

# Legal Definitions

## Contents

Legal definitions in alphabetical order.

<b>Legal Definition 1: Abatement</b> .....	5
<b>Legal Definition 2: Accumulation</b> .....	5
<b>Legal Definition 3: Ademption</b> .....	5
<b>Legal Definition 4: Administration</b> .....	5
<b>Legal Definition 5: Administration Period</b> .....	5
<b>Legal Definition 6: Administrator (m)/Administratrix (f)</b> .....	5
<b>Legal Definition 7: Affidavit</b> .....	5
<b>Legal Definition 8: Age 18 to 25 Trust</b> .....	5
<b>Legal Definition 9: Age 18 to 25 Exit Charge</b> .....	6
<b>Legal Definition 10: Aggregate Chargeable Transfer</b> .....	6
<b>Legal Definition 11: Agricultural Relief</b> .....	6
Relief from Inheritance Tax which is due on the transfer of agricultural property. The relief applies to the agricultural value of the asset only .....	6
<b>Legal Definition 12: Agricultural Property</b> .....	6
<b>Legal Definition 13: Agricultural Value</b> .....	6
<b>Legal Definition 14: AIM Shares</b> .....	6
<b>Legal Definition 15: Alternatively Secured Pension Fund (ASP)</b> .....	6
<b>Legal Definition 16: Annual Exemption</b> .....	7
<b>Legal Definition 17: Annuity</b> .....	7
<b>Legal Definition 18: Appeal</b> .....	7
<b>Legal Definition 19: Assets</b> .....	7
<b>Legal Definition 20: Attestation</b> .....	7
<b>Legal Definition 21: Authorised Unit Trust (AUT)</b> .....	7
<b>Legal Definition 22: Beneficiary</b> .....	7
<b>Legal Definition 23: Bequest</b> .....	7
<b>Legal Definition 24: Book Value</b> .....	8
<b>Legal Definition 25: Business</b> .....	8
<b>Legal Definition 26: Business Property</b> .....	8
<b>Legal Definition 27: Business, Woodland, Heritage and Farm Relief</b> .....	8
<b>Legal Definition 28: Capital Gains Tax (CGT)</b> .....	8
<b>Legal Definition 29: Cessate Grant</b> .....	8
<b>Legal Definition 30: Chargeable amount on an age 18 to 25 Trust</b> .....	8

# Legal Definitions

Legal Definition 31: Chargeable Gift .....	8
Legal Definition 32: Chargeable Value .....	8
Legal Definition 33: Charitable Trust .....	9
Legal Definition 34: Charity .....	9
Legal Definition 35: Charity Exemption .....	9
Legal Definition 36: Chattels .....	9
Legal Definition 37: Child/Children .....	9
Legal Definition 38: Civil Partner .....	9
Legal Definition 39: Civil Partnership .....	9
Legal Definition 40: Clearance Certificate .....	9
Legal Definition 41: Co-habitee .....	9
Legal Definition 42: Codicil .....	10
Legal Definition 43: Coroner .....	10
Legal Definition 44: Deed of Variation .....	10
Legal Definition 45: De facto .....	10
Legal Definition 46: Deposition .....	10
Legal Definition 47: Devise .....	10
Legal Definition 48: Discretionary Trust .....	11
Legal Definition 49: Disposition .....	11
Legal Definition 50: Domicile .....	11
Legal Definition 51: Double taxation convention (DTC) .....	11
Legal Definition 52: Emolument .....	11
Legal Definition 53: Employee Trust .....	11
Legal Definition 54: En ventre sa mere .....	11
Legal Definition 55: Estate .....	11
Legal Definition 56: Excepted Estate .....	12
Legal Definition 57: Executor (m)/Executrix (f) .....	12
Legal Definition 58: Exempt Gifts .....	12
Legal Definition 59: Exempt Transfer .....	12
Legal Definition 60: Exemptions .....	12
Legal Definition 61: Exit Charge .....	12
Legal Definition 62: Fall in Value Relief .....	13
Legal Definition 63: Financial Services Authority (FSA) .....	13
Legal Definition 64: Flat-rate Charge .....	13
Legal Definition 65: Foreign Domiciliary .....	13

# Legal Definitions

Legal Definition 66: Former Civil Partner.....	13
Legal Definition 67: Free of Tax.....	13
Legal Definition 68: FOTRA.....	13
Legal Definition 69: FOTRA Gilts .....	13
Legal Definition 70: Gift in Consideration of Marriage or Civil Partnership .....	14
Legal Definition 71: Gifts to Spouse or Civil Partner .....	14
Legal Definition 72: Gift with Reservation.....	14
Legal Definition 73: Gift with Reservation of Benefit.....	14
Legal Definition 74: Goodwill.....	14
Legal Definition 75: Government Securities .....	14
Legal Definition 76: Grant ad colligenda bona .....	14
Legal Definition 77: Grant Caeterorum .....	14
Legal Definition 78: Grant of administration de bonis non.....	15
Legal Definition 79: Grant of Double Probate .....	15
Legal Definition 80: Grant of Letters of Administration .....	15
Legal Definition 81: Grant of Letters of Administration with will annexed .....	15
Legal Definition 82: Grant of Probate .....	15
Legal Definition 83: Grant of Representation .....	15
Legal Definition 84: Grant Pendente Lite.....	15
Legal Definition 85: Gross Estate .....	16
Legal Definition 86: Guardian .....	16
Legal Definition 87: HMRC .....	16
Legal Definition 88: IHT 205 .....	16
Legal Definition 89: IHT 400 .....	16
Legal Definition 90: Immediately Chargeable Transfer (ICT).....	16
Legal Definition 91: Income Tax .....	16
Legal Definition 92: Inheritance Tax (IHT).....	16
Legal Definition 93: Inquest .....	17
Legal Definition 94: Instrument of Variation .....	17
Legal Definition 95: Interest.....	17
Legal Definition 96: Intestacy.....	17
Legal Definition 97: Intestate .....	17
Legal Definition 98: Issue .....	17
Legal Definition 99: Joint Tenants .....	17
Legal Definition 100: Lasting Power of Attorney .....	17

