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Glossary of Probate Terms

Abatement. Gifts may need to be abated if there are insufficient funds in an estate. **Pecuniary legacies** are paid out before the residue is distributed – sometimes there is no residue left if the Testator has been overly optimistic as to the size of his or her estate – very occasionally, there are insufficient funds to meet even the pecuniary legacies in full, in which case they are reduced proportionately – this is called abatement.

Adjustment. A situation where a court departs from and varies the strict interpretation and application of the rules of intestacy, for instance in order to recognise a claim from a person other than the statutory next of kin (see also **IPFD Act**).

Administer. Estates are administered and Administrators administer them; they are **not**, ever, “administ**rat**ed”.

Administration. The process of the administering of a testate or intestate estate by the Personal Representatives of the Deceased. Often the tasks involved in the administration are delegated through the instructing of a professional administrator such as a solicitor.

Administrator. A person who administers an intestate estate. The Administrator’s authority derives from the Grant of Letters of Administration (contrast **Executor**).

Administratrix. A female Administrator. The plural is Administratrices.

Adoption. A person is regarded as legally adopted in England & Wales only if they were adopted and the adoption registered on or after 1 January 1927. All earlier “adoptions”, even if through solicitors, are regarded as fosterings only.

Ambulatory. A Will is ambulatory, meaning that it does not take effect until the death of the Deceased. It is for this reason that the share due to a beneficiary who **predeceases** the Deceased lapses in the absence of a **gift-over clause**.

Ancestor. An ascendant. In common speech, sometimes used erroneously for any relatives e.g. “I wish to find out about my ancestors”.

Animus testandi. This is the Testator’s declaration in the Will that this is his or her “last Will and Testament”.

Ascendant. Classes of kin which extend “upwards”. In England & Wales rules of intestate succession, there are two classes of ascendant kin – i) parents and ii) grandparents. See also **Descendant** and **Collateral**.

Assign. A beneficiary may assign their interest elsewhere – for instance, to a child or to charity. The procedure for this is usually a deed of variation or assignment.



Attestation clause. In England & Wales, the signing of a Will by the Testator in the presence of two witnesses in order to make it valid.

Bachelor. A man who has **never** married. See also **single**.

Barrister. A type of **lawyer**. More specifically, one that is qualified to give specialist legal advice and can argue a case in court.

Bean-pole family. With falling birth rates and more one or two children families, family trees will become more “bean-pole” (and less spreading oak) in shape.

Beneficial entitlements. A collective noun relating to who is entitled to what from the residue of an estate or from a trust fund. However, the term is **not** used of specific individuals – so, for instance, one would **not** say that “the beneficial entitlements are Mr Jones, Mr Smith and Ms Williams”.

Beneficiary. This is the generic term for a person receiving an inheritance from the estate of a deceased person. When contacting beneficiaries themselves, for risk management reasons, it is preferable to use the qualified term “potential beneficiary” so as to avoid making any promise or guarantee of benefit. See also **heir at law**, **pecuniary legatee** and **residuary beneficiary**.

Benjamin Order. This is a “presumption of death” order made by a court with regard to a specific missing person (it cannot be used for an entire class of heir or many individuals). A Benjamin Order will only be granted if the missing person has not been heard of for at least seven years and all reasonable enquires have been undertaken to try to locate him or her. The sum due to the missing person can then be distributed to the other, known beneficiaries. The issuing of a Benjamin Order protects the Personal Representatives of a Deceased from being sued should the missing person subsequently materialise and seek to recover his or her rightful benefit.

Bequeath. To give **personalty**, or personal estate. Contrast with **devise**.

Bequest. A general term for a gift made in a Will. This term is perhaps best reserved for occasions where a Testator bequeaths a specific legacy of, for example, jewellery or furniture. However, it can also be used for pecuniary legacies. The person receiving the bequest should be termed merely a “beneficiary”. Synonymous with **legacy**.

Bona vacantia. In England & Wales, unclaimed estates passing (or escheating – see **escheat**) to the Crown as **ultimate heir**. For extra cachet, try italicising thus: *bona vacantia*. Also the division of the Treasury Solicitor – sometimes referred to simply as BV – dealing with such unclaimed estates.

Bona vacantia authority. In England & Wales, either the **Treasury Solicitor** or one of the Duchies of Cornwall and Lancaster.

