



Higher National Unit specification

General information

Unit title: Drafting Wills

Unit code: H3BV 35

Superclass: EC

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Version: 01

Unit purpose

On completion of this Unit, the learner will be able to draft various types of Will, both simple and complex, in accordance with clients' instructions, taking into account current legal requirements. They will also be able to advise clients, under the direction of a supervising solicitor, of various factors to be taken into account when drafting Wills, in accordance with the clients' circumstances. The Unit will also focus on Legal Rights, specific legacies and an understanding of Inheritance Tax and the implications that may arise.

The Unit is aimed at those who work as Executry paralegals and intend to become a Law Society of Scotland Registered Paralegal; those already employed in the legal sector who may wish to broaden their expertise; and students or others who aspire to the paralegal role.

Outcomes

On successful completion of the Unit the learner will be able to:

- 1 Advise a client of the different factors that affect the drafting of a Will.
- 2 Draft simple and complex Wills in accordance with clients' instructions.
- 3 Prepare a Legal Rights entitlement whether or not there is a valid Will.

Credit points and level

1 Higher National Unit credit at SCQF level 8: (8 SCQF credit points at SCQF level 8)

Higher National Unit specification: General information (cont)

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Recommended entry to the Unit

Access to this Unit is at the discretion of the centre. However, learners would normally be expected to have competence in *Communication Skills* at SCQF level 6 or equivalent and should normally have completed Unit F1A7 34 *Scottish Legal System* or have similar qualifications or experience. It would also be beneficial for the learner to have completed the HN Units F19P 34 *Scots Private Law* and *Executry Law and Practice*.

Core Skills

Opportunities to develop aspects of Core Skills are highlighted in the Support Notes for this Unit specification.

There is no automatic certification of Core Skills or Core Skill components in this Unit.

Context for delivery

If this Unit is delivered as part of a Group Award, it is recommended that it should be taught and assessed within the subject area of the Group Award to which it contributes.

Equality and inclusion

This Unit specification has been designed to ensure that there are no unnecessary barriers to learning or assessment. The individual needs of learners should be taken into account when planning learning experiences, selecting assessment methods or considering alternative evidence.

Further advice can be found on our website www.sqa.org.uk/assessmentarrangements.

Higher National Unit specification: Statement of standards

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Acceptable performance in this Unit will be the satisfactory achievement of the standards set out in this part of the Unit specification. All sections of the statement of standards are mandatory and cannot be altered without reference to SQA.

Where evidence for Outcomes is assessed on a sample basis, the whole of the content listed in the Knowledge and/or Skills section must be taught and available for assessment. Learners should not know in advance the items on which they will be assessed and different items should be sampled on each assessment occasion.

Outcome 1

Advise a client of the different factors that affect the drafting of a Will.

Knowledge and/or Skills

- ◆ Current Legislation surrounding Legal Rights, in particular Succession (Scotland) Act 1964
- ◆ The effects of attempting to disinherit a child
- ◆ Requirements of a valid Will, including testamentary capacity
- ◆ Tax Implications of a Will
- ◆ Destinations over
- ◆ Executor's powers and restrictions
- ◆ Survivorship destinations in title deeds and evacuation
- ◆ Domicile
- ◆ Foreign assets
- ◆ Revocation of Wills

Outcome 2

Draft simple and complex Wills in accordance with clients' instructions.

Knowledge and/or Skills

- ◆ Competency of executor or executors, and change of executor(s)
- ◆ Take clear instructions when drafting a Will
- ◆ Necessity of drafting a Will promptly
- ◆ Types of Will, ie simple or complex according to client's financial circumstances
- ◆ Specific legacies
- ◆ Signing procedures
- ◆ Types of trusts
- ◆ Vesting
- ◆ Codicils
- ◆ Informal writing
- ◆ Necessity of regular review

Higher National Unit specification: Statement of standards (cont)

Unit title: Drafting Wills

Outcome 3

Prepare a Legal Rights entitlement whether or not there is a valid Will.

Knowledge and/or Skills

- ◆ Entitlement to claim under Legal Rights
- ◆ Legal Rights and procedures for discharging after death
- ◆ Method of producing a Legal Rights entitlement including division

Evidence Requirements for this Unit

Learners will need to provide evidence to demonstrate their Knowledge and/or skills across all Outcomes by showing that they can:

The learner will provide written evidence to show that they can:

- ◆ prepare at least one simple and at least one complex Will according to clients' instructions.
- ◆ prepare a Legal Rights entitlement for at least one complex Will, showing an example of a division.

For the simple Will, learners will be provided with details of either a husband or wife who are married with children, where no heritable estate is involved and therefore no Inheritance Tax calculation. The testator's instructions should require learners to comment on the Legal Rights of family members according to current legislation, to ensure specific legacies are precise and to ensure that the Will is valid.

