed among relatives following the intestacy hierarchy outlined in *s.46 AEA 1925*.

2.4 Who Inherits the Family Home When There's No Will

The rules for who inherits the family home depend on how it was owned. The following rules govern the passing of the family home.

2.4.1 When the Home Automatically Goes to the Surviving Partner

This happens if the home was owned as "beneficial joint tenants" (the most common way for married couples and civil partners to own a home). This happens under a legal principle called the right of survivorship, meaning ownership passes directly to the surviving partner as soon

as death occurs. This means the couple both legally own the entire property together. On death, the surviving partner automatically becomes the sole owner. This happens outside of any other inheritance rules.

2.4.2 When the Home Becomes Part of the Deceased's Estate

This happens in two situations:

- The home was owned solely by the person who died.
- The home was owned as "tenants in common" (where each owner has a distinct share).

In either case, the deceased's share does not pass automatically to the surviving partner. Instead, it forms part of their estate, which is everything they owned at death. This estate is then shared out under the intestacy rules, which set out who inherits when there is no valid will,

2.4.3 The Right to Request the Family Home

If the home becomes part of the estate, the law gives the surviving spouse or civil partner a special right to request the home be transferred to them. This process is called "appropriation." To do this, the surviving partner must have been living in the home at the time of death and must make a written request to the executors or personal representatives who are managing the estate.

How It Works

- **The request**: The surviving partner can ask the Executors or Personal Representatives to transfer the home to them.
- **The cost**: The value of the home is deducted from the total amount the survivor is entitled to receive from the estate. If the home is worth less than their entitlement, they receive the home and the balance in cash or other assets. If it is worth more, they may still take the home but must pay the difference called equality money back into the estate.

The request for the family home must be made within 12 months from the date the Executors get their official authority (the grant of representation) to make this request in writing.

Example:

James is entitled to £800,000. The home is worth £400,000. James can request the home and receive an additional £400,000 in cash or other assets from the estate. If the home is worth more than his entitlement, he can still request the home, but he must pay the difference, known as "equality money," back into the estate for the other beneficiaries.

This means if James is entitled to £700,000 and the home is worth £800,000, he can request the home by paying £100,000 to the estate.

2.5 Estate Distribution in Intestacy

Where there is a surviving spouse or civil partner but no issue, the estate in its entirety passes to the spouse.

A spouse refers strictly to the person to whom the deceased was legally married at the time of death. The law focuses solely on the existence of a valid marriage, not on the emotional state of the relationship. In ***Re Watson*** [1986] 1 WLR 971, the court held legal status, not the nature of the relationship, determines entitlement under intestacy. Even though the deceased and his wife had been separated for several years and were living apart, the court held that she remained his legal spouse and was therefore entitled to inherit his estate on intestacy. Their estrangement had no effect on her legal rights.

In ***Re Dix*** [2004] EWCA Civ 139, where a woman who had lived with the deceased for many years sought a share of his estate on intestacy, court held that mere cohabitation, no matter how long or stable the relationship, does not confer the status or automatic inheritance rights of a spouse under intestacy rules.

However, once a divorce is finalised and the marriage has legally ended, the former spouse no longer qualifies under the intestacy rules. This principle was stated in ***Re Coventry*** [1980] Ch 461 that following a final decree of divorce, the former spouse no longer has any rights to

benefit as a spouse under the intestacy provisions. The legal status of "spouse" is extinguished upon dissolution of the marriage, regardless of any prior entitlement.

A civil partner is one in a legally recognised civil partnership, a status offering rights and responsibilities similar to marriage. Issue refers to all direct descendants of the deceased.

When both spouse or civil partner and children survive, the law sets out a clear structure for how the estate is to be divided.

- **Personal Chattels**

  The surviving spouse or civil partner inherits all personal chattels outright. Under *s.55(1)(x)* of the *Administration of Estates Act 1925*, this refers to tangible movable property such as household items, furniture, cars, and jewellery but excludes money or securities, items used mainly for business purposes, and assets held solely as investments.

- **Statutory Legacy**

  The spouse or civil partner is entitled to a fixed statutory legacy, which is free of tax and costs, along with interest accruing from the date of death until payment. The interest rate is the Bank of England rate in effect on the day of death. The amount of the statutory legacy is £322,000 for deaths occurring on or after 26 July 2023. If the total value of the estate (excluding personal chattels) is less than this figure, the spouse or civil partner inherits the entire estate.

- **Residuary Estate**

  Any remaining balance of the estate is divided into two equal halves. One half passes absolutely to the spouse or civil partner, while the other half is held on statutory trusts for the deceased's children or other issue, who receive their share once they reach the age of 18.

  Summarily, where both a spouse and issue survive, the spouse receives all personal chattels, £322,000, and half of the remaining estate, while the deceased's children or descendants take the other half upon reaching adulthood.

2.6 Special Categories and Important Case Law

2.6.1 Cohabitants (Unmarried Partners)

Unmarried partners, often referred to as cohabitants, have no automatic inheritance rights under the intestacy rules, regardless of how long they lived together or how interdependent their relationship was. This means that if one partner dies intestate, the surviving partner cannot inherit any part of the estate unless specifically provided for in a valid will.

However, a surviving cohabitant who was financially dependent on the deceased may apply to the court for reasonable financial provision under the *Inheritance (Provision for Family and Dependants) Act 1975*. The leading case of ***Ilott v Mitson*** [2017] UKSC 17 affirmed the principles governing such claims, illustrating the court's power to make discretionary awards to dependents or family members who have been unfairly left without support, even where they have no automatic right of inheritance.

2.6.2 Void or Annulled Marriages

Where a marriage is void from the start or is later annulled, the surviving spouse is not legally recognised as a husband or wife for the purposes of intestacy and therefore has no right to inherit. In ***Akhter v Khan*** [2020] EWCA Civ 122, the court held that a non-qualifying *nikah* ceremony created no valid marriage, so the woman was not a "spouse" and had no intestacy rights, as parties to a *void ab initio* marriage are treated as never legally married.

Similarly, under *s.18A* of the *Wills Act 1837*, if a marriage or civil partnership ends by divorce, annulment, or dissolution, the former spouse or partner is treated as having predeceased the testator, meaning any gift to them under a will fails automatically.

2.6.3 Children Born through Lawful Surrogacy

Section 48 Human Fertilisation and Embryology Act 2008 confirms that anyone recognised as a parent under the Act is treated as such for all legal purposes, meaning the child can inherit as "issue" even without a genetic link. Section 33 provides that the woman who gives birth is always recognised as the child's legal mother. However, where a surrogate mother carries a

child for others, once a parental order is granted by the court, full legal parenthood transfers to the commissioning couple, and the surrogate ceases to have parental rights. The child is then treated under the intestacy rules, like an adopted child, as the legitimate child of the commissioning parents, with full inheritance rights within their family.

2.6.4 Children Adopted by the Deceased

They are treated as the natural children of their adoptive parents for intestacy purposes. Once an adoption is finalised, all legal ties to the child's natural parents are severed for inheritance purposes, unless the adoption order provides otherwise. Therefore, if an adopted person dies intestate and leaves no surviving spouse, civil partner, or children, their estate will pass to their closest relatives within the adoptive family, not their birth family.

However, they may retain certain contingent rights in the estates of their biological parents under specific circumstances, by virtue of *s.1 Adoption Act 1976*. This typically arises where a will or settlement made before the adoption expressly refers to the child in their capacity as a natural child, or where the instrument clearly shows an intention for the adopted individual to benefit despite the adoption.

2.6.5 Children Not Legitimated by Marriage

Intestacy law makes no distinction between legitimate and illegitimate children. All children, regardless of whether their parents were married to each other, are entitled to inherit from either parent under the intestacy rules. This reflects the principle of equality among children, regardless of birth status. Therefore, children born out of wedlock are recognized as "issue" and inherit on the same footing if paternity is established or recorded.

However, where a person dies intestate and their parents were never married, the law presumes that the father did not survive the deceased unless there is clear evidence of paternity such as the father's name appearing on the birth certificate, a court declaration of parentage, or other reliable proof showing that he was legally recognised as the parent.

2.6.6 Order of Death

When two people die simultaneously or in close succession that it is impossible to determine who died first, the law provides a default rule of survivorship under *s.184* of the *Law of Property Act 1925*. It states that the elder person is deemed to have died first, allowing for the proper administration of estates and succession. This rule was applied in ***Scarle v Scarle*** [2019] EWHC 2224 (Ch), where a husband and wife died in uncertain circumstances, and the court held that the younger person was presumed to have survived the elder, determining the order in which their estates were distributed.

2.7 Conclusion

Intestacy laws provide a rigid, statutory framework that applies automatically when there is no valid will or the will fails to dispose of all assets. These rules prioritise spouses and blood relatives in a fixed order and do not consider cohabitants, stepchildren, or charities unless explicitly named. For this reason, individuals are strongly advised to draft comprehensive, valid wills to ensure their estate passes according to their wishes rather than default legal rules.

3

PRECISION IN WILL DRAFTING

Drafting a valid and effective will is a fundamental skill for any legal practitioner dealing with estates. A well-drafted will ensures that the testator's wishes are respected and minimises the risk of disputes or partial intestacy. This guide covers essential aspects of will drafting, drawing from authoritative sources and established case law.

3.1 Preliminary Steps: Understanding Your Client and Their Instructions

1. Identity and Capacity

Begin by confirming the testator's full legal name, address, and marital status to avoid any confusion. Rigorous assessment of testamentary capacity is crucial, following the classical test in ***Banks v Goodfellow*** [1870] LR 5 QB 549 which requires the testator to understand the nature of the will, the extent of their property, and the claims to which they ought to give effect. In borderline cases, it is important to seek a medical report to document capacity and protect against future challenges.

2. Previous Wills

Check for any earlier wills or codicils. Incorporate a clear revocation clause to expressly cancel previous wills and avoid conflicting instructions. Remember that codicils only modify parts of a will and can complicate administration if multiple documents remain in effect.

3. Avoiding Undue Influence

To prevent undue influence and protect the integrity of the will-making process, solicitors or will drafters ought to conduct client interviews privately, without the presence of relatives, friends, or potential beneficiaries who may exert pressure on the testator. This ensures that the testator's instructions are given freely, without fear, manipulation, or persuasion from others. The principle was underscored in ***Bourne v Keane*** [1919] AC 815, where the court emphasised that a will must represent the testator's independent wishes, formed without external interference.

Where any signs of coercion, dependency, or suspicious behaviour arise such as a dominant relative speaking on behalf of the testator, or a major beneficiary arranging or dictating the terms of the will, the solicitor should take extra precautions by giving independent legal advice or undertaking further capacity assessments.

3.2 Framework and Key Clauses of a Will

Professionally prepared wills tend to follow a similar and well-established structure, as outlined below.

1. **Introductory Clause**

   The opening of a will serves to formally identify the testator and the document itself. It must clearly state the testator's full name and address. While the date of execution can appear at the beginning or end, it is best practice to include it so the chronological order can be established, which is vital for determining if a later document revoked an earlier one. The document's purpose as the "last will and testament" should be stated.

   Example: "I, John Michael Doe of 25 Oak Street, hereby declare this to be my last will and testament, revoking all previous wills and codicils made by me."

2. **Revocation Clause**

   The revocation clause cancels all prior wills to provide clarity. The purpose of this clause is to expressly revoke all previous wills and codicils. This is a key safeguard, as it avoids

the need for extensive searching for and legal analysis of prior testamentary documents after the testator's death.

Example: "I hereby revoke all former wills and testamentary dispositions previously made by me."

3. Appointment of Executor Clause

One key advantage of making a will is that the testator can choose who will manage their estate after death. This is clause to appoint at least two individuals to ensure smooth estate administration and name alternates if primary appointees cannot act. These individuals are called executors, and in some cases, trustees if the will creates a trust. While the same people can serve both roles, this is not mandatory. Executors handle the collection of assets, payment of debts, and distribution of the estate; trustees then manage any property held on trust.

There is no legal maximum for executors, but only up to four can obtain a grant of probate over the same assets. A single executor is allowed, but it is usually advisable to appoint at least two or name a substitute, to ensure continuity if one cannot act.

The testator may appoint family or friends, solicitors or professionals, or banks/trust corporations to the role of executor or trustee. Executors and trustees are fiduciaries and cannot profit from their role unless authorised. They may claim expenses but not payment for time or skill unless permitted under *s.29 of the Trustee Act 2000*, which allows reasonable remuneration for trust corporations and those acting in a professional capacity, with consent from co-executors.

However, because this statutory right does not always apply (e.g., where only one professional executor survives), wills commonly include a charging clause to allow professional executors or trustees to charge reasonable fees for their services.

Where minor children are involved, appoint guardians and trustees to manage their inheritance to manage any inheritance until they reach adulthood. In ***Re Cleaver*** [1981] 1 WLR 939, it was emphasised that trustees owe strict fiduciary duties to act honestly, prudently, and in the best interests of the beneficiaries. They must manage the trust

property with care, avoid conflicts of interest, and ensure the inheritance is preserved and properly applied for the children's benefit.

Example: "I appoint my daughter, Sarah Doe, to be the sole executrix of this my will. If she is unable or unwilling to act, I appoint my nephew, James Doe, as substitute executor."

4. Funeral Wishes

While funeral directions clauses are not legally binding, they serve an important practical and emotional purpose. Including funeral wishes helps guide family members on matters such as burial or cremation preferences, religious rites, or memorial arrangements, reducing uncertainty and potential disputes.

5. Residuary Clause

This clause disposes of any property not specifically mentioned elsewhere in the will, the "residue" of the estate. It prevents partial intestacy (when part of the estate isn't covered by the will).

Example: "I give all the rest, residue, and remainder of my estate of whatsoever nature and wheresoever situate to my wife, Mary Doe."

6. Attestation Clause

This clause confirms that the will has been signed by the testator in the presence of witnesses, in compliance with legal formalities. It supports the will's validity in court.

Example: "Signed by the testator in our presence and by us in the presence of the testator and each other."

3.3 Types of Gifts and Their Drafting Considerations

1. Specific Gifts

Specific legacies are gifts of clearly identified, particular assets owned by the testator, such as personal property or land. If the item is sold or destroyed before the testator's death, the gift fails (adeems), and the beneficiary receives nothing unless the will provides a substitute. The

risk of ademption can be reduced by using broader wording, e.g., “my main residence at the date of my death.”

The case of ***Re Adams and Kensington Vestry*** [1884] 27 Ch D 394**,** established the principle that precatory words alone do not create a trust unless the testator’s intention to impose a binding obligation is clear from the wording and context of the will.

For example, “I give my collection of antique silver coins to my grandson, Thomas Bush”.

2. Pecuniary Gifts

A pecuniary gift refers to a specific sum of money given to a person, organisation, or charity under a will. It is paid out of the general assets of the estate rather than from any particular fund or item. For example, “I give the sum of £10,000 to my nephew James Smith”.

The real value of a pecuniary gift, a fixed monetary amount, can be affected by changes in the economy between the time the will is made and the testator’s death. For this reason, it is considered prudent to include fallback or index-linked provisions to protect the beneficiary against inflation and devaluation over time, or insolvency. For example, where the testator intends the payment to come from a particular account or investment, it is advisable to include an alternative source in case that fund no longer exists or becomes insolvent.

3. Demonstrative Gifts

This is a monetary gift linked to a specific fund or source for its payment. If the named fund or account exists and contains sufficient funds, the payment is made directly from that source, and the gift is treated as specific. However, if the fund no longer exists or is insufficient at the time of death, the remaining balance is made up from the general estate, and the gift is treated as general. This ensures the beneficiary still receives the intended amount although if the particular fund is depleted or closed before the testator’s death.

For example, “I give £5,000 from my savings account with Barclays Bank to my friend, Daniel”.

4. **Vested and Contingent Gifts**

When a testator wishes to benefit younger beneficiaries, such as minors, it is important to decide whether the gift should be vested or contingent. A vested gift takes effect upon the testator's death, provided the beneficiary survives them. For example, "I give £10,000 to my grandson, Tim." If Tim is 18 or older, he receives the money at once; if he is under 18, it is held on trust until he reaches adulthood. If Tim dies before 18, the gift forms part of his own estate.

On the other hand, a contingent gift depends on the fulfilment of a condition, such as reaching a specified age. For example, "A gift of £10,000 to Oliver if he reaches 25" will only vest once he attains that age. If he dies before 25, the gift fails and passes either to an alternative beneficiary named in the will or to the residuary estate. Trustees must be appointed to hold and manage contingent gifts until the condition is met.

5. **Residuary Gifts**

The residue represents what remains of the estate after paying debts, expenses, taxes, and specific legacies. This is a critical sweeping-up clause disposing of all remaining assets after debts and legacies have been paid, preventing partial intestacy.

For example, "I give all the rest of my property after deducting debts and legacies to my sister, Mary Doyle".

Where residue passes outright to adult or charitable beneficiaries, no trust is needed, though creating one causes no harm. In family wills, the residue is often placed on contingent trusts or discretionary trusts (trustees decide who benefits and in what amounts).

3.4 Liability for Inheritance Tax and Associated Obligations

When a person dies, Inheritance Tax (IHT), costs, and any property-related charges must be allocated among beneficiaries according to law or the wording of the will. By default, IHT on specific gifts is paid from the residuary estate, meaning the residuary beneficiary bears the cost. However, the testator can alter this by specifying that a gift is "subject to tax" (the recipient pays the IHT) or "free of tax" (IHT is paid from residue).

Expenses related to the packing, transport, or delivery of specific gifts are normally borne by the beneficiary, unless the will provides otherwise. If the testator states that the gift is "free of costs," these expenses are paid from residue. If a property is subject to a mortgage, the beneficiary inheriting the property is responsible for repaying it, unless the will specifies otherwise, by virtue of *s.35* of the *Administration of Estates Act 1925*. A clause stating that the property is given "free of mortgage" shifts the burden of repayment to the residuary estate.

3.5 Provisions Relating to Survivorship and Powers

3.5.1 Survivorship Clause

These are clauses requiring beneficiaries to survive the testator by a specified period to avoid unintended lapses and complications from the statutory presumption under s.184 *Law of Property Act 1925*. It ensures that a beneficiary must live for a specified period, commonly 28 days, after the testator's death to inherit the estate. Without such a clause, a beneficiary who dies shortly after the testator would still inherit, causing the property to pass through two estates and possibly to unintended persons. This is prevented by redirecting the gift if the beneficiary fails to survive the testator for the stated period to give the testator greater control over who ultimately receives their estate.

3.5.2 Executors' Powers

The *Administration of Estates Act 1925* and the *Trustee Act 1925* and *Trustee Act 2000* give powers to both trustees and PRs. However, it is standard practice to include specific clauses within the will to extend or modify, and even restate these statutory powers to allow for a single, convenient reference document detailing all necessary management powers. The will should grant broad powers to executors and trustees to sell, invest, insure, and manage estate assets, charge remuneration, carry on testator's business, and accept receipts on behalf of minors-beneficiaries.

Under *s. 19 Trusts of Land and Appointment of Trustees Act 1996*, if all beneficiaries are of full age and capacity and are entitled to the entire trust fund, they may instruct the trustees to retire and appoint replacement trustees of their choosing. In effect, where the beneficiaries could have terminated the trust completely under the rule in ***Saunders v Vautier*** [1841] 4

Beav 115, they may instead choose to keep the trust in place but with new trustees selected by them.

This flexibility reduces administrative delays and avoids costly court applications.

3.6 Formal Execution Requirements

Under *s.9* of the *Wills Act 1837*, a will must:

- Be in writing, signed by the testator or by another in their presence and at their direction.
- Be signed or acknowledged by the testator in the presence of two witnesses present at the same time.
- Have both witnesses sign in the presence of the testator (witnesses need not be present to each other).

Failure to comply renders the will invalid. Witnesses must be impartial and cannot be beneficiaries or spouses of beneficiaries; otherwise, gifts to them fail (*s.15 Wills Act 1837*).

Recent changes during the COVID-19 pandemic allow for remote witnessing via video link, but only under strict conditions and within specific time frames.

