SQE1

WILLS AND THE ADMINISTRATION OF ESTATES

COMPREHENSIVE STUDY NOTES

Validity • Entitlement • Intestacy • Drafting • IHT • Administration

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CHAPTER 1

Validity of Wills and How Property Passes on Death

SQE1 SYLLABUS — This chapter enables you to achieve the SQE1 assessment specification in relation to functioning legal knowledge concerned with wills and the administration of estates:

- Validity of wills and codicils: testamentary capacity; duress and undue influence; formal requirements.
- Property passing outside the estate: joint property; life policies; pension scheme benefits; trust property.

In this chapter, the test for testamentary capacity known as the Banks v Goodfellow test and s 9 Wills Act 1837 may be referred to in the SQE1 assessment by name. Otherwise, references to cases, statutory and regulatory authorities are provided for illustrative purposes only.

LEARNING OUTCOMES — By the end of this chapter you will be able to apply core legal principles, at the level of a competent newly qualified solicitor, to realistic client-based and ethical problems in the following areas:

- ✓ the requirements for a valid will;
- ✓ professional conduct issues arising out of the preparation of wills;
- ✓ how property passes on a person’s death; and
- ✓ challenging the validity of a deceased person’s will.

1.1 Introduction

Wills are among the most important documents a person can create, and solicitors are frequently consulted to ensure their validity. When a person dies, the distribution of their assets follows a strict order of priority: first, assets passing independently of the will; second, assets passing under a valid will; and finally, any remaining assets distributed according to the intestacy rules.

1.2 Property Passing Outside the Will and Intestacy Rules

Many valuable assets do not pass through a will or intestacy rules but transfer independently of the estate.

Asset Type	How It Passes
Joint property (beneficial joint tenants)	Deceased’s interest passes automatically to the surviving joint tenant(s) by the doctrine of survivorship. Does NOT apply to tenancy in common — the share passes under the will/intestacy.
Insurance policies	Standard life assurance proceeds are paid to PRs for distribution. A policy written in trust or assigned to named beneficiaries passes to them directly, regardless of the will.
Pension benefits	Benefits for employees dying "in service" are often paid as a discretionary lump sum by trustees to family/dependants, bypassing the estate entirely.
Trust property	Equitable interests (e.g. life interests) usually end on the beneficiary’s death; property devolves under the original trust’s terms, not the deceased’s will.

ANALYSIS ORDER: Solicitors must analyse beneficial entitlements in strict order: (1) property passing OUTSIDE the will; (2) property passing UNDER the will; (3) property passing on INTESTACY.

1.3 Wills Terminology

A person making a will is a testator (male) or testatrix (female). Key components of a will include the revocation clause (cancels previous wills/codicils) and the appointment of executors (personal representatives responsible for administering the estate).

Type of Gift	Description
Specific gift	A gift of a specific item owned by the testator (e.g. a specific house or watch).
General gift	A gift of an item matching a description (e.g. "100 shares in X plc"); if not owned at death, executors must purchase it using estate funds.
Demonstrative gift	A general gift directed to be paid from a specific fund.
Pecuniary gift	A gift of a specific sum of money.
Residuary gift	A "sweeping-up" provision for all remaining property after debts, expenses, and other gifts are paid.

1.4 The Requirements for a Valid Will

To be valid, a will must satisfy three simultaneous requirements: the testator must have the necessary CAPACITY, the correct INTENTION, and must observe the FORMALITIES OF EXECUTION.

1.5 Capacity

Testators must generally be at least 18 years old and possess the requisite mental capacity.

1.5.1 The Banks v Goodfellow Test

The testator must understand: the nature of making a will; the approximate extent of their property; and the moral claims they should consider. An exception (Parker v Felgate) allows a will to be valid if the testator had capacity when giving instructions to a solicitor, even if they later lose capacity before execution, provided they understand they are signing a document based on those instructions.

1.5.2 The "Golden Rule"

Solicitors should arrange for a medical practitioner to provide a report confirming capacity and to witness the will if the testator's mental state is in doubt (e.g. due to age or illness).

1.5.3 The Burden of Proof

Capacity is generally presumed if a will is rational on its face and the testator showed no mental confusion. If challenged, the burden shifts to the CHALLENGER to prove a lack of capacity.

1.6 Intention

The testator must have both GENERAL intention (to make a will) and SPECIFIC intention (to make this particular will and approve its contents).

1.6.1 Meaning of Intention

The testator must know and approve the contents of the will at the time of execution.

1.6.2 The Burden of Proof

Knowledge and approval are presumed if the testator had capacity and read the document. This presumption is REBUTTED if: the testator was blind or illiterate; another person signed on their behalf; or there are suspicious circumstances (e.g. the drafter is a major beneficiary).

1.6.3 Force, Fear, Fraud, Undue Influence, and Mistake

A will can be challenged if it was produced through coercion (undue influence), fraud, or if parts were included by mistake.

1.7 Formalities of Execution

Under Section 9 of the Wills Act 1837, a will is only valid if it meets specific formal criteria.

1.7.1 The Section 9 Requirements

- Must be IN WRITING (typed, handwritten, etc.).
- Must be SIGNED by the testator, or by someone else in their presence and by their direction.
- The signature must be intended to GIVE EFFECT to the will.
- The signature must be made or acknowledged in the presence of TWO OR MORE WITNESSES present at the same time.
- Each witness must ATTEST and sign (or acknowledge their signature) in the testator's presence.

> WITNESSING RESTRICTION: If a beneficiary (or their spouse/civil partner) witnesses the will, the WILL remains valid, but the GIFT to that beneficiary FAILS.

1.7.2 Privileged Wills

Military personnel on active service and mariners at sea can make valid wills in any form, including oral statements, without complying with s 9 formalities.

1.7.3 The Burden of Proof — Due Execution

Due execution is PRESUMED if the will contains an attestation clause reciting that the s 9 formalities were followed.

1.7.4 Solicitors' Duties

Solicitors owe a duty of care to beneficiaries (as well as the testator) to ensure wills are validly executed and should ideally supervise the signing process. Failure to do so can lead to negligence claims.

Chapter 1 — Summary

✔ A valid will requires capacity AND intention (usually at the time of signing) AND compliance with s 9 Wills Act 1837.

✔ A solicitor drafting a will owes a duty to prospective beneficiaries as well as the testator.

✔ Order of analysis: (1) assets passing outside the will/intestacy; (2) valid will disposing of remaining property; (3) intestacy rules if no valid will or incomplete disposal.

✔ Banks v Goodfellow test: understand nature of will; extent of property; moral claims to consider.

✔ Golden Rule: medical practitioner report and witnessing where capacity is in doubt.

✔ Witnessing by a beneficiary: will remains valid but the gift to that beneficiary fails.

✔ A challenger must establish lack of capacity, intention, or non-compliance with s 9 — always check where the burden of proof lies.

CHAPTER 2

Wills: Establishing Entitlement

SQE1 SYLLABUS — This chapter enables you to achieve the SQE1 assessment specification in relation to functioning legal knowledge concerned with wills and the administration of estates:
▸ The validity of a will and interpretation of the contents of a will. The distribution of testate, intestate and partially intestate estates.
▸ The interpretation of wills.
▸ Effect of different types of gifts.
▸ Failure of gifts.

Note that for SQE1, candidates are not usually required to recall specific case names or cite statutory or regulatory authorities. Cases are provided for illustrative purposes only.

LEARNING OUTCOMES — By the end of this chapter you will be able to apply core legal principles, at the level of a competent newly qualified solicitor, to realistic client-based and ethical problems in the following areas:
✓ applying the rules of interpretation;
✓ the circumstances in which a will can be rectified;
✓ the reasons for the failure of gifts in a will; and
✓ establishing the entitlement of beneficiaries in a will.

