



# 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  
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Notary Chamber of Bulgaria



International  
Association of  
Judges

promoting an independent judiciary worldwide

# Introduction

**CHARLOTTE OLIVER**

**SOLICITOR QUALIFIED IN UK 1994**

**AVVOCATO REGISTERED IN ROME BAR COUNCIL IN 2001**

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

**OLIVER & PARTNERS - CROSS BORDER LEGAL ASSISTANCE BY DUAL QUALIFIED LAWYERS  
IN FAMILY LAW, PROPERTY LAW, SUCCESSION AND WILLS**



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# Introduction

## CONSEQUENCES OF BREXIT

**EUROPEAN UNION (WITHDRAWAL AGREEMENT) ACT 2020**

EU LAW IS LEGALLY BINDING IN THE UK DURING THE TRANSITION PERIOD (ART. 27) UP TO 31<sup>ST</sup> DECEMBER 2020

**UK NOT A PARTY TO SUCCESSION REGULATION OR MATRIMONIAL PROPERTY REGULATIONS**



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# Introduction

## EXAMINING LEGAL ENGLISH

### GLOSSARY OF TERMINOLOGY

## COMMON TERMS AND VOCABULARY OF ENGLISH LEGAL LANGUAGE

### SUCCESSION LAW, FAMILY LAW AND PROPERTY LAW IN THE CONTEXT OF EU REGULATIONS:

650/2012 1103/2016 1104/2016



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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 WILL BIND 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 OR FAIRNESS

COMMON LAW COURTS WERE STRICT AND ONLY PROVIDED FOR DAMAGES AS A REMEDY

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

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



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## EQUITY

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**

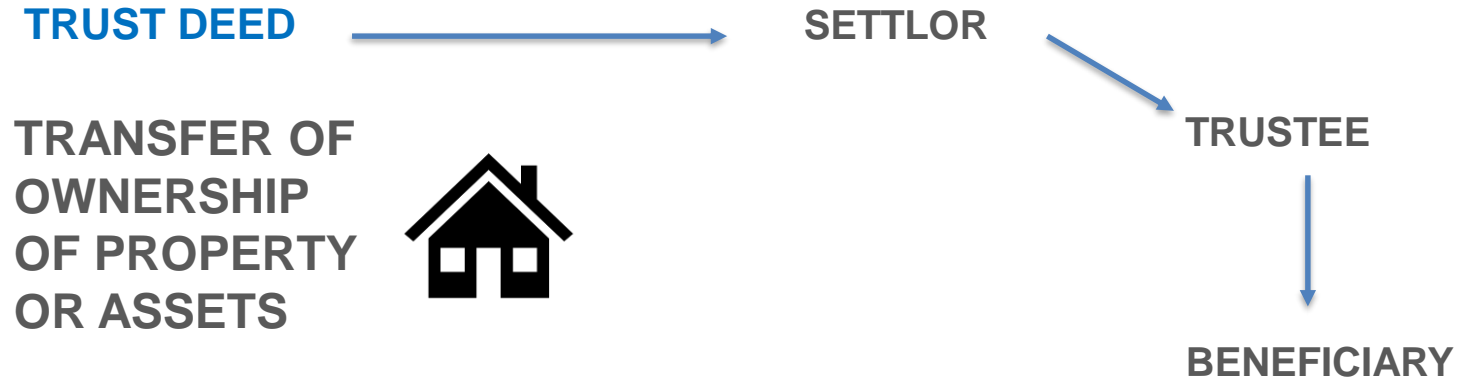
HAGUE CONVENTION ON LAW APPLICABLE TO TRUSTS  
AND THEIR RECOGNITION (1985)

