



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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Fondazione
Italiana
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Partners



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Notary Chamber of Bulgaria



International
Association of
Judges

promoting an independent judiciary worldwide

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EU ESTABLISHMENT OF LAWYERS DIRECTIVE DIR. 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**

CCBE - Guidelines for Bars & Law Societies on Free Movement of Lawyers within the EU



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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



LEGAL ENGLISH IN PRACTICE

UK COURT STRUCTURE

- LOWER COURTS

(CRIMINAL MATTERS)

MAGISTRATES COURT

CROWN COURT

(CIVIL MATTERS)

COUNTY COURT

HIGH COURT

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

- COURT OF APPEAL

- SUPREME COURT (Previously House of Lords)



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CELTIC LANGUAGE



55 BC - ROMAN INVASION

LATIN LANGUAGE AND ROMAN LAW



440 AD - ARRIVAL OF ANGLO - SAXONS

**ANGLO-SAXON ENGLISH
(OLD ENGLISH – GERMANIC VERNACULAR)**



1066 - NORMAN CONQUEST

ANGLO - NORMAN FRENCH



1300'S - STATUTE OF PLEADINGS



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1362 - STATUTE OF PLEADINGS

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 IN PRACTICE

MANY ENGLISH LEGAL TERMS DERIVE FROM EARLY INFLUENCE OF FRENCH AND LATIN IN COMMON LAW:

ESTATE EXECUTOR PROPERTY LEASE TENANT

DEVELOPMENT OF MIDDLE ENGLISH

NOTWITHSTANDING AFORESAID WHEREBY

DOUBLETS - COMBINING SYNONYMS: NULL AND VOID - LAST WILL AND TESTAMENT

CEASE AND DESIST - TERMS AND CONDITIONS - GOODS AND CHATELS



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DEVELOPMENT OF COMMON LAW

Common law was developed by caselaw made by the King's courts from the Norman conquest onwards

A common law case was started by a petition known as a "Writ".

Common law has no written code unlike civil law systems

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

STARE DECISIS - "Let the decision stand" – BINDING PRECEDENT



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EQUITY

The common law courts were very strict and procedural. They were not seen to provide justice or fair remedies but only provided for damages

Petitions were made to the King for alternative remedies

The Court of Chancery was established to find more appropriate remedies based on equitable principles

Common Law and Court of Chancery merged in 1700's

Equitable remedies include: injunctions – specific performance



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LAW OF TRUSTS

The Trust is a common law instrument developed in English law of property

In a situation where one person held legal title to property, the courts decided it was fair, just or "equitable" that this person hold it on Trust and were compelled to use it for the benefit of another.

Relevance of Trust in EU property and succession law



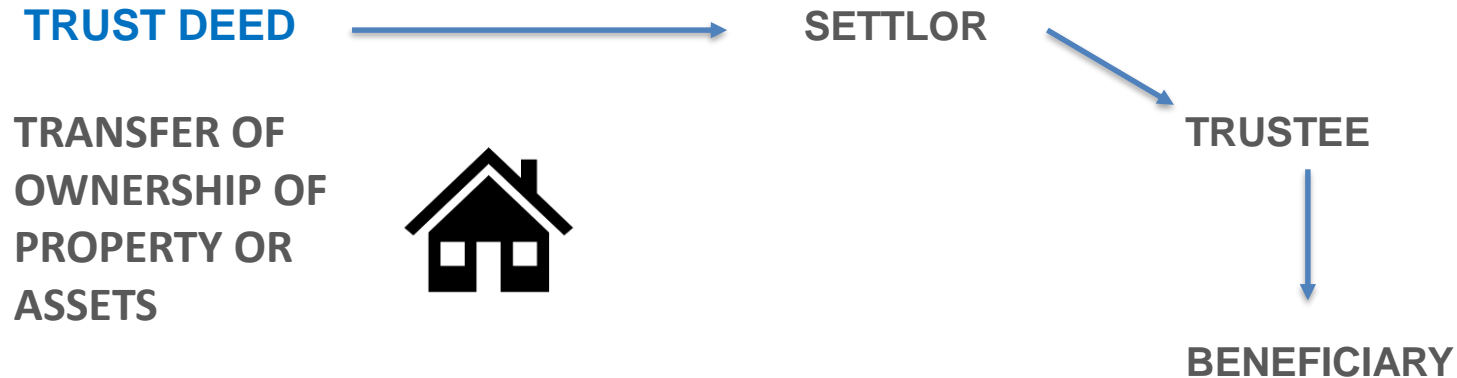
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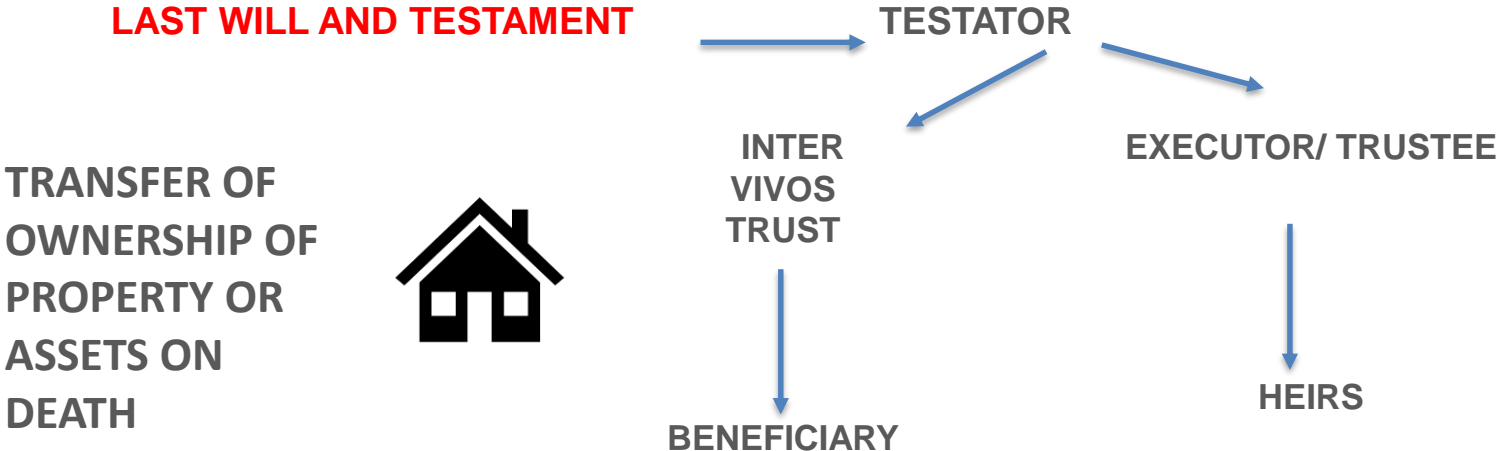
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INTER VIVOS TRUST



