



L-4

Probate
Post-death variations

Abbreviations

PR – Personal representative

Tes – Testatrix

T – Trustee

B – Beneficiary

TA 2000 – Trustee Act 2000

WA 1837 – Wills Act 1837

CP – Civil partner

AEA 1925 – Administration of Estates Act 1925

IHTA 1984 – Inheritance Tax Act 1984

TCGA 1992 – Taxation of Chargeable Gains Act 1992

I(PFD)A 1975 - Inheritance (Provision for Family and Dependents) Act 1975

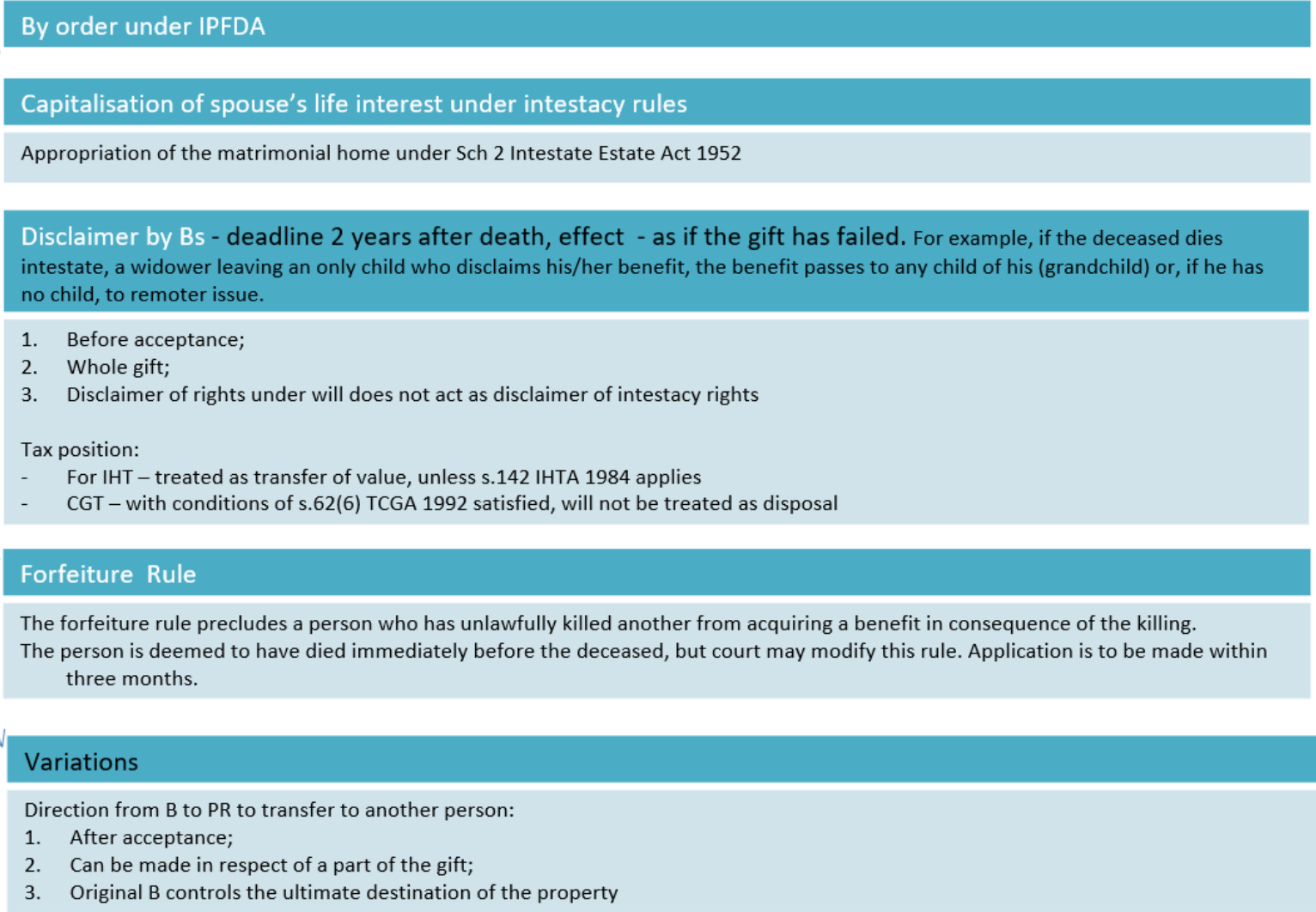
Post-death variations

1. Types
2. Under I(PFD) Act 1975



1. Types

Alteration



2. Under I(PFD) Act 1975

Tes failed to make adequate financial provisions

Solution	<p>Apply with a court under I(PFD) Act 1975</p> <p>Types of orders: a) lump sum; b) periodical payment; c) interim periodical payment</p> <p>An order is treated as if it had effect from the date of death for IHT purposes, for example, an award to a spouse may result in applying spouse exemption</p>
Time to apply	6 months from the grant, but may be applied before issue of the grant; Court may extend it
Categories of applicants	<ol style="list-style-type: none"> 1. <u>Spouse / CP</u>: court will take into account: <ol style="list-style-type: none"> (a) Age and duration of the marriage (b) Applicant's contribution (c) Provisions which might expect if divorced 2. <u>Former Spouse / CP</u>: rarely successful because the matrimonial court has already considered 3. <u>Cohabitant</u>: lived as husband and wife minimum 2 years ending immediately before the date when the deceased died, was both living: <ol style="list-style-type: none"> (a) In the same household as the deceased; and (b) As the husband or wife of the deceased. <p>* In case of temporary interruption – see <i>[Re Dix]</i> the court could look beyond: <i>if the interruption were merely transitory and the relationship was still recognised as subsisting throughout, the couple would be living in the same household and satisfy the statutory criteria</i></p> 4. <u>Child of deceased</u>: if adult – unlikely. Court will take into account: <p style="text-align: center;"><i>Manner in which the applicant was expected to be educated and trained</i></p> 5. <u>Family child / stepchild</u>: A person who