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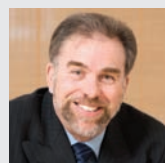
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### LexisPSL Wills & Probate

Our team of highly qualified lawyers have put together an unbeatable set of materials to guide you through wills and probate law and practice.

### Built by Lawyers for Lawyers.

Leading Professional Support Lawyers for Wills & Probate:



**Malcolm Skinner**, *Solicitor, Private Client*

Malcolm specialises in Private Client work with particular emphasis on wills and probate. He also has experience of the contentious side of wills and trusts.



**Lisa Carkeek**, *Solicitor, Private Client*

Lisa's experience covers all aspects of traditional private client law, including wills and probate at every level, the creation, administration and termination of trusts and mitigating tax exposure. Lisa has a particular interest in sophisticated international tax planning.

## What does LexisPSL Wills & Probate Include?

- 110+ Practice notes
- 23 Topic overviews

## What sources are quoted or referenced?

- Atkin's Court Forms
- Butterworths Wills Probate and Administration Service
- Encyclopaedia of Forms & Precedents
- Halsbury's Laws of England
- Tristram and Coote's Probate Practice
- Tolley's Administration of Estates
- Tolley's Administration of Trusts
- Williams on Wills

## Current Topics included in LexisPSL Wills & Probate:

### Wills Topics:

#### Will Drafting

##### Initial matters

The client and the practice  
Practical capacity issues\*  
Lifetime giving\*  
Finance Act 2006 effect\*  
Professional negligence

##### The client

Relevant information  
Planning the will  
Form of the will\*  
Completing and executing the will\*  
Subsequent considerations\*

##### Specific will considerations

Personal representatives  
Disabled beneficiaries  
Incapacitated testators  
Adoption, legitimation and illegitimacy  
Specific and general legacies and devises  
Will trusts  
The family home  
Business issues  
Agriculture issues  
Gifts to charities  
Codicils

#### Other considerations\*

Inheritance Tax  
Capital Gains Tax  
Income Tax  
*And more*

#### The Law of Wills

##### The will

Nature of a will  
Property that can be left by will\*  
Beneficiaries of a will\*  
*And more*

##### Formalities

Form of will  
Signature\*  
*And more*

##### Revocation, republication

and revival  
Revocation  
Marriage or civil partnership revocations\*  
Republication  
*And more*

#### Failure of gifts

Ademption  
Election and estoppel\*  
Disclaimer and acceptance\*  
*And more*

#### Will construction\*

Courts, evidence and general principles  
Property  
Persons  
*And more*

#### Intestacy\*

Total intestacy  
Partial intestacy

#### Charitable Gifts\*

Gifts pre Charities Act 2006  
Gifts post Charities Act 2006  
Creation  
*And more*

### Probate Topics:

#### Probate (non-contentious)

##### Immediate steps following death

Initial client meeting  
Registration of death  
Disposal of the body  
*And more*

##### Personal representatives

The definition of a personal representative  
Appointment of personal representatives  
Personal representatives authority prior to the grant  
*And more*

##### Entitlement to the estate

Requirements for a valid will  
Entitlement under a will  
Entitlement on an intestacy  
*And more*

##### Pre-application matters

Jurisdiction in probate matters  
Assets that do not require a grant  
The type of grant needed  
*And more*

##### Application for the grant (deaths in England and Wales)

Funding the inheritance tax payable on death  
Valuation for inheritance tax  
HMRC form IHT 205  
*And more*

##### Estate administration

Collecting and realising assets  
Payment of debts - solvent estate  
Payment of debts - insolvent estate  
*And more*

#### Distribution of the estate

Payment of legacies  
Ascertainment of residue  
Estate accounts  
*And more*

#### Problems during the administration\*

The deceased died with no known relatives  
Bankruptcy  
The deceased died abroad  
*And more*

#### Cross-border estates

Foreign assets and domiciles  
Resealing  
Recognition of UK grants  
*And more*

#### Contentious probate and trusts

##### Court jurisdiction

Probate Court functions  
Solemn Form grants  
Proceedings in the High Court and County  
*And more*

##### Validity of wills

Want of due execution  
Capacity  
Want of knowledge and approval  
*And more*

##### Probate actions

Caveats and citations  
Rectification  
Mutual wills and secret trusts  
Forfeiture claims

