

TABLE OF CONTENTS

Sir Henry Theobald

Foreword to the 19th Edition of Theobald on Wills

Preface

Table of Cases

Table of Statutes

Table of Statutory Instruments

SECTION A: INTRODUCTION

CHAPTER 1

1. WILLS AND OTHER TESTAMENTARY INSTRUMENTS

1. INTRODUCTION	1-001
2. CHARACTERISTICS OF TESTAMENTARY INSTRUMENTS	1-002
3. CONDITIONAL WILLS	1-012
4. OTHER TYPES OF WILL	1-015
5. MUTUAL WILLS	1-018

CHAPTER 2

2. WILLS AND CONFLICTS OF LAWS

1. JURISDICTION OF THE ENGLISH COURT	2-002
2. DISTINGUISHING MOVABLES AND IMMOVABLES	2-011
3. DOMICILE	2-014
4. INTESTACIES	2-031
5. WILLS OF MOVABLES	2-033
6. EXERCISE OF POWERS OF APPOINTMENT OVER MOVABLES	2-052
7. WILLS OF IMMOVABLES AND EXERCISE OF POWERS OF APPOINTMENT OVER IMMOVABLES	2-059
8. DOCTRINE OF REVOCATION	2-069
9. THE SUCCESSION REGULATION	2-073

SECTION B: MAKING A WILL

CHAPTER 3

3. THE FORMAL VALIDITY OF WILLS

1. INTRODUCTION	3-001
2. FORMAL VALIDITY UNDER THE WILLS ACT 1837	3-005
3. PRESUMPTION OF THE DUE EXECUTION OF A WILL	3-033
4. PRIVILEGED WILLS	3-040
5. FORGERY	3-058
6. REGISTRATION OF A WILL	3-062

CHAPTER 4

4. THE SUBSTANTIAL VALIDITY OF WILLS

1. INTRODUCTION	4-001
-----------------------	-------

CONTENTS

2. TESTAMENTARY CAPACITY	4-003
3. KNOWLEDGE AND APPROVAL	4-041
4. UNDUE INFLUENCE	4-057
5. FRAUD AND FRAUDULENT CALUMNY	4-068
6. CONSTRUCTIVE TRUST AS AN ALTERNATIVE REMEDY IN PROBATE DISPUTES	4-071

CHAPTER 5

5. INCORPORATION OF DOCUMENTS AND SECRET TRUSTS

1. INTRODUCTION	5-001
2. INCORPORATION OF DOCUMENTS	5-002
3. SECRET TRUSTS	5-015

CHAPTER 6

6. ALTERATIONS

CHAPTER 7

7. REVOCATION, REVIVAL AND REPUBLICATION

1. INTRODUCTION	7-001
2. REVOCATION BY MARRIAGE OR CIVIL PARTNERSHIP	7-007
3. REVOCATION BY A SUBSEQUENT WILL OR CODICIL	7-016
4. BY DULY EXECUTED WRITING DECLARING AN INTENTION TO REVOKE ..	7-042
5. REVOCATION BY DESTRUCTION	7-044
6. CONDITIONAL REVOCATION	7-061
7. REVIVAL	7-077
8. CONSEQUENCES OF REVIVAL AND "REPUBLICATION"	7-085

CHAPTER 8

8. WHAT PROPERTY MAY BE DISPOSED OF BY WILL?

1. INTRODUCTION	8-001
2. SPECIFIC PROPERTY	8-005
3. CONTRACTS RELATING TO WILLS	8-006

CHAPTER 9

9. THE EQUITABLE DOCTRINE OF ELECTION

1. GENERAL PRINCIPLES	9-001
2. PROPERTY SUBJECT TO SPECIAL POWER	9-017
3. THE INTENTION OF THE TESTATOR	9-022
4. HOW ELECTION MADE	9-029
5. EXPRESS CONDITION IN WILL	9-033
6. DISCLAIMER OF ONEROUS GIFT	9-034
7. THE BASIS OF THE DOCTRINE	9-035

