

# Wills & Estates: Complete Course Notes

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### Module 1: The Foundation – Drafting a Will and Advising Clients

This module provides a comprehensive framework for taking instructions, ensuring testamentary capacity, and drafting a will that is both valid and effective.

#### Part 1: Introduction & Core Principles

- 1.1 Why a Will is Non-Negotiable: Avoiding intestacy, choosing your executor, and protecting your family.
- 1.2 The Nature of a Will: Definition and legal characteristics.
- 1.3 The 6 Pillars of a Valid Will: A step-by-step guide to what makes a will legally effective.
  - The document requirement.
  - Disposing of property.
  - Testamentary intention.
  - Testamentary Capacity (In-Depth): The *Banks v Goodfellow* test, the solicitor's role, dealing with minors (s 16) and persons lacking capacity (s 18).
  - Formal Requirements (s 6): The precise rules for signing and witnessing.
  - Revocation, alteration, and revival.

#### Part 2: The Art of Taking Instructions

- 2.1 The Initial Interview: Location, approach, and the importance of privacy.
- 2.2 The 12 Key Enquiries You Must Make:
  1. Correct Name and Identification.
  2. Locating and Revoking Previous Wills.
  3. Mapping the Family Tree: Identifying beneficiaries, dependants, and potential family provision claimants.
  4. The Asset Audit: Joint tenancy vs. tenancy in common, business interests, and trusts.

5. Superannuation (The Hidden Trap): Binding vs. non-binding death benefit nominations, self-managed funds, and why a will alone is not enough.
6. The Digital Asset Plan: How to handle online accounts, cryptocurrencies, and digital property without putting passwords in the will.
7. Choosing the Right Executor: Number, age, capacity, and the solicitor-executor rules (ASCR 2015 r 12).
8. Trustees and Guardians: Distinguishing the roles and making effective appointments.
9. Drafting Gifts: Specific vs. general gifts, the risk of ademption, and the critical role of the residuary clause.
10. Lapse and Survivorship (s 35): Understanding the 30-day survival rule.
11. Payment of Debts: The statutory order and how to vary it.
12. Giving Powers: Moving beyond statutory powers to cover business, investments, and digital assets.

### **Part 3: Drafting, Execution, and Final Steps**

- 3.1 Structure of a Will: The standard order of clauses from the testimonium to the attestation.
- 3.2 Codicil or New Will? A decision-making guide for when a client wants to make changes.
- 3.3 Execution Ceremony (Step-by-Step): Ensuring strict compliance with s 6 to avoid costly informal will applications.
- 3.4 After the Will is Signed: Storage options, providing copies, the right of inspection (s 54), and advising on regular revisions.

### **Module 2: The Process – Applying for Probate**

This module is a practical, procedural guide to obtaining the court's authority to administer an estate. It covers every document, from the initial notice to the final grant.

### **Part 4: Commencing the Probate Application**

- 4.1 When a Grant is (and isn't) Required.
- 4.2 The Executor Interview: Preparing for the meeting, documents to collect, and critical questions to ask.

- 4.3 The Notice of Intended Application (UCPR Form 116): Correctly publishing on the NSW Online Registry and the 14-day rule.

### **Part 5: The Core Documents (Mastering the Forms)**

- 5.1 The Summons (UCPR Form 111): A clause-by-clause guide to correctly identifying the deceased, the executor, and the relief claimed.
- 5.2 The Affidavit of Executor (UCPR Form 118): The heart of the application.
  - Paragraphs 1-15 Explained: From proving the will and death to disclosing assets, liabilities, and the executor's identity.
  - The Inventory of Property (UCPR Form 117): What to include, what to exclude, and how to value assets correctly (joint tenancies, superannuation, foreign assets).
- 5.3 Ancillary Affidavits: When and how to use affidavits of attesting witness, delay, and due execution.

### **Part 6: Filing, Requisitions, and the Grant**

- 6.1 The Online Filing Process: A step-by-step walkthrough of the NSW Online Registry system.
- 6.2 Decoding Probate Requisitions: The most common errors (name variations, missing signatures, incorrect asset descriptions) and how to fix them.
- 6.3 Obtaining the Grant: Understanding the electronic grant and its evidentiary value.

## **Module 3: The Administration – Managing and Distributing the Estate**

This module provides a complete roadmap for the personal representative, from the moment the grant is issued to the final distribution and release.

### **Part 7: The Personal Representative's Toolkit**

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- 7.2 Opening the Estate Account: Best practices for managing estate funds and earning interest.
- 7.3 Getting in the Assets: A Practical Guide

- Real Property: Transmission applications, notices of death, and using PEXA.
- Personal Property: Bank accounts, shares (listed and unlisted), and motor vehicles.
- Digital Assets: A risk-management guide to accessing, securing, and distributing online property.

## **Part 8: Managing Liabilities and Tax**

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- 8.2 Secured Debts and the Conveyancing Act s 145.
- 8.3 Income Tax Returns: The dual obligation for the deceased and the estate.
- 8.4 Capital Gains Tax (CGT) on Death (ITAA 1997 Div 128):
  - The general disregard rule.
  - Cost base for pre and post-CGT assets.
  - The main residence exemption and the 2-year rule.

## **Part 9: Distribution and Finalization**

- 9.1 Notice of Intended Distribution (PAA s 92): The final call to creditors and the protection it provides.
- 9.2 Maintenance Distributions (PAA s 92A): A powerful tool for supporting dependants early.
- 9.3 Power of Appropriation (Trustee Act s 46): A tax-effective strategy for distributing assets.
- 9.4 Interest on Legacies (PAA s 84A): The 12-month rule and the prescribed interest rate.
- 9.5 Final Distribution: Securing receipts, preparing deeds of release, and concluding the administration.
- 9.6 Executor's Commission (PAA s 86): How and when to claim payment for the personal representative's "pains and trouble."