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



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## INTER VIVOS TRUST



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## TESTAMENTARY TRUSTS

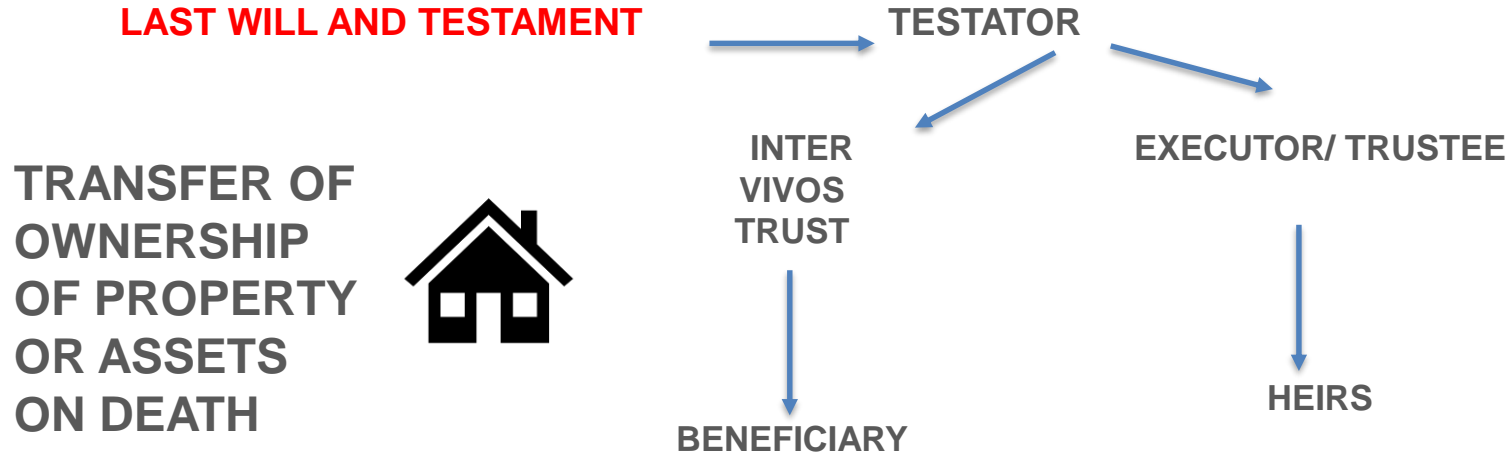
COMMON LAW - A "STATUTORY TRUST" IS CREATED AUTOMATICALLY ON DEATH.  
THE ESTATE OF THE DECEASED PASSES TO THE PERSONAL REPRESENTATIVE  
APPOINTED BY THE COURT (EXECUTOR/TRUSTEE/ADMINISTRATOR)

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



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## TESTAMENTARY TRUST





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## EXAMPLE OF A 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.*



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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

### Last Will and Testament

#### WILLS ACT 1837

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



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## PROBATE

The 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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## 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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## VALIDITY OF ENGLISH WILL IN EU MEMBER STATE

### Succession Reg. Article 27 - Formal validity of dispositions of property upon death made in writing

1. A disposition of property upon death made in writing shall be 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**, either at the time when the disposition was made, or at the time of death;
  - (c) of a **State in which the testator .... had his domicile**, either at the time when the disposition was made ... or at the time of death;
  - (d) of the **State in which the testator ...had his habitual residence**, either at the time when the disposition was made... or at the time of death; or
  - (e) in so far **as immovable property** is concerned, of the **State in which that property is located**.



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## PRINCIPLE OF 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 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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## PRINCIPLE OF SCISSION PRIVATE INTERNATIONAL LAW OF ENGLAND AND WALES

### 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 PRINCIPLE 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.



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## ITALIAN COURT OF CASSAZIONE – interim ruling n. 18 of 3<sup>rd</sup> January 2020

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

- Peter died two months after his marriage to Benedetta.
- Peter had made Will in 1997, before his marriage, leaving legacy of 50.000 Euro to Benedetta and the residue to his 7 children from a previous relationship
- 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 3<sup>rd</sup> January 2020

### 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 applies to moveable and immoveable property
- Scission not contrary to Italian public policy rule
- The wife was entitled as a “legitimate heir” to 1/3 of all Italian property

