



Syllabus

STEP Advanced Certificate in Will Preparation

(England & Wales)



www.step.org/diploma

Will Preparation

Introduction

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

For more information about the course and how to apply, please visit the programme website: www.cltint.com/courses/step-advanced-certificate-in-will-preparation



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.

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Module 2

MANAGING THE PROCESS OF WILL PREPARATION

This module covers:

- The duty of care owed by a will draftsman to the testator and others
- The implications of the 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.

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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.

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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.

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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 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
- Understand the current impact of EU Regulation No 650/2012 on will drafting
- Identify and describe procedures used to ensure that domicile is dealt with appropriately when advising a testator.

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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.

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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 I(PFD)A
- Who may claim under the I(PFD)A.

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.

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Module 8

PRINCIPLES OF TRUST AND ESTATE TAXATION

This module covers:

- The tax regimes applicable to personal representatives and trustees
- The steps required in calculating liability under each tax regime
- The exemptions and reliefs of each tax regime
- When each tax falls due for payment.

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

- Understand the principles of income taxation of an individual
- Explain how personal representatives are taxed for income and capital gains
- Advise clients on the income tax and capital gains tax consequences of including the different types of trusts in a will
- Explain the taxation impact on beneficiaries under a will trust
- Understand how capital gains tax is calculated
- Explain to clients how death affects assets which are subject to a capital gain
- Understand capital gains tax issues for both personal representatives and trustees
- Explain the inheritance tax (IHT) consequences of including discretionary trusts in a will.

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Module 9

GENERAL INHERITANCE TAXATION ISSUES, EXEMPTIONS AND RELIEFS

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, including the transferable nil-rate band and the residence nil-rate band.

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

- List and explain the main exemptions and reliefs from IHT
- Distinguish a relief from IHT from an exemption and an exclusion, and explain in what circumstances a relief may be available
- Advise clients who may wish to take advantage of the reduced 36% IHT rate
- Explain how the nil-rate band is calculated and how it may be transferred
- Outline how the residence nil-rate band works
- Explain what property is excluded from IHT
- Understand the spouse/civil partner exemption where one spouse is not UK domiciled
- Calculate the TNRB.

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Module 10

TAXATION AND WILL DRAFTING

This module covers:

- The IHT consequences of different types of trusts created in a will
- Immediate post-death interests
- Protecting the vulnerable
- Bereaved minor's trusts and 18–25 trusts
- Funding issues to pay IHT charges on death
- The difference between variations and disclaimers
- Exempt and non-exempt shares of residue.

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

- Explain the IHT treatment of different types of trust under a will
- Explain the requirements of immediate post-death interests (IPDIs)
- Explain when a bereaved minor's trust or an 18-25 trust may be appropriate
- Explain the tax effect of putting the family home into a trust
- Understand how single grossing up works
- Describe the way in which a will can protect the interests of vulnerable beneficiaries
- Understand how funding issues may impact on will drafting
- Explain the income tax treatment of different forms of provision under a will
- Explain the consequences of sections 142, 143 and 144 Inheritance Tax Act 1984.

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MODULES 11A–C

DRAFTING THE WILL

This module covers:

- Practical guidance on drafting and checking wills
- The order, structure and content of a will:
 - 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.

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Module 12

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.

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Module 13

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.

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Module 14

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.

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Module 14 continued...

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 personalty 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 secret and 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.

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Module 15

OTHER AREAS OF LAW FOR THE WILL DRAFTSMAN

This module covers:

- The doctrine of abatement
- The principle of ademption
- The 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.

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Module 16

DIGITAL ASSETS

This module covers:

- Different types of digital assets
- The importance of considering digital assets in will writing
- How a testator may incorporate digital assets into their will.

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

- Explain what constitutes a digital asset
- Understand the issues that can arise for digital assets on death
- Explain the options for a testator when considering how to include digital assets in their will.

Contact us

For full details of the programme visit:

www.cltint.com/courses/step-advanced-certificate-in-will-preparation

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