INTERNATIONAL INHERITANCE FORUM

REPORT
ON
UNITED KINGDOM

INTERNATIONAL INHERITANCE FORUM

Table of Contents

1. GENERAL RULES 3
1.1. Origin and nature of property 3
1.2. Simultaneous death 3
1.3. Capacity to inherit 4
1.4. Ownership and vesting of property 4
1.5. Unworthiness 5
1.6. Acceptance 5
1.7. Liability for debts 5
1.8. Renunciation and disclaimer 6
1.9. Marital rights 6
2. INTESTACY 7
2.1. Declarations of Inheritance 7
2.2. Relationship 7
2.3. Order of preference 7
3. WILLS 8
3.1. Formalities 8
3.2. Revocation and Revival 9
3.3 Recognition, publication and probate 10
3.4. Curing formal deficiencies and rectification 11
3.5. Pacts and agreements as to future successions 12
3.6. Forced, reserved and elective shares and other legal rights 13
3.7. Disinheritance 13
3.8. Dependants' relief or maintenance 13
3.9. Restraints on freedom to testate 14
4. ADMINISTRATION 14
4.1. Intestate administration 14
4.2. Testamentary Administration 16
4.3 Management and control 17

1. GENERAL RULES

1.1. Origin and nature of property

Does your law distinguish between the origin or nature of property (real v personal; movable v immovable)? Are there different rules applicable to different classes of property?

There are two different types of property under English law: real property (land and buildings) and personal property (everything else). However, in the context of succession law, the most important distinction made is between moveable and immoveable assets, particularly when dealing with a cross-border estate.

Moveable property comprises anything that can be moved from one place to another, particularly intangible goods that are not fixed to a location, including services, intellectual property, and negotiable instruments such as banknotes and bills of exchange. It also includes personal items such as clothing and jewellery, household goods such as furniture and appliances, and other items including animals and vehicles.

Immovable property comprises land and buildings.

The distinction is important because, when dealing with the estate of a deceased person, moveable property shall be governed by the law of the deceased's domicile, while immovable property shall follow the law of the country where it is situated (Lex situs).

1.2. Simultaneous death

Which rules apply in the case of simultaneous death? How is the death of two or more heirs or testators determined? Are there presumptions?

In case of simultaneous deaths, the '*commorientes*' rule will apply to determine the title to property. The rule states that (subject to any court order) if two or more people die in circumstances where it is not possible to tell who died first, the deaths are presumed to have occurred in order of seniority, so the younger is deemed to survive the elder (*section 184, Law of Property Act 1925*). For example, if a husband (the elder) and a wife (the younger) die together in a car accident and it is not possible to tell who died first, the wife is deemed to survive the husband for the purposes of succession to their estates.

The *commorientes* rule does not apply for the purposes of:

- Inheritance tax (IHT) on death. For this purpose, the individuals concerned are assumed to have died at the same instant (section 4(2), Inheritance Tax Act 1984). The interaction of the commorientes rule and the IHT rule can have IHT advantages for spouses and civil partners, but these may be lost as the rule is often overridden by a survivorship clause in the will.

- The intestacy rules, on the simultaneous deaths of an intestate individual and his spouse or civil partner. A spouse or civil partner who dies within 28 days of the intestate's death is deemed not to have survived (section 46(2A), Administration of Estates Act 1925).

1.3. Capacity to inherit

Who is capable of inheriting? For example, can minors, unborn children and absentees inherit? Are there restrictions based on nationality or domicile?

Anyone can inherit, regardless of their age and legal status.
If a beneficiary under a will or intestacy is a minor, their share of the estate or the asset(s) given to them will be held in trust until they are of age (this is usually 18, but a will may provide for them to become entitled at a later age, for instance 21 or 25).

People who are declared bankrupt are still entitled to inherit. However, any asset inherited will automatically vest in the trustee in bankruptcy as part of the bankrupt's estate for the benefit of creditors.

1.4. Ownership and vesting of property

Who has the ownership or the legal possession (seisin) of estate property on death? Are the legal or testamentary heirs automatically (by operation of law) vested with the deceased's property rights on death, or are there required judicial or administrative procedures before vesting takes place?