Bond of caution. Pronounced to rhyme with “nation” not “portion”. In Scotland, all **Executors-dative** on intestate estates have to take out a bond of caution, which is a legal indemnity or insurance company guarantee that the Executor will administer the estate properly according to the law.

Calendar. The indexes to the probate records in England & Wales are called probate calendars.

Capital. The actual realised assets in an estate – usually used of a fund of money within a Trust. See also **Income**.

Caveat. A caveat is a restriction placed upon an unadministered estate to prevent probate being issued to it until any disputes or outstanding matters are resolved. A caveat might be placed if, for example, there are concerns about the validity of a Will, or of the fitness of an Administrator to handle an estate. A caveat lasts for six months and upon expiry can be extended by a further six months.

Caveator. A person placing a **caveat** upon an estate.

Chain of Representation. If a beneficiary dies after the date of death of a Deceased before receiving their benefit, their share will fall to their own estate. In such cases, one needs to identify and locate their legal Personal Representative (PR). If the PR has also died, it is necessary to document their death and identify and locate their own PR, and so on and so forth. This is called a chain of representation leading to **successors by representation**.

Champertry. The process whereby a third party (such as an heir locator) presents and maintains the claim of an entitled party (such as an heir) in exchange for a consideration (usually a commission fee). In *Rees v De Bernardy* [1896] 2 Ch 437, a contingency fee agreement was set aside on the basis that it was champertous. *Rees v De Bernardy* was considered in an Irish case, *Fraser v Buckle* [2003] WTLR 1389, concerning an heir locators' contingency fee agreement. The Irish Supreme Court held that *Rees* was still good law and set aside the agreements on the basis they were champertous.

Chattels. These are personal assets such as a car, furniture, paintings, jewellery etc.

Child or children. The first generation of issue of a marriage or other relationship. See **issue** for when you should use issue instead.

Civil partnership. Short for **registered civil partnership**. In England & Wales, legally binding same-sex unions produce **registered civil partners**. A civil partner has the same entitlement to inherit as the spouse of a married Deceased.

Civil registration. The recording of **vital statistics** – birth, marriage and death – by the state and leading to the compilation of registers and the issuing of certificates.

Claimant. A person **not** entitled to benefit under the terms of a Will or under an intestacy but making a legal claim against the estate in the hope of receiving benefit from it. Strictly speaking, a claimant is not a beneficiary or an heir.



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Class. A class of kin is a category of persons entitled under the rules of intestacy. The classes in England & Wales are i) spouse (or registered civil partner), ii) issue, iii) parents, iv) siblings of the whole blood and their issue, v) siblings of the half blood and their issue, vi) grandparents, vii) uncles and aunts of the whole blood and their issue and viii) uncles and aunts of the half blood and their issue. In other jurisdictions there may be more classes, or there may be fewer classes and the concept of degree may enter instead – see **degree**.

Class gift. In a Will, a bequest to a specific group of normally (but not necessarily) unspecified persons. For example, “I leave a one half share of my estate to my brothers and sisters”.

Clearing off. On intestacies, one works through the classes (or degrees, if applicable) of kin in order of precedence until one containing survivors is found. This process is called clearing off.

Codicil. A separate yet attached document held with a Will and modifying its content, usually written when the Testator wishes to add or subtract a beneficiary to the Will or change the nature of a gift. A codicil is described as being annexed to the Will.

Cohabitation. At present, a cohabitant has no legal rights under intestacy rules. However, **IPFD Act** claims can be made successfully against an estate on the grounds of cohabitation. This ruling applies only to opposite sex cohabitants.

Collateral kin. Classes of kin which extend “sideways”. In England & Wales there are four classes of collateral kin entitled under an intestacy – i) siblings of the whole blood and their issue, ii) siblings of the half blood and their issue, iii) uncles and aunts of the whole blood and their issue and iv) uncles and aunts of the half blood and their issue. See also **Ascendant** and **Descendant**.

Comfort policy. An insurance policy obtained where no heirs are known to be missing but the Personal Representatives wish to err on the side of caution and play extra safe.

Commorientes. A term in law, referring to two persons (usually husband and wife) who died at the same time in the same incident (such as a traffic accident) and without it being possible to determine which of the two died first.

