

Supplementary Legal Materials

F6: Foundation stage legal research

Sample assessment - Inheritance scenario

Instructions to candidates.

Use the document below to answer the questions in your assessment.

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| 1. The Wills Act 1837 | Pages 2 - 5 |
| 2. The Inheritance (Provision for Family and Dependants) Act 1975 | Pages 6 - 14 |
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(Extracted and modified documents accessed 17.5.20)



Wills Act 1837

1837 CHAPTER 26 7 Will 4 and 1 Vict

An Act for the amendment of the laws with respect to Wills.

[3rd July 1837]

1. **Meaning of certain words in this Act: “Will”: “Real estate”: “Personal estate”:
Number: Gender.**
2.
3. **All property may be disposed of by will; Contingent Interests; Rights of Entry;
and property acquired after the execution of the will.**
4. **4-6.**
7. **No will of a person under age valid.**
8.
9. **Signing and attestation of wills**
10. **Appointments by will to be executed like other wills, and to be valid, although
other required solemnities are not observed.**
11. **Soldiers and mariners wills excepted.**
12.
13. **Publication of will not be requisite.**
14. **Will not to be void on account of incompetency of attesting witness.**
15. **Gifts to an attesting witness to be void.**
16. - 36. **Not reproduced.**

[ONLY SECTIONS 1-15 OF THE WILLS ACT REPRODUCED]

**1. Meaning of certain words in this Act: “Will”: “Real estate”: “Personal estate”:
Number: Gender.**

The words and expressions herein-after mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this Act, except where the nature of the provision or the context of the Act shall exclude such construction, be interpreted as follows; (that is to say,) the word “will” shall extend to a testament, and to a codicil, and to an appointment by will or by writing in the nature of a will in exercise of a power, [and also to an appointment by will of a guardian of a child,][and also to an appointment by will of a representative under section 4 of the Human Tissue Act 2004] [or section 8 of the Human Transplantation (Wales) Act 2013], . . . and to any other testamentary disposition; and the words “real estate” shall extend to manors, advowsons, messuages, lands, tithes, rents, and hereditaments, . . . whether corporeal, incorporeal, or personal, [and to any undivided share thereof,] and to any estate, right, or interest (other than a chattel interest) therein; and the words “personal estate” shall extend to leasehold estates and other chattels real, and also to monies, shares of government and other funds, securities for money (not being real estates), debts, choses in action, rights, credits, goods, and all other property whatsoever which by law devolves upon the executor or administrator, and to any share or interest therein; and every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing; and every word importing the masculine gender only shall extend and be applied to a female as well as a male.

2.

3. All property may be disposed of by will; Contingent Interests; Rights of Entry; and property acquired after the execution of the will.

It shall be lawful for every person to devise, bequeath, or dispose of, by his will executed in manner herein-after required, all real estate and all personal estate which he shall be entitled to, either at law or in equity, at the time of his death, and which, if not so devised, bequeathed, or disposed of, would devolve . . . upon his executor or administrator; and the power hereby given shall extend . . . to all contingent, executory or other future interests in any real or personal estate, whether the testator may or may not be ascertained as the person or one of the persons in whom the same respectively may become vested, and whether he may be entitled thereto under the instrument by which the same respectively were created, or under any disposition thereof by deed or will; and also to all rights of entry for conditions broken, and other rights of entry; and also to such of the same estates, interests, and rights respectively, and other real and personal estate, as the testator may be entitled to at the time of his death,

notwithstanding that he may become entitled to the same subsequently to the execution of his will.

4.

5.

6.

7. No will of a person under age valid.

No will made by any person under the age of [eighteen years] shall be valid.

8.

9. Signing and attestation of wills

No will shall be valid unless—

(a)it is in writing, and signed by the testator, or by some other person in his presence and by his direction; and

(b)it appears that the testator intended by his signature to give effect to the will; and

(c)the signature is made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and

(d)each witness either—

(i)attests and signs the will; or

(ii)acknowledges his signature, in the presence of the testator (but not necessarily in the presence of any other witness),

but no form of attestation shall be necessary.]