CHAPTER 10

10. WHO MAY BE DEVISEES OR LEGATEES?

1. CORPORATIONS	10-002
-----------------------	--------

CONTENTS

2. UNINCORPORATED ASSOCIATIONS	10-003
3. POLITICAL PARTIES	10-008
4. ALIENS AND FOREIGN RESIDENTS	10-009
5. MURDER OR MANSLAUGHTER BY BENEFICIARY	10-010
6. ATTESTING WITNESSES AND THEIR SPOUSES	10-011
7. FORMER SPOUSE OR CIVIL PARTNER	10-021
8. GIFTS FOR MONUMENTS	10-025
9. GIFTS FOR ANIMALS	10-026
10. GIFTS FOR NON-CHARITABLE PURPOSES	10-027
11. MINORS	10-028
12. PERSONS LACKING MENTAL CAPACITY	10-029

SECTION C: PROCEDURE FOR CONTENTIOUS PROBATE CLAIMS

CHAPTER 11

11. PRELIMINARY STEPS AND PARTIES

1. GENERAL	11-001
2. PRELIMINARY STEPS IN A PROBATE CLAIM	11-017
3. PARTIES TO A PROBATE CLAIM	11-019

CHAPTER 12

12. THE CLAIM FORM, ACKNOWLEDGEMENT, EVIDENCE OF TESTAMENTARY
DOCUMENTS AND STATEMENTS OF CASE

1. THE CLAIM FORM	12-001
2. THE WITNESS STATEMENT OR AFFIDAVIT OF TESTAMENTARY DOCUMENTS	12-005
3. ACKNOWLEDGEMENT OF SERVICE	12-009
4. STATEMENTS OF CASE	12-011

CHAPTER 13

13. CASE MANAGEMENT AND PRE-TRIAL PROCEDURE

1. CASE MANAGEMENT	13-001
2. DISCLOSURE	13-003
3. FURTHER INFORMATION	13-004
4. EVIDENCE	13-005
5. WITNESS STATEMENTS	13-006
6. EXAMINATION OF WITNESSES	13-007
7. INTERIM INJUNCTIONS	13-008
8. COMMittal	13-009