# Legal Definitions

Legal Definition 101: Legacy.....	18
Legal Definition 102: Liabilities .....	18
Legal Definition 103: Life Interest .....	18
Legal Definition 104: Life Tenant.....	18
Legal Definition 105: Limited Probate .....	18
Legal Definition 106: Living Will.....	18
Legal Definition 107: Minor.....	18
Legal Definition 108: Net Estate.....	18
Legal Definition 109: Next of Kin .....	19
Legal Definition 110: Nil Rate Band Allowance .....	19
Legal Definition 111: Nil Rate Band Trust .....	19
Legal Definition 112: Nominated Asset .....	19
Legal Definition 113: Nominee.....	19
Legal Definition 114: Normal Expenditure Out of Income Gifts .....	19
Legal Definition 115: Potentially Exempt Transfers.....	20
Legal Definition 116: Notice of Determination.....	21
Legal Definition 117: Oath.....	21
Legal Definition 118: Outright Gift.....	21
Legal Definition 119: Pecuniary legacy .....	21
Legal Definition 120: Personal Representative.....	21
Legal Definition 121: Personal Chattels .....	21
Legal Definition 122: Per Stirpes .....	21
Legal Definition 123: Potentially Exempt Transfer .....	21
Legal Definition 124: Post Mortem .....	22
Legal Definition 125: Power of Attorney .....	22
Legal Definition 126: Privileged Will.....	22
Legal Definition 127: Probate.....	22
Legal Definition 128: Probate Registry .....	22
Legal Definition 129: Proportionate Charge.....	23
Legal Definition 130: Registrar .....	23
Legal Definition 131: Relevant Business Property.....	23
Legal Definition 132: Residuary Beneficiary .....	23
Legal Definition 133: Residuary Estate .....	23
Legal Definition 134: Residue.....	23
Legal Definition 135: Revocation .....	23

# Legal Definitions

Legal Definition 136: Settlement .....	24
Legal Definition 137: Settlor .....	24
Legal Definition 138: Settlor's Cumulative Total.....	24
Legal Definition 139: Simultaneous Deaths.....	24
Legal Definition 140: Small Gift Exemption .....	24
Legal Definition 141: Social Fund .....	24
Legal Definition 142: Solvent .....	24
Legal Definition 143: Specific Bequests .....	25
Legal Definition 144: Specified Exempt Transfers .....	25
Legal Definition 145: Specified Transfers.....	25
Legal Definition 146: Spouse .....	25
Legal Definition 147: Stamp Duty Land Tax .....	25
Legal Definition 148: Statutory Legacy .....	25
Legal Definition 149: Subject to Tax.....	25
Legal Definition 150: Taper Relief .....	25
Legal Definition 151: Ten-yearly Charge .....	26
Legal Definition 152: Tenants in Common .....	26
Legal Definition 153: Testator (m)/Testatrix (f) .....	26
Legal Definition 154: Transitional Serial Interest (TSI) .....	26
Legal Definition 155: Trust .....	26
Legal Definition 156: Trustee .....	26
Legal Definition 157: Witnesses.....	27

# Legal Definitions

## Legal Definition 1: Abatement

A proportional reduction applied where an estate has insufficient assets to pay beneficiaries or creditors in full.

## Legal Definition 2: Accumulation

When the income of a fund is saved up and not paid out to any beneficiaries, it is said to be accumulated.

## Legal Definition 3: Ademption

A gift or property mentioned in a will that cannot be given to the beneficiary because it no longer belonged to the deceased.

## Legal Definition 4: Administration

Dealing with the affairs of the deceased. This involves establishing, collecting and distributing the assets of the estate as stated in a will (or where there is no will, according to the Rules of Intestacy).

## Legal Definition 5: Administration Period

The time it takes from the date of death to completion of the estate's administration.

## Legal Definition 6: Administrator (m)/Administratrix (f)

The name given to the personal representative if not appointed by a valid will or if the named Executor does not wish to act. Usually the next-of-kin, this person will normally have to obtain a Grant of Letters of Administration from the Probate Registry to show that he or she is the person with legal authority to deal with the deceased's estate.

## Legal Definition 7: Affidavit

A written statement, confirmed by oath, for use as evidence in court.

## Legal Definition 8: Age 18 to 25 Trust

From 22 March 2006, an 'age 18 to 25 trust' is a discretionary trust set up under the Will or intestacy of a deceased parent or step-parent, where the property is held on trust for the benefit of someone aged over 18 and under 25. Accumulation and maintenance trusts set up before 22 March 2006 which provide for beneficiaries to become absolutely entitled to the trust fund on or before the age of 25 will become age 18 to 25 trusts if, before 6 April 2008, they rewrite the trust to comply with the new rules. The property in an 18 to 25 trust is

# Legal Definitions

subject to age 18 to 25 exit charges when property leaves the trust on or before the beneficiary's twenty-fifth birthday.