The complex Will draft should involve preparation of a Will for either a husband or wife, both of whom have been married before and both of whom have children to previous partners, and have children together. There will be more than one property involved, and the Will should demonstrate the ability to divide the estate equally according to the wishes of the testator and in accordance with current legislation (a guide to which can be found on the HMRC website). The complex Will should incorporate an Inheritance Tax calculation.

The completed draft Wills should each be in accordance with the clients' instructions and meet the requirements of current legislation. For the complex Will, learners will be required to advise on the creation of a Trust.

The advice given may be in written or oral form and should enable the client to make a suitable choice of Executor, and should cover the purpose of Legal Rights, Specific Legacies and how complex relationships may affect a Will. Learners should be required to demonstrate their knowledge of signing procedures and client's capacity to make a Will, either simple or complex. Learners should show that in the drafting process they have taken account of all relevant items in the Knowledge and Skills section.

Higher National Unit specification: Statement of standards (cont)

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In addition, learners should demonstrate knowledge of the Legal Rights division despite a valid Will by producing an accurate Legal Rights entitlement for a complex will. Figures should be provided to learners to allow the legal rights to be calculated.

Written and/or oral evidence of knowledge which cannot be inferred from the two draft Wills and the legal Rights entitlement produced may be sampled as required.

The assessment should be carried out under controlled, open-book conditions in class, with learners having access to one text book and relevant class notes. The assessment should take a maximum of three hours for all three pieces of evidence and centres may allow the evidence gathering to be staggered into two or three separate events.



Higher National Unit Support Notes

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Unit Support Notes are offered as guidance and are not mandatory.

While the exact time allocated to this Unit is at the discretion of the centre, the notional design length is 40 hours.

Guidance on the content and context for this Unit

This Unit is part of the Professional Development Award (PDA) in Executory Law and Practice at SCQF level 8 but could be delivered within other appropriate qualifications as a free-standing Unit. The purpose of this Unit is to provide learners with knowledge of Will drafting in Scotland. The Unit will be of benefit to learners in legal services, especially executory paralegals.

The PDA in Executory Law and Practice is a specialist qualification for paralegals and others whether in private practice or in local authority legal teams, or with paralegal responsibilities of this kind in a range of other types of organisation. These PDAs were developed in close collaboration with the Scottish Paralegal Association and the Law Society of Scotland. The PDAs provide one route whereby paralegals can qualify for registration as part of the Law Society of Scotland's Registered Paralegal Scheme.

Guidance on approaches to delivery of this Unit

Teaching should concentrate on informing learners of the various sources and resources, and demonstrating how to use these, with learners being given the opportunity to practice their research skills by retrieving data from text books and electronic legal databases. Full use should be made of all available resources. Where institutions have access to legal computer databases, learners should acquaint themselves with these databases. Further resources include text books and case reports.

Outcome 1 deals with the terms of a Will, and the current taxation legislation. Learners should be aware of the validity of a Will, and the effect of the clauses within the body of a Will. A guide to validity can be found in The Requirements of Writing (Scotland) Act 1995. They should also be aware of current legislation in which, where there is a surviving spouse, he/she would be entitled to claim a share of the net free moveable estate and the children would be entitled to claim between them a share of the net free moveable estate.

Learners should be aware of the importance of including destinations over within the body of the Will to reflect the client's wishes. Learners should also have an understanding of an Executor's powers and restrictions.

Learners should be aware of the importance of checking title deeds of the family home and any other property belonging to the client to ensure these do not contradict the client(s) current will instructions.

Higher National Unit Support Notes (cont)

Unit title: Drafting Wills

Outcome 2 involves the correct signing procedures when drafting Wills to include summing up the client's instructions for drafting these, the appropriate choice of Executor(s) and the necessity to follow client's instructions when drafting Wills.

Learners should also develop a clear understanding of vesting, the date of outright entitlement, in order to draft a Will. It is also important for the learner to have an understanding of different kinds of Trusts and where their use is relevant.

Learners will also need to be aware of Legal Rights claims which could be made, the independent advice that Legal Rights claimants require, and the procedures for discharging Legal Rights. The Legislation can be found in the Succession (Scotland) 1964 Act. The remaining estate after Legal Rights is dealt with in accordance with the Will. Outcome 3 is designed to enable learners to advise on and assess the entitlement to Legal Rights whether or not there is a valid Will.

Guidance on approaches to assessment of this Unit

Evidence can be generated using different types of assessment. The following are suggestions only. There may be other methods that would be more suitable to learners.

Centres are reminded that prior verification of centre-devised assessments would help to ensure that the national standard is being met. Where learners experience a range of assessment methods, this helps them to develop different skills that should be transferable to work or further and higher education.

