FQPS Academy

SQE1 · FLK2 · WILLS AND ESTATES · 2026 - 2027

For the SQE

Wills

and the Administration of Estates

Validity, failed gifts, intestacy, grants, the administration and 1975 Act claims.

Six questions, in order

FQPS Academy - SQE Prep

UPDATED NOVEMBER 2026

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Is there a will, does it work, and who takes the rest?

What is This Guide?

A practical route through **Wills and the Administration of Estates for SQE1**: what makes a will valid and who must prove it, how wills are changed and revoked, why gifts fail, the **intestacy rules** with a decision tree, who can take the **grant** and how to apply, the order for paying debts and legacies, and claims under the **1975 Act**. Four worked examples run the rules on real-looking facts.

Who This Guide is For?

- SQE1 candidates sitting FLK2 in January or July 2027
- Anyone who knows the rules but mixes up the order of steps
- Candidates who have never seen a will or a probate file
- Paralegals in private client teams who want the law behind the forms

Why It Matters?

This subject rewards **sequence**. Is there a valid will? What does it give, and which gifts fail? What passes outside it? Who inherits the rest? Who takes the grant? Who is paid first? Answer those six questions in order and most questions answer themselves.

How the Subject Is Tested

Wills and the Administration of Estates is one of the subjects of **FLK2, session 1**, sat alongside Trusts, Land Law and Solicitors Accounts. The SRA's blueprint gives it 14 to 20% of that paper, and its Functioning Legal Knowledge runs to 75 lines on our checklist.

The SRA's five areas, in short	Where this guide covers it
1. Validity and interpretation of a will; testate, intestate and partially intestate estates	Chapters 2 to 5 (pages 05 to 13)
2. Applying for a grant of representation	Chapter 6 (pages 14 and 15)
3. Inheritance Tax on lifetime gifts and on death	Outline only (page 15): see our free guide **Inheritance Tax for the SQE**
4 and 5. The administration, PRs and trustees, beneficiaries' rights, and 1975 Act claims	Chapters 6 and 7 (pages 14 to 18)

The question format

Single best answer: five options and "only one correct answer". Closed book: the rules and the order of steps must be in your head.

Which law

The law examined is the law in force four calendar months before the first day of the window: **11 September 2026** for January 2027 and **12 March 2027** for July 2027. Nothing here changed from 11 September to 11 November 2026, our last check.

What questions look like

A family, a will (or none), some assets and a problem: is the will valid, who inherits, who takes the grant, can the cohabitant claim. Wrong options apply a real rule to the wrong facts.

The tax lines

The block also tests Inheritance Tax and the income tax and CGT of the administration. This guide covers the succession law; the tax has its own guides.

One rule of thumb

Most questions turn on **timing**: when the will was made, when the testator married or divorced, who survived whom, when the grant issued. Write the dates down before you read the options.

Sources: SRA SQE1 Assessment Specification and FLK, applicable from 1 September 2026, as reproduced in this repo's specification checklist (pages 1, 2, 14 to 16); SQE1 dates in marketing/lib/sqe-dates.ts. Accessed 11 November 2026.

Wills and Estates on One Page

THE RULES AND NUMBERS TO KNOW COLD · TICK THE BOX WHEN YOU CAN STATE THE RULE

RULE AND WHEN IT APPLIES	FIGURE	PAGE	DONE
Making and revoking a will			
Minimum age to make a will Wills Act 1837 s 7; privileged wills aside (s 11; 1918 Act s 1)	**18**	05	☐
Witnesses Present at the same time when the testator signs or acknowledges (s 9)	**2**	06	☐
Video witnessing Counted only for wills made 31 January 2020 to 31 January 2024 (s 9(2))	**Ended**	06	☐
Gift to a witness or their spouse Unless the will is valid without that witness (s 15; Wills Act 1968 s 1)	**Void**	06	☐
Marriage or civil partnership Unless made expecting to marry that person, meant to survive it (ss 18, 18B)	**Revokes**	07	☐
Divorce or dissolution Former spouse treated as dying on that date (ss 18A, 18C)	**As if dead**	07	☐
Gifts and interpretation			
A will speaks from As to the property it covers, unless a contrary intention (s 24)	**Death**	08	☐
Gift to a child who dies first Passes to that child's issue living at the death (s 33)	**Saved**	08	☐
Rectification claim From the first grant, unless the court permits (AJA 1982 s 20)	**6 months**	09	☐
Intestacy			
Spouse must survive by Otherwise treated as not surviving (AEA 1925 s 46(2A))	**28 days**	11	☐
Statutory legacy to spouse Deaths from 26 July 2023, with interest at Bank rate	**£322,000**	11	☐
Spouse share of the rest Absolutely; the other half to issue on the statutory trusts	**One half**	11	☐
Issue take at Or earlier marriage or civil partnership (s 47)	**18**	11	☐
Grants and administration			
Most PRs on one grant Two at least if a minor or a life interest (SCA 1981 s 114)	**4**	14	☐
Earliest grant after death Probate or with will annexed 7; administration on intestacy 14 (NCPR r 6)	**7 or 14 days**	14	☐
Full IHT account (IHT400) if not excepted Before applying; from the end of the month of death, or 3 months from first acting if later (IHTA s 216(6))	**12 months**	15	☐
Probate fee Estates over £5,000; none at £5,000 or less	**£526**	15	☐
Executor's year No duty to distribute before then (AEA s 44)	**1 year**	16	☐
Notice for claims Gazette and newspaper (Trustee Act 1925 s 27)	**2 months**	16	☐
Beneficiary's claim to a share 6 years for arrears of interest on a legacy (Limitation Act 1980 s 22)	**12 years**	16	☐
1975 Act claim From the first grant, unless the court permits (s 4)	**6 months**	18	☐
Cohabitant claimant Living together as a couple immediately before death	**2 years**	18	☐

Summary only: each rule has conditions on the page shown. Statutes on legislation.gov.uk; GOV.UK; checked 11 November 2026.