CHAPTER 14

14. TRIAL

1. TRIAL IN THE HIGH COURT	14-001
2. TRIAL IN THE COUNTY COURT	14-014

CHAPTER 15

15. COSTS

1. COURT'S DISCRETION	15-001
-----------------------------	--------

2. COSTS OF PARTICULAR PARTIES	15-011
--------------------------------------	--------

CHAPTER 16

16. PROVISION FOR THE DECEASED'S FAMILY AND DEPENDANTS	
--	--

SECTION D: UNDERSTANDING A WILL

CHAPTER 17

17. ADMISSIBILITY OF EVIDENCE AS AN AID TO CONSTRUCTION	
---	--

1. ADMISSIBILITY OF DIRECT EXTRINSIC EVIDENCE	17-002
2. OTHER EVIDENCE ADMISSIBLE	17-017

CHAPTER 18

18. GENERAL PRINCIPLES OF CONSTRUCTION	
--	--

1. PURPOSE OF CONSTRUCTION	18-001
2. THE COURT'S APPROACH TO THE CONSTRUCTION OF WILLS	18-002

CHAPTER 19

19. RECTIFICATION OF WILLS	
----------------------------	--

CHAPTER 20

20. PROCEDURE IN INTERPRETATION AND RECTIFICATION CLAIMS	
--	--

1. CLAIMS CONCERNING THE MEANING OF THE WILL	20-001
2. CLAIMS FOR RECTIFICATION OF WILLS	20-007

CHAPTER 21

21. TYPES OF LEGACY	
---------------------	--

1. SPECIFIC, GENERAL, AND DEMONSTRATIVE LEGACIES	21-001
2. CUMULATIVE AND SUBSTITUTIONAL LEGACIES	21-020

CHAPTER 22

22. GIFTS OVER	
----------------	--

1. GIFT OVER WHERE LEGATEE DIES BEFORE TESTATOR	22-002
2. GIFT OVER UPON DEATH BEFORE LEGACY PAYABLE	22-003
3. GIFT OVER UPON DEATH BEFORE VESTING	22-005
4. GIFT OVER UPON DEATH BEFORE "ENTITLED"	22-007
5. GIFT OVER UPON DEATH BEFORE ACTUALLY RECEIVING A LEGACY	22-009
6. GIFT OVER UPON DEATH UNMARRIED	22-011
7. GIFT OVER UPON DEATH WITHOUT LEAVING OR HAVING ISSUE	22-013
8. GIFT OVER UPON DEATH WITHOUT CHILDREN	22-020
9. "AND" CHANGED INTO "OR" IN GIFTS OVER AND VICE VERSA	22-021
10. SUBSTITUTION	22-030

CHAPTER 23

23. TESTAMENTARY OPTIONS	
--------------------------	--

1. NATURE OF OPTION	23-001
2. TERMS OF OPTION	23-003
3. FAILURE OF OPTION	23-009

CHAPTER 24

24. GIFTS OF ANNUITIES	
------------------------	--

1. CHARACTERISTICS OF ANNUITIES	24-001
2. FROM WHAT DATE ARE ANNUITIES PAYABLE?	24-010
3. THE DURATION OF ANNUITIES AND GIFTS OF ANNUAL SUMS	24-011
4. ANNUITIES CHARGED ON CORPUS OR INCOME	24-018
5. VALUATION BY REPRESENTATIVES	24-029
6. VALUATION OF ANNUITIES WHERE ESTATE IS INSUFFICIENT	24-030

CHAPTER 25

25. GIFTS FOR CHARITABLE PURPOSES	
-----------------------------------	--

1. INTRODUCTION	25-001
2. THE ADVANTAGES AND SCOPE OF CHARITY	25-003
3. CHARITABLE PURPOSES	25-007
4. GIFTS IN RESPECT OF AN OFFICE	25-045
5. PERPETUITY IN RELATION TO CHARITY	25-046
6. UNCERTAINTY	25-047
7. THE CY-PRÈS DOCTRINE	25-056

CHAPTER 26

26. RESIDUARY GIFTS AND PARTIAL INTESTACY	
---	--

1. LAPSE	26-002
2. CHARGES AND RESULTING TRUSTS	26-024
3. ACCELERATION	26-025
4. RESIDUARY GIFTS	26-028
5. PARTIAL INTESTACY	26-049

CHAPTER 27

27. DESCRIPTION OF THINGS	
---------------------------	--

1. GENERAL	27-002
2. THE MEANING OF CERTAIN WORDS DESCRIBING THINGS	27-045

CHAPTER 28

28. DESCRIPTION OF BENEFICIARIES: GENERAL	
---	--

1. DATE FROM WHICH A WILL SPEAKS AS TO OBJECT OF GIFT	28-002
2. GIFTS TO PARTICULAR PEOPLE	28-004

3. SURVIVORSHIP AND SURVIVORS	28-020
4. GIFT TO "UNMARRIED" PERSONS AND ELDEST AND YOUNGER SIBLINGS .	28-042

CHAPTER 29

29. DESCRIPTION OF BENEFICIARIES: RELATIONSHIPS

1. GIFT TO TESTATOR'S SPOUSE OR CIVIL PARTNER	29-002
2. GIFT TO SPOUSE OR CIVIL PARTNER OF ANOTHER	29-006
3. BROTHERS AND SISTERS AND BROTHERS-IN-LAW AND SISTERS-IN-LAW ..	29-011
4. NEPHEWS AND NIECES	29-012
5. COUSINS	29-014
6. GRANDCHILDREN	29-015
7. ISSUE	29-016
8. DESCENDANTS	29-021
9. OFFSPRING	29-022
10. "RELATIONS"	29-023
11. "FAMILY"	29-030
12. GIFTS TO HEIRS	29-035
13. GIFTS TO NEXT-OF-KIN	29-050
14. GIFTS TO REPRESENTATIVES AND EXECUTORS	29-068
15. DEPENDANTS	29-083
16. FRIENDS	29-084
17. GIFTS TO SERVANTS AND EMPLOYEES	29-085
18. GIFT TO LESSEES	29-094

