

## Guernsey

*Gavin Ferguson and Chris Hards*

Ogier

**SECTION A. BRIEF SURVEY OF THE LOCAL SYSTEM**

## 1. Type of System

- (a) The legal system of Guernsey is a customary law system. With regard to matters such as succession and land law, the law has developed from the common law of Normandy and France prior to 1789. In other matters such as tort and certain aspects of contract law, English common law is now largely followed. **21.01**
- (b) The Bailiwick of Guernsey is that part of the Channel Islands that is subject to the jurisdiction of the Bailiff of Guernsey who presides in the Royal Court of Guernsey. The Bailiwick consists of the island of Guernsey (together with the islands of Herm and Jethou), the island of Alderney (which has a separate system of inheritance), and the island of Sark (which also has a separate system of inheritance), off which the island of Brecqhou lies. **21.02**
- Subject to statutory exceptions, the law of Guernsey is applicable through the Bailiwick. **21.03**

## 2. Wills

- (a) The law distinguishes between wills made inside the island of Guernsey and those made outside (see 21.05). Where a will is made within the island of Guernsey under Part III of the Law Reform (Inheritance and Miscellaneous Provisions (Guernsey) Law 2006 (the '2006 Law'), from 6 May 2008 the old obligation to have a will of realty and a separate will of personalty has been abolished. It is possible to execute a holographic will of personalty. In respect of a will of realty, will of personalty or a joint will of realty and personalty made outside of Guernsey: **21.04**
- a will must be in writing and signed by the testator/trix or someone else in their presence and at their direction (the 'Signing');
  - the testator/trix intend the Signing is to give effect to the will;
  - the Signing must be made in the presence of two witnesses who either attest and sign the will or acknowledge the Signing in the presence of the testator/trix;
  - to be a competent witness the witness must be 14 and not the spouse or descendant of the testator/trix, although an incompetent witness does not invalidate the

will. An executor can be a witness but a gift to a person who attests it or their spouse is void;

- a gift to a descendant of the testator/trix before the testator/trix died will be presumed to be a gift to such person's issue then living at the time of the testator/trix's death. There is a similar rule for gifts to classes of person.

- 21.05** A will of both realty and personalty can be made outside the Bailiwick of Guernsey provided that it is validly made in accordance with the requirements for wills of personalty.
- 21.06** Prior to 1 January 2016, Alderney required separate wills of personalty and realty and a will of realty was required to be signed before two jurats of the Court of Alderney. Since that date, Alderney applies the same rules as have applied in Guernsey since 2008. In Sark a will must be witnessed by the *Seneschal* (judge of the court) and *Greffier* (clerk of the court). Alternatively, it may be made in Guernsey under the rules applicable there.
- 21.07** (b) (i) A will can be amended by a codicil and a codicil will be executed in accordance with the same rules that are applicable to the making of the will.
- 21.08** (ii) Marriage does not automatically revoke a will under Guernsey law (although marriage will affect a will if the spouse's legal rights are not recognized in it to the extent that it will be modified by the imposition of those legal rights). Guernsey does not have any special rules about wills that are made shortly before death.
- 21.09** (iii) Divorce does not automatically affect a will.
- 21.10** (iv) Under s. 26 of the 2006 Law a revoked will can only be revived by re-execution or a codicil showing an intention to revive it.
- 21.11** (v) The Inheritance (Guernsey) Law, 2011 (the '2011 Law') makes reference to civil partnerships entered into pursuant to the Civil Partnership Act 2004 (UK legislation) or those treated as having formed a civil partnership by virtue of having registered an overseas relationship within the meaning of that Act. With effect from 16 May 2016, the same treatment was extended to cover same-sex marriages performed abroad. With effect from 1 January 2016, the Inheritance (Alderney) Law 2015 (the '2015 Alderney Law') recognizes civil partnerships and same-sex marriages performed abroad for the purposes of succession in Alderney.
- 21.12** Whilst none of the jurisdictions implemented domestic civil partnership legislation, domestic same-sex marriage laws have been implemented across the Bailiwick with Guernsey introducing them with effect from 2 May 2017, Alderney from 14 June 2018, and Sark from 23 April 2020.
- 21.13** (vi) No express provision is made in respect of mutual wills by statute anywhere in the Bailiwick. It is expected that a contract entered into to give effect to mutual wills would be upheld provided that the same was not entered into to defeat a dependant's claim under the provisions for family and dependants of the 2011 Law (see para. 21.47).
- 21.14** (c) A power of appropriation can be created by will.
- 21.15** (d) A will trust may be created.