10. Appointments by will to be executed like other wills, and to be valid, although other required solemnities are not observed.

No appointment made by will, in exercise of any power, shall be valid, unless the same be executed in manner herein-before required; and every will executed in manner herein-before required shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will, notwithstanding it shall have been expressly required that a will made in exercise of such power should be executed with some additional or other form of execution or solemnity.

11. Soldiers and mariners wills excepted.

Provided always, that any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his personal estate as he might have done before the making of this Act.

12.

13. Publication of will not be requisite.

Every will executed in manner herein-before required shall be valid without any other publication thereof.

14. Will not to be void on account of incompetency of attesting witness.

If any person who shall attest the execution of a will shall at the time of the execution thereof or at any time afterwards be incompetent to be admitted a witness to prove the execution thereof, such will shall not on that account be invalid.

15. Gifts to an attesting witness to be void.

If any person shall attest the execution of any will to whom or to whose wife or husband any beneficial devise, legacy, estate, interest, gift, or appointment, of or affecting any real or personal estate (other than and except charges and directions for the payment of any debt or debts), shall be thereby given or made, such devise, legacy, estate, interest, gift, or appointment shall, so far only as concerns such person attesting the execution of such will, or the wife or husband of such person, or any person claiming under such person or wife or husband, be utterly null and void, and such person so attesting shall be admitted as a witness to prove the execution of such will, or to prove the validity or invalidity thereof, notwithstanding such devise, legacy, estate, interest, gift, or appointment mentioned in such will.



Inheritance (Provision for Family and Dependants) Act 1975

1975 CHAPTER 63

An Act to make fresh provision for empowering the court to make orders for the making out of the estate of a deceased person of provision for the spouse, former spouse, child, child of the family or dependant of that person; and for matters connected therewith.

[12th November 1975]

- 1. Application for financial provision from deceased's estate.**
- 2. Powers of court to make orders.**
- 3. Matters to which court is to have regard in exercising powers under s. 2.**
- 4.-25. [sections not reproduced]**
- 26. Consequential amendments, repeals and transitional provisions.**
- 27. Short title, commencement and extent.**

[ONLY SECTIONS 1-3 and 26-27 OF THE INHERITANCE (PROVISION OF FAMILY AND DEPENDANTS) ACT 1975 REPRODUCED]

1. Application for financial provision from deceased's estate.

(1) Where after the commencement of this Act a person dies domiciled in England and Wales and is survived by any of the following persons:—

[F1](a) the spouse or civil partner of the deceased;

(b) a former spouse or former civil partner of the deceased, but not one who has formed a subsequent marriage or civil partnership;]

[F2](ba) any person (not being a person included in paragraph (a) or (b) above) to whom subsection

(1A) **F3**... below applies;]

(c) a child of the deceased;

(d) any person (not being a child of the deceased) **[F4]**who in relation to any marriage or civil partnership to which the deceased was at any time a party, or otherwise in relation to any family in which the deceased at any time stood in the role of a parent, was treated by the deceased as a child of the family;]

(e) any person (not being a person included in the foregoing paragraphs of this subsection) who immediately before the death of the deceased was being maintained, either wholly or partly, by the deceased;

that person may apply to the court for an order under section 2 of this Act on the ground that the disposition of the deceased's estate effected by his will or the law relating to intestacy, or the combination of his will and that law, is not such as to make reasonable financial provision for the applicant.

[F5](1A) This subsection applies to a person if the deceased died on or after 1st January 1996 and, during the whole of the period of two years ending immediately before the date when the deceased died, the person was living—

(a) in the same household as the deceased, and

(b) **[F6]**as if that person and the deceased were a married couple or civil partners].]

F7(1B).

