

ILM Factsheet

Glossary of legal terms

Prepared for ILM by Wilsons

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A

Abatement	Reduction of a gift in a Will where there are insufficient assets to pay it in full.
Ad colligenda bona, grant	Limited grant of probate (interim grant). Allows the administrator to collect in and preserve estate assets, but not to distribute them.
Ademption	Failure of a gift in a Will.
Administration Action	High Court action under Part 64 Civil Procedure Rules 1998. Used to secure proper administration of the estate.
Administrator	Person responsible for winding up an estate where the deceased did not leave a Will.
Advancement/Appointment, power of	Authorises trustees to pay capital out of a trust fund for beneficiaries of that trust.
Affidavit	Sworn statement.
ADR	Alternative dispute resolution. Methods used to resolve disputes without litigation.
Appearance to warning	Reply made by a caveator where a warning has been issued in respect of their caveat. Once entered, a grant will not be issued other than by court order.
Appropriation	Giving the deceased's property to a beneficiary in its present form, in satisfaction of a gift in a Will.
Attestation clause	Statement in a Will recording the manner in which it was executed.
Attorney	Person authorised to act in another's place.

B

Beneficiary	Person entitled to the benefit of property held on trust; person receiving a gift in a Will.
Bequest	Gift in a Will.

C

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Calderbank offer	Without prejudice offer to settle a claim. May be produced to the Court to influence costs orders.
Capital Gains Tax	Tax levied on increase in value of capital assets on the disposal of those assets.
Caveat	Notice lodged at the Probate Registry to prevent a grant of probate being issued. (See also <u>warning</u> and <u>appearance to warning</u>).
Caveator	Person lodging a caveat.
Civil Procedure Rules 1998	The body of rules that govern the conduct of civil claims in England and Wales.
Citation	Document issued by a Probate Registry. Can be used to require the recipient to take probate, to accept or refuse a grant of probate or to propound a Will.
Codicil	Document adding to or altering the terms of a Will.
Contingent interest	Interest (eg. in property) that is only obtained if and when a particular event occurs.
Cy-Pres	Doctrine concerning failed gifts showing general charitable intention. The Attorney General may allow the use of the property that would have formed the gift for a similar charitable purpose.
Constructive Trust	Trust created by the law in particular circumstances.
D	<hr/>
Declaration (of trust)	Creation of a trust.
Deposition	Statement on oath by a witness, used in judicial proceedings.
Devastavit	Wasting of estate assets resulting from a personal representative's breach of duty.
Devise	Gift of real property (i.e. land) by Will.
Distribution	Giving out estate property to beneficiaries.
Donatio mortis causa	Latin term meaning a gift made in anticipation of death.
E	<hr/>
Equitable	Fair/ in accordance with the rules of Equity.

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Equity	Body of rules aimed at achieving fairness and justice.
Estoppel	Rule preventing a person from denying the truth of something he has led another to believe and rely on to his detriment.
Execute	Formally sign a deed or document.
Executor	Person appointed in a Will to administer the estate.
Executor de son tort	Person who has intermeddled in an estate without being authorised, as an executor or personal representative.
Exemption clause	Part of a Will or contract limiting the liability of a party.
Ex gratia payment	Payment made by a charity where the trustees believe they are under a moral obligation to do so, but there is no legal obligation to pay.
Exhibit	An article of evidence, often attached to a witness statement.
F	<hr/>
Fiduciary	Person holding a position of trust/loyalty.
Fraud	Gain of a material advantage by wrongful means.
G	<hr/>
Grant of representation (probate/letters of administration)	Authority to administer a deceased's estate, given by the Probate Registry.
H	<hr/>
Hearsay	Second-hand evidence of statements made by a person other than the witness giving evidence.
Heir	One who succeeds to property or a title by virtue of descent.
Hotchpot	Taking account of benefits received by a beneficiary prior to deceased's death (on intestacy).
I	<hr/>
Indemnify	One person making good the loss suffered by another.