2.1 Introduction

Personal representatives (executors or administrators) must determine the effect of the gifts in a will by considering the specific wording, the property owned by the deceased at death, and whether named beneficiaries survived the testator. This process of "construing the will" is essential to administering the estate lawfully.

2.2 Basic Presumptions

The starting point is careful study of the will's wording. Courts cannot rewrite a will to reflect what they think a testator might have wanted. Instead, two presumptions apply: non-technical words are given their ORDINARY meaning; technical words are given their TECHNICAL legal meaning (e.g. "personal estate" = personalty, not realty). These presumptions can only be rebutted if the will clearly indicates a different meaning.

2.3 Establishing the Testator's Intention

The court determines the testator's intention as expressed in the document read as a whole. Section 21 of the Administration of Justice Act 1982 allows EXTRINSIC EVIDENCE to be used where part of the will is:

- Meaningless.
- Ambiguous on its face.
- Ambiguous in light of surrounding circumstances (e.g. Thorn v Dickens: a gift to "mother" was proven to mean the testator's wife, because his actual mother had already died).

2.4 Rectification

Under Section 20 of the Administration of Justice Act 1982, the court has a NARROW power to "rectify" a will that fails to carry out the testator's clear intentions due to: a CLERICAL ERROR; or a FAILURE TO UNDERSTAND INSTRUCTIONS. For example, a solicitor's error writing "one half of my share" instead of "my one half share" was rectified as a clerical mistake. This power cannot be used where the solicitor simply misunderstood the legal effect of the words chosen.

2.5 Property Passing Under the Will

> Section 24 Wills Act 1837: the will "SPEAKS FROM THE DATE OF DEATH" as regards property. A gift of "all my estate" includes everything owned at death, even if acquired after the will was made. Rebutted only by contrary intention (e.g. "the house I now own").

2.6 Identifying the Beneficiaries

> As regards PEOPLE, the will "SPEAKS FROM THE DATE OF EXECUTION" — the opposite rule to property.

Rule	Detail
General rule	A gift to "Kate's eldest daughter" goes to the person fitting that description when the will was signed; if she dies before the testator, the gift does not pass automatically to the next surviving daughter.
Family relationships	Gifts to "children" or "nephews" typically refer only to BLOOD relatives unless specified otherwise.
Children — special rules	"Issue" = direct descendants of all generations. Adopted children are treated as children of their adoptive parents. Illegitimacy is irrelevant for modern wills.
Gender recognition	A person's legally acquired gender affects property devolution only if the will was made AFTER 4 April 2005.
Spouses/civil partners	NOT interchangeable terms — a gift to "wife" FAILS if the testator only entered a civil partnership.

2.7 Failure of Gifts

A gift that fails usually falls into the residuary estate; if the residuary gift itself fails, this causes a PARTIAL INTESTACY.

Reason for Failure	Detail
Uncertainty	Gift fails if the recipient or subject matter cannot be identified.
Beneficiary witnesses	s 15 Wills Act 1837: if a beneficiary (or spouse/civil partner) witnesses the will, the GIFT to them fails (will remains valid) — ensures witness impartiality.
Divorce or dissolution	Former spouse treated as having died on the date the marriage was legally dissolved; gifts to them fail; substitutional gifts take effect.
Ademption	A specific gift (e.g. "my gold watch") is "adeemed" and fails if the testator no longer owns it at death.
Lapse	Gift fails if the beneficiary dies before the testator. Unknown order of death: elder deemed to have died first (s 184 Law of Property Act 1925).
Disclaimer	A beneficiary can refuse a gift, treated as if they predeceased the testator.
Forfeiture	A person cannot benefit from the estate of someone they have unlawfully

	killed — treated as having predeceased the victim.

KEY EXCEPTION — s 33 Wills Act 1837: Gifts to children or issue do NOT lapse if the deceased beneficiary left their own children who survive the testator. The deceased beneficiary's children take their parent's share.

Chapter 2 — Summary

✔ The task of interpreting a will is to establish the testator's intention as expressed in the will read as a whole.

✔ Extrinsic evidence is admitted only where wording is meaningless, ambiguous on its face, or ambiguous in light of surrounding circumstances.

✔ Rectification is limited to clerical errors or failure to understand instructions — NOT misunderstanding legal effect.

✔ Property: will speaks from the date of DEATH. People: will speaks from the date of EXECUTION.

✔ Seven ways a gift can fail: uncertainty; beneficiary witnessed; divorce/dissolution; ademption; lapse; disclaimer; forfeiture.

✔ s 33 Wills Act 1837: gifts to children/issue do not lapse if their own children survive the testator.

CHAPTER 3

Wills: Revocation, Additions and Alterations

SQE1 SYLLABUS — This chapter enables you to achieve the SQE1 assessment specification in relation to functioning legal knowledge concerned with wills and the administration of estates:
▸ The validity of a will and interpretation of the contents of a will. The distribution of testate, intestate and partially intestate estates.
▸ The planning, management and progression of the administration of an estate.
▸ Alterations and amendments to wills.
▸ Methods of revocation.
▸ Effect of marriage and divorce of a testator.
▸ Use of codicils.
▸ Effect of alterations made to wills both before and after execution.

Note that for SQE1, candidates are not usually required to recall specific case names or cite statutory or regulatory authorities. Cases are provided for illustrative purposes only.

LEARNING OUTCOMES — By the end of this chapter you will be able to apply core legal principles, at the level of a competent newly qualified solicitor, to realistic client-based and ethical problems in the following areas:
✓ the circumstances in which a will can be revoked;
✓ the nature and effect of a codicil; and
✓ the effectiveness of alterations to a will.

3.1 Introduction

A fundamental characteristic of a will is that it is REVOCABLE — a testator is free to change their mind and cancel a will at any time, provided they possess the same mental capacity required to create one. Testators are encouraged to keep their wills under review, as circumstances like the birth of a child or improved finances may render existing terms inappropriate.

3.2 Revocation — Three Methods

3.2.1 By a Later Will or Codicil

Under Section 20 of the Wills Act 1837, a will can be revoked by a declaration in a subsequent testamentary document. While professional wills usually include an express revocation clause ("I hereby revoke all former wills..."), a later will can also revoke an earlier one BY IMPLICATION if the two documents are inconsistent.

> Conditional revocation (dependent relative revocation): a revocation is deemed INVALID if it was mistakenly based on the belief that a new will would be effective — the old will may be revived if the new one fails.

3.2.2 By Destruction

A will is revoked if the testator (or someone in their presence and by their direction) burns, tears, or otherwise destroys it with the INTENTION TO REVOKE. Physical destruction WITHOUT intention (an accident), or intention WITHOUT physical destruction (merely writing "revoked" on the back), does NOT suffice. In Cheese v Lovejoy, a testator kicked his will into a waste paper basket but because it was not actually destroyed, it remained valid.

3.2.3 By Marriage or Formation of a Civil Partnership

Event	Effect on Will
Marriage / civil partnership	AUTOMATIC REVOCATION of any existing will. Exception: will made in "expectation of marriage" to a SPECIFIC person, with intention that it not be revoked by that marriage — both elements must be evident from the wording.
Divorce	Does NOT revoke a will. Former spouse treated as having predeceased the testator: gifts to them fail; appointment as executor is nullified.

3.3 Mutual Wills

Mutual wills occur when two individuals (often spouses) make wills in similar terms based on an AGREEMENT that the survivor will leave their estate in a specific way. While a survivor can technically revoke their will (because of the principle of revocability), equity intervenes by imposing a CONSTRUCTIVE TRUST over the survivor's estate in favour of the original beneficiaries. This prevents the survivor from reneging on the bargain after the first person has died.

3.4 Codicils

A codicil is a document executed with the SAME FORMALITIES as a will that adds to, amends, or partially revokes an existing will.