2 Making a Valid Will

A will is valid only if four things are right: **capacity**, **knowledge and approval**, **free will** (no undue influence) and the **formalities**. The first three come from case law; the formalities are in s 9 of the Wills Act 1837 (page 06). The testator must also be 18 or over (s 7), unless the will is privileged.

Element	The test	Who must prove it
Capacity	Banks v Goodfellow (1870): could the testator understand (i) the nature of making a will and its effect, (ii) the extent of the property, and (iii) the claims to which they ought to give effect? And no "disorder of the mind" or "insane delusion" may shape the gifts	The person propounding the will. If it is duly executed and rational on its face, capacity is **presumed**; the objector must raise a real doubt; then the burden returns to the propounder
Knowledge and approval	The testator knew and approved the contents of the will	Presumed where a capable testator has the will read over and executes it: a "grave and strong presumption". Where suspicious circumstances exist, the propounder must remove the suspicion
Undue influence	Coercion, "and that only". Persuasion and appeals to affection are legitimate: "a testator may be led but not driven"	The person alleging it. There is **no presumption** of undue influence for wills, unlike lifetime gifts; the facts must be inconsistent with any other explanation

The Mental Capacity Act 2005?

In Hughes v Pritchard [2022] EWCA Civ 386 the Court of Appeal applied **Banks v Goodfellow**, noting that no one argued it had not survived the 2005 Act. Use Banks for the exam.

A solicitor-drafted will

A will prepared by a solicitor, read over and properly executed raises a "very strong presumption" of knowledge and approval (Gill v Woodall [2010] EWCA Civ 1430 at [14]), which "can be rebutted only by the clearest evidence" (Gregson v Taylor, quoted at [15]).

Duress and fraud

Undue influence in the probate sense covers coercion and fraud. Pressure that makes a weak testator give in "for the sake of a quiet life" can be enough if it overbears their own judgment (Re Edwards, applied in Rea v Rea).

Sources: Wills Act 1837 ss 7, 9; Hughes v Pritchard [2022] EWCA Civ 386 at [62] to [64] (quoting Banks v Goodfellow (1869-70) LR 5 QB 549 and Key v Key [2010] EWHC 408 (Ch)); Gill v Woodall [2010] EWCA Civ 1430 at [13] to [15]; Rea v Rea [2024] EWCA Civ 169 at [20] and [21]; Rea v Rea [2019] EWHC 2434 (Ch) at [64], quoting Re Edwards [2007] EWHC 1119 (Ch). Accessed 11 November 2026.

Is This Will Valid?

Our method. Run the formalities first: they are the quickest to check. The first NO tells you why the will fails.

1 Was the testator 18 or over?
Wills Act 1837 s 7. Privileged wills of soldiers in actual military service and mariners at sea aside (s 11; Wills (Soldiers and Sailors) Act 1918 s 1).

NO → **Invalid** — No will under 18.

↓ YES

2 Is it in writing, signed by the testator (or by someone in their presence and by their direction), meaning the signature to give effect to it?
s 9(a) and (b). No set place for the signature.

NO → **Invalid** — Not executed as a will.

↓ YES

3 Did the testator sign, or acknowledge the signature, with two witnesses present at the same time?
s 9(c). Physical presence: video counted only for wills made 31 January 2020 to 31 January 2024 (s 9(2)).

NO → **Invalid** — Both must be there together.

↓ YES

4 Did each witness sign (or acknowledge their signature) in the testator's presence?
s 9(d). Not necessarily in front of each other. No attestation clause is required.

NO → **Invalid** — Each witness, in the testator's presence.

↓ YES

Formally valid. Now the three substantive tests (page 05)
Capacity (presumed if rational and duly executed), knowledge and approval (presumed if read over), no undue influence (never presumed). Then check each gift: a gift to a witness or their spouse is void (s 15).

Run it: five signings

Facts (our examples, invented names)	Stops at	Result
Asha signs before her neighbour, who leaves; later a second witness arrives and she shows him her signature	3	Invalid: the witnesses were never present at the same time
Ben signs with both witnesses in the room; one witness then takes the will next door to sign	4	Invalid: that witness did not sign in Ben's presence
Cy signs in 2025 on a video call, witnessed remotely	3	Invalid: video witnessing ended with wills made on 31 January 2024
Dora's will is witnessed by her son's wife and a friend; the son is left £10,000	End	Will valid; the gift to the son is void (s 15)
Eli's will has three witnesses; one is left his car	End	Valid, and the gift is saved: two other witnesses suffice (1968 Act s 1)

No proper attestation clause? The registry asks a witness for evidence of due execution (NCPR r 12).

3 Changing and Revoking

Alterations and codicils

Before execution

An alteration made **before** the will is signed is part of the will as executed. Because the registry cannot tell when an unauthenticated change was made, it asks for **evidence** of whether it was there at execution (NCPR r 14).