- (e) A will of realty can be lodged at the *Greffe* (Public Records Office) and it will be available for public inspection once operative as proof of title. Probate or letters of administration are granted by the Ecclesiastical Court, which will keep a copy. **21.16**

### 3. Intestacy

#### Guernsey

- (a)–(b) For intestate persons dying on or after 2 April 2012, the provisions of Part III of the 2011 Law apply, repealing the rules under the *Loi sur les Successions 1840* (the ‘1840 Law’). In brief, these rules were: **21.17**

*Direct Succession*, i.e. where the deceased has left children or other issue: the heirs are the children of the deceased who will take equal shares, although if one or more of those children have predeceased the deceased, their children take the share that would have gone to their parent *par representation* with the possibility of there being *representation* to all living generations where applicable.

*Indirect Succession*: the principle of Guernsey law is that property only ascends where it can neither descend nor, in effect, go sideways. Therefore the heirs of a deceased are first their brothers and sisters, secondly the applicable descendants of their brothers and sisters, thirdly their ascendants, fourthly their other collaterals.

It is first of all necessary to distinguish between personal property (*meubles*) and real property (*immeubles*). With respect to intestate succession to real property, it is important to note that the distinction that previously existed between *propre* (real property that the deceased had themselves inherited although not taken under a will), *acquêts* (real property acquired by the deceased during their lifetime by gift, by purchase or by taking under a will) and *conquêts* (property acquired by husband and wife jointly or severally during their lifetime) has been abolished pursuant to paragraph 11 of the Schedule to the 2011 Law. **21.18**

Where the deceased has left no children or remoter issue (defined as descendants), the surviving spouse or civil partner of the deceased shall inherit the whole of the real property of the deceased absolutely. **21.19**

If there are descendants, the surviving spouse or civil partner shall inherit: **21.20**

an undivided one-half share of the matrimonial home absolutely together with the enjoyment of the remaining undivided one-half share of the matrimonial home, usufruit, (until the formation of a subsequent marriage or civil partnership); and

an undivided one-half share of any real property (other than the matrimonial home) of the deceased absolutely. Subject to the aforesaid inheritance to the surviving spouse, the heirs to the real property of the deceased shall be the descendants of the deceased.

The principle of Guernsey law previously stated, that property only ascends where it can neither descend nor, in effect, go sideways, remains. Therefore, in the event that there is no surviving spouse and also no descendants, the heirs to the real property of a deceased are firstly the *privileged collaterals* i.e. the brothers and sisters of the deceased and their **21.21**

descendants, secondly the *ascendants* (comprising those from whom the deceased is descended) and, thirdly their *remaining collaterals* (e.g. certain cousins etc).

- 21.22** In relation to personal property, if there are no descendants, the surviving spouse or the surviving civil partner of the deceased shall inherit the whole of the personal estate of the deceased absolutely.
- 21.23** If there is no surviving spouse and no surviving civil partner, the descendants shall inherit the whole of the personal estate of the deceased absolutely.
- 21.24** If the deceased is survived by descendants and also a spouse or civil partner, the surviving spouse or civil partner shall inherit a one-half share of the personal estate of the deceased absolutely with the descendants inheriting the remaining one-half share absolutely.
- 21.25** If there is no surviving spouse or civil partner and no descendants, the same rules that apply to the intestate succession of real property (as provided for at paragraph 21.21 above) apply also to personal property of the deceased.
- 21.26** The following particular rules apply:
- In order for a person to inherit, he or she must be alive (including *en ventre sa mère*) and, when born, capable of living (*né viable*).
  - Females rank equally with males in parity of degree.
  - Siblings of the half blood rank equally with siblings of the whole blood in parity of degree.
  - Where there is more than one heir in parity of degree, each shall be entitled to an equal share of the inherited property.
  - Where the intestate's spouse or civil partner survived the intestate but died before the end of the period of 28 days beginning on the date of the intestate's death, the rules espoused above shall apply as if the spouse or civil partner had not survived the intestate.
  - Persons who live together who are unmarried have no rights over the property of the other, although their children will enjoy rights to inherit from their parents.
  - Within each of the classes (i.e. the descendants, the privileged collaterals, the ascendants and the remaining collaterals), the person or persons nearest in degree inherit and if more than one in equal shares.
  - A person falling within the class of privileged collaterals, ascendants or remaining collaterals cannot inherit where there is a person in any preceding class, or a representative of such a person.