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Inheritance tax	Tax payable on the value of assets on death (previously known as estate duty or capital transfer tax).
Injunction	Court order requiring action to be taken or refrained from.
Instrument	Document having legal effect.
Inter vivos	Whilst alive (usually referring to time at which an act occurred).
Intermeddling	Action taken by a third party which would normally have been carried out by an executor.
Intestacy	Devolution of the estate of a deceased who has left no valid Will.
Issue	A person's lineal descendants (e.g. children, grand-children).
J	<hr/>
Joint tenancy	Method of holding property jointly. On the death of one joint owner his/her legal and beneficial interest in the property passes automatically, by survivorship, to any joint owners who are still alive. Contrast <u>tenancy in common</u> .
Jurisdiction	The geographical area within which a Court has authority, or the type of matter it is authorised to decide.
L	<hr/>
Laches	Equitable doctrine governing unacceptable delay in asserting a right.
Lapse	Failure of a bequest in a Will caused by the recipient pre-deceasing the testator.
Legacy	Gift in a Will.
Letters of administration	Authority to administer a deceased's estate, granted by the Probate Registry, where the deceased left no Will.
Letters of administration with Will annexed	Authority to administer a deceased's estate, granted by the Probate Registry, where there is a Will but no executor.
Life interest	A right to enjoy property, or the proceeds of investment of property, until death.
Life tenant	Person entitled to a life interest.
M	<hr/>

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Mala fides	Latin, meaning 'bad faith'.
N	<hr/>
Negligence	Breach of a duty of care which causes another person to suffer loss.
Non est factum	Claim that a document is invalid because it was executed by a person who did not understand its true character.
O	<hr/>
Order	Command by the Court.
P	<hr/>
Pari passu	Equal distribution (e.g. of a debtor's funds between unsecured creditors).
Partial intestacy	Devolution of a deceased's estate where some, but not all, of that estate is validly disposed of by Will. Those assets not disposed of by Will are distributed on the intestacy basis.
Personal property (personalty)	Property other than land.
Personal representative	Person appointed to administer a deceased's estate (executor/administrator).
Pleadings	Statements given by parties to litigation detailing the grounds on which they are claiming/defending.
Precatory words	Record of a person's wishes (not legally binding) regarding disposal of property by the person to whom that property has been left.
Precedent	Previous decision of a Court of law which binds future Courts faced with the same or similar facts.
Presumption	Assumption drawn by the Court. May sometimes be disproved ('rebutted') by evidence to the contrary.
Priority	The right to take before others (e.g. property).
Probate	Binding confirmation that a deceased's estate will be administered by one or more of the executors named in the deceased's Will.
Probate Registry	Court office dealing with the right to administer a deceased's estate and certain connected formalities.

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Propound a Will	Attempt to obtain a grant of probate in respect of a particular Will.
Protocol	Guidelines for conduct of parties to legal proceedings.
R	<hr/>
Real property (realty)	Land and property associated with land.
Receiver	Person appointed by the Court of Protection to manage the affairs of a third party during their lifetime.
Rectification	Correction by the Court of a clerical or administrative error in an instrument.
Remainder, interest in	Interest in property which only becomes effective once a prior interest in that property has come to an end (e.g. in property subject to a life interest).
Remainderman	Person entitled to an interest in remainder.
Remuneration certificate	Procedure whereby a client can require a solicitor to justify his/her fees to a representative of the Law Society.
Renounce probate	Refuse the office of executor.
Residuary legatee	Beneficiary under a Will of all of the deceased's property which is not otherwise disposed of.
Residue	That which is left in a deceased's estate after all legacies, administration expenses and liabilities have been paid.
Resulting trust	Trust created by the law in particular circumstances.
Revocation	Rendering a document ineffective in law (e.g. a Will).
S	<hr/>
Self-dealing rule	Rule that a trustee is not permitted to sell trust property to himself without the consent of all beneficiaries.
Sequestration	Order commanding persons to enter and take possession of property until a judgment is complied with.
Set-off	Defence to a claim for money based on the claimant's own indebtedness to the defendant. The amount recovered by the claimant is reduced by the amount owed to the defendant.
Settlement of claim	Agreement by which a dispute is brought to an end.