After execution

No effect unless executed like a will: testator and witnesses sign near it (s 21). If not, the original words stand, unless they are no longer "apparent": then that part is simply blank.

A **codicil** adds to or changes a will and must be executed like one. "Will" includes a codicil (Wills Act 1837 s 1), so a codicil can also revoke all or part of a will.

Four ways a will is revoked

Method	Rule	Watch for
Later will or codicil (s 20)	Revokes expressly, or by implication to the extent it is inconsistent	Check for a revocation clause; without one, both may be read together
Writing executed like a will (s 20)	A signed and witnessed document declaring an intention to revoke	An unwitnessed letter saying "my will is cancelled" does nothing
Destruction (s 20)	Burning, tearing or otherwise destroying, by the testator or by someone in their presence and by their direction, **with the intention** of revoking	Accidental destruction is not revocation; nor is destruction by another person out of the testator's presence
Marriage or civil partnership (ss 18, 18B)	Revokes the whole will automatically (some appointments under a power of appointment survive: s 18(2))	Not if the will shows the testator expected to marry **a particular person** and intended the will (or a gift) to survive that marriage

Divorce does not revoke

On divorce, annulment or dissolution after the will, the will survives but the former spouse or civil partner is treated as having **died on that date**: any appointment as executor or trustee, and any gift to them, takes effect as if they had died, unless the will shows a contrary intention (ss 18A, 18C). Their right to claim under the 1975 Act is unaffected. Separation, even a judicial separation order, changes nothing: only a final divorce, annulment or dissolution is the trigger.

Sources: Wills Act 1837 ss 1, 18, 18A, 18B, 18C, 20, 21; Non-Contentious Probate Rules 1987 r 14. Accessed 11 November 2026.

4 What the Will Gives

Classify each gift before you decide what happens to it. The type decides whether it can adeem and in what order it is used to pay debts (page 17).

Type	Example	Key point
Specific	"My Rolex watch"; "my house at 4 Mill Lane"	Fails by **ademption** if the item is not in the estate at death
General	"£5,000 to my niece"	Paid out of the general estate; cannot adeem
Demonstrative	"£5,000 out of my Nationwide account"	Paid from that fund; any shortfall is treated as a general (pecuniary) legacy (AEA s 55(1)(ix))
Residuary	"The rest of my estate to my children equally"	What is left after debts, expenses and other gifts

Why gifts fail

Ademption

A specific gift fails if, at death, its subject "has ceased to be within the testator's estate or its nature has fundamentally changed" (Rokkan v Rokkan [2021] EWHC 481 (Ch)). The will speaks from death (s 24).

Lapse

A gift fails if the beneficiary dies before the testator. Exception: a gift to the testator's **child or remoter descendant** who leaves issue living at the death passes to that issue, unless the will says otherwise (s 33).

Witness or spouse of witness

The gift is void, but the will stands (s 15). Saved if the will has enough other witnesses without them (Wills Act 1968 s 1).

Former spouse

After divorce or dissolution, treated as having died on that date (ss 18A, 18C), so the gift fails unless the will shows otherwise.

Where failed gifts go

Into the residue (for land, s 25 says so expressly). If the residuary gift itself fails, that part passes on **partial intestacy** (AEA s 49).

Who survived whom?

The 28-day rule for spouses applies only on intestacy (AEA s 46(2A)). In a will, only a **survivorship clause** (for example, "if she survives me by 28 days") adds a period.

Sources: Wills Act 1837 ss 15, 18A, 18C, 24, 25, 33; Wills Act 1968 s 1; Administration of Estates Act 1925 ss 46(2A), 49, 55(1)(ix); Rokkan v Rokkan [2021] EWHC 481 (Ch) at [70]. Accessed 11 November 2026.

Worked Example: Which Gifts Fail?

Our example, invented names and figures. Take each clause in turn, then follow the money.

Edna made a valid will in **2019**, witnessed by her friend **Iris** and her GP. It appoints her husband **Jack** as executor, and leaves: (1) her Rolex watch to her nephew **Fred**; (2) £10,000 to her son **George**; (3) £5,000 to Iris; (4) £2,000 to Jack; (5) £3,000 to her neighbour **Kay**; and (6) the residue to her sister **Lena**. Edna and Jack **divorced in 2022**. She sold the watch in 2024. Kay died in 2023, and George died in 2025 leaving a daughter, **Hana**. Edna dies in **2026**.

Clause	Result	Why
(1) Watch to Fred	**Fails**	**Ademption**: the will speaks from death (s 24), and the watch is no longer in the estate. Fred does not get the sale proceeds
(2) £10,000 to George	**Hana takes**	George died first, but he was Edna's child and left issue living at her death: s 33 passes the gift to Hana
(3) £5,000 to Iris	**Void**	Iris witnessed the will (s 15). With only two witnesses, the 1968 Act cannot save it. The will itself stands
(4) £2,000 to Jack	**Fails**	After the divorce Jack is treated as having died on the date of the divorce order (s 18A). The divorce did not revoke the will
(5) £3,000 to Kay	**Lapses**	Kay died first and was not Edna's descendant, so s 33 does not apply
(6) Residue to Lena	**Lena takes**	She also takes the money that clauses (3), (4) and (5) would have used, and the watch proceeds already in the estate

Who takes the grant?

Jack's appointment as executor fails too (s 18A), and no other executor is named. So: **letters of administration with will annexed**. Lena, as the residuary beneficiary, comes first under NCPR r 20(c).