3.7 Common Drafting Traps and How to Avoid Them

- **Ambiguity and Vagueness**

  The use of precise language and full names to clearly identify beneficiaries and specific gifts they are entitled is to prevent issues of ambiguity. Include substitution clauses for predeceased beneficiaries to avoid failed gifts. Substitution clauses to name alternate recipients, which prevents gifts from failing (lapsing) if the primary beneficiary predeceases the testator should be incorporated.

- **Partial Intestacy**

A residuary clause should always be included in the will. This is essential to dispose of any remaining assets after specific gifts are paid out, thereby preventing a situation of partial intestacy (where part of the estate passes according to intestacy rules).

- **Clerical Errors**

All documentation are to be double-checked to avoid clerical errors. Courts have limited power to correct mistakes, and rectification as shown in ***Joshi v Mahida*** [2013] EWHC 484 (Ch) is only possible if the testator's true intentions can be clearly established.

- **Undue Influence and Suspicious Circumstances**

To maintain the legal presumption that the testator knew and approved the will, strictly avoid having beneficiaries involved in the drafting or witnessing of the document. Failure to do so can raise suspicious circumstances (***Gill v Woodall*** [2010] EWCA Civ 1430), potentially invalidating the will.

- **Asset Changes and Ademption**

The testator should be advised to conduct regular will reviews and use codicils (amendments) to reflect any significant changes in their assets, such as major sales or acquisitions. This helps prevent the principle of ademption, where a specific gift fails because the item no longer exists in the estate at the time of death.

- **Client Care**

Client care is vital, requiring solicitors to interview clients alone to check for undue influence, clearly explain the implications of the will's terms, and confirm all instructions in writing. It is essential they keep records, maintain detailed notes, especially concerning the testator's capacity and the precise circumstances of the will's execution, are vital for defending against future disputes. Where feasible, the solicitor should personally supervise the execution of the will to ensure strict compliance with all legal formalities.

Solicitors should take instructions for the drafting of a will only from the client and not from any intermediary, as doing otherwise would not be in the client's best interests. *Paragraph 6.1* of the *SRA Code of Conduct for Solicitors*, RELs and RFLs requires that solicitors do not act if there is an own interest conflict or a significant risk of such a conflict. There is clearly the potential for such a conflict to arise where the testator wishes to benefit the solicitor. Accordingly, solicitors should not prepare a will that provides significant benefits to themselves, their spouses, civil partners, or family members unless the client has first obtained independent advice.

3.8 Conclusion

In conclusion, precision in will drafting is vital to ensuring that a testator's true intentions are carried out and that their estate is administered efficiently, without dispute. A well-prepared will must combine legal accuracy with practical foresight; addressing potential issues such as ademption, undue influence, tax burdens, and partial intestacy. By following statutory requirements, using clear and unambiguous language, and incorporating appropriate safeguards like survivorship clauses and substitution provisions, legal practitioners can protect both the testator's wishes and the beneficiaries' interests. Ultimately, careful drafting reflects professional diligence and upholds the integrity of the testamentary process.

4

UNDERSTANDING ALTERATIONS AND REVOCATION

A will is not a static document; it reflects the testator's wishes at a particular point in time and may need to be changed or cancelled as circumstances evolve. Understanding the rules governing revocation and alteration is therefore essential to ensure that only the testator's final, valid intentions take effect upon death. This chapter examines the different ways in which a will can be revoked or amended, the formal requirements, legal principles and case law for doing so.

4.1 Alterations to Wills: Handwritten Changes, Validity, and Rectification

Though wills are ideally drafted and executed in their final form, testators sometimes want to make changes to an existing will without creating a new document or formal codicil. Understanding when these alterations are valid, and the difference between testator made alterations and court ordered corrections is critical.

4.1.1 When Are Handwritten Alterations Valid?

Testators may add handwritten notes, cross out words, or make interlineations on their wills after execution. However, for these alterations to be legally effective, strict formalities apply.

4.1.2 What Constitutes a Valid Alteration?

A valid alteration is any change made to an existing will that meets the criteria below.

1. **Made by the Testator:** The change must be made by the person who made the will, the testator, themselves or by someone authorized by the testator in their presence.
2. **Complies with Formalities Under *Section 9* of the *Wills Act 1837:*** The alteration must be signed or acknowledged by the testator in the presence of two independent witnesses. Both witnesses must also sign the alteration in the testator's presence. Testators should never add handwritten changes unilaterally or without proper witnessing to avoid invalidity.
3. **Clear and Intentional Change:** The alteration should clearly express the testator's intention to amend the will. This includes crossing out words, adding new clauses, or inserting new bequests**.**
4. **Documented and Traceable:** Ideally, changes are made in a way that can be easily understood by executors and beneficiaries to avoid ambiguity**.**

Why such strictness? To prevent fraud or mistake and ensure the testator genuinely intended the alteration. In ***Jelley v Iliffe*** [1981] 2 WLR 80, the court accepted that handwritten interlineations were valid alterations because the testator signed the changes in the presence of two witnesses who signed as well. This case highlights that testators can validly amend wills post-execution, but only by complying with formalities.

4.1.3 Examples of Valid Alterations

There are several ways a valid alteration can be made to a will. Interlineations, which are handwritten words added between printed lines, are valid if they are properly signed and witnessed. Similarly, crossing out words or clauses with a line is acceptable, only if the action is accompanied by the necessary signatures. Finally, additions, such as new provisions written in the margin or on a separate page, must also be properly executed.

4.1.4 What Makes an Alteration Invalid?

An invalid alteration is a change that does not comply with the statutory formalities. It can arise under different circumstances.

1. **Lack of Proper Witnessing:** Alterations signed only by the testator but not witnessed by two independent witnesses are invalid.

2. **Alterations Made by Others Without Authorization:** Changes made by a third party without the testator's authority or presence are invalid**.**
3. **Ambiguous or Illegible Alterations:** Changes that create confusion or cannot be clearly interpreted may be disregarded**.**
4. **Failure to Sign or Acknowledge the Alteration:** If the testator does not sign or explicitly acknowledge the changes, they are not valid.

4.1.5 Consequences of Invalid Alterations

An invalid alteration will not be treated as part of the will, so the original terms remain effective. However, if the invalid alteration involved crossing out or removing significant parts, courts might view those original parts as having been revoked, which can lead to partial intestacy. Regardless of the outcome, invalid alterations create significant difficulties for executors during the probate process, often leading to disputes among beneficiaries. Invalid alterations increase the risk of litigation and significantly delay the distribution of the estate. In ***Re Herbert*** [1921], an unwitnessed handwritten change was found invalid and the original clause remained in force.

4.1.6 How Can Invalid Alterations Be Rectified?

Section 20 Administration of Justice Act 1982 provides that courts have a limited power to rectify a will where clerical errors or misunderstandings prevented the will from reflecting the testator's true intentions. Rectification does not cover informal alterations made without proper witnessing.

Evidence such as draft wills, instructions, or witness statements are essential in rectification claims.

Best Practices for Making Alterations

- Always advise clients to avoid handwritten changes without professional supervision.
- When a change is necessary, draft a codicil, a formal supplement to the will that complies with all execution requirements.

- If a will requires multiple or substantial changes, recommend drafting a new will rather than numerous codicils or informal changes.
- Ensure any alteration or codicil is signed, witnessed, and stored safely alongside the original will.

Summary Table

Valid Alterations	Invalid Alterations
Signed by testator in presence of two witnesses	Signed only by testator, no witnesses
Witnessed by two independent witnesses	Changes made by unauthorized third parties
Clear, intentional, and unambiguous changes	Ambiguous, illegible, or unclear changes
Comply with Wills Act 1837 formalities	Alterations without formalities

4.1.7 Distinguishing Rectification from Alteration

Alterations are changes made by the testator during their lifetime, such as handwritten notes, strike-throughs, or additions by codicil, and these modifications must be properly signed and witnessed to be valid and effective. On the other hand, rectification is a limited power of the court used after the testator's death to judicially correct an existing mistake in the will, typically only when there is strong evidence that the will fails to reflect the testator's true intentions due to a clerical error or the drafter's failure to understand instructions. A testator who attempts an alteration without complying with legal formalities risks its validity, which causes the original clause to remain in force; while, rectification is a highly discretionary remedy that is only available posthumously and requires clear proof.

4.2 Codicils and Additions: Enhancing Wills without Full Replacements

While making a completely new will is often the cleanest way to change a testator’s wishes, codicils serve as an efficient legal tool to modify, clarify, or supplement an existing will. Understanding codicils is essential for practitioners advising clients who wish to make smaller

or incremental changes to their testamentary documents without the complexity and expense of a full rewrite.

4.2.1 What Is a Codicil? Defining the Concept and Its Role

A codicil is a formal legal document that supplements or alters an existing will without replacing it entirely. Unlike a new will, a codicil modifies specific provisions, clarifies ambiguous language, adds gifts, appoints or changes executors, or revokes particular clauses. The will and any codicil must be interpreted together to determine the testator's overall intentions.

Codicils allow for flexibility. For example, a testator may wish to add a new beneficiary, change an executor, or update a bequest of a particular item without discarding the entire will. They are especially useful when circumstances change such as the acquisition or disposal of assets or when a minor correction is required.

4.2.2 Formal Requirements: The Same Rigor as Wills

A codicil must comply with the same legal formalities as a will under *s.9* of the *Wills Act 1837*; the testator must sign the codicil or acknowledge their signature in the presence of two independent witnesses and the two witnesses must also sign the codicil in the testator's presence. The codicil should expressly refer to the original will and include a clause confirming that all unaffected provisions of the will remain valid and unchanged.

Failure to comply with these formalities can render a codicil invalid, risking partial intestacy. The making of codicils is not a trivial process and should be professionally supervised.

4.2.3 Effect of Codicils on the Will: Republishing and Interpretation

One of the most important legal effects of a codicil is republishing the will at the date the codicil is executed. Republishing means that the entire will, together with the codicil, is treated as though it were executed anew on the date of the codicil.

Section 22 Wills Act 1837 provides that a revoked will can be revived, wholly or partly, by a codicil evincing intention to revive it.

In ***Saunders v Vautier*** [1841] 4 Beav 115, it was established that upon execution of a codicil, the will is regarded as republished, causing the will to take effect as if it had been made on the date of the codicil's execution.

This can affect the interpretation of gifts, especially specific gifts tied to particular assets. For example, a gift in the will of "my car" may include a replacement car purchased before the codicil was signed, even if the original car was sold after the will's date but before the codicil. It updates survival requirements, so a beneficiary must survive the testator as of the codicil date to take.

4.2.4 Common Uses of Codicils

A codicil serves several common and practical purposes in estate planning. It is used for adding new legacies, such as when a testator decides to leave a specific gift, like £10,000 to a friend, which is then formally added by the codicil. A codicil is useful for changing executors; if the originally named executor becomes unable or unwilling to serve, the codicil can appoint replacements. It also provides a straightforward method to revoke specific clauses; rather than going through the effort of rewriting the entire will, a testator can simply use a codicil to cancel an outdated gift or provision. Finally, codicils are often used for clarifying ambiguities in the existing document. If the original will's language has caused confusion, the codicil can clarify the testator's intended meaning.

4.2.5 Advantages and Disadvantages of Codicils

Advantages

A codicil is cost-effective, as it is significantly less expensive and time-consuming than going through the process of drafting an entirely new will. It is also highly efficient, enabling a testator to make minor changes to their existing estate plan quickly. Above all, a codicil is flexible, allowing testators to easily respond to shifts in their assets, family circumstances, or wishes without needing to discard and re-execute the original will document.

Disadvantages

While codicils offer flexibility, they also carry inherent risks. A primary concern is the complexity risk; accumulating multiple codicils over time can lead to confusion, contradictions between different documents, or general uncertainty regarding the testator's final wishes. This complexity, in turn, creates an administrative burden for executors, who may struggle to locate all the separate documents or accurately interpret how they should be read. Finally, there is the significant risk of invalidity; just like a will, a codicil must be properly executed, if not, the intended changes will be ineffective, leading to costly and drawn-out legal disputes.

4.2.6 Best Practices When Using Codicils

To ensure the proper use and validity of codicils, advisers should supervise the drafting and execution of these documents to guarantee full compliance with all legal formalities. Codicils must be clearly drafted by referencing the original will by date and describing the intended changes unambiguously. For effective estate management, clients should be encouraged to limit the number of codicils and instead consider consolidating all modifications into a new, single will after several changes have accumulated. Finally, for administrative ease, all codicils must be kept with the original will in a safe and easily accessible location.

4.2.7 Practical Examples

Example 1: Mr. Scott executes a will leaving his entire estate to his children. Two years later, he acquires a valuable painting he wishes to leave to a friend. Instead of rewriting his entire will, he executes a codicil adding a specific legacy of the painting to the friend, properly witnessed.

Example 2: Mrs. Jones makes a will naming her sister as executor. After her sister falls ill, Mrs. Jones executes a codicil appointing a professional executor alongside her sister, ensuring estate administration continuity.

Example 3: Mr. Johnson's will leaves £20,000 to a charity. Following a change in the charity's mission, he executes a codicil revoking the legacy and substituting a different charity as beneficiary.

4.3 Revocation

Revocation means that a will is no longer effective. This can happen intentionally by act of the testator or automatically by law.

A will can be revoked by the testator at any time, as long as they still possess testamentary capacity. Revocation is the formal process of cancelling or withdrawing a will, either wholly or partly, rendering it legally ineffective. This reflects testamentary freedom; just as a person may decide how their estate should be distributed, they may also change or withdraw that decision whenever they wish.

Understanding the various ways wills can be revoked is fundamental to advising clients on how to properly update or replace their testamentary intentions.

4.3.1 Automatic Revocation by Life Events: Marriage, Divorce, and Annulment

Certain life events automatically revoke or affect wills by operation of law, reflecting the idea that major life changes may alter testamentary intentions.

Marriage and Civil Partnership

Section 18(1) of the *Wills Act 1837* automatically revokes the entirety of a will if the testator marries or enters a civil partnership after making it. Historically, this protected spouses by ensuring wills reflect changed family circumstances.

However, an exception is provided in *s.18(3) Wills Act 1837*; a will is not revoked if it was expressly made in contemplation of that marriage or states it is made "notwithstanding" future marriage. This exception also applies to civil partnerships by virtue of *s.18B Wills Act 1837*.

A will in contemplation of marriage remains valid even if the wedding doesn't occur, unless the will explicitly states it's conditional upon the marriage. However, marrying anyone other than the specific person named in the will revokes it.

Divorce and Annulment

Section 18A of the *Wills Act 1837* treats gifts or appointments to former spouses or civil partners as if they had predeceased the testator. As a result, gifts to ex-spouses lapse, and the estate passes according to the residuary clause or intestacy if no residuary, unless a contrary intention is proven.

The case of ***Shaw v Shaw*** [1954] 2 QB 429 confirmed that void or annulled marriages prevent former spouses from inheriting under a will, as they are no longer legally recognised as spouses for the purposes of succession.

Here, the will is not wholly annulled, unless the spouse was gifted the entire estate.

4.3.2 Revocation by Physical Destruction of the Will

A will can be revoked by physically destroying the original document, but destruction alone is insufficient; the testator's intention at the time of revocation must be clear.

Actions constituting revocation include burning, tearing, obliterating, or otherwise destroying the will. This action intending to revoke a will must be accompanied by requisite intention. Courts look carefully for evidence that the testator intended the destruction to revoke the will. Destruction without such intention is ineffective.

If only part of the will is destroyed, courts examine whether the testator intended to revoke the whole will or just part of it. In ***Re Morton's Goods*** [1887] 12 P.D. 141, it was held that if only part of a will is destroyed without an intention to revoke the whole, the remainder of the will remains valid.

In ***Cheese v Lovejoy*** [1877] 2 PD 251, the testator struck through parts of his will, wrote "All these are revoked," and discarded it, but the document was later. The court held the will was not revoked, as *s.20* of the *Wills Act 1837* requires both intent and actual destruction. Mere intention without physical destruction is insufficient to revoke a will.

In ***Perkes v Perkes*** [1820] 2 Hag Ecc 295, the court confirmed that both the intention to revoke and the act of destruction must coexist for revocation by destruction to be effective.

Physical destruction remains a method testators may use in emergency or informal situations, but it is risky unless the intent is unambiguous. Therefore, clients should be counselled that physical revocation should be confirmed in writing or by a new will/codicil to avoid disputes.

4.3.3 Revocation by Subsequent Testamentary Instrument

When a testator wants to change their will, the most straightforward method is to execute a new will or a codicil that supersedes the old one. The law recognises this as a primary means of revocation.

Under *s.20* of the *Wills Act 1837*, a subsequent will or codicil revokes previous wills or codicils but only to the extent that the new document conflicts with the earlier one. A testator may expressly revoke all prior wills and codicils by including a clear revocation clause, e.g., "I revoke all former wills and codicils." If this clause is missing, revocation is implied only for parts inconsistent with the later document.

Implied revocation can cause confusion if the new will only partially covers the estate or if multiple wills exist, leading to unintended intestacy for assets not mentioned in the newer will. It is important to date the wills during execution to establish the order they were created in event of revocation.

In ***Reading v Reading*** [2015] EWHC 946 (Ch), the testator made a codicil that altered the residuary beneficiary from his nephew to his son. The court held the codicil revoked the inconsistent earlier clause, showing how even minor documents can effectively revoke parts of a will.

4.3.4 Dependent Relative Revocation

In certain rare cases, the court may treat a testator's intention to revoke a will as conditional upon a specific event such as the successful execution of a new will. This principle, known as the doctrine of dependent relative revocation or conditional revocation, allows the court to "save" the earlier will if the condition is not fulfilled. Thus, if the new will is never validly

executed or takes no effect, the earlier will may still stand, even if physically destroyed, provided its contents can be reconstructed from a copy or draft.

4.4 Mutual Wills: Binding Agreements to Prevent Revocation

Mutual wills are a less common but critical category involving agreements not to revoke wills unilaterally.

Mutual wills are mirror-image wills made by two or more people, often spouses, based on an agreement to make identical or reciprocal provisions and not revoke them, during their lifetimes or after one dies, without mutual consent. By reason of the agreement, courts impose a constructive trust binding the survivor once the first testator dies, preventing them from changing their will to the detriment of the original beneficiaries. If the survivor does alter the will, affected beneficiaries can ask the court to enforce the trust and recover the property.

If clients want mutual wills, solicitors must ensure a clear contractual or trust arrangement is drafted alongside the wills. If no express agreement or trust exists, mutual wills may not be enforceable. Because they restrict testamentary freedom and can lead to complex disputes, mutual wills are generally discouraged in modern practice.

In ***Re Cleaver*** [1981] 1 WLR 939, the court enforced a mutual wills agreement, holding that the surviving spouse was bound by a constructive trust and therefore could not revoke or alter the mutual will made with her late husband.

4.5 Best Practices in Drafting and Executing Wills: Avoiding Pitfalls

4.5.1 Drafting Clear Revocation Clauses

One of the simplest yet most crucial drafting tips is to include an explicit revocation clause. This is to prevent multiple conflicting wills from causing confusion or partial intestacy. Ambiguous revocation can lead to multiple wills being presented at probate, complicating estate administration. Revocation clauses can also appear in codicils, revoking previous codicils and wills to the extent of inconsistency

The wordings of the clause could be, “I hereby revoke all former wills and codicils made by me at any time before the date of this will.”

4.5.2 Advising on the Use of Codicils vs New Wills

Codicils can be used for minor changes, such as adding a gift or changing executors. Multiple codicils or substantial changes increase risks of confusion and error, create conflicts and difficulties for executors, and it might be advisable to execute a new will.

Example: A client who adds three or more codicils over years should be advised to consolidate into a new will to ensure clarity.

4.5.3 Supervising Execution and Witnessing

The *Wills Act 1837* requires the testator to sign or acknowledge the will in the presence of two independent witnesses, who must also sign. It is important for solicitors to supervise for testators sometimes make last-minute alterations or forget formalities, risking invalidity.

The drafting solicitor should, if possible, witness the signing or ensure a qualified witness supervises it, and maintain detailed notes of the signing event, including confirmation of capacity and absence of undue influence.

4.5.4 Handling Handwritten Alterations During Execution

If a testator wishes to make handwritten changes during executionfor example, crossing out a line or adding a gift), these must be signed or acknowledged by the testator, witnessed by two independent witnesses who also sign. Failure to follow these formalities can render the entire will or part of it invalid.