Upon the deceased's death, his or her assets vest in the individual(s) known as Personal Representatives (PR's), who are the people entitled to make an application to the Probate Registry for a Grant of Representation (a legal document required to prove one's authority to administer the estate; they hold the assets as trustees for the people entitled to them, i.e. the beneficiaries. The PR's will be either the Executor(s) appointed in the will or the Administrator(s) in case of intestacy, meaning the next of kin (closest relative of the deceased). When the estate is insolvent (because the liabilities exceed the assets), a creditor of the estate may be given permission to make an application for a Grant, which will give them limited powers to administer the estate. Once a Grant of Representation has been issued, the PR's will be able to transfer assets to beneficiaries or sell them in order to distribute the proceeds, but they will first have to be sure any tax due has been paid and all liabilities/debts discharged.

1.5. Unworthiness

Are certain persons presumed or deemed unworthy to inherit by operation of law?

Anyone who unlawfully causes the death of another is prohibited on grounds of public policy from benefiting from the estate of the deceased. In addition to this, there are cases where an application can be made to the Court to prevent someone from benefiting from the estate (for example a beneficiary who has forged a will in order to inherit).

1.6. Acceptance

How does an heir accept? Can acceptance be tacit, or must it be express? Is the heir presumed or deemed to have accepted in certain circumstances?

As the assets are initially managed and administered by the Personal Representatives, an heir or beneficiary does not need to formally accept the bequest. The PR will be deemed to have accepted their appointment to act as soon as they have performed any act of administration of the estate.

1.7. Liability for debts

Does acceptance entail liability for the deceased's debts? To what extent are the heirs, who accept an estate, liable for its debts? If they are liable, can they accept under benefit of inventory? In other words, how do heirs accept without incurring personal liability exceeding their benefits under the law or under the will? Are there circumstances in which the heirs forfeit their rights to request an inventory or to accept subject to an inventory?

There is no benefit of inventory under English law. Debts and liabilities need to be paid from the deceased's assets by the Personal Representatives. The PR's can incur personal liability from the moment they start dealing with the estate and can be sued by the creditors of the deceased; they can however protect themselves from personal liability by administering the estate in a proper manner so that they cannot be held personally responsible for the deceased's debts. The first thing the executor should do – before paying any debts – is ascertain the solvency of the estate. A simple balance sheet exercise should reveal if the estate is solvent or not. If there is any risk that liabilities will outweigh assets, no immediate payments should be made to any creditors.

If the estate is solvent, the executor should be certain that they are aware of all the debts and liabilities they are obliged to pay before finalising the estate. In most estates, it's not possible to be absolutely sure that all creditors have been identified, but protection against unknown claims can be easily obtained by placing notices under Section 27 of the Trustee Act 1925 in The Gazette, and a local newspaper.

A deceased estates notice specifies a two-month period for claimants to contact the executor to register a claim against the estate. Once that time has expired, the executor may distribute the estate, having regard only to the claims they have received notice of.

A creditor who misses the deadline has no recourse against the executor personally, but can still pursue the beneficiaries who receive the estate. But the important thing for the executor is that they can, at a given point in time, hand the estate over to the beneficiaries, safe in the knowledge that they will face no personal difficulty if an unknown creditor later surfaces.

1.8. Renunciation and disclaimer

When, and how, may an heir expressly renounce to or disclaim an inheritance? Are there situations in which the law deems that an heir has renounced, e.g., concealment of property? What are the effects of renunciation? Is a person who renounces generally or disclaims deemed never to have been an heir?

Beneficiaries can disclaim their entitlement under a will or under intestacy. The disclaimer can be done orally or in writing. If it is made in writing, it should be signed by the Beneficiary and all the Executors/Administrators, and witnessed.

Executors can 'renounce probate', provided that they have not performed any action in the administration of the estate (commonly referred to as 'intermeddling').

1.9. Marital rights

Are property rights acquired by spouses (howsoever defined) during the course of their marital relationship (howsoever defined) considered for purposes of determining a spouse's entitlement to an intestate share or determining a spouse's entitlement under a testamentary disposition? To what extent, if any, must a spouse elect between his, her or their matrimonial property rights and his, her or their intestate rights or rights under a will? Does a surviving spouse have a prior claim to a family residence or homestead in addition to or as part of any intestate claim or claim under a will?