If Edna had remarried in 2025

The marriage would have **revoked** the will (s 18), unless it showed she then expected to marry that person and meant the will to survive it. Intestacy: her spouse first (page 11).

A gift over: "if George dies first, to the RSPCA"

The will says where the gift goes: a contrary intention, so s 33 gives way and the RSPCA takes, not Hana.

If Lena had died first

The residuary gift lapses (Lena is a sister, not a descendant), so the residue passes on **partial intestacy** (AEA s 49).

When the words are wrong or unclear

Rectification (AJA 1982 s 20)

Only for a **clerical error** or a **failure to understand the instructions**. Apply within **6 months** of the first grant, unless the court permits later.

Extrinsic evidence (s 21)

Allowed, including evidence of the testator's intention, where part of the will is meaningless or ambiguous on its face or in the light of the surrounding circumstances.

Our example. Rules: Wills Act 1837 ss 15, 18, 18A, 24, 33; Wills Act 1968 s 1; AEA 1925 s 49; NCPR r 20; Administration of Justice Act 1982 ss 20, 21; Rokkan v Rokkan [2021] EWHC 481 (Ch).

Property that never reaches the PRs

Before you distribute anything, take out what the will cannot touch. A will (and the intestacy rules) only pass property the deceased owned beneficially and alone, or as a tenant in common.

Asset	What happens on death	Exam point
Joint tenancy (house, joint account)	Passes **automatically** to the surviving joint owners by survivorship	Outside the will and the grant. A tenant in common's share does **not** pass automatically: it is in the estate
Life policy	Paid to the owner of the policy or the person named under its terms. If the deceased owned a policy on their own life, it is part of their estate	A policy written in trust is settled property: paid to the trustees, not the PRs
Pension death benefits	Usually paid at the **discretion** of the scheme trustees or administrators, even if the member made a nomination	Then not part of the estate. Payable to the estate, or under a binding nomination: part of the estate
Trust property	Property the deceased held as trustee, or in which they had only a life interest, passes under the trust	Not distributed under the will. A life tenant's death ends their interest

Do you need a grant for it?

Often not. GOV.UK lists money or shares owned with others, and land owned as joint tenants, among the assets that pass to the surviving owners without probate.

But not out of reach of a 1975 Act claim

The court can order the deceased's severable share of a joint tenancy to be treated as part of the net estate, so far as is just (1975 Act s 9).

Tax is different

Property outside the succession estate can still count for Inheritance Tax: a joint tenant's share, for example, is valued for IHT. Keep the two estates apart in your answer. Our Inheritance Tax guide covers who pays the tax on it.

Our method: before you read the will, list the assets in two columns, "passes outside" and "in the estate". Only the second column is distributed under the will or the intestacy rules, and only it needs the grant.

Partial intestacy

Where a will disposes of only part of the estate, the intestacy rules apply to the rest, subject to the will (AEA s 49). The PRs hold the undisposed part on trust for those entitled on intestacy (page 11).

Sources: GOV.UK, Applying for probate and How to value an estate for Inheritance Tax; HMRC Inheritance Tax Manual IHTM17030, IHTM17051, IHTM20012; Inheritance (Provision for Family and Dependants) Act 1975 s 9; Administration of Estates Act 1925 s 49. Accessed 11 November 2026.

5 Intestacy

Section 46 of the Administration of Estates Act 1925 decides who takes the **residuary estate**: what is left after funeral, testamentary and administration expenses and debts. Work down the list: the first class in which someone takes an absolutely vested interest (for example, by reaching 18) takes.

The intestate leaves	Who takes
Spouse or civil partner, no issue	The spouse takes **everything**, absolutely
Spouse or civil partner and issue	Spouse: the **personal chattels**, a **statutory legacy of £322,000** with simple interest at the Bank of England rate in force at the end of the day of death, and **half** of the rest absolutely. Issue: the other half on the statutory trusts
Issue, no spouse	Everything to the issue on the statutory trusts
No spouse, no issue	Both parents equally, or the one surviving parent
None of those	In order: brothers and sisters of the whole blood; of the half blood; grandparents; uncles and aunts of the whole blood; of the half blood. All on the statutory trusts, except grandparents (equal shares, outright)
No one	The Crown (or the Duchy of Lancaster or the Duke of Cornwall) as bona vacantia

The statutory trusts (s 47)

Equal shares for those living at the death who reach **18** (or marry or form a civil partnership earlier). The children of a beneficiary who died first take their parent's share between them; no one takes while their own parent can.

The 28-day rule (s 46(2A))

A spouse or civil partner who dies within 28 days, beginning with the day of death, is treated as **not** having survived. It applies to spouses only.

Personal chattels (s 55(1)(x))

Tangible movable property, except money or securities for money, property used solely or mainly for business, and property held solely as an investment.

Who gets nothing

Unmarried partners, however long the relationship; stepchildren; friends; carers. Their route is a 1975 Act claim (page 18). A spouse who is informally separated still takes in full; under a judicial separation order, they are treated as already dead (MCA 1973 s 18(2)).

Sources: Administration of Estates Act 1925 ss 46, 47, 55(1)(x), Sch 1A; Administration of Estates Act 1925 (Fixed Net Sum) Order 2023 (SI 2023/758), in force 26 July 2023; GOV.UK, Applying for probate. Accessed 11 November 2026.

Who Inherits on Intestacy?