#### Administration conflicts

Applications in the course of administration  
Removal of PRs  
Personal representatives and the deceased's liabilities  
*And more*

#### Practice and procedure\*

Claim Form  
Testamentary Scripts  
Particulars  
Defence and Counterclaim

#### IPFDA 1975 actions

The spouse and civil partner applicant  
The cohabitant and children applicants  
The ground for the claim  
Variation, discharge, suspension and revival of orders  
Intention to defeat  
Procedural table

#### Trust disputes

Jurisdiction of the court  
Applications to the court by trustees  
Breach of Trust  
Asset tracing  
Exemptions and Reliefs  
Defences  
Sham trusts

\*Coming soon

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## Wills and probate precedents

### Will drafting

#### Initial matters

Declarations under the Inheritance (Provision for Family and Dependents) Act 1975

#### The client

Usual form

Forms for wills in expectation of marriage

Nil-rate band discretionary trust of a sum of money

Of testator's residence or his share in it (with cash to make up any shortfall)

Simple form: IPDI to spouse, remainder to children (with substitution of their children) not contingent on surviving the spouse

Giving overriding powers of appointment and resettlement (exercisable during 80 year period) to the trustees

Attestation clause for use when the testator can neither read the will nor sign it

About discretionary trust: spouse to be the primary beneficiary, then for issue

A complete will for spouses with a disabled child, other children and substantial assets

A will for young parents with a disabled child, where the parents may have further children

Commencement of will made in expectation of forming a civil partnership

Commencement of will made in expectation of marriage?conditional form

Commencement of will of testator with UK and foreign property confining the will to UK property

Commencement of mirror but not mutual wills

Commencement of will made on behalf of a mentally disordered person pursuant to an order of the Court of Protection W01.16

Form where the testator is blind

Reciprocal wills giving entire estate to spouse absolutely, with alternative gift to issue

Reciprocal wills containing nil-rate band legacy on discretionary trusts with gift of residue to spouse

Reciprocal wills of spouses both having adult children by previous marriages (but none by their own), the first to die making a nil-rate band gift to his or her own children and giving the survivor a life interest in residue with remainder to his or her own children, and the survivor leaving his or her estate to his or her own children

Reciprocal wills of couple living together who have children, leaving residue on discretionary trusts

Will giving business carried on as sole trader or in partnership to sons, and legacies to daughters, with residue to wife for life with remainder to children with substitution clause and hotchpot of specific gifts

Will of widower giving estate equally between his children, one son being given an option to purchase the farming assets

### Specific will considerations

Complete codicil?second codicil appointing a replacement executor

Minor amendments to wording of will

Attestation clause

Gift of residue to charity

Division of residue between charity and chargeable beneficiaries having regard to the decisions in *Re Benham's Will Trust* and *Re Radcliffe*

Pecuniary legacy to charity

Declarations as to receipts

Provision against lapse of gift to a named charity or charitable organisation

Appointment of executors and substitutional executors

Appointment of partner and individuals as executors

Appointment of partners with succession clause providing for incorporation or conversion into a limited liability partnership

Appointment of executors limited to business property as defined

Trust for spouse of the testator's share as tenant in common of residence with full life interest for the spouse and provision for substitute dwelling

Gift of house on trust - trustees to have a discretion to allow a named person to occupy

Absolute gift to spouse with substitutional gift to children on reaching a specified age in the event of the spouse predeceasing or failing to survive for a specified period

Trusts giving life interest to surviving spouse but with overriding powers of appointment and resettlement (exercisable during 80-year period) to trustees?provisions for substitution (including share of child already dead when will made) with accelerated vesting on marriage of grandchildren

Request for burial or cremation

To executors (and trustees): conditional gifts

To grandchildren (or other class): global sum to be shared

To husband and wife (or other couple): gift to both, with accruer

Index linked legacy

To such charities as the trustees select

To adult with substitution of children or grandchildren

To adult for life (qualifying as an IPDI) with power (and encouragement) for the trustees to raise capital

To a minor contingent on reaching 25 (18-25 trust) (substitutionary gift to children)?with power for the trustees to accumulate income for 21 years and/or make it belong to the beneficiary absolutely

Of specific items to a donee, with examples of substituted donees

Of such personal chattels as the donee may select

To spouse (or other donee) for life (qualifying as an IPDI)