Confirmation. The Scottish equivalent of a **Grant of Representation** taken out by an Executor on a testate or an intestate estate.

Contingent. A legacy which is contingent is payable only if a condition is met e.g. “to my god-daughter upon her attaining 21 years of age”; in a Trust situation, a different example might be “a life interest to my young wife so long as she does not get remarried to Mr Jones”.

Cousin german. An old-fashioned term for a **first cousin**.

Court of Protection. The Master of the Court has the power to appoint a **Receiver / Deputy** to look after the affairs of incompetent **Patient / Person**. The Master also has the power to approve the writing of a **Statutory Will** upon behalf of a Patient / Person and to authorise the content of that Will.

Crown Agent. Acts for the Crown in estate and especially on **bona vacantia** matters in the United Kingdom. In most of England & Wales, this function is performed by the **Treasury Solicitor**. However, in the two Duchies of Cornwall and Lancaster, the Crown Agent is Farrer & Co, Solicitors. In Scotland, the Crown Agent is the Queen's and Lord Treasurer's Remembrancer (Q<R).

Decedent. American-English term for the Deceased.

Decree Absolute. The court order and accompanying certificate legally dissolving a marriage. The plural is **Decrees Absolute**. The D and A are capitalised.

Decree Nisi. The certificate **provisionally** dissolving a marriage. The marriage is not dissolved and the couple not divorced until the Decree Nisi is made Absolute – see **Decree Absolute**. In other words, if a person dies between the issuing of the Decree Nisi and the Decree Absolute, they are still regarded as married by the law. The plural is **Decrees Nisi**. The D and N are capitalised.

Deed of variation. A deed of variation is used to vary the terms of a Will, or of the intestacy rules, by mutual agreement of all the affected parties.

Deed poll. A deed (a signed and sealed document) to which there is only one party, usually used for legal changes of name.

Degree. In some jurisdictions (such as those in Canada), as well as the concept of **class** of kin, there is also the notion of degrees of kinship. So-called civil degrees of kinship are counted from the Deceased up to the common ancestor and then down to the relative in question. For instance, a first cousin is a person of 4 degrees' remove to the Deceased (the four removes or steps are i) parent, ii) grandparent, iii) uncle or aunt and iv) first cousin). Similarly, a first cousin once removed is at 5 degrees' remove to the Deceased; but so is a **second cousin once removed ascending**. There is a colour table called the Degrees of Kinship Diagram in the TR Docs List which illustrates fully the concept of degree.

Deputy or Receiver. The person officially appointed (usually by the **Court of Protection**) to look after the affairs of a **Person** or **Patient** unable to manage their own.

Descendant. A noun. Classes of kin which extend “downwards” from the subject. In England & Wales there is just one class of descendant kin on intestacies – issue. Note that the spelling is **Descendant**. See also **Ascendant** and **Collateral**.

Devise. To give **realty**, or real estate. Contrast with **bequeath**.

Devolution of an estate. The distribution to the class of persons to whom the residue of an estate passes (upon whom it devolves). For instance, “the residue devolves upon the siblings of the whole blood and their issue upon the statutory trusts”.

Disclaim. If a beneficiary disclaims, he or she is treated as if non-existent and therefore their interest in the estate does not pass to their issue, if any. If a beneficiary does not wish to inherit but does wish their interest to pass elsewhere, they **assign** it instead.

Dissolution of a marriage. Legal divorce.

Divorce. The legal termination or dissolution of a marriage. See also **Decree Absolute** and **Decree Nisi**.

Domicile. A permanent legal residence. The laws of a person's domicile should determine how their estate is distributed.

Escheat. Used of an estate which passes to the Crown (or the State) in the absence of any claimants under the rules governing intestacy in the jurisdiction in question. For example, "The estate of John William Smith escheated to the Crown after he died intestate with no known next of kin". See **bona vacantia**.

Estate. The assets left by the Deceased.

Estranged. A couple who are estranged are still married to one another unless they have legally divorced. They are therefore still entitled to inherit from one another's estates. See also **separated**, which implies a lesser degree of alienation – a couple could be separated without being estranged.

Excepted estate. An estate beneath the **nil-rate band** for IHT in England & Wales.

