

**ASSOCIATION OF  
CONTENTIOUS TRUST  
AND PROBATE  
SPECIALISTS (ACTAPS)**

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# ASSOCIATION OF CONTENTIOUS TRUST AND PROBATE SPECIALISTS (ACTAPS)

If you are working in the field of contentious probate and trusts, or want to move into this area, this comprehensive course will give your career a real boost.

The University of Law, in collaboration with the Association of Contentious Trust and Probate Specialists (ACTAPS), offers this training course for those wishing to specialise in contentious probate and trusts.

Predominantly distance learning, but supported by study sessions primarily at our London Bloomsbury campus, this course is designed to be studied over two years although there is an option to defer parts into a third year, if more convenient.

Our ACTAPS course is open to all solicitors, barristers and legal executives. Upon successful completion you will become an associate member of ACTAPS, a forum which allows specialists

in this field to exchange experience and expertise. After two years you will also be eligible to complete an application form for full membership of the association, which is in the absolute discretion of the Association Committee.

For the avoidance of any doubt, the Association has asked us to highlight that successful completion of the education course will not in any way guarantee a successful application for full membership. If you do not have an active contentious trust and probate practice during your two years of associate membership, after having successfully completed the education course, this may adversely affect an application for full membership.

ACTAPS issue associate membership certificates once a year in September following completion of all the elements of the course.

# STUDYING THE ACTAPS PROGRAMME WITH US WILL ENABLE YOU TO:

- Identify the strengths and weaknesses of a client's claim in probate and trust disputes
- Progress a case using 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 may be a sham
- Advise on steps to trace and recover assets

# COURSE CONTENT

Predominantly distance-learning based, this course aims to develop specialist expertise in this field. It is open to all qualified solicitors, barristers and legal executives.

The course is structured around five core modules, with an additional session on Alternative Dispute Resolution (ADR). While the course is predominantly distance-learning based, each module incorporates at least one face-to-face evening session of two hours led by an experienced practitioner.

<b>Year 1</b>	<b>Probate Actions</b> (October to January) <b>Mental Capacity</b> (February to June)
<b>Year 2</b>	<b>Inheritance Act Claims</b> (October to January) <b>Trust Actions</b> (January to March) <b>Sham Trusts and Asset Tracing</b> (March to June)
<b>Alternative Dispute Resolution</b>	<p>The <b>ADR</b> session is delivered as an afternoon face-to-face session of three hours and can be undertaken in June or September.</p> <p>Although most people study the course over two years, it is possible to defer the Sham Trusts and Asset Tracing module together with the <b>ADR</b> session into a third year.</p>

# MODULES

## PROBATE ACTIONS

**WHEN:** Year one – October to January

**WHO:** Henry Frydenson, Frydenson & Co,  
and Professor Lesley King, The University of Law

### GROUNDINGS 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

# MENTAL CAPACITY

**WHEN:** Year one – February to June

**WHO:** Senior Judge Denzil Lush of the Court of Protection and Nori Graham, Geriatric Psychiatrist

## 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 and abuse

## LASTING POWERS OF ATTORNEY

- Validity
- The role of the certificate provider
- Prescribed forms of LPA
- Procedure for registration
- Matters which will prevent registration
- Objections to registration
- The two types of LPA
- Comparison between health and welfare LPA and advance decisions
- Comparison of EPAs and LPAs

## DECISION MAKING AND DEPUTIES

- 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/LPA

# INHERITANCE ACT CLAIMS

**WHEN:** Year two - October to January

**WHO:** Henry Frydenson, Frydenson & Co,  
and Professor Lesley King, The University of Law

- 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

# TRUST ACTIONS

**WHEN:** Year two – January to March

**WHO:** Dawn Goodman, Withers

## 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 themselves 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 restitution
- Injunctions
- Removal of trustees
- Gains
- Evidence

## DEFENCES

- Trustee Act 1925, s61
- Exoneration clauses
- Limitation
- Release by the beneficiary
- The 'Prudent' defence

## AVOIDING A BREACH

- Obtaining directions from court
- Trustee Act 1925, s57
- Variation of Trusts Act 1958

## USE OF PROTECTORS

- Functions
- Litigation involving protectors



# SHAM TRUSTS / ASSET TRACING

**WHEN:** Year three – March to June

**WHO:** Robert Hunter, Herbert Smith

## 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
- Attack by creditors
- How to challenge

## 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
- Costs

# ALTERNATIVE DISPUTE RESOLUTION

**WHEN:** Year two or three

There is an additional face-to face session on Alternative Dispute Resolution (ADR). This gives you the opportunity to participate in a role

play of a mediation in a trust or wills context. You can choose whether to do ADR in your second or third year.

# COURSE FEES

The fee for this course for 2022 is £2,100 + VAT for each year. You can choose to pay the full amount (£6,000 + VAT) upfront, or pay for your first year (£2,000 + VAT) at time of booking and pay for years 2 and 3 (£4,000 + VAT) at the start of year 2. Course fees are the same whether you take the course over two or three years.

# DATES

Our ACTAPS course commences in October 2022 and study takes place over three years. Delegates have the option of completing the course in just two years by studying years two and three simultaneously. This decision is taken on completion of year one.

Face-to-face sessions are held at our London Moorgate centre or our London Bloomsbury centre. Dates to be confirmed after booking.

# BOOK

The booking form for the course starting in October 2022 will be available from May 2022. To secure a place on the course, please complete the booking form and send it to our address on the form, together with payment. Bookings are accepted on a first come, first served basis.

You can download the booking form here:

[law.ac.uk/study/legal-training/actaps](http://law.ac.uk/study/legal-training/actaps)

**Important Information:** Upon successful completion of the course, you will be granted time-limited associate membership of ACTAPS, which will automatically terminate two years following successful completion of the course. If following completion of the course and the expiry of the two years of associate membership, you apply for full membership of ACTAPS, you do so in the full knowledge that such application is in the absolute discretion of the ACTAPS Committee, and the University accepts no responsibility as a result of any such application for full membership being declined by ACTAPS. For details of eligibility requirements for full membership please refer to:

[actaps.com/join.cfm](http://actaps.com/join.cfm)

We go to great lengths to ensure that the information provided is correct at the time of publication. However, we reserve the right to withdraw or change, for any reason and without notice, any of the programmes and/or to alter tuition fees, locations, entry requirements and/or the facilities and/or services available from or provided by or on behalf of the University. Please note that the choice of subjects may be limited by considerations of timetable, staffing and/or available places on a course.