Absolute gift of holdings in a particular company (with provision for changes)

Gift of unincorporated business owned solely by the testator



Residuary gift to spouse (or other adult), whom failing to trustees to hold on trust (defining 'the Trust Fund')

For children at [18] with substitutionary trusts for grandchildren at [18] or on marriage

Concise discretionary trust for children, allowing income and capital to be applied unequally until the youngest reaches [25] and, subject to that, for children equally at [25] with substitutionary trust for grandchildren

80 year discretionary trust

2 year discretionary trust

Excluding all apportionment

Against lapse

As to the exclusion of children who are illegitimate, legitimated, adopted or born through infertility techniques (and those related through them

To exercise extended powers of maintenance and advancement

To exercise rights attaching to (private) company holdings

To delegate and to employ agents and others

Letter by testator to trustees?dependent beneficiary?where trust fund is of the whole estate

Direction for anatomical examination and corneal grafting

Clause providing for the use of the testator's body for therapeutic purposes, but not for medical education or research

Perpetual gift for the upkeep of a churchyard with a request to maintain a particular grave

Gift for the maintenance and upkeep of an animal

Appointment of same persons as executors and trustees

Appointment of future partners in a solicitors' firm as executors and trustees

Appointment of literary executors

Appointment of separate executors for testator's business

Appointment of separate executors for UK property and foreign property

Appointment of guardian which takes effect if the other parent predeceases the appointor or if there is a residence order in favour of the testator at his or her death, with optional wording making it also take effect if the other parent does not make an effective appointment

Gift of personal chattels by incorporation of definition in the Administration of Estates Act 1925

Gift of articles of personal adornment to daughters as trustees shall determine

Gift of articles with request to distribute them in accordance with testator's wishes

Gift of proceeds of premium savings bonds and prizes received or awarded since the testator's death

Indemnity to trustees carrying on business

Gift subject to a mortgage

Gift freed from a mortgage debt

Declaration as to payment of inheritance tax on specific gifts

Gift with the object of ensuring personal residence by the devisee?alternative form using a periodic tenancy

Gift to vicar for poor of a parish

Legacy to a religious community

Gift to a hospital supported by public funds

Declaration that inheritance tax and foreign death duties on pecuniary legacies and personal chattels shall be paid out of residue

Trust for wife for life and then to issue upon such trusts as she shall appoint

Trust for the minor children of the testator at age 18 falling within Inheritance Tax Act 1984, s 71A (trusts for bereaved minors) and Finance Act 2005, ss 23?45 (special income tax and capital gains tax treatment for trusts for the vulnerable)

Trust for children at discretion of trustees until the youngest attains eighteen or twenty-one years of age

Declaration that certain children are to bring specified sums into hotchpot

Declaration that certain future gifts are to be brought into hotchpot

Legacy equal to inheritance tax threshold to be held on discretionary trusts

Trusts for a disabled person

Accruer of share

Clause providing against lapse in the case of a gift to a named person and that the clause shall operate as a direct gift to the substituted persons

General form of gift over on failure of the trusts of residue

General indemnity clause?proviso excluding professional and corporate trustees

## Probate (non-contentious)

### Immediate steps following death

Notice to creditors, and others, to make their claims against the estate of a deceased person

Particulars to be supplied to the London Gazette

Subpoena to bring in a testamentary document

General heading of affidavit

Affidavit to lead subpoena to bring in testamentary document

### Personal representatives

Notice to non-proving executor

Oath for administrators (by parent and nominee)

Oath for administrators (with the will annexed)

Oath for administrator (for the use and benefit of a mentally incapable person)

Oath for administrator (with will) (to an attorney of an executor or residuary beneficiary)

Oath for administrator (to attorney of person entitled to the grant)

Oath for administration (will) under s 116 of the Supreme Court Act 1981

Oath for executors (a firm)

Oath for executor ('double probate')

Oath for executors (general form)

Power of attorney to take letters of administration with will annexed

Power of attorney to take letters of administration

Notice to non-proving executor

Oath for administrator (surviving spouse or civil partner alone)

Oath for administrator (child of deceased)

Oath for administrators (issue applying on renunciation of spouse)

Oath for administration (will) under s 116 of the Supreme Court Act 1981

Oath for administrators (with the will annexed)