## Legal Definition 9: Age 18 to 25 Exit Charge

The inheritance tax charge on an age 18 to 25 trust which occurs when:

- The beneficiary becomes absolutely entitled to the property in the trust between their 18th and 25th Birthdays
- Some of the property in the trust is distributed to the beneficiary,  
Or
- The beneficiary dies aged over 18.

## Legal Definition 10: Aggregate Chargeable Transfer

The total amount on which inheritance tax is charged. This is made up of the deceased's personal and real estate, any interest in possession trusts in which the deceased was treated as having a beneficial interest, gifts with reservation, the deceased's share of joint property, all chargeable transfers made by the deceased in the seven years prior to death and the value of any alternatively secured pension from which the deceased was entitled to benefit as the original scheme member.

## Legal Definition 11: Agricultural Relief

Relief from Inheritance Tax which is due on the transfer of agricultural property. The relief applies to the agricultural value of the asset only.

## Legal Definition 12: Agricultural Property

Land or pasture used in the growing of crops or intensive rearing of animals for food consumption. Also can include farmhouses and farm cottages.

## Legal Definition 13: Agricultural Value

The value a property would have if it could only be used as agricultural property.

## Legal Definition 14: AIM Shares

Shares which are traded on the Alternative Investment Market.

## Legal Definition 15: Alternatively Secured Pension Fund (ASP)

A fund (whether sums or assets) held under a money purchase arrangement that have been 'designated' to provide a scheme member (who is aged 75 or over) with an alternatively secured pension.

# Legal Definitions

## Legal Definition 16: Annual Exemption

The amount you can give away each tax year that will be exempt from Inheritance Tax. This is currently £3,000 and applies to one gift or a number of gifts up to that amount. There are other exemptions which can apply. Unused allowance from the previous year can also be used, but the current year's allowance must be used first.

## Legal Definition 17: Annuity

A series of fixed payments paid over a fixed number of years or during the lifetime of an individual, or both. An annuity is often used to provide a pension. It can also be an annual payment provided for in a will. Unused allowance from the previous year can also be used, but the current years allowance must be used first.

## Legal Definition 18: Appeal

The personal representatives may appeal against a notice of determination in writing within 30 days of the date of issue of the notice. The appeal will be heard either by the Special Commissioners or the Lands Tribunal.

## Legal Definition 19: Assets

The deceased persons' property, savings, investments and personal chattels which combined make up their 'estate'.

## Legal Definition 20: Attestation

Witnessing a signature.

## Legal Definition 21: Authorised Unit Trust (AUT)

A unit trust scheme authorised by the Financial Services Authority. A UK unit trust must be authorised before it can be offered to the general public in the UK.

## Legal Definition 22: Beneficiary

A person who is entitled to a share of an estate.

## Legal Definition 23: Bequest

A gift of a particular object or cash but not land or buildings.



# Legal Definitions

## Legal Definition 24: Book Value

A company's value as it appears on a balance sheet, equal to total assets and intangible assets such as goodwill, minus liabilities. The value of assets as they appear on a balance sheet will be equal to the cost of the assets minus accumulated depreciation. Book value therefore often differs substantially from the open market value.

## Legal Definition 25: Business

For the purpose of business relief, business includes any business carried on in the exercise of a profession or vocation.

## Legal Definition 26: Business Property

See relevant business property.

## Legal Definition 27: Business, Woodland, Heritage and Farm Relief

If the deceased owned a business, woodland, or National Heritage property, some relief from Inheritance Tax may be available.

## Legal Definition 28: Capital Gains Tax (CGT)

A tax on the profit made when selling an asset. Each person has an annual CGT allowance for tax free profits.

## Legal Definition 29: Cessate Grant

A grant of representation which terminates at the end of a specified time span. Application for this is made on the form Cap A5C.

## Legal Definition 30: Chargeable amount on an age 18 to 25 Trust

On an age 18 to 25 trust the chargeable amount is the amount by which the value of the trust has decreased as a result of a disposition by the trustees.

## Legal Definition 31: Chargeable Gift

Any gifts made to a 'qualifying' charity, either during your lifetime or in your will.

## Legal Definition 32: Chargeable Value

The chargeable value of an estate on death is the total of the assets less liabilities less exempt gifts and capital relief.

# Legal Definitions

## Legal Definition 33: Charitable Trust

A trust which is held indefinitely for charitable purposes only.

## Legal Definition 34: Charity

An organisation registered as a UK charity or other qualifying organisation e.g. a Hospice.

## Legal Definition 35: Charity Exemption

Any gifts made to a 'qualifying' charity, either during your lifetime or in your Will.

## Legal Definition 36: Chattels

Any movable personal property not used for business. For example, TV, sofa, cooker, jewellery, wine, pictures, even cars and horses.

## Legal Definition 37: Child/Children

In a will, this means all legitimate and illegitimate children and legally adopted children. It does not include stepchildren, unless specifically referred to in a will.

## Legal Definition 38: Civil Partner

A person who has entered into a civil partnership with another person.

## Legal Definition 39: Civil Partnership

The relationship between two civil partners registered under the Civil Partnership Act 2004.