> REPUBLICATION EFFECT: A codicil causes the original will to be treated as if it were made on the date the CODICIL was executed. This can save a gift to a beneficiary who witnessed the original will but did NOT witness the codicil.

3.5 Alterations

Testators sometimes attempt to change a will by writing directly on the document. Validity depends on TIMING.

Timing	Validity Requirement
Before execution	Valid if testator intended the alteration to be part of the will. PRESUMPTION: all alterations were made AFTER execution unless evidence proves otherwise.
After execution	Must be executed LIKE A WILL (signed by testator and two witnesses) — though initials in the margin next to the change are usually sufficient.
Invalid alteration	ORIGINAL WORDING stands as long as it remains "apparent" (optically readable — e.g. holding to light, magnifying glass).
Obliteration	If original words are completely covered so no longer readable: REVOCATION BY DESTRUCTION of that part — beneficiary receives NOTHING. If words obliterated to substitute new ones that FAIL (lack of witnessing), court may apply conditional revocation to restore the original gift if its contents can be proven by other evidence.

Chapter 3 — Summary

✔ A testator with testamentary capacity is free to revoke their will at any time.

✔ Three methods of revocation: by a later will/codicil; by destruction (with intention); by marriage/civil partnership formation.

✔ A codicil amends, adds to, or partially revokes a will — and REPUBLISHES the original will as of the codicil's date.

✔ Mutual wills: equity imposes a constructive trust on the survivor's estate if there was a clear agreement not to revoke.

✔ Alterations before execution: valid if intended to be part of the will. After execution: must be executed like a will.

✔ Invalid alterations: original wording stands if apparent. Obliteration: revocation by destruction of that part.

✔ Conditional revocation (dependent relative revocation) may restore an obliterated gift if a failed substitute was intended.

CHAPTER 4

Intestacy

SQE1 SYLLABUS — This chapter enables you to achieve the SQE1 assessment specification in relation to functioning legal knowledge concerned with wills and the administration of estates:
▸ The validity of a will and interpretation of the contents of a will. The distribution of testate, intestate and partially intestate estates.
▸ The planning, management and progression of the administration of an estate.
▸ The law and practice relating to personal representatives and trustees in the administration of estates and consequent trusts. The rights, powers and remedies of beneficiaries of wills and consequent trusts.
▸ The distribution of intestate and partially intestate estates.
▸ Section 46 Administration of Estates Act 1925.
▸ The statutory trusts.
▸ Property passing outside the estate.

In the SQE1 assessment the rules of distribution on intestacy may be referred to by way of the statutory authority, namely s 46 Administration of Estates Act 1925. Otherwise, in this chapter references to cases and statutory authorities are provided for illustrative purposes only.

LEARNING OUTCOMES — By the end of this chapter you will be able to apply core legal principles, at the level of a competent newly qualified solicitor, to realistic client-based and ethical problems in the following areas:
✓ the circumstances which give rise to intestacy; and
✓ the distribution of the estate on intestacy.

4.1 Introduction

The intestacy rules decide who is entitled to an individual’s property when they die WITHOUT having validly disposed of it by will. The rules apply on a TOTAL intestacy (no will at all) or a PARTIAL intestacy (a valid will exists but fails to dispose of all the deceased’s property). The rules impose a STATUTORY TRUST over the estate.

4.2 Distribution Where Survived by a Spouse

Survivors	Spouse Receives
Spouse AND issue (children/descendants)	Personal chattels + statutory legacy of £270,000 + HALF the remaining balance (the other half passes to the issue on statutory trusts)
Spouse, NO issue	THE ENTIRE ESTATE

4.3 Distribution Where No Surviving Spouse

The residuary estate is divided between the intestate’s relatives in the HIGHEST category below (only moving to the next category if no one in the category above survives):

Priority	Category
1	Issue (children and their descendants)
2	Parents
3	Brothers and sisters of the whole blood (and their issue)
4	Brothers and sisters of the half blood (and their issue)
5	Grandparents
6	Uncles and aunts of the whole blood (and their issue)
7	Uncles and aunts of the half blood (and their issue)
8	The Crown, Duchy of Lancaster, or Duke of Cornwall (bona vacantia)

4.4 The Statutory Trusts

Members of a category share EQUALLY.

The issue of a deceased relative may take that relative's share in SUBSTITUTION.

Entitlement is CONTINGENT upon attaining 18, or marrying/forming a civil partnership earlier.

NOTE: This statutory trust mechanism does NOT apply to a spouse, parents, or grandparents — only to other categories.

Chapter 4 — Summary

✔ Intestacy rules apply where property has not been disposed of by a valid will (total or partial intestacy).

✔ Spouse + issue: spouse gets chattels + £270,000 statutory legacy + half the remaining balance.

✔ Spouse, no issue: spouse receives the ENTIRE estate.

✔ No spouse: distribution follows the hierarchy — issue, parents, full siblings, half siblings, grandparents, full aunts/uncles, half aunts/uncles, then Crown.

✔ Statutory trusts: equal shares within a category; substitution for issue of a deceased relative; contingent on reaching 18 (or earlier marriage/civil partnership).

CHAPTER 5

Will Drafting

SQE1 SYLLABUS — This chapter enables you to achieve the SQE1 assessment specification in relation to functioning legal knowledge concerned with wills and the administration of estates:

- Personal representatives: the appointment of executors.
- The law and practice relating to personal representatives and trustees in the administration of estates and consequent trusts.
- Revocation of wills: methods of revocation; effect of marriage of a testator.
- The interpretation of wills: effect of different types of gift; failure of gifts.
- Burden and incidence of Inheritance Tax.
- Administration of estates: duties of personal representatives.

Note that for SQE1, candidates are not usually required to recall specific case names or cite statutory or regulatory authorities. Cases are provided for illustrative purposes only.

LEARNING OUTCOMES — By the end of this chapter you will be able to apply core legal principles, at the level of a competent newly qualified solicitor, to realistic client-based and ethical problems in the following areas:

- ✓ common provisions in a will;
- ✓ the powers and duties of executors during the administration of an estate; and
- ✓ will trusts and the powers and duties of the trustees.

5.1 Introduction

Will drafting is critical to ensuring a testator's intentions are not thwarted by unexpected events, such as the death of a beneficiary or the loss of a specific asset. A solicitor must anticipate these eventualities, advise on who bears the burden of taxes or debts, and select appropriate executors. The process also allows for the creation of trusts to manage property for young or vulnerable beneficiaries.

5.2 Structure of a Will

While most solicitors use templates, professionally drafted wills follow a uniform structure: revocation of former wills; appointment of executors; specific legacies; and a gift of the residue.

5.3 Opening

The opening identifies the testator by full name and address and establishes the nature of the document. It must include the DATE OF EXECUTION to establish the chronology for revocation purposes. If a marriage or civil partnership is imminent, the will should state it is made in EXPECTATION OF THAT MARRIAGE to prevent automatic revocation upon the ceremony.

5.4 Revocation Clause

This clause expressly cancels all previous wills and codicils. Including it is essential to avoid the need for exhaustive searches for prior documents after the testator's death.

5.5 Appointments

5.5.1 Executors (and Trustees)

A minimum of ONE executor is required, but appointing at least TWO (or a substitute) is prudent in case one cannot act. If a trust is created, the same individuals often serve as both executors and trustees.

Choice of Executor	Advantage	Disadvantage
Family/friends	Typically act for free	May lack professional expertise
Solicitors	Professional expertise	Charge fees
Trust corporations	Permanence (no risk of death/incapacity)	Can be expensive

CHARGING PROVISIONS: Because executors are fiduciaries, they cannot profit from their position unless authorised. A charging clause allows professional executors to receive reasonable remuneration for their time and skill.

5.5.2 Guardians

If the testator has infant children, they should appoint guardians to care for them if both parents die.