There is no matrimonial property regime under English law, meaning that there is no separate set of rules regulating the entitlement to property between spouses which may interfere or overlap with succession rules. Separation of property is the default position, whereby ownership of assets is based on who holds their legal title. Different rules will apply in divorce cases, where assets are distributed between spouses by the Court which will exercise its discretion when assigning property.

There can also be cases where an asset, like a residence, is held in the sole name of a spouse, but the other spouse has a beneficial interest in it through their contribution to the purchase or upkeep of the property. Such beneficial interest will have to be determined under the rules applying to constructive and resulting trusts, and not to a matrimonial property regime.

2. INTESTACY

2.1. Declarations of Inheritance

Who establishes intestate entitlement? Are judicial, notarial or other formal declarations or certificates required to confirm entitlement?

Where an individual died intestate, their estate will devolve in accordance with the rules of intestacy as set out in the Administration of Estates Act 1925 (AEA 1925). The person(s) entitled to administer the estate will have to apply for a specific Grant of Representation, called Grant Letters of Administration. Such document will entitle them to administer and distribute the estate in accordance with the Intestacy Rules.

2.2. Relationship

Who is entitled to inherit? Is relationship based solely on blood? Do adopted children inherit their adopting parents' estates? Is the surviving spouse an intestate heir? For purposes of intestacy, who is a spouse?

S46 of the AEA 1925 sets out the order of entitlement under the intestacy rules. The order depends on the value of the estate and on which relatives survive the deceased. The right of a family member to have an entitlement on intestacy depends on their relationship to the intestate and whether any closer relatives have survived. The general principle is that the estate is shared by the relatives closest to the deceased (who are in the highest category), to the exclusion of relatives in lower categories. There are more detailed provisions if there is a surviving spouse or civil partner. The spouse or civil partner has priority over all other family members but may have to share the residuary estate in certain circumstances.

For the purposes of intestacy, to be a spouse one must be married. The word spouse applies to both men and women, as long as they are legally married. If two people are in a civil partnership, they will have the same rights in respect of inheritance and succession. Their tax treatment is also equivalent to that of spouses (i.e. transfers between civil partners and between spouses are equally exempt from inheritance tax).

2.3. Order of preference

What is the order of preference? Is inheritance based on degrees of relationship? What are the proportionate interests of descendants, ascendants and collaterals?

Deceased leaves surviving spouse or civil partner and surviving issue
Where the intestate is survived by their spouse or civil partner and issue, the residuary estate is distributed as follows:

• The spouse or civil partner receives all *chattels* absolutely.

- The spouse or civil partner receives a statutory legacy free of inheritance tax (IHT) and costs plus gross interest from death until payment. If the residuary estate is worth less than £250,000, the spouse or civil partner receives everything and the issue receive nothing. The value of the statutory legacy increases from £250,000 to £270,000 for deaths on or after 6 February 2020.
- The rest of the residuary estate is split equally into two halves. The spouse or civil partner takes one half absolutely and the issue take the other half on the statutory trusts.

The spouse or civil partner can ask the Administrator(s) to appropriate the matrimonial home to them in satisfaction of their entitlement

Deceased leaves surviving spouse or civil partner (but no issue)
The spouse or civil partner inherits everything.

Deceased dies leaving no surviving spouse or civil partner
Where there is no surviving spouse or civil partner but the intestate does leave blood relatives, their residuary estate passes in the following order, passing to the next category only if there are no surviving members in a preceding category:

- Their issue on the statutory trusts.
- Their parents (equally, if both alive).
- Their brothers and sisters on the statutory trusts.
- Their half brothers and sisters on the statutory trusts.
- Their grandparents (equally, if more than one alive).
- Their uncles and aunts on the statutory trusts.
- Their half-uncles and aunts on the statutory trusts.

Deceased leaves no blood relation
Where an intestate dies leaving no blood relation, their estate passes as *bona vacantia* to the Crown, the Duchy of Lancaster or the Duke of Cornwall. The Crown, Duchy or Duke may provide for dependants of the intestate and other persons for whom the intestate might reasonably have expected to make provision.

3. WILLS

3.1. Formalities

How many types of wills are there? What are their formal requirements?

From a formal point of view, there is only one type of will. In general terms, a Will is a document made in accordance with the formal requirements laid down by section 9 of the Wills Act 1837 (WA 1837), containing statements by the person making it with regard to the disposition of their property after their death.

