

# Contents

<i>Preface</i>	v
<i>Table of Statutes</i>	xiii
<i>Table of Statutory Instruments</i>	xix
<i>Table of Cases</i>	xxi
<b>Chapter 1 Introduction</b>	<b>1</b>
1.4 Drafting	1
1.10 Precedents	3
<b>Chapter 2 General Considerations</b>	<b>4</b>
2.2 The intestacy rules	4
2.8 Joint property	5
2.14 Contentious probate claims	7
2.31 Claims under the Inheritance (Provision for Family and Dependants) Act 1975	10
2.45 Foreign issues	14
2.46 Changing circumstances	14
2.56 Binding of wills	16
<b>Chapter 3 Taking Instructions</b>	<b>17</b>
3.2 Protocols and codes of practice	17
3.5 Arrangements for taking instructions	18
3.14 Taking instructions	19
3.23 Other matters	21
3.25 Checklist	22
<b>Chapter 4 Opening and Revocation</b>	<b>41</b>
4.2 Identity of the testator	41
4.11 Precedents	44
<b>Chapter 5 Joint, Mutual and Reciprocal ('Mirror') Wills</b>	<b>46</b>
5.2 Joint Wills	46
5.3 Reciprocal/mirror Wills	46
5.4 Mutual Wills	47
5.11 Precedents	49
<b>Chapter 6 Foreign Issues and Declarations as to Jurisdiction</b>	<b>51</b>
6.2 Formal validity	51

## Preface

extraordinary resilience and character afterwards has been an example to us all when faced with hardships.

Many others have contributed to this work in many other ways. Vincent Oakley has provided many comments and suggestions that have proved invaluable. The staff at Bloomsbury and the editor, Vickie Tomlinson, have been unfailingly helpful in the face of ever moving deadlines. We must also thank our colleagues in chambers, particularly our clerks Keith Plowman, Marc Schofield and Fay Bennett; without their patience this work would not have been possible. Finally, we must thank our families for their continuing love and support.

This book is dedicated to Michael and his family who are always in our thoughts.

The law is stated as at October 2014.

Richard Dew and Kevin Shannon

Ten Old Square, Lincoln's Inn WC2A 3SU

clerks@tenoldsquare.com

## Contents

<i>Preface</i>	v
<i>Table of Statutes</i>	xiii
<i>Table of Statutory Instruments</i>	xix
<i>Table of Cases</i>	xxi
<b>Chapter 1 Introduction</b>	<b>1</b>
1.4 Drafting	1
1.10 Precedents	3
<b>Chapter 2 General Considerations</b>	<b>4</b>
2.2 The intestacy rules	4
2.8 Joint property	5
2.14 Contentious probate claims	7
2.31 Claims under the Inheritance (Provision for Family and Dependants) Act 1975	10
2.45 Foreign issues	14
2.46 Changing circumstances	14
2.56 Binding of wills	16
<b>Chapter 3 Taking Instructions</b>	<b>17</b>
3.2 Protocols and codes of practice	17
3.5 Arrangements for taking instructions	18
3.14 Taking instructions	19
3.23 Other matters	21
3.25 Checklist	22
<b>Chapter 4 Opening and Revocation</b>	<b>41</b>
4.2 Identity of the testator	41
4.11 Precedents	44
<b>Chapter 5 Joint, Mutual and Reciprocal ('Mirror') Wills</b>	<b>46</b>
5.2 Joint Wills	46
5.3 Reciprocal/mirror Wills	46
5.4 Mutual Wills	47
5.11 Precedents	49
<b>Chapter 6 Foreign Issues and Declarations as to Jurisdiction</b>	<b>51</b>
6.2 Formal validity	51

6.6	Essential validity	52
6.12	English private international law of succession	53
6.18	EU Regulation No 650/2012	54
6.23	Location of declarations as to jurisdiction	55
6.24	Precedents	56
<b>Chapter 7 Funeral Wishes</b>		<b>57</b>
7.1	Declarations concerning funeral arrangements and disposal of the testator's body	57
7.5	Expenses	58
7.6	Cremation	58
7.7	Donation of the body and organs	58
7.9	Precedents	59
<b>Chapter 8 Appointment of Executors and Trustees</b>		<b>61</b>
8.1	Definitions	61
8.2	Advice to testator	61
8.5	Executors and trustees	62
8.10	Common appointments	63
8.11	Appointment of a beneficiary	63
8.14	Appointment of a friend or business acquaintance	64
8.16	Appointment of solicitors	64
8.23	Appointment of accountants	65
8.24	Appointment of a trust corporation	65
8.26	Appointment of the public trustee	66
8.27	Power to charge fees	66
8.32	Final points	67
8.33	Precedents	68
<b>Chapter 9 Appointment of Guardians</b>		<b>75</b>
9.4	Appointment	76
9.9	Revocation	77
9.12	Other points	77
9.14	Precedents	78
<b>Chapter 10 Legacies</b>		<b>80</b>
10.1	The use and type of legacies	80
10.5	Gifts free of inheritance tax	80
10.8	The priority and timing of legacies	81
10.11	The satisfaction of debts and the presumption against 'double portions'	81
10.13	Nil rate band legacies	82
10.14	Legacies to the draftsman	82
10.15	Precedents	83
<b>Chapter 11 Specific Gifts of Real Property and Rights of Occupation</b>		<b>88</b>
11.1	Simple gifts of land	88
11.8	Gifts of land on trust	89
11.25	Precedents	95
<b>Chapter 12 Specific Gifts of Chattels and Other Personal Property</b>		<b>100</b>
12.1	Need for a gift of chattels	100