(2) In this Act "reasonable financial provision"—

(a) in the case of an application made by virtue of subsection (1)(a) above by the husband or wife of the deceased (except where the marriage with the deceased was the subject of a decree of judicial separation and at the date of death the decree was in force and the separation was continuing), means such financial provision as it would be reasonable in all the circumstances of the case for a husband or wife to receive, whether or not that provision is required for his or her maintenance;

[F8](aa) in the case of an application made by virtue of subsection (1)(a) above by the civil partner of the deceased (except where, at the date of death, a separation order under Chapter 2 of Part 2 of the Civil Partnership Act 2004 was in force in relation to the civil partnership and the separation was continuing),

means such financial provision as it would be reasonable in all the circumstances of the case for a civil partner to receive, whether or not that provision is required for his or her maintenance;]

(b)in the case of any other application made by virtue of subsection (1) above, means such financial provision as it would be reasonable in all the circumstances of the case for the applicant to receive for his maintenance.

[F9(2A)The reference in subsection (1)(d) above to a family in which the deceased stood in the role of a parent includes a family of which the deceased was the only member (apart from the applicant).]

[F10(3)For the purposes of subsection (1)(e) above, a person is to be treated as being maintained by the deceased (either wholly or partly, as the case may be) only if the deceased was making a substantial contribution in money or money's worth towards the reasonable needs of that person, other than a contribution made for full valuable consideration pursuant to an arrangement of a commercial nature.]

Textual Amendments

F1S. 1(1)(a)(b) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 71, 263(2), **Sch. 4 para. 15(2)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F2S. 1(1)(ba) inserted (8.11.1995) by 1995 c. 41, **s. 2(2)**

F3Words in s. 1(1)(ba) omitted (2.12.2019) by virtue of The Civil Partnership (Opposite-sex Couples) Regulations 2019 (S.I. 2019/1458), reg. 1(2), **Sch. 3 para. 3(2)(a)**

F4Words in s. 1(1)(d) substituted (1.10.2014) by Inheritance and Trustees' Powers Act 2014 (c. 16), s. 12(2), **Sch. 2 para. 2(2)** (with s. 12(4)); S.I. 2014/2039, art. 2

F5S. 1(1A) inserted (8.11.1995) by The Law Reform (Succession) Act 1995 c. 41, **s. 2(3)**

F6Words in s. 1(1A)(b) substituted (2.12.2019) by The Civil Partnership (Opposite-sex Couples) Regulations 2019 (S.I. 2019/1458), reg. 1(2), **Sch. 3 para. 3(2)(b)**

F7S. 1(1B) omitted (2.12.2019) by virtue of The Civil Partnership (Opposite-sex Couples) Regulations 2019 (S.I. 2019/1458), reg. 1(2), **Sch. 3 para. 3(2)(c)**

F8S. 1(2)(aa) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 71, 263(2), **Sch. 4 para. 15(6)**; S.I. 2005/3175, art. 2(1), **Sch. 1**

F9S. 1(2A) inserted (1.10.2014) by Inheritance and Trustees' Powers Act 2014 (c. 16), s. 12(2), **Sch. 2 para. 2(3)** (with s. 12(4)); S.I. 2014/2039, art. 2

F10S. 1(3) substituted (1.10.2014) by Inheritance and Trustees' Powers Act 2014 (c. 16), s. 12(2), **Sch. 2 para. 3** (with s. 12(4)); S.I. 2014/2039, art. 2

2. Powers of court to make orders.

(1) Subject to the provisions of this Act, where an application is made for an order under this section, the court may, if it is satisfied that the disposition of the deceased's estate effected by his will or the law relating to intestacy, or the combination of his will and that law, is not such as to make reasonable financial provision for the applicant, make any one or more of the following orders:—

(a) an order for the making to the applicant out of the net estate of the deceased of such periodical payments and for such term as may be specified in the order;

(b) an order for the payment to the applicant out of that estate of a lump sum of such amount as may be so specified;

(c) an order for the transfer to the applicant of such property comprised in that estate as may be so specified;

(d) an order for the settlement for the benefit of the applicant of such property comprised in that estate as may be so specified;

(e) an order for the acquisition out of property comprised in that estate of such property as may be so specified and for the transfer of the property so acquired to the applicant or for the settlement thereof for his benefit;

(f) an order varying any ante-nuptial or post-nuptial settlement (including such a settlement made by will) made on the parties to a marriage to which the deceased was one of the parties, the variation being for the benefit of the surviving party to that marriage, or any child of that marriage, or any person who was treated by the deceased as a child of the family in relation to that marriage.