The basic requirements for a valid Will are that the testator must:

- have the capacity to make a Will
- have the intention to make a Will and
- comply with the prescribed formalities

In order to be formally valid, a Will must:

- be in writing (not necessarily handwriting)
- be signed by the testator or by some other person in their presence and by their direction
- give the appearance that the testator intended by their signature to give effect to the Will
- have a signature made or acknowledged by the testator in the presence of two or more witnesses present at the same time *
- be witnessed and each witness must attest and sign the Will or acknowledge their signature, in the presence of the testator (but not necessarily in that of any other witness)

*For Wills made on or after 31 January 2020, the formal requirement for a valid Will to be witnessed in the presence of two witnesses includes both physical and virtual presence, to allow Wills to be validly witnessed remotely by way of video conference.

The above requirements do not apply to privileged wills and statutory wills.

3.2. Revocation and Revival

Is it possible to revoke a will, and how may it be revoked? Can a revoked will be revived, and how may it be revived?

A Will is revocable at any time during the testator's lifetime either automatically by operation of law or by a deliberate act of the testator. A Will is not revoked by a presumed intention or a change of circumstances except for those specified in the Wills Act 1837, i.e. marriage and civil partnership.
A will can be revoked by the Testator as long as they have the mental capacity to do so. The test for capacity to revoke is the same as for capacity to make a will, i.e. the Testator must have knowledge and approval of what they are doing.

Deliberate acts that revoke a Will include:

- a later Will or codicil or any writing if the document expressly states that all previous testamentary documents are revoked and is executed in the same way as a Will or codicil.
- destruction of the Will by the testator or another at the testator's direction.

Interestingly, a later will which does not expressly states that all previous wills are revoked does not automatically revoke an earlier will under English law (see case of *Perdoni v. Curati*).

A codicil can revive a will that the testator revoked before making the codicil, if the testator intends to do so. The effect of reviving the will is the same as if the testator makes a new will in the same terms as the revived will, but on the date of the codicil that revives it. Because there can be uncertainty about any other wills or codicils that the testator made between the original date of the revived will and the date of the codicil, it is usually better for the testator to make a new will unless there are good reasons for reviving the earlier one (for example, because the testator cannot make a new will immediately and the provisions of the earlier will are preferable to intestacy).

The testator cannot revive a will that they have revoked by destruction.

If the testator wants to revive a revoked will, the codicil should state this expressly to avoid uncertainty about the testator's intention. If the testator made any other will after the revoked will but before the codicil, the codicil should also confirm whether or not the testator is revoking these will to avoid confusion, as this is not automatic. (If the codicil revives an earlier will that contains a clause revoking all earlier wills the effect of the revival is to revoke all other wills before the date of the codicil, but it is better to make this clear.)

The revived will includes any codicils made to that will unless the testator states otherwise. If the testator revives a will that they first partially revoked then wholly revoked, the will is revived in the form in which it stood when they wholly revoked it, so the partial revocation still stands unless the testator states otherwise.

The testator can also revive a revoked will by re-executing it (section 22, Wills Act 1837). This is only advisable if the testator does not want to change the will and if there is space for clear re-execution.

The formalities for re-executing the will are the same as those for executing it.

3.3 Recognition, publication and probate

Describe your system's extrajudicial or judicial procedures, if any, for recognition and publication of a will. Which authority (judicial, notarial or other) determines whether a will has been validly executed in compliance with formal requirements?

When an individual dies, the Executors named in his or her will need to have proof of their authority to administer the deceased's estate. Proof of that authority is given when the court issues a grant. The competent court is the Probate Registry, which is a section of the High Court of Justice (Family Division). For the Probate Registry to issue a Grant, the will has to be 'proved' by the Executors. All Executors who have accepted their appointment and are willing to act are therefore called 'proving' Executors. The original will is submitted to the Probate Registry together with a declaration signed by all proving Executors, which is called a Statement of Truth.

If the Probate Registry find that they have jurisdiction and that the Will is authentic, they will issue the Grant of Probate. In some cases, the Probate Registry may request additional evidence in support of various aspects of the application: for instance, they may ask an affidavit by one of the witnesses if the will was signed incorrectly or if they suspect that the will may have been tampered with, or a declaration as to the deceased's domicile at the time of death. This is particularly relevant when a foreign will is submitted to the Probate Registry.

