|  |
| --- |
| **Leicester De Montfort Law School**  **Legal Practice Course**  **Wills and Administration of Estates**  Small Group Session 2 |

**Outcomes**

As a result of this Small Group Session, you will be able to:

* Advise on the validity and contents of a will (including the validity of alterations) and codicils
* Calculate the Inheritance Tax liability on death and advise on how to raise funds for the payment of IHT

**Materials and preparation needed**

For this Small Group Session, you must:

* Listen to all the Wills and Administration of Estates lectures
* Listen again to the Inheritance Tax lectures
* Make notes using the PowerPoint slides relating to all these online lectures.
* Read the relevant chapters in your online Legal Foundations Manual.
* Complete the Small Group Session 2 Pre-Session Quiz and check your answers against those provided. It is important that you complete these questions as they cover important points of law that you will need in order to answer the questions below.
* Prepare answers to the following questions and bring them to the session with you.
* For Exercise 2 use the Inheritance Tax calculation precedent for Amanda Taylor to assist you in completing the calculation.
* After the session, complete the post session task relating to the estate of Robert McGowen and check your answer against the one provided. You should also listen to the post consolidation screencast.

Please ensure that you have completed the Small Group Session 2 Pre-Session Quiz and checked your answers before preparing answers to the following exercises.

**EXERCISE I**

You are a solicitor with the firm of Cuthbertstons, Probate and Taxation Solicitors, 27 Commercial Street, Rugby, Warwickshire, CV8 2JN. You have been informed that Rosemary Sarah Hardy died on 1st September 2021 at the Warwick Nursing Home and Hospice. She had suffered from multiple sclerosis, diagnosed some 8 months earlier. Margaret, your secretary, has brought you Mrs. Hardy’s will (see Document 1). Your firm has been instructed to act by the executor.

You arrange an appointment with Mr. James Hardy the executor for early the following week. Before the meeting, you carry out an archive check and you discover that a colleague of yours was instructed about twelve months ago to draft a codicil. You ask Margaret to locate the codicil, which she does (see Document 2). By coincidence, the next day you receive a letter from James enclosing a further codicil that he found whilst sorting out Rosemary’s papers (see Document 3).

You contact the Oxford Radcliffe Hospitals Trust to advise it of Rosemary’s death and her wish to leave her body to medical research. You receive a reply (see Document 4)

A chronology of events is set out at Document 5.

**Task**

Consider the content of Documents 1-5 and answer the following 12 questions.

## **Document 1**

1. Is the alteration made to clause 6 valid?
2. Is there any problem with that gift?
3. What is the position if the witness “S. Armstrong” is the husband of Sally who is the beneficiary?
4. Do Solicitors have a duty of care to check the execution of the will?

**Document 2**

1. Does the execution of the codicil at Document 2 have any effect on the gift to Sally?

### **Document 3**

### Look at Document 3 in the light of Document 4.

Answer the following points in relation to formality, intention, knowledge and

approval and testamentary capacity.

#### **Formality**

1. Is there any issue with the execution of the codicil and if so, what will the Probate Registry require on application for the Grant of Probate?
2. Is there any issue with the signature of the testatrix and if so, what will the Probate Registry require on application for the Grant of Probate?

#### **Intention and Knowledge and Approval**

1. Are there any suspicious circumstances in relation to the preparation of the codicil?
2. If so, who will have to prove that the testatrix had the requisite knowledge of the contents of the codicil?
3. If Janet Franshaw (who is one of witnesses) is Sally Anne Franshaw’s (the beneficiary) civil partner, then what impact does this have on the gift to Sally?

#### **Testamentary Capacity**

1. What do the contents of Document 4 suggest in relation to the capacity of the testatrix in relation to the will and codicil?
2. What would need to be produced to support the argument that the testatrix did have capacity in relation to both the will and codicil?

**Document 1**

**THIS IS THE LAST WILL AND TESTAMENT** of me Rosemary Sarah Hardy of Starling’s Cottage, Christminster, Oxfordshire, OX4 2TT

**1 Revocation**

I revoke all former wills and testamentary dispositions made by me

**2 Donation and disposal of my body**

I direct that my body or any part of itmay be used by the Oxford Radcliffe Hospitals NHS Trust, Woodstock Road, Oxford, OX2 6HE for any medical purpose including anatomical examination provided that such use is lawful and in accordance with the provisions of the Anatomy Act 1984and in due course I direct that the institution receiving my body shall have it cremated