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TESTAMENTARY TRUST



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MATRIMONIAL PROPERTY LAW

Development of principles of equity in 19th century English Law to allow married women to own property as “*feme sole*” in place of “*feme covert*”

Married Women’s Property Act 1882

Previously married women could only own property in equity under Trust

No matrimonial property regime exists in UK

Marriage does not have a proprietary effect

Property distributed on divorce at discretion of court – ancillary relief



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MATRIMONIAL PROPERTY LAW

WHITE V WHITE (2000 SUPREME COURT)

In financial relief disputes on divorce, the court must refer to the yardstick of “equal distribution of all the assets”

Prior to this case the courts based distribution of matrimonial assets according to the needs of the weaker spouse



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MATRIMONIAL PROPERTY REGIMES

Y v Y [2014] High Court – Family Division

French citizens were married in France with *separation de biens* agreement and resident for many years in the UK. Divorce court in UK held that the French matrimonial property agreement would not be upheld. Wife was therefore entitled on divorce to a share in husband's property purchased during marriage



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MATRIMONIAL PROPERTY LAW

SCISSION PRINCIPLE

What is the effect of marriage on the property of the spouses where there is a conflict of law?

Movable property – governed by law of common matrimonial domicile OR the country with which the parties and the marriage has the closest connection

Immovable property – governed by the law of the country in which the property is situated



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MATRIMONIAL PROPERTY LAW

DOMICILE IN COMMON LAW

DOMICILE OF ORIGIN – Domicile of person's father at time of own birth if parents married

DOMICILE OF CHOICE – On attaining age 18, domicile of choice will be place of centre of interests, indicated by an intention to remain permanently

DOMICILE AND MATRIMONIAL PROCEEDINGS ACT 1973 – Wife can acquire domicile independent of her husband



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REGULATIONS 1103/2016 AND 1104/2016

MATRIMONIAL PROPERTY REGIMES

Default marriage regime in Italian law is community of property “*comunione dei beni*”

Only the following non-matrimonial property is excluded from common property of spouses:

- property of each spouse purchased before the marriage;
- property acquired during the marriage by donation or inheritance;
- property for the personal use of each spouse;
- property received as compensation for damage/loss.

Separation of property may be expressly chosen on marriage or by later deed “*separazione dei beni*”



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REGULATIONS 1103/2016 AND 1104/2016

MATRIMONIAL PROPERTY REGIMES

EU Commission in 2011 proposed enhanced cooperation between member states

Regulations are not adopted by all EU States as registered partnerships and same-sex marriages not recognised equally in each state

19 EU COUNTRIES HAVE ADHERED TO REGULATIONS

Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Italy, Luxembourg, Malta, Netherlands, Portugal, Slovenia, Spain and Sweden.



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