5.6 Non-Residuary Gifts

5.6.1 Pecuniary Legacies

Gifts of specific sums of money.

5.6.2 Specific Legacies

Gifts of specific assets (e.g. a house or a watch). They carry a risk of ADEMPTION — the gift fails if the testator no longer owns the item at death. Using general wording like "my main residence" can help prevent ademption if a property is sold and replaced.

5.6.3 The Beneficiary

Issue	Key Drafting Point
Identification	Beneficiaries must be accurately named and described to avoid gifts failing for uncertainty.
Vested vs contingent	A VESTED gift has no conditions; a CONTINGENT gift requires a condition to be met (e.g. a grandchild reaching age 25).
Lapse	If a beneficiary dies before the testator, the gift fails (lapses) into residue unless a substitutional gift is specified.
Charities	Include the registered charity number and state the gift is for "general charitable purposes" — ensures success even if the charity changes name or structure.

5.6.4 Burden of Inheritance Tax, Costs, and Charges

Burden	Default Rule
IHT	Unless the will states a gift is "subject to tax," the tax is paid out of the residuary estate.
Costs	Packing and transport costs for specific items are borne by the beneficiary unless the will says otherwise.
Mortgages (s 35 AEA 1925)	Mortgages on gifted land are the responsibility of the beneficiary receiving that land, unless the will directs the debt be paid from residue.

5.7 Gift of the Residue

The "residue" is everything left after debts, expenses, and other gifts are paid.

5.7.1 Direction for Payment of Debts and Legacies

An express direction ensures these liabilities are cleared before the residue is distributed.

5.7.2 Is a Trust Required?

Trusts of residue are common in family wills to manage funds for minors (contingent trusts), allow trustees to choose beneficiaries (discretionary trusts), or provide for a spouse for life with remainder to children.

5.7.3 Avoiding Partial Intestacy

> To prevent residue from falling under intestacy rules, include SUBSTITUTIONAL GIFTS and a "longstop" beneficiary (e.g. a charity). Wording like "for such of my children as survive me" is safer than naming individuals — it automatically accounts for future children or predeceased ones.

5.8 Survivorship Clause

Requires a beneficiary to survive the testator by a set period (e.g. 28 days) to inherit. This prevents assets passing through the estate of a beneficiary who dies shortly after the testator — avoiding the cost of double administration and ensuring property passes to the testator's chosen backup beneficiary.

5.9 Administrative Provisions

These clauses extend or modify the statutory powers given to executors and trustees to facilitate smoother administration.

Powers for ALL Wills	Powers for TRUSTEES (where a trust arises)
Power to charge (professional remuneration)	General power to invest (TA 2000)
Power to appropriate assets (e.g. shares instead of cash) without formal consent	Power to purchase land
Power to insure trust/estate assets	Power to use income for MAINTENANCE (s 31 TA 1925)
Power to accept receipts from parents on behalf of minor beneficiaries	Power to advance CAPITAL for ADVANCEMENT (s 32 TA 1925)

5.10 Attestation Clause

Every will should end with this clause, reciting that the formalities of Section 9 of the Wills Act 1837 were met. This raises a PRESUMPTION OF DUE EXECUTION, simplifying the probate process.

5.11 Professional Conduct

Issue	Rule
Third-party instructions	Solicitors must only take instructions DIRECTLY from the client to avoid misunderstanding or fraud.
Legacies to the solicitor	Should generally NOT draft wills giving significant gifts to themselves or family unless the client received INDEPENDENT LEGAL ADVICE.
Appointment of solicitor as executor	Must NOT lead clients to believe their appointment is essential — must explain lay persons can be executors and that professional executors are often more expensive.

Chapter 5 — Summary

✔ All wills contain common elements: opening; revocation; appointment of executors/trustees; legacies; gift of residue; administrative powers; attestation clause; date.

✔ Executors: consider how many; whether trustees also needed; whether a charging clause is necessary.

✔ Pecuniary legacies: consider burden of IHT. Specific legacies: consider ademption risk and burden of costs/IHT/charges.

✔ Gift of residue: direction for payment of debts/expenses; consider if a trust is required; ALWAYS include substitutional gifts to avoid partial intestacy.

✔ Beneficiaries: consider infants (receipts clause; vested/contingent); substitutional gifts; charity identification; survivorship clauses.

✔ Trustee powers: investment; land purchase; sale of personalty; maintenance (income); advancement (capital); limiting beneficiary control.

✔ Professional conduct: take instructions only from the client; avoid drafting gifts to yourself without independent advice; do not overstate the need for a solicitor-executor.

CHAPTER 6

Inheritance Tax

SQE1 SYLLABUS — This chapter enables you to achieve the SQE1 assessment specification in relation to functioning legal knowledge concerned with wills and the administration of estates:
▸ The law and practice of inheritance tax in the context of lifetime gifts and transfers on death.
▸ Lifetime chargeable transfers.
▸ Potentially exempt transfers.
▸ Transfers on death.
▸ Exemptions and reliefs.
▸ The scope of anti-avoidance provisions.

Note that for SQE1, candidates are not usually required to recall specific case names or cite statutory or regulatory authorities. Cases are provided for illustrative purposes only.

LEARNING OUTCOMES — By the end of this chapter you will be able to apply core legal principles, at the level of a competent newly qualified solicitor, to realistic client-based and ethical problems in the following areas:
✓ transactions which incur inheritance tax;
✓ inheritance tax payable on death and on lifetime transfers;
✓ exemptions and reliefs; and
✓ liability and burden of inheritance tax.

6.1 Introduction

Inheritance Tax is primarily intended to levy a tax on the wealth an individual has acquired over their lifetime, charged at death. To prevent tax avoidance through divesting assets before death, IHT also applies to specific transfers made during an individual's lifetime.

6.2 The Charge to Tax

Governed by the Inheritance Tax Act 1984, IHT is charged on three main occasions:

Occasion	Detail
Death	On the value of the estate.
Lifetime gifts to individuals (PETs)	Potentially Exempt Transfers — chargeable only if the donor dies within 7 years.
Lifetime gifts to companies/trusts (LCTs)	Lifetime Chargeable Transfers — immediately chargeable.

6.3 The Main Charging Provisions — Four Steps

Step	Action

1. Identify the transfer of value	Any disposition reducing the value of the transferor's estate.
2. Find the value transferred	The amount of the reduction in the estate.
3. Apply exemptions and reliefs	Reductions for public policy reasons (e.g. transfers to spouse or charity).
4. Calculate tax at the appropriate rate	Using the Nil Rate Band (£325,000) and Residence Nil Rate Band (£175,000) where applicable.

CUMULATION PRINCIPLE: Look back SEVEN YEARS from a transfer to determine how much of the NRB remains available for the current transfer.

6.4 Transfers on Death

Step	Detail
Step 1: identify the transfer	Deemed transfer of the entire "estate" — includes property under will/intestacy, joint property by survivorship, certain trust property (e.g. Immediate Post-Death Interest), and gifted property where the deceased RESERVED A BENEFIT.
Step 2: value transferred	Open market value immediately before death. Debts, taxes, reasonable funeral expenses are deductible.
Step 3: exemptions/reliefs	Spouse/Civil Partner Exemption (full exemption, UK-domiciled spouses); Charity Exemption; Business Property Relief (BPR) and Agricultural Property Relief (APR) — can reduce values by 100% or 50%.
Step 4: calculate tax	First £325,000 (NRB) taxed at 0%; excess usually taxed at 40%. Unused NRB/RNRB from a predeceased spouse transfers to survivor's estate.

RNRB applies when a residence is "closely inherited" by lineal descendants, though it tapers for estates valued over £2 million.

6.5 Lifetime Transfers: Potentially Exempt Transfers (PETs)

PETs are lifetime gifts from one individual to another. Value transferred = the loss in value to the donor's estate (may include "related property" rules to prevent undervaluation between spouses). Lifetime-only exemptions: Annual Exemption (£3,000 per year); small gifts (£250); normal expenditure out of income.