[F1] (h) an order varying for the applicant's benefit the trusts on which the deceased's estate is held (whether arising under the will, or the law relating to intestacy, or both).]

[F2] (g) an order varying any settlement made—

(i) during the subsistence of a civil partnership formed by the deceased, or

(ii) in anticipation of the formation of a civil partnership by the deceased,

on the civil partners (including such a settlement made by will), the variation being for the benefit of the surviving civil partner, or any child of both the civil partners, or any person who was treated by the deceased as a child of the family in relation to that civil partnership.]

(2) An order under subsection (1)(a) above providing for the making out of the net estate of the deceased of periodical payments may provide for—

(a) payments of such amount as may be specified in the order,

(b) payments equal to the whole of the income of the net estate or of such portion thereof as may be so specified,

(c) payments equal to the whole of the income of such part of the net estate as the court may direct to be set aside or appropriated for the making out of the income thereof of payments under this section,

or may provide for the amount of the payments or any of them to be determined in any other way the court thinks fit.

(3)Where an order under subsection (1)(a) above provides for the making of payments of an amount specified in the order, the order may direct that such part of the net estate as may be so specified shall be set aside or appropriated for the making out of the income thereof of those payments; but no larger part of the net estate shall be so set aside or appropriated than is sufficient, at the date of the order, to produce by the income thereof the amount required for the making of those payments.

[F3(3A)]In assessing for the purposes of an order under this section the extent (if any) to which the net estate is reduced by any debts or liabilities (including any inheritance tax paid or payable out of the estate), the court may assume that the order has already been made.]

(4)An order under this section may contain such consequential and supplemental provisions as the court thinks necessary or expedient for the purpose of giving effect to the order or for the purpose of securing that the order operates fairly as between one beneficiary of the estate of the deceased and another and may, in particular, but without prejudice to the generality of this subsection—

(a)order any person who holds any property which forms part of the net estate of the deceased to make such payment or transfer such property as may be specified in the order;

(b)vary the disposition of the deceased's estate effected by the will or the law relating to intestacy, or by both the will and the law relating to intestacy, in such manner as the court thinks fair and reasonable having regard to the provisions of the order and all the circumstances of the case;

(c)confer on the trustees of any property which is the subject of an order under this section such powers as appear to the court to be necessary or expedient.

Textual Amendments

F1S. 2(1)(h) inserted (1.10.2014) by Inheritance and Trustees' Powers Act 2014 (c. 16), s. 12(2), **Sch. 2 para. 4(2)** (with s. 12(4)); S.I. 2014/2039, art. 2

F2S. 2(1)(g) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 71, 263(2), **Sch. 4 para. 16**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F3S. 2(3A) inserted (1.10.2014) by Inheritance and Trustees' Powers Act 2014 (c. 16), s. 12(2), **Sch. 2 para. 4(3)** (with s. 12(4)); S.I. 2014/2039, art. 2

3. Matters to which court is to have regard in exercising powers under s. 2.

(1) Where an application is made for an order under section 2 of this Act, the court shall, in determining whether the disposition of the deceased's estate effected by his will or the law relating to intestacy, or the combination of his will and that law, is such as to make reasonable financial provision for the applicant and, if the court considers that reasonable financial provision has not been made, in determining whether and in what manner it shall exercise its powers under that section, have regard to the following matters, that is to say—

(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.

(2) **[F1]** This subsection applies, without prejudice to the generality of paragraph (g) of subsection (1) above, where an application for an order under section 2 of this Act is made by virtue of section 1(1)(a) or (b) of this Act.]

The court shall, in addition to the matters specifically mentioned in paragraphs (a) to (f) of that subsection, have regard to—

(a) the age of the applicant and the duration of the marriage **[F2]** or civil partnership];

(b) the contribution made by the applicant to the welfare of the family of the deceased, including any contribution made by looking after the home or caring for the family.