**3 Appointment of executors**

I appoint my husband James William Hardy of Starling’s Cottage, aforesaid and my brother, Nathan Gillingham of 1 Church Street, Cresscombe, Worcestershire, WR15 8GD to be the executors and trustees of this will and I declare that the expression ‘my Trustees’ in this will shall (where the context permits) include the trustees or trustee for the time being of this will whether original or substituted

**4 Appointment of guardians**

In the event of my husband James William Hardy (‘my Husband’) predeceasing me I appoint the said Nathan Gillingham to be the guardian of my minor child but if Nathan Gillingham is unable or unwilling to act then I appoint my sister, Sally Louise Armstrong of The Marlott, Abbot’s Cernal, Devon EX8 9DZ to be the guardian of my minor child

**5 Precatory trust of chattels**

I give to my Husband for his own absolute use and benefit free of any tax or duty arising in respect of my death all my personal chattels as defined in the Administration of Estates Act 1925 Section 55(1)(x) not otherwise specifically disposed of by this will or any codicil to it but it is my wish without creating any trust or imposing any binding obligation that my Husband should dispose of such personal chattels in accordance with any written memorandum or memoranda left with this will or with my personal papers

**6 Pecuniary legacies**

I give free of any tax or duty arising in respect of my death: *80,000* ***RSH***

* 1. to my sister the said Sally Louise Armstrongthe sum of £50,000 *SS SA*
  2. to my nephew David Richard Armstong of The Marlott, aforesaid the sum of £10,000
  3. to my son Andrew Peter Hardy the sum of £100,000

# 7 Specific legacies

I give the following specific legacies free of any tax or duty arising in respect of my death:

7.1 to the Oxford Museum of Modern Art, St Aldates, Oxford, OX1 8LP, my painting by Juan Miro, entitled Untitled Number 7 and measuring 84 inches by 172 inches

7.2 to my brother, the said Nathan Gillingham, my yacht, Annabell, registered at Lloyds under number 1877659

**8 Residue**

I give all my property both movable and immovable of whatever nature and wherever situated except property otherwise disposed of by this will or by any codicil to it but subject to and after payment of or provision for my funeral and testamentary expenses debts and any legacies given by this will or by any codicil to it and any tax or duty arising in respect of my death even if not a testamentary expense on all gifts in this will or any codicil to it given free of such tax or duty

8.1 to my Husband absolutely PROVIDED he shall survive me for the period of 30 days and if my Husband shall actually survive me but fail to do so for such period of 30 days then I declare that the income arising during such period shall not belong to him but rather shall be accumulated and added to capital

8.2 if my Husband shall not survive me (or in the event of the lapse or failure for any reason of the gift to him) then to such of my siblings as shall be living at my death and if more than one in equal shares absolutely

**9 Administrative powers**

9.1 The statutory power of appropriation conferred by the Administration of Estates Act 1925 Section 41 (as amended) shall be exercisable by my Trustees without any of the consents made requisite by that section and shall include power to appropriate in favour of any of my Trustees entitled to a share or interest in my estate

9.2 Any property for the time being subject to any of the trusts of this will or any codicil to it may be kept insured against such risks (if any) and for such amount as my Trustees shall in their absolute discretion think fit (but so that my Trustees shall not in any way be obliged to effect any insurance and shall not be liable for any failure to insure) with some insurance office of repute in the names of my Trustees and my Trustees may for such purpose pay all premiums and other costs incurred in connection with such insurance out of any money held upon the same trusts under this will or any codicil to it as such insured property (and so that the benefit of any such insurance shall be held upon the like trusts)

9.3 In respect of land and buildings situated anywhere in the world otherwise than in England and Wales my Trustees shall have power to sell lease let mortgage charge license and generally manage and deal with any property (whether movable or immovable) which may for the time being be subject to any of the trusts of this will or any codicil to it as if they were beneficial owners absolutely entitled

9.4 My Trustees shall have power to put or leave any shares stocks securities insurance policies or other property whatever (including money) in the name or names of any nominee or nominees for my Trustees and to put or leave any movable chattels and bearer or other securities and certificates for safe keeping in the possession or custody of any person or persons without being responsible for any loss or damage and on such terms and subject to such conditions including remuneration of any such nominee or custodian as my Trustees shall think fit and so that any such nominees or custodians may be or include any one or more of my Trustees

9.5 My Trustees shall have power to delegate all or any of their administrative powers contained in this will and any administrative power conferred by law to any person or persons subject to such conditions (if any) as my Trustees shall think fit (without being liable for the acts or defaults of any such delegate) and to revoke or modify any such delegation or conditions