Executor. (1) In England & Wales, a person who is nominated in the Will to administer the testate estate of the Deceased. The Executor's authority derives from the Will, not the Grant of Probate (contrast **Administrator**). (2) In Scotland, the generic term for a person who acts on either a testate or an intestate estate – therefore the Scottish equivalent to **Personal Representative** in England & Wales.

Executor-dative. The Scottish equivalent of an **Administrator** on an intestate estate. The plural is **Executors-dative**.

Executor-nominate. The Scottish equivalent of an **Executor** of a Will. The plural is **Executors-nominate**.

Executor's year. The year during which the Executor must pay the legacies in a Will to the legatees. If this is not done, the legatees are entitled to their legacy plus 4% statutory interest upon it.

Executrix. A female Executor. The plural is **Executrices**.

Expectant heir. A person who has an interest in a **remainder** – for instance, upon the death of a **life tenant**.

Extract (verb). A **PR** extracts a **Grant** to an estate.

Farrer & Co. The **Crown Agent** for the two Duchies of Cornwall and of Lancaster.

First cousin. A child of an uncle or aunt. May be of **whole blood** or **half blood**. In terms of **degree** – 4 degrees' remove.



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First cousin once removed. A grandchild of an uncle or aunt. May be of **whole blood** or **half blood**. In terms of **degree** – 5 degrees' remove. Do **not** confuse with **second cousin**.

First cousin twice removed. A great grandchild of an uncle or aunt. May be of **whole blood** or **half blood**. In terms of **degree** – 6 degrees' remove.

Gift-over clause. A **substitution clause** or contingency provision made in a Will governing the future of a gift in a particular eventuality. Most frequently, a Will will provide an alternative destination should an originally intended beneficiary predecease the Deceased. For instance, a Testator may leave a one half share of his or her residuary estate to a sibling, with the proviso (gift-over clause) that, if the sibling predeceases, the share will pass to the late sibling's children in equal shares. Incidentally, if there were no gift-over clause in the Will in this example, should the sibling predecease the Testator, a partial intestacy would arise on that one half share of the estate. See also **predecease**.

Grant of Letters of Administration. In England & Wales, the specific term for a **Grant of Representation** extracted by an Administrator on an intestate estate. Often abbreviated to Letters of Administration.

Grant of Letters of Administration with Will Annexed. In England & Wales, various conditions have to be met for a Will to be legally valid, for instance there must be an **animus testandi** and an **attestation clause**; and at least one Executor must be named. If there is no Executor named in the Will, or if the Executor renounces or predeceases the Deceased and a replacement is not nominated by the Deceased, but the estate is still distributed according to the terms of the Will, the Grant of Representation taken out is called a Grant of Letters of Administration with Will Annexed. However, this may be contested and the estate may end up being distributed upon intestacy as if no Will had ever been made.

Grant of Probate. In England & Wales, the specific term for a **Grant of Representation** taken out by an **Executor** on a testate estate. Note that the Executor's powers derive from the Will not the Grant of Probate.

Grant of Representation. In England & Wales, the umbrella or generic term for a **Grant of Probate** (on a testate estate) or a **Grant of Letters of Administration** (on an intestate estate). A Grant is a one-page certificate empowering the legal **Personal Representatives** named therein to administer the estate.

Half blood. Sharing only one **not** two ascendants in common with a person. For instance, a sibling of the half blood shares one parent in common; whilst an uncle of the half blood shares one grandparent. See also **whole blood** and **illegitimate**.

Heir. Strictly speaking, an **heir at law** under an **intestacy**. Often, however, used loosely as another generic term for a **beneficiary**.

Heir at law. One of the statutory next of kin under an **intestacy**; and, by virtue of this, a person entitled to share in the estate. The plural is, of course, heirs at law. No hyphens needed.



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Heir locator. A firm of probate genealogists which works speculatively, and without instruction, on estates which enter the **public domain**. An heir locator works on a so-called contingency basis, whereby a commission fee is extorted from the heir in exchange for presenting and maintaining the heir's claim.

Holographic Will. A Will written in the handwriting of the Testator himself or herself.

IHT. See **Inheritance Tax**.

Illegitimate. A person born to unmarried parents. Since the Family Law Reform Act 1987 came into effect on 4 April 1988, illegitimacy in and of itself has not debarred a person from inheriting in England & Wales. However, at the level of sibling, or of uncle and aunt, the frequent absence of a father on the birth certificate of an illegitimate person may make them of half blood status, thereby disqualifying them from inheriting if there are whole blood kin with prior claim.