CHAPTER 30

30. DESCRIPTION OF BENEFICIARIES: CHILDREN

1. INTRODUCTION	30-001
2. THE IMPACT OF THE HUMAN RIGHTS ACT 1998	30-002
3. ILLEGITIMATE CHILDREN AT COMMON LAW (WILL EXECUTED BEFORE 1 JANUARY 1970)	30-012
4. ILLEGITIMATE CHILDREN UNDER THE FAMILY LAW REFORM ACT 1969 (WILL EXECUTED ON OR AFTER 1 JANUARY 1970 AND BEFORE 4 APRIL 1988)	30-032
5. ILLEGITIMATE CHILDREN UNDER THE FAMILY LAW REFORM ACT 1987 (WILL EXECUTED ON OR AFTER 4 APRIL 1988)	30-037
6. LEGITIMATED CHILDREN	30-041
7. ADOPTED CHILDREN	30-064
8. CHILDREN BORN AS A RESULT OF ASSISTED REPRODUCTION TECHNIQUES	30-084
9. STEP-CHILDREN	30-091
10. GIFTS TO CHILDREN	30-092
11. THE GENDER RECOGNITION ACT 2004	30-102
12. DISTRIBUTION PER CAPITA AND PER STIRPES	30-104

CHAPTER 31

31. DESCRIPTION OF BENEFICIARIES: CLASS GIFTS

1. GENERAL PRINCIPLES	31-001
-----------------------------	--------

2. CLASS TO TAKE IN DEFAULT OF APPOINTMENT	31-017
3. EFFECT OF WORDS OF FUTURITY	31-018

CHAPTER 32

32. DESCRIPTIONS OF INTERESTS

1. ABSOLUTE INTERESTS	32-002
2. SUCCESSIVE AND CONCURRENT INTERESTS, JOINT TENANCY AND TENANCY IN COMMON	32-045
3. ESTATES FOR LIFE AND PUR AUTRE VIE	32-073
4. LIMITATIONS BY WAY OF REMAINDER—DIVESTING	32-096
5. ENTAILED ESTATES AND SHIFTING CLAUSES	32-147
6. IMPLICATION AND REFERENCE	32-166

CHAPTER 33

33. CONDITIONS

1. CONDITIONS DISTINGUISHED FROM ANALOGOUS RESTRICTIONS	33-003
2. CONDITIONS, WHETHER PRECEDENT OR SUBSEQUENT	33-007
3. THE OPERATION OF CONDITIONS	33-008
4. THE PERFORMANCE OF CONDITIONS	33-011
5. PARTICULAR CONDITIONS	33-016
6. VOID CONDITIONS	33-053
7. EFFECT OF A CONDITION BEING VOID	33-072

CHAPTER 34

34. VESTING

1. INTRODUCTION	34-001
2. VESTING OF REAL ESTATE	34-004
3. VESTING OF CHARGES ON LAND	34-019
4. VESTING OF BEQUESTS OF PERSONALTY	34-020

CHAPTER 35

35. PERPETUITY AND ACCUMULATION

1. INTRODUCTION	35-001
2. THE RULE IN WHITBY v MITCHELL AND THE CY-PRÈS DOCTRINE BEFORE 1926	35-003
3. THE RULE AGAINST PERPETUITIES AT COMMON LAW	35-005
4. THE PERPETUITIES AND ACCUMULATIONS ACT 1964	35-047
5. THE 2009 ACT AND ITS EFFECT	35-060
6. THE RULE AGAINST PERPETUAL DURATION	35-072
7. THE RULE AGAINST ACCUMULATIONS, PRIOR TO THE 2009 ACT	35-073