## Legal Definition 40: Clearance Certificate

The personal representatives can apply for a clearance certificate using form IHT30 once they have supplied the necessary forms and paid all the Inheritance Tax and interest due. Find out more about clearance certificates in the guide: 'Inheritance Tax and record keeping'.

## Legal Definition 41: Co-habitee

A partner of the deceased who may have a claim to a share of the estate. The term 'common law wife' is not recognised in law.

# Legal Definitions

## Legal Definition 42: Codicil

An addition or change made to an existing Will. It has to be signed and witnessed in the same way as a will.

## Legal Definition 43: Coroner

A doctor or lawyer responsible for investigating deaths in the following situations:

- The Deceased was not attended by a doctor during the last illness or the doctor treating the Deceased had not seen him or her either after death or within the 14 days before death
- The death was violent or unnatural or occurred under suspicious circumstances. The cause of death is not known or is uncertain
- The death occurred while the patient was undergoing an operation or did not recover from the anaesthetic
- The death was caused by an industrial disease
- The death occurred in a prison or in police custody.

## Legal Definition 44: Deed of Variation

A document which varies a will or the provisions of intestacy after a person has died.

An 'instrument' or 'deed' of variation or 'family arrangement' enables beneficiaries of a deceased's estate to alter the distribution of that estate. This can be done up to two years after the date of death. It is sometimes known as a deed of assignment, or deed of surrender or release. With effect from 1 August 2002 the changes are only effective from the date of death if the deed contains a statement of intent that it is to take effect for tax purposes.

## Legal Definition 45: De facto

Usually used when referring to the common law spouse as a de facto wife or the de facto husband. Not legally married, but living together as if married, the common law couple do not share the same rights as a married couple.

## Legal Definition 46: Deposition

The official statement by a witness taken in writing as opposed to having been taken verbally.

## Legal Definition 47: Devise

Land or buildings left or transferred by a will.

# Legal Definitions

## Legal Definition 48: Discretionary Trust

A trust where the trustee has full power to decide which members of a group of beneficiaries are to receive their capital and when.

## Legal Definition 49: Disposition

A disposal or transfer of property or cash, including both the creation and the release of any debt or right. The legislation specifically includes certain types of transfer and more information can be found in the Inheritance Tax Manual.

## Legal Definition 50: Domicile

The country you consider to be your permanent home even if you actually reside elsewhere. It is distinct from nationality and place of residence.

## Legal Definition 51: Double taxation convention (DTC)

A treaty which helps prevent a transfer from being taxed by two countries if both countries have the right to tax the same property when a death occurs or a gift is made.

## Legal Definition 52: Emolument

The payment that is made for work that has been done including salary, bonuses and some other forms of benefit in kind.

## Legal Definition 53: Employee Trust

A discretionary trust set up to benefit employees of a particular occupation or firm and the relatives and dependants of those employees. For more information on employee trusts, please see our guide – What are special trusts?

## Legal Definition 54: En ventre sa mere

This means a child unborn within the mother's womb.

## Legal Definition 55: Estate

The property, money and possessions of a deceased person. For inheritance tax purposes since 22 March 2006, this now includes a person's assets in their sole name, their share of joint assets, assets they have nominated elsewhere, assets in trust (an immediate post death interest, disabled person's interest or a transitional serial interest) from which they had a benefit, assets given away but in respect of which a benefit had been reserved and the value of alternatively secured pension funds where the deceased had benefits as an original member or as a dependant who received benefits in succession to an original member. The value of

# Legal Definitions

chargeable transfers within seven years of death (most usually gifts other than those to individuals) must be added in order to calculate the inheritance tax due.

## Legal Definition 56: Excepted Estate

- One that is less than £325,000
- One that is more than £325,000 but less than £1,000,000 but no Inheritance Tax is payable because the estate passes to a spouse, civil partner or a charity
- One where the deceased person was a 'foreign domiciliary' – they lived permanently abroad and died abroad and the value of their UK assets is under £150,000.

## Legal Definition 57: Executor (m)/Executrix (f)

The name given to a personal representative if he or she is appointed by a valid will or codicil. The executor will normally have to apply for a Grant of Probate to confirm that he or she is the person with legal authority to deal with the estate of the deceased.

## Legal Definition 58: Exempt Gifts

Gifts that are exempt from inheritance tax. These include:

- Gifts to individuals more than seven years before death. See potentially exempt transfers
- Gifts to spouses or civil partners
- Gifts not exceeding £3,000 in any one tax year. See annual exemption
- Gifts on consideration of marriage or civil partnership
- Gifts to UK charities
- Gifts for national purposes
- Small gifts
- Gifts which are normal expenditure out of income.

## Legal Definition 59: Exempt Transfer

An exempt transfer is one that is wholly covered by one or more exemptions.

## Legal Definition 60: Exemptions

Some gifts are exempt from inheritance tax because the gifts are covered by exemptions. See exempt gifts for details of the exemptions from inheritance tax which may apply.

## Legal Definition 61: Exit Charge

Also known as a proportionate charge.

# Legal Definitions

## Legal Definition 62: Fall in Value Relief

When tax, or additional tax, is payable on a gift because the donor has died and the value of a gift has fallen between the date of the gift and the date of death, then tax is usually charged on the reduced value of the gift.

## Legal Definition 63: Financial Services Authority (FSA)

The government agency that regulates investment business as required by Financial Services Act 1986.

## Legal Definition 64: Flat-rate Charge

The inheritance tax charge on accumulation and maintenance trusts, age 18 to 25 trusts and certain other special trusts where proportionate, exit and ten-yearly charges do not apply.