F3 . . . In the case of an application by the wife or husband of the deceased, the court shall also, unless at the date of death a decree of judicial separation was in force and the separation was continuing, have regard to the provision which the applicant might reasonably have expected to receive if on the day on which the deceased died the marriage, instead of being terminated by death, had been terminated by a decree of divorce **[F4]**; but nothing requires the court to treat such provision as setting an upper or lower limit on the provision which may be made by an order under section 2.]

[F5] In the case of an application by the civil partner of the deceased, the court shall also, unless at the date of the death a separation order under Chapter 2 of Part 2 of the Civil Partnership Act 2004 was in force and the separation was continuing, have regard to the provision which the applicant might reasonably have expected to receive if on the day on which the deceased died the civil partnership, instead of being terminated by death, had been terminated by a dissolution order **[F4]**;

but nothing requires the court to treat such provision as setting an upper or lower limit on the provision which may be made by an order under section 2.]]

[F6(2A)]Without prejudice to the generality of paragraph (g) of subsection (1) above, where an application for an order under section 2 of this Act is made by virtue of section 1(1)(ba) of this Act, the court shall, in addition to the matters specifically mentioned in paragraphs (a) to (f) of that subsection, have regard to—

(a)the age of the applicant and the length of the period during which the applicant lived **[F7]**in the same household as the deceased as if the applicant and the deceased were a married couple or civil partners];

(b)the contribution made by the applicant to the welfare of the family of the deceased, including any contribution made by looking after the home or caring for the family.]

(3)Without prejudice to the generality of paragraph (g) of subsection (1) above, where an application for an order under section 2 of this Act is made by virtue of section 1(1)(c) or 1(1)(d) of this Act, the court shall, in addition to the matters specifically mentioned in paragraphs (a) to (f) of that subsection, have regard to the manner in which the applicant was being or in which he might expect to be educated or trained, and where the application is made by virtue of section 1(1)(d) the court shall also have regard—

[F8(a)]to whether the deceased maintained the applicant and, if so, to the length of time for which and basis on which the deceased did so, and to the extent of the contribution made by way of maintenance;

(aa)to whether and, if so, to what extent the deceased assumed responsibility for the maintenance of the applicant;]

(b)to whether in **[F9]**maintaining or assuming responsibility for maintaining the applicant] the deceased did so knowing that the applicant was not his own child;

(c)to the liability of any other person to maintain the applicant.

(4)Without prejudice to the generality of paragraph (g) of subsection (1) above, where an application for an order under section 2 of this Act is made by virtue of section 1(1)(e) of this Act, the court shall, in addition to the matters specifically mentioned in paragraphs (a) to (f) of that subsection, have **[F10]**regard—

(a)to the length of time for which and basis on which the deceased maintained the applicant, and to the extent of the contribution made by way of maintenance;

(b)to whether and, if so, to what extent the deceased assumed responsibility for the maintenance of the applicant.]

(5)In considering the matters to which the court is required to have regard under this section, the court shall take into account the facts as known to the court at the date of the hearing.

(6)In considering the financial resources of any person for the purposes of this section the court shall take into account his earning capacity and in considering the financial needs of any person for the purposes of this section the court shall take into account his financial obligations and responsibilities.

Textual Amendments

F1 Words in s. 3(2) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 71, 263(2), **Sch. 4 para. 17(2)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F2 Words in s. 3(2)(a) inserted, and the words from "the court shall, in addition" to the end of s. 3(2)(b) become the second sentence of the subsection, (5.12.2005) by virtue of Civil Partnership Act 2004 (c. 33), ss. 71, 263(2), **Sch. 4 para. 17(3)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F3 Word in s. 3(2) repealed, and the words following it become the third sentence of the subsection, (5.12.2005) by virtue of Civil Partnership Act 2004 (c. 33), ss. 71, 261(4), 263(2), **Sch. 4 para. 17(4), Sch. 30**; S.I. 2005/3175, **art. 2(1)(6)**, Sch. 1