A representative is a descendant of the person to be represented who in turn must be dead and, in his or her lifetime, had been capable of inheriting from the deceased. So, for example, if the heirs are the children of the deceased, they will take in equal shares, although if one or more of those children have predeceased the deceased, their children take the share that would have gone to their parent *par représentation* with the possibility of there being *représentation* to all living generations where applicable. Where a class has been identified, representation is permitted *a l'infini*.

- Succession applies up to, but not including, the seventh degree. Where there is a succession one finds the common ancestor and counts the number of degrees on the longest line for this purpose. In the absence of anyone who can succeed in the sixth

degree, in Guernsey and Alderney the property would pass to the Crown. However, in Sark property would pass to the Seigneur of Sark.

By virtue of the 2006 Law Part I, from 6 May 2008, with respect to intestate succession opening on or after that date and testate successions relating to wills executed on or after that date: **21.27**

- illegitimate and legitimate children are treated the same; and
- where a will refers to persons it will be presumed to include illegitimate persons of that class unless a contrary intention appears. The change does not include wills made before that date, including ones that have codicils executed after it.

As mentioned above, for persons who have died prior to 2 April 2012, the intestacy rules under the 1840 Law shall apply. **21.28**

### Alderney

Since the introduction of the 2015 Alderney Law, succession law in Alderney mirrors Guernsey law for those dying intestate after the implementation of that law. **21.29**

Prior to 1 January 2016, as regards personal property (*meubles*), similar principles applied as in Guernsey prior to the commencement of the 2011 Law. **21.30**

For persons who died prior to 1 January 2016, as regards real property (*immeubles*), the intestacy rules under the Alderney Land and Property Law 1949, Part IX apply (although noting that Alderney, like Guernsey, had abolished the distinction between *propres* and *acquêt*). Briefly, the heirs that would take the property or, as the case may be, the proceeds of sale, were as follows: **21.31**

- surviving spouse, but only where there was no other heir in the specified categories; descendants: the same rules as Guernsey applied;
- the deceased's parents, who took in equal shares;
- the deceased's brothers and sisters of the whole blood and their issue representing them *per stirpes*;
- brothers and sisters of the half blood and their issue representing them *per stirpes*;
- surviving grandparents in equal shares; failing them the great-grandparents would inherit;
- surviving uncles and aunts of the whole blood only and to each stock of descent from such uncle or aunt;
- uncles and aunts of the half blood with stocks of descent.

### Sark

As regards personal property (*meubles*), broadly similar principles apply to those in Guernsey prior to the commencement of the 2011 Law, but with certain variations in more remote instances. **21.32**

As regards real property, the rules contained within the Real Property (Succession) (Sark) Law 1999 (the '1999 Sark Law') apply. In order to understand the rules it is necessary to know that Sark is divided into approximately 40 units known as tenements and some other 20 units colloquially called free-holds (defined as property in the law). These land holdings **21.33**

are indivisible and therefore on inheritance only one person may take, although there are limited rights to make wills of real property. The rules of intestate succession are set out in the schedule to the law and are as follows.

- 21.34** Inheritance is up to but not including the seventh degree of relationship computed by the canonical mode. In the absence of anyone entitled to inherit, the property escheats to the Seigneur (feudal lord of Sark).
- 21.35** In the application of the rules there is no discrimination by sex or by reason of illegitimacy (although succession to the property of an illegitimate child is only through the maternal line) or adoption.
- 21.36** Representation is allowed infinitely.
- 21.37** The classes of persons who may inherit are:
- (1) descendants;
  - (2) brothers and sisters and their descendants;
  - (3) ascendants;
  - (4) other collaterals descending from a common ancestor.
- 21.38** A member of one class may only take in the absence of any person in the preceding class. Thus the nearest in degree inherits. In parity of degree, the eldest in that class inherits.
- 21.39** A distinction is made between property that has been acquired by the deceased (*acquet*) and property that is inherited (*propre*). A *propre* includes not only inherited property but that acquired by the *retrait lignager* (the right of a family member to preemption on sale). Where property is a *propre*, it may only be inherited by someone in the family from which the property descended.
- 21.40** The fundamental in applying these principles is that they identify one person who takes the entire property or, where there is more than one property, all of the properties.