4.5.5 Record Keeping and Document Storage

Original wills and codicils should be stored securely, ideally in a fireproof safe or with a professional will-storage service. Copies of the will should be provided to the testator and trusted individuals, advising them to keep the document accessible but safe. Records should be updated after any codicils or new wills to avoid confusion.

4.5.6 Capacity and Undue Influence Checks When Altering Wills

Testators requesting alterations, especially late in life, may lack capacity or be subject to pressure. Therefore, professionals should assess capacity carefully, documenting observations, and consider recommending medical reports. Independent legal advice should be encouraged where undue influence is suspected.

Summary Table

Pitfall	Solution
Failure to include revocation clause	Always include clear revocation wording
Multiple codicils causing confusion	Advise consolidation into a new will
Unsigned or unwitnessed handwritten changes	Supervise and witness all alterations properly
Failure to supervise signing	Drafting solicitor to be present if possible
Lack of capacity or undue influence	Conduct capacity assessments, recommend independent advice
Poor record-keeping	Keep detailed notes and copies

4.6 Conclusion

Understanding the rules surrounding revocation, codicils, and alterations ensures wills truly reflect the testator's intentions and are resistant to legal challenges. Solicitors and advisers must guide clients carefully through the process of changing their wills, whether by drafting new wills, adding codicils, or supervising handwritten alterations, and ensure full compliance with statutory requirements. Careful drafting, clear revocation clauses, professional supervision of execution, and sound record-keeping are key to avoiding disputes and ensuring peace of mind for clients.

5

INHERITANCE TAX (IHT)

Inheritance Tax (IHT) is a tax levied on the transfer of assets upon an individual's death, as well as on certain lifetime transfers. IHT is governed primarily by the *Inheritance Tax Act 1984*, supported by various regulations and HM Revenue & Customs (HMRC) guidance. The tax applies in England, Wales, and Northern Ireland, with Scotland having a different tax system.

5.1 The Scope and Charge of IHT

IHT applies to transfers of value, which broadly means the disposal of property or assets. IHT tax is charged on the net value of the estate or transfer after allowing for debts, certain reliefs, exemptions, and thresholds.

These transfers may be:

Transfers on Death

IHT is primarily a tax on wealth at death, designed to charge tax on the total value of a person's estate meaning their assets minus any debts subject to specific exemptions and reliefs. This includes the entire estate of the deceased person at the time of death, including property, investments, cash and possessions

Lifetime Transfers

In order to prevent tax avoidance, gifts or transfers made during a person's life may become chargeable to IHT depending on the type and timing. Generally, lifetime transfers are not

taxable, but IHT also applies to certain gifts made within seven years before death to prevent the estate from being reduced in value. Such gifts, known as potentially exempt transfers (PETs), are initially free from IHT when made. If the donor survives for seven years, the gift becomes fully exempt; however, if the donor dies within that period, it becomes chargeable to IHT.

Transfers made during a person's lifetime to companies or trusts (other than those for disabled persons) are immediately chargeable to IHT at the time of the gift, as these arrangements could otherwise be used to reduce the value of the taxable estate.

5.2 Understanding Net Value

When calculating IHT, the starting point is the total value of the assets and property that a deceased person owned at the time of their death. However, IHT is not charged on this gross value directly. Instead, it is levied on the net value of the estate or transfer. This net value is essentially the amount left; the remainder after deducting allowable expenses, debts, and exemptions.

5.2.1 What Does "Net Value" Mean in This Context?

Net value refers to the true taxable value of an estate or lifetime transfer once all relevant deductions and reliefs are applied. It reflects the actual value of wealth that passes to beneficiaries and forms the basis on which IHT is assessed.

5.2.2 Components Affecting Net Value

1. **Gross Estate Value**

   The gross estate value represents the total market value of all assets owned or controlled by the deceased at the time of death. It includes real property, such as land and houses, financial assets like bank accounts and investments, and personal possessions such as jewellery, vehicles, and artwork. It also encompasses business interests and life insurance proceeds payable to the estate.

For example, if Isaac owned a house worth £500,000, investments of £200,000, and personal effects valued at £100,000, his gross estate would total £800,000.

2. **Less: Debts and Liabilities**

All debts and liabilities must be deducted from the total gross estate to determine the net estate value. These deductions include outstanding mortgages or secured loans, unpaid credit card or personal debts, funeral expenses, administration costs, and, where applicable, IHT already paid on certain lifetime transfers.

For instance, Mr. Black owed £150,000 on a mortgage and incurred £10,000 in funeral costs, the estate's taxable value would be reduced by £160,000, resulting in a lower net estate subject to IHT.

3. **Less: Exemptions**

Certain gifts and transfers are entirely exempt from IHT and therefore reduce the taxable portion of the estate. These include transfers between spouses or civil partners, donations to qualifying charities, and annual exemption gifts of up to £3,000 per tax year. In addition, small gifts of up to £250 per recipient each year are excluded from tax.

Because these are not treated as chargeable transfers, they directly lower the value of the estate subject to IHT.

4. **Less: Reliefs**

Some categories of property benefit from special reliefs that significantly reduce their taxable value. For example, Business Property Relief (BPR) can reduce qualifying business assets by 50% or 100%, while Agricultural Relief may provide up to 100% relief on eligible farmland. The Residence Nil-Rate Band additionally extends the tax-free threshold for qualifying homes passed to direct descendants.

These reliefs play a vital role in easing the overall tax burden on estates with business or agricultural interests and must be carefully applied.

5. **Less: Nil-Rate Bands and Allowances**

   The nil-rate band, currently set at £325,000 per individual, represents the portion of an estate that is free from IHT. In addition, the residence nil-rate band offers an extra allowance where the main home passes to children or grandchildren.

   Together, these thresholds reduce the net taxable value of the estate, with only the amount exceeding them subject to IHT.

Illustration

Suppose:

- Gross estate value = £1,000,000
- Debts and liabilities = £150,000
- Charitable gifts = £100,000 (exempt)
- Qualifying business assets with 100% BPR = £200,000
- Nil-rate band = £325,000
- Residence nil-rate band = £175,000

Step 1: Subtract debts £1,000,000 – £150,000 = £850,000 (net estate before exemptions/reliefs)

Step 2: Subtract exempt gifts £850,000 – £100,000 = £750,000

Step 3: Apply reliefs; subtract business relief £750,000 – £200,000 = £550,000

Step 4: Apply nil-rate bands

Total allowances = £325,000 + £175,000 = £500,000

Chargeable estate = £550,000 – £500,000 = £50,000

Step 5: Tax calculation; tax at 40% on £50,000 = £20,000

5.2.3 Why Is Understanding Net Value Important?

Understanding the net value of an estate is important because it provides the basis for an accurate tax assessment, as the true IHT liability can only be determined after all debts, reliefs, and exemptions have been subtracted. Knowing the net value is central to effective estate planning, allowing the testator to employ strategies specifically aimed at reducing the taxable net value to minimize IHT. Furthermore, determining the net value is essential to the executor's role, as they are legally required to accurately identify all liabilities and claim every available relief to ensure the correct calculation is made and that no overpayment of tax occurs.

5.3 Valuation of the Estate and Transfers

Accurately determining the value of the estate is essential for calculating IHT, as it establishes the total taxable wealth of the deceased at the date of death. The estate includes all property, possessions, financial assets, and any interests or powers of disposal held by the deceased, regardless of location or form.

The general rule is that each asset is assessed at its open market value at the date of death, that is, the price it could reasonably fetch if sold between a willing buyer and a willing seller. This ensures a fair and objective valuation of the estate.

Certain types of assets are subject to special valuation rules. For example, business assets and agricultural property may qualify for Business Property Relief (BPR) or Agricultural Relief (APR), which reduce their taxable value to reflect their unique nature and contribution to economic activity. Similarly, shares in private companies, leasehold properties, or jointly owned assets often require a professional appraisal by a qualified surveyor or valuer to determine their precise market worth.

Finally, deductible liabilities play a key role in reducing the estate's chargeable value. These include outstanding debts, mortgages, funeral expenses, and administrative costs incurred in managing the estate.

Once these deductions and applicable reliefs are applied, the net value of the estate is calculated forming the basis upon which IHT is ultimately assessed.

5.4 Nil-Rate Band and Residence Nil-Rate Band

The Nil-Rate Band (NRB) represents the portion of an estate that is exempt from IHT. Under current law, the NRB is set at £325,000 per individual, meaning that no IHT is payable on the first £325,000 of a person's estate. Any amount above this threshold is taxed at the standard IHT rate, unless other exemptions or reliefs apply. The NRB can also be transferred between spouses or civil partners, allowing the surviving partner to inherit any unused portion of the deceased's NRB. This can effectively double the tax-free threshold to £650,000 for the second estate, provided the necessary claim is made to HMRC.

In addition to the NRB, the Residence Nil-Rate Band (RNRB) provides an extra allowance, currently up to £175,000, when a qualifying residence is left to direct descendants, such as children or grandchildren. This relief recognises the importance of passing on the family home and is available even if the property is sold before death, provided the value is replaced by other assets passed to descendants.

However, the RNRB is subject to tapering for high-value estates. Specifically, for every £2 that an estate exceeds £2 million, the RNRB is reduced by £1, meaning that estates significantly above this threshold may lose some or all of the allowance. Like the NRB, the RNRB is also transferable between spouses or civil partners, which allows couples to combine both allowances potentially shielding up to £1 million of the combined estate from IHT when both partners have passed away and the home is left to their direct descendants.

The NRB and RNRB provide opportunities for families to minimise their IHT liability through proper structuring and use of available reliefs.

5.5 Rates of Inheritance Tax and Conditions for Reduced Rates

The Inheritance Tax (IHT) rate is primarily charged at 40% and applies to the value of a deceased person's estate that exceeds the available nil-rate bands. This rate is charged on the chargeable value of the estate after deducting debts, reliefs, and exemptions. In other words, only the remaining balance above the applicable thresholds is subject to IHT.

However, a reduced IHT rate of 36% can apply where the deceased leaves at least 10% of their net estate to one or more qualifying charities. This lower rate serves as an incentive for charitable giving, ensuring that individuals who make significant donations to charity upon death are rewarded with a lower tax burden on the rest of their estate.

To qualify for the reduced rate, the donation must be made to a qualified charity or recognised charitable organisation, as defined under HMRC's charitable status rules; be left as an outright gift, or in some cases through a trust, provided the charity ultimately benefits; and represent at least 10% of the net value of the estate.

This reduced rate applies across all components of the estate, such as property, savings, and investments, once the 10% threshold is met.

Illustration

Suppose a deceased's net estate (after deductions) is valued at £1,000,000.

- Nil-rate band = £325,000 (tax-free).
- Chargeable estate = £1,000,000 - £325,000 = £675,000.
- If less than 10% is left to charity, tax = 40% of £675,000 = £270,000.
- If 10% or more is left to charity, tax = 36% of £675,000 = £243,000, saving £27,000 in tax.

5.6 Lifetime Transfers: Potentially Exempt Transfers (PETs) and Lifetime Chargeable Transfers (LCTs)

IHT not only applies on death but also to certain lifetime transfers, which fall into two key categories.

5.6.1 Potentially Exempt Transfers (PETs)

PETs refer to lifetime gifts made by an individual (donor) to another person (donee) that can become exempt from IHT if the donor survives for seven years after making the gift. This provision allows individuals to reduce the taxable value of their estate through planned lifetime giving, provided they live long enough after making the transfer.

However, if the donor dies within seven years of making the gift, the PET is "triggered" and the value of the gift is included in the estate for IHT purposes. This prevents individuals from avoiding IHT by making substantial gifts shortly before death.

PETs generally apply to outright gifts made by an individual to another person; the donor gives away ownership of the asset completely, without retaining any control, benefit, or future interest. However, it does not apply to gifts made into most types of trusts; transfers into discretionary trusts, interest-in-possession trusts, or corporate entities are treated instead as lifetime chargeable transfers.

To mitigate the harshness of this rule, Taper Relief applies to reduce the amount of IHT payable progressively, not the value of the gift itself, if death occurs between three and seven years after the transfer. The longer the donor survives, the greater the reduction in tax liability.

Years since gift	Taper Relief %	Tax payable as % of full charge
0–3 years	0%	100%
3–4 years	20%	80%
4–5 years	40%	60%
5–6 years	60%	40%
6–7 years	80%	20%
>7 years	100%	0% (fully exempt)

Example:
Mr. Mark gifts £100,000 to his son but dies 5 years later. Normally, £100,000 would be taxable. However, taper relief reduces the tax payable to 60% of the full charge.

5.6.2 Lifetime Chargeable Transfers (LCTs)

LCTs refer to gifts or transfers made during a person's lifetime that are immediately subject to IHT because they do not qualify as PETs. These typically include transfers into trusts such as discretionary or interest-in-possession trusts, or other arrangements where the donor does not make an outright gift to an individual.

LCTs are immediately chargeable to IHT at the lifetime rate of 20% on the value exceeding the donor's available nil-rate band, the tax-free allowance.

Importantly, any LCT made during a person's lifetime uses up part or all of their nil-rate band, thereby reducing the allowance available to offset IHT on their estate at death. If the donor dies within seven years of making the LCT, the value of the transfer is reassessed and may attract additional IHT at death rates (up to 40%), with credit given for any tax already paid at the lifetime rate.

Example:
If an individual transfers £400,000 into a discretionary trust, the first £325,000 falls within the nil-rate band and is exempt. The remaining £75,000 is taxed immediately at 20%, resulting in £15,000 IHT payable by the trustees.

5.7 Exemptions and Reliefs: Reducing or Eliminating the IHT Liability

The law provides various exemptions and reliefs to reduce IHT liability, encouraging certain behaviours and protecting family wealth.

5.7.1 The Annual Exemption

This exemption allows an individual to give away up to £3,000 per tax year (from 6 April to 5 April) without any inheritance tax implications. It represents the main annual allowance for gifts, and if the full amount is not used in one tax year, it can be carried forward for one additional year only. This means that if no gifts were made in the previous year, an individual could gift £6,000 in the current year (£3,000 from the previous year plus £3,000 for the current year) free of inheritance tax.

5.7.2 The Small Gifts Exemption

This allows an individual to give up to £250 per person per tax year to as many different people as they wish without any inheritance tax implications. However, this exemption cannot be combined with another exemption for the same recipient in the same tax year, meaning

you cannot, for example, give someone £3,000 under the annual exemption and an additional £250 under the small gifts exemption.

5.7.3 Spouse and Civil Partner Exemption

Transfers of property or assets between spouses or civil partners are fully exempt from IHT, regardless of their value. This exemption is designed to encourage free passing of wealth between partners during life or on death without triggering a tax charge. Additionally, any unused portion of the deceased's nil-rate band can be transferred to the surviving spouse or civil partner, effectively doubling the IHT-free threshold available to the survivor's estate. However, it is important to note that this exemption does not extend to unmarried partners or cohabitants, regardless of the length or nature of their relationship.

5.7.4 Business Property Relief (BPR)

BPR provides significant tax relief of up to 100% exemption on qualifying business assets, thereby reducing or eliminating their IHT liability. To qualify, the business interest or asset must have been owned for at least two years prior to death or transfer. Eligible assets include sole trader businesses, partnerships, and shares in unlisted trading companies. This relief ensures that viable family businesses can be passed on without forcing their sale to pay IHT.

Example: Mr. John owns a family business valued at £1 millon. On his death, the business qualifies for 100% BPR, meaning no IHT is payable on this portion of the estate.

5.7.5 Agricultural Relief (AR)

AR grants up to 100% relief from IHT on the value of qualifying agricultural property, to ensure that family farms and agricultural enterprises can be passed down without the need to sell assets to meet tax liabilities. The relief applies to farmland, farmhouses, and buildings that are used wholly or mainly for agricultural purposes, either by the owner, a tenant, or a qualifying company.

To qualify, the property must generally have been occupied or owned for at least two years before death or seven years if let to another. This relief preserves agricultural land for continued use and supports generational succession in farming families.

5.7.6 Charitable Gifts

Gifts to registered charities or approved charitable institutions are fully exempt from IHT, encouraging philanthropy and charitable giving. Furthermore, where a testator leaves at least 10% of their net estate to qualifying charities, the IHT rate on the remaining taxable estate is reduced from 40% to 36%. This incentive can lead to a substantial tax saving while supporting charitable causes. Strategic inclusion of charitable legacies in wills is therefore both tax-efficient and socially beneficial.

5.8 Gifts with Reservation of Benefit (GWR)

GWR arises when a person transfers ownership of an asset but continues to use or benefit from it after the transfer. In such cases, the asset is still treated as part of the donor's estate for IHT purposes, as the gift is not regarded as a genuine divestment. This rule prevents individuals from attempting to avoid IHT by gifting assets while retaining use or enjoyment.

Example: If Mrs. Elisabeth gifts her home to her children but continues to live in it rent-free, HMRC will treat the property as still forming part of her estate upon death. Only when she relinquishes all benefit or pays full market rent will the gift cease to be subject to GWR rules.

5.9 Payment of Inheritance Tax and Reporting Obligations

Inheritance Tax must generally be paid within six months from the end of the month in which the death occurred. The responsibility for calculating, reporting, and paying IHT lies with the executors or personal representatives (PRs), who must settle all tax liabilities before distributing the estate to beneficiaries. Late payment attracts interest charges, which can accumulate quickly.

Executors must also file detailed IHT returns with HMRC, setting out the valuation of assets, deductions, and tax due. For certain assets such as land, buildings, or unlisted company shares, HMRC allows payment by instalments over ten years, providing flexibility when estate assets are not immediately liquid. This ensures that valuable, illiquid assets need not be sold hastily to meet IHT obligations.

Summary

Aspect	Key Details
Standard IHT Rate	40% on estate value above nil-rate band
Reduced Rate	36% if less than or equal to 10% is left to charity
Nil-Rate Band	£325,000 (transferable between spouses)
Residence Nil-Rate Band	Up to £175,000 additional allowance for main residence
PETs	Gifts exempt if donor survives 7 years; taper relief applies
LCTs	Taxed at 20% immediately if above nil-rate band
Exemptions	Spouse exemption, charitable gifts, business and agricultural reliefs
GWR	Gifts where donor retains benefit still part of estate
Payment Deadlines	Six months from month end of death

Examples

Example 1: The Basic Estate with Spouse Exemption

John passes away, leaving an estate with a gross value of £800,000. He owes £100,000 on his mortgage and had £5,000 in credit card debt. His will leaves his entire estate to his wife, Sarah.

Relevant Exemption: Spouse/Civil Partner Exemption

Calculation Breakdown

Gross Estate Value: £800,000

Less: Debts and Liabilities:

Mortgage: £100,000

Credit Card: £5,000

Total Deductions: £105,000

Net Estate (before exemptions): £800,000 - £105,000 = £695,000

Apply Exemptions: The entire net estate is left to his spouse. The Spouse Exemption is 100%.

Chargeable Estate: £695,000 - £695,000 = £0

IHT Liability: £0

This demonstrates the power of the spouse exemption. No matter the size of the estate, transfers to a spouse are entirely free of IHT. It also means John's Nil-Rate Band (£325,000) is unused and can be transferred to Sarah's estate for use when she dies.

Example 2: Estate with Lifetime Gifts (PETs) and the Nil-Rate Band

Margaret dies in June 2024. Her estate at death is worth £500,000. She had given her daughter a cash gift of £150,000 five years ago. Her nil-rate band is fully available.

Relevant Reliefs: Potentially Exempt Transfer (PET), 7-Year Rule, Taper Relief, Nil-Rate Band.

Calculation Breakdown:

Step 1: Deal with the Lifetime Gift (PET)

The gift of £150,000 was made 5 years before death. It therefore becomes chargeable.

Check Taper Relief: Death was between 4-5 years after the gift, so taper relief is 40%. This reduces the *tax payable*, not the value of the gift.

The gift uses up part of the nil-rate band available at death.

Step 2: Calculate IHT on the PET

Value of PET: £150,000

Less Nil-Rate Band: £150,000 - £150,000 = £0

IHT on PET before taper: £0

Apply Taper Relief: £0 x 60% (the tax payable percentage for 4-5 years) = £0

IHT on PET is £0. The gift used £150,000 of the £325,000 nil-rate band.