Oath for executor ('double probate')

Renunciation of administration

Renunciation of probate

Notice to creditors, and others, to make their claims against the estate of a deceased person

Particulars to be supplied to the London Gazette

Notice to non-proving executor

Oath for executors (general form)

Oath for administrators (with will annexed) (de bonis non administratis)

Oath for administrator (de bonis non administratis)

Form CAP A-5C

Consent by person prejudiced to proof of a will

Renunciation of probate

Renunciation of administration

Renunciation of administration (with will annexed)

Renunciation, by person appointed for the purpose, of minor's right to a grant

Retraction of renunciation

Assent Unregistered title: by deed, by executors where freehold property subject to restrictive covenants

Assent Unregistered title: by deed, by executors in respect of leasehold property, indemnity covenant from beneficiary

Notice of Assent to landlord

Assent in traditional form by executors of unregistered freehold land

### **Entitlement to the estate**

Affidavit of due execution by a subscribing witness  
Affidavit of due execution by person present at the time of execution  
Affidavit by a subscribing witness as to alteration  
Affidavit of handwriting  
Affidavit of plight and condition of will  
Affidavit of search for a will  
Application for a standing search  
Notice by the surviving spouse or civil partner to have life interest redeemed where the surviving spouse or civil partner is not the sole personal representative  
Notice by surviving spouse or civil partner of election to have life interest redeemed where surviving spouse or civil partner is the sole personal representative  
Notice by surviving spouse or civil partner exercising rights in the matrimonial home  
Consent of spouse or civil partner to disposal by personal representatives of matrimonial home within 12 months of grant

### **Pre-application matters**

Power of attorney to take letters of administration  
Oath for executors (limited to settled land)  
Oath for administrators (with will annexed) (de bonis non administratis)  
Oath for administrator (for the use and benefit of a mentally incapable person)  
Power of attorney to take letters of administration with will annexed  
Particulars to be supplied to the London Gazette

### **Application for the grant (deaths in England and Wales)**

Affidavits  
Affidavit as to alteration of will  
Affidavit of due execution  
Affidavit of plight and condition  
Affidavit of alias  
Oath for administrators (with the will annexed)  
Oath for administrator (surviving spouse or civil partner alone)  
Oath for executors (general form)  
Oath for probate (general form)

### **Estate administration**

Consent of spouse or civil partner to disposal by personal representatives of matrimonial home within 12 months of grant  
Deed of appointment made within two years of the death of the testator appointing property to the surviving spouse  
Deed of variation by surviving spouse absolutely entitled to residue giving nil rate band legacy to children absolutely  
Memorandum for endorsement on original grant of representation  
Variation of will by legatees and residuary beneficiary to vary the estate by means of a substituted will  
Deed of disclaimer under a will  
Deed of disclaimer of an interest on intestacy

### **Distribution of the Estate**

Appointment of trustees of infant's legacy  
Receipts by beneficiaries  
Scheme of appropriation  
Trust accounts  
Corrective account/inventory  
Tax certificate - beneficiary of trust or estate  
Corrective account/inventory  
Estate account  
Estate Account (short form)  
Estate Account (long form)  
Receipts by beneficiaries

Tax certificate - beneficiary of trust or estate  
By executor to a gift of an undivided share in land  
Assent - Unregistered title, in favour of person(s) absolutely entitled under will or intestacy, freehold or leasehold, unencumbered or subject to a mortgage  
Memorandum of Assent  
Notice of Assent to landlord  
Receipts by beneficiaries  
Registered title: in favour of person(s) absolutely entitled under will or intestacy  
Unregistered title: by deed, by executors where freehold property subject to restrictive covenants  
Unregistered title: by deed, by executors, in respect of leasehold property, indemnity covenant from beneficiary  
Unregistered title: by deed, by executors, subject to a mortgage created by testator, indemnity covenant from beneficiary  
Unregistered title: in favour of tenant for life of settlement governed by Settled Land Act 1925 created by deceased's will

### **Cross-border estates**

Affidavit of facts  
Affidavit as to foreign law

### **Contentious probate and trusts**

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#### **Court jurisdiction**

PARTICULARS OF CLAIM for propounding will  
DEFENCE AND COUNTERCLAIM for propounding will  
REPLY AND DEFENCE TO COUNTERCLAIM: general denial  
CLAIM FORM: general form