3.4. Curing formal deficiencies and rectification

Can your courts save, cure or validate testamentary paper that does not comply with formal requirements? Where a will contains errors, slips or omissions or where a will fails to carry out the testator's instructions, do your courts have a power to rectify the will?
What remedial powers, if any, can your courts exercise in order to secure the testator's true intentions?

As stated above, a will which has been signed incorrectly may in some cases still be proved, provided the witnesses who were present at its execution can submit an Affidavit of due Execution.

Where a Will contains errors, the Court has some powers to rectify them. The powers of rectification of the Court are set out in s20 of the Administration of Justice Act 1982 as follows:-
Section 20 of the Administration of Justice Act 1982 enables the court to order a will to be rectified so as to remedy a failure to carry out the testator's intentions in consequence of either:

(i) a clerical error; or
(ii) a failure to understand his instructions.

Section 20(1) requires the court to examine three questions:
(i) what were the testator's intentions with regard to the disposition in respect of which rectification is sought;
(ii) whether the will is so expressed that it fails to carry out those intentions; and
(iii) whether the will is expressed as it is in consequence of either:
(a) a clerical error; or
(b) a failure on the part of someone to whom the testator has given instructions in connection with his will to understand those instructions.

Under section 21, The court can admit evidence of the testator's intention to solve any ambiguities caused by the drafting of their Will.

In some cases, it is possible for the beneficiaries of an estate to make changes to the distribution of the estate, instead of directly following the terms of the will or the rules of intestacy. This can be done using a Deed of Variation. A Deed of Variation can be used by a beneficiary of the estate who wants to alter or redirect their inheritance entitlement. They can choose to redirect their share to anyone they wish, regardless of whether or not that person has been included in the deceased's will or is recognised under the rules of intestacy. If the Deed of Variation would affect a beneficiary who is under 18, then it's not possible to do this, as a minor cannot legally agree to a Deed of Variation.

A Deed of Variation can be prepared before or after obtaining the grant of probate but it must take place within two years of the date of death of the deceased.

3.5. Pacts and agreements as to future successions

Does your law permit parties to enter into covenants, pacts or agreements with respect to future successions?

In some circumstances, agreements as to future successions are admissible under English law. For example, when a consent order issued in financial proceedings requires an undertaking by an individual to pay certain sums, the payer may enter an irrevocable deed of covenant to make financial arrangements for the payee in the event of the payer's death during the subsistence of a periodical payments order. This is commonly referred to as a '**deed of covenant to leave by will'**.

Mutual wills may also be regarded as agreements of this type. While their popularity is rapidly declining, they are still permitted under English law. Broadly, Mutual Wills arise where two people execute Wills on agreed terms. For example:

'This is the last Will and testament of me (name) of (address) and I declare that my wife (name) and I have agreed with one another to execute Wills in similar terms and in consideration of such promise we have agreed that such respective Wills shall not hereafter be revoked or altered either during our joint lives (so long as we shall remain married) or by the survivor of us (if surviving as the lawful spouse of the other).'

There must be an agreement between the testators that the Wills will not be revoked. The enforceability of the agreement after the death of the first to die is by means of a constructive trust.The parties may release each other from their bargain by mutual agreement or during their joint lifetimes either may revoke their Will separately if they give notice of the revocation to the other party. If notice is not given during their joint lives, where the one who dies first has departed from the bargain by executing a fresh Will revoking the former one, the survivor, who has on the death of the other party to the agreement, notice of the revocation, cannot claim to have the later Will of the deceased set aside or modified or indirectly enforced by way of trust or otherwise. The survivor will not be bound by the agreement.

Finally, **trusts** have been considered to fall within the definition of agreements as to future succession. This could have substantial implications, as most wills drafted under English law will contain trusts, and if such wills need for some reason or other to be recognised in Italy, the prohibition under article 458 of the Italian Civil Code could potentially make it impossible to give effect to the testator wishes.

However, it is worth noting that a trust is created by the agreement of the Settlor with the Trustees (not the Beneficiary) and is made during the Settlor's lifetime, even when its provisions are set to take effect on the settlor's death. Death of the settlor or testator is not the cause of the agreement, but simply the moment when the assets are legally transferred to the trustees.