#### 4. Freedom of Testation

##### Guernsey

- 21.41** (a)–(d) Pursuant to Part I of the 2011 Law, from 1 April 2012 forced heirship in Guernsey was abolished, meaning there are no restrictions on a person's testamentary freedom and a person will be able to leave his or her property to whomever he or she wishes.
- 21.42** However, the provisions of Part I do not apply to the testamentary succession to the estate, whether real or personal, of a person whose will was executed before 2 April 2012 (although it is possible for a person with a will executed before 2 April 2012 to now execute a codicil declaring that it is his or her intention that this Part should apply to the testamentary succession to their estate.)
- 21.43** For Guernsey wills executed prior to 2 April 2012 which have not been amended according to the above paragraph, the following restrictions apply.

### Guernsey—Real Property

In brief, a person who did not have any legitimate descendants was free, subject to the rights of the surviving spouse, to leave their real property to whom they wished. If they had descendants their real property had to (by *Inheritance (Guernsey) Law 1954*, as amended) be left to one or more of: **21.44**

- their spouse;
- their descendants;
- their descendants and their descendants;
- their step-children and their descendants;
- but no other person or persons.

Where there is a surviving spouse, whether or not there are descendants, they will be entitled to a life interest (*usufruit*) over 50% of the deceased's real property up to an upper limit based on its rateable value. They retain this unto death or re-marriage. **21.45**

### Guernsey—Personal Property

In a case where a person had no spouse or descendants, as with real property, they were free to leave their personal property to whom they pleased. If there were surviving descendants (Loi Relative à la Portion Disponible des Biens Meubles des Pères et Mères (1930); Law of Inheritance (Guernsey) Law 1979), their children, or those who represent them if one or more of them had predeceased them, were entitled to one-half of the personal estate if there were no surviving spouse, or one-third of the personal estate if there were. In each case the children, or those representing them would take equally. A surviving spouse has a right to one-half of the personal property where there were no descendants, and one-third of the personal property where there were descendants. This right was known as the *droit de conjoint*. This right could be challenged where the parties had become estranged and were living apart at the time of the deceased's death. Where the *droit de conjoint* existed it was not possible to put it into trust. **21.46**

Although there is now testamentary freedom, Part II of the 2011 Law has introduced a scheme of provision for family and dependants which closely mirror the provisions of the English Statute 'Inheritance (Provision for Family and Dependants) Act 1975'. It enables a relative of a person who has died, or a person who was dependent upon the deceased at the time of death, to apply to the Court for 'reasonable financial provision' to be made for him or her out of the estate where the effect of the will or the intestacy was that he or she was not properly provided for, the definition of financial provision varying slightly in the case where the person claiming such provision is a spouse or civil partner of the deceased. **21.47**

The classes of person who may apply under these provisions, and the grounds for granting such an application, are restricted and in the vast majority of cases, where the deceased person will have made adequate provision for those who might reasonably have been expected to benefit, it is unlikely that any application will be made or, if made, will be successful. **21.48**

However, in light of these provisions, a person making a will now should be aware that it is possible for a family member or dependant who has not been properly provided for, to make an application challenging the terms of that will. **21.49**

- 21.50** Where a person is validly adopted they will, from the date of the adoption, be treated as a natural legitimate child of the person or persons who adopted them.
- 21.51** It is possible for any person who would be entitled to automatic rights of inheritance to renounce them by a contract registered at the Royal Court.
- 21.52** Where a number of people inherit a number of different pieces of land, it is possible to divide that between them by a *partage*. Under a *partage* the different pieces of property that were owned by the deceased are divided between a number of their heirs. The *partage* may also involve monetary payments to certain heirs to compensate them for getting smaller or no pieces of land.
- 21.53** Under the customary law, an advance on a succession of either real or personal property would be taken into account on ascertaining a person's entitlement on an inheritance.
- 21.54** The customary law also recognized a principle known as *la reserve*, whereby gifts of real property made during the deceased's lifetime could be set aside where they exceeded the portion of the property which they could give on death. This principle has not been referred to in any recent statute and therefore it remains to be seen how much, if any, of it now survives.

#### **Alderney**

- 21.55** The 2015 Alderney Law introduced a similar regime in Alderney to that which has been applied in Guernsey since the commencement of the 2011 Law. Prior to 1 January 2016, the following provisions applied:

#### **Alderney—Personal Property**

- 21.56** Similar rules applied as used in Guernsey, save that illegitimate children had no automatic rights and had to be expressly brought in to enjoy any *legitime* but with one major exception, namely that whilst a widow had the right to the *droit de conjoint*, a widower did not.

#### **Alderney—Real Property**

- 21.57** A surviving widow had the right to *douaire*. This is the right of a life interest *usufruit* over one-third of the real property, or the proceeds of sale of the real property. *Douaire* was earned by the consummation of the marriage and continued until the death or re-marriage of the widow.
- 21.58** A surviving widower had the right of *franc veuvage*. This is the right to a life interest over all of the property (or proceeds of sale), but a widower was only entitled to this if a living child had been born of the marriage. This right continued until the death or re-marriage of the widower.