Immediate Family. In England & Wales, the classes of spouse, issue, parent and siblings of whole and half blood and their issue.

Income. The annual or other interest accruing from capital assets. See **Capital**.

Infant. A **minor**. In England & Wales, technically a person under the age of 18. Used primarily of those under 1 year of age.

Inheritance (Provision for Family and Dependents) Act 1975. See under **IPFD Act**.

Inheritance Tax (IHT). In England & Wales, the tax on estates. Paid by the estate (not by its beneficiaries). At present in England & Wales there are two rates -- a **nil-rate band** (effectively no tax to pay) and a 40% band on the part of the estate over and above the nil-rate band threshold.

Intestacy. A situation where a person (the **Intestate**) has died without leaving a valid Will.

Intestate. A person (male or female) who has died without leaving a valid Will. Can also be used as an adjective when referring to an estate where no valid Will was left.

Intestate succession. The process that applies in a particular jurisdiction when a person has died without leaving a Will. See also **rules of intestacy**.

IPFD Act. The Inheritance (Provision for Family and Dependents) Act 1975. Amended by the Law Reform (Succession) Act 1995. This act permits claims to be made against an estate by persons not entitled under the rules of intestacy. The court may make an **adjustment** if it decides that provision ought to be made for the claimant. Typical claimants are cohabiting common law spouses of at least two years' standing and financial dependants.

Issue. Children, grandchildren and remoter descendants indefinitely.

Joint tenants. Joint ownership of, for example, a property by two (or more) people, where the shares pass automatically upon death to the survivor(s). Contrast **tenants in common**.

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Jurisdiction. This is the legal administrative district in which the Deceased has died. It is **not** synonymous with state, country etc. Thus the United Kingdom, for example, contains the jurisdictions of i) England & Wales, ii) Scotland and iii) Northern Ireland. Similarly, neither Australia nor Canada nor USA is a jurisdiction as far as intestate succession is concerned, as there are no federal (countrywide) rules of intestacy – instead, in each instance, the State or Territory or Province has its own individual rules of intestacy.

Laws of intestacy. The rules that apply in a particular jurisdiction when a person has died without leaving a Will. Synonymous with rules of intestacy. The application of the laws is called **intestate succession**.

Lawyer. A generic term that could be said to encompass barristers, solicitors, legal executives and others.

Legacy. A general term for a gift in a Will. Synonymous with **bequest**.

Legal executive. A trained legal professional that specialises in a certain area of law. Legal executors are represented by the Institute of Legal Executives (ILEX).

Legitimation. If the parents of an illegitimate child subsequently marry, he or she is legitimated from the date of marriage.

Letters of Administration. In England & Wales, the specific term for a **Grant of Representation** taken out by an Administrator on an intestate estate. The full term is a **Grant of Letters of Administration**.

Life Interest. The income or other benefit received by a **Life Tenant** during their lifetime.

Life Tenant. A person who receives the immediate **income** of a Trust following the death of the Deceased. Often it will be the widow(er). Usually the income is received for the duration of their life – this is termed their **Life Interest**. Upon their death it passes elsewhere – see **remainderman**.

Long-stop beneficiary. See **remainderman**.

Marriage settlement. A form of Trust set up upon marriage with certain long-term financial or other provisions.

Minor. In England & Wales, technically a person under the age of 18. 18 is the age of majority, when the person ceases to be a minor. See also **infant**.

Next of kin. Nearest relatives of any person. See **statutory next of kin** for the correct and preferred legal term to use of the Deceased.

Nil-rate band. In Inheritance Tax, the portion of the estate which is taxed at 0%.

Noncupative Will. A will made orally by the **testator**. Also spelt “nuncupative”.

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OSP. This is an old abbreviation for *obit sine prole* = died without issue.

Partial intestacy. A situation where part but not all of an estate will devolve as on intestacy. Often this arises by oversight (where a Testator failed to make provision for all the assets or for an asset overseas) or by default (where an intended beneficiary dies during the lifetime of the Deceased without a substitution clause having been included in the Will to redirect the gift in that eventuality).