## Legal Definition 65: Foreign Domiciliary

A type of excepted estate. Where the deceased died after 5 April 2004 and was never domiciled or deemed domiciled in the UK the estate can be treated as an excepted estate provided the UK estate consists only of cash or quoted shares not exceeding £100,000 in total.

## Legal Definition 66: Former Civil Partner

A person whose civil partnership has been legally dissolved.

## Legal Definition 67: Free of Tax

Gifts made by a will can be expressed to be free of tax, which means that any Inheritance Tax on the value of that gift is borne by the residuary estate.

## Legal Definition 68: FOTRA

Some UK Government securities are issued on 'Free Of Tax to Residents Abroad' (FOTRA) terms and are exempt from UK inheritance tax where the beneficial owner of the security was not ordinarily resident in the UK.

## Legal Definition 69: FOTRA Gilts

'Free of Tax to Residents Abroad' gilts are securities issued by the Treasury with the condition that they, and the interest on them, are exempt from UK taxation so long as they are held beneficially by or on behalf of persons whose ordinary residence is outside the UK. This is excluded property.

# Legal Definitions

## Legal Definition 70: Gift in Consideration of Marriage or Civil Partnership

A gift made to a person who is about to get married or to form a civil partnership. These gifts are exempt from IHT up to the following amounts:

- £5,000 made by the person's parent
- £2,500 made by the person's grandparent
- £1,000 made by anyone else.

## Legal Definition 71: Gifts to Spouse or Civil Partner

Means anything left to your spouse or partner who has their permanent home in the UK, or gifts made to them in your lifetime.

## Legal Definition 72: Gift with Reservation

See gift with reservation of benefit.

## Legal Definition 73: Gift with Reservation of Benefit

A gift which is not fully given away so that the person getting the gift does so with conditions attached or the person making the gift keeps back some benefit for themselves.

## Legal Definition 74: Goodwill

The value of a business over and above its book value of assets, which represents the goodwill of customers or the skill and expertise of company employees.

## Legal Definition 75: Government Securities

Securities issued by the Treasury quoted on the stock exchange.

## Legal Definition 76: Grant ad colligenda bona

A grant of representation which is limited to a particular purpose and allows the administrator power to preserve the deceased's estate. For example, where part of the deceased's estate consists of perishable goods.

## Legal Definition 77: Grant Caeterorum

A grant of representation which follows an initial grant in respect of limited property thus giving the administrator power over the remaining assets. Application for this type of grant requires the submission of a form IHT400.

# Legal Definitions

## Legal Definition 78: Grant of administration de bonis non

Grant of representation 'concerning goods not administered'. It is used where, following a grant of representation, the personal representative dies without completing the administration of the estate.

## Legal Definition 79: Grant of Double Probate

A grant of representation where one executor does not wish to prove the will and the right to join others later is reserved. When the non-proving executor wishes to take up office later, a grant of double probate is made. Application for this is made on the form Cap A5C which is available from the Probate and IHT Helpline on 0845 3020900.

## Legal Definition 80: Grant of Letters of Administration

The legal document issued by the Probate Registry, appointing an administrator (normally the next-of-kin) to deal with the estate. This is issued when there is a will but no executor is named, where the executors are unable to apply, where they do not wish to be involved in dealing with the estate or where the deceased has not made a will or any will made is not valid.

## Legal Definition 81: Grant of Letters of Administration with will annexed

The proof of legal authority required by the person who is entrusted with dealing with a deceased person's estate where there is a will but there is no executor named, or when the executors are unable or unwilling to apply for the grant.

## Legal Definition 82: Grant of Probate

The legal document issued by the Probate Registry, appointing an executor to deal with an estate. Normally only obtainable by the executors of a valid will.

## Legal Definition 83: Grant of Representation

Collectively refers to both a Grant of Probate or a Grant of Administration, giving the personal representative the legal right to administer and distribute the estate.

## Legal Definition 84: Grant Pendente Lite

An interim Grant of Representation which is only effective for a limited time, for example, while the validity of a will is being contested.



# Legal Definitions

## Legal Definition 85: Gross Estate

Total value of all assets before any debts are taken into consideration.

## Legal Definition 86: Guardian

A person who would become responsible for your children in the event of your death before those children reach the age of 18.

## Legal Definition 87: HMRC

Her Majesty's Revenue and Customs. This is a government department that used to be called the Inland Revenue.

## Legal Definition 88: IHT 205

The IHT205 form is completed as part of the probate process if the deceased's estate is an 'excepted estate' and the person died on or after 1 September 2006 as a permanent resident of England, Wales or Northern Ireland.

## Legal Definition 89: IHT 400

The IHT400 form – which has replaced IHT200 form – and its supplementary pages (schedules IHT401 to IHT423) is completed as part of the probate process if there is IHT to pay or the deceased's estate does not qualify as an 'excepted estate'.

## Legal Definition 90: Immediately Chargeable Transfer (ICT)

Before 22 March 2006, there was an immediate claim for inheritance tax on gifts into discretionary trusts or to companies. For gifts made on or after 22 March 2006, an immediately chargeable transfer is one made to the trustees of a relevant property trust or to a company. Additional tax may be payable if the donor dies within seven years of the gift.

## Legal Definition 91: Income Tax

Tax payable on income. An income tax return must be prepared and submitted for the deceased for the year in which they died and any tax due must be paid before the distribution of the estate.