#### **Sark—Personal Property**

- 21.59** The rules are the same as they used to be for Guernsey, the Personal Property (Succession) (Sark) Law, 2007 having abolished the distinction between illegitimate children and legitimates.



**Sark—Real Property**

Under the 1999 Sark Law, which came into force in 2000, where a person has descendants they may make a will and leave a property in its entirety to one of those descendants. If they have more than one property, they can leave each property to different descendants. The fundamental principle remains, however, that the property cannot be divided. The Chief Pleas (Sark Parliament) may by ordinance extend the definition of ‘descendant’, which currently means any legitimate or illegitimate or adopted descendant of any sex or age, to include a surviving spouse. **21.60**

Where a person has no descendants, they may leave their property to any one person and if they have more than one property they may leave each to separate people; but again, a single property may not be divided between separate owners. As an alternative, they may set up a trust for sale and the trustee has a power to reasonably postpone the sale. The beneficiaries may be any one or more natural persons or charities. This may only be done when a person does not have descendants. **21.61**

The *droits du douaire and franc veuvage* have been abolished from the date of the coming into force of the law, but existing rights are not affected. Under any succession opening after the coming into force of the law, a surviving spouse is to have life enjoyment over one-third and may reasonably select the property or part of the property over which this is to be exercised (this amount can be increased by ordinance of the Chief Pleas). **21.62**

**5. Maintenance**

Under Section 5 of Part II of the 2011 Law, where an application is made for reasonable financial provision, the Court has the power to make any order which it thinks fit which may include an order for the making to the applicant out of the net estate of the deceased of such periodical payments, for such term, as may be specified in the order. The same provisions apply in Alderney under Part VIII of the 2015 Alderney Law. **21.63**

**6. Community Property between Husband and Wife**

- (a) Guernsey is not a community of property regime. **21.64**
- (b) On the death of a husband, household ‘paraphernalia’ will belong to the surviving spouse, in addition to the *droit du conjoint* (in respect of wills made before the 2011 Law came into force). **21.65**

**7. Joint Property**

Real property can either be held jointly for the survivor, in which case it passes to the survivor or in undivided shares, in which case each share will pass to the heirs of the party. Personal property, e.g. bank accounts and company shares that are jointly owned, is **21.66**

presumed, pursuant to *The Husband and Wife (Joint Accounts) (Guernsey) Law, 1966*, to pass to the survivor.

## 8. Gifts (*Inter Vivos*)

- 21.67** (a) There is a particular rule whereby if a person dies leaving no descendants, but collaterals and ascendants, and if that person's parent made an advance to them acknowledged in writing as being an advance of succession, then on that person's death the parent is entitled to be reimbursed by the estate for the advance.
- 21.68** With regard to personal property, and in the absence of a will made after the 2011 Law came into force, where a gift is so great as to reduce the *legitime* to which the other heirs are entitled, that proportion may well be taken into account, thereby reducing that beneficiary's entitlement to *legitime*, which applies as a presumption rather than as a rule of law. It is, however, clear that during their lifetime a person could make gifts to a trust and the trust could prefer some heirs rather than others (Trusts (Guernsey) Law, 2007).
- 21.69** With regard to real property and again in the absence of a will made after the 2011 Law came into force, the question remains unresolved as to how far the customary law would still set aside a gift that preferred one heir rather than another. Under the customary law the principle was that parents could not make any donation of real property to a person who would not be entitled to inherit it. If, however, there was a grandparent whose children had died, but there were other descendants, up to one-third of the real property could be given provided it was given to a person who would not be entitled to succeed to it on death. These principles have not been tested in court for many years and therefore it is open to question today as to how far they survive.
- 21.70** (b) See (a) above.

## 9. Capacity

- 21.71** (a) The testator/trix must be of the age of majority, which is 18 in Guernsey, Sark and Alderney. His or her marital status is not relevant in Guernsey, Sark, or Alderney.
- 21.72** (b) In the case of a will of real property made by a person in Guernsey (please note as per para. 21.04(a) it is now possible to have a joint Guernsey will of real property and personal property), two witnesses aged 14 and over are sufficient or, if made in Alderney, two jurats of the Court of Alderney or, if in Sark, *inter alia*, the Seneschal of the Court of Sark. With regards to wills of personalty, wills of realty and joint wills of personalty and realty made outside the Bailiwick of Guernsey, wills may be witnessed by any persons who are 14 or over, other than the spouse or descendants of the testator/trix, or any person benefiting under the will or their spouse. If this is infringed, the legacy or bequest to them becomes invalid, although the will otherwise remains valid. An executor may witness a will provided that neither the executor nor their spouse is a beneficiary.

