



Trusts, Wills and Probate Library

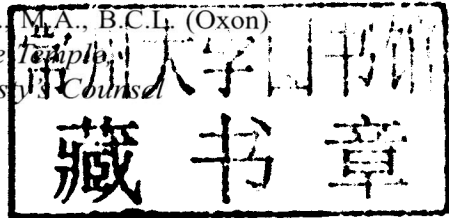
# **Williams, Mortimer and Sunnucks** **on** **Executors, Administrators and** **Probate**

(Being the 20th edition of Williams on Executors  
and the 8th edition of Mortimer on Probate)

General Editors

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**Williams, Mortimer and Sunnucks**  
**on**  
**Executors, Administrators and**  
**Probate**

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First Edition	1832	by Rt. Hon. Sir E. V. Williams
Second Edition	1838	by Rt. Hon. Sir E. V. Williams
Third Edition	1841	by Rt. Hon. Sir E. V. Williams
Fourth Edition	1849	by Rt. Hon. Sir E. V. Williams
Fifth Edition	1856	by Rt. Hon. Sir E. V. Williams
Sixth Edition	1867	by Rt. Hon. Sir E. V. Williams
Seventh Edition	1873	by Rt. Hon. Sir E. V. Williams and W. V. Vaughan Williams
Eighth Edition	1879	by Hon. Sir Roland L. Vaughan Williams and W. V. Vaughan Williams
Ninth Edition	1893	by Hon. Sir Roland L. Vaughan Williams
Tenth Edition	1905	by Hon. Sir Roland L. Vaughan Williams and A. R. Ingpen KC
Eleventh Edition	1921	by Sydney E. Williams, assisted by H. Clifford Mortimer
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Thirteenth Edition	1953	by Sir David Hughes Parry, assisted by D. C. Potter
Fourteenth Edition	1960	by Professor G. W. Keeton, assisted by E. H. Scamell
Fifteenth Edition	1970	by J. H. G. Sunnucks
Sixteenth Edition	1982	by J. H. G. Sunnucks, John Ross Martyn and Kevin Garnett
Seventeenth Edition	1993	by J. H. G. Sunnucks, John Ross Martyn and Kevin Garnett
Eighteenth Edition	2000	by J. H. G. Sunnucks, assisted by John Ross Martyn and Nicholas Caddick
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#### Mortimer on Probate

First edition	1911	by Clifford Mortimer
Second edition	1927	by Clifford Mortimer and Hamish H. H. Coates
Third edition	1970	by J. H. G. Sunnucks
Fourth edition	1982	by J. H. G. Sunnucks, John Ross Martyn and Kevin Garnett
Fifth edition	1993	by J. H. G. Sunnucks, John Ross Martyn and Kevin Garnett
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## **The Writers and Founding Editors of This Book: Edward Vaughan Williams, Clifford Mortimer, and James Sunnucks**

Edward Vaughan Williams was called to the Bar in 1823 and, like many barristers since, he edited and wrote from his early days of practice. At first he edited law reports, but then, in 1832, published the first edition of *Williams on Executors*. Joseph Chitty, one of the early members of the Chitty legal dynasty, described it as “*one of the most able and correct works that have ever been published on any legal subject.*” High praise indeed. He became a Justice of the Court of Common Pleas in 1846, and was soon acknowledged as one of the most powerful and capable judges sitting at Westminster Hall. His judgments could only be described as concise, legally correct, and imbued with a common sense approach. An unfortunate deterioration in his hearing caused his retirement for the bench in 1865, and he died ten years later. Two at least of his descendants achieved distinction. One of his sons was Lord Justice Roland Vaughan Williams, and one of his grandsons was Ralph Vaughan Williams, the distinguished composer.

Clifford Mortimer is best known to the present day public as the father of the late John Mortimer QC, the creator of Horace Rumpole. The son gave a loving account of the father, in his play *A Voyage Round My Father* as well as in various written reminiscences. Clifford seems to have been a larger than life figure, fond of quoting Shakespeare in both suitable and unsuitable contexts. An example of the suitable was his saying that, like a woman mentioned in *Twelfth Night*, he had sat like patience on a monument during the speech or speeches of other counsel. An example of the unsuitable was, perhaps, when in the corridors of the Law Courts he yelled to an instructing solicitor who had forgotten a document the words of Macbeth: “*The devil damn thee black, thou cream-faced loon.*” These anecdotes must not be allowed to obscure the fact that he had a large practice in what was then the Probate, Divorce and Admiralty Division of the High Court. A search of electronic media shows, for example, that he was counsel in such significant cases, mentioned in this book, as *In the Estate of Plant* [1926] P 139 and *Re R., deceased* [1951] P.10 (in which he appeared with his son John). He was also counsel in at least one important piece of matrimonial litigation, *Hyman v Hyman; Hughes v Hughes*, reported at [1929] P 1.