3.6. Forced, reserved and elective shares and other legal rights

Are there portions of an estate that are reserved for certain individuals (forced heirs)? Who qualify as forced heirs? What portion of an estate is reserved for these heirs (portio legitima) and what portion is freely disposable under a will?

How is the quantum of the forced share calculated? Are lifetime gifts (gifts inter vivos) taken into consideration and, if so, are these lifetime gifts reduced if estate assets are insufficient to satisfy claims of forced heirs?

Are there limits (monetary or otherwise) when calculating the forced shares?

Do the forced shares constitute ownership claims on estate property (real rights or rights in rem), or are they expressed as monetary claims? Can the forced shares be satisfied by a life interest or enjoyment (usufruct), an interest in trust or any other proprietary entitlement less than full ownership?

As between forced heirs, e.g., siblings, are there mechanisms to secure equal treatment?

Some systems have laws entitling certain persons, notably a spouse, to elect to receive a portion of a decedent's assets instead of benefits under a will. If this applies to your system, describe the applicable law.

There are no reserved portions or forced heirship rules under English law.

If a will provides for the estate to be divided in shares (equal or unequal) among certain beneficiaries, lifetime gifts should only be taken into consideration in calculating a beneficiary's share when the will contains a 'Hotchpot' clause. Hotchpot clauses and rules apply to trusts and wills, to ensure fairness to the beneficiaries by taking into consideration amounts already received when calculating the final amount due to the beneficiaries under the terms of the trust or will.

3.7. Disinheritance

Does your system permit disinheritance (disherison, exheredation)? On what grounds can forced heirs be disinherited?

As the English legal system does not have forced heirship rules, there are no provisions regarding disinheriting beneficiaries.

3.8. Dependants' relief or maintenance

If your system provides for dependants' relief or maintenance, who is entitled to claim?
Does your system provide a mechanism for dependants, who are not forced heirs, to make an alimentary or maintenance claim? If so, on what grounds can they make a claim? Are there limits to these maintenance

claims? Can forced heirs submit a maintenance claim, in addition to their forced share, against the disposable portion of the estate?
If your system does not have forced, reserved or elective shares, can a claim be made against the estate by dependants and, if so, who may make such a claim and on what grounds?
In general, describe who may make a claim for maintenance where a will has not made adequate provision. Must a maintenance claim be made within a certain time?

The **Inheritance (Provision for Dependants) Act of 1975** enables certain categories of applicants to claim financial provisions out of an estate for maintenance or, when the applicant is a spouse, for maintenance or otherwise. Claims must be brought within 6 months from the issue of the Grant of Probate. The decision to award a financial settlement to a beneficiary is discretionary and determined by the Court in accordance the criteria set out in the Act, which must be applied to each case. the decision is therefore fact-dependent in each case: there is no automatic right to claim, and applicants are not guaranteed an award.

3.9. Restraints on freedom to testate

Are there restraints on freedom of testation, other than the issues outlined under 3.5 and 3.6?

There are no restrictions on the freedom to testate.

4. ADMINISTRATION

4.1. Intestate administration

Who administers an intestate estate? Is there a requirement to appoint an administrator? Do the heirs agree on the administrator and on the terms of administration, or does a court or other authority appoint an administrator?

Describe the administration of intestate estates.

The intestacy rules described above at 2.2 and 2.3 only apply to property that the deceased could have left by will. The rules therefore do not apply to assets that the deceased held jointly with another party where the right of *survivorship* applies so that the assets pass to the survivor (for example, a joint bank account or a house held as joint tenants), assets held on trust for the deceased that pass under the terms of the trust on their death, or life insurance policies.

As seen above, in order to administer the estate, it is usually necessary to obtain a Grant of Representation, which in case of intestacy is known as Grant Letters of Administration. Without this grant, the personal representatives are unable to enter into most transactions involving the deceased's assets, or realise or transfer the majority of the assets in the estate. As there is no will appointing executors, the persons entitled to apply for a Grant are set out in section 22 of the Non Contentious Probate Rules (NCPR) 1957 in the following order

of priority:

(a) the surviving spouse or civil partner;

(b) the children of the deceased and the issue of any deceased child who died before the deceased;

(c) the father and mother of the deceased;

(d) brothers and sisters of the whole blood and the issue of any deceased brother or sister of the whole blood who died before the deceased;

(e) brothers and sisters of the half blood and the issue of any deceased brother or sister of the half blood who died before the deceased;

(f) grandparents;

(g) uncles and aunts of the whole blood and the issue of any deceased uncle or aunt of the whole blood who died before the deceased;

(h) uncles and aunts of the half blood and the issue of any deceased uncle or aunt of the half blood who died before the deceased.

