



# EULawInEN

EU LAW TRAINING IN ENGLISH LANGUAGE:  
BLENDED AND INTEGRATED CONTENT AND LANGUAGE TRAINING  
FOR EUROPEAN NOTARIES AND JUDGES



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# Legal English in practice

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Fondazione  
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Partners



Magyar Országos  
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Notary Chamber of Bulgaria



International  
Association of  
Judges

promoting an independent judiciary worldwide

# Glossary of terminology

## COMMON TERMS AND VOCABULARY IN SUCCESSION LAW AND PROPERTY LAW

IN THE CONTEXT OF EU REGULATIONS:

650/2012

1103/2016 and 1104/2016



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# Introduction

## THE LEGAL PROFESSION IN ENGLAND AND WALES

CLIENT



TWO TYPES OF LAWYER: **SOLICITOR** – Initial instructions and case preparation



**BARRISTER** – Trial preparation – Advocacy

(ATTORNEY = US LAWYER )



# Introduction

## DUAL QUALIFIED LAWYER

### EU ESTABLISHMENT OF LAWYERS DIRECTIVE 98/2005/CE

Directive to facilitate practice of the profession of lawyer on a permanent basis in a member state other than that in which the qualification was obtained

Defines a lawyer within the scope of the Directive by listing two conditions:

- (1) The person must be a EU national
- (2) The person must hold one of the professional titles listed within the Directive



# Introduction

## FRAMEWORK OF EU FAMILY LAW

<b>Reg. 2201/2003</b>	<i>Establishing jurisdiction in divorce, legal separation and marriage annulment</i>
<b>Hague Protocol 2007</b>	
<b>Reg. 4/2009</b>	<i>Maintenance obligations</i>
<b>Reg. 1259/2010</b>	<i>Choice of law applicable to divorce and separation</i>
<b>Reg. 650/2012</b>	<i>Succession</i>
<b>Regs. 1103/ 2016 And 1104/2016</b>	<i>Matrimonial property regimes</i>



# Introduction

## CONSEQUENCES OF BREXIT

### European Union (Withdrawal Agreement) Act 2020

Withdrawal Agreement makes provisions for changes to EU law to be legally binding in the UK during the transition period (Art. 27)

Transition period up to 31<sup>st</sup> December 2020



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# Legal English and common law

CELTIC LANGUAGE → 55 BC - ROMAN INVASION

LATIN LANGUAGE - ROMAN LAW → 440 AD - ANGLO - SAXONS

ANGLO-SAXON ENGLISH  
(OLD ENGLISH – GERMANIC VERNACULAR) → 1066 - NORMAN  
CONQUEST

FRENCH → 1300'S - STATUTE OF PLEADINGS



# Legal English and common law

## 1362 - STATUTE OF PLEADINGS

THE STATUTE WAS WRITTEN IN **FRENCH** AND STATED THAT ALL  
LEGAL PROCEEDINGS SHOULD BE SPOKEN IN **ENGLISH**

**BUT MUST BE RECORDED IN LATIN**

UP TO 1730 - PROCEEDINGS IN COURTS OF JUSTICE ACT





# Legal English and common law

DEVELOPMENT OF MIDDLE ENGLISH IN 16<sup>TH</sup> CENTURY

“**NOTWITHSTANDING**”

“**AFORESAID**”

“**WHEREBY**”

DOUBLETS - COMBINING SYNONYMS:

**Null and Void**

**Cease and Desist**

**Terms and Conditions**

**Last Will and Testament**



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# Legal English and common law

## PRECEDENT IN COMMON LAW

The [ratio decidendi](#) (reason for decision) of each case will bind future cases in lower courts having the same generic set of facts, which must be judged in a similar manner.

**STARE DECISIS - “Let the decision stand“ – BINDING PRECEDENT**



# Legal English and common law

## EXAMPLE OF PRECEDENT IN COMMON LAW

*CARLILL V CARBOLIC SMOKE BALL CO [1893] 1 QB 256*

### CONTRACT LAW

OFFER AND ACCEPTANCE - FORMATION OF LEGALLY BINDING CONTRACT



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# Legal English and common law

## EQUITY AND TRUSTS

### Development of the Courts of Equity parallel to the common law courts

- Common law courts were very strict and procedural
- Common law courts only awarded damages which did not guarantee justice
- Petitions were made to King for a fair or equitable remedy
- Court of Equity or Court of Chancery established
- Common Law courts and the Court of Chancery merged in 1700's



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# Legal English and common law

## EQUITY AND TRUSTS

### TYPES OF EQUITABLE REMEDIES:

INJUNCTIONS, SEQUESTRATION

FREEZING ORDER

SPECIFIC PERFORMANCE



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# Legal English and common law

## EQUITY AND TRUSTS

### TRUSTS ARE EXCLUDED FROM SCOPE OF SUCCESSION REGULATION

**ART. 1 (2) (J):** The «creation, administration and dissolution of trusts shall be excluded from the scope of this Regulation».

