

STEP ADVANCED CERTIFICATE IN WILL PREPARATION

ENGLAND & WALES

Syllabus

INTRODUCTION

This document contains the detailed syllabus for the STEP Advanced Certificate in Will Preparation (England & Wales).

This syllabus should be read in conjunction with the **course brochure**, which explains the method of delivery and assessment, entry requirements and personal and business benefits of completing the programme.

The brochure, course dates and enrolment application form can be found on the programme website www.cltint.com/stepcertwillprep.

ADVANCED CERTIFICATE IN WILL PREPARATION

MODULE 1: AN INTRODUCTION TO WILL WRITING

This module covers:

- The socio-legal background to will preparation
- Will preparation as an occupation
- The purpose of a will and what may be disposed of by will
- Powers of appointment and their importance in will drafting
- The Wills Act 1837 in will preparation

By the end of this module you should be able to:

- Describe the socio-legal context in which will preparation operates
- Explain the purpose of a will and explain what property may be disposed of by will
- Identify and distinguish between the different types of powers of appointment
- Effectively draft powers of appointment in a will to accurately reflect the intentions of a testator
- Outline the requirements of a valid will by reference to the relevant provisions of the Wills Act 1837

MODULE 2: MANAGING THE PROCESS OF WILL PREPARATION

This module covers:

- The duty of care owed by a wills draftsman to the testator and others
- Time taken to prepare a will
- Retainers to prepare a will
- Processes in the preparation of a will and effective control of risk

By the end of this module you should be able to:

- Explain the will draftsman's duty of care and the risks of breaching it
- Identify and apply the factors that should be considered when determining the timescale for a will to be prepared
- Explain the purpose of the retainer for the preparation of a will and describe how the terms of a retainer may vary in different circumstances
- Explain the importance of having a risk management policy and outline the six steps in policy creation
- Describe the key stages in the will preparation process

MODULE 3: TAKING INSTRUCTIONS

This module covers:

- The importance of taking good instructions
- The benefits of good instruction meetings
- The testator's language
- The importance of reviewing previous wills
- Recording instructions
- Money laundering and confirming a testator's identity
- Conflicts of interest

By the end of this module you should be able to:

- Explain the importance of accurate and comprehensive instructions
- Identify the risks of not taking detailed instructions
- Explain the main legal issues of the will preparation process in a clear and concise manner that is understandable to testators
- Evaluate the importance of reviewing previous wills
- Explain why it is necessary to confirm a testator's identity when taking initial instructions with reference to the appropriate money laundering legislation
- Define a conflict of interest and identify the circumstances in which such a situation may arise in the will preparation process
- Explain working procedures that minimise the risks associated with taking instructions

MODULE 4: TESTAMENTARY CAPACITY, UNDUE INFLUENCE AND KNOWLEDGE AND APPROVAL

This module covers:

- What testamentary capacity is and the effect of not having it
- The time available for assessment
- Tests of capacity: *Banks v Goodfellow* and Mental Capacity Act 2005
- The Golden Rule
- Undue influence
- Knowledge and approval
- Practical application of the concepts of capacity, undue influence and knowledge and approval

By the end of this module you should be able to:

- Explain the significance of mental capacity of a testator in the will preparation process
- Explain when capacity should be assessed and identify and apply the tests for mental capacity with reference to *Banks v Goodfellow* and the provisions of the Mental Capacity Act 2005
- Apply the "Golden rule" in relation to the assessment of mental capacity and explain how it interacts with the decision in *White v Jones*
- Define the concept of undue influence
- Explain and apply the concepts of knowledge and approval in the will preparation process
- Identify and describe the procedures used to ensure that capacity, undue influence and knowledge and approval are appropriately investigated when advising a testator

MODULE 5: THE FOREIGN ELEMENT

This module covers:

- Domicile
- Situs of assets
- Formal and essential liability
- Conflicts of law
- Practical tips for dealing with a will involving a foreign element

By the end of this module you should be able to:

- Explain the significance of domicile in relation to the preparation of a will
- Explain the law of succession applicable to both moveable and immoveable property
- Outline the key factors to be considered when dealing with the foreign element of an estate when drafting a will
- Explain how a will can be held to be essentially invalid as a result of conflict of law
- Assess the governing law to be applied where there is no express provision in the will relating to this
- Explain how both movables and immovables are dealt with where there is revocation of a will
- Outline the basic principles that govern powers of appointment where the testator is not domiciled in England or Wales
- Explain the circumstances in which a person will obtain a domicile of choice and also, describe what will happen if a domicile of choice is lost
- Evaluate the effect of a person being domiciled validly in more than one jurisdiction
- Explain the importance of obtaining advice from a lawyer from the relevant jurisdiction when dealing with a testator of foreign domicile
- Identify and describe procedures used to ensure that domicile is dealt with appropriately when advising a testator