Patient or Person. A person who is non compos mentis – in a legal sense, incompetent and unable to look after their own affairs. The person officially appointed (usually by the **Court of Protection**) to look after the Patient's / Person's affairs is called their **Receiver / Deputy**.

Pecuniary legacy. In a Will, a specific gift of money – e.g. "I give £500 to my neighbour Marshall Mathers". Pecuniary legacies should be paid out before the value of the residuary estate is calculated and a distribution made to the residuary beneficiaries. Research costs should not fall upon a pecuniary legacy but be treated as a general administration expense to be borne by the estate as a whole, so that if the stipulated legacy is £500 then that should be the sum received by the legatee (and not £500 minus research or other costs). There is one exception to this – see **abatement**. If a legacy is not satisfied within the **Executor's year**, the legatee is entitled to statutory interest (at 4%) upon their pecuniary legacy.

Pecuniary legatee. A beneficiary receiving a pecuniary legacy.

Person or Patient. A person who is non compos mentis – in a legal sense, incompetent and unable to look after their own affairs. The person officially appointed (usually by the **Court of Protection**) to look after the Person's / Patient's affairs is called their **Deputy / Receiver**.

Personal Representative. In England & Wales, this is the generic term for both **Administrators** and **Executors** – see separate entries. Commonly abbreviated to PR or PRs. The Scottish equivalent is simply **Executors**.

Personalty. Personal estate – moveable property – e.g. savings. Contrast **realty**.

Per stirpes distribution. Devolution under the laws of intestacy in England and Wales is *per stirpes* rather than *per capita* within certain classes. If the distribution were simply per capita, each heir would receive the same amount of inheritance. However, per stirpes (or stirpital) distribution means that, where a potential heir within the relevant class predeceases the Intestate, their issue takes their share under the **principle of representation**. Therefore, where the relevant class of heir is i) issue, ii) siblings (of whole or half blood) or iii) uncles and aunts (of whole or half blood), the number of primary shares is determined by the total number of children (or brothers and sisters, or uncles and aunts) who either survived the Intestate or predeceased leaving surviving issue. Each primary share is then subdivided at the next level depending on the number of children, and so on. Another way of conceptualising this is to think of it as being per capita to the heads of line (the children, or the siblings, or the uncles and aunts) and then per stirpes down. Please note that distribution in other jurisdictions (e.g. Scotland, the various Channel Islands, Canada etc) may be very different.

PRs. See **Personal Representative**.

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Predecease. A person predeceases the Deceased if he or she dies before them. Predecease can have a dramatic effect on a Will. For instance, a Testator might leave a one half share of his or her residuary estate to a sibling, with a **gift-over** to the late sibling's children in equal shares should the sibling predecease. However, if there were **no** gift-over clause in the Will, in this example the predeceasing of the sibling would trigger a **partial intestacy** on that one half share of the estate. See also **gift-over**.

Principle. A tenet, an article of faith, a rule, a guideline, as in **principle of representation** below.

Principle of representation. In succession law, a rule that permits, within **collateral** classes of kin, the children or issue of a relevant parent who has died before the **vesting date** to step into their shoes and take in lieu their share of the estate. Sometimes (as in the class of siblings in the Province of Ontario), representation is permitted only to the next generation (i.e. children) but sometimes (as in all four **collateral** classes in England & Wales) indefinitely to any generation of issue.

Prior claimant. Kin entitled in precedence to, and to the exclusion of, other family. For example, if the Deceased's siblings and their issue were already known and subsequently the Deceased's issue were found, such issue would take in precedence and would be prior claimants to the estate.

Probate calendar. See under **calendar**.

Probate practitioner. A solicitor or other lawyer specialising in probate.

Public domain. The world at large beyond the office of the solicitor or bank or government department. Estate matters enter the public domain by being advertised or by passing through the court.

Queen's and Lord Treasurer's Remembrancer (Q<R). The **bona vacantia authority** and **Crown Agent** in Scotland.

Realty. Real estate – immovable property – e.g. a house. Contrast **personalty**.

Receiver or Deputy. The person officially appointed (usually by the **Court of Protection**) to look after the affairs of a **Patient** or **Person** unable to manage their own.

Relict. A widow.

Remainder. The **capital** for distribution upon the death of a **life tenant** to a trust.

