



EULawInEN

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



This Project is funded
by the European Union's
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Legal English in practice

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This Project is implemented by Coordinator



Fondazione
Italiana
del Notariato

Partners



Magyar Országos
Közjegyzői Kamara



Notary Chamber of Bulgaria



International
Association of
Judges

promoting an independent judiciary worldwide

Introduction

CHARLOTTE OLIVER

ENGLISH SOLICITOR QUALIFIED IN UK 1994

AVVOCATO INTEGRATO REGISTERED IN ROME (ORDINE DEGLI AVVOCATI) IN 2001

EU ESTABLISHMENT OF LAWYERS DIRECTIVE DIR. 98/2005/CE

OLIVER & PARTNERS STUDIO LEGALE - CROSS BORDER LEGAL ASSISTANCE BY DUAL QUALIFIED LAWYERS IN PRIVATE CLIENT MATTERS - FAMILY LAW, PROPERTY LAW, SUCCESSION AND WILLS



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Introduction

EXAMINING LEGAL ENGLISH

MY ROLE IN THE PROJECT – INTRODUCING BACKGROUND OF COMMON LAW
AND HISTORY OF LEGAL ENGLISH, LANGUAGE SUPPORT

ADDITIONAL LANGUAGE REFERENCE MATERIALS PROVIDED BY EULAWINEN PROJECT:

GLOSSARY - COMMON TERMS AND VOCABULARY OF LEGAL ENGLISH

LITIGATION TERMINOLOGY – PROCEEDINGS IN UK COURTS



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Introduction

THE EU REGULATIONS IN FOCUS:

EU REG 650/2012 - SUCCESSION LAW, WILLS

EU REGS 1103/2016 AND 1104/2016 – FAMILY LAW AND
MATRIMONIAL PROPERTY LAW

HARMONISATION OF LAWS BUT NOT CHANGE OF SUBSTANTIVE LAW

RELATIONSHIP WITH LAW N. 218/1995 IN ITALY
RULES ON PRIVATE INTERNATIONAL LAW



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KEY PRINCIPLES IN ENGLISH SUCCESSION/FAMILY LAW

KEY PRINCIPLE 1 STATUTORY TRUST ON DEATH

KEY PRINCIPLE 2 TESTAMENTARY FREEDOM

KEY PRINCIPLE 3 SCISSION

KEY PRINCIPLE 4 DOMICILE

KEY PRINCIPLE 5 NO MATRIMONIAL PROPERTY REGIME



Introduction

UNITED KINGDOM & IRELAND

NO OPT IN TO REGULATIONS (Under Protocol 21 to the EU Treaties)

DENMARK – NO OPT IN (Protocol 22)

UK, IRELAND AND DENMARK ARE “THIRD STATES”

EUROPEAN UNION (WITHDRAWAL AGREEMENT) ACT 2020

FOLLOWING BREXIT EU LAW IS LEGALLY BINDING IN THE UK DURING THE
TRANSITION PERIOD (ART. 27) UP TO 31ST DECEMBER 2020



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Introduction

SEPARATE LEGAL SYSTEMS OF UNITED KINGDOM



ENGLAND AND WALES



SCOTLAND



NORTHERN IRELAND



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THE DEVELOPMENT OF THE LEGAL ENGLISH LANGUAGE

UP TO 55 BC - CELTIC DIALECT

55 BC - ROMAN INVASION OF BRITAIN INTRODUCED LATIN AND ROMAN LAW

440 AD - ARRIVAL OF THE ANGLO – SAXONS WHO INTRODUCED ANGLO-SAXON (GERMANIC) ENGLISH

1066 AD - NORMAN CONQUEST ANGLO - NORMAN FRENCH



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1362 - STATUTE OF PLEADINGS

STATUTE WAS WRITTEN IN **FRENCH**

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



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DEVELOPMENT OF COMMON LAW

FROM 1066 COMMON LAW DEVELOPED BY CASELAW MADE BY THE KINGS COURTS

NO WRITTEN CODE UNLIKE CIVIL LAW SYSTEMS

BINDING PRECEDENT - STARE DECISIS (“Let the decision stand“)

RATIO DECIDENDI OF EACH CASE BINDS FUTURE CASES IN THE LOWER COURTS



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COURT STRUCTURE - ENGLAND AND WALES



LOWER COURTS

(CRIMINAL COURTS)

MAGISTRATES COURT CROWN COURT

(CIVIL COURTS)

COUNTY COURT

HIGH COURT OF JUSTICE

- CHANCERY DIVISION
- QUEEN'S BENCH DIVISION
- FAMILY DIVISION



COURT OF APPEAL

SUPREME COURT (Previously House of Lords)