MODULE 6: JOINT PROPERTY

This module covers:

- How joint property devolves
- How jointly owned interests can be bequeathed by will
- Severance of joint tenancy interests
- The importance of *Carr-Glynn v Frearsons*
- Joint gifts in wills

By the end of this module you should be able to:

- Identify and differentiate the characteristics of a tenancy in common and a joint tenancy
- Explain and advise a testator as to how jointly owned interests devolve on death
- Demonstrate how to take relevant instructions to ascertain the extent of a testator's property and determine the nature of any co-ownership
- Identify the circumstances in which a joint tenancy can be severed and explain the effects of severance
- Evaluate the findings in *Carr-Glyn v Frearsons* and identify the risks to the draftsman of not taking adequate instructions on the subject of co-ownership
- Evaluate the practical risks posed by the subject of co-ownership in will preparation
- Select the correct terminology to bequeath joint gifts in a will to reflect a testator's instructions

MODULE 7: INHERITANCE (PROVISION FOR FAMILY AND DEPENDANTS) ACT (“I(PFD)A”) 1975

This module covers:

- The draftsman’s role in dealing with I(PFD)A issues
- The main features of the Act
- Who may claim under the Act

By the end of this module you should be able to:

- Explain the purpose of the I(PFD)A in relation to wills
- Identify the key provisions of the I(PFD)A that should be considered when establishing a claim under the Act
- Outline the factors to be taken into consideration when determining who may make a claim under the I(PFD)A
- Identify potential claimants under the I(PFD)A
- Advise a testator as to how to reduce the risk of claims under the I(PFD)A being made against their estate
- Analyse, evaluate and apply the most important case law relating to claims under the I(PFD)A when advising a testator

MODULE 8: TAXATION: GENERAL ISSUES

This module covers:

- The calculation and payment of IHT on death
- Exemptions from IHT
- Property excluded from IHT
- Reliefs from IHT
- The nil rate band
- Practical issues for funding IHT

By the end of this module you should be able to:

- Identify the information necessary to calculate IHT on an estate
- Undertake the appropriate research to obtain information necessary to calculate IHT on an estate
- Identify the relevant provisions of the Inheritance Act 1984 and the Finance Act 2006 applicable in the calculation of IHT
- Identify problems that can arise in the calculation of IHT and recommend measures to combat these problems
- Define what is meant by “relevant property” in the context of IHT calculation and explain how and when this applies
- Describe how IHT may be charged on different types of interest given under a will
- List and explain the main exemptions and exclusions from IHT
- Distinguish a relief from IHT from an exemption and an exclusion, and explain in what circumstances a relief may be available
- Explain how the nil rate band is calculated and how it may be transferred
- Advise a testator as to the transfer of a nil rate band and the effects of this
- Describe the incidence and burden of IHT and highlight the potential funding issues for a testator
- Calculate IHT on an estate

MODULE 9: TAXATION: SPECIFIC ISSUES

This module covers:

- The property reliefs from IHT
- Immediate post-death interests
- Protection of the vulnerable
- Exempt and non-exempt shares of residue
- Income tax and other tax charges on beneficiaries under the Will
- Specific rules of IHT affected by Will drafting

By the end of this module you should be able to:

- Explain the requirements for IPDIs and the taxation of such interests
- Describe the way in which a will can protect the interests of vulnerable beneficiaries
- Explain the rules in *re Benham and re Ratcliffe* and the tax consequences resulting from them
- Explain the income tax treatment of different forms of provision under a Will
- Explain specific IHT rules including s39A IHTA 1984, double grossing, survivorship as it affects the nil rate band and commorientes as well as other detailed tax rules
- Calculate IHT, CGT and income tax on an estate and on any trusts set up by the Will

MODULE 10: DRAFTING THE WILL

This module covers:

- Practical guidance on drafting and checking wills
- The order, structure and content of a will viz:
 - Commencement and declarations
 - Executors and trustees
 - Testamentary guardians
 - Funeral instructions
 - Types of gift

By the end of this module you should be able to:

- Identify the constituent parts of a will and explain their purpose
- Appreciate the need for a logical order, clear language and proper grammar in a will
- Identify the most common errors in will preparation and explain how to avoid them
- Explain the importance of up to date precedents
- Explain how precedents and standard provisions should be used to implement more complex instructions into a will
- Draft the most common dispositive and non-dispositive clauses in a will to accurately reflect a testator's instructions

MODULE 11: NON-STANDARD WILLS

This module covers:

- Will drafting in an emergency
- The rules governing privileged wills
- Wills for deaf or blind testators
- Mutual wills
- Wills for those lacking testamentary capacity