Remainderman. A person (male or female) who receives the **remainder** or **capital** from a trust fund after the death of the life tenant. The plural is remaindermen. Sometimes referred to as being the succeeding interest or ultimate beneficiary or long-stop beneficiary.

Renounce. A person named in a Will as an Executor may decline to act, for whatever reason (e.g. infirmity, indolence, antipathy, apathy). This is called renouncing.

Representation. See **principle of representation**.

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Residuary beneficiary. A person entitled to share in the residue of a testate or intestate estate. In a testate estate, a residuary beneficiary will usually (but not necessarily) have been named by the Deceased. Usually, this part of the Will will be introduced by words to the effect that "the remainder of my estate I give upon trust to the following persons in equal (or whatever) shares". In an intestate estate, a residuary beneficiary will of course **not** have been named in person, as there is no Will – the residuary beneficiaries then are the **statutory next of kin**. Synonymous with **residuary legatee**.

Residuary estate. What is left, the remainder of the estate – the net sum for distribution after payment of funeral expenses, debts, any Inheritance Tax, pecuniary legacies, legal administration costs and any research fees etc. The residuary estate or **residue** is then distributed to the residuary beneficiaries named in the Will or to the statutory next of kin under intestacy.

Residuary legatee. See **residuary beneficiary**, with which it is synonymous.

Residue. See **residuary estate**, with which it is synonymous.

Rules of intestacy. The laws that apply in a particular jurisdiction when a person has died without leaving a Will. Synonymous with laws of intestacy. The process is called **intestate succession**.

Second cousin. A great grandchild of one's great grandparents. Other ways of looking at the relationship include: The grandchild of a great uncle or great aunt. The grand nephew or grand niece of a grandparent. The first cousin once removed of a parent. In terms of degree – 6 degrees' remove. **Not** entitled to benefit under the rules of intestacy in England & Wales.

Second cousin once removed ascending. A grandchild of one's great grandparents. Other ways of looking at the relationship include: The parent of a second cousin. The child of a great uncle or great aunt. The nephew or niece of a grandparent. The first cousin of a parent. In some tables this relative is mistakenly called a first cousin once removed. In terms of degree – 5 degrees' remove. **Not** entitled to benefit under the rules of intestacy in England & Wales.

Section 116. s116 of the Supreme Court Act 1967.

Separated. A couple who are separated are still married to one another unless they have legally divorced. They are therefore still entitled to inherit from one another's estates. See also **estranged**, which implies a greater degree of alienation.

Settlor. A person who has created a Will Trust or otherwise set up a Trust.

Siblings. The collective term for brothers and sisters, both natural and adopted, legitimate and illegitimate. May be of **whole blood** or **half blood**. Do **not** use to refer to **step-siblings**.

Single. Presently not married. Therefore the term is ambiguous. Please note that the term is **not** necessarily synonymous with bachelor or spinster – it can also be applied to and used by persons ("single persons") who have been divorced.



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Solicitor. A type of **lawyer** in possession of a practising certificate and a member of the Law Society, who is able to give advice on legal subjects. They can represent people in lower courts.

Spinster. A woman who has never married. See also **single**.

Spouse. The generic term for husband or wife.

Statute-barred. After 12 years, unclaimed estates fallen to the Crown become statute-barred – i.e. non-recoverable by any late claimant kin. Interest is paid within these 12 years. However, the **Treasury Solicitor** will entertain claims of up to 30 years at its discretion, albeit not paying any interest on the balance of years after the initial 12.

Statute of limitations. A law which defines the period of time in which a claim can be made. Usually 12 years. In England & Wales, the Treasury Solicitor sometimes refers to the possibility of the statutory next of kin being able to recover from them bona vacantia estates which have escheated to the Crown within 12 years, with interest accruing on the sum originally escheated; and within 13 to 30 years, at their discretion, without any extra interest after the 12th year.

Statutory legacy. The inheritance that an heir at law receives under an intestacy.

Statutory next of kin. The nearest next of kin according to the succession law of the jurisdiction of death of the Deceased and thereby the persons entitled to inherit upon intestacy. In England & Wales, only the statutory next of kin of an Intestate is entitled to take out Letters of Administration and thereby become Administrators.

Statutory trusts. Statutory trusts exist within **collateral** classes of kin and enable the children or issue of a relevant parent who has died before the vesting date to step into their shoes and take in lieu their share of the estate.