If the donor survives 7 years — the PET becomes EXEMPT. If they die within 7 years — it becomes CHARGEABLE.

6.6 Lifetime Transfers: Lifetime Chargeable Transfers (LCTs)

Gifts into MOST TRUSTS are immediately chargeable as LCTs. Tax charged at 0% on the NRB and 20% on the excess. If the transferor pays the tax (rather than the trustees), the gift must be "GROSSED UP" because the tax paid is itself a further loss to the donor's estate.

6.7 Effect of Death on Lifetime Transfers

If the transferor dies within 7 years: PETs become chargeable; IHT on LCTs is recalculated at the 40% death rate. TAPERING RELIEF reduces tax payable if the transferor survived between 3 and 7 years after the gift.

Years Survived	Taper Relief (% of Death Rate Charged)
0–3 years	100% (no relief)
3–4 years	80%

4–5 years	60%
5–6 years	40%
6–7 years	20%

6.8 Liability and Burden

LIABILITY = who must pay HMRC. BURDEN = who ultimately loses the wealth.

Scenario	Liability
On death	PRs liable for non-settled estate; trustees liable for settled property.
PETs (chargeable)	Transferee primarily liable.
LCTs	Transferor primarily liable.

The "estate rate" is the average tax rate applicable to each item, used to apportion tax for specific legacies or property qualifying for instalments.

6.9 Time for Payment

IHT on death estates is due SIX MONTHS after the end of the month of death. An INSTALMENT OPTION allows tax on land, businesses, and certain shareholdings to be paid in 10 equal annual instalments.

6.10 Liability, Burden and Timing — Worked Example

PRs are liable for the WHOLE tax, but the BURDEN for joint property falls on the survivor, while the RESIDUE bears the burden for assets passing under the will.

6.11 Anti-Avoidance

Provision	Purpose
DOTAS (Disclosure of Tax Avoidance Schemes)	Requires disclosure of certain arrangements to HMRC.
GAAR (General Anti-Avoidance Rule)	Allows HMRC to counteract arrangements that cannot be regarded as a reasonable course of action.

Chapter 6 — Summary

✔ Three IHT occasions: death; lifetime gifts to individuals (PETs, only chargeable if death within 7 years); lifetime gifts to trusts/companies (LCTs, immediately chargeable).

✔ Four steps: identify transfer of value; find value transferred; apply exemptions/reliefs; calculate tax.

✔ NRB £325,000 and RNRB £175,000 taxed at 0%; excess at 40% (death) or 20% (LCT lifetime rate).

✔ PETs become chargeable only if donor dies within 7 years; taper relief applies between 3–7 years.

✔ LCTs recalculated at death rates if transferor dies within 7 years — with credit given for tax already paid.

✔ PRs liable for non-settled estate; transferee liable for chargeable PETs; transferor liable for LCTs.

✔ IHT due 6 months after end of month of death; instalment option for land/businesses/shareholdings (10 years).

CHAPTER 7

Family Provision and Post-death Variations

SQE1 SYLLABUS — This chapter enables you to achieve the SQE1 assessment specification in relation to functioning legal knowledge concerned with wills and the administration of estates:
▸ The planning, management and progression of the administration of an estate including claims under the Inheritance (Provision for Family and Dependants) Act 1975.
▸ The law and practice relating to personal representatives and trustees in the administration of estates and consequent trusts. The rights, powers and remedies of beneficiaries of wills and consequent trusts.
▸ Claims against estates under the Inheritance (Provision for Family and Dependants) Act 1975: time limit; applicants; ground; liabilities of personal representatives and their protection.

The ability of certain categories of people to apply to the court to claim part of an estate on the ground that the will did not make reasonable provision for them is governed by the Inheritance (Provision for Family and Dependants) Act 1975. This Act may be referred to in the SQE1 assessment. References to cases in this chapter are provided for illustrative purposes only.

LEARNING OUTCOMES — By the end of this chapter you will be able to apply core legal principles, at the level of a competent newly qualified solicitor, to realistic client-based and ethical problems in the following areas:
✓ potential applicants for family provision;
✓ the process by which the court exercises its discretion under the Inheritance (Provision for Family and Dependants) Act 1975;
✓ protection of personal representatives against personal liability to successful family provision applicants; and
✓ rights of beneficiaries to vary the disposition of the deceased's estate post-death together with any associated inheritance tax (IHT) and capital gains tax (CGT) consequences.

7.1 Introduction

England and Wales generally offer testamentary freedom, allowing individuals to leave property to whomever they choose. This freedom is limited by the Inheritance (Provision for Family and Dependants) Act 1975, which allows certain people to claim part of an estate if the will or intestacy rules failed to make "reasonable provision" for them. Beneficiaries may also voluntarily rearrange their inheritance through post-death variations or disclaimers, often for tax efficiency or moral reasons.

7.2 Inheritance (Provision for Family and Dependants) Act 1975

Enables individuals aggrieved by their exclusion from a will (or lack of entitlement under intestacy) to apply to the court for a benefit from the estate. Applies ONLY if the deceased was DOMICILED in England and Wales.

7.2.1 Categories of Applicant

Category	Description
(a) Spouse or civil partner	Legally married or in a civil partnership at death.
(b) Former spouse or civil partner	Provided not remarried and not barred by a court order during divorce/dissolution.
(c) Child of the deceased	Children of any age; includes adopted children.
(d) Person treated as a child of the family	Step-children or those for whom the deceased stood in a parental role.
(e) Persons maintained by the deceased	Those receiving substantial financial contributions toward reasonable needs immediately before death (non-commercial arrangement).
(f) Cohabitants	Lived in the same household as the deceased for at least 2 YEARS ending immediately before death, as husband, wife, or civil partner.

7.2.2 Time Limit

> Applications must be made within SIX MONTHS of the date the grant of representation is issued. The court has discretion to extend for good reason (e.g. estate not yet distributed; claim has significant merit).

7.2.3 The Ground for a Claim and the Guidelines

The SOLE ground for a claim is that the disposition of the estate does not make REASONABLE FINANCIAL PROVISION for the applicant.

Standard	Applicable To	Test
Surviving spouse standard	Surviving spouse/civil partner only	Provision that is reasonable in ALL circumstances, whether or not required for MAINTENANCE.
Ordinary standard	All other applicants	Limited to what is reasonable for their MAINTENANCE (everyday living expenses).

Section 3 Guidelines: the court considers financial resources and needs, moral obligations, the size of the estate, any physical or mental disabilities, and the conduct of the applicant. In Illott v Blue Cross, for adult children, a mere blood relationship may be insufficient without a moral claim or special circumstances.

7.2.4 Orders

The court can make various orders against the "NET ESTATE," including periodical payments, lump sums, or transfer of specific property. The net estate can include the deceased's share of joint property passing by survivorship if the court so orders.

7.2.5 Anti-Avoidance

To prevent individuals divesting assets before death to defeat claims, the court can set aside gifts made within SIX YEARS of death if intended to bypass the Act.

7.2.6 Protecting the PRs

> PRs should wait at least SIX MONTHS from the grant before distributing assets, to avoid personal liability for successful family provision claims.

7.3 Post-death Variations and Disclaimers

7.3.1 Types of Arrangement

Arrangement	Effect

Lifetime gift	Beneficiary accepts the inheritance, then gifts it to someone else.
Post-death disclaimer	Beneficiary REJECTS an inheritance entirely; the asset passes as if they predeceased the deceased. Cannot disclaim PART of a gift, or disclaim after accepting a benefit from it.
Post-death variation	Beneficiary REDIRECTS their benefit to someone else, effectively rewriting the will/intestacy. Requires the beneficiary to be 18+ with mental capacity.