## Legal Definition 92: Inheritance Tax (IHT)

The tax normally due if your estate (sometimes including any assets held in trust and gifts during lifetime, made within seven years of death) is valued over the current Inheritance Tax threshold (£325,000 in 2010-11). The tax is payable at 40 per cent on the amount over this

# Legal Definitions

threshold. (i.e. an estate of £425,000 would normally pay 40% of (£425,000 less £325,000) = £40,000). Certain exemptions exist.

## Legal Definition 93: Inquest

A public enquiry, held by a coroner, into the medical cause and circumstance of a death.

## Legal Definition 94: Instrument of Variation

A document which varies a will or the provisions of intestacy after a person has died. An 'instrument' or 'deed' of variation or 'family arrangement' enables beneficiaries of a deceased's estate to alter the distribution of that estate. This can be done up to two years after the date of death. It is sometimes known as a deed of assignment, or deed of surrender or release. With effect from 1 August 2002 the changes are only effective from the date of death if the deed contains a statement of intent that it is to take effect for tax purposes.

## Legal Definition 95: Interest

The right to property.

## Legal Definition 96: Intestacy

The name for the situation which arises when someone dies without making a Will. Their estate is then distributed according to the Rules of Intestacy.

## Legal Definition 97: Intestate

A death where there is no legally valid will.

## Legal Definition 98: Issue

Your children and all direct bloodline descendants arising from them – grandchildren, great-grandchildren, and so on.

## Legal Definition 99: Joint Tenants

Property owned by 2 or more people. Joint tenants are usually husband and wife and in the event of the death of one of them their share in that asset passes automatically to the surviving co-owner(s) and not as part of their estate under their will. A joint tenant cannot make a gift of their share of the property to anyone else as it is not theirs to give.

## Legal Definition 100: Lasting Power of Attorney

A power of attorney which is not revoked by any subsequent mental incapacity of the person granting the power.

# Legal Definitions

## Legal Definition 101: Legacy

A gift left in a will, other than houses or land. There are three common types of legacies:

- A specific legacy is simply a specific property or object
- A pecuniary legacy is a gift of a specific sum of money
- A residuary legacy is a gift of the money or assets left over when all other legacies and expenses have been paid.

## Legal Definition 102: Liabilities

The debts that need to be settled by the estate following the death of the deceased e.g. household and general bills, funeral expenses, outstanding income tax.

## Legal Definition 103: Life Interest

A common form of interest in possession in settled property where a person has an interest for the duration of their lifetime.

## Legal Definition 104: Life Tenant

A person who holds a life interest in settled property.

## Legal Definition 105: Limited Probate

Where an executor is appointed in respect of certain assets only, such as literary works.

## Legal Definition 106: Living Will

Sometimes known as an 'advance directive' is a document containing instructions to medical personnel to allow them to stop prolonging your life in the event of you becoming terminally ill, permanently unconscious or losing your mental capacity. Some people decide they do not want to be kept alive in such an event by either artificial means or medical treatment. Living wills cannot necessarily be enforced by law.

## Legal Definition 107: Minor

A person under 18 years of age.

## Legal Definition 108: Net Estate

This is the gross estate minus all debts.

# Legal Definitions

## Legal Definition 109: Next of Kin

The nearest blood relative of the deceased.

## Legal Definition 110: Nil Rate Band Allowance

The amount that can be passed to beneficiaries without paying Inheritance Tax. For 2010/2011, this is £325,000.

## Legal Definition 111: Nil Rate Band Trust

Also called a Nil Rate Band Discretionary Trust. A trust usually created by a will, designed to hold assets up to the amount inheritance tax allowance.

## Legal Definition 112: Nominated Asset

Certain assets, such as deposits with Friendly societies, National Savings Bank accounts and National Savings Certificates, can be transferred on death direct to chosen beneficiaries by nomination. Nominated property does not pass under the will or intestacy but it does form a part of the estate for inheritance tax purposes.

## Legal Definition 113: Nominee

A person who holds property on behalf of another.

Non-instalment option property

A phrase used in HMRC Inheritance Tax to describe property on which the instalment option may not be chosen, such as bank accounts, household and personal goods and life insurance policies.

## Legal Definition 114: Normal Expenditure Out of Income Gifts

Any regular gifts you make out of your after-tax income, not including your capital, are exempt from Inheritance Tax. These gifts will only qualify if you have enough income left after making them to maintain your normal lifestyle.

These include:

- Monthly or other regular payments to someone
- Regular gifts for Christmas and birthdays, or wedding/civil partnerships, anniversaries
- Regular premiums on a life insurance policy – for you or someone else.

You can also make exempt maintenance payments to:

- Your husband, wife or civil partner

# Legal Definitions

- Your ex-spouse or former civil partner
- Relatives who are dependent on you because of old age or infirmity
- Your children, including adopted children and step-children, who are under 18 or in full-time education.

## Legal Definition 115: Potentially Exempt Transfers

If you make a gift to someone and you survive for 7 years after making the gift, then that gift is exempt from IHT. If you die within seven years and the total value of gifts you made is less than the IHT threshold, then the value of the gifts is added to your estate and any tax due is paid out of the estate.

However, if you die within seven years of making a gift and the gift is valued at more than the IHT threshold, IHT will need to be paid on its value, either by the person receiving the gift or by the representatives of the estate.