CHAPTER 36

36. EXECUTION OF POWERS

1. INTRODUCTION	36-002
-----------------------	--------

CONTENTS

2. WILLS WITH FOREIGN ELEMENTS	36-004
3. GENERAL POWERS	36-009
4. SPECIAL POWERS	36-019

SECTION E: GIVING EFFECT TO WILLS

CHAPTER 37

37. PROBATE AND ITS EFFECT

1. JURISDICTION TO GRANT PROBATE	37-001
2. APPOINTMENT OF EXECUTORS	37-002
3. WHAT MAY BE PROVED	37-006
4. GRANT TO DECEASED DOMICILED ABROAD	37-007
5. PROOF OF WILL	37-008
6. INCORPORATED DOCUMENTS	37-009
7. EFFECT OF PROBATE	37-010
8. COURT OF PROBATE AND COURT OF CONSTRUCTION	37-011
9. JURISDICTION OVER GRANTS	37-012

CHAPTER 38

38. ADMINISTRATION

1. INTRODUCTION	38-001
2. THE ORDER OF ASSETS	38-002
3. PAYMENT OF LEGACIES	38-006
4. ABATEMENT OF LEGACIES	38-008
5. INCIDENCE OF ADMINISTRATION EXPENSES	38-028
6. PROPERTY SUBJECT TO A CHARGE	38-030
7. MARSHALLING	38-032
8. CONTRIBUTION	38-033

CHAPTER 39

39. ADMINISTRATIVE POWERS OF TRUSTEES

1. INTRODUCTION	39-001
2. POWERS OF SALE	39-002
3. POWER TO MORTGAGE	39-008
4. POWER OF INVESTMENT	39-009
5. POWER TO CARRY ON TESTATOR'S BUSINESS	39-013
6. POWER OF MAINTENANCE	39-014
7. POWER OF ADVANCEMENT	39-018
8. DISCRETIONARY POWERS GENERALLY	39-019
9. POWER OF APPROPRIATION	39-020
10. POWER TO CHARGE FOR PROFESSIONAL SERVICES	39-023

CHAPTER 40

40. SATISFACTION; THE PRESUMPTION AGAINST DOUBLE PORTIONS (AND OTHER DOUBLE PROVISION)

1. INTRODUCTION AND DEFINITION	40-001
--------------------------------------	--------

CONTENTS

2. SATISFACTION	40-007
3. SATISFACTION (OR ADEMPTION) OF LEGACIES BY PORTIONS	40-022
4. EXTRINSIC EVIDENCE TO REBUT PRESUMPTION	40-042
5. HOTCHPOT CLAUSES	40-043

CHAPTER 41

41. ADEMPTION

1. INTRODUCTION AND DEFINITION	41-001
2. ALTERATION OF ESTATE	41-004
3. CHANGE IN NATURE OF LEGACY	41-005
4. TYPES OF LEGACY	41-011
5. ADEMPTION BY CHANGE EFFECTED BY STATUTE OR ACT OF THIRD PARTIES	41-025
6. ADEEMED LEGACY NOT RESTORED	41-028

CHAPTER 42

42. INCOME OR INTEREST CARRIED BY GIFTS

1. SPECIFIC AND RESIDUARY GIFTS	42-001
2. WHAT IS INCOME OF SPECIFIC GIFT?	42-007
3. APPORTIONMENT	42-011
3. INTEREST ON GENERAL LEGACIES	42-012
4. GIFT TO A CLASS	42-015

CHAPTER 43

43. RIGHTS BETWEEN TENANT FOR LIFE AND REMAINDERMAN

1. INTRODUCTION	43-001
2. ORDINARY OUTGOINGS	43-002
3. ESTOPPEL AGAINST TENANT FOR LIFE	43-004
4. CAPITAL AND INCOME	43-005
5. RESIDUE GIVEN TO PERSONS IN SUCCESSION	43-006

SECTION F: PROFESSIONAL NEGLIGENCE

CHAPTER 44

44. PROFESSIONAL NEGLIGENCE

1. THE DUTY TO THE TESTATOR	44-001
2. THE DUTY TO DISAPPOINTED OR INTENDED BENEFICIARIES	44-004
3. BURDEN OF PROOF	44-006
4. EXTENT OF DUTY	44-011
5. BREACH OF DUTY	44-019
6. DAMAGES	44-026
7. WASTED COSTS ORDERS	44-030