An eminent reviewer made some cogent criticisms of the 1960 edition of *Williams on Executors*. James Sunnucks (better known as Jim) was entrusted with editing it to meet those criticisms, and to merge *Mortimer on Probate* with it. He succeeded markedly in both those tasks. This was only one of his achievements during his years of practice at the Chancery Bar. He was Counsel in a number of noteworthy cases including *Re Flynn* [1982] 1 W.L.R. 310 (which is cited

repeatedly in this work), *Ives v High* [1967] 2 Q.B. 379 (an important case on estoppel) and *Cityland and Property Holdings Ltd v Dabrah* [1968] Ch. 166 (a mortgage case). There is a fuller memoir of Jim in the last edition, penned by Lord Justice Mummery. As he wrote, Jim was a rounded person, who had a full life in Lincoln's Inn, and at home in East Mersea. He served the Inn, the Diocese of Chelmsford, and his local community in many ways. The memoir records that Jim was fond of the Victorian poets, and could quote long passages from memory; so poetry, and not only probate, links him with Clifford Mortimer. There is no record, however, of his abusing any instructing solicitor with an offensive quotation. He was too kind and considerate to do any such thing.



## Preface

A recent competition on the *Obiter* page of the Law Society Gazette asked readers to nominate a character whose estate they would least like to wind up. The winner, Helen Hall, suggested Dracula. Our hope is that Dracula's English representatives and their advisers will find this new edition of *Williams, Mortimer & Sunnucks* useful. From its pages, they can learn all about their stake in his corpse, the significance of his Transylvanian domicile, how to go about getting a grant, what assets are available to them, how to deal with claims from those with whom he came into particularly close contact (or, more probably, from their estates), how to deal with disputes between the various Brides of Dracula and, most importantly, the position regarding their own remuneration. We predict hours of entertainment.

More seriously, the object of this book is to give practitioners, and perhaps others, guidance on the making of grants in respect of the estates of people who have died and how those estates are administered and distributed.

Part 1 of the book deals with a number of preliminary matters. Chapters 1 and 2 deal with the probate jurisdiction of the courts. They include material, for which we must thank Edward Bragiel of Hogarth Chambers, explaining how the recently adopted EU Regulation on Succession will affect practitioners. Chapters 3 and 4 explain some of the terms and concepts encountered in this area of law, providing, for example, definitions of terms such as "executor" and "administrator" and describing the different forms of grant. Chapters 5 to 7 consider when a grant is needed and what happens when a person acts without one.

Parts 2 to 5 are concerned with grants and how to go about obtaining them. Part 2 examines the office and appointment of executors and the admission of wills to probate. Part 3 deals with the office of administrator and the entitlement to a grant of administration in cases of partial and total intestacy. Part 4 (Non-contentious Practice) looks at the procedure in relation to grants where there is no dispute as to whether the deceased left a will and, if so, the identity and terms of that will. These make up the vast majority of probate cases. Where, however, there is a dispute, the procedure for resolving that dispute is described in Part 5 (Contentious Practice). The number of recent cases referred to in Parts 2 to 5, shows how relatively frequently issues arise in relation to these matters.

Once the grant is obtained, the administration of the estate can proceed. In this regard, Part 6 explains the assets that go to make up the estate and the liabilities to which it is subject. Part 7 addresses how the representatives should go about the actual business of administration—their duties and powers and their liability for default. It also contains a much expanded chapter on taxation for which we

are particularly indebted to Charles Holbech of New Square Chambers. Part 8 deals with claims for provision under the Inheritance (Provision for Family and Dependants) Act, 1975. Part 9 then deals with administration actions – i.e. litigation in relation to matters of administration of an estate and considers in detail the position of representatives in such litigation. Part 10 is concerned with matters of distribution; how the representatives go about satisfying the claims of beneficiaries in the estate. It deals with the so-called “executor’s year” and with issues such as ademption and satisfaction, abatement and assents. It also addresses the complexities of equitable apportionment and the remedies such as refunding, following, tracing and subrogation.

The book concludes with statutory materials and other information, such as the table of distribution on intestacy and two tables dealing with state benefits which we hope will assist practitioners.

In the preface to the last edition of this book we wrote that we were “*standing on the shoulders of giants*”, namely the three originators of this book, Edward Vaughan Williams, Clifford Mortimer, and James Sunnucks. We are still there. The more we work on the text of the book, the more we are aware of what they achieved. We are very glad that their names have been so long preserved through the combination, development and updating of their work in this combined book.

In many ways, one of the privileges of being involved with *Williams, Mortimer & Sunnucks* is its historical context. It is now the 180th anniversary of the first edition of *Williams on Executors*; the 101st anniversary of the first edition of *Mortimer on Probate*; and the 42nd anniversary of the combined book, which was the 15th edition of Williams and the 3rd edition of Mortimer. The first edition was published in the year of the Great Reform Act of 1832; the fourth edition followed the year of revolutions all over Europe and the 10th edition of 1905 came out as the Dreadnought was launched and the suffragette movement had its first public protest. Unsurprisingly, new editions were not published during either World War; many of the users of the book, and at least one future editor (James Sunnucks) were defending our laws, instead of practising them.