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Severance	Conversion of a joint tenancy into a tenancy in common.
Sham	Arrangement/document intended to appear to third parties to create legal relations which are different from the actual relations the parties intended to create.
Skeleton argument	Outline of a party's case, used in hearings.
Specific performance	Order requiring a party to an agreement to perform his obligations under that agreement exactly according to its terms.
Statement	Representation of fact, in words or otherwise.
Statute-barred	Claim to which there is an automatic defence under the Limitation Act 1980, owing to the claimant's delay in bringing the claim.
Stay of proceedings	Order halting proceedings for a period of time.
Subpoena	Direction from the Court to give evidence or bring relevant documents into court.
Succession	The order in which persons inherit property.
Summary judgment	Procedure whereby the Court decides a claim without a full trial.
Survivorship, right of	Right of a surviving joint tenant to the whole of the jointly-held property on the other joint tenant's death.
T	<hr/>
Taxation of costs	Assessment by the Court of the amount of one party's costs for which another is liable. Now known as 'detailed assessment'.
Tenancy in common	Method of holding property jointly whereby each party's share passes into their estate on their death, rather than to the other joint owners – contrast <u>joint tenancy</u> .
Testament	A Will.
Testamentary capacity	The ability in law to make a valid Will.
Testamentary script	A Will, a draft for a Will, instructions for a Will, evidence of the contents of a Will or a copy of a Will alleged to have been destroyed.
Testator/testatrix	A person who has made a Will.
Testimony	Statement of a competent witness in court, offering

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	evidence of that which he asserts.
Title	Right to land or goods, or evidence of that right.
Tomlin order	Order recording a voluntary settlement of a claim on terms whereby the action is stayed except for the purpose of carrying the agreed terms into effect.
Tort	Branch of law relating to harm done by one person to another (or to that person's property).
Tracing trust property	Method by which assets in the hands of third parties can, under certain circumstances, be identified as trust assets.
Trial	The formal determination of a dispute before a court.
Trust	Equitable arrangement whereby one or more persons ('trustees') hold property for the benefit of others ('beneficiaries').
Trust documents	Documents in the possession of trustees containing trust information.
Trustee	One who holds property on trust for another.
Trust instrument	Document used to create a trust.
U	<hr/>
Ultra vires	An action which is beyond a body's legal authority.
Uncertainty, void for	Failure of a document because it is so ambiguous or obscure that it cannot be understood.
Unconscionable	That which no honest and fair person could accept.
Undertaking	Binding promise.
Undue influence	Improper pressure on a person.
Unless order	Court order imposing certain sanctions unless the terms of an order are complied with.
V	<hr/>
Vacant possession	Premises for sale which are not subject to a lease.
Vendor	Seller.
Vest	Put a person in possession of legal rights.

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Vexatious proceeding	A claim which has the effect of subjecting a defendant to inconvenience or harassment and has little or no basis in law.
Vicarious liability	Responsibility in law for another's actions (e.g. for an employee).
Void	Without legal force.
Voidable	Capable of being rendered void.
W	<hr/>
Waiver	Voluntary abandonment of a claim or right.
Warning	Notice filed in answer to a caveat, requiring the caveator to enter an appearance within 8 days, failing which the caveat will be removed.
Wilful	Deliberate act of a free agent.
Will	Legally binding written declaration by a person of their wishes regarding disposal of their property after their death.
Without prejudice	Statement which cannot be referred to in subsequent court proceedings.
Woolf reforms	The changes to legal rules and proceedings, brought about by Lord Woolf, which resulted in the Civil Procedure Rules 1998.

The contents of this glossary are only intended to be brief and simple definitions of technical legal words or concepts. They can be no substitute for specific legal advice. Consequently we cannot accept responsibility for this information, errors or matters affected by subsequent changes in the law.

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