was treated by the deceased as a child of the family can apply whether or not this treatment was in relation to a marriage to which the deceased was a party at any time. 6. <u>Dependants</u> – immediately before the death was maintained wholly or partly: The deceased made a substantial contribution to that person's reasonable needs other than for full, valuable consideration under an arrangement of a commercial nature. Need not show that the deceased contributed more to the relationship than the applicant did. Factors the court will take into account: <ol style="list-style-type: none"> (a) Extent and basis upon which the deceased assumed responsibility (b) Length of time

Test The factors the court must take into account [s.3 of the IPFDA 1975]

- (a) the **financial resources and financial needs** which **the applicant** has or is likely to have in the foreseeable future;
- (b) the financial resources and financial needs which **any other applicant** for an order under section 2 of this Act has or is likely to have in the foreseeable future;
- (c) the financial resources and financial needs which any beneficiary of the estate of the deceased has or is likely to have in the foreseeable future;
- (d) any **obligations and responsibilities** which the **deceased had towards any applicant** for an order under the said section 2 or towards any beneficiary of the estate of the deceased;
- (e) the **size and nature of the net estate** of the deceased;
- (f) any **physical or mental disability of any applicant** for an order under the said section 2 or any beneficiary of the estate of the deceased;
- (g) any **other matter, including the conduct** of the applicant or any other person, which in the circumstances of the case the court may consider relevant.

Post-death variations

1. **s.3 I(PFD)A 1975**
2. **Legal Practice Companion: Problems which can arise or LPC Handbook**
3. **Foundations for the LPC (OUP):** “Wills And Administration Of The Estate ”, Entitlement to the estate / Provisions for family and dependants; Basis of the claim; The application; The applicant; Reasonable financial provision etc
4. **Legal Foundations (CLP): Succession to Property on Death**