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DEVELOPMENT OF LEGAL TERMINOLOGY IN COMMON LAW

- MANY ENGLISH LEGAL TERMS DERIVE FROM THE EARLY INFLUENCE OF FRENCH AND LATIN:

ESTATE EXECUTOR PROPERTY LEASE TENANT

- DEVELOPMENT OF MIDDLE ENGLISH: *NOTWITHSTANDING AFORESAID WHEREBY*

- DOUBLETS AND TRIPLETS - COMBINING SYNONYMS:

*CEASE AND DESIST - TERMS AND CONDITIONS - GOODS AND CHATTELS - LAW AND ORDER
NULL AND VOID - LAST WILL AND TESTAMENT - AID AND ABET - GIVE, DEVISE AND BEQUEATH*



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EQUITY

DEFINITION OF EQUITY =

JUSTICE
FAIRNESS
FLEXIBILITY

A CHECK AND BALANCE OF COMMON LAW



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EQUITY COURTS

COMMON LAW COURTS WERE STRICT AND ONLY PROVIDED REMEDY OF DAMAGES

COURT OF CHANCERY ESTABLISHED TO FIND JUDICIAL REMEDIES BASED ON
EQUITABLE PRINCIPLES

COMMON LAW COURTS AND COURT OF CHANCERY MERGED IN 1700'S



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EQUITABLE REMEDIES

TYPE OF EQUITABLE REMEDIES THAT THE COURT CAN GRANT:

INJUNCTIONS

SPECIFIC PERFORMANCE

RESTITUTION

DECLARATORY RELIEF

CONSTRUCTIVE TRUST



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EQUITY AND TRUSTS

TRUST = A COMMON LAW INSTRUMENT DEVELOPED IN ENGLISH LAW OF PROPERTY AS AN **EQUITABLE REMEDY**

HAGUE CONVENTION ON LAW APPLICABLE TO TRUSTS
AND THEIR RECOGNITION (1985)

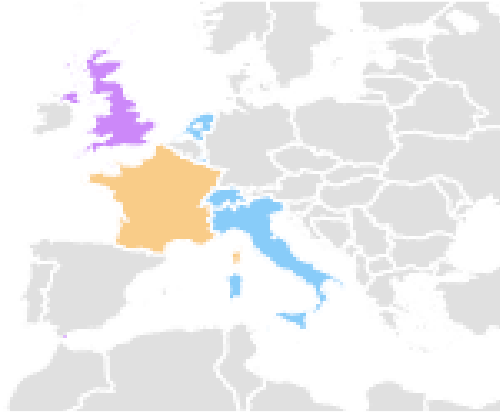
ART. 2 THE TERM “TRUST” REFERS TO:
“*LEGAL RELATIONSHIPS CREATED INTER VIVOS OR ON DEATH*”



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EQUITY AND TRUSTS

HAGUE CONVENTION 1982 PARTIES (EU STATES/EEA/INDEPENDENT):



UK
FRANCE
ITALY
LUXEMBOURG
LIECHTENSTEIN (EEA)
MALTA
MONACO
NETHERLANDS
SAN MARINO
SWITZERLAND

PLUS: (AUSTRALIA, CYPRUS, CANADA (8 PROVINCES), CHINA (HONG KONG ONLY), PANAMA)