The whole of this Unit may be assessed on a holistic basis, with one assessment covering all three Outcomes. The assessment can consist of case studies to enable completion of two draft Wills and a Legal Rights entitlement, with evidence of knowledge that is not generated through the case studies being sampled. Centres have the freedom to assess by any manner they think appropriate within the guidelines.

Outcomes 1 and 2

In order to draft a complex Will for a couple, both of whom have been previously married and both of whom have children to previous partners, the learner will be required to advise in relation to the creation of a Trust.

Outcome 3

Learners are required to provide evidence of their knowledge of the Legal Rights division despite a valid Will by producing a Legal Rights entitlement. A computation of the Legal Rights entitlement will provide the best evidence that the learner fully understands this aspect of executry.

Higher National Unit Support Notes (cont)

Unit title: Drafting Wills

Opportunities for e-assessment

E-assessment may be appropriate for some assessments in this Unit. By e-assessment we mean assessment which is supported by Information and Communication Technology (ICT), such as e-testing or the use of e-portfolios or social software. Centres which wish to use e-assessment must ensure that the national standard is applied to all learner evidence and that conditions of assessment as specified in the Evidence Requirements are met, regardless of the mode of gathering evidence. The most up-to-date guidance on the use of e-assessment to support SQA's qualifications is available at www.sqa.org.uk/e-assessment.

Opportunities for developing Core and other essential skills

All elements of the Core Skill of *Problem Solving* — Critical Thinking, Planning, Organising, Reviewing and Evaluating — will be naturally developed as learners analyse case studies, consider legal rights of family members according to current legislation, ensure specific legacies are precise and, under the supervision of a solicitor, draft valid documents.

Skills in *Communication* will be enhanced as practical tasks are completed; learners access, evaluate and apply complex information from the HMRC website and other sources. The ability to write accurately and coherently, with attention to detail, will be integral to achievement. Discussion of relevant case studies can provide opportunities to use oral skills in context to review and evaluate issues.

History of changes to Unit

Version	Description of change	Date

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General information for learners

Unit title: Drafting Wills

This section will help you decide whether this is the Unit for you by explaining what the Unit is about, what you should know or be able to do before you start, what you will need to do during the Unit and opportunities for further learning and employment.

This Unit is designed to provide you with the specialist skills required to provide advice and draft a Will following a client's instructions.

The Unit is aimed at those who work as Executry paralegals and intend to become a Law Society of Scotland Registered Paralegal; those already employed in the legal sector who may wish to broaden their expertise; and students or others who aspire to the paralegal role.

On completion of this Unit you should be able to:

- 1 Advise a client of the different factors that affect the drafting of a Will.
- 2 Draft simple and complex Wills in accordance with clients' instructions.
- 3 Prepare the Legal Rights entitlement whether or not there is a valid Will.

In Outcome 1 you will learn the terms incorporated in a Will, and about taxation legislation. You will learn what makes a valid Will, and the effect of the clauses within the body of a Will. A guide to validity can be found in The Requirements of Writing (Scotland) Act 1995. You should also be aware of current legislation surrounding Legal Rights, the duties of an Executor and the importance of survivorship destinations and destinations over.

Outcome 2 involves the correct signing procedures when drafting Wills to include summing up the client's instructions for drafting these, the appropriate choice of Executors and the necessity to follow client's instructions when drafting Wills. You will also learn to draft Wills promptly and to keep them under review. You will develop a clear understanding of vesting and the advantages of doing so. You will also develop the knowledge of different types of Trusts and where their use is relevant in order to provide advice, under the direction of a supervising solicitor, in relation to the creation of a Trust.

Outcome 3 is about assessing entitlement to Legal Rights. You will learn about Legal Rights division despite a valid Will so that you can prepare a Legal Rights entitlement.

This Unit is largely assessed through case studies together with a set of restricted response questions or multiple choice questions. You will be provided with detailed information to enable you to draft two Wills and a Legal Rights entitlement, and other questions will allow you to demonstrate your knowledge of Will drafting procedures.

In undertaking this Unit, you will learn about:

- ◆ Current legislation surrounding Legal Rights
- ◆ Requirements of a valid Will
- ◆ The effects of attempting to disinherit a child
- ◆ Executor's powers and restrictions
- ◆ Competency of Executor or Executors
- ◆ Specific Legacies
- ◆ Signing Procedures
- ◆ Types of Will — simple and complex

General information for learners (cont)

Unit title: Drafting Wills

- ◆ Tax implications of a Will
- ◆ Destinations over
- ◆ Survivorship destinations
- ◆ Domicile
- ◆ Foreign assets
- ◆ Types of Trusts
- ◆ Vesting
- ◆ Codicils
- ◆ Informal writing
- ◆ Revocation of Wills