- (c) As regards natural persons, they must be living at the time of the deceased in order to inherit. A minor may inherit property, but will be subject to restrictions as to the disposal of that property. There is no reason why a company should not be a beneficiary. **21.73**

## 10. Authority (Court, Notarial, or Other)

- (a) It is necessary to distinguish wills of realty and wills of personalty. **21.74**

A will of realty is potentially a conveyancing document and it appoints no executors. Therefore it is informally registered in the Guernsey *Greffé* (for property situate in Guernsey), with the Alderney Court (for property situate in Alderney), and the Sark *Greffé* (for property situate in Sark). **21.75**

With regard to personal property situated anywhere in the Bailiwick of Guernsey (i.e. Guernsey, Alderney and Sark), it is necessary to seek a grant of probate or a grant of letters of administration from the Guernsey Ecclesiastical Court. **21.76**

- (b) Where there is a valid will, application is made by an executor or the executors with a valuation of the estate and an oath is administered. In the case of an intestacy, a prospective administrator will apply producing the death certificate, a valuation of the personalty, and their details. They then swear an appropriate oath. It was formerly the case that a prospective administrator was required to provide a bond for twice the value of the assets (unless an Advocate was appointed as attorney for the administrator) but the Ecclesiastical Court ceased this practice in 2013. **21.77**

- (c) Probate is opposed by the entry of a caveat, an administrative act that lasts for six months or until it is lifted. The caveat prevents the Ecclesiastical Court from proceeding. The Ecclesiastical Court does not adjudicate on the merits, which will be determined by the Royal Court. **21.78**

## 11. Invalidity of Will

- (a) Where a will has not formally been executed, e.g. with less than the required number of witnesses or in the case of Sark without the formal witnesses required by law, it will be invalid. The document is not a will and therefore an intestacy would automatically apply. **21.79**

- (b) A will is presumed valid, but where it has been successfully contested on one of the grounds set out in (c) below it is voidable. **21.80**

- (c) A will may be contested on the grounds that the testator/trix lacked testamentary capacity. The burden of proof is on the person seeking to disprove testamentary capacity. Clearly, one may lack testamentary capacity by reason of mental incapacity, but also where one did not truly exercise one's will, whether by reason of fraud, duress or some other factor. **21.81**

## 12. Simultaneous Death

- 21.82** (a)–(b) Under the 2011 Law, any case on or after 2 April 2012 (and under the 2015 Alderney Law, any case on or after 1 January 2016) where two or more persons have died in circumstances rendering it uncertain which of them have survived the other or others, the presumption is that such deaths will be presumed to have occurred in order of seniority, the younger being deemed to survive the elder.

## 13. Presumption of Death

- 21.83** Where the court rules that death is presumed, the normal rules of inheritance apply.

## 14. Estate Taxes

- 21.84** (a)–(d) There is no tax on succession to real property. When an application is made for a grant of probate/administration to the Ecclesiastical Court a duty of about 0.35% is payable on the worldwide value of the estate or the Guernsey value if the probate/administration is just for Guernsey. This is payable, on making the application, out of the estate.

## 15. Administration of Estates

- 21.85** (a) Real property devolves automatically without judicial or administrative act. With regard to personal property there must be a grant of probate or administration. The executor or administrator takes possession of the personal property, liquidates assets as appropriate, pays off the debts and then distributes the property to the heirs, usually as money payments, although there may be specific bequests of property or an heir may have agreed with the executor or administrator to take an item as part of their inheritance. Executors are appointed by will. Administrators are first a surviving spouse and then the next of kin starting with the surviving children.
- 21.86** (b) For practical purposes, although an executor or administrator should prepare accounts the only body likely to see them is the Guernsey Tax Authority, where Guernsey tax is relevant.
- 21.87** (c) There is no automatic scrutiny by an outside body, although the Royal Court would have an inherent jurisdiction to order an account of the making out of good cause.
- 21.88** (d) If any heir disagrees with the method of liquidating the estate they could take the matter to the court.
- 21.89** (e) See (a) above.
- 21.90** (f) See (a) above.