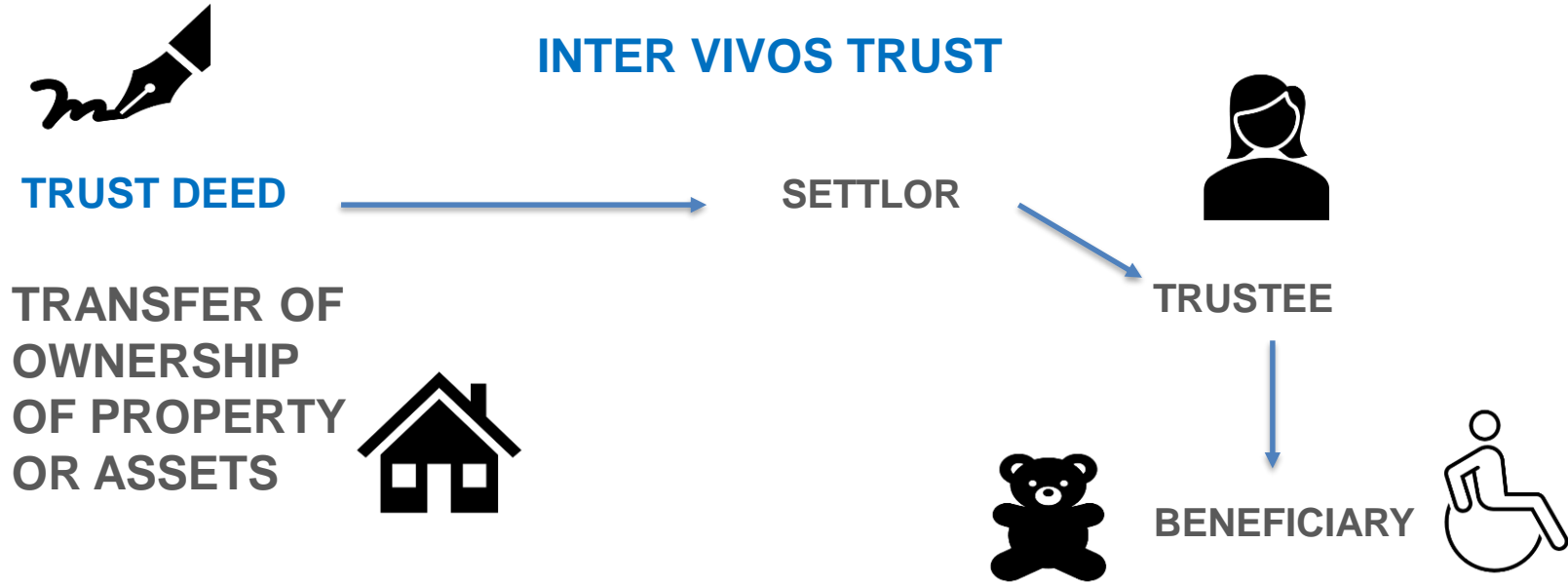
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INTER VIVOS TRUST



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TRUSTS IN ENGLISH SUCCESSION LAW

KEY PRINCIPLE 1: “STATUTORY TRUST” CREATED AUTOMATICALLY ON DEATH.

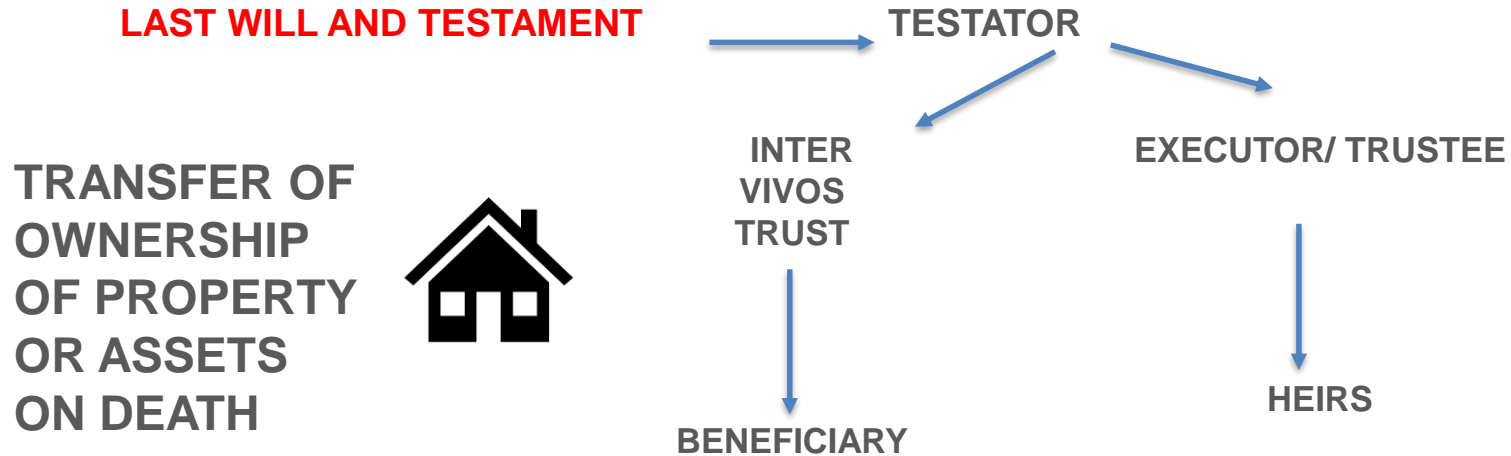
THE ESTATE OF THE DECEASED PASSES TO THE PERSONAL REPRESENTATIVE APPOINTED BY THE COURT (EXECUTOR/TRUSTEE/ADMINISTRATOR)

COMPARE CIVIL LAW – ESTATE OF THE DECEASED PASSES DIRECTLY TO THE HEIRS



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STATUTORY TRUST IN SUCCESSION LAW



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TESTAMENTARY TRUST

EXAMPLE OF CLAUSE IN WILL

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.