12.3	Inheritance tax and gifts of chattels	100
12.4	Gifts of personal chattels	100
12.8	Collections	101
12.9	Rights of selection of chattels	101
12.12	Chattels subject to a charge	102
12.14	Releases and gifts of debts	103
12.15	Gifts of shares	103
12.17	Gifts of bank accounts	103
12.18	Precedents	104
<b>Chapter 13 Business Interests</b>		<b>112</b>
13.2	Tax reliefs	112
13.16	Gift of a business interest	115
13.33	Trustees' powers	119
13.35	Business executors	119
13.37	Precedents	120
<b>Chapter 14 Charities and Charitable Giving</b>		<b>127</b>
14.1	Introduction	127
14.3	Whether a gift is charitable	127
14.6	Reduced rate of inheritance tax	128
14.12	Gifts to charity	129
14.22	Precedents	132
<b>Chapter 15 Digital Assets</b>		<b>138</b>
15.1	Digital assets	138
15.5	Current rules	139
15.7	Practical problems concerning digital assets	139
15.12	Digital asset list	140
15.13	Gifts of digital assets	140
15.16	Caveat	141
15.17	Precedents	142
<b>Chapter 16 Residuary Gifts</b>		<b>149</b>
16.4	Survivorship clause	149
16.30	Precedents	156
<b>Chapter 17 Minors</b>		<b>165</b>
17.2	Receipt clauses	165
17.3	Trustee powers	165
17.6	Inheritance tax	166
17.13	Income and capital gains tax	167
17.17	Summary of options	168
17.20	Precedents	170
<b>Chapter 18 Disabled and Vulnerable Beneficiaries</b>		<b>172</b>
18.2	Flexibility	172
18.6	Inheritance tax	173
18.12	Income and capital gains tax	174
18.16	Means tested benefits	174
18.21	Drafting considerations and options	175
18.24	Precedents	177

<b>Chapter 19 Powers of Trustees</b>	<b>181</b>
19.9 Investment and management powers and duties	183
19.13 Power to insure	184
19.14 Power to borrow	184
19.15 Powers and duties in relation to delegation	185
19.30 Duty of care	188
19.31 Powers and duties in relation to trusts of land	189
19.39 Miscellaneous additional powers	190
19.43 STEP provisions	191
19.45 Precedents	193
<b>Chapter 20 Declarations</b>	<b>198</b>
20.2 Intermediate income	198
20.3 Legitimated, illegitimate, adopted and step-children	198
20.5 Survivorship, lapse and accrual	199
20.9 Satisfaction and ademption	200
20.12 Precedents	201
<b>Chapter 21 Attestation</b>	<b>204</b>
21.8 Witnesses	206
21.12 Draftsman's duty in relation to attestation	206
21.20 Precedents	209
<b>Chapter 22 Inheritance Tax</b>	<b>212</b>
22.3 An outline of inheritance tax	212
22.5 Inheritance tax on death	213
22.9 Inheritance tax on lifetime transfers	213
22.12 Settlements	214
22.17 Age contingent gifts	215
22.22 The spouse exemption	216
22.23 Transferable nil rate bands	217
22.26 Charities	217
22.28 The burden and allocation of inheritance tax	218
22.31 The foreign aspect	218
22.34 Anti avoidance	219
22.37 Precedents	220
<b>Chapter 23 Inheritance Tax Mitigation in Wills</b>	<b>221</b>
23.4 Agricultural and business property	221
23.8 Avoiding grossing up	222
23.9 Transferable nil rate bands	223
23.14 Nil rate band gifts	224
23.17 Life interests and exempt beneficiaries	224
23.20 Gifts to charities	225
23.21 Short term discretionary trusts	225
23.24 Precedents	227
<b>Chapter 24 Complete Wills</b>	<b>232</b>
24.6 Precedents	234
<b>Chapter 25 Single Adults</b>	<b>239</b>
25.2 Precedents	240

<b>Chapter 26 Wills for Married Couples or Civil Partners with no Children</b>	<b>247</b>
26.2 Precedents	248
<b>Chapter 27 Wills for Married Couples or Civil Partners with Children</b>	<b>253</b>
27.1 Married couples or civil partners with children	253
27.12 Precedents	257
<b>Chapter 28 Unmarried Couples with Children</b>	<b>280</b>
28.2 Precedents	281
<b>Chapter 29 Second Marriages or Civil Partnerships</b>	<b>287</b>
29.3 Precedents	288
<b>Chapter 30 Wills in the Court of Protection</b>	<b>296</b>
30.1 Introduction	296
30.2 The jurisdiction	296
30.8 Statutory Wills and codicils	298
30.11 Best interests in statutory Wills and codicils	298
30.18 Procedure	300
30.26 Executing the Will or codicil	302
30.28 Precedents	303
<b>Chapter 31 Variations after Death</b>	<b>304</b>
31.8 Disclaimer	305
31.10 Deed of variation	306
31.19 Precedents	308
<b>Chapter 32 Letters and Other Support Materials</b>	<b>318</b>
32.3 Letter enclosing Wills for completion	318
32.4 Letter about a life interest trust	319
32.5 Letter about a discretionary trust	320
32.6 Notice of severance	321
32.7 Promissory note	322
32.8 Appointment ending a short term discretionary trust within two years of death	323
<b>Appendix Part 1: Attestation, Construction and Interpretation</b>	<b>329</b>
<b>Appendix Part 2: Powers</b>	<b>348</b>
<b>Appendix Part 3: Intestacy Rules</b>	<b>378</b>
<b>Appendix Part 4: Inheritance Tax and Capital Gains Tax</b>	<b>383</b>
<i>Index</i>	393