F4 Words in s. 3(2) inserted (1.10.2014) by Inheritance and Trustees' Powers Act 2014 (c. 16), s. 12(2), **Sch. 2 para. 5(2)** (with s. 12(4)); S.I. 2014/2039, art. 2

F5 Words in s. 3(2) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 71, 263(2), **Sch. 4 para. 17(5)**; S.I. 2005/3175, **art. 2(1)**, Sch. 1

F6 S. 3(2A) inserted (8.11.1995) by 1995 c. 41, **s. 2(4)**

F7 Words in s. 3(2A)(a) substituted (2.12.2019) by The Civil Partnership (Opposite-sex Couples) Regulations 2019 (S.I. 2019/1458), reg. 1(2), **Sch. 3 para. 3(3)**

F8 S. 3(3)(a)(aa) substituted for s. 3(3)(a) (1.10.2014) by Inheritance and Trustees' Powers Act 2014 (c. 16), s. 12(2), **Sch. 2 para. 5(3)(a)** (with s. 12(4)); S.I. 2014/2039, art. 2

F9 Words in s. 3(3)(b) substituted (1.10.2014) by Inheritance and Trustees' Powers Act 2014 (c. 16), s. 12(2), **Sch. 2 para. 5(3)(b)** (with s. 12(4)); S.I. 2014/2039, art. 2

F10 Words in s. 3(4) substituted (1.10.2014) by Inheritance and Trustees' Powers Act 2014 (c. 16), s. 12(2), **Sch. 2 para. 5(4)** (with s. 12(4)); S.I. 2014/2039, art. 2

4.-25. NOT REPRODUCED.

26. Consequential amendments, repeals and transitional provisions.

F1(1).

(2) Subject to the provisions of this section, the enactments specified in the Schedule to this Act are hereby repealed to the extent specified in the third column of the Schedule; and in paragraph 5(2) of Schedule 2 to the **M1** Matrimonial Causes Act 1973 for the words "that Act" there shall be substituted the words "the Matrimonial Causes Act 1965."

(3) The repeal of the said enactments shall not affect their operation in relation to any application made thereunder (whether before or after the commencement of this Act) with reference to the death of any person who died before the commencement of this Act.

(4) Without prejudice to the provisions of section 38 of the **M2** Interpretation Act 1889 (which relates to the effect of repeals) nothing in any repeal made by this Act shall affect any order made or direction given under any enactment repealed by this Act, and, subject to the provisions of this Act, every such order or direction (other than an order made under section 4A of the **M3** Inheritance Family Provision Act 1938 or section 28A of the **M4** Matrimonial Causes Act 1965) shall, if it is in force at the commencement of this Act or is made by virtue of subsection (3) above, continue in force as if it had been made under section 2(1)(a) of this Act, and for the purposes of section 6(7) of this Act the court in exercising its powers under that section in relation to an order continued in force by this subsection shall be required to have regard to any change in any of the circumstances to which the

court would have been required to have regard when making that order if the order had been made with reference to the death of any person who died after the commencement of this Act.

Textual Amendments

F1S. 26(1) repealed (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 11 para. 210** Table; S.I. 2014/954, art. 2(e) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

Modifications etc. (not altering text)

C1The text of s. 26(1)(2) and Schedule is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

Marginal Citations

M11973 c. 18.

M21889 c. 63.

M31938 c. 71.

M41965 c. 72.

27. Short title, commencement and extent.

(1) This Act may be cited as the Inheritance (Provision for Family and Dependants) Act 1975.

(2) This Act does not extend to Scotland or Northern Ireland.

(3) This Act shall come into force on 1st April 1976.

Within the statute and SI section of Part A

Please note the list changes function (screenshot below) and search results (72 results in total) should be incorporated into the online materials available to facilitate question 6 & 8 as currently written. Functionality of the online system to be discussed on this point.