Step 3: Calculate IHT on the Estate at Death

Gross Estate at Death: £500,000

Available Nil-Rate Band: £325,000 - £150,000 (used by the PET) = £175,000

Chargeable Estate: £500,000 - £175,000 = £325,000

IHT at 40%: £325,000 x 40% = £130,000

Total IHT Liability: £130,000 (all from the death estate).

This shows how PETs made within 7 years of death use up the nil-rate band first. Even though no tax was due on the PET itself, it reduced the tax-free allowance for the main estate, increasing the overall tax bill.

Example 3: Utilizing Business Property Relief (BPR)

David, a single man, dies. His estate comprises:

His main residence: £450,000

Shares in his unlisted trading company (owned for 5 years): £400,000

Cash and ISAs: £100,000

Debts and funeral expenses: £25,000

Relevant Relief: Business Property Relief (BPR) at 100%.

Calculation Breakdown:

Gross Estate Value: £450,000 + £400,000 + £100,000 = £950,000

Less: Debts and Liabilities: £25,000

Net Estate (before reliefs): £950,000 - £25,000 = £925,000

Apply Reliefs:

The shares qualify for 100% BPR. £400,000 is deducted from the taxable value.

Taxable Estate after BPR: £925,000 - £400,000 = £525,000

Apply Nil-Rate Band:

Standard Nil-Rate Band: £325,000

Chargeable Estate: £525,000 - £325,000 = £200,000

IHT Calculation: £200,000 x 40% = £80,000

IHT Liability: £80,000

BPR is extremely valuable. Without it, the chargeable estate would have been £925,000 - £325,000 = £600,000, leading to a tax bill of £240,000. BPR saved £160,000 in tax, allowing the business to pass on without being sold to pay the tax bill.

Example 4: The Reduced Rate for Charitable Giving

Emma's net estate after all debts and liabilities is £1,000,000. She leaves £100,000 to a registered charity in her will. The rest goes to her children. She has her full Nil-Rate Band (£325,000) and Residence Nil-Rate Band (£175,000) available.

Relevant Reliefs: Charitable Exemption, 10% Test for Reduced Rate (36%).

Calculation Breakdown:

Net Estate: £1,000,000

Apply Charitable Exemption:

Gift to charity: £100,000 (This is deducted from the estate before calculating the tax due).

Calculate the "Baseline Amount" for the 10% Test:

Baseline = Net Estate after all exemptions/reliefs BUT before the charitable gift and the nil-rate bands.

In this simple case, it's £1,000,000.

10% of Baseline: £1,000,000 x 10% = £100,000

Emma left exactly £100,000 to charity, so she meets the 10% test and qualifies for the 36% rate.

Apply Nil-Rate Bands:

Total Allowances: £325,000 (NRB) + £175,000 (RNRB) = £500,000

Calculate Chargeable Estate:

Net Estate: £1,000,000

Less Charitable Gift: £100,000

Less Nil-Rate Bands: £500,000

Chargeable Estate: £1,000,000 - £100,000 - £500,000 = £400,000

IHT Calculation at Reduced Rate: £400,000 x 36% = £144,000

Comparison at 40%: If she had given less than 10%, the tax would be £400,000 x 40% = £160,000.

By gifting exactly 10% of her net estate, Emma saved £16,000 in IHT (£160,000 - £144,000), and £100,000 went to a good cause. This is a powerful incentive for charitable giving.

Example 5: Complex Estate with Multiple Elements

Michael dies. His estate includes:

House left to his son: £750,000

ISA: £150,000

Shares in a listed company (non-business): £200,000

He gifted his daughter £326,000 (a PET) 6 years and 1 month ago.

He has an outstanding loan: £50,000.

His wife pre-deceased him and had used none of her nil-rate band.

Relevant Reliefs: Transferable Nil-Rate Band, Residence Nil-Rate Band, PETs, 7-Year Rule.

Calculation Breakdown:

Step 1: Check the PET

The gift of £326,000 was made just over 6 years ago. As the donor died within 7 years, it is chargeable.

Taper Relief: 6-7 years means 80% relief (tax payable is 20% of the full charge).

It will use up the nil-rate band.

Step 2: Calculate IHT on the PET

Value of PET: £326,000

Less Nil-Rate Band: £326,000 - £325,000 = £1,000

IHT on PET at full death rate (40%): £1,000 x 40% = £400

Apply Taper Relief: £400 x 20% = £80 (This is the tax due on the PET).

Step 3: Calculate IHT on Death Estate

Gross Estate: £750,000 + £150,000 + £200,000 = £1,100,000

Less Debts: £50,000

Net Estate: £1,100,000 - £50,000 = £1,050,000

Apply Nil-Rate Bands:

Michael's NRB: £325,000 (fully used by the PET)

Transferable NRB from wife: £325,000

Residence NRB (house left to son): £175,000

Total Allowances: £325,000 + £175,000 = £500,000

(Note: His own NRB is gone, but he can use his wife's transferred NRB and his own RNRB).

Chargeable Estate: £1,050,000 - £500,000 = £550,000

IHT on Death Estate: £550,000 x 40% = £220,000

Total IHT Liability: £80 (from PET) + £220,000 (from death estate) = **£220,080**

This complex example ties together multiple concepts: the 7-year rule for PETs, taper relief, the use of the transferable nil-rate band from a pre-deceased spouse, and the application of the Residence Nil-Rate Band. It shows how a PET can use up the individual's own nil-rate band, but the transferred band from a spouse remains available for the rest of the estate.

5.10 Conclusion

Inheritance Tax is a complex area requiring careful analysis of transfers, valuation, exemptions, reliefs, and timing. Legal professionals must be thorough in advising clients to optimize tax efficiency while ensuring compliance. Mastery of these rules is essential for effective estate planning and administration under the SQE framework.

6

CLAIMS AGAINST ESTATES UNDER THE INHERITANCE (PROVISION FOR FAMILY AND DEPENDANTS) ACT 1975

This chapter explores how English law ensures fairness when a will or intestacy fails to provide adequate support for dependants or family members. It examines the *Inheritance (Provision for Family and Dependants) Act 1975*, anti-avoidance protections, and post-death variations or disclaimers as tools for achieving equitable outcomes. It also highlights the rights of beneficiaries and creditors, and the duties of personal representatives to administer estates lawfully and fairly.

6.1 Family-Provision Claims under the 1975 Act

Under the *Inheritance (Provision for Family and Dependants) Act 1975*, certain individuals who have been excluded from a will or left without adequate provision on intestacy may apply to the court for reasonable financial provision from the deceased's estate. The Act applies primarily where the deceased was domiciled in England and Wales at death but may, in limited cases, extend to non-domiciled individuals who left assets or dependants within the jurisdiction. Applicants may include those completely omitted from the will or dissatisfied with their inheritance, allowing the court to vary the will or intestacy to ensure fair support for eligible family members and dependants.

6.1.1 Who May Apply

An application must be brought within 6 months of the grant of probate or letters of administration. Eligible applicants at the date of death include:

1. **Spouses and Civil Partners**

   In ***Fielden v Cunliffe*** [2005] EWCA Civ 1508**,** a widow applied for provision from her multi-millionaire husband's estate. Their marriage was short, and he had left most of his wealth to his business partners. The court confirmed that for a spouse, the starting point is the provision they would have likely received upon a divorce (divorce cross-check). This often entitles them to a share of the capital assets, not just maintenance, especially in long marriages.

2. **Former Spouses and Civil Partners**

   Former spouses and civil partners who were financially dependent on the deceased following a divorce or dissolution may make a claim if the will made no provision for them or the provision was inadequate, provided they have not remarried or entered into a new partnership. In ***Re Fullard (Deceased)*** [1981] 2 All ER 796, a widow had been divorced from the deceased for many years. He had made no provision for her in his will. The Court of Appeal stated that the purpose of this category is not to provide a top-up for a former spouse who has managed independently. The key is to provide maintenance where there is a continuing financial need that should have been met by the deceased. The fact that a clean break had been achieved in the divorce was a highly relevant factor.

3. **Children**

   This includes including adult children, whether natural or adopted. However, the threshold is high for an adult child who is not disabled. They must show a financial need that it is reasonable for the estate to meet. Mere disappointment or the fact of being a child does not suffice. The court will consider the applicant's financial resources and obligations, and any other moral claims on the estate, as held in ***Illott v The Blue Cross Animal Society*** [2017] UKSC 17**.**

In ***Re Jennings (Deceased)*** [1994] Ch 28, two adult sons in their 40s, who were financially independent, claimed against their father's estate from which they had been excluded. The Court of Appeal dismissed the claims. It held that adult children of able body and mind must demonstrate a special circumstance or a moral obligation beyond the normal parent-child relationship to justify provision. Financial need alone is insufficient

4. Individuals Treated as Children of the Deceased

They include for example, step-children or long-term residents in the deceased's household : his covers step-children or any individual treated as a child of the family (e.g., a foster child or a niece/nephew raised by the deceased). In ***Re Leach (Deceased)*** [1985] 2 All ER 754, A step-child applied for provision. The deceased had married her mother when the applicant was 27 and had not supported her financially during her minority. The court held that the crucial question is whether the deceased assumed the position and responsibilities of a parent towards the applicant. This involves more than just a friendly relationship and typically includes some element of financial support or upbringing. On the facts, the claim failed as the relationship was more that of friends.

5. Dependants the Deceased Maintained Immediately Before Death

This is a "catch-all" category with two strict legal tests that must both be met as contained in *Section 1(1)(e) 1975 Act*. In ***Jelley v Iliffe*** [1981] 2 All ER 2, an elderly man moved in with his niece and her husband, who provided him with care and support. He made some contributions to the household. The Court of Appeal established the test for "maintenance." It is more than just help or gifts; it involves the continuous provision of a substantial portion of the applicant's needs (e.g., housing, food, essential living costs). It also set out the requirement for the deceased to have assumed responsibility for the applicant's maintenance.

6. Cohabitants

Persons who were not married or in a civil partnership with the deceased may claim under the *1975 Act* if they lived in the same household as the deceased, as their spouse or civil

partner, for the entire two years immediately before death. In the case of ***Gully v Dix*** [2004] 1 FLR 918, it was ruled that a couple who lived together for 27 years were still cohabiting despite a temporary three-month separation before the deceased's death. The court found their substantial, enduring relationship had not genuinely ended, as the deceased wanted her back and the applicant would have returned had she received his messages. Therefore, the applicant met the two-year cohabitation requirement to claim against the estate.

In ***Negus v Bahouse*** [2008] EWCA Civ 1002, the court confirmed that the two-year period must be continuous and immediately before the death.

Example: Mrs. Deborah died leaving her entire estate to a distant cousin. Her 24-year-old son, recently graduated and with mounting rent arrears, may apply under the *1975 Act* as a "child," arguing that the will fails to make reasonable provision for his maintenance.

6.1.2 "Reasonable Financial Provision"

Determining what amounts to reasonable financial provision under the *1975 Act* involves a two-stage inquiry: first, whether the will or intestacy rules have failed to make adequate provision for the applicant; and second, what level of provision would be reasonable in the circumstances. There are two distinct legal standards for determining what constitutes reasonable financial provision from an estate.

For spouses/civil partners, the test is broad. The standard is what would be fair and reasonable in all the circumstances, not limited to maintenance; guiding principle is what might be awarded in divorce proceedings.

For other applicants, "reasonable provision" is narrower; focused on maintenance needs (food, shelter, clothing, education, care). In ***Ilott v Mitson*** [2017] UKSC 17, courts interpreted maintenance to include capital for mortgage repayment, education, or even lump sums, but cautioned it should be interpreted generally. It does not mean providing everything the applicant might want or an equal share of the estate, but rather meeting their basic everyday needs such as housing and living expenses

The test is objective, but the court may consider the deceased's stated reasons for exclusion, whether expressed in the will or a separate written statement.

6.1.3 Factors the Court Weighs

Section 3(2) of the *1975 Act* directs the court to consider all circumstances, notably:

1. Applicant's resources and needs (e.g. income, savings, health):
2. Estate size and nature (e.g. liquid vs. illiquid assets).
3. Other beneficiaries' needs (so as not to leave them destitute). In ***Re Coventry*** [1979] 2 WLR 853, the court refused an adult son's claim for provision from his father's small estate, holding that priority should be given to the widow's greater financial need, as the son was able-bodied and employed.
4. Applicant's relationship to the deceased (length and closeness).
5. Any contributions by the applicant to the deceased's welfare or estate (e.g. caring duties or financial assistance).
6. Applicant's physical or mental disability, and likewise for other beneficiaries.
7. Any other matter the court deems relevant (e.g. tax implications).

6.1.4 Available Remedies

Once the court determines that reasonable financial provision has not been made, it exercises broad discretion, guided by statutory factors, to decide what is fair and adequate in the circumstances. It will also specify which beneficiary bears the burden of the order. When granted, the estate is distributed according to the court's order, overriding the will or intestacy rules.

Under *s.4* of the *1975 Act*, the court may order:

- Lump-sum payments (e.g. a cash award to a dependent child to purchase a home).
- Periodical payments (maintenance for life or a fixed term).

- Transfer of property (e.g. the family home).
- Variation of shares (shifting capital among residuary beneficiaries).

6.2 Protections Under the *1975 Act*

When a testator, in their final days, deliberately strips their estate of value to frustrate dependants' rightful claims for maintenance, the *Inheritance (Provision for Family and Dependants) Act 1975* steps in with powerful anti-avoidance provisions.

6.2.1 Section 3A – Reintegrating Disguised Transfers

These prevent "last-minute" transfers, sales at undervalue, or settlements into trusts when the dominant motive is to deny reasonable provision to an eligible claimant. The scope of the transactions includes gifts of cash or property made within six years before death, sales at undervalue (e.g., charging a token £1 for a £250,000 cottage to a friend), and trust settlements (e.g., moving shares into a discretionary trust with self-appointed trustees).

The effect of a successful claim is that the court may order any such transaction to be treated as never having occurred effectively "wrapping" the transferred assets back into the deceased's estate for the purposes of the family-provision claim.

Procedure

The applicant first provides evidence of the suspicious timing or undervalue of the transaction. Then, the court assesses whether the predominant motive was to defeat a reasonable financial provision claim. If satisfied, an order is made to restore the asset to the estate's pool before calculating what is reasonable provision.

Illustration

A deceased woman transferred her countryside property to a church two months before death. Blake, the widower successfully applied under *s.3A*; the gift was unwound, and the property counted as part of the estate when assessing her maintenance award.

6.2.2 Section 5 – Protecting Executors and Administrators

Often times, executors distribute the estate in good faith, only to face a claim months later. This protection creates a safe harbour for personal representatives who acted honestly and in accordance with the will (or intestacy rules); they are shielded from personal liability for subsequent family-provision awards.

As a result, executors need not delay distributions for fear of liability but should keep careful records in case the court later reallocates assets under the *1975 Act*.

6.3 Altering Distributions After Death

Beyond contested claims, beneficiaries can voluntarily rearrange their entitlements by varying or disclaiming their inheritance to achieve fairness, tax efficiency, or to satisfy dependants without court intervention. Such variations allow redistribution of the estate to better reflect current family or financial circumstances.

6.3.1 Deeds of Variation

A deed of variation provides beneficiaries with the flexibility to legally alter how an estate is distributed, even after the death of the testator. It allows beneficiaries to alter the distribution of an estate after death, provided it is executed within two years of death under *s.142* of the *Inheritance Tax Act 1984*, to maintain inheritance tax and capital gains tax continuity.

All beneficiaries affected must consent, including those with contingent interests, with minors or unborn beneficiaries represented by guardians. Unanimity among beneficiaries is paramount.

Through such a deed, beneficiaries can redirect legacies, such as changing a £50,000 cash legacy to be held in trust for her aunt, adjust residuary shares, for example by reallocating proportions between beneficiaries, or fund new trusts for children or charities.

For tax purposes, the variation is treated as though the deceased originally made the new arrangements, ensuring nil-rate bands, IHT reliefs and exemptions remain intact, while

capital gains tax rollover rules apply so that assets retain their original base cost and acquisition date, avoiding immediate capital-gains triggers.

Illustration: The sole residuary beneficiary, David, wishes to ensure dependants are provided for. He and co-beneficiaries sign a deed diverting 20% of the residue into a life-interest trust for an elderly former housekeeper. Because it's done by deed within two years, David's CGT liability is unaffected and the entire arrangement sits within the deceased's IHT computations.

6.3.2 Disclaimers – Renouncing to Redirect

A disclaimer is a legal refusal to accept inherited assets from a will, intestacy, or survivorship rights, causing those assets to be distributed as if the original beneficiary died first. Therefore, a disclaimer should only be used if the property, upon rejection, automatically passes to the person the original beneficiary actually intends to benefit.

For the process to be effective for tax purposes, the beneficiary must generally disclaim within a nine-month time frame of the deceased's death (or extended by court order).

Upon a valid disclaimer, the operation is such that the disclaiming party is treated as though they predeceased the testator, causing their share to fall away to the alternate beneficiaries named in the will or those next in the intestacy hierarchy.

This method has several uses. It allows for automatic redirection; for example, a beneficiary who faces means-tested benefits may disclaim their share, passing it to a sibling. It also allows for flexible planning through partial disclaimers, where a beneficiary renounces only a specific legacy or a percentage of a residuary share.

For tax purposes, disclaimers made within the permitted time frame are treated as if the adjusted distribution was part of the original testamentary disposition, meaning no additional IHT is triggered. Similarly, no Capital Gains Tax (CGT) arises for the disclaiming party since they never acquire ownership of the asset; instead, the ultimate recipient assumes the deceased's original base cost and acquisition position.

Illustration: Emma, residuary beneficiary of 100%, disclaims half her share to benefit her two children equally. Within nine months, a valid disclaimer sends that half directly to her children under the will's substitution clause, no extra IHT or CGT arises.

6.4 Beneficiaries Rights

Beneficiaries are individuals legally entitled to inherit or receive property from the estate of a deceased person, whether under a valid will (testate succession) or by operation of law under the intestacy rules (intestate succession). Their rights, both procedural and substantive, are enforceable against the PRs who are under a fiduciary duty to administer the estate lawfully, fairly, and without undue delay. The law provides several mechanisms through which beneficiaries may protect their interests and hold PRs accountable.

6.4.1 Right to Fair Treatment

Beneficiaries are entitled to equitable and impartial handling throughout the probate process. Executors must strictly comply with the will's provisions and act solely in the best interests of the estate, ensuring that no beneficiary is unfairly favoured or disadvantaged. This right is rooted in the executor's fiduciary duty to act in the best interests of the estate and all its beneficiaries collectively, rather than favouring one over another. As a result, any form of bias, preferential treatment, or concealment can give rise to disputes and erode confidence in the executor's integrity.

Fairness also extends to how information is shared and how decisions are communicated. Executors must act transparently, keeping beneficiaries reasonably informed about key steps, timelines, and financial matters related to the estate. Concealing information, showing favouritism, or prioritising one beneficiary's interests over others can lead to disputes and potential legal action for breach of duty.

6.4.2 Right to Information and Accounts

This right arises from the fiduciary relationship between the executor and the beneficiaries, which requires openness and accountability in all dealings involving estate assets. Beneficiaries are entitled to access essential documents such as copies of the will, the grant of

probate or letters of administration, and detailed statements of account showing the estate's assets, liabilities, income, and distributions. They are also entitled to explanations regarding any delays or omissions in the distribution process to ensure that executors do not misuse or mismanage estate property and that all actions taken are transparent, traceable, and in accordance with the will or intestacy rules.

Section 25 of the *Administration of Estates Act 1925*, executors are legally required to provide a full inventory and account of the estate when ordered by the court. The principle established in ***Re Londonderry's Settlement*** [1965] Ch 918 reinforces this right, holding that beneficiaries are entitled to sufficient disclosure to verify that the estate has been properly managed, though not to unfettered access to every internal document or communication. Where executors fail to provide adequate information or appear to conceal details of their administration, beneficiaries may seek judicial intervention.

6.4.3 Right to Demand Proper Administration

Beneficiaries have the right to compel PRs to perform their duties with due diligence and integrity. Where PRs fail to act promptly, neglect their responsibilities, or refuse to provide necessary information, beneficiaries may apply to the court for directions. The court may order PRs to produce estate accounts**,** proceed with administration, or distribute the estate without further delay.

