

Wills, Trust & Estate Administration Curriculum

This document includes:

- Knowledge & Skills Objectives
- Topics Covered

Knowledge & Skill Objectives

Detailed objectives are contained in each chapter of the text material. The following is an overview:

Knowledge Objectives:

Upon completion the student will:

- Understand the purpose of a Power of Attorney for Property and how it is created and utilised
- Understand the rules and requirements relating to Personal Directives and Living Wills
- Understand the many types of Wills and how a Will can legally implement a testator's wishes
- Understand the process for taking Will instructions and preparing a Will
- Know the rules relating to estates of persons who die without a Will
- Understand the potential claims that can be made against an estate by family members
- Understand how the law of succession in Quebec may affect estates of persons living elsewhere in Canada
- Appreciate the need to obtain probate and the process involved
- Understand the benefits of probate fee planning
- Understand the role and duties of various persons in administering estates
- Know the steps required to complete the administration of an estate
- Understand how property is managed for others under trusts and statutory authority
- Understand the requirements to keep and pass estate and trust accounts
- Understand how the laws of other jurisdictions can apply to succession of foreign property
- Identify applicable legislation and law

Knowledge & Skill Objectives Continued...

Skills Objectives:

Upon completion the student will, in relation to the topic headings listed below, be able to:

Powers of Attorney

- Explain the need for substitute decision making for property
- Identify the duties and powers that can be exercised by an attorney for property

Personal Directives and Living Wills

- Explain the need for substitute decision making for the person
- Identify the duties and powers that can be exercised by the person appointed to make decisions for the person

Law of Wills

- Identify the requirements for a valid Will
- Explain the different types of Wills
- Describe the types of gifts in a Will

Will Preparation

- Describe role of the solicitor in Will preparation
- Explain the process for taking Will instructions
- Identify the general layout of a Will
- Explain the purpose of specific clauses in a Will
- Describe how Wills may be amended and revoked

Intestacy

- Identify the scheme of distribution on an intestacy
- Describe the problems that arise when a person dies without a Will
- Explain how an intestacy can arise

Claims Against Estates

- Describe the claims that can be made by a spouse or partner under family law
- Describe the claims that can be under dependant's relief legislation
- Explain other claims that may be made by family members

Quebec Issues

- Identify how the law of Quebec may affect the estate of a person resident elsewhere
- Describe the main differences between Quebec law and that of other provinces as it relates to succession of property

Knowledge & Skill Objectives Continued...

Obtaining the Grant of Probate

- Explain the requirement to obtain probate
- Identify the probate fees payable in your province
- Describe the process for obtaining the grant

Probate Fee Planning

- Identify probate fee planning strategies
- Describe the advantages and disadvantages of probate fee planning strategies

Administration of Trusts and Estates

- Describe the role of executor, solicitor for the estate and agent for executor
- Explain the effect of multiple Wills
- Identify issues applicable to insolvent estates
- Identify the unique issues relevant to administration of estates versus trusts

Steps in Estate Administration

- Describe the steps to be taken in administering an estate
- Explain how estate assets are realised and managed
- Identify how estate assets are to be distributed
- Explain the importance of tax clearance and releases

Administration of Trusts and Property held for others under Statutory Authority

- Describe how trusts created under a Will are set up and administered
- Identify the need for a statutory guardian and how one is appointed
- Describe the duties and powers of a statutory guardian
- Explain the rules relating to administration of property of an absentee

Estate and Trust Accounts

- Explain the requirement to keep accounts
- Describe the basic statements and ledgers required to be kept
- Identify when accounts need to be passed and describe the process

Foreign Property and Wills

- Explain the difference between residence and domicile
- Identify movable property and immoveable property
- Describe the importance of identifying the law governing making a Will and the succession of foreign property

Applicable Law

- Identify applicable legislation and law governing the creation and administration of trusts in your province.

Summary of Topics Covered

1. Powers of Attorney for Property

- Requirements for Attorney for Property
- Choice of Attorney
- Attorney's Powers
- Attorney's Duties
- Removal of Attorney
- Provincial Legislation

2. Personal Directives and Living Wills

- Requirements
- Choice of Attorney
- Attorney's Powers
- Attorney's Duties
- Living Wills
- Provincial Legislation

3. The Law of Wills

- Testamentary dispositions
- Requirements of a Valid Will
- Contracts to make a Will
- Will Substitutes
- Types of Wills
- Testamentary Gifts:
 - Limits on Testamentary Freedom
 - Treatment of Debts and Mortgaged Property
- Delegation of Testamentary Powers
- Trusts in Wills
- Interpretation and Rules of Construction

4. Will Preparation

- Duty of Solicitor
- Joint Retainers and Conflicts of Interest
- Taking Instructions
- Order and Contents of a Will Including Usual Clauses
- Execution
- Amendment
- Revocation
- Home Made Wills and Will Kits
- Avoiding Intestacy
- Avoiding Litigation
- Cases on Wills – interpretation and drafting

Summary of Topics Covered Continued...

5. Intestate Estates

- Importance of Making a Will
- Problems arising on Intestacy
- Statutory regime of distribution
- Examples of Case Law

6. Claims against Estates by Family Members

- Claims by Spouse or partner under family law
- Claims under dependants relief legislation
- Other claims

7. Quebec Issues for Canadians Outside Quebec

- A primer on Civil Law
- Situations where Quebec issues may arise:
- Unique features of Succession Law

8. Obtaining the Grant of Probate

- Requirement to obtain probate
- Probate fees payable
- Jurisdiction, officials and their duties
- Types of grants
- Process to obtain

9. Probate Fee Planning

- Provincial relevance
- Assets not requiring probate
- Probate fee planning strategies
- Pros and cons of planning strategies
- Examples of probate fee planning: The Good the Bad and the Ugly

10. Administration of Trusts and Estates

- Role of Executor
- Role of the Solicitor
- Agent for Executor
- Effect of multiple Wills
- The Executor's Year
- Provincial Summaries
- Partial intestacy and Escheats
- Insolvent Estates
- Trust administration compared with estate administration

11. Steps in Estate Administration

- Preliminary matters
- Obtaining the Grant of Probate
- Managing estate assets

Summary of Topics Covered Continued...

12. Administration of Trusts and Property held for others under Statutory Authority

- Administration of trusts same as estates with some exceptions
- Administering trusts created in a Will
- Administration under a Power of Attorney
- Administration as a Court Appointed Guardian
- Absentees

13. Estate and Trust Accounts

- Requirement to keep accounts
- Basic system
- Passing Accounts
- Guardians and Other Trustees

14. Foreign Property and Wills

- Domicile and residence
- Moveable and immovable property
- Application of law governing a Will