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Inheritance (Provision for Family and Dependants) Act 1975

UK Public General Acts > 1975 c. 63 > More Resources

Table of Contents Content More Resources ?

Associated Documents

There are no associated documents for this legislation.

Impact Assessments

There are no associated impact assessment for this legislation.

List of all changes (made to the revised version after 2002) : ?

Affecting the Inheritance (Provision for Family and Dependants) Act 1975 >

Original Print PDF of Queen's Printer Version

This PDF does not include any changes made by correction slips. ?

Download

Requires Adobe Acrobat Reader

Screenshot of relevant supplementary material need for question 8

Inheritance (Provision for Family and Dependants) Act 1975	1975 c. 63	s. 23	substituted	Inheritance and Trustees' Powers Act 2014	2014 c. 16	Sch. 3 para. 2	✓
Inheritance (Provision for Family and Dependants) Act 1975	1975 c. 63	s. 25 (defs. of "former wife" and "former husband")	amended (prosp.)	Family Law Act 1996	1996 c. 27	s. 66(1) Sch. 8 Pt. 1 para. 27(8)	
Inheritance (Provision for Family and Dependants) Act 1975	1975 c. 63	s. 25(1)	words substituted	Civil Partnership Act 2004	2004 c. 33	Sch. 4 para. 27(2)	✓
Inheritance (Provision for Family and Dependants) Act 1975	1975 c. 63	s. 25(1)	words inserted	Civil Partnership Act 2004	2004 c. 33	Sch. 4 para. 27(3)	✓
Inheritance (Provision for Family and Dependants) Act 1975	1975 c. 63	s. 25(1)	words substituted	Crime and Courts Act 2013	2013 c. 22	Sch. 9 para. 92(a)	✓
Inheritance (Provision for Family and Dependants) Act 1975	1975 c. 63	s. 25(1)	words substituted	Crime and Courts Act 2013	2013 c. 22	Sch. 9 para. 92(b)	✓
Inheritance (Provision for Family and Dependants) Act 1975	1975 c. 63	s. 25(4)	word inserted	Civil Partnership Act 2004	2004 c. 33	Sch. 4 para. 27(4)(a)	✓
Inheritance (Provision for Family and Dependants) Act 1975	1975 c. 63	s. 25(4)(b)	words substituted	Civil Partnership Act 2004	2004 c. 33	Sch. 4 para. 27(4)(b)	✓
Inheritance (Provision for Family and Dependants) Act 1975	1975 c. 63	s. 25(4A)-(5A)	substituted for s. 25(5)	Civil Partnership Act 2004	2004 c. 33	Sch. 4 para. 27(5)	✓
Inheritance (Provision for Family and Dependants) Act 1975	1975 c. 63	s. 25(6A)	inserted	Civil Partnership Act 2004	2004 c. 33	Sch. 4 para. 27(6)	✓
Inheritance (Provision for Family and Dependants) Act 1975	1975 c. 63	s. 26(1)	repealed	Crime and Courts Act 2013	2013 c. 22	Sch. 11 para. 210	✓
Inheritance (Provision for Family and Dependants) Act 1975	1975 c. 63		Commencement Order	The Civil Evidence Act 1995 (Commencement No. 1) Order 1996	1996 No. 3217		✓
Inheritance (Provision for Family and Dependants) Act 1975	1975 c. 63	specified amended provision(s)	Commencement Order	The Civil Partnership Act 2004 (Commencement No. 2) Order 2005	2005 No. 3175	art. 2 3 Sch. 1 2	✓
Previous 1 2							

Banks v Goodfellow [1861-73]

All ER Rep 47 Also reported LR 5 QB 549; 39 LJQB 237; 22 LT 813

COURT OF QUEEN'S BENCH

SIR ALEXANDER COCKBURN CJ, BLACKBURN, MELLOR AND HANNEN JJ

11 JANUARY, 13 MAY, 06 JULY 1870

06 July 1870

Will - Validity - Capacity of testator - Mental illness - Partial illness - Effect on testamentary capacity - Presumption against validity.