In ***Re Biggs*** [1966] 1 All ER 358, the court intervened to compel administration after PRs failed to act, reaffirming that beneficiaries are entitled to timely and competent estate management.

The principle recognises that PRs hold their powers in trust for beneficiaries and must be accountable to them. The court may also direct PRs to take specific actions such as delivering property, submitting detailed estate accounts, or paying legacies that are overdue.

6.4.4 Right to Sue for Breach of Duty

If PRs breach their fiduciary obligations, for example, by acting negligently, preferring certain beneficiaries over others, or misapplying estate funds, beneficiaries have a legal right to seek

redress. Under *s.25* of the *Administration of Estates Act 1925*, PRs are legally required to administer the estate diligently, impartially, and with proper care. Breach of these duties gives rise to several potential remedies, including:

- A personal claim for compensation or restitution against the PR for loss caused by mismanagement;
- A proprietary claim over specific assets that have been wrongly transferred or misused; and
- An injunction to prevent further harm or to restrain the PR from committing further breaches.

Courts will hold PRs personally liable for any loss or misapplication of estate assets resulting from their failure to meet the required standard of care.

6.4.5 Right to Challenge the Grant

Beneficiaries who dispute the administration of an estate may exercise their right by taking a pre-grant action to challenge the grant of representation. This can be done by entering a caveat at the Probate Registry under *Rule 44* of the *Non-Contentious Probate Rules 1987*, effectively preventing the issue of any grant until the dispute is resolved. A caveat is particularly appropriate where there is a challenge to the validity of the will, such as allegations of lack of testamentary capacity, undue influence, or fraud; uncertainty or dispute as to who is the rightful PR; or competition among multiple potential applicants seeking the grant.

A caveat lasts for six months but can be renewed indefinitely in further six-month intervals. During this period, no grant of representation will be issued unless the caveat is withdrawn or removed through a court order. This mechanism safeguards the estate against premature or improper administration while disputes regarding entitlement or validity are resolved.

6.4.6 Right to Seek Removal of PRs

Beneficiaries have the right to apply for the removal or replacement of PRs whose conduct endangers or obstructs the proper administration of the estate. Grounds for removal include incapacity, dishonesty, hostility towards beneficiaries, conflict of interest, prolonged delay, or

general mismanagement. Courts exercise this power to protect the integrity of the estate and maintain confidence in its administration.

Two key statutory provisions govern the removal of PRs:

- ***Section 50 of the Administration of Justice Act 1985***, which empowers the court to substitute or remove PRs after a grant has been issued; and
- ***Section 116 of the Senior Courts Act 1981***, which applies pre-grant, allowing the court to pass over a person otherwise entitled to the grant if they are unfit or unwilling to act.

The leading case of ***Letterstedt v Broers*** [1884] 9 App Cas 371, established that removal is justified where the PR's behaviour or attitude threatens the efficient and impartial administration of the estate. The court held that while hostility alone may not suffice, persistent conflict or misconduct that compromises estate management warrants removal.

In practice, the court considers the welfare of beneficiaries and the efficient completion of administration above all else. If necessary, it may appoint a neutral professional or trust corporation to act in place of the removed PR to restore confidence and ensure fairness.

6.4.7 Right to Distribution within a Reasonable Time

This ensures that beneficiaries receive their inheritance without unnecessary delay once the estate has been properly administered. Under the long-established "executor's year" principle, personal representatives are given a period of twelve months from the testator's death to collect assets, settle debts, and pay any taxes before distributing the remainder to beneficiaries. This grace period recognises the administrative complexities involved in winding up an estate.

After the executor's year has passed, beneficiaries are generally entitled to request or demand distribution unless there are valid reasons for continued delay, such as unresolved tax matters, disputes over debts, or ongoing litigation. If the delay is prolonged or unjustified, beneficiaries may apply to the court for an order compelling distribution or for the executor's removal.

In ***Re Beetham*** [1937] Ch 409, the court held that executors are entitled to a reasonable period, usually twelve months from the date of death, to collect assets, pay debts, and settle

liabilities. However, once these duties are complete, they must not unreasonably delay the distribution of the estate, as beneficiaries are entitled to timely receipt of their inheritance.

6.4.8 Right to Legal Representation

Probate law involves intricate rules, timelines, and fiduciary duties that can be difficult for non-lawyers to navigate. Engaging a solicitor who specialises in probate or estate administration helps beneficiaries fully understand their rights, obligations, and entitlements under the will or intestacy laws. Legal professionals can explain each stage of the process; from applying for a grant of representation to distribution of assets, thereby reducing confusion, preventing misinterpretation, and ensuring that beneficiaries are not disadvantaged due to lack of legal knowledge.

Solicitors can act on behalf of beneficiaries to challenge improper conduct by executors, contest unfair distributions, or resolve disputes among heirs. In contentious cases, lawyers may assist in filing claims, negotiating settlements, or initiating proceedings to safeguard the estate's integrity. This representation not only upholds the beneficiary's rights but also promotes fairness and accountability in the administration process. Ultimately, access to legal counsel empowers beneficiaries to make informed decisions, assert their entitlements confidently, and secure a just outcome in line with the will and the law.

In ***Re Evans*** [1986] 1 WLR 101 (Ch D), the court recognised that beneficiaries are entitled to legal representation and advice when challenging executors or trustees, affirming their right to legal assistance in safeguarding fair and proper estate administration.

6.4.9 Right to Trace or Recover Misapplied Assets

Where PRs wrongly distribute or misappropriate estate assets, beneficiaries may invoke the equitable doctrine of tracing to recover the property or its substitute. This allows beneficiaries to follow their beneficial interest into new property acquired using misapplied estate funds. The principle was established in ***Re Diplock*** [1948] Ch 465, where the court permitted beneficiaries to trace charitable legacies that had been wrongly distributed and recover the funds from their substituted form.

Tracing ensures that beneficiaries can reclaim what is rightfully theirs even where the original asset no longer exists in its original form. For instance, if a PR uses estate money to purchase land, beneficiaries can claim an equitable interest in the land itself. This remedy underscores the fiduciary nature of PRs' duties and provides strong protection against misuse of estate property.

6.5 The Fiduciary Nature and Liabilities of PRs

PRs occupy a fiduciary position of the highest trust and confidence, similar to that of trustees. Once appointed under a valid grant of representation, they assume legal ownership of the deceased's estate but only for the purpose of administration. Every decision they make must therefore prioritise the interests of the estate, creditors, and beneficiaries, rather than their own. The fiduciary character of their office imposes duties of honesty, prudence, impartiality, and accountability.

6.5.1 Core Fiduciary Duties

1. **Duty to Act Impartially**

PRs must act fairly between all beneficiaries, ensuring that no one is favoured or prejudiced without justification. This includes maintaining neutrality in family disputes and distributing assets according to the terms of the will or intestacy rules. In ***Tempest v Camoys*** [1882] 21 Ch D 571, the court reaffirmed that trustees and PRs must exercise their powers in good faith for the benefit of all interested parties.

2. Duty to Avoid Conflict of Interest

PRs must not place themselves in situations where their personal interests could conflict with those of the estate. They cannot profit from their position unless expressly authorised by the will or by the court. The case of ***Boardman v Phipps*** [1967] 2 AC 46 underlines that even an honest fiduciary can be liable to account for profits gained from a conflict of interest.

3. Duty to Exercise Due Care and Skill

PRs must administer the estate with the degree of skill and care that an ordinarily prudent person would exercise in managing their own affairs. This standard is elevated for professionals such as solicitors, accountants, or financial advisors who act as PRs, as they are held to the standard of their professional expertise. The duty extends to investing estate funds wisely, safeguarding property, and keeping accurate records. Failure to exercise such care can result in personal liability for losses.

6.5.2 Consequences for Breach of Duty

Where PRs breach their fiduciary obligations, the law imposes strict personal liability. They may be required to restore any financial loss caused to the estate or beneficiaries and relinquish any unauthorised profit gained from their role. They may also face court removal or substitution under *s.50 Administration of Justice Act 1985* if their conduct threatens the proper administration of the estate.

In addition, PRs who distribute assets without paying debts or taxes, or who act in bad faith, may be personally sued by creditors or beneficiaries. Such liability is not limited to intentional misconduct; negligence, delay, or oversight may also suffice.

Given these risks, PRs administering complex or high-value estates are strongly advised to obtain executor's insurance or indemnities to mitigate exposure to personal financial loss.

6.5.3 Statutory Relief

Despite the strict fiduciary obligations imposed on PRs, the law recognises that mistakes can occur in good faith. Under *s.61* of the *Trustee Act 1925*, a PR may seek relief from personal liability if the court is satisfied that they acted honestly and reasonably, and they ought fairly to be excused for the breach.

This is a judicial safety net, allowing the court to balance fairness with accountability. However, the relief is discretionary and not automatic; it will only be granted where PRs can demonstrate transparency, proper record-keeping, and genuine efforts to comply with their legal duties.

6.6 Entitlements and Remedies of Creditors

Creditors hold a superior legal claim to the assets of a deceased person's estate, ranking above all beneficiaries. This means that no distribution to beneficiaries may lawfully occur until all valid debts, liabilities, and expenses have been paid in full or otherwise settled. PRs have a statutory and fiduciary duty to ensure that creditors are identified, verified, and paid before making any distributions, as failure to do so may result in personal liability.

6.6.1 Priority of Creditors Over Beneficiaries

The *Administration of Estates Act 1925* provides that creditors must be satisfied before any beneficiary receives their entitlement. PRs stand in the shoes of the deceased and are responsible for ensuring the estate's debts including loans, mortgages, unpaid taxes, and service bills are discharged from available assets. Only after this can the balance, if any, be distributed among beneficiaries. If PRs distribute assets prematurely, creditors can recover what is owed directly from them. This rule ensures that creditors are not unfairly prejudiced by errors or delays in estate administration.

6.6.2 Personal Liability of Personal Representatives

PRs who neglect to identify and settle known or discoverable debts act at their own risk. Once assets are distributed, PRs may find themselves personally liable to make good the unpaid sums from their own funds. This principle was firmly established in ***Re Shipman*** [1920] 1 Ch 311, where PRs were held personally responsible for failing to pay a legitimate debt before distributing the estate to beneficiaries. The court held that ignorance of the debt was no defense where reasonable enquiries could have revealed it.

Creditors may enforce payment directly against PRs where funds are available. Therefore, PRs must conduct due diligence by reviewing the deceased's financial records, contacting known creditors, checking loan agreements, utility accounts, and tax correspondence, and seeking professional advice when necessary.

6.7 From Estate Administration to Trust Management

The role of PRs does not always end once the estate administration is complete. In many cases, particularly where the deceased's will creates ongoing trusts such as life interests, trusts for minors, or discretionary family trusts, the PRs automatically transition into the role of trustees. This shift marks a change in the nature of their responsibilities; from the temporary function of administering the estate to the continuing duty of managing trust property. This transition is automatic unless the will appoints separate trustees for ongoing trusts.

6.7.1 Circumstances Giving Rise to the Transition

- **Life interests:** For example, where the will provides that property is "to my spouse for life, and thereafter to my children," the PRs must retain the property and manage it during the life tenant's lifetime. Upon the tenant's death, the property passes to the remaindermen; those entitled after the life interest ends.
- **Trusts for minors:** Where a beneficiary is under the age of 18 or specified age stated in the will, the PRs must hold and manage their inheritance until the beneficiary reaches majority or the specified age of entitlement.
- **Discretionary or contingent trusts:** Where the will leaves assets "on trust" to be distributed at the discretion of the trustees or upon the occurrence of certain events, the PRs retain the assets in a trustee capacity until those conditions are satisfied.

6.7.2 Duties After Role Change

Once PRs become trustees, their obligations are governed primarily by the *Trustee Act 1925* and the *Trustee Act 2000*, as well as by the specific terms of the will or trust instrument.

Their main obligations include acting prudently when investing assets under *s.1 of the Trustee Act 2000*, maintaining and providing accurate trust accounts, and filing tax returns to comply with HMRC requirements. Trustees must also administer the trust strictly in accordance with its terms, ensuring distributions follow the will or statutory provisions. Where multiple beneficiaries exist, such as a life tenant and remaindermen, trustees must act fairly and impartially, balancing income and capital interests while safeguarding the trust's overall value.

6.8 Conclusion

In summary, the law seeks to balance testamentary freedom with fairness by protecting dependants, beneficiaries, and creditors alike. The *Inheritance (Provision for Family and Dependants) Act 1975* allows courts to correct inadequate provision, while post-death variations and disclaimers offer flexible, consensual solutions. Beneficiaries are safeguarded through enforceable rights to proper administration and accountability, while creditors retain priority to ensure all debts are settled before distribution. Together, these provisions uphold justice, transparency, and order in the administration and distribution of estates.

7

SECURING AUTHORITY TO ADMINISTER THE ESTATE

When a person dies, someone must take responsibility for administering their estate settling debts, paying taxes, and distributing remaining assets to the rightful heirs or beneficiaries. This task falls to the personal representatives (PRs), a term encompassing both executors (appointed in a will) and administrators (appointed in the absence of a valid will). To act lawfully, PRs usually need formal recognition in the form of a "grant of representation," which confirms their legal authority to deal with the estate.

7.1 Identifying Personal Representatives and Assets

The first step in obtaining a grant involves a thorough evaluation of the estate to identify the personal representatives (PRs), beneficiaries, and assets of the deceased. Executors named in a valid will have the primary right to apply for a grant of probate. Where no executors are appointed or are unwilling to act, administrators must be appointed to obtain a grant of letters of administration with the will annexed. In cases where no valid will exists, simple letters of administration are required. Under intestacy, entitlement to apply for the grant follows the hierarchy established by *Rules 20 and 22* of the *Non-Contentious Probate Rules (NCPR) 1987*.

At this stage, it is also necessary to identify the beneficiaries entitled to inherit, whether under the will or by operation of intestacy rules. The PRs must further carry out a comprehensive assessment of the deceased's estate, compiling details of all assets and liabilities such as bank accounts, property, pensions, investments, personal belongings, and debts. Finally, an Inheritance Tax (IHT) assessment must be conducted to determine whether the estate is

taxable. If it qualifies as an “excepted estate,” simplified reporting procedures may be used; otherwise, full IHT reporting is required.

7.2 Identifying the Right Personal Representatives (PRs)

Before an estate can be administered, it is essential to establish who is entitled to apply for the grant of representation. This depends on whether the deceased died testate (with a valid will) or intestate (without a valid will). The PRs are legally responsible for collecting the deceased's assets, paying debts and taxes, and distributing the estate according to the will or intestacy rules.

7.2.1 Testate Estates (Will Exists)

In the case of a testate estate, where a valid will exists, the person or persons named as executors in the will have the first right to apply for a Grant of Probate. It is common for a will to appoint multiple executors, often at least two, especially where trusts arise or minors are involved. However, only one executor is required to make the application unless special circumstances dictate otherwise. If none of the executors appointed are able or willing to act, whether due to death, incapacity, or renunciation, an administrator with the will annexed may apply for a Grant of Letters of Administration with Will Annexed. Such a grant is usually sought by the beneficiary or beneficiaries with the greatest entitlement under the will, in accordance with the order of priority set out in *Rule 20* of the *NCPR 1987*.

7.2.2 Intestate Estates (No Valid Will Exists)

Where the deceased dies intestate, meaning no valid will exists, the estate is administered according to the intestacy rules set out in *s.46* of the *Administration of Estates Act 1925*.

The order of entitlement begins with the surviving spouse or civil partner, who must have been legally married or in a registered civil partnership at the time of death; separation without divorce or dissolution does not affect their right to inherit. Next in line are the deceased’s children, both biological and adopted, all of whom rank equally. If any child has predeceased the intestate but left issue, such as grandchildren or great-grandchildren, they inherit their parent’s share by representation.

Following these are the parents of the deceased, then siblings of the whole blood (sharing both parents), their issue (nieces and nephews), siblings of the half-blood (sharing one parent), and their issue. If none of these relatives are living, the estate passes to the grandparents, then to uncles and aunts of the whole blood and their issue, followed by uncles and aunts of the half-blood and their issue.

In the absence of any surviving relatives within these categories, the estate ultimately passes to the Crown as *bona vacantia*, administered by the Treasury Solicitor.

7.2.3 Special Considerations

- **Trust estates or minor beneficiaries**: If the estate contains a trust or a minor beneficiary, at least two PRs are required to apply to ensure effective trust management and compliance with the *Trustee Act 1925* and *Administration of Estates Act 1925*.
- **Multiple entitlements**: If multiple people are equally entitled (e.g., two children), the court may issue the grant to one or more of them. A maximum of four administrators can be appointed to as administrators.
- **Renunciation**: A person named as executor may renounce their right by signing a Deed of Renunciation (*Form PA15*). Once renounced, they cannot later assume the role unless the court grants permission.
- **Power reserved**: If an executor prefers not to act immediately but wishes to retain the option to do so later, they may have power reserved to them. This allows the remaining executor or executors to proceed with the application and administration of the estate while preserving the non-acting executor's right to participate at a later stage if necessary.

7.3 Number and Legal Capacity of Personal Representatives

7.3.1 How Many PRs Can Apply?

A maximum of 4 people can act as PRs for the same estate. This rule is governed by *s.114* of the *Senior Courts Act 1981*, which limits administrative complexity and potential conflicts in

estate management. There is no minimum number required unless special rules apply to specific circumstances, such as where trusts exist or minor beneficiaries are involved.

7.3.2 When Two PRs Are Required (Compulsory Joint Grants)

In the case of compulsory joint grants, at least two PRs must be appointed. This requirement, set out under *s.114(2) Senior Courts Act 1981* and *s.22 Administration of Estates Act 1925*, at least two PRs must be appointed when the estate includes property held on trust, or includes a minor as beneficiary entitled to a share of the estate or to a contingent interest (e.g., inheritance at age 18 or upon marriage), or there is a life interest existing in the estate.

For instance, if a will leaves a property on trust for a child until they turn 21, at least two PRs must be appointed to ensure proper oversight and administration.

7.3.3 Capacity and Eligibility to Act

To qualify and act as a PR, the applicant must meet certain eligibility criteria. They must be at least 18 years of age, possess full mental capacity, and not be an undischarged bankrupt. Although a bankrupt individual may be named as an executor in a will, they are prohibited from acting in that capacity until their bankruptcy has been discharged, due to the fiduciary nature of the role.

7.3.4 Special Situations

- **Stillborn children or predeceased beneficiaries:** When determining the number of PRs or beneficiaries entitled to an estate, stillborn children or individuals who die before the testator are not included in the count. If a beneficiary predeceases the testator, their entitlement is extinguished and the estate is distributed as though they had never been named as a beneficiary. In some cases, however, their own issue may inherit in their place under the principle of representation, particularly in intestate estates.
- **Corporate PRs**: A corporate body, such as a trust corporation, bank, or firm of solicitors, may act as a personal representative alongside individual executors, providing both professional oversight. Corporate PRs are often appointed in complex

estates where professional management, impartiality, and continuity are beneficial. They count as one personal representative for the purpose of the statutory maximum of four PRs under *s.114 Senior Courts Act 1981*.

- **Attorney executors and loss of capacity**: If an executor loses capacity, their attorney under a lasting power of attorney cannot act on their behalf in the role of executor. The authority to administer an estate is personal and cannot be delegated through power of attorney. In such situations, a new application for a grant may be necessary, and the court may appoint an administrator with the will annexed to continue the administration of the estate.
- **Executors residing abroad**: Executors who reside outside the United Kingdom retain the right to apply for a grant of probate, but because of practical challenges may need to appoint a UK-based attorney through a power of attorney to handle local administrative matters on their behalf. In some instances, HM Courts and Tribunals Service (HMCTS) may require that the appointment of a UK-based co-executor or administrator be appointed to prevent delays, facilitate efficient administration and ensure compliance with procedural requirements.

7.3.5 Grant in Sole Name; Risks and Exceptions

Although the law permits a single PR to apply for a grant of representation, doing so can present several practical and legal risks. Where the estate contains trust property, it is essential to appoint multiple PRs to prevent potential mismanagement and to comply with statutory requirements under the *Trustee Act 1925* and *Administration of Estates Act 1925*. Acting alone in such cases may expose the sole PR to liability and make it difficult to ensure proper oversight of trust assets.