Our method for s 46. First take out what passes outside the estate (page 10), and pay the debts and expenses. Then stop at the first YES.

1 **Did a spouse or civil partner survive by 28 days?**
Married or in a civil partnership at the death, even if informally separated (not under a separation order: MCA 1973 s 18(2); CPA 2004 s 57). Cohabitants do not count.

YES → **Spouse takes**
All of it if no issue. With issue: chattels, £322,000 plus interest, half the rest.

↓ NO

2 **Are there issue (children, or descendants of a child who died first)?**
Including adopted children; not stepchildren.

YES → **Issue take**
Everything (or the other half) on the statutory trusts: equal shares by stocks, at 18.

↓ NO

3 **Is either parent alive?**

YES → **Parents take**
Equally, or all to the one survivor, outright.

↓ NO

4 **Any brothers or sisters of the whole blood, or their issue?**
Then the half blood, only if no whole-blood line takes.

YES → **Siblings take**
On the statutory trusts; issue of a sibling who died first take that share.

↓ NO

5 **Any grandparents?**
Then uncles and aunts of the whole blood, then the half blood, and their issue.

YES → **Grandparents take**
Equal shares, outright.

↓ NO

Otherwise: the Crown, as bona vacantia
Or the Duchy of Lancaster or the Duke of Cornwall. It may provide for dependants and others the intestate might reasonably have provided for (s 46(1)(vi)).

Run it: one family, no spouse

Our example. **Gus** dies intestate, single, with no children; his parents have died. His estate after debts is **£300,000**. His sister **Hal** is alive. His brother **Ian** died in 2020, leaving two adult children, **Jo** and **Kit**. He also has a half-sister, **Lou**.

Who	Share	Why
Hal	**£150,000**	Whole-blood sister: one of two stocks
Jo and Kit	**£75,000 each**	Take Ian's half between them (s 47(3), by stocks)
Lou	**nil**	The half blood take only if no whole-blood sibling line takes

Worked Example: a Spouse and Children

Our example, invented names and figures. Death after 26 July 2023, so the statutory legacy is £322,000.

Ann dies intestate on **10 October 2026**. Her husband **Ben** survives her by years. They have a daughter, **Cleo** (24), and a son, **Dev** (15). Ann owned: her share of the home, worth **£400,000**, held with Ben as **joint tenants**; her car, furniture and jewellery, **£20,000**; savings and shares, **£760,000**. Her debts, funeral and the costs of the administration come to **£38,000**.

Step	Working	Figure	Why
1	Home: passes to Ben by survivorship	**outside**	Not part of the estate on intestacy
2	Savings and shares less debts and expenses	**£722,000**	£760,000 − £38,000
3	Personal chattels to Ben	**£20,000**	Car, furniture, jewellery: s 55(1)(x)
4	Statutory legacy to Ben	**£322,000**	Plus simple interest from the death at Bank rate, paid primarily out of income (s 46(4))
5	Balance: £722,000 − £322,000	**£400,000**	Split in half
6	Half to Ben, absolutely	**£200,000**	Ben's total: £542,000, plus interest and the home
7	Half on the statutory trusts: Cleo	**£100,000**	Over 18: hers outright
8	Half on the statutory trusts: Dev	**£100,000**	Held on trust until he reaches 18

The grant

Letters of administration. Ben has first right (NCPR r 22(1)(a)). Dev is a **minor**, so at least **two** administrators are needed (SCA s 114(2)): Ben with Cleo, who is next in line under r 22(1)(b).

If Ben had died 20 days after Ann

For s 46 he is treated as not surviving: the £742,000 goes to Cleo and Dev equally. But the home **still passed to Ben** by survivorship, so it is in Ben's estate. The 28-day rule does not touch joint property.

If Ann and Ben had never married

Ben takes nothing under s 46: Cleo and Dev share the £742,000. He still has the home by survivorship, and can claim under the 1975 Act as a cohabitant of 2 years or more (maintenance standard).

If Ann had left no children

Ben takes the whole estate absolutely. Her parents, brothers and sisters take nothing while a spouse survives.

If Dev died at 16, with no children

His share was contingent on reaching 18, so it never vested. The statutory trusts are for the children who reach 18: Cleo takes the whole **£200,000** half (s 47(1)(i)).

If Cleo had died before Ann, leaving a son

Her son takes the £100,000 Cleo would have taken, when he reaches 18. Issue of a child who died first take by stocks (s 47(1)(i)).

Our example. Rules: AEA 1925 ss 46, 47, 55(1)(x); Fixed Net Sum Order 2023; NCPR r 22; SCA 1981 s 114; 1975 Act s 1(1)(ba), (1A).

6 Grants of Representation

A grant of representation proves the personal representatives' authority to deal with the estate. Whether one is needed depends on what the estate holds: each bank and organisation has its own rules, and assets that pass by survivorship need none (page 10).

Grant of probate

There is a will, and an **executor** named in it applies.

Letters of administration with will annexed

There is a will, but no executor is named, or none can or will act.

Letters of administration

There is **no valid will**: a full intestacy.