- (g) See (a) above. **21.91**
- (h) There is no equivalent to the UK Deed of Variation in Guernsey. There is no inheritance tax in Guernsey and so there is no need for one to be able to vary the terms of a will. If the beneficiary under a will does not wish to accept their entitlement, they can simply gift their inheritance without any tax consequences. **21.92**

## 16. Domicile/Nationality

- (a) As regards personal property Guernsey will apply the law of the deceased's domicile to substantive questions of inheritance. **21.93**
- (b) The Ecclesiastical Court will not grant probate if the deceased was domiciled in Guernsey but left no assets there. **21.94**

## 17. Charitable Giving

- (a) The will can include provision for a gift to pass to charity directly from the estate. Alternatively, if the testator has a discretionary will, they can leave a letter alongside the will addressed to their executors/trustees requesting that a gift be made to charity. **21.95**
- (b) The gift to charity can be outright or it can be coupled with a request that the funds be applied for a specific purpose or purposes. **21.96**
- (c) It is possible to make a gift to a foreign charity. A testator is free to leave their property to any person or institution that they so wish. **21.97**
- (d) There is no Guernsey tax payable on the estate of a deceased, other than the 0.35% Ecclesiastical Court fee referred at to a paragraph 21.84 which is payable irrespective of to whom the estate is passing to (i.e. there is no reduced fee if part of the deceased's estate is passing to charity). **21.98**

## SECTION B. APPLICABLE LAW/PROCEDURE WHERE FOREIGN ELEMENTS ARE INVOLVED

### 1. Jurisdiction

- (a)–(b) Guernsey law will apply to real property situated within the jurisdiction, and to personal property situated anywhere owned by a person dying domiciled in Guernsey. **21.99**
- (c) The relevant court with regard to movable property is the Ecclesiastical Court of Guernsey (for property in the Bailiwick of Guernsey, i.e. Guernsey, Alderney, and Sark), although where any caveat is entered the matter must be referred to the Royal Court of Guernsey. In the case of a dispute involving immovable property, the courts are the **21.100**

Royal Court of Guernsey in the case of immovable property situated in Guernsey, the Court of Alderney in the case of immovable property situated in Alderney, and the Court of Sark, where the immovable property is situated in Sark.

## 2. Applicable Law

**21.101** In the case of real property, the law of the relevant part of the Bailiwick of Guernsey where the real property is situated applies. In the case of personal property, the law of domicile at the time of death applies.

## 3. Foreign Succession/Inheritance Orders

**21.102** (a) No foreign order would be recognized to the extent that it conflicted with the local law relating to locally situated real property. With regard to personal property, it is necessary to make a separate application.

**21.103** (b) In the case of personal property situate in the Bailiwick of Guernsey, the person holding it will only release it on the basis of a valid Guernsey grant. Occasionally, with regard to small amounts, releases may be made without a formal grant of Guernsey probate or letters of administration, but this is entirely at the discretion of the relevant body.

**21.104** (c) In the case of grants coming from the United Kingdom, a Guernsey grant is basically issued on the submission of a court-sealed and certified copy of the original grant. For other jurisdictions, a grant certified by the British Consulate in that jurisdiction must be accompanied by an affidavit of a lawyer from that jurisdiction, attesting to the law of inheritance of the country and the validity of the order together with a translation if not in English or French.

**21.105** (d) Guernsey has its own trust law and recognizes trusts in other jurisdictions. In respect of succession of personalty, Guernsey shall apply the law of the deceased's domicile which would include any forced heirship provisions. However, to the extent that personalty is transferred onto a Guernsey law trust, provided that the settlor had the capacity to so transfer, all questions arising in relation to that trust are to be determined according to the law of Guernsey (section 14 of the Trusts (Guernsey) Law, 2007).

## 4. Two or More Succession or Probate Orders

**21.106** In the case of real property, the court will apply local law and therefore not recognize any order that is inconsistent with that law.

**21.107** With regard to movable property, the court will only have regard to the law of the deceased's domicile on death.