Between the first and second impressions of the fifteenth edition, Britain joined the then Common Market. The 18th edition coincided with the new millennium. Times change and the cases and topics discussed in *Williams, Mortimer & Sunnucks* are often a reflection of past times. Despite this, we have deliberately retained passages from past editions that often seem more than a little quaint to readers of the present edition (we are particularly fond of the discussion over Emblements at paragraph 44–07). However, we feel this is important. Our present and our future are shaped by our past (particularly in this area of law) and we cannot learn from the past unless books such as this continue to deal with the past. In addition, old cases can still be useful. One of us (JGRM) was once assisted on the allowable amount of funeral expenses by *Offley v Offley* (1691) Prec. Chance.26.

We have had considerable assistance in producing this new edition of *Williams, Mortimer & Sunnucks* and it gives us huge pleasure to thank all of those involved.

First we mention those whose names appear on the title page, by virtue of their work on specific chapters. From Hogarth Chambers, in alphabetical order, they

are Edward Bragiel, Julia Clark, Gwilym Harbottle and Alexander Stewart. From New Square Chambers, again in alphabetical order, they are John Eidinow, Jane Evans-Gordon, Charlotte Ford, Charles Holbech, Alexander Learmonth, and Leigh Sagar. The chapter on Social Security matters, which can be of considerable practical importance, was updated and in many places re-written by Veronica Mathew, formerly of Leicester De Montfort Law School.

The next two names are ones of distinction in banking and medicine respectively. Martyn Frost was the head of the technical team supporting the trust business of Barclays Bank; he gave us help on new material in the book dealing with money laundering issues. Robin Jacoby is Emeritus Professor of Old Age Psychiatry at the University of Oxford. He updated the medical paragraphs in Chapter 13 (having written them in the edition in which they first appeared). We are happy to say that both these gentlemen are still making their expertise available to the legal profession and the public, Martyn through Trenfield Trusts & Estates Consulting Ltd. and Robin via [www.banks-v-goodfellow.com](http://www.banks-v-goodfellow.com).

We also have great pleasure in thanking Helen Whitby, the District Probate Registrar at Ipswich, for her help on non-contentious Registry procedure and Paul Teverson, a Master of the Chancery Division of the High Court, for his help with the chapters dealing with Contentious Practice and Administration Proceedings. We feel that their assistance is of particular importance in making *Williams, Mortimer & Sunnucks* relevant and helpful to practitioners.

It is conventional to conclude a list of thanks in textbooks such as this by mentioning the librarians of Lincoln's Inn, and our colleagues in Chambers. This is because convention, as so often, reflects reality. The on-going help of the one, and intellectual stimulation of the other, have been important to us. Finally, it is another convention to thank one's publishers. Once again, this convention reflects reality. We are truly grateful to Taryn Dullisear and Mariam Moore of Sweet & Maxwell for their efficiency and patience in helping to bring this book to publication.

JOHN ROSS MARTYN  
New Square Chambers

NICHOLAS CADDICK Q.C.  
Hogarth Chambers

December 2012

### **Note on Books and Sources of Information**

We have referred in footnotes to a number of textbooks and precedent books. The precedent books are:—

*Drafting Trusts and Will Trusts*, by James Kessler (10th edn, 2011)  
*Practical Will Precedents*, which is loose-leaf (ed. Withers)  
*Brighouse's Precedents of Wills* (14th edn, 2007)

*Potter & Monroe's Tax Planning with Precedents*, also loose-leaf  
*Sweet & Maxwell's Express Wills* is a CD-ROM package

The textbooks mentioned in the footnotes are too numerous to list exhaustively. Those that it may be useful to mention here are:

Dicey, Morris and Collins on the Conflict of Laws (15th edn, 2012)  
Francis on Inheritance Act Claims (loose-leaf)  
Halsbury's Laws of England (vols. 102 and 103, 5th edn, 2010)  
Hawkins on the Construction of Wills (5th edn, 2000)  
Heywood and Massey, Court of Protection Practice (loose-leaf)  
Jarman on Wills (8th edn, 1951)  
Lewin on Trusts (18th edn, third cumulative supplement 2013)  
McCutcheon on Inheritance Tax (5th edn, 2009)  
Sidney Ross on Inheritance Act Claims (3rd edn, 2011)  
Theobald on Wills (17th edn, 2010)  
Tristram and Coote's Probate Practice (30th edn, 2008)  
Williams on Wills (9th edn, 2008)

The Trusts Discussion Forum, [www.trustsdiscussionforum.co.uk](http://www.trustsdiscussionforum.co.uk), stimulates and informs practitioners in this area of law. STEP (The Society of Trust and Estate Practitioners) and ACTAPS (The Association of Contentious Trust and Probate Specialists) do the same.

“I will the Law written in our vulgar language, for now it is an old, mix’d and corrupt Language, only understood by Lawyers, whereas every Subject ought to understand the law under which he lives.”

King James I

“For who almost is there who either is not, or may not be an Executor of Administrator; or at least hath not, or may not have to do with them, either to receive from them, or to pay to them Debts or Legacies? . . . How many know no more of these, than of the Way of a Ship upon the Sea?”

Tho Wentworth, Office and Duty of Executors

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