Who is entitled: the Non-Contentious Probate Rules 1987

With a will (r 20)

(a) the executor
(b) a residuary beneficiary holding on trust for another
(c) any other residuary beneficiary, or anyone entitled to undisposed-of residue
(d) the PR of a residuary beneficiary
(e) any other beneficiary, or a creditor
(f) the PR of another beneficiary or creditor

On intestacy (r 22)

(a) spouse or civil partner
(b) children, and issue of a child who died first
(c) parents
(d) whole-blood brothers and sisters, and issue of one who died first
(e) half-blood likewise
(f) grandparents
(g) whole-blood uncles and aunts, and issue
(h) half-blood likewise; then the Treasury Solicitor, then a creditor

How many PRs

No more than **four** for the same part of the estate. If a beneficiary is a **minor** or a **life interest** arises, administration needs a trust corporation or at least **two** individuals, unless the court thinks a sole administrator expedient (SCA 1981 s 114).

Same degree, and timing

An adult is preferred to a minor's guardian, and a living person to a dead one's PR (r 27(5)). No probate or letters with will annexed within **7 days** of the death, and no other letters of administration within **14 days**, without leave (r 6).

Sources: GOV.UK, Applying for probate; Non-Contentious Probate Rules 1987 rr 6, 20, 22, 27; Senior Courts Act 1981 s 114. Accessed 11 November 2026.

Executors who will not act

Power reserved

An executor can stand back now but keep the right to apply later. The executors who apply must give notice to those reserving power (NCPR r 27(1)).

Renunciation

Giving up the right to apply **permanently**, on form PA15. Up to four executors can be named on the application.

Choosing executors

Eligibility and suitability matter: pick adults able and willing to act. An executor who lacks capacity cannot apply (GOV.UK, form PA14).

The application, step by step

Step	What happens	Detail
1	Find the original will and any codicils	The original is needed, not a photocopy; form PA13 if it is lost. It becomes a public record
2	Value the assets and debts at the date of death	Needed for the application even if no tax is due
3	Is it an **excepted estate**?	Usually yes if below the IHT threshold, or £650,000 or less with a spouse's unused threshold, or all to a UK spouse or charity and under £3 million. Then no IHT400: apply straight away
4	If not, send the IHT400 and pay	Within 12 months of the death and before applying; start paying any IHT and wait for HMRC's code
5	Apply online, or on paper	Form PA1P (will) or PA1A (no will). Fee **£526** if the estate is over £5,000; none at £5,000 or less
6	The registry checks the will	No proper attestation clause, or doubt about execution: evidence from a witness (r 12). Unexplained alterations: evidence (r 14)

Funding the first payment of Inheritance Tax

Tax on death is due by the end of the **sixth month** after the death, and some must usually be paid **before** the grant: the PRs cannot yet sell assets. GOV.UK lists the routes:

Direct Payment Scheme

Banks, building societies and investment providers (including NS&I) pay HMRC from the deceased's accounts on form IHT423, before the grant.

Other sources

Payment from the deceased's government stock; or someone pays from their own bank account and claims it back from the estate after the grant.

Instalments and postponing

Tax on land, businesses and some shares can be paid in 10 yearly instalments (IHTA 1984 s 227); if funds cannot be released, PRs can ask to postpone.

Burden, liability and incidence of the tax, and the instalment rules, are in our free guide **Inheritance Tax for the SQE**. Excepted estate rules shown are for deaths from 1 January 2022.

Sources: GOV.UK, Applying for probate; How to value an estate for Inheritance Tax; Pay your Inheritance Tax bill; Inheritance Tax Act 1984 s 227. Non-Contentious Probate Rules 1987 rr 12, 14, 27. Accessed 11 November 2026.

Administering the Estate

The PRs must "collect and get in the real and personal estate of the deceased and administer it according to law", and account to the court when required (AEA s 25). In practice that means six jobs, in order.

1 **Secure and collect.** Insure, notify banks, collect money owed, sue if needed.	**2** **Advertise.** Gazette and local paper: at least 2 months for claims (Trustee Act s 27).	**3** **Pay expenses and debts.** Funeral, testamentary and administration expenses, debts and tax (page 17).
4 **Pay the legacies.** Sell assets where needed, or appropriate them with consent (AEA s 41).	**5** **Account.** Estate accounts for the residuary beneficiaries to approve.	**6** **Distribute residue.** Under the will or the intestacy rules.

The executor's year

PRs are not bound to distribute before **one year** from the death (AEA s 44). A beneficiary cannot demand a legacy sooner.

Wait 6 months from the grant

A 1975 Act claim can be made up to 6 months from the grant. PRs who distribute after that are protected if a late claim is later allowed (s 20).

Liability, and how PRs protect themselves

Risk	Protection
Unknown creditors or beneficiaries	Statutory advertisements (Trustee Act s 27): after the time in the notice (at least 2 months), and having made the usual searches, PRs who distribute are not liable to a claimant they did not know of. The claimant can still follow the property into the hands of a recipient, other than a purchaser
A missing beneficiary	A court order allowing distribution on the footing that the beneficiary does not exist (a **Benjamin order**, from In re Benjamin [1902] 1 Ch 723). The order does not destroy their interest. In practice PRs may also insure against the beneficiary reappearing
An insolvent beneficiary	A bankrupt's estate vests in their trustee in bankruptcy (Insolvency Act 1986 s 306), so check for a bankruptcy before paying the beneficiary
An honest mistake	The court may relieve a PR who "acted honestly and reasonably, and ought fairly to be excused" (Trustee Act s 61; PRs are trustees for this purpose: s 68(1)(17))

Beneficiaries have 12 years to claim a share of the personal estate; 6 years for arrears of interest on a legacy (Limitation Act 1980 s 22).