#### **Validity of wills**

BRIEF DETAILS OF CLAIM to establish will: will against will  
BRIEF DETAILS OF CLAIM to establish will: claimants propounding will alone: defendant seeking to establish codicil  
DEFENCE: no due execution or want of knowledge and approval  
PLEA of undue influence  
PLEA that testator lacked testamentary capacity  
Letter to general practitioner or local health authority incorporating a request for a report  
Witness statement in support of an application for examination of a person with knowledge of a testamentary document under the Supreme Court Act 1981 Section 122  
Plea - pretended will  
Claimant propounds will under Wills Act 1963: defendant pleads that it was not duly executed

#### **Probate actions**

BRIEF DETAILS OF CLAIM to estate: interest action  
BRIEF DETAILS OF CLAIM for revocation of probate and grant of administration  
BRIEF DETAILS OF CLAIM for revocation of letters of administration  
BRIEF DETAILS OF CLAIM to propound lost will  
BRIEF DETAILS OF CLAIM for rectification of will  
WITNESS STATEMENT about testamentary documents  
PARTICULARS OF CLAIM in interest action  
CLAIM FORM to enforce testator's contract to settle property by will  
Affidavit to lead citation to accept or refuse administration  
Citation to accept or refuse administration  
Defendant pleads that will propounded by claimant was revoked by destruction  
Defendant pleads against will propounded by claimant and claims probate of earlier will  
Defendant pleads against will propounded by claimant and claims an intestacy

Affidavit of applicant for order for rectification of will: clerical error alleged

Affidavit of witness supporting application for order for rectification of will: testator's instructions misunderstood

Affidavit of witness supporting application for order for rectification of will: clerical error alleged

Statement of claim: rectification of will

Affidavit by executors in support of application for leave to distribute in reliance on counsel's opinion

Summons for directions by caveator wishing to show cause against grant

Non-contentious probate rules 1987 Form 3

Non-Contentious Probate Rules 1987 Form 4

Non-Contentious Probate Rules 1987 Form 5

Summons for directions

Application Notice

#### **Administration conflicts**

APPLICATION NOTICE to appoint administrator pending determination of probate claim

WITNESS STATEMENT supporting application of administrator pending

Affidavit by executors in support of application for leave to distribute in reliance on counsel's opinion

#### **IPFDA 1975 actions**

CLAIM FORM by widow for reasonable provision

APPLICATION NOTICE to approve terms of settlement on behalf of child and for trial on written evidence

APPLICATION NOTICE to discontinue proceedings

APPLICATION NOTICE for interim order

APPLICATION NOTICE for variation of order for reasonable provision

#### **Trust disputes**

BRIEF DETAILS OF CLAIM for account of trust property

PARTICULARS OF FORM by trustees for order impounding beneficiary's interest as indemnity

CLAIM FORM for relief from liability

CLAIM FORM for appointment of new trustee

CLAIM FORM for removal of trustee

CLAIM FORM by trustees for directions as to sale and litigation

CLAIM FORM for variation of trusts

DETAILS OF CLAIM for execution of trusts

BRIEF DETAILS OF CLAIM for account of income

BRIEF DETAILS OF CLAIM with parties by beneficiary that property acquired by non-trustees, as the result of knowledge coming to them whilst purporting to act as agents for the trust, is held on constructive trust for beneficiary

BRIEF DETAILS OF CLAIM for injunction restraining sale of property into which trust property can be followed, declaration of priority, and appointment of new trustees

PARTICULARS OF CLAIM for breach of statutory duty and trust under Trustee Act 2000?delegation

PARTICULARS OF CLAIM by trustees for order impounding beneficiary's interest as indemnity

PARTICULARS OF CLAIM by a beneficiary to recover money from another beneficiary who has been over-paid

CLAIM FORM invoking the court's statutory jurisdiction: general form

CLAIM FORM for appointment of new trustee

WITNESS STATEMENT of fitness of new trustee

WITNESS STATEMENT supporting claim form for removal of trustee

WITNESS STATEMENT by trustee supporting claim form for variation of trusts

CLAIM FORM for delivery of particular account

CLAIM FORM by trustee requesting indemnity from beneficiary