

WILLS AND PROBATE CASE LAW UPDATE

FUSION LEGAL WILLS AND PROBATE
SEMINAR

OCT 2015

Charles Holbech

TESTAMENTARY CAPACITY

- Test in *Banks v Goodfellow* (1870) LR 5 QB 549, at 565
- Test in Mental Capacity Act 2005
 - Presumption of capacity
- *Re Walker* [2015] WTLR 493
 - No presumption of capacity
 - Retrospective assessment of capacity
 - Legal burden on claimant

CAPACITY TO UNDERSTAND

- Simons v Byford [2014] EWCA Civ 280
- Capacity to understand
 - Not actual understanding
 - Nor test of memory
- No need to understand collateral consequences
- Brennan v Prior [2013] EWHC 2867 Ch
 - No need to understand every consequence of legal effect
- Incapable if cannot recall beneficiaries: Williams v Wilmot [2012] EWHC 2211

SOLICITOR'S OPINION ON CAPACITY

- Hawes v Burgess [2013] EWCA Civ 74
- Strong evidence of incapacity required
 - Experienced solicitor
 - Contemporaneous note confirming capacity
 - Will read and explained
 - Will not incapable or irrational
- Re Ashkettle [2013] EWHC 2125 (Ch)
 - No sound basis for solicitor's view on capacity
 - Terms of will surprising

BEREAVEMENT/LACK OF WILLPOWER

- Key v Key [2010] 1 WLR 2020
 - Bereavement
 - Severe affective disorder
- Re Dharamsi [2013] EWHC 3917 (Ch)
 - Bereavement not necessarily disorder of mind
 - Testator acted of own volition
- Parker v Litchfield [2014] EWHC 1799 (Ch)
 - Physical problems
 - Mental energy to make decisions

KNOWLEDGE AND APPROVAL

- Gill v Woodall [2011] Ch 380
 - Grave and strong presumption
 - Knowledge and approval
 - Solicitor reads will
- Testatrix suffered from agrophobia
 - Exceptional case
- Will not read in manageable chunks

PRECAUTIONS/IGNORANCE OF EFFECT

- Solicitor: need to take proper precautions
- Hawes v Burgess [2013] EWCA Civ 74
 - Beneficiary present
 - Draft not sent for prior approval
 - Golden rule not observed
- Brennan v Prior [2013] EWHC 2867 Ch
 - Ignorance of legal effect
 - Knowledge of contents
 - What giving and to whom

EVALUATION OF ALL EVIDENCE

- McCabe v McCabe [2015] EWHC 1591 (Ch)
 - Absence of reading over not fatal
 - Active instructions as to content

- Re Butcher [2015] EWHC 1240 (Ch)
 - Estate left to builder
 - Exclusion of beneficiaries under prior will
 - Easy will to understand

UNDUE INFLUENCE

- Hubbard v Scott [2012] WTLR 29
 - Estate to cleaner
 - Fascination of younger woman
 - Not coercion
- Schomberg v Taylor [2013] EWHC 2269 (Ch)
 - Cogent evidence
 - Persistent unwanted pressure
- Schrader v Schrader [2013] EWHC 466 (Ch)
 - Inferred undue influence
 - No good reason for change in will

FORGERY/DUE EXECUTION

- McCabe v McCabe [2015] EWHC 1591 (Ch)
 - Strong presumption of due execution

- Bhangal v Kaur, Lawtel, 15 Feb. 2014
 - Handwriting evidence inconclusive
 - Attesting witnesses not called
 - Finding of forgery

INHERITANCE ACT CLAIMS: ADULT CHILDREN

- **Ilott v Mitson**
 - Estranged adult child of deceased
 - Unreasonable to exclude?
 - Value judgment
- **Quantum**
 - Limited by expectation of benefit?
 - Relevance of state benefits: [2015] EWCA Civ 797
- **Re Waters [2014] EWHC 3614**
 - Conduct defeated claim
 - Adult estranged daughter

SPOUSES

- Dellal v Dellal [2015] W.T.L.R. 1137
 - Claim by widow
 - Dispositions intended to defeat applications for financial provision
 - Application to strike out/summary judgment failed
- Chekov v Fryer [2015] EWHC 1642 (Ch)
 - Claim by former spouse
 - S. 15 order that no claims against other's estate
 - Claim as cohabitant

REMOVAL OF PRS/TRUSTEES

- Wilby v Rigby [2015] EWHC 2394 (Ch)
 - Removal of both executors
 - Could not work together
 - Independent solicitor appointed if no agreement
- Re Weetman [2015] EWHC 1166 (Ch)
 - Removal of trustees
 - Conflict of interest
 - Ownership of shares in company
 - Trustee a director
 - Appointment of family members as new trustees

MARLEY V RAWLINS

- Marley v Rawlins [2015] AC 129
 - Rectification of mirror wills
 - Signed by wrong spouse
 - Clerical error
 - Even if will formally invalid
- Marley v Rawlins (Costs) [2015] AC 157
 - Insurer of solicitor
 - Liable to pay costs of both parties



CHARLES HOLBECH

Charles.holbech@newsquarechambers.co.uk

020 7419 8000

New Square Chambers