7.3.2 IHT Considerations

> Section 142 IHTA 1984: a variation/disclaimer can be "READ BACK" into the will, treated as if the deceased gave the property directly to the new beneficiary. Avoids it being treated as a PET by the original beneficiary. Conditions: in WRITING; within TWO YEARS of death; NOT for consideration in money or money’s worth.

7.3.3 CGT Considerations

Variations/disclaimers made within two years of death can similarly be read back for CGT purposes. This ensures no disposal charge for the original beneficiary, and the new recipient is deemed to have acquired the asset at its PROBATE VALUE at death.

Chapter 7 — Summary

✔ Family provision: six categories of applicant under the 1975 Act; applies only where deceased domiciled in England and Wales.

✔ Time limit: six months from grant (court discretion to extend).

✔ Sole ground: failure to make reasonable financial provision — surviving spouse standard (broader) vs ordinary/maintenance standard (others).

✔ PRs should wait six months from grant before distributing, to avoid personal liability to successful applicants.

✔ Disclaimer: rejects inheritance entirely (treated as predeceasing). Variation: redirects to a chosen person.

✔ To "read back" for IHT/CGT: in writing; within 2 years of death; not for consideration; (variation) must elect to read back.

CHAPTER 8

Administration: Obtaining the Grant of Representation

SQE1 SYLLABUS — This chapter enables you to achieve the SQE1 assessment specification in relation to functioning legal knowledge concerned with wills and the administration of estates:

- The planning, management and progression of the administration of an estate.
- Grants of representation: need for a grant of representation; the relevant provisions of the Non-Contentious Probate Rules; application procedure; valuation of assets and liabilities; excepted estates; methods of funding the initial payment of inheritance tax.

In this chapter, the following may be referred to in the SQE1 assessment: inheritance tax form numbers (IHT205, IHT400 and IHT421); Non-Contentious Probate Rules (NCPR) 1987, Rules 20 and 22; and forms PA1P and PA1A. Otherwise, references to cases, statutory and regulatory authorities are provided for illustrative purposes only.

LEARNING OUTCOMES — By the end of this chapter you will be able to apply core legal principles, at the level of a competent newly qualified solicitor, to realistic client-based and ethical problems in the following areas:

- ✓ whether a grant of representation is required, the type of grant and possible applicants;
- ✓ which inheritance tax ('IHT') form should be submitted;
- ✓ the date for payment of IHT and funding the initial payment;
- ✓ probate papers required to obtain the grant; and
- ✓ the effect of a grant of representation.

8.1 Introduction

The grant of representation is a document issued by the Probate Registry that provides CONCLUSIVE EVIDENCE of the PRs' title to assets and the validity of any will. While executors derive authority from the will itself, they still require the grant to undertake major transactions such as selling land or releasing funds from banks.

8.2 Initial Assessment

8.2.1 The PRs

Type of PR	Source of Authority	Type of Grant Applied For
Executor	Named in a valid will	Grant of PROBATE
Administrator (will exists, no executor)	No will appointing an able/willing executor	Letters of administration WITH WILL ANNEXED
Administrator (no will)	Deceased died intestate	Simple LETTERS OF ADMINISTRATION

ONE executor is always sufficient, but TWO ADMINISTRATORS are generally required if there is a MINORITY INTEREST (a beneficiary under 18) or a LIFE INTEREST.

8.2.2 The Beneficiaries

Solicitors must verify the will's validity, identify beneficiaries, and advise on distribution while complying with data protection (GDPR).

8.2.3 Details of Property and Debts

PRs must gather asset details and valuations (market value) to assess the PROBATE VALUE and any IHT liability.

8.2.4 Assets for Which a Grant Is NOT Required

- Small payments (under £5,000) at the discretion of certain institutions.
- Chattels (moveable property) and cash found in the deceased's possession.
- Joint property held as beneficial joint tenants (passes by survivorship).
- Life insurance policies written in trust and discretionary pension benefits.

8.2.5 Assessment of the IHT Position

PRs must determine if they need to submit Form IHT205 (for "excepted" estates with no tax) or Form IHT400 (where tax is likely payable).

8.2.6 Preparation of Papers

Required documents: the original will; necessary affidavits; the correct IHT form; and the application form (PA1P or PA1A). Professional applications for probate must now be made ONLINE.

8.3 Affidavit Evidence

The Probate Registry may require sworn evidence to resolve doubts about a will:

Affidavit Type	When Required
Due execution	If the attestation clause is missing or defective.
Knowledge and approval	Where there are suspicious circumstances, or the testator was illiterate.
Plight and condition	If the will appears tampered with (e.g. paperclip marks or tears).
Lost wills	To prove the contents of a missing document.

8.4 Completing the IHT Form

The PRs must submit an IHT account within 12 MONTHS of the end of the month of death.

Form	Used For
IHT205 — Excepted estates	Small estates (gross value below NRB); exempt estates (bulk passes to spouse/charity, gross value under £1 million); non-domiciled estates.
IHT400	All other UK-domiciled estates. A receipt from HMRC (IHT421) is required before the grant is issued.

8.5 Paying the IHT

IHT is generally due SIX MONTHS after the end of the month of death.

Property Type	Payment Timing
Non-instalment property (cash, shares)	Must be paid BEFORE the grant can be obtained.

Instalment option property (land, businesses)	Can be paid in 10 ANNUAL INSTALMENTS.

FUNDING METHODS: direct payment scheme from the deceased's bank; life assurance proceeds; loans from beneficiaries; bank borrowing.

8.6 Forms PA1P and PA1A

These forms establish the applicants' right to the grant. Key sections identify the applicants and the deceased, address any settled land, and cover applications by attorneys for incapacitated persons.

Applicants must specify the GROSS and NET PROBATE VALUES (assets passing under the grant) — this differs from the IHT value as it excludes joint property. Applicants sign declarations confirming they will administer the estate according to law.

8.7 Executors Applying for a Grant of Probate

Executors apply using FORM PA1P. Executors have the HIGHEST PRIORITY for a grant. A grant can be issued to up to FOUR executors. Those unwilling to act may RENOUNCE (if they haven't "intermeddled") or have POWER RESERVED to them (to act later if a vacancy arises).

8.8 Administrators Applying for Letters of Administration with Will Annexed

Used when a will is valid but no executor can act.

Priority (Rule 20 NCPR 1987)	Category
(a)	Executor
(b)	Residuary legatee holding in trust
(c)	Other residuary legatee
(d)	PRs of a deceased residuary legatee
(e)	Other legatees/creditors
(f)	PRs of these individuals

Beneficiaries with VESTED interests are preferred over CONTINGENT ones. Minors cannot act personally, and two administrators are usually required for minority or life interests.

8.9 Administrators Applying for (Simple) Letters of Administration

Used when the deceased died intestate, using FORM PA1A.

Priority (Rule 22 NCPR 1987)	Category
(a)	Spouse/civil partner
(b)	Children/issue
(c)	Parents
(d)	Whole-blood siblings
(e)	Half-blood siblings
(f)	Grandparents
(g)	Whole-blood uncles/aunts
(h)	Half-blood uncles/aunts

Minors cannot act. A minimum of TWO administrators is required if the intestacy creates a minority interest. Up to FOUR administrators can be appointed, but "power reserved" is NOT available on intestacy.

Chapter 8 — Summary

✔ PRs are executors (named in will, apply for grant of probate via PA1P) or administrators (apply for letters of administration with will annexed or simple letters of administration via PA1A).

✔ Priority for letters of administration with will annexed: Rule 20 NCPR 1987. Priority for simple letters of administration: Rule 22 NCPR 1987.

✔ Some assets (joint property; life policies in trust) do not pass through PRs and are excluded from probate value.