Additionally, if there are other individuals who are equally entitled to apply such as multiple children or next of kin in an intestate estate, the sole PR must obtain evidence of their consent or formal renunciation before proceeding. Failure to do so could result in disputes or challenges to the validity of the grant.

It is generally advisable to apply with at least two PRs, even when not legally required. This ensures smoother decision-making, better accountability, and avoids complications should one PR die or become incapacitated or otherwise unable to act.

7.4 Types of Grants of Representation

The law provides for several distinct types of grants of representation depending on whether a will exists, who is entitled to apply, and the circumstances surrounding the estate. Understanding the correct type of grant is crucial for executors, administrators, and practitioners involved in estate administration.

7.4.1 Grant of Probate (Testate Estate)

A grant of probate is the most straightforward and commonly issued type of grant. It is issued where the deceased died testate, that is, having left a valid will and the executors named in that will are both able and willing to act. The grant serves as legal confirmation of the will's validity and the executors' authority to administer the estate.

Once granted, the executors may collect the deceased's assets, pay off any debts and liabilities, and distribute the remaining estate in accordance with the terms of the will. A copy of the will must be lodged with the application, and upon issuance of probate, it becomes a public document.

For example, if Mary dies leaving a will appointing her daughter Sarah and her solicitor Mr. Brown as executors, both may apply for a Grant of Probate. If they accept the role, the grant will be issued jointly to them.

7.4.2 Grant of Letters of Administration (Intestate Estate)

A grant of letters of administration is required when the deceased dies intestate, that is, without leaving a valid will. In such cases, the grant is issued to the person or persons entitled under the statutory rules of intestacy, following the order of priority outlined in *Rule 22* of the *NCPR 1987*.

Unlike executors, who derive their authority directly from the will, administrators obtain their authority solely from the grant itself. They are required to distribute the estate strictly in accordance with the intestacy provisions set out in *s.46* of the *Administration of Estates Act 1925*.

For instance, if John dies without a will and is survived by a spouse and two children, his spouse, being the primary person entitled under the intestacy rules, would apply for the Grant of Letters of Administration.

7.4.3 Grant of Letters of Administration with Will Annexed

This form of grant applies in circumstances where the deceased left a valid will, but none of the named executors are able or willing to act. This may occur where no executor was appointed in the will, where all named executors have predeceased the testator, lack legal capacity, have renounced their right to act, or have failed to apply for probate. In such instances, a person entitled under the will to a share of the estate may apply for a Grant of Letters of Administration with Will Annexed.

Although the will continues to determine how the estate is distributed, the administrator's authority arises from the grant rather than the will. The will is formally attached or "annexed" to the grant, giving rise to its name. Administrators under this grant have powers similar to executors, though they may need to seek the court's direction for certain matters.

For example, if Anna's will names her sister Rachael as sole executor but Rachael dies before Anna, Anna's son, being a major beneficiary, may apply for a Grant of Letters of Administration with Will Annexed to administer her estate.

7.4.4 Special Types of Grants

In certain exceptional or urgent circumstances, the court may issue special types of grants to address specific needs in the administration of an estate. These specialist grants are designed to ensure the protection and continuity of estate management where a standard grant cannot yet be issued or completed.

1. Grant *ad colligenda bona* (To Collect The Goods)

This is a temporary or limited form of grant issued to preserve and protect the assets of an estate pending the issue of a full grant of representation. It is typically granted in urgent situations where immediate action is necessary, such as when there is a delay in obtaining probate due to a will dispute or where specific assets like perishable goods, property at risk of damage, or unstable financial accounts must be safeguarded.

The authority of the holder of this grant is strictly limited to collection and preservation; they cannot distribute the estate or settle debts.

2. Grant *pendente lite* (Pending Litigation)

This is issued when there is ongoing litigation over the validity of a will or entitlement to a grant of representation. It is commonly used when a *caveat* has been lodged or when probate proceedings are delayed due to disputes between interested parties. The court usually appoints a neutral party, often a solicitor or independent administrator, to act under this grant. Their powers are restricted to preserving and maintaining the estate until the litigation is concluded, ensuring that the assets remain secure and unaffected by the dispute's duration.

3. Grant *de bonis non administratis* (Of Goods Not Yet Administered)

This grant is issued when part of an estate remains unadministered because the original PR has died, become incapacitated, or been removed before completing the administration. This grant authorises a replacement PR to take over and complete the remaining duties, such as distributing the residual estate or finalising tax matters. It is especially common where an executor dies intestate or fails to fulfil their fiduciary obligations, allowing the proper conclusion of the estate's affairs.

4. Grants Limited by Time or Purpose

In some instances, the court may issue grants that are restricted by time, scope, or purpose to meet specific administrative needs. These include grants covering only a particular asset, such as the right to pursue a legal claim or manage a lease, or grants limited to a specific duration, for example, where an executor is temporarily unable to act. Variations include:

- **Grant *durante absentia***: is issued when the executor or administrator is absent from the jurisdiction, allowing temporary administration in their absence.
- **Grant *durante minore aetate***: is issued when the executor is under 18 years of age, enabling an interim administrator to act until the executor reaches majority.
- **Grant *durante dementia*** – granted where the executor lacks mental capacity, allowing another person to manage the estate until capacity is regained.

These specialised grants ensure that estate administration can continue efficiently and lawfully, even under unusual or constrained circumstances, until the executor regains capacity or becomes of age.

7.4.5 Priority in Applications

When multiple parties are entitled to apply for a grant of representation, priority is determined by their legal standing under the relevant rules. If one eligible party submits an application before others, the court will generally issue the grant to that applicant, provided they possess an equal or superior right to apply.

Those with the same or lesser entitlement may either be invited to renounce their right to act or have power reserved to them, allowing the applicant to proceed while preserving the others' ability to participate later if necessary. This approach ensures orderly administration and prevents unnecessary delay or conflict between equally entitled applicants.

7.5 The Grant Process: Step-by-Step Procedure

Obtaining a grant of representation involves several structured procedural steps governed primarily by the *NCPR 1987* and the relevant HMCTS guidance.

Step 1: Determine the Type of Grant

The first step is to establish whether the deceased died testate or intestate. This determination guides the type of grant to be applied for: a Grant of Probate if executors are named and willing to act; a Grant of Letters of Administration if the deceased died intestate; or a Grant of Letters

of Administration with Will Annexed if a valid will exists but no executor is able or willing to act.

Step 2: Collect Key Documents

Applicants must gather all essential documents required for the application. These include the original will (if one exists), an official death certificate, and the relevant IHT forms; IHT205 for excepted estates or IHT400 for chargeable or complex estates. Additionally, a completed application form is required: PA1P for testate estates or PA1A for intestate estates. Identification documents and any necessary witness statements must also be provided to support the application.

Step 3: Assess Inheritance Tax Liability

Before submitting the application, the PR must assess whether IHT is payable. If the estate exceeds the nil-rate band or includes complex or foreign assets, the IHT400 (long form) must be used. In such cases, HMRC must provide clearance before the grant is issued. Where tax is due, payment, either in full or by instalments, should be made in advance to avoid delays, especially for large or taxable estates.

Step 4: Submit Application

Applications can be made either online or by post, depending on the nature of the estate and the applicant's role. Legal practitioners generally use the MyHMCTS portal for online submissions. All forms must be properly completed, signed, and accompanied by the required supporting documents.

Step 5: Await Grant and Administer Estate

Once the application is reviewed and successful, the probate registry issues the grant of representation. Upon receipt, PRs are authorised to collect and manage the deceased's assets, settle outstanding debts and liabilities, and distribute the estate per the terms of the will or the intestacy rules.

Step 6: Keep Records and Close the Estate

Throughout the process, executors and administrators are required to maintain comprehensive records of all financial transactions and administrative decisions. Proper documentation protects them from potential liability and ensures transparency for beneficiaries. Once all debts have been settled, distributions made, and accounts finalised, the estate may be formally closed.

7.6 IHT Forms and Tax Compliance

Inheritance Tax (IHT) compliance is an integral part of the grant process. Before a grant of representation can be issued, HMRC must receive and process the relevant IHT return. The choice of form depends on the size, structure, and composition of the estate.

7.6.1 IHT205 – For Low-Value or Excepted Estates

This form is used for low-value or excepted estates where the total value of the estate falls below the nil-rate band threshold of £325,000, or where all assets pass to an exempt beneficiary such as a spouse, civil partner, or registered charity. It also applies where there are no significant lifetime gifts made by the deceased within the seven years prior to death. This simplified form allows for quicker processing, as no detailed valuation or full account submission to HMRC is required.

7.6.2 IHT400 – For Chargeable Estates

This form is required for estates that exceed the £325,000 threshold or where the estate includes complex trusts or taxable elements. This includes cases where not all assets pass to exempt beneficiaries, where the deceased owned business or trust interests, or where lifetime gifts made within the seven years before death exceed the nil-rate band. It requires full disclosure of assets, liabilities, exemptions, and reliefs, such as business or agricultural property relief.

7.6.3 Tax Deadlines

IHT must be paid within six months of the end of the month in which the deceased died. Failure to pay within this timeframe incurs in interest charges and possible financial penalties. It is therefore essential for personal representatives to assess tax liability promptly and ensure timely payment to avoid delays in obtaining the grant.

7.6.4 Paying IHT Before Probate

Certain estate assets can be accessed before the grant is issued to cover the tax due. Through the Direct Payment Scheme, banks and building societies can transfer funds directly from the deceased's account to HMRC for IHT payment. For estates with illiquid assets such as real estate or business interests, HMRC may permit payment by instalments, allowing the tax to be spread over several years. This provision helps ease the financial burden on the estate while ensuring compliance with statutory tax obligations.

7.7 Legal Effect of the Grant

Once granted, the PRs have the official authority to collect the deceased's assets; pay funeral costs, debts, and taxes. They are empowered to distribute what remains according to the will or intestacy rules.

Banks and other institutions will typically require sight of the grant before releasing funds. Without it, PRs cannot prove title to land or sell property. The grant protects third parties dealing with the PRs and supports the administration process from start to finish.

7.8 Practical Considerations and Solicitor's Role

Solicitors play a pivotal role in advising on whether a grant is necessary (e.g., where joint assets exist), completing probate application documents correctly, managing IHT issues, especially timing, reliefs, and exemptions. They also guide families on renunciations, complex entitlements, or disagreements between potential PRs and are primarily in charge of communicating with HMRC and HMCTS Probate.

7.9 Conclusion

In conclusion, securing authority to administer an estate ensures lawful and orderly management of a deceased's affairs. It involves identifying rightful personal representatives, obtaining the correct grant, and meeting tax and legal obligations. Acting in a fiduciary role, PRs must manage assets, pay debts, and distribute the estate responsibly. Solicitors guide this process to ensure compliance and protect beneficiaries' interests. Ultimately, the grant provides the legal foundation for efficient and fair estate administration.

8

MANAGING THE ESTATE: FIDUCIARY FRAMEWORK AND INITIAL STEPS

The administration of a deceased person's estate is a vital legal process that ensures all debts and taxes are settled before distributing assets to beneficiaries. The personal representative (PR) plays a central fiduciary role, acting with integrity, prudence, and fairness to manage the estate in accordance with the law and the deceased's intentions.

This chapter examines the key stages of estate administration, from its commencement and scope to the fiduciary duties and protective measures available to PRs. It emphasises the importance of diligence, impartiality, and transparency, showing that effective estate administration is both a legal duty and an exercise in responsible stewardship.

8.1 The Administration Period: Commencement and Scope

The administration period is the critical legal interval that begins immediately upon an individual's death and concludes only when the Personal Representatives (PRs) have fully executed their duties. This period encompasses the entire process of managing the deceased's affairs, from collecting and safeguarding assets to the final distribution of the net estate to the rightful beneficiaries.

During this time, the estate exists in a transitional state; while legal title to the assets vests in the PRs, they hold this property not for their own benefit, but in a fiduciary capacity for the

benefit of the creditors and those entitled under the will or intestacy rules. It is a period of active stewardship where the PRs must navigate a complex web of legal obligations, ensuring that all debts, taxes, and expenses are settled before any beneficiary receives their inheritance. The importance of this period cannot be overstated, as any misstep; such as a premature distribution, can expose the PRs to significant personal liability.

8.2 The Fiduciary Role of Personal Representatives

8.2.1 Legal Nature and the Duty of Care

Upon their appointment, PRs assume a role of the highest trust and confidence, legally characterised as a fiduciary. This means their powers are not absolute but must be exercised with honesty, integrity, and a primary regard for the interests of the estate and its beneficiaries. The foundational case of ***Speight v Gaunt*** [1883] 9 App Cas 1 established the standard of care expected of PRs, holding that they must act as an "ordinary prudent man of business" would, when managing his own affairs.

This does not demand infallibility but requires PRs to act in good faith, exercise reasonable skill and judgment, and avoid unnecessary risk. For instance, a PR like David, who is managing his late aunt's estate, would be expected to obtain professional valuations for her antique collection before sale, rather than accepting a casual offer from a neighbour. Failure to meet this standard, by being negligently careless or recklessly speculative with estate assets, can result in the PR being held personally liable for any resulting losses.

8.2.2 Core Fiduciary Duties: Impartiality, No Conflict, Due Care

The fiduciary nature of the role gives rise to several core, non-delegable duties.

1. **Duty of impartiality**: PRs must balance the interests of all beneficiaries fairly, without favouritism. For example, if an estate is to be divided equally between two siblings, Sarah and Michael, the PR cannot allow Sarah to take possession of a volatile asset early, hoping it will increase in value, while leaving Michael with cash that is being eroded by inflation. Both must be treated equally.
2. **Duty to avoid conflicts of interest**: A PR must not place themselves in a situation where their personal interests conflict with their duties to the estate. For instance, a

PR named Thomas would be in a clear breach of duty if he purchased a property from the estate for himself at a significant undervalue, or if his own company provided services to the estate without full disclosure and consent from all beneficiaries. The rule is strict; even if the transaction is objectively fair, the conflict itself is a breach.

3. **Duty of due care and skill**: The duty requires PRs to administer the estate diligently. This includes taking steps to secure assets (e.g., changing locks on a vacant property), insuring valuable items, and pursuing debts owed to the estate. A professional, such as a solicitor acting as a PR, is held to a higher standard reflective of their professed expertise.

8.3 Protection Against Liability

Given the onerous nature of their duties, the law provides PRs with specific mechanisms to protect themselves from personal financial liability when acting responsibly.

8.3.1 The *Section 27 Trustee Act 1925* Procedure for Unknown Creditors/Beneficiaries

A significant risk for PRs is the possibility of an unknown creditor or beneficiary emerging after the estate has been distributed. *Section 27* of the *Trustee Act 1925* provides a vital safe harbour. This procedure allows PRs to advertise for claimants by placing a notice in the London Gazette and a newspaper local to where the deceased lived or conducted business. The notice invites any person with a claim against the estate to come forward within a specified period, which must be at least two months. If a claimant does not come forward within this time, the PR can distribute the estate without liability for that claim, even if it later materialises.

For example, if Emma, as PR, correctly follows the *s.27* procedure and distributes the estate, she will not be personally liable if a forgotten loan creditor subsequently appears. The creditor's remedy in such a case would be against the beneficiaries who received the assets, not against Emma.

8.3.2 Benjamin Orders for Missing Beneficiaries

A related problem arises when a beneficiary under a will or intestacy cannot be located. The PRs cannot safely distribute the missing person's share for fear they will later reappear and sue. The solution is to apply to the court for a Benjamin Order, named after the case ***Re Benjamin*** [1902] 1 Ch 723. This order allows the court to authorise the PRs to distribute the estate on the assumption that the missing person has died, or in intestacy, that they died without issue.

For instance, if a testator's will leaves a share to his nephew, Liam, but Liam moved abroad years ago and all trace of him has been lost, the PRs can seek a Benjamin Order. If granted, they can distribute Liam's share to the alternate beneficiaries named in the will (or those next in the intestacy order). Should Liam ever reappear, his claim would be against the people who received his share, not the PRs who acted under the court's protection.

8.3.3 The Six-Month Moratorium: *Inheritance (Provision for Family and Dependants) Act 1975* Claims

Perhaps the most critical temporal protection for PRs relates to claims for financial provision. Under the *Inheritance (Provision for Family and Dependants) Act 1975*, eligible persons (such as spouses, children, or dependants) who feel the will or intestacy rules have not made reasonable financial provision for them have the right to apply to the court. The crucial point for PRs is that the time limit for bringing such a claim is six months from the date of the Grant of Representation.

As a result, PRs are strongly advised to observe a six-month moratorium on any significant distribution of the estate's assets. Distributing the entire estate to the named beneficiaries within the first month, for example, would be highly risky. If a successful *1975 Act* claim was then brought by the deceased's adult daughter, Chloe, the PRs could be held personally liable for the sum awarded to her if the beneficiaries who received the assets refused or were unable to repay it. Therefore, prudent practice is to wait until this six-month period has elapsed, or to obtain insurance or a formal indemnity from the beneficiaries if an early distribution is necessary.

8.4 Securing the Assets

The administration of an estate is a process of transformation, turning the abstract legal ownership of a deceased individual into a concrete fund of value for the benefit of creditors and beneficiaries. The most critical and initial phase of this process is the collection of the assets. For the personal representative (PR), this is not a passive role of waiting for assets to appear; it is an active, diligent, and often complex duty to locate, secure, and assert control over the entire property of the deceased.

This section delves into the multifaceted nature of this task, moving beyond a simple checklist to explore the legal and practical challenges a PR must navigate. The consequences of negligence in this area are severe, as the PR can be held personally liable for any loss to the estate resulting from a failure to collect or secure an asset. Therefore, a thorough understanding of the rules governing the collection of assets, from straightforward bank accounts to complex equitable interests, is indispensable.

8.4.1 Tracing, Identifying, and Securing Assets

The PR's role begins with the function of a forensic archivist and a custodian. Before any distribution can be contemplated, the PR must first construct a complete and accurate inventory of the deceased's estate. This process is foundational, as it is impossible to administer what one does not know exists.

The Investigative Process: From Will to Reality

The starting point is always the will, if one exists. However, the will is merely a map of intentions; it does not, in itself, reveal the full topography of the estate. The PR must therefore embark on a comprehensive investigation. This involves scouring the deceased's personal records: bank statements from all institutions, share certificates, digital investment accounts, title deeds to property, insurance policies, pension documentation, and even correspondence that might hint at business interests or debts owed. In the modern era, this investigation must extend into the digital realm.

The PR must secure access to the deceased's email accounts, which may contain electronic statements, and their computer files, which might hold records of cryptocurrency wallets or

other digital assets. For example, upon the death of David, his executor, Sarah, might find a well-drafted will in his desk drawer. However, by reviewing his emails, Sarah discovers monthly statements from an online-only brokerage firm David used for casual trading, an asset he never physically documented. Without this digital investigation, this valuable portfolio would have been overlooked.

The Duty to Secure and Preserve

Once an asset is identified, the PR has an immediate, non-delegable duty to secure it. This duty is one of care and prudence. For tangible assets, this means taking physical control. If the deceased lived alone in a property, the PR should promptly change the locks to prevent unauthorized access and secure any valuable items within, such as art, jewellery, or collections. For high value items, placing them in a bank's safe deposit box is the prudent course of action. For financial assets, the duty involves notifying the relevant institutions, banks, building societies, investment firms, of the death. This action effectively freezes the accounts, preventing any further transactions until the PR obtains a Grant of Representation and formalizes control. The crucial point is that the PR must take positive steps. They cannot assume assets are safe. If David owned a valuable vintage car parked in a public garage, Sarah would be negligent if she did not move it to a secure, private location. If the car were subsequently stolen or vandalized, Sarah could be held personally liable for the loss to the estate.

The Challenge of "Unknown" Assets

A particular difficulty arises with assets that are not easily discoverable. These could include uncashed cheques, royalties from intellectual property that are paid annually, or an interest in a private company that lacks formal share certificates. The PR is expected to make all reasonable enquiries. This may involve contacting the deceased's former business partners, publishers, or professional advisors. While the PR is not expected to be omniscient, the standard is that of the "reasonable and prudent executor."