## 5. Assets

Where a person dies domiciled in Guernsey, but without any movable assets in Guernsey, there is no reason why the court should not grant a declaration in an appropriate form. There is a procedure whereby British courts can make a request of other British courts, and therefore if a person has died domiciled in Guernsey and had assets in another British jurisdiction, that jurisdiction could, if it wished, apply to the Guernsey court to answer questions on the Guernsey law of succession. **21.108**

## 6. Expert Evidence

- (a) Where there is personal property in Guernsey, and a person has died domiciled other than in the United Kingdom, it is necessary to have a certificate as to the applicable foreign law from an appropriate lawyer certified by the British Consulate in that country. **21.109**
- (b) It is not normal for the lawyer to have to appear in court. If, however, the matter is contested, it would be referred by the Ecclesiastical Court to the Guernsey Royal Court. In such a case it is likely that affidavits as to foreign law would be put in by all of the relevant parties. Where they disagree, the other parties would be entitled to insist that the deponents be called as witnesses in order to be questioned. **21.110**

## 7. Unity of Succession

It is accepted that with regard to movable property, the law of the deceased's last domicile should govern the disposition of that property wherever situate. **21.111**

## 8. Formalities

A will would be recognized under Guernsey law even though it does not comply with the Guernsey rules, if it is formally valid (*Execution of Wills (Bailiwick of Guernsey) Law 1994* (the '1994 Wills Law')) in: **21.112**

- the territory where it is executed;
- the territory where the testator/trix died, was domiciled or had their habitual residence;
- the territory where the testator/trix was either a national at the time of execution or their death; or
- in the case of real property, the territory where the real property was situated.

## 9. The Hague Convention

Guernsey is not a party to any applicable Hague Convention. **21.113**

## 10. Wills

- 21.114** (a) The legal requirement for execution of wills is a matter of formal validity and therefore any will formally valid under Guernsey law, or under the 1994 Wills Law, would be recognized.
- 21.115** (b) The construction of a will will be interpreted by the law of the testator/trix's domicile at the time that they made it.
- 21.116** (c) The rights of heirs and beneficiaries is a matter for the substantive law. Therefore, if it is real property, the Guernsey law as to who can succeed will apply. If it is personal property, then the Guernsey law will apply if the individual dies domiciled in Guernsey. If they die domiciled elsewhere, it will be the law of that jurisdiction.
- 21.117** (d) The capacity to inherit will be decided by the law governing essential validity.
- 21.118** (e) The capacity to make a will is a matter of the law of the applicable domicile at the time the will was made.
- 21.119** (f) Guernsey law will apply public policy where it perceives a foreign will overriding that public policy. Where something has vitiated the intention of the person making the will, that would be perceived as a matter of the law of the applicable domicile, although if that law was radically different, Guernsey public policy may override it. A legacy to a witness would be regarded as a matter of formal validity, unless there were other grounds (e.g. fraud or duress) to override this.
- 21.120** (g) Execution of the will must conform with the law governing the essential validity of the power. A will exercising a power of appointment is not improperly executed by reason only that the execution is not in accordance with formalities applicable to the instrument creating the power.
- 21.121** (h) The instrument amending or revoking a will must be properly executed under the normal rules, i.e. the same rules under which the will may be executed.
- 21.122** (i) In the case of a Guernsey trust, Guernsey law will not recognize a reserve in respect of a non-domiciled Guernsey person so as to overturn the trust. With regard to other cases, Guernsey law will recognize reserves, as it is a concept known to Guernsey law and it will have regard to the law of the domicile, in the case of movable property, and the law of the place where the property is situated, in the case of immovable property.

## 11. Domicile/Nationality

- 21.123** (a) Domicile or nationality can be a determinate when it saves an otherwise invalid will under the 1994 Wills Law, and this can be either at the time of making the will or at the time of death in the case of formal validity. In the case of substantive matters it is only the domicile at the time of death that matters.
- 21.124** (b) The domicile of a beneficiary is irrelevant for the purposes of Guernsey law, although if a beneficiary is domiciled in Guernsey and is under age, they will not be fully free to



deal with their property, and in particular any real property that they own can only be sold with the confirmation of the Royal Court.

- (c) Where there is more than one nationality this is not a problem, as nationality is only relevant as a saving factor for the formal validity of wills. With regard to domicile, Guernsey law will only recognize one domicile at a time. Thus the starting point would be the individual's domicile at birth, which would be determined by the domicile of their father. The domicile that one takes at birth can alter, but may only alter to one other domicile at a time. If through the person's habits, for example living in a number of different countries, there is no clearly identifiable domicile to replace the birth domicile, this would remain through life. **21.125**

## 12. Taxation

There is no applicable taxation with regard to immovable property in Guernsey, Alderney or Sark, although from the death of the deceased the new owners automatically become owners of it without the necessity of any judicial act and they would be liable to property rates from the moment of death. **21.126**

With regard to probate for Guernsey movable property, 0.35% is payable to the Ecclesiastical Court. No distinction is made between residents and non-residents. **21.127**

Other than the above, there are no applicable estate duties in the Bailiwick of Guernsey on either immovable or movable property. **21.128**