✔ IHT205 for excepted estates; IHT400 for all other UK-domiciled estates (with IHT421 receipt needed before grant).

✔ Non-instalment property: IHT paid before grant. Instalment property: 10 annual instalments, due 6 months after month of death.

✔ One executor is always sufficient; two administrators required for minority or life interests.

CHAPTER 9

Administration: Dealing with the Estate

SQE1 SYLLABUS — This chapter enables you to achieve the SQE1 assessment specification in relation to functioning legal knowledge concerned with wills and the administration of estates:
▸ The validity of a will and interpretation of the contents of a will. The distribution of testate, intestate and partially intestate estates.
▸ The law and practice of inheritance tax in the context of lifetime gifts and transfers on death.
▸ The planning, management and progression of the administration of an estate including claims made under the Inheritance (Provision for Family and Dependants) Act 1975.
▸ The law and practice relating to personal representatives and trustees in the administration of estates and consequent trusts. The rights, powers and remedies of beneficiaries of wills and consequent trusts.
▸ Duties of personal representatives.
▸ Liabilities of personal representatives and their protection.
▸ The sale of assets to raise funds to pay funeral expenses, tax, debts and legacies.
▸ Distribution of the estate.
▸ Burden and incidence of inheritance tax.
▸ The personal representatives' liability to income tax and capital gains tax.
▸ The beneficiaries' liability to capital gains tax on inherited assets.

In the SQE1 assessment the process available to personal representatives to protect themselves from liability to unknown beneficiaries/creditors may be referred to by way of the statutory authority, namely s 27 Trustee Act 1925; also, the process available to personal representatives to protect themselves from liability to missing beneficiaries/creditors may be referred to as a Benjamin order. Otherwise, in this chapter references to cases and statutory authorities are provided for illustrative purposes only.

LEARNING OUTCOMES — By the end of this chapter you will be able to apply core legal principles, at the level of a competent newly qualified solicitor, to realistic client-based and ethical problems in the following areas:
✓ key steps required to administer an estate;
✓ the rules on the incidence of debts and pecuniary legacies;
✓ the methods by which personal representatives may seek to protect themselves from personal liability; and
✓ the tax implications of the sale and distribution of assets.

9.1 Introduction

The administration of an estate involves four broad phases: COLLECTING ASSETS; PAYING DEBTS (including funeral and testamentary expenses); DISTRIBUTING LEGACIES; and COMPLETING THE FINAL DISTRIBUTION of the residuary estate. The process is similar for testate and intestate estates, though the latter requires identifying beneficiaries using statutory rules.

9.2 The Administration Period

Begins immediately at death and concludes when the residue is ready to be vested in the beneficiaries or trustees. PRs hold their office FOR LIFE — they remain responsible if new assets or liabilities are discovered years later.

9.3 Duties of the PRs

Under Section 25 of the AEA 1925, the primary duty of PRs is to collect the estate and administer it according to law. PRs are personally liable for DEVASTAVIT (a wasting of assets) resulting from any breach of duty, such as failing to protect asset values or misallocating funds. The court may relieve a PR of liability under SECTION 61 of the Trustee Act 1925 if they acted "honestly and reasonably".

9.4 Protection Against Liability

Risk	Protection Mechanism
Unknown beneficiaries/creditors	s 27 Trustee Act 1925 advertisements in the LONDON GAZETTE and appropriate local newspapers. Must wait at least TWO MONTHS from the notice before distributing.
Missing beneficiaries/creditors (known but cannot be found)	Set aside funds; take an indemnity from other beneficiaries; purchase insurance; OR seek a BENJAMIN ORDER from the court to distribute on the assumption the person is dead.
Inheritance (Provision for Family and Dependants) Act 1975 claims	Wait at least SIX MONTHS from the date of the grant before distributing.

9.5 Administrative Powers of PRs

PRs derive powers from the will and various statutes, including the AEA 1925, Trustee Act 1925, and Trustee Act 2000.

9.6 Collecting the Assets

Ownership of assets passes to PRs UPON DEATH (executors) or UPON THE GRANT (administrators). They must collect property by producing the grant to institutions like banks. They owe a duty of REASONABLE CARE AND SKILL to preserve these assets. Assets passing independently (like joint property) do NOT devolve on PRs.

9.7 Paying Funeral and Testamentary Expenses and Debts

9.7.1 Preliminary Considerations

PRs use immediate funds (cash or insurance) to pay debts and must prioritise repaying any bank loans used to pay IHT. They may sell assets to raise cash but should generally avoid selling specific legacies unless necessary.

9.7.2 Payments to Be Made

The deceased's debts; reasonable funeral expenses; and testamentary expenses (e.g. probate fees and IHT on property vesting in the PRs).

9.7.3 Solvent Estates

SECURED DEBTS (mortgages) are the responsibility of the beneficiary receiving that asset, unless the will states otherwise. UNSECURED DEBTS are paid according to a "statutory order," usually starting with property not disposed of by the will, then the residuary estate.

9.7.4 Insolvent Estates

If assets are insufficient to pay all debts, PRs must follow a strict order of priority: SECURED CREDITORS first; then FUNERAL/ADMIN EXPENSES; then UNSECURED CREDITORS, who receive a pro-rata share (ABATEMENT) of what remains.

9.8 Paying the Legacies

Type	Method / Timing
Specific legacies	Transferred via ASSENT (land) or stock transfer forms. RETROSPECTIVE to date of death — beneficiary entitled to (and liable for tax on) any income produced from death onward.
Pecuniary legacies	Typically paid from the residuary estate.
Time for payment	Generally payable at the end of the "executor's year" (one year after death). If delayed, the legatee is entitled to interest.

9.9 Completing the Administration

9.9.1 IHT Adjustments

PRs may need to submit a CORRECTIVE ACCOUNT for newly discovered assets, or take advantage of LOSS RELIEF if qualifying investments are sold for less than their probate value within 12 months of death.

9.9.2 PRs' Continuing IHT Liability

PRs remain liable for future IHT instalments, and may be liable for IHT on the deceased's LIFETIME TRANSFERS if the recipient fails to pay. They should obtain a CLEARANCE CERTIFICATE from HMRC before final distribution.

9.9.3 Income Tax and Capital Gains Tax

Tax	Rate / Treatment
Income Tax (PR liability)	7.5% on dividends; 20% on other income received during administration.
CGT (PR liability)	PRs acquire assets at PROBATE VALUE. On sale: 20% (or 28% for residential land) on gains exceeding the annual exemption.
CGT (transfer to beneficiary)	NO disposal for CGT purposes; beneficiary acquires the asset at PROBATE VALUE.

9.10 Transferring Assets to Residuary Beneficiaries

ADULTS with vested interests receive property outright. MINORS or those with contingent interests have assets transferred to TRUSTEES. Land is transferred using a written, signed ASSENT.

9.11 Estate Accounts

The final step is preparing ESTATE ACCOUNTS showing all assets, debts, and the balance for residuary beneficiaries. Separate accounts for capital and income are required if there is a life or minority interest. Beneficiaries SIGN the accounts to approve them and release the PRs from further liability.

Chapter 9 — Summary

✔ PRs are under a statutory duty to administer the estate correctly and are personally liable for devastavit.

✔ Protection: s 27 TA 1925 advertisements (2 months); Benjamin order for missing beneficiaries; wait 6 months for IPFDA 1975 claims.

✔ Solvent estate: secured debts to the asset-recipient; unsecured debts via statutory order. Insolvent: secured creditors, then expenses, then unsecured pro-rata.

✔ Specific legacies via assent (retrospective to death); pecuniary legacies from residue; payable at end of executor's year.

✔ PRs pay income tax (7.5%/20%) on administration income and CGT (20%/28%) on disposals; transfers to beneficiaries are not CGT disposals (probate value carries over).

✔ Estate accounts finalise the administration and are signed by beneficiaries to release the PRs from liability.