A failure to follow obvious leads, for instance, ignoring a file labelled "Patent Royalties" in the deceased's study, would constitute a breach of this duty. The process of tracing, identifying, and securing is therefore the essential first step that validates all subsequent administration,

creating a protected and known fund from which the debts and legacies of the estate can be paid.

8.4.2 Obtaining Professional Valuations

With the assets identified and secured, the next critical step is to determine their precise value as at the date of death. This valuation exercise is far from an academic one; it has direct and serious consequences for the tax liability of the estate, the preparation of the estate accounts, and the ultimate fairness of distribution among the beneficiaries.

The Purposes of Valuation

The primary driver for accurate valuation is the calculation of Inheritance Tax (IHT). HM Revenue & Customs (HMRC) requires a full and frank disclosure of the estate's value on form IHT400. An under-valuation, whether negligent or fraudulent, can lead to significant penalties, interest charges, and personal liability for the PR. Conversely, an over-valuation results in an overpayment of tax, which is a loss to the beneficiaries.

Furthermore, for the purposes of estate accounts, every asset must be assigned a value to provide a clear financial picture of the administration. Finally, if the estate is to be distributed in cash or if beneficiaries are to receive assets of different types, a precise valuation is essential to ensure the division is equitable and in accordance with the will or the rules of intestacy.

When is a Professional Valuation Required?

The PR must distinguish between assets with a readily ascertainable value and those that require expert input. Cash in a bank account, or publicly traded shares (valued at the closing price on the date of death), can be valued without specialist help. However, the vast majority of significant assets fall into the category requiring a professional valuation. The rule of thumb is that any asset whose value is uncertain, specialist, or constitutes a significant proportion of the estate should be professionally appraised.

For instance, the PR for Eleanor's estate must obtain a formal market valuation from a chartered surveyor for her residential property. Similarly, her collection of antique jewellery should be valued by a certified gemologist or a reputable auction house specialist. Her holding

in a private limited company would require a valuation from a qualified accountant or business valuer, as there is no public market for the shares.

The Prudence of Professional Instruction

Instructing a professional valuer serves two key purposes beyond mere accuracy. First, it provides the PR with a shield against potential allegations of negligence or favouritism. If a beneficiary later complains that a property was undervalued, the PR can point to the independent, qualified valuation as evidence of having discharged their duty of care. Second, for certain assets, HMRC often expects to see a professional valuation.

For land and buildings, for example, the IHT400 form specifically asks whether a professional valuation has been obtained, and not having one can trigger an enquiry. The cost of the valuation is a legitimate expense of the estate administration. The PR's role is not to save money by cutting corners on valuations, but to ensure the estate is valued correctly, thereby protecting themselves, the estate, and the beneficiaries from future financial and legal complications.

8.4.3 Accessing Joint Assets and Resulting Trusts

One of the most frequent and problematic areas in collecting assets involves property held in joint names. The fundamental question the PR must resolve is whether the asset passes automatically to the surviving joint owner by the right of survivorship (jus accrescendi), or whether it forms part of the deceased's shareable estate.

The Legal and Equitable Distinction: Joint Tenancy vs. Tenancy in Common

The core of the issue lies in the distinction between a joint tenancy and a tenancy in common. Under a joint tenancy, the co-owners are treated as a single, unified owner in law. None holds a distinct share; upon the death of one, the entire property automatically vests in the survivor(s). This is the "survivorship" principle. In contrast, a tenancy in common recognises that each co-owner holds a distinct, albeit undivided, share in the property; for example, a 50% share or a 70%/30% split. Upon death, that distinct share does not pass to the other tenant(s) in common but forms part of the deceased's estate and passes under their will or intestacy.

It is noteworthy that the legal title to land can only be held as a joint tenancy (by virtue of *s.1(6)* of the *Law of Property Act 1925*). However, the beneficial interest (the right to enjoy the property's value) can be held either as a joint tenancy or a tenancy in common. The PR's task is to ascertain the nature of the beneficial ownership.

Presumptions and the Role of Intention

The courts have developed different presumptions depending on the context. For a domestic property purchased by a married couple or civil partners, the presumption is that they hold the beneficial interest as joint tenants, reflecting their likely intention of mutual benefit. However, for commercial purchases or those between unrelated parties, the presumption is a tenancy in common. The most instructive modern authority is the Court of Appeal decision in ***Laskar v Laskar*** [2008] EWCA Civ 347.

In ***Laskar***, a mother and daughter purchased a property as an investment, with the mother providing the majority of the deposit from her own resources and the daughter taking out a mortgage for the balance. They were registered at the Land Registry as joint legal owners. When the mother died, the dispute arose: did the daughter become the sole beneficial owner by survivorship, or was the mother's beneficial share held on trust for her estate? The Court of Appeal held that the context was "commercial, not family," and the primary intention was investment. Consequently, the presumption of a resulting trust applied. This meant the beneficial interests were held as a tenancy in common in shares proportionate to their financial contributions to the purchase price. The mother's share therefore formed part of her estate and did not pass to the daughter.

Practical Implications for the Personal Representative

The lesson from ***Laskar*** for a PR is profound. They cannot simply accept the form of the legal title at face value. When dealing with a jointly-owned asset, particularly between family members in a non-nuclear context or between business partners, the PR must conduct a thorough investigation. This involves:

- Scrutinising the transfer deed or trust deed for any express declaration of the beneficial interests.

- Investigating the source of the purchase funds. Who provided the deposit? Who serviced the mortgage?
- Reviewing correspondence and conduct that reveals the parties' true intention.

For example, if Frank dies, having jointly owned a buy-to-let property with his friend, Graham, the PR must not assume it passes to Graham. If the conveyance shows they contributed 70/30 to the purchase price and split the rental income accordingly, this is powerful evidence of a tenancy in common. The PR has a duty to collect Frank's 70% beneficial share for the estate. To automatically cede the entire property to Graham would be a gross dereliction of duty, unfairly depriving Frank's other beneficiaries of their inheritance.

8.4.4 Collecting Debts Owed to the Estate

The assets of the estate are not limited to positive property like houses and bank accounts; they also include choses in action, the right to bring a legal action to recover a debt. The PR "steps into the shoes" of the deceased and has a duty to take reasonable steps to collect all sums legally due to the estate.

The Nature of the Duty

This duty is to act in the best interests of the estate as a whole, for the benefit of all who have a claim on it, from creditors to residuary beneficiaries. The PR must be an active collector, not a passive observer. This typically begins with a formal written demand for payment to the debtor. If the debt is not repaid, the PR must consider whether it is commercially prudent to initiate legal proceedings. The cost of such action must be weighed against the likelihood of recovery and the size of the debt. Writing off a debt is an option, but only if the PR reasonably believes that recovery is impossible or that the cost of recovery would exceed the debt itself.

The Principle of Asset Independence

A classic and enduring problem arises when the debtor is also a beneficiary under the will or intestacy. There is a natural human tendency to believe that the debt can be "forgiven" or simply offset against the debtor's legacy. The law, however, takes a strict and formalistic approach to prevent unfairness, as definitively established in ***Re Stevens*** [1898] 1 Ch 162.

In ***Re Stevens***, the testator had made loans to his son during his lifetime. The son was also a beneficiary under the will. Upon the father's death, the son argued that the debt should be treated as satisfied by his legacy, or that he should not have to repay it. The court firmly rejected this. It held that the debt was an asset of the estate, owed to the estate as a separate legal entity. The son's legacy was a separate liability of the estate, owed to him. The two could not be conflated. The executor was therefore under a duty to collect the debt in full from the son. The son was required to repay the loan from his own resources, and only then would he receive his full legacy from the estate. To do otherwise would privilege the son-debtor over the other beneficiaries, who would effectively see their shares diminished by the unpaid debt.

Modern Application and the PR's Responsibility

The principle in ***Re Stevens*** remains good law. For example, if Grace's estate is owed £10,000 by her brother, Henry, who is also due a legacy of £15,000 under her will, the PR's duty is clear. The PR must demand that Henry repays the £10,000 debt. Once this sum is collected into the general estate, the estate then pays Henry his £15,000 legacy. The net effect is that Henry receives £5,000. If the PR were to simply offset the debt and pay Henry only £5,000, this would be a technical breach of duty. It would mean the other beneficiaries (e.g., the residuary beneficiaries) have effectively contributed to paying Henry's debt, as the £10,000 asset was never collected into the pot from which they are paid. The PR must be impartial and ensure that all assets are collected before any liabilities are paid, maintaining the integrity of the estate as a separate fund.

8.5 Conclusion

The task of collecting the assets is the bedrock upon which the entire edifice of estate administration is constructed. It is a phase that demands from the personal representative a unique blend of skills: the inquisitiveness of a detective, the prudence of a banker, the analytical mind of a lawyer, and the impartiality of a trustee. This chapter has demonstrated that the process is far more nuanced than simply making a list of possessions. It involves a proactive duty to trace and secure assets, a prudent obligation to obtain independent valuations, a sophisticated legal understanding to unravel the complexities of joint ownership, and a firm, impartial hand to collect debts, even from those within the family circle.

A failure at this initial stage; whether by missing a valuable asset, failing to secure it from loss, undervaluing it for tax purposes, mischaracterising a joint tenancy, or neglecting to collect a due debt, sends ripples of dysfunction through every subsequent stage of the administration. It can lead to personal liability for the PR, disputes among beneficiaries, and penalties from HMRC. Conversely, a meticulous, diligent, and legally-informed approach to collecting the assets creates a secure, accurately valued, and comprehensive fund. This provides the stable foundation from which the PR can confidently proceed to the next critical tasks: paying the estate's debts and taxes, and ultimately, distributing the inheritance to the rightful beneficiaries, in full accordance with the law.

9

MANAGING THE ESTATE: FINANCIAL SETTLEMENT & DISTRIBUTION MECHANICS

Once the initial framework of the administration period is established and assets have been identified and secured, Personal Representatives (PRs) must actively manage and deploy the estate's resources. This chapter examines the core administrative powers that enable PRs to convert assets, settle obligations, and ultimately prepare the estate for distribution. These powers, derived from statute and common law, are not discretionary rights for the PRs' benefit but are tools to be used diligently and impartially to fulfil their fiduciary mission.

9.1 The Administrative Powers of Personal Representatives

The role of a PR is not merely custodial; it is actively managerial. To effectively administer the estate, PRs are endowed with a suite of powers that allow them to deal with estate property in a manner akin to a beneficial owner, but always tempered by their overarching fiduciary duties. Understanding the scope and limits of these powers is essential to both effective and safe estate administration.

9.1.1 Power to Sell, Lease, or Mortgage Property

A fundamental power granted to PRs is the authority to deal with the estate's real and personal property. *Section 33* of the *Administration of Estates Act 1925* confers upon PRs the power to sell, lease, or even mortgage any part of the estate as if they were the absolute beneficial owner. This power is indispensable for raising funds to pay debts, taxes, and administration

expenses, or to facilitate an equitable distribution among beneficiaries where an asset cannot be divided in kind.

For example, consider an estate comprising a family home, a portfolio of shares, and a bank account with insufficient cash to pay a large Inheritance Tax bill. The PR, Mr. Davies, can exercise his power under *s.33* to sell the shares or, if necessary, the house to generate the required liquidity. He is not required to obtain the beneficiaries' consent, though he must act in their best interests.

The case of ***Re King*** [1963] Ch 459 reinforces this principle. In this case, executors sold a farm that was part of the estate despite the objections of a beneficiary who wished to retain it. The court upheld the sale, confirming that the power of sale is exercisable by PRs without beneficiary approval, provided it is exercised in good faith and for a proper purpose of the administration, such as paying debts or effecting a fair division. However, PRs must act prudently in such sales, obtaining proper valuations and ensuring the terms are the best reasonably obtainable to avoid allegations of waste or negligence.

9.1.2 Power to Invest Estate Assets

During the administration period, which can sometimes be protracted, PRs may hold significant cash balances or may need to manage assets for the longer term, particularly if a trust arises. The *Trustee Act 2000* provides the modern statutory framework for investment. *Section 3* of the Act grants PRs a wide, general power to make any kind of investment that an absolute owner could make, moving beyond the restrictive lists of the past. This could include stocks, bonds, unit trusts, or even real estate.

However, this power is coupled with a stringent statutory duty of care set out in *Section 1* of the *Trustee Act 2000*. This duty requires PRs to exercise such care and skill as is reasonable in the circumstances, with a higher standard expected of PRs who act in a professional capacity.

The landmark case of ***Nestlé v National Westminster Bank*** [1994] 1 All ER 118 illustrates the long-standing principles underpinning this duty. The bank, as trustee, was found to have failed in its duty by adhering to an overly cautious and narrow investment

strategy over several decades, which resulted in the fund underperforming significantly. The court emphasised that trustees (and by extension, PRs) must conduct periodic reviews of investments and ensure a balanced portfolio, considering the need for diversification and the suitability of investments to the trust.

For a PR like Mrs. Daniel, who is managing a large estate for minor beneficiaries, this means she cannot simply leave a large cash sum in a non-interest-bearing account. She must seek appropriate professional advice and invest the funds prudently to preserve and, where reasonable, enhance the estate's value for those entitled.

9.1.3 Power to Continue the Deceased's Business (Risks and Re Whitehouse)

Where the deceased was a sole trader or a partner in a business, PRs face the difficult decision of what to do with that business interest. They possess a power to continue the deceased's business, but this is a high-risk area and is typically limited to a short period to allow for an orderly sale or winding down. The primary purpose is to preserve the business's value as an estate asset, not to embark on a new entrepreneurial venture.

The significant risk, as demonstrated in ***Re Whitehouse*** [1951] Ch 720, is that PRs can be held personally liable for losses incurred. In this case, an executor continued to run the deceased's building business for several years, during which it accrued substantial debts. The court held the executor personally liable for these trading losses.

The power to trade does not extend to binding the estate indefinitely for new liabilities; creditors of the continued business can look to the PR personally for payment. Therefore, if a PR, Mr. Khan, decides to continue his late father's retail shop to fulfil existing orders and find a buyer for the going concern, he must do so with extreme caution. He should use estate assets clearly identified for this purpose, keep meticulous accounts, and seek to minimise new credit obligations. Ideally, the PR should seek express authority from the will or an indemnity from the adult beneficiaries before undertaking anything more than a brief wind-down period.

9.1.4 Power to Compromise Claims and Employ Agents

Estate administration often involves navigating disputes, whether defending a claim against the estate or pursuing a debt owed to it. PRs have the power to compromise, settle, or abandon

any claim relating to the estate. This allows them to avoid the expense and uncertainty of litigation. For instance, if a creditor claims the estate owes £20,000, but the PR, Ms. Green, has evidence suggesting the true debt is only £12,000, she has the authority to negotiate a settlement for £15,000 if she reasonably believes it is in the best interests of the estate to avoid a costly court case.

To assist them in their complex duties, *s.11* of the *Trustee Act 2000* gives PRs the power to appoint agents, such as solicitors, accountants, or property valuers, to perform any of their functions. This is crucial for tasks requiring specialist knowledge. However, it is vital to understand that this is a power of delegation, not abdication.

The PRs remain ultimately responsible for the overall administration and must supervise the agents they appoint. They are obliged to ensure the agent is competent and their fees are reasonable. For example, if Mr. Davies appoints a solicitor to handle the conveyancing of a property sale, he must still review the report and the final sale agreement to ensure the transaction is properly concluded.

9.1.5 Power to Insure Estate Assets

The duty to preserve estate assets logically extends to a power, and indeed a duty, to protect them from foreseeable loss. PRs have a statutory power under the *Trustee Act 1925* to insure any estate property against risks of loss or damage. This is a critical risk-management tool. For example, if a house forms part of the estate and is left vacant, the PR has a duty to ensure it is adequately insured against fire, flood, or vandalism. Failure to do so could constitute a breach of duty. If the uninsured property were then destroyed by a fire, the PR could be held personally liable to the beneficiaries for the loss in value of the estate. The cost of the insurance premiums is a legitimate administration expense payable from the estate. This power allows a PR, like Ms. Green, to act as a prudent owner would, safeguarding significant assets for the ultimate benefit of the beneficiaries.

9.1.6 Power to Maintain and Advance Funds to Minor Beneficiaries

Where a beneficiary is a minor, their inheritance will typically be held on trust until they reach the age of 18 (or an older age specified in the will). During this period, PRs have powers to use

the estate's income and sometimes its capital for the minor's benefit. The power of maintenance, found in the *Trustee Act 1925*, allows PRs to use income from the child's trust fund for their "education, maintenance, or benefit." For instance, the PRs could use dividend income from shares held for a young beneficiary, Sophie, to pay for her school fees, music lessons, or living costs if she is not being supported by her parents.

Furthermore, the power of advancement allows PRs to pay up to one-half of a beneficiary's presumptive share out of the capital of the trust fund for their "advancement or benefit." This is a broader power and can be used for purposes such as funding a university education, providing a deposit for a first home, or helping to start a business.

For example, if a 20-year-old beneficiary, Thomas, is set to inherit £100,000 at age 25, the PRs could advance him up to £50,000 early to help him purchase a property. These powers are discretionary and must be exercised responsibly, considering the interests of any other beneficiaries and the overall intentions of the testator.

9.1.7 Power to Appropriate Assets to Beneficiaries

This power, often underappreciated but highly practical, allows PRs to transfer specific estate assets to a beneficiary in satisfaction of their legacy or share of the residue, rather than selling the asset and giving them the cash. The power is statutory, provided for in the Administration of Estates Act 1925. For this to be valid, the asset must be valued at the date of appropriation, and the value must correspond to the beneficiary's entitlement.

This power is extremely useful in several scenarios. For instance, if a residuary beneficiary, David, is entitled to £50,000 and has always admired a painting in the estate valued at £10,000, the PRs could appropriate the painting to him, reducing his cash entitlement to £40,000.

It is particularly crucial in intestacy cases, where the surviving spouse or civil partner has the right to require the PRs to appropriate the family home to them in satisfaction of their statutory legacy. This allows the surviving spouse to remain in the home without the estate having to force a sale. The appropriation must be made at a proper valuation, and all beneficiaries with an interest in the asset must consent if the value is contentious.

9.2 Settling Debts and Liabilities: The Order of Payment

The most critical financial responsibility of Personal Representatives, after safeguarding assets, is the orderly and lawful settlement of all outstanding claims against the estate. This process is not discretionary; it is governed by a strict statutory hierarchy that PRs must follow meticulously. The central principle is that creditors' claims take absolute priority over beneficiaries' inheritances. A failure to adhere to this legally prescribed order constitutes a serious breach of fiduciary duty and exposes PRs to significant personal liability.

9.2.1 The Paramount Duty to Settle Claims

Before a single pound can be distributed to a happy beneficiary, every valid debt owed by the deceased must be identified and paid. This is the paramount duty of the PR. They "step into the shoes" of the deceased and are legally obliged to use the estate's assets to settle all just liabilities. This includes not only obvious debts like credit card bills and utility accounts but also contingent liabilities, funeral expenses, and all tax obligations.

The PR must conduct due diligence by reviewing the deceased's papers, corresponding with known creditors, and advertising for unknown claimants under *s.27* of the *Trustee Act 1925*, as discussed in Chapter 8 above. The distribution of the estate is the final act of administration, not an intermediate step. For example, if an estate is worth £300,000 and a beneficiary, Liam, is impatient for his £50,000 legacy, the PR, Ms. Carter, must resist the pressure until she is certain all debts, including a potential, yet undiscovered, loan of £20,000 have been settled. Paying Liam first would be a fundamental error, placing his interests above those of the legitimate creditors.

9.2.2 Personal Liability for Premature Distribution

The consequences of distributing an estate before settling all liabilities are severe and were starkly illustrated in the case of ***Glyne T Harris as Personal Representative of Helena Norma McDonald v HMRC*** [2018] WTLR 119. In this case, Mr. Harris, the PR, transferred the bulk of the estate's assets to the sole beneficiary on the understanding that the beneficiary would then pay the Inheritance Tax (IHT) due to HMRC. The beneficiary failed to do so. The court held that the liability to pay IHT rested squarely with the PR, and by divesting the estate

of its assets before the tax was paid, Mr. Harris had committed a breach of duty. He was held personally liable for the outstanding tax bill.