If you die between three and seven years after making a gift, and the total value of gifts that you made is over the threshold, any IHT due on the gift is reduced on a sliding scale. This is known as 'Taper Relief'.

Time between the date the gift was made and the date of death

3 to 4 years

4 to 5 years

5 to 6 years

6 to 7 years

Taper relief percentage applied to the tax due

20%

40%

60%

80%

However if you give an asset away at any time, but keep an interest in it – for example, you give your house away but continue to live in it rent-free – this gift will not be a potentially exempt transfer, and is known as a gift with reservation of benefit. In this case a current market rent must be paid to the owner.

# Legal Definitions

## Legal Definition 116: Notice of Determination

A notice of determination may be issued where the personal representatives do not agree the value of the transfer. It is a written notice which states that the outstanding matters have been determined or payment of the outstanding tax has not been made. There is a right of appeal.

## Legal Definition 117: Oath

A pledge to tell the truth often calling upon God as a witness.

## Legal Definition 118: Outright Gift

A gift where the donor gives away full ownership of the gift and does not retain any benefit.

## Legal Definition 119: Pecuniary legacy

A gift of a sum of money under a will.

## Legal Definition 120: Personal Representative

A general term for both administrators in an intestate estate and executors where there is a valid will.

## Legal Definition 121: Personal Chattels

These are defined in Section 55 (1) (x) Administration of Estates Act 1925 and mean 'carriages, horses, stable furniture and effects (not used for business purposes), motor cars and accessories (not used for business purposes), garden effects, domestic animals, plate, plated articles, linen, china, glass, books, pictures, prints, furniture, jewellery, articles of household or personal use or ornament, musical and scientific instruments and apparatus, wines, liquors and consumable stores, but do not include any chattels used at the death of the intestate for business purposes nor money or securities for money'.

## Legal Definition 122: Per Stirpes

If a property is to be divided 'per stirpes' among the children of a deceased person, then each child takes an equal share. If a child has predeceased the deceased that child's children will take equally between them the share that the predeceased child would have taken.

## Legal Definition 123: Potentially Exempt Transfer

Up to 22 March 2006, a potentially exempt transfer (PET) was an outright gift to an individual, to an accumulation and maintenance trust, or to a disabled person's interest, which becomes an exempt transfer if the donor lives for seven years after the date of the gift. For transfers made on or after 22 March 2006, a PET is an outright gift to an individual, to a

# Legal Definitions

disabled person's Interest, or to a bereaved minor's trust on the coming to an end of an immediate post-death interest which becomes exempt if the donor lives for seven years after the date of the gift.

## Legal Definition 124: Post Mortem

Where there is no certifiable reason for a person's death, doctors may ask relatives for permission to carry out a post-mortem which is a medical examination of the body to determine the cause of death. It should not delay the funeral.

## Legal Definition 125: Power of Attorney

An authority given by one person to another to act for him in their absence. The person authorised to act is the attorney of the other. See also enduring power of attorney.

## Legal Definition 126: Privileged Will

A will made by a soldier on active service or a sailor at sea which does not have to comply with the usual formalities to make it valid. It does not have to be in writing, or, if it is in writing, does not have to be witnessed by two witnesses. The soldier or sailor can also be a minor.

## Legal Definition 127: Probate

The term probate is often given to the process of administering the affairs of a deceased person. In order to release assets held in banks, sell property, transfer shares etc, many institutions require one of the following certificates to satisfy themselves that they are releasing estate assets to the person legally entitled: –

- If there is a will  
The original will (not a copy) is assessed by the Probate Registry and provided it is determined to be valid, a Grant of Probate is issued, and the executor named may then administer the estate in accordance with that Will.
- If there is no will  
The next-of-kin is approved by the Probate Registry and a Grant of Letters of Administration is issued. The next-of-kin then administers the estate in accordance with  
The Rules of Intestacy.

## Legal Definition 128: Probate Registry

A court within the Family Division of the High Court. Responsible for making sure that a will is valid and the applicant is legally entitled to administer the estate.

# Legal Definitions

## Legal Definition 129: Proportionate Charge

An inheritance tax charge on a relevant property trust (link to relevant property trust in the glossary) which arises when property in the trust ceases to be relevant property or when the trustees make a disposition which reduces the value of the relevant property. The main examples of property ceasing to be relevant property are when the settlement comes to an end or when some of the property is distributed to beneficiaries.

## Legal Definition 130: Registrar

The person who registers the death. By law, every death must be registered by the Registrar of Births, Deaths and Marriages for the sub-district in which it occurred.

## Legal Definition 131: Relevant Business Property

Types of property on which business relief may be available. These include:

- A business
- An interest in a business, such as a partner
- Unquoted shares which are not listed on a recognised stock exchange
- Shares or securities which give the transferor control of a business, land, buildings, plant or machinery used wholly or mainly in the business or partnership

## Legal Definition 132: Residuary Beneficiary

Any person entitled to receive all or part of a share of the residue of an estate after all debts, taxes and specific legacies have been paid, under the terms of a will or as per the Rules of Intestacy.

## Legal Definition 133: Residuary Estate

Means your estate after the deduction of specific gifts and money gifts, debts, funeral and testamentary expenses.

## Legal Definition 134: Residue

The remainder that is left after the monetary legacies, specific gifts, funeral expenses, Inheritance Tax and other testamentary expenses have been paid.