9.6 Where my Trustees are authorised or required to pay a pecuniary legacy to any person who does not have the capacity to give a valid receipt for it my Trustees may pay the same to any parent or guardian of such person for the benefit of such person without seeing to the application of it or themselves apply the same for the benefit of such person as may be directed in writing by such parent or guardian and the receipt of such parent or guardian shall be a sufficient discharge to my Trustees

9.7 The receipt of the person professing to be the treasurer or other proper officer of any charity to which any legacy may be payable under this will shall be a sufficient discharge to my Trustees

**10 Charging clause**

Any of my Trustees for the time being a solicitor or other person engaged in any profession or business shall be entitled to charge and be paid all usual professional or other reasonable and proper charges for business done or services rendered or time spent by him or his firm in proving this will and administering my estate and in relation to the trusts of the will or of any codicil to it whether in the ordinary course of his profession or business or not and although not of a nature requiring the employment of a solicitor or other professional or business person

**11 Clause headings**

The headings to the clauses of this will are for the purposes of information only and are not part of and shall not be used in the construction of this will or of any part of it

IN WITNESS of which I have set my hand to this my will this 18th day of June 2006

Signed by the above named )

***Rosemary Sarah Hardy***

testatrix in our presence )

and by us in hers )

*Simon Smithers*

*15 Church Lane*

*Christminster*

*Oxon*

*OX4 3GH*

*S. Armstrong*

*The Marlott*

*Abbot’s Cernal*

*Devon*

*EX8 9DZ*

**Document 2**

I Rosemary Sarah Hardy of Starling’s Cottage, Christminster, Oxfordshire, OX4 2TT declare this to be the first codicil to my will dated 18th day of June 2006 (‘my Will’)

**1 Additional pecuniary legacies**

I give to my niece, Sarah May Gillingham of 1 Church Street, Cresscombe, Worcestershire, WR15 8GD the sum of £17,500 free of inheritance tax

**2 Amendments to pecuniary legacies**

I make the following amendment to clause 6.2 of my Will. The legacy to David Richard Armstong of The Marlott, Abbot’s Cernal, Devon EX8 9DZ shall be £17,500 free of inheritance tax and not the sum specified in clause 6.2 of my Will

**3 Confirmation of will**

In all other respects I confirm my Will

IN WITNESS of which I have set my hand to this my will this 16th day of October 2021

Signed by the above named )

***Rosemary Sarah Hardy***

testatrix in our presence )

and by us in hers )

*Simon Smithers*

*15 Church Lane*

*Christminster*

*Oxon*

*OX4 3GH*

*Barbara Cadabra*

*3 The Row*

*Christminster*

*Oxfordshire*

*OX3 6JJ***Document 3**

I Rosemary Sarah Hardy of Warwick Nursing Home and Hospice, Coventry Road, Warwick, WR2 7EY declare this to be the second codicil to my will dated 18th day of June 2006 (‘my Will’) with one codicil thereto dated 16th October 2021

*1 Additional pecuniary legacies*

*I give to Sally Anne Franshaw of 8 Castle Street, Warwick, WR1 7QE the sum of £35,000 free of inheritance tax for all the kindness she has shown to me during my convalescence at the Warwick Nursing Home and Hospice*

*2. Confirmation of will*

*In all other respects I confirm my Will as varied by the one codicil to it*

IN WITNESS of which I have set my hand to this my will this 8th day of March 2022

Rosemary Sarah Ha

Janet Franshaw

52 Broad Avenue

Warwick

WR3 3TT

Gillian Lowry

*17 The Beeches*

*Warwick*

*WR2 9DB*

**Note to students**: It transpires from your investigations that Sally Anne Franshaw wrote the codicil.

**Document 4**

Neurology Department

Woodstock Road

Oxford

OX2 6HE

Tel 01865 228553

# Oxford Radcliffe Hospitals

## **NHS Trust**

Cuthberstons,

Probate and Taxation Solicitors,

27 Commercial Street,

Rugby,

Warwickshire,

CV8 2JN.

Dear Sirs

### Rosemary Sarah Hardy Deceased

I would be grateful if you would pass on to the widower of the late Rosemary Hardy, this department’s condolences for his sad loss. The Trust is always indebted to those who leave their body for the advancement of medical science.

Following initial studies it has come to my attention that Mrs. Hardy did not die of the debilitating effects of multiple sclerosis, but of new variant CJD. This would explain her rapid deterioration over the previous year and the onset of intermittent memory loss, first identified in May of this year. My colleagues have perused Mrs. Hardy’s medical notes and their findings correlate with the loss of motor-neuron use that she showed towards her death.