Statutory Will. A Will written upon behalf of a person who is not legally competent to write their own. Usually, the person will be a **Patient** of, or **Person** under, the **Court of Protection** and the Will writer will be their **Receiver** or **Deputy**.

Step-siblings. Persons brought to an immediate family by the earlier or later marriage of a parent and sharing no blood relationship to the Deceased.

Substitution clause. See **gift-over clause**.

Successors by representation. The ultimate Personal Representatives at the end of the **chain of representation** and the persons to whom the Personal Representatives of the original estate can account with the monies due (even if they themselves are not the persons entitled, they are the persons empowered to dispose of it to the rightful heirs).



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Survivorship. In England & Wales, since the Law Reform (Succession) Act 1995, which came into effect for deaths after 1 January 1996, the spouse of an Intestate has been required to survive the Intestate by at least 28 days to attain a **vested interest**. A survivorship clause can also be inserted in a Will to stipulate that a spouse or any other beneficiary has to survive the Deceased by a certain period of time before they may inherit.

Tenants in common. Joint ownership of, for example, a property by two (or more) people, where the shares do **not** pass automatically upon death to the survivor(s) but fall into the deceased part-owner's estate. Contrast **joint tenants**.

Testament. See under **Will**.

Testate. An estate is testate if a valid Will was left. A person dies testate if he or she does so leaving a valid Will.

Testator. A man who has left a valid Will.

Testatrix. A woman who has left a valid Will. The plural is testatrices.

Treasury Solicitor. The primary but not the only **bona vacantia authority** in England & Wales. The **Crown Agent** in most of England & Wales with the exception of the two Duchies of Cornwall and Lancaster. The Crown as ultimate heir is entitled to a Grant of Letters of Administration to a **bona vacantia** estate. The Treasury Solicitor will advertise in the national and perhaps local press for claimants to come forward in priority to the Crown. If no such claims arise (or a firm of heir locators does not intervene and act speculatively to try to locate the statutory next of kin), the Treasury Solicitor claims the estate for the Crown. The estate can be recovered by the statutory next of kin for a period of up to 12 years with interest and, at their discretion, to a maximum of 30 years after the date of death – see under **statute-barred**.

Trust. A Trust is a document designed to secure the long term management of the estate of the Deceased after (and sometimes during) their life, with both immediate and subsequent provisions. Typically, there will be a **life tenant** and **remaindermen**. The usual Trust document is the Will but other forms exist e.g. a marriage settlement. See also **Will Trust**.

Trust Fund. The capital within a Trust.

Ultimate heir. In most jurisdictions, the ultimate heir will be the state in one form or another. On English & Welsh **bona vacantia** estates, the ultimate heir is the Crown.

Unproved estate. Some persons die leaving Wills but these are never proved (probated), either because the estate is of modest value or the question of benefit is straightforward and uncontested (e.g. passing to a surviving spouse). Similarly, some persons die intestate without a Grant of Letters of Administration being taken out to their estate. Again, this is usually the case where there is a modest or negligible estate and/or the statutory next of kin is the spouse. In these cases, no Grant of Representation exists and there is no entry in the probate calendar.

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Vested interest. A beneficiary obtains an absolute or vested interest if they survive the **vesting date**.

Vesting date. The date at which a potential beneficiary has to be alive in order to inherit. Often this will simply be the date of death of the Deceased. However, Wills can have **survivorship clauses** and Trusts may stipulate age requirements (e.g. 18 or 21 or 25 years) for minor (or indeed other) children to fulfil before they may inherit.

Viduity. Widowhood.

Vital statistics. A generic term for the three major life events – birth, marriage and death.

Voters lists. Electoral rolls.

Warning. In a probate sense, a warning is the notice served upon a **caveator** to explain his or her interest and reasons for preventing a Grant from issuing.

Whole blood. Sharing **both** ascendants in common with another person. For instance, a sibling of the whole blood shares both parents in common; whilst an uncle of the whole blood shares two grandparents. Contrast **half blood**.

Will. The last Will and testament of a person, intended to dispose of their estate after their death. Historically, the “Will” relates to **realty** (real estate), while the “testament” refers to **personalty** (personal estate).

Will Trust. A Trust set up in a Will.

Witness at marriage (contrast **informant** at death).