By the end of this module you should be able to:

- Describe the circumstances under which emergency will drafting is required and the difficulties of so doing
- Describe how the will draftsman can minimise the risks of dealing with will writing in emergency circumstances
- Define what is meant by a privileged will and list those persons who are entitled to make such a will
- Explain how a privileged will can be executed
- Describe the risks associated with taking will instructions from a deaf or blind testator and how these can be mitigated
- Define what constitutes a mutual will and advise a testator as to the advantages and disadvantages of this type of will
- Identify and explain the criteria to establish when a statutory will is appropriate, making appropriate reference to the Mental Capacity Act 2005

MODULE 12: EXECUTION AND REVOCATION OF A WILL

This module covers:

- The statutory requirement for valid execution
- Amendments to executed wills
- Supervision of execution by the draftsman
- Inspection of executed wills
- Revocation

By the end of this module you should be able to:

- List the statutory requirements under the Wills Acts 1837 and 1963 for valid execution of a will
- Advise a testator as to the statutory requirements for execution and revocation of a will
- Describe how an executed will may be amended legitimately
- Analyse, evaluate and apply the most appropriate case law relating to the supervision of execution of a will by a draftsman
- Highlight the risks associated with failure to supervise the execution of a will and recommend ways of minimising those risks
- Advise a testator in concise but sufficiently comprehensive terms on the subject of execution of a will
- Explain the importance of inspecting executed wills and identify the risks of not inspecting an executed will
- List the circumstances in which a will may be revoked with reference to the appropriate provisions of the Wills Act 1837
- Advise a testator as to the statutory requirements for revocation

MODULE 13: SOME TRAPS IN WILL WRITING

This module covers:

- Misdescription
- Incorporation by reference
- Dating the will
- Republication and Revival
- Per stirpes/per capita
- A trust for sale (or not)
- Secret and Half-secret trusts
- Professional duties regarding exoneration provisions
- Precatory words
- Forfeiture

By the end of this module you should be able to:

- Explain what is meant by misdescription in will preparation and the effect of this
- Outline ways of minimising the risk of misdescription
- List the requirements for a document to be incorporated by reference into a will
- Explain the importance of dating a will
- Define what is meant by republication and be able to draft a clause into a will to allow legitimate republication of a will
- Describe and distinguish the concepts of per stirpes and per capita in relation to distribution of assets in a will
- Explain the effect of the Trusts of Land and Appointment of Trustees Act 1996 (“TLATA”) in relation to land that is to be held on trust in a will
- Explain how trusts of personality are outside the provisions of TLATA and explain what alternative statutory regime applies
- Explain and distinguish the concepts of a secret and half secret trusts
- Identify clauses in a will that create a secret and a half secret trust
- Describe ways to minimise the risks created by secret and half secret trusts
- Explain the purpose of an exoneration clause
- Describe the professional duties of a wills draftsman in relation to exoneration and ways of minimising the risks of exoneration clauses
- Explain what is meant by “precatory words” and describe the effect of these on gifts in a will
- List the circumstances in which forfeiture of a will applies

MODULE 14: OTHER AREAS OF LAW FOR THE WILL DRAFTSMAN

This module covers:

- Doctrine of Abatement
- Principle of Ademption
- Doctrine of Election
- Distribution of an intestate estate
- Guardianship
- Gender Recognition Act 2004
- How a gift under the will may lapse
- Perpetuities and Accumulations
- Proprietary estoppel

By the end of this module you should be able to:

- Describe the doctrine of abatement, list the order of abatement of legacies and explain how legacies are abated
- Define what is meant by ademption and discuss ways to circumvent the potential effects of this on the administration of an estate
- Define the doctrine of election and list the circumstances in which it will apply
- Explain the processes by which an intestate estate will be administered
- Describe who may be classed as a guardian, how they may be appointed and list their rights and duties
- List and explain the key provisions of the Gender Recognition Act 2004 that are most appropriate to will drafting
- Describe when a gift by will may lapse and explain how this should be dealt with
- Identify, explain and apply the key provisions of the Perpetuities and Accumulations Act 2009
- Evaluate the effect of the Perpetuities and Accumulations Act 2009 on the drafting of a will
- Define what is meant by “Proprietary Estoppel”
- Identify when the doctrine of Proprietary Estoppel applies in the will writing process
- Advise a testator as to how to avoid the problems Proprietary Estoppel may present

CONTACT US

For full details of the programme visit:

www.cltint.com/stepcertwillprep

If you have any queries please contact us:

Email: cltinternational@centlaw.com

Phone: +44 (0) 121 362 7733

CLT International

Wrens Court | 52-54 Victoria Road | Sutton Coldfield

Birmingham | B72 1SX | United Kingdom