This case serves as a powerful warning: a PR's duty to pay debts is non-delegable. They cannot shift this responsibility to a beneficiary, even by agreement. The assets must be used to pay the debts directly from the estate. If a PR, like Mr. Sharma, distributes an estate believing all debts are settled, but a forgotten creditor then emerges, Mr. Sharma would be personally liable to that creditor from his own funds if the beneficiaries could not, or would not, return the money.

9.2.3 Order for Solvent Estates

For a solvent estate (where assets exceed liabilities), the order of payment is set out in *s.34(3)* of the *Administration of Estates Act 1925*. This order is designed to ensure fairness and consistency. PRs must pay debts from the available assets in the following sequence:

1. **Funeral, Testamentary and Administration Expenses**

   This first category has the highest priority. It includes reasonable funeral costs (e.g., coffin, hearse, burial/cremation fees) and the expenses of administering the estate itself, such as probate court fees, solicitor's costs, and valuation fees. The case of *Re Pilkington [1962]* confirmed that a reasonable headstone can be included as a funeral expense. For example, the cost of a simple funeral for Mr. Evans and the fee for valuing his house for probate would be paid before any other debts.

2. **Debts and Liabilities**

   The second category encompasses all other debts owed by the deceased at the date of death. This includes secured debts (like a mortgage, which is paid from the sale proceeds of the property it is secured against), and unsecured debts (like bank loans, credit card balances, and invoices from tradespeople). Within this category, secured debts are effectively paid first from their specific security, but all unsecured debts rank equally. If there are insufficient funds to pay all unsecured debts in full, they are paid proportionately.

3. Legacies

Only after all expenses and debts in categories 1 and 2 have been paid in full can the PRs proceed to pay the legacies (gifts) outlined in the will. These are paid in a specific order: specific and demonstrative legacies first, followed by general and pecuniary legacies.

4. The Residuary Estate

Whatever remains after all the above payments constitutes the "residue," which is distributed to the residuary beneficiaries named in the will.

9.2.4 Order for Insolvent Estates

When an estate is insolvent (its liabilities exceed its assets), a different, more stringent order of payment applies, as prescribed by the *Insolvency Act 1986*. This regime prioritises certain classes of creditors to ensure a fair outcome dictated by public policy. The order is as follows:

1. Secured Creditors (to the value of their security).
2. Funeral, Testamentary and Administration Expenses.
3. Preferential debts; which includes certain taxes like VAT and PAYE and arrears of employee wages.
4. Ordinary unsecured creditors; the largest group that encompasses credit card companies, personal loan providers, and trade suppliers.
5. Interest on debts incurred after the insolvency.
6. The beneficiaries, who receive nothing due to insolvency.

The case of ***Re Smith (Deceased)*** [1990] reaffirmed the application of these insolvency rules to estates. The court upheld the PRs' decision to pay creditors in the statutory order, even though this meant that specific legacies in the will failed completely. The judgment reinforced that a PR's fiduciary duty in an insolvency is primarily to the creditors, not the beneficiaries. For a PR managing an insolvent estate, their role shifts from benefactor to liquidator, and their primary goal is to ensure a fair and lawful distribution among the creditors according to this strict hierarchy.

9.2.5 The Principle of Abatement

Abatement is the legal process that governs which gifts in a will must be reduced or fail entirely when the estate's assets are insufficient to pay all debts and legacies in full after the solvent order of payment has been applied. The principle ensures a fair and predictable method of scaling back beneficiaries' expectations. The rules of abatement follow a specific order, which is the reverse of the order in which legacies are paid:

1. **The residuary estate**: These beneficiaries bear the first and greatest burden. The residuary beneficiary is the last to be paid and the first to suffer any shortfall.
2. **General and pecuniary legacies**: If the residue is exhausted and debts remain, general legacies (e.g., "£5,000 to my friend David") and pecuniary legacies abate proportionately.
3. **Demonstrative legacies**: These are next to abate, but only after their designated fund is used up.
4. **Specific legacies**: These are the most protected and abate last of all. A gift of "my grandmother's wedding ring to my daughter, Sarah" will only be sold if all other assets are insufficient to cover the debts.

For example, imagine an estate with £40,000 in assets after debts, but the will contains a pecuniary legacy of £20,000 to Ben and a specific legacy of a vintage car worth £30,000 to Chloe. The residue is nil. The debt of £40,000 is paid first. To cover this, the £20,000 for Ben's legacy and £20,000 of the value of Chloe's car would be used. Ben receives nothing, and Chloe receives the car but must contribute £20,000 of its value to the estate (or the car is sold, and she receives the balance). This demonstrates how abatement operates to meet the estate's paramount duty to its creditors.

9.3 Paying the Legacies

With all debts, taxes, and expenses fully discharged, the administration enters its final, distributive phase: paying the legacies. This is not a simple matter of writing cheques; it requires a precise understanding of the different types of gifts and the legal rules that govern their satisfaction.

9.3.1 Specific Legacies and Ademption

A specific legacy is a gift of a particular, identifiable asset that the testator owned at the time of making the will, such as "my Steinway piano to my nephew, George." The key legal principle governing specific legacies is ademption. If the specific item described in the will does not form part of the estate at the date of the testator's death, the gift is said to be "adeemed" (extinguished), and the beneficiary receives nothing. Ademption typically occurs if the item has been sold, given away, lost, or destroyed.

The classic authority is ***Re Gibson*** [1949] Ch 123. The testator made a will leaving "my motor car" to his friend. Before his death, he sold that specific car. The court held that the gift had adeemed; the friend was not entitled to the proceeds of the sale nor to a different car the testator later acquired. The gift simply failed. This can lead to harsh results. For instance, if Mrs. Peterson leaves "my house at 1 Maple Avenue to my sister," but sells that house and moves to a new one before she dies, the sister inherits nothing. The gift is tied to the specific asset, not its value. Ademption does not generally apply if the asset merely changes form but remains substantially the same, such as shares in a company that are later subdivided or renamed after a takeover.

9.3.2 Pecuniary and Demonstrative Legacies

These are the most common types of monetary gifts in a will.

A pecuniary legacy is a gift of a fixed sum of money, e.g., "I give £10,000 to my cousin, Anna." It is payable from the general assets of the estate. If the residuary estate is insufficient, these legacies will abate proportionately, as discussed in section 9.2.5.

A demonstrative legacy is a hybrid gift. It is a gift of money that specifies a particular fund or asset from which it is to be paid first, e.g., "I give the sum of £5,000 to my friend, Daniel, to be paid from my savings account with Barclays Bank." Its key advantage is that if the designated fund is insufficient or no longer exists, the gift is not adeemed. Instead, it becomes a general legacy, and the shortfall is paid from the residuary estate. For example, if the Barclays account only has £2,000 when Daniel's legacy falls due, he will receive that £2,000 from the account and the remaining £3,000 from the general residue. This structure provides a safety net for the beneficiary that a pure specific legacy does not.

9.3.3 The Executor’s Year and Interest on Late Payments

PRs are granted a reasonable period, known as "the executor's year," to perform their duties before legacies become legally payable. This period is one year from the date of death. The law recognises that collecting assets, valuing them, and settling liabilities is a complex process that cannot be completed instantly.

Pecuniary legacies are due for payment at the end of this executor's year. If a PR fails to pay a pecuniary legacy after this one-year period without a good reason, the legacy begins to accrue interest. The current statutory rate for this purpose is 6% per annum, as set by the *Judgments Act 1838*, unless the will itself specifies a different rate.

The case of ***Re Culbertson*** 1 WLR is instructive on what constitutes an unreasonable delay. In this case, the executors delayed the payment of a legacy for several years beyond the executor's year due to ongoing disputes with the Inland Revenue. The court held that this delay was unjustified and awarded the beneficiary interest on the legacy for the period of the delay.

The judgment emphasised that while complex tax affairs can cause delays, PRs must proceed with reasonable diligence and cannot use administrative complexities as an indefinite excuse for withholding payment from beneficiaries. Therefore, a PR like Ms. Jones should keep beneficiaries informed if a legacy will be delayed beyond the executor's year due to a genuine, unresolved issue, such as a disputed claim or a complex property sale, to demonstrate she is acting diligently and to mitigate the risk of an interest claim.

9.4 Conclusion

This chapter has navigated the financial engine room of estate administration. The journey from empowered manager to faithful distributor is paved with strict legal duties and a clear procedural hierarchy. The administrative powers granted to PRs to sell, invest, and compromise are formidable tools, but they are granted solely for the purpose of effectively marshalling the estate to meet its obligations.

The order of payment is not a suggestion but a mandatory roadmap that places the interests of creditors and the state unequivocally above those of the beneficiaries. The rules governing legacies, from the harsh doctrine of ademption to the protective nature of demonstrative gifts and the discipline of the executor's year, provide a detailed framework for ensuring the testator's wishes are carried out as fully and fairly as the estate's finances allow.

Mastering this financial settlement and distribution mechanics is what separates a competent PR from a negligent one. It is the rigorous application of these rules that protects the PR from personal liability and ensures that the final, distributive act of the administration is both legally sound and equitable.

10

MANAGING THE ESTATE: FINALISING THE ESTATE & FORMAL CONCLUSION

The administration of an estate is a journey that moves from the initial, protective steps of collecting assets to the final, distributive act of passing them to the beneficiaries. This concluding chapter addresses the critical final phase of the process. It is during this stage that the abstract duties of the personal representative (PR) are crystallised into formal accounts, tax liabilities are conclusively settled, and the remaining assets are transferred, culminating in the PR's discharge from their onerous responsibilities.

This phase demands meticulous attention to detail, a thorough understanding of final obligations, and transparent communication with beneficiaries. Failure to properly conclude the estate can leave the PR personally exposed to claims long after the main administrative tasks appear complete.

10.1 Preparing the Estate Accounts

The estate accounts are the definitive financial record of the PR's stewardship. They provide a transparent and accountable summary of all transactions undertaken during the administration period, from the receipt of assets to the payment of liabilities and distributions. They are not merely an internal document but a crucial piece of accountability that beneficiaries are entitled to see.

10.1.1 Purpose and Key Components

The preparation of estate accounts serves several vital purposes. Primarily, they protect the PR by providing a clear audit trail, demonstrating that they have acted in accordance with their duties and have not misapplied any estate funds. Secondly, they inform the beneficiaries, providing them with the evidence they need to approve the PR's actions and agree to the distribution of the residue. Finally, they are often a prerequisite for the PR to obtain a formal discharge from their office.

A professionally drafted set of estate accounts typically comprises three core components:

1. **A Capital Account**

   This details the assets and liabilities of the estate as at the date of death. It is, in effect, the opening balance sheet of the administration. It will list each asset (e.g., "Freehold Property, 1 High Street – £350,000"; "Shares in PLC Co. – £45,000") and each liability (e.g., "Credit Card Debt – £2,500"; "Mortgage – £125,000"). The net total is the estate's initial capital value.

2. **An Income Account**

   This records all income received by the estate during the administration period and any expenses paid out of income. This includes rental income from properties, dividends from shares, and bank interest. Expenses might include insurance premiums on estate properties or letting agent fees.

3. **A Distribution Account (also Charge and Discharge Account)**

   This is the most dynamic section, showing how the capital and income have been applied. It records all payments made from the estate, categorised into funeral expenses, testamentary expenses (e.g., probate fees, legal costs), creditor payments, inheritance tax, and distributions to beneficiaries, whether interim or final. It concludes by showing the transfer of the residuary estate to the ultimate beneficiaries.

For example, in the estate of David, the accounts would show the receipt of sale proceeds from his house, the payment of his funeral bill and a debt to a builder, the deduction of solicitor's

fees, and the final legacies paid to his children, Sarah and Michael. The accounts tell the complete financial story of David's estate from death to distribution.

10.1.2 Sharing Accounts with Beneficiaries

Once prepared, the PR has a duty to provide the estate accounts to the residuary beneficiaries for their approval. This is not a mere courtesy but a fundamental right of the beneficiaries, who are the ultimate owners of the fund. The process involves sending a copy of the draft accounts to each residuary beneficiary, inviting them to review the figures and raise any queries. This transparency is key to avoiding future disputes and obtaining formal assents to the distribution.

Best practice involves accompanying the accounts with a covering letter that explains their structure, highlights any unusual transactions, and formally requests the beneficiary's approval. Once the beneficiary is satisfied, they should be asked to sign a form of approval or discharge.

This written confirmation is powerful evidence that the beneficiary has accepted the accounts and agreed to the manner in which the administration has been conducted, thereby significantly limiting the PR's future liability to that beneficiary. If a beneficiary refuses to approve the accounts without good reason, the PR may have to seek formal directions from the court, but a transparent and well-documented process from the outset makes such an outcome less likely.

10.2 Finalising Tax Matters

A core responsibility in concluding an estate is ensuring that all tax affairs are settled with finality. This involves not only paying the calculated taxes but also engaging with HM Revenue & Customs (HMRC) to obtain formal confirmation that no further liability will arise, thus protecting the PR from future claims.

10.2.1 Reviewing IHT and Submitting Corrective Accounts

The initial Inheritance Tax (IHT) submission (on form IHT400) is based on the best estimates and professional valuations available at the time. However, during the administration, the

actual realisations of assets may differ from these initial values. A property might be sold for more or less than its probate valuation; shares may be sold at a different price. The PR has a continuing duty to report any significant discrepancies to HMRC.

This is done by submitting a corrective account (form IHT400c) if the overall value of the estate changes by more than a certain threshold or if there are changes to the distribution of the estate. Submitting a corrective account ensures the final IHT liability is accurate. For instance, if Eleanor's house was valued at £500,000 for probate but later sold for £525,000, the PR must account for the additional £25,000, which may result in a further IHT liability. Failing to do so constitutes non-disclosure and could lead to penalties.

10.2.2 Obtaining Formal IHT Clearance from HMRC

Perhaps the most critical step in finalising tax matters is obtaining a formal Inheritance Tax clearance certificate from HMRC under *s.239* of the *Inheritance Tax Act 1984*. This is not an automatic process; the PR must actively apply for it by submitting form IHT30 after all tax has been paid but before the estate is fully distributed.

The importance of this certificate cannot be overstated. It is a formal confirmation from HMRC that all IHT due on the estate has been paid. Once issued, it provides the PR with a complete discharge from any further IHT liability, even if HMRC later discovers an error or omission. Distributing the estate without obtaining this certificate is a significant risk, as it leaves the PR personally liable for any further IHT that may subsequently be demanded. It is the linchpin of the PR's protection in matters of IHT.

10.2.3 Settling CGT and Income Tax from the Administration Period

The estate is a separate taxable entity during the administration period, and the PR is responsible for settling its tax liabilities.

1. **Capital Gains Tax (CGT)**: The estate is subject to CGT on the disposal of assets that have increased in value since the date of death. This is distinct from IHT, which is levied on the value at death. The PR must use the value at the date of death as the base cost for CGT calculations. The annual exempt amount for an estate is typically separate from that of an individual. For example, if the PR for Frank's estate sells a vintage car

that was valued at £40,000 at death for £55,000, a capital gain of £15,000 has been realised. The PR must report this on the estate's self-assessment tax return and pay the CGT due from the estate's funds before distribution.

2. **Income Tax**: The estate is also liable for Income Tax on the income it receives (e.g., rent, dividends, interest) during the administration period. The PR must register the estate with HMRC as a separate taxpayer and submit a self-assessment tax return (form SA900) for each tax year until the administration is complete. The income is taxed at the relevant rates, and the tax paid is a debt of the estate.

Only after all these tax liabilities; IHT, CGT, and Income Tax, have been calculated, paid, and formally cleared, can the PR safely proceed to the final distribution of the residue.

10.3 Distribution of the Residuary Estate

The distribution of the residuary estate is the ultimate purpose of the administration, the point at which the beneficiaries finally receive their inheritance. This process is governed by legal formalities and a continuing duty of care owed by the PR.

10.3.1 Transfer to Adult Beneficiaries

For assets that have been retained in the estate (e.g., a specific legacy of a painting or a share of the residue), the legal transfer is effected by the PR executing an Assent. An assent is a formal document (often a deed) by which the PR assigns the legal title of the asset to the beneficiary. For land or property, this must be done in writing and should be registered at the Land Registry to transfer the legal title. For shares, the PR will use the stock transfer form and work with the company's registrars to have the beneficiary registered as the new owner. For cash, it is typically a simple bank transfer. The key is that the PR must have obtained or have proof of their authority (the Grant of Probate/Letters of Administration) to effect these transfers.

10.3.2 Interim Distributions

A full administration can take many months, or even years, to complete. It is often possible and desirable for the PR to make interim distributions on account to the residuary

beneficiaries. This involves paying a part of their expected entitlement before the final accounts are prepared and all liabilities are known with absolute certainty.

This is a power that must be exercised with great caution. The PR must ensure that:

- They retain sufficient funds to pay all known and anticipated debts, taxes, and expenses.
- They are not aware of any competing claims or potential creditors.
- The beneficiaries provided an indemnity, whereby they agree to repay the funds if a unforeseen liability arises that requires the money to be returned.

For instance, in a large and complex estate, the PR for Grace's estate might release £50,000 to each of her children once it is clear that the estate's assets far exceed its liabilities, while retaining a substantial buffer for the final IHT bill and costs.

10.3.3 Handling Distributions to Minors, Life Tenants, and Trusts

Special rules apply when beneficiaries are not simply adults receiving an absolute gift.

Minors: A minor (under 18) cannot give a valid receipt for a capital legacy. Therefore, the PR cannot simply pay the money to the child or their parents. The will may dictate that the gift is held in a trust until the child reaches a specified age. If not, the PR must hold the legacy on the statutory trusts under the Administration of Estates Act 1925. This typically involves investing the funds and may require the PR to apply to the court for directions, or to appoint trustees to manage the fund until the child comes of age.

Life tenants and trusts: If the will creates a life interest (e.g., "to my wife for life, remainder to my children"), the PR's role is to transfer the capital assets to the trustees of the will trust, who will then hold and manage them according to the trust terms. The PR must also ensure the residue is correctly apportioned between the capital and income accounts, as the life tenant is entitled to the income, while the remaindermen are entitled to the capital. This requires a careful division of assets and income generated during the administration period.

10.4 Closing the Estate: Discharging the Personal Representatives

The final act of administration is the discharge of the PR. This is the formal release of the PR from their duties and liabilities. It occurs once all assets have been collected, all debts and taxes have been paid, the estate accounts have been approved by the beneficiaries, and the entire net estate has been distributed.

The primary mechanism for discharge is the Formal Assent or Release signed by the beneficiaries. By approving the final estate accounts and receiving their inheritance, the beneficiaries are, in effect, accepting that the PR has administered the estate correctly. For full protection, the PR should obtain a formal, signed document from each residuary beneficiary, often called a Release or Discharge, which states that the beneficiary has received their full entitlement and discharges the PR from any further claims relating to the administration.

Once this is obtained, the PR's role is complete. They can finally close the estate's bank accounts and destroy redundant documents (after ensuring any legal requirements for record-keeping are met). This discharge provides the PR with a legal shield, demonstrating that they have fulfilled their duties and that the beneficiaries have consented to their actions.

10.5 Conclusion

The journey of estate administration, from the first steps of securing assets to the final act of obtaining a discharge, is a comprehensive and rigorous process governed by law and fiduciary duty. This final chapter has underscored that a successful conclusion is not achieved by haste, but by methodical, transparent, and prudent action. The preparation of clear estate accounts, the diligent finalisation of all tax liabilities with HMRC, the careful execution of distributions, and the formal discharge of the PR are not isolated tasks but interconnected steps that bring the cycle of administration to a secure and definitive close.

For the personal representative, adherence to this process is the surest path to fulfilling their solemn responsibility, minimising personal risk, and ensuring that the testator's wishes are honoured faithfully. For the beneficiaries, it is the guarantee that the estate has been administered with integrity and that their inheritance is received free from future financial

entanglements. Thus, the finalisation of the estate represents the culmination of the PR's stewardship, transforming the legal obligations of the office into the successful transfer of a legacy, and bringing the administrative process to its proper and final conclusion.

Master the Principles and Practice of Succession Law for the SQE1

Law Angels SQE Series: Wills and Administration of Estates provides a clear, comprehensive, and compassionate guide to the entire field of succession. Meticulously designed for the SQE1 curriculum, this textbook moves beyond theory to cultivate the meticulous drafting, procedural, and client-handling skills essential for effective practice.

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