CHAPTER 10

Administration: Rights of Beneficiaries and Liabilities of Personal Representatives

SQE1 SYLLABUS — This chapter enables you to achieve the SQE1 assessment specification in relation to functioning legal knowledge concerned with wills and the administration of estates:

- The law and practice relating to personal representatives and trustees in the administration of estates and consequent trusts. The rights, powers and remedies of beneficiaries of wills and consequent trusts.
- Duties of personal representatives in the administration of estates.
- Liabilities of personal representatives and their protection in the administration of estates.

Note that for SQE1, candidates are not usually required to recall specific case names or cite statutory or regulatory authorities. Cases are provided for illustrative purposes only.

LEARNING OUTCOMES — By the end of this chapter you will be able to apply core legal principles, at the level of a competent newly qualified solicitor, to realistic client-based and ethical problems in the following areas:

- ✓ challenges relating to the personal representatives' ('PRs') application for a grant of representation;
- ✓ beneficiaries' rights in the administration of an estate;
- ✓ actions beneficiaries and creditors can bring against PRs and possible defences; and
- ✓ distinctions between PRs and trustees and the types of actions that can be brought against the latter.

10.1 Introduction

The primary duties of PRs — obtaining a grant, collecting assets, paying debts, and distributing the residue — can lead to conflict if not performed correctly. Litigation against PRs is increasing, so it is essential for both PRs and beneficiaries to understand their respective rights and liabilities, and the point at which PRs transition into being trustees.

10.2 The Rights of Beneficiaries

10.2.1 Action Regarding the Grant

Mechanism	Purpose

Caveat	Lodged at the Probate Registry to PREVENT issue of a grant (e.g. dispute over validity or executor's capacity). Lasts SIX MONTHS.
Citation to take probate	Used for an executor who has "intermeddled" but has not applied for the grant.
Citation to propound a will	Forces someone to prove a later will that might change the distribution.
Citation to accept or refuse a grant	Standard way to "clear off" someone with a prior right to a grant who shows no intention of applying.
Passing over (s 116 Senior Courts Act 1981)	Court orders that a person be "passed over" in favour of someone else if unwilling/unable to act, even if they intermeddled.

10.2.2 The Right to Compel Due Administration

Beneficiaries of an unadministered estate do NOT have an equitable interest in the assets — both legal and equitable interests stay with the PRs until the assets are transferred or "assented."

- **Accounts and information:** Right to inspect estate records; court order under s 25 AEA 1925 available to compel an inventory and accounts.
- **Administration proceedings:** Interested parties can seek court guidance, or (last resort) a general administration order with full court supervision.
- **Executor's year:** PRs generally have ONE YEAR from death before they can be compelled to distribute the estate.

10.2.3 Actions Against the PRs for Breach of Duty

Ground	Description
Breach of fiduciary duty	PRs must avoid conflicts of interest; must pay unauthorised profits (e.g. a stockbroker's commission) back into the estate.
Devastavit	"Wasting of assets" — misuse of assets, negligence (e.g. failing to monitor volatile investments), or maladministration (distributing to the wrong people).

DEFENCES: acted "honestly and reasonably" (s 61 TA 1925); will contained an exclusion clause; beneficiaries agreed to the breach; OR followed s 27 advertising procedures for unknown claimants.

LIMITATION: 12 YEARS for claims of underpaid interest in an estate; NO limit for claims involving fraud or PRs taking property for their own use.

10.2.4 Following and Tracing the Assets

If PRs wrongly distribute assets, a beneficiary can bring a PROPRIETARY CLAIM to recover the assets (or proceeds) from the recipient, UNLESS that person bought them for value in good faith. A PERSONAL CLAIM for a refund is also available once all remedies against the PRs are exhausted.

10.2.5 Removal of PRs

Once a grant has been issued, a PR can only be removed or replaced by a COURT ORDER under Section 50 of the Administration of Justice Act 1985, with the welfare of the beneficiaries as the primary consideration.

10.3 The Rights of Creditors

PRs are liable for the deceased's debts only to the extent of the assets in the estate. However, they can be PERSONALLY LIABLE for devastavit if they pay legacies before creditors, or pay debts in the wrong order in an insolvent estate. PRs should use the s 27 advertising procedure to protect themselves from unknown creditors.

10.4 The Transition from PRs to Trustees

When a will creates an ongoing trust, a transition occurs from the office of PR to that of trustee.

Property Type	Trigger for Transition
Real estate	Marked when the PRs execute a written ASSENT to themselves in their new capacity as trustees.
Personalty	PRs become trustees once the administration (paying debts, determining final residue) is COMPLETE.

Unlike trustees, PRs CANNOT retire and CANNOT be removed without a court order.

Chapter 10 — Summary

✔ A caveat prevents a grant issuing (6 months); citations compel PRs to act or be passed over.

✔ Beneficiaries of an unadministered estate have no equitable interest but can compel due administration; PRs have an "executor's year" before being compelled to distribute.

✔ PRs are fiduciaries and personally liable for devastavit (misuse, negligence, maladministration).

✔ Defences: s 61 TA 1925 (honest and reasonable); exclusion clause; beneficiary consent; s 27 advertising compliance.

✔ Beneficiaries/creditors can trace assets into a wrongful recipient's hands (proprietary claim) or sue them personally for a refund.

✔ PRs can only be removed by court order (s 50 AJA 1985) — unlike trustees, they cannot retire.

✔ Transition to trustee: assent (land) or completion of administration (personalty).

QUICK REFERENCE — KEY TIME LIMITS, THRESHOLDS AND FIGURES

Item	Figure / Time Limit	Notes
Minimum age for testator	18 years	Subject to privileged will exception
Number of witnesses (s 9 Wills Act 1837)	2 or more, present at the same time	Beneficiary witness: gift fails, will remains valid
s 184 LPA 1925 (uncertain order of death)	Elder deemed to have died first	Relevant to lapse
Statutory legacy (spouse + issue)	£270,000	Plus chattels and half the remaining balance
Nil Rate Band (NRB)	£325,000	Taxed at 0%; cumulation over preceding 7 years
Residence Nil Rate Band (RNRB)	£175,000	Tapered for estates over £2 million; requires closely inherited residence
IHT death rate	40%	36% if 10%+ of estate left to charity
IHT lifetime rate (LCTs)	20%	On excess above NRB at time of transfer
PET survival period	7 years	Becomes exempt if donor survives; taper relief 3–7 years
Annual exemption (lifetime gifts)	£3,000 per year	Can carry forward one unused year
Small gifts exemption	£250 per recipient per year	Cannot combine with annual exemption for same person
IHT payment deadline (death estates)	6 months after end of month of death	Instalment option: 10 years for land/business/shares
IHT account submission deadline	12 months after end of month of death	IHT205 (excepted) or IHT400
IPFDA 1975 application time limit	6 months from grant of representation	Court discretion to extend
Cohabitant qualifying period (IPFDA 1975)	2 years immediately before death	Living in the same household as husband/wife/civil partner
Anti-avoidance look-back (IPFDA 1975)	6 years before death	Gifts made to defeat a claim may be set aside
PRs wait before distributing (family provision)	6 months from grant	Protects against IPFDA 1975 claims
Variation/disclaimer read-back period (IHT/CGT)	2 years from death	Must be in writing; not for consideration
s 27 TA 1925 advertisement wait period	2 months from notice	London Gazette + local newspaper
Executor's year	1 year from death	PRs cannot generally be

		compelled to distribute before this
Caveat duration (Probate Registry)	6 months	Prevents issue of a grant
Limitation — underpaid interest claims against PRs	12 years	No limit for fraud or PR self-dealing
Maximum executors on a grant	4	Others may have power reserved
Minimum administrators (minority/life interest)	2	Required where a beneficiary is under 18 or there is a life interest