The person(s) applying for a Grant are called Administrators (as opposed to Executors). In order to obtain a Grant they generally must produce one of the following:

- An IHT account certified to show that the tax has been paid or that none is payable.
- The information required by regulation 6 of the Inheritance Tax (Delivery of Accounts) (Excepted Estates) Regulations 2004 (SI 2004/2543) (Regulations), (which includes information about the deceased and the assets and liabilities of the estate), where the estate is an excepted estate under regulation 4 of the Regulations.

Therefore, the Administrator(s) must gather the necessary information about the deceased's estate and, where an account is required, deliver that information to HMRC using form IHT400, and pay any tax due. If no account is required because the estate is excepted, the Administrator(s) should use a different form (IHT205) to submit the information.

Once the Grant has been issued, the Administrator(s) must:

- Collect and get in the real and personal estate of the deceased and administer it according to law.
- When required to do so by the court, exhibit on oath in the court a full inventory of the estate and when so required render an account of the administration of the estate to the court.
- When required to do so by the High Court, deliver up the grant of probate or administration to that court.

The effect of the Grant is that the Administrator(s) hold on trust all the assets that the deceased did not dispose of in their will, and the Administrator(s) have power to sell the assets (section 33, AEA 1925). The statutory trust is similar to an express trust in a will and gives the Administrator(s) powers and duties. The Administrator(s) must pay the funeral and administration expenses and any debts of the deceased. The balance remaining (after setting aside an amount to meet any cash gift in the will if the individual is partially intestate)

is the residuary estate, which is shared among the family under the intestacy rules on distribution

The Administrator(s)' power to sell assets does not mean that they must be sold. Where a beneficiary consents, they can appropriate assets in satisfaction of a beneficiary's share (section 41, AEA 1925).

Where the Administrator(s) hold land, they have all the powers of an absolute owner to transfer the land to adult beneficiaries who are absolutely entitled to it and who have capacity, whether or not they agree to this.

The Administrator(s) must keep estate accounts and that these should be made available for inspection by a beneficiary or creditor on request. Copies should be provided and copying charges may be made if necessary. It is only if this request is refused or if the accounts are not clear or accurate that an application to the court for an inventory or an account will be required.

4.2. Testamentary Administration

Who administers a testamentary estate? If an executor or administrator has been named under the will, is there a requirement for the appointment to be confirmed by a court or other authority?

Describe the administration of testate estates.

The administration of estates under a Will has many similarities with the administration under Intestacy rules. The main differences are:

- The person(s) who have the authority to deal with the deceased's estate are the Executors appointed in the Will;
- The authority of the Executor is derived from the Will and not from the Grant, although the Grant is still required to confirm that authority to third parties;
- The Grant is called Grant of Probate;
- The estate is distributed in accordance with the Will's provisions.

If a Will does not appoint Executors, or if the appointment is void, the people benefiting under the Will can make an application for a different grant called Grant Letters of Administration (with will attached).

The duties and powers of the executors before and under the Grant are the same as described for Administrators above, namely:-

- To submit an IHT account to HMRC when required;
- To pay Inheritance tax;
- To collect all assets and administer them according to the Will;
- To render an account of the administration to the Court if so required;

• To deliver up the Grant of Administration or Probate to the Court if so required.

4.3 Management and control

To what extent, if any, is the management and control of an intestate or testate estate, by the heirs, by a court-appointed administrator or by the executor under a will, supervised by a court or subject to judicial oversight?

For example, are administration fees subject to court review? Must administrators publicly file accounts?

Describe the administration process.

Personal Representatives must act with due diligence and they owe a duty of care to the beneficiaries and to the creditors of the estate. They must observe this duty of care when keeping estate accounts and delivering them to the beneficiaries when requested. When such a request is denied, or the accounts are not clear/inaccurate, an application to the Court for an inventory or an account will be required.