Sources: Administration of Estates Act 1925 ss 25, 41, 44; Trustee Act 1925 ss 27, 61, 68(1)(17); Inheritance (Provision for Family and Dependants) Act 1975 ss 4, 20; Re Supercapital Ltd [2020] EWHC 1685 (Ch), describing In re Benjamin orders; Insolvency Act 1986 s 306; Limitation Act 1980 s 22. Accessed 11 November 2026.

Paying Debts and Legacies

In a **solvent** estate, unless the will says otherwise, the PRs use the property in the order of AEA 1925 Sch 1 Pt II (s 34(3)).

Order	Property used	In short
1	Property not disposed of by the will (keeping back a fund for pecuniary legacies)	Any partial intestacy first
2	The residue (keeping back the same fund)	The residuary beneficiary bears debts before the legatees
3, 4	Property given for, or charged with, the payment of debts	Rare in practice
5	The fund kept back for pecuniary legacies	Then the cash legacies are cut down
6	Property specifically given, rateably according to value	Specific gifts last

Mortgaged property (s 35)

A mortgage or other charge is paid primarily out of the property it is charged on, unless the deceased showed a contrary intention. A general direction to "pay my debts" out of residue is **not** enough.

An insolvent estate

Different rules: the bankruptcy order of priority applies, but reasonable funeral, testamentary and administration expenses come **before** the preferential debts (SI 1986/1999 art 4).

Worked: Nora's estate

Our example, invented figures. **Nora** leaves her house (£300,000, with a **£100,000 mortgage**) to her son **Oscar**; £50,000 to her daughter **Pat**; £20,000 to her nephew **Quinn**; and the residue to her friend **Rose**. She has £100,000 in cash. Her unsecured debts, funeral and expenses total **£30,000**.

Working	Figure	Why
Oscar takes the house subject to the mortgage	**£200,000 net**	s 35: the charge stays with the house
Cash £100,000; keep back £70,000 for the legacies	**£30,000**	That £30,000 is the residue
Debts and expenses come out of residue	**£30,000**	Sch 1 Pt II para 2
Pat and Quinn are paid in full; Rose receives	**nil**	The residuary beneficiary bears the debts

If the debts were £120,000

Residue (£30,000) goes first, then the whole £70,000 legacy fund: Pat and Quinn get nothing. The last £20,000 comes from the house (para 6), so Oscar bears it.

If the will said the mortgage is to be paid from residue

A contrary intention **referring to the charge** (s 35(2)): the mortgage joins the debts. Residue and the legacy fund (£100,000) cannot meet £130,000, so £30,000 still falls on the house: Oscar nets £270,000.

Our example. Rules: AEA 1925 ss 34(3), 35, Sch 1 Pt II; Administration of Insolvent Estates of Deceased Persons Order 1986 art 4.

Claims under the Inheritance (Provision for Family and Dependants) Act 1975

Where the deceased died **domiciled in England and Wales**, certain people can ask the court for provision on the ground that the will, the intestacy rules, or both do not make "reasonable financial provision" for them (s 1(1)).

Who can apply (s 1(1))	Standard of provision (s 1(2))
(a) Spouse or civil partner	**Surviving spouse standard**: what is reasonable for a spouse to receive, whether or not needed for maintenance (maintenance only if a judicial separation, or separation, order was in force and the separation continuing)
(b) Former spouse or civil partner who has not remarried or formed a new civil partnership	**Maintenance standard**: what is reasonable for the applicant's maintenance
(ba) Cohabitant: lived in the same household as a couple for the whole 2 years immediately before the death	
(c) A child of the deceased, of any age	
(d) A person treated by the deceased as a child of the family	
(e) Anyone being maintained by the deceased immediately before death: a substantial contribution to their reasonable needs, not for full value under a commercial arrangement (s 1(3))	

Time limit (s 4)

Six months from the date the grant is first taken out. Later only with the court's permission. A claim can be made **before** a grant.

What the court can order (s 2)

Periodical payments, a lump sum, a transfer or settlement of property, the purchase of property for the applicant, or a variation of the trusts of the estate.

The factors (s 3)

For every claim

The financial resources and needs, now and in the foreseeable future, of the applicant, any other applicant and any beneficiary; the deceased's obligations and responsibilities; the size and nature of the net estate; any physical or mental disability; and any other matter, including conduct. The court looks at the facts at the **hearing**.

Extra factors by applicant

Spouse: age, length of marriage, contribution to the family, and what they might have expected on divorce (neither a floor nor a ceiling). **Cohabitant:** age, length of cohabitation, contribution. **Child:** how they were being, or expected to be, educated or trained.

Sources: Inheritance (Provision for Family and Dependants) Act 1975 ss 1, 2, 3, 4. Accessed 11 November 2026.

Exam Traps

Ten ways a plausible option can be wrong. Check every answer against them.

1. Divorce does not revoke

Marriage revokes the will; divorce only treats the former spouse as dead. The rest of the will survives.

2. Witnesses together

Both witnesses must be present at the same time when the testator signs or acknowledges. Not one by one.

3. A witness-beneficiary

The gift fails, not the will. Unless there are enough other witnesses without them.

4. Section 33 is for descendants

A gift to a child who dies first passes to their issue. A gift to a friend, sibling or spouse who dies first simply lapses.

5. The 28-day rule is for intestacy

It applies to a spouse under s 46 only. A will needs its own survivorship clause.