**RECITAL 13:** This should not be understood as a general exclusion of trusts. Where a trust is created under a will or under statute in connection with intestate succession the law applicable to the succession under this Regulation should apply with respect to the devolution of the assets and the determination of the beneficiaries.



# Legal English and common law

## EQUITY AND TRUSTS

HAGUE CONVENTION  
ON LAW APPLICABLE TO TRUSTS AND THEIR RECOGNITION 1985

**ART. 2 THE TERM TRUST REFERS TO “*LEGAL RELATIONSHIPS CREATED  
INTER VIVOS OR ON DEATH*”**



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# Legal English and common law

## TESTAMENTARY TRUSTS

**COMMON LAW** – Statutory trust created automatically on death – the estate of the deceased passes to personal representative appointed by the court (executor/trustee/administrator) who holds property on behalf of beneficiaries.

**CIVIL LAW** – Estate of the deceased passes directly to the heirs.





# Legal English and common law

## TESTAMENTARY TRUSTS

**TESTATOR** is the person who specifies, or implies that a trust be created as a part of his or her will.

**EXECUTOR AND TRUSTEE** whose duty is to carry out the terms of the will.

**BENEFICIARY** who will receive the benefits of the trust.

**PROBATE COURT** oversees the Trustee's handling of the trust.



# Legal English and common law

## TESTAMENTARY TRUSTS

TRUST DEED OR  
TESTAMENTARY TRUST

PROPERTY OR  
ASSETS



SETTLOR – OR TESTATOR

TRUSTEE OR EXECUTOR

(LEGAL OWNER)

BENEFICIARY OR HEIR

(BENEFICIAL OWNER)



# Legal English and common law

## EXAMPLE OF TESTAMENTARY TRUST

*I GIVE DEVISE AND BEQUEATH all of my real and personal property whatsoever and wheresoever situated not hereby or by any codicil hereto otherwise specifically disposed of (including any property over which I may have a general power of appointment or disposition by Will) to my trustees UPON TRUST to sell call in and convert the same into money but with full power to postpone the sale calling in and conversion thereof for so long as they in their absolute discretion shall think fit AND to discharge therefrom my just debts and my funeral expenses and to stand possessed of the remainder (hereinafter called “my residuary estate”) upon and subject to the following provisions of this my Will.*



# Legal English and common law

## TESTAMENTARY FREEDOM

### **John Stuart Mill in Principles of Political Economy (1848):**

“...the ownership of a thing cannot be looked on as complete without the power of bestowing it, in life or on death, at the owner’s pleasure”.

### **Inheritance (Provision For Family And Dependants Act) 1975**

UK Courts now have a discretion to override will or intestacy law and recognise claim against an estate for “reasonable financial provision”. Only applies where deceased had last place of domicile.



# Legal English and common law

## TESTAMENTARY FREEDOM

Inheritance Act claims can be brought by:

- current spouse or civil partner of the deceased;
- former spouse or civil partner of the deceased who has not remarried or received a final financial settlement following the breakdown of the marriage or civil partnership;
- cohabitee who during two years before the date of death, was living with deceased “in the manner of” spouse or civil partner;
- child of the deceased including illegitimate, legitimated and adopted children of any age;
- any person treated by the deceased as a child of the marriage or civil partnership;
- any person not included above who was maintained wholly or partly by the deceased immediately before his death.



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# Legal English and common law

## TESTAMENTARY FREEDOM

The court will take into account the following factors when deciding whether a reasonable financial provision has been granted for a claimant:

- the financial resources and needs of the applicant;
- the financial resources and needs of any other applicant;
- the financial resources and needs of the beneficiaries;
- any obligations and responsibilities of the deceased towards any applicant and any beneficiary;
- the size and nature of the estate of the deceased;
- any physical or mental disability of any applicant or beneficiary;
- any other matter, including conduct, which the court may consider relevant.



# Legal English and common law

## EXAMPLES OF PRECEDENT IN COMMON LAW

### SUCCESSION LAW AND TESTAMENTARY FREEDOM

*ILOTT V THE BLUE CROSS AND OTHERS [2017] UKSC 17*

*WELLESLEY V WELLESLEY & OTHERS (2019)*

*THOMPSON V RAGGETT [2018] EWHC 688 (CH)*



# Legal English and common law

## DOMICILE IN ENGLISH LAW

**DETERMINES THE APPLICABLE LAW TO SUCCESSION OF MOVABLES**

**DOMICILE OF ORIGIN** – Domicile of person's father at time of own birth if parents married, or person's mother if not married

**DOMICILE OF CHOICE** – On attaining age 16, domicile of choice may be made by taking up physical presence in a new country with an intention to remain permanently





# Common law and probate

## PROBATE

The procedure by which the Courts of England and Wales authorises a personal representative (P.R.) to administer the estate of the deceased

WHERE DECEASED LEFT WILL

GRANT OF PROBATE

P.R. = EXECUTOR

WHERE DECEASED DIED INTESTATE

GRANT OF ADMINISTRATION

P.R. = ADMINISTRATOR



# Common law and probate

## PROBATE

### DUTIES OF THE P.R. ARE TO:

Confirm that the will proved is the original Last Will of deceased.

Collect in the whole estate.

Make an inventory of assets and estimate of gross value of estate (value of assets before liabilities and any gifts made in last 7 years).

Arrange payment of debts and liabilities.

Calculation and payment of inheritance tax (IHT) - 40% on amount over £325,000.

Keep accounts including distribution to beneficiaries.

Approve or disprove claims of creditors.



# Legal English and common law

## PRIVATE INTERNATIONAL LAW

### PRINCIPLE OF SCISSION

#### MOVABLE PROPERTY

The material or essential validity of a will of movables or of any particular gift of movables contained therein is governed by the **law of the testator's domicile at the time of his death.**

#### IMMOVABLE PROPERTY

The material or essential validity of a will of immovables or any particular gift of immovables contained therein is governed by **the law of the country where the immovables are situated.**



# Legal English and common law

## CASE STUDY - SUCCESSION

### CASE OF LORD LAMBTON, EARL OF DURHAM

#### FACTS

MADE AFFIDAVIT CONFIRMING ITALY WAS HIS DOMICILE OF CHOICE  
HIS ENGLISH WILL LEFT HIS ENTIRE WORLDWIDE ESTATE TO HIS ONLY SON  
DAUGHTERS CLAIMED ITALIAN LAW APPLIED TO IMMOVEABLE PROPERTY IN ITALY



# Legal English and common law



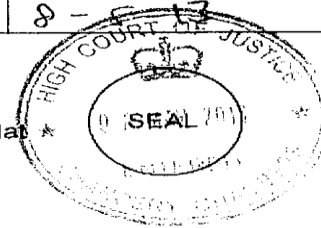
## Claim Form

In the High Court of Justice  
Chancery Division

	<i>for court use only</i>
Claim No.	HC13D017777
Issue Date	8 - 5 - 17

Claimant(s) name(s) and address(es) including postcode

**The Right Honourable Edward Richard Lambton, Earl of Durham of Durham**  
2, 14 Phillimore Gardens, London W8 7QE



Defendant(s) name

**Lady Lucinda Lambton**  
**Lady Beatrix Mary Nevill**  
**Lady Mary Gabrielle Ann Lambton**



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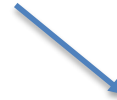
# Legal English and common law

## MATRIMONIAL PROPERTY IN ENGLISH LAW

### OWNERSHIP OF PROPERTY BETWEEN SPOUSES



LEGAL OWNERSHIP



EQUITABLE OWNERSHIP



# Legal English and common law

## MATRIMONIAL PROPERTY IN ENGLISH LAW

No matrimonial property regime - instead the Courts have a wide discretion on marriage breakdown to distribute property fairly and may have recourse to the principles of Equity by recognising an implied Trust

CASELAW – PETTITT V PETTITT; GISSING V GISSING



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# Legal English and common law

## MATRIMONIAL PROPERTY IN ENGLISH LAW

**RESULTING TRUST** – arises as direct result of a financial contribution to purchase price ie recognises beneficial ownership

**CONSTRUCTIVE TRUST** – is established where common intention that claimant would acquire interest in property and the claimant has relied on this to his/her detriment





# Legal English and common law

## CIVIL PARTNERSHIPS IN ENGLISH LAW

CIVIL PARTNERSHIP ACT 2004

MARRIAGE (SAME SEX COUPLES ACT) 2013

CO-HABITATION RIGHTS/ COMMON LAW SPOUSE/DE FACTO PARTNERSHIP



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