For a testator to be capable of making a valid will he must be able to understand the nature of the act and its effects and the extent of the property of which he is disposing, and he must be able to comprehend and appreciate the claims to which he ought to give effect and the manner in which his property is to be distributed between them. The fact that the testator suffers from mental illness which does not interfere with the general powers and faculties of his mind, and, in particular, does not prevent his possessing the faculties mentioned above, so that there is no connexion between the illness and the will, will not render the will liable to be overthrown on the ground of the testator's incapacity. But when the fact that a testator has been subject to some form of mental illness is established a will executed by him must be regarded with great distrust and every presumption should in the first instance be made against it. The presumption against such a will becomes additionally strong where the will is an "inofficious" one, ie, one in which natural affection and the ties of near relationship have been disregarded.

Notes

Explained: Boughton v Knight [1861-73] All ER Rep 40. Considered: Jenkins v Morris (1880) 14 Ch D 674. Applied: Re Belliss, Polson v Parrott (1929) 141 LT 245. Considered: In the Estate of Bohrman, [1938] 1 All ER 271; Battan Singh v Armichaud, [1948] 1 All ER 152. Referred to: Murphett v Smith (1887) 12 PD 116; Birkin v Wing (1890) 63 LT 80; Roe v Nix (1892) 9 TLR 128.

...

Coram: Cockburn CJ

Ratio: The testator suffered from delusions, but not so badly or in such a way as was found to affect his capacity or to influence his testamentary disposition. The judge had given the following direction: 'The question is whether the testator was capable of having such a knowledge and appreciation of facts, and was so far master of his intentions, free from delusions, as would enable him to have a will of his own in the disposition of his property, and act upon it.'

Held: The will was effective. English law gives testators 'absolute freedom' in the disposal of their property. However the court pointed to 'a moral responsibility of no ordinary importance. the instincts and affections of mankind, in the vast majority of instances, will lead men to make provision for those who are the nearest to them in kindred and who in life have been the objects of their affection.' To disappoint reasonable expectation of this kind is to 'shock the common sentiments of mankind, and to violate what all men concur in deeming an obligation of the moral law'. English law 'leaves everything to the unfettered discretion of the testator' on the assumption that 'the instincts, affections and common sentiments of mankind may safely be trusted to secure, on the whole, a better disposition of the property of the dead' than stereotyped and inflexible rules. The court considered the test for testamentary capacity.

Cockburn CJ said: 'It is unnecessary to consider whether the principle of the foreign law or that of our own is the wiser. It is obvious, in either case, that to the due exercise of a power thus involving moral responsibility, the possession of the intellectual and moral faculties common to our nature should be insisted on as an indispensable condition. It is essential to the exercise of such a power (of making a will) that a testator shall understand the nature of the act and its effects; shall understand the extent of the property of which he is disposing; shall be able to comprehend and appreciate the claims to which he ought to give effect; and, with a view to the latter object, that no disorder of the mind shall poison his affections, pervert his sense of right or prevent the exercise of his natural faculties – that no insane delusion shall influence his will in disposing of his property and bring about a disposal of it which, if the mind had been sound, would not have been made.

Here, then, we have the measure of the degree of mental power which should be insisted on. If the human instincts and affections, or the moral sense, become perverted by mental disease; if insane suspicion, or aversion, take the place of natural affection; if reason and judgment are lost, and the mind becomes a prey to insane delusions calculated to interfere with and disturb its function, and to lead to a testamentary disposition, due only to their baneful influence – in such a case it is obvious that the condition of the testamentary power fails, and that a will made under such circumstances ought not to stand.'

JUDGMENT

Ilott (Respondent) v The Blue Cross and others (Appellants)

before

Lord Neuberger, President
Lady Hale, Deputy President
Lord Kerr
Lord Clarke
Lord Wilson
Lord Sumption
Lord Hughes

JUDGMENT GIVEN ON

15 March 2017

Heard on 12 December 2016

Appellants
Penelope Reed QC
Hugh Cumber
(Instructed by Wilsons
Solicitors LLP)

Respondent
Brie