

Association of Contentious Trust & Probate Specialists Course



The College of Law, in association with the Association of Contentious Trust and Probate Specialists (ACTAPS), offer an ACTAPS course for those specialising in contentious probate and trusts.

This predominantly distance-learning course aims to develop specialist expertise in this field and to provide a recognised professional qualification for those already working in the field and those wanting to move into the area. Those who complete the course will become associate members of ACTAPS and after two years will be eligible to apply for full membership.

Who is this training for

The course is open to all qualified barristers, solicitors and legal executives.

The programme

The three-year course is structured around five compulsory core modules. Those studying will receive a pack of learning materials and coursework. Each module includes attendance at one or two face-to-face sessions. There is also an additional face-to-face session on ADR.

A fast track option is available for associates who wish to study the final module (Sham Trusts and Asset Tracing) in the second year. Associates can choose whether to do ADR in the second or third year. All face-to-face sessions are run as evening seminars from 6pm to 8pm, except ADR which is run from 2pm to 5pm.

The course is delivered primarily via distance learning, although each module incorporates at least one face-to-face session of two hours led by an experienced practitioner.

ADR consists exclusively of a face to face session in which delegates are able to role play a mediation.

Key benefits

- After completing the programme delegates will be able to:
- identify the strengths and weaknesses of a client’s claim in probate and trust disputes
 - identify the matters which must be pursued in order to progress the case and the correct procedure
 - draft appropriate documentation and letters
 - determine a basis for negotiation
 - assist a client in alternative dispute resolution
 - advise settlors, beneficiaries and trustees where there is a possibility that a trust is a sham
 - advise on steps to trace and recover assets

Assessment

The course is assessed through coursework submitted at the end of each module (apart from ADR which is not assessed). The coursework replicates practice and requires associates to write letters, assess the strengths and weaknesses of a case and determine the appropriate steps to take to progress a transaction.

CPD

The course counts as 100% of the delegate’s annual CPD requirement.

Year 1 Modules	Year 2 Modules	Year 3 Modules
<p>1. Probate Actions: October – January</p> <p>Face to face session Henry Frydenson, Mishcon de Reya and Professor Lesley King, The College of Law</p>	<p>3. Inheritance Act Claims: October – January</p> <p>Face to face session Henry Frydenson, Mishcon de Reya and Professor Lesley King, The College of Law</p>	<p>5. Sham Trusts b. Asset Tracing: March – June</p> <p>Face to face session Robert Hunter, Allen and Overy</p>
<p>2. Mental Capacity: February – June</p> <p>Face to face sessions Denzil Lush, Master of the Court of Protection and Nori Graham, Geriatric Psychiatrist</p>	<p>4. Breach of Trust: January – March</p> <p>Face to face session Dawn Goodman, Withers</p>	<p>ADR: May</p> <p>Face to face session Beverley Rogers and Doctor James Behrens</p>



1. PROBATE ACTIONS

- Grounds for challenging a will
 - Formalities
 - Capacity
 - Knowledge and Approval
 - Undue influence
 - Solicitor's negligence
- Jurisdiction
 - Which court?
 - Limitation periods
 - Foreign element
- Procedure
 - Initial steps – pre-action protocol and *Larke v Nugus*
 - Costs
 - Use of counsel
 - County court and High Court proceedings
- Running a case
 - Taking instructions
 - Gathering evidence
 - Tactics and strategy
- Other types of action
 - Inheritance Act claims
 - Claims against personal representatives
 - Mutual wills
 - Proprietary estoppel
 - Beddoe orders
 - Charity proceedings

2. MENTAL CAPACITY

- Testamentary Capacity
 - The test
 - Duty of solicitor in relation to capacity
 - Instructing a medical practitioner
- Enduring Powers of Attorney
 - Capacity
 - Prescribed form
 - Registration
 - Reasons for invalidity
 - Review and Appeals
 - Danger of Abuse
- Lasting Powers of Attorney
 - Validity
 - The role of the certificate provider
 - Prescribed form of LPA
 - Procedure for registration
 - Matters which will prevent registration
 - Objections to registration
 - The two types of LPA
 - Relationship between Welfare LPA & Advance Decisions
 - Comparison of EPAs and LPAs
 - Decision making and Deputies
 - Existing Receivers

- Court of Protection's powers
- Duties of deputies
- When will a deputy be appointed?
- Security and protection
- Urgent applications
- Appeals
- Statutory Wills
 - Requirements
 - Documentation
 - Evidence
 - Procedure
- Capacity to Marry
 - Effect of lack of capacity
 - Test
 - Capacity to divorce
- Capacity to make Lifetime Gifts
 - Test
 - Undue influence
 - Duties of solicitor
 - Gifts on behalf of incapacitated principal
 - Gifts under an EPA
- The Lord Chancellor's Visitors

3. INHERITANCE ACT CLAIMS

- The statutory basis for bringing a claim
- Problems in relation to particular categories of applicants
- Costs and applications in small estates
- Conflicts of interest
- Issuing proceedings
- The hearing
- Legal professional privilege
- Compromise and Part 36 offers
- Appeals
- Running a case

4. TRUST ACTIONS

- Disputes as to the validity of trusts
 - Failure to satisfy one of the three certainties or the beneficiary principle
 - The trust is a sham failing to impose trustee obligations
- The duties of trustees
 - For example:
 - To acquaint himself with the nature of the trust property and the terms of the trust
 - To act impartially
 - To invest properly under the terms of the trust instrument and the general law
 - Ability to charge
 - Hastings Bass principle
- Remedial action
 - Problems associated with restoration
 - Injunctions

- Removal of trustees
- Gains
- Evidence
- Defences
 - Trustee Act 1925, s61
 - Exonerated clauses
 - Limitation
 - Release by the beneficiary
 - The "Prudential" defence
- Avoiding a breach
 - Obtaining directions from court
 - Trustee Act 1925, s57
 - Variation of Trusts Act 1958
- Use of Protectors
 - Functions
 - Litigation involving Protectors

5a. SHAM TRUSTS

- What is a Sham?
- Indicators of a sham
- Forced Heirship
 - Community of property
 - Restrictions on testamentary freedom
- Problems for trustees
 - Failing to put beneficiaries first
 - Position of trustees when trust attacked
 - Rights of beneficiaries
- Challenging the trust
 - Basis of challenge
 - Attacks by creditors
 - How to challenge

5b. ASSET TRACING

- The legal basis of claims
 - Elements of fraud
 - Proprietary remedies
 - Personal remedies
 - The original wrongdoer
 - Recipients of assets
 - Third parties with knowledge
- How to recover assets
 - Obtaining information from respondent before starting action
 - Obtaining information from third parties
 - Breaking legal privilege
 - Freezing injunctions
 - Tracing injunctions
 - The costs issue

Alternative Dispute Resolution

A half day face to face session at which delegates have an opportunity to participate in a role play of a mediation in a trust or wills context.

Contact us

For further information, please call us on 01483 216216 or e-mail us at pd@lawcol.co.uk.
Alternatively, visit www.college-of-law.co.uk

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