## Legal Definition 135: Revocation

When the testator decides to change their will completely and invalidates the previous one, they are deemed to have revoked their will.



# Legal Definitions

## Legal Definition 136: Settlement

A settlement occurs when property is held in trust for successive beneficiaries. The property which a settlor puts into trust is known as the trust fund or 'settled property'.

## Legal Definition 137: Settlor

A person who puts property into a trust. For inheritance tax purposes a settlor is the person who makes a settlement or who directly or indirectly provides the assets for a settlement.

## Legal Definition 138: Settlor's Cumulative Total

When settlor sets up a trust, the settlor's cumulative total is all the chargeable transfers made in the seven years before the setting up of the trust. While the settlor is alive, the cumulative total does not include the amount of any potentially exempt transfers (PETs). If the settlor's cumulative total is later adjusted to include PETs which become chargeable as a result of the settlor's death, the charges on the trust will be revised, and extra tax may become payable.

## Legal Definition 139: Simultaneous Deaths

For inheritance tax, if two or more people die and it is not known who died first, we assume that they have died at the same moment. This does not alter the legal position for the administration of the estate which is that the elder is presumed to have died first. This is also known as commorientes and further information on this subject can be found in the IHT Manual.

## Legal Definition 140: Small Gift Exemption

Up to £250 may be given to as many individuals as you wish tax-free in any one tax year. However, you can't give a larger sum and claim exemption for the first £250. You can't use your small gifts allowance together with any other exemption when giving to the same person.

## Legal Definition 141: Social Fund

Part of the Social Security system which may provide help with the cost of a funeral, depending on circumstances.

## Legal Definition 142: Solvent

The value of the assets exceeds any debts and liabilities.

# Legal Definitions

## Legal Definition 143: Specific Bequests

Particular items gifted by a will. Gifts you want left to specific people such as your pet cat to a specific individual you know would be able to look after it. They may also be referred to as 'specific legacies' or 'specific gifts'.

## Legal Definition 144: Specified Exempt Transfers

Gifts made to the deceased's spouse or civil partner charities, political parties, housing associations, maintenance funds for historic buildings and employee trusts must be added back to the estate to see if the estate qualifies as an excepted estate.

## Legal Definition 145: Specified Transfers

Gifts of cash, chattels or corporeal movables, quoted shares or securities, or outright gifts of land or buildings to individuals, not gifts into trust. For an estate to qualify as an excepted estate (excepted estate), specified transfers made within 7 years of death cannot exceed £100,000.

## Legal Definition 146: Spouse

When using terms such as 'husband' and 'wife', it is important to remember that this refers to your husband or wife at the time a will was written. If you are going through a divorce, your spouse remains your husband or wife until you receive your decree absolute.

## Legal Definition 147: Stamp Duty Land Tax

A tax on land transfers paid by the buyer. It is currently paid on transfers of over £125,000.

## Legal Definition 148: Statutory Legacy

The amount of money which is distributed to a surviving spouse of a person who dies intestate.

## Legal Definition 149: Subject to Tax

Gifts made by a Will can be expressed to be subject to tax which means that the gift bears its own tax rather than having the tax on it paid out of the Residuary Estate.

## Legal Definition 150: Taper Relief

If the total chargeable value of all the gifts made between three and seven years before a death is more than the threshold at death, then taper relief is due. The relief reduces the amount of tax payable on a gift, not the value of the gift itself.

# Legal Definitions

## Legal Definition 151: Ten-yearly Charge

An inheritance tax charge which arises on a relevant property trust on the tenth anniversary of the setting up of the trust and each subsequent ten-year anniversary.

## Legal Definition 152: Tenants in Common

Where two or more people own assets as 'Tenants in Common' it means that on the occasion of the death of one of them, their share in that asset passes in accordance with the provisions of their Will, if they have one, or under the Rules of Intestacy if they do not. Each joint owner has a distinct share which forms part of their estate on death and does not pass automatically to the surviving tenant(s).

## Legal Definition 153: Testator (m)/Testatrix (f)

The person who actually sets out his wishes and requests as to how their estate should be divided in the form of a will. A testator must be over 18 years of age and of sound mind at the time of making the will.

## Legal Definition 154: Transitional Serial Interest (TSI)

Where an interest in possession trust arises before 6 April 2008, it will be regarded as a transitional serial interest (TSI) if it arises on or after 22 March 2006, but follows a previous interest in possession in effect immediately before that date. An interest in possession trust may also be regarded as a TSI if it arises on the death of the holder of the previous interest on or after 6 April 2008 and if either the new holder is the spouse or civil partner of the previous holder or the settled property consists of a contract of life insurance.

## Legal Definition 155: Trust

These are arrangements set up by will or deed obligations which bind a person holding the legal ownership of assets (trustee) to deal with the assets for the benefit of others (beneficiaries). The most common form of trusts which arise are Bereaved Minor Trusts; 18-25 Trusts; Disabled Persons Interest Trusts; Relevant Property Trusts; Immediate Post Death Interests, Transitional Serial Interests and Discretionary Trusts.

## Legal Definition 156: Trustee

A person responsible for administering a trust. They hold any assets until nominated beneficiaries meet certain criteria set out in the will e.g. they reach the age of 18. Trustees normally have powers to distribute monies and have full power to sell and invest monies held on trust.

# Legal Definitions

## Legal Definition 157: Witnesses

A will is always subject to the signatures of two witnesses. They each have to sign the will having witnessed the signature of the testator.