I am sure that you will wish to discuss this news with Mr. Hardy and his family. If I can be of further assistance in explaining this disease to Mr. Hardy please ask him to contact me.

Yours faithfully,

Paul Bainbridge

Directorate Manager Neurosciences

##### **Document 5**

##### **Chronology of events**

**18/06/2006 Will executed**

**From August 2021 rapid deterioration**

**16/10/2021 1st codicil executed**

**January 2022 diagnosed MS**

**08/03/2022 2nd codicil**

**May 2022 memory loss identified**

**01/09/2022 death of testatrix**

**EXERCISE 2**

MEMO

**From: John Banks**

**To: Trainee Solicitor**

**Date: --/--/21**

**Re: Amanda Taylor (deceased)**

I met with William Taylor last Monday, regarding his wife, Amanda who died on 21st August 2022. Attached is a copy of her will. The will was not drafted by this firm, but I do not anticipate any problems of validity.

I have attached full details of the estate, together with further details about Mrs. Taylor arising from my interview. William has told me that he is willing to act as executor, but has instructed the firm to carry out the necessary legal work.

I would like you to assist on this file by helping with the following:

1. Prepare a preliminary calculation on the amount of inheritance tax payable. I will go through this with you tomorrow.
2. Consider also how Mr Taylor will be able to pay the IHT as he has told me that his finances are completely tied up at present.

**Task**

1. Calculate how much inheritance tax will be payable. Use the IHT precedent for Amanda Taylor that has been provided. It will take you through the steps to follow in order to calculate the IHT on her estate.
2. How will Mr Taylor will be able to pay the inheritance tax? It will assist you to consider the following options:-

* Direct payment scheme.
* Administration of Estates (Small Payments) Act 1965.
* Loan from beneficiary
* Sale of assets which do not require a Grant
* Bank Loan
* Life Insurance monies payable to the estate

- National Savings and Government stock.

- Heritage property in lieu of tax

- Offer HMRC an asset in lieu of tax

- Obtaining a grant on credit

- Apply to HMRC for the grant to be obtained on credit.

**THIS IS** the last will and testament of me Amanda Taylor of Oak Cottage Braunston in the County of Leicester made this 10th day of November 2009.

1. I appoint my husband William Taylor to be my sole executor.
2. I give subject to tax all the money standing to my credit in my bank account with Barclays Bank at the date of my death to my daughters in equal shares.
3. Subject to the above gifts I give all my estate both real and personal wherever situate to my said husband but if he shall fail to survive me by 28 days or if this gift should fail for any reason then to such of my daughters as shall survive me and if more than one in equal shares.

Signed by the testatrix in our

*Amanda Taylor*

joint presence and then by us

in hers

*Robert Timms*

*7 Pope Street*

*Braunston*

*Leics.*

*LE3 8FX*

*Sandra Timms*

*7 Pope Street*

*Braunston, Leicestershire*

*LE3 8FX*

**ATTENDANCE NOTE**

Attending William Taylor regarding the estate of his late wife.

**Amanda Taylor (deceased)**

Date of birth; 5th July 1968

Address at Date of death: Oak Cottage, Braunston, Leicestershire

Occupation: Human Resource Manager. Also partner in family firm, jointly with husband.

Surviving Family: Husband- William Taylor

Daughter- Vanessa Taylor (aged 22)

Daughter- Anthea Taylor (aged 13)

Property at date of death:

1. Family home (Oak Cottage) owned with William as beneficial joint tenants.

Value of property 250,000.00

1. Life policy written in trust for Anthea and Vanessa equally 40,000.00

3. Audi motor car 10,000.00

4. Arrears of salary 1,000.00

5. Pension - lump sum death benefit held on discretionary trust by

employer’s pension scheme trustees. Amanda completed a

nomination form in favour of William, Anthea and Vanessa in

equal shares 90,000.00

6. Shares in employer’s company\* (under share option scheme) 100,000.00

7. Bank account with Barclays Bank in her sole name 235,000.00

8. Jewellery valued at 10,000.00

9. Various Building Society accounts totalling 10,000.00

9. Her share of the partnership business 300,000.00

\* The company is a PLC and Amanda did not have a majority shareholding.

Lifetime Gifts

£106,000 to her daughter Vanessa in January 2020.

Debts

The debts and expenses of the estate amount to £76,000 which includes her £50,000 half share of the mortgage on Oak Cottage.