6. Joint tenancy first

A joint tenant's share passes by survivorship, outside the will, the intestacy rules and the grant. A tenant in common's share does not.

7. Cohabitants take nothing

Not on intestacy, however long the relationship. Their route is the 1975 Act, within 6 months of the grant.

8. Minor or life interest

Administration needs at least two individuals (or a trust corporation). Probate to a sole executor is not caught by that rule.

9. Residue pays first

In a solvent estate, debts come out of undisposed-of property and residue before pecuniary legacies, and those before specific gifts.

10. Burden of proof

Capacity and knowledge and approval: on the person propounding the will, helped by presumptions. Undue influence: on the person alleging it.

Before you choose, ask three questions

1

Is there a valid, unrevoked will, and does each gift still work?

2

What passes outside the estate, and who takes the rest?

3

Who is entitled to the grant, and in what order is the estate used?

Test yourself

Cover the answers and give yourself a minute for each. All names and figures are invented; all deaths are in 2026.

1 Mo, 17, signs a will with two witnesses present. Is it valid?

Answer. No. No will made under 18 is valid (s 7), unless privileged.

2 Nell tears up her will in a rage, meaning to revoke it, then regrets it. Is it revoked?

Answer. Yes. Destruction by the testator with the intention of revoking (s 20). Regret afterwards changes nothing.

3 Owen's will leaves everything to his partner Pia. They later marry. The will does not mention marriage. Effect?

Answer. The will is **revoked** (s 18). Owen dies intestate unless he makes a new will; Pia takes as his spouse.

4 A will leaves £8,000 "to my brother Ray". Ray dies before the testator, leaving a son. Who takes?

Answer. Not Ray's son: the gift lapses into residue. s 33 covers only the testator's own descendants.

5 Sue dies intestate leaving a husband and no issue. Her mother is alive. Estate £900,000. Who takes?

Answer. The husband takes everything, absolutely. Her mother takes nothing.

6 Tom dies intestate leaving a wife and two adult children. Net estate £522,000, with no personal chattels. What does the wife get?

Answer. £322,000 plus interest, and half of £200,000: **£422,000**. Each child gets £50,000.

7 Una dies intestate. Her wife dies 10 days later. Who takes Una's estate under s 46?

Answer. Treated as if the wife **did not survive** (28 days). The estate goes to the next class, starting with Una's issue.

8 A will names no executor and leaves the residue to a niece. Which grant, and who applies first?

Answer. Letters of administration with will annexed. The niece, as residuary beneficiary (r 20(c)).

9 Vic dies intestate leaving only two children, Wyn (30) and Xan (12). Can Wyn take the grant alone?

Answer. No. A minor beneficiary means at least two administrators (s 114(2)), unless the court allows a sole one.

10 Yasmin lived with Zak as a couple for 5 years until he died. His will leaves all to his brother. Can she claim?

Answer. Yes, as a cohabitant (s 1(1)(ba)), on the **maintenance** standard, within **6 months** of the grant.

11 PRs advertise under s 27, wait 2 months, then distribute. An unknown creditor appears. Are the PRs liable?

Answer. No (s 27(2)), if they also made the usual searches. The creditor may follow the assets into the beneficiaries' hands.

12 Legacy of £20,000 "out of my Barclays account". The account holds £12,000 at death. What happens?

Answer. A **demonstrative** legacy: £12,000 from the account, and the £8,000 shortfall is paid as a general legacy.

Your Wills and Estates Checklist

Tick a line only when you can do it from blank paper, with the figures, in under two minutes.

Validity

- [ ] I can state the four formalities of s 9 and run the decision tree (page 06)
- [ ] I know the tests for capacity, knowledge and approval and undue influence, and who must prove each (page 05)

Changing, revoking and interpreting

- [ ] I know the four ways to revoke, and what marriage and divorce do (page 07)
- [ ] I can classify a gift and say why it fails: ademption, lapse, s 33, s 15, s 18A (pages 08 and 09)
- [ ] I know what passes outside the estate (page 10)

Intestacy

- [ ] I can apply s 46 from memory, with the £322,000 and the 28-day rule (pages 11 and 12)
- [ ] I can split an estate between a spouse and children, and run the statutory trusts (page 13)

Grants

- [ ] I know the three grants and the order of priority under rr 20 and 22 (page 14)
- [ ] I know the application steps, excepted estates and how to fund the IHT (page 15)

Administration and claims

- [ ] I know the PRs' duties, the executor's year and their protections (page 16)
- [ ] I can apply the order for paying debts, and s 35 (page 17)
- [ ] I know the 1975 Act applicants, standards, factors and time limit (page 18)

On the day

- [ ] I ask the three questions before choosing an answer (page 19)
- [ ] I have scored twelve out of twelve on the self-test, under time (page 20)

Make the order automatic

STEP 1

Learn the map

The one-page table on page 04: cover the figure column and test yourself.

STEP 2

Run the trees

Validity on page 06 and intestacy on page 12, for every set of facts you meet.

STEP 3

Work on paper

Rework the examples on pages 09, 13 and 17 from blank paper.

STEP 4

Test yourself

The twelve questions on page 20, then the traps on page 19.

STEP 5

Build exam pace

Full-length SQE1 mocks in the 2027 format (2 x 85 questions).

STEP 6

Questions?

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This subject rewards order. Cover the figure column on page 04 each morning, and rework one example from blank paper each day: the will, the gifts, what passes outside, who takes the rest, the grant, the debts.



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