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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.”



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FORM OF ENGLISH WILL - WILLS ACT 1837

Last Will and Testament

CAPACITY	FUNERAL DIRECTORS
REVOCAION	LEGACIES
CHOICE OF LAW	GIFT OF RESIDUE
INTENDED MARRIAGE	WITNESSES
EXECUTORS	SIGNATURE DATE



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PROBATE

Procedure by which the Civil Courts of England and Wales (Family Division) authorise a personal representative (PR) 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



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GRANT OF PROBATE

IN THE HIGH COURT OF JUSTICE

The District Probate Registry at Winchester

BE IT KNOWN that
otherwise

of **146 Camberwell New Road Camberwell London SE5 0RR**

died on the **4th** day of **August 2014**
domiciled in **England and Wales**

AND BE IT FURTHER KNOWN that the last Will and Testament of the said deceased (a copy of which is annexed) was proved and registered in the High Court of Justice and that Administration of all the estate which by law devolves to and vests in the personal representative of the said deceased was granted by the said Court on this date to the Executor



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LEGALISATION OF GRANT OF PROBATE

APOSTILLE

1961 HAGUE CONVENTION

Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents

APOSTILLE (Convention de La Haye du 5 octobre 1961)	
1. Country: Pays / País:	United Kingdom of Great Britain and Northern Ireland
This public document Le présent acte public / El presente documento público	
2. Has been signed by a été signé par ha sido firmado por	Not applicable
3. Acting in the capacity of agissant en qualité de quien actúa en calidad de	Not applicable
4. Bears the seal / stamp of est revêtu du sceau / timbre de y está revestido del sello / timbre de	The Family Division Of the High Court of Justice
Certified Attesté / Certificado	
5. at à / en	London
6. the le / el día	06 October 2016
7. by par / por	Her Majesty's Principal Secretary of State for Foreign and Commonwealth Affairs
8. Number sous no / bajo el numero	APO-21861
9. Seal / stamp Sceau / timbre Sello / timbre	10. Signature Signature Firma

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FORMAL VALIDITY OF A WILL

Succession Reg. Article 27 (1)

Disposition of property upon death is valid as regards form if its form complies with the law:

- (a) of the **State in which the disposition was made ...**;
- (b) of a **State whose nationality the testator ... possessed** (time of making will or on death)
- (c) of a **State in which the testator had his domicile** (time of making will or on death)
- (d) of the **State in which the testator ...had his habitual residence** (time of making will or on death)
- (e) in so far **as immovable property** is concerned, of the **State in which that property is located**.



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SUBSTANTIVE VALIDITY OF A WILL

- **DEPENDS ON LAW APPLICABLE TO SUCCESSION**
- **KEY PRINCIPLE 2 - TESTAMENTARY FREEDOM**

(INHERITANCE (PROVISION FOR FAMILY AND DEPENDANTS ACT) 1975

UK Courts have a discretion to override a Will or intestacy law and recognise a claim against an estate for “reasonable financial provision”.)



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PRIVATE INTERNATIONAL LAW OF ENGLAND AND WALES

KEY PRINCIPLE 3 - 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.**



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DOMICILE

KEY PRINCIPLE 4 - DOMICILE 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.



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MATRIMONIAL PROPERTY REGIMES

KEY PRINCIPLE 5 – NO MATRIMONIAL PROPERTY REGIME

ENGLISH PRIVATE INTERNATIONAL LAW RULES:

IMMOVABLE PROPERTY - Lex rei sitae or place of matrimonial domicile?

MOVABLE PROPERTY - Matrimonial domicile



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ITALIAN COURT OF CASSAZIONE – interim ruling n. 18 of 3rd January 2020

PETER – Deceased – British citizen domiciled in UK
BENEDETTA - Second wife – Italian citizen

- Peter made Will in 1997, before his marriage, leaving legacy of 50.000 Euro to his partner Benedetta and the residue to his 7 children from a previous relationship
- Peter then married Benedetta and died two months later
- Benedetta started legal action against the children claiming that the will was invalid



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ITALIAN COURT OF CASSAZIONE – interim ruling n. 18 of 3rd January 2020 pending decision of Sezioni Unite

JUDGEMENT OF COURT OF APPEAL OF MILAN

- Peter's succession was governed by English law
- In English law a will is considered automatically revoked by marriage (S.46 Wills Act 1837)
- The 1997 will was therefore invalid and rules of intestacy apply
- The English law rule of scission not contrary to Italian public policy rule
- The wife was entitled as a “legitimate heir” to 1/3 of all Italian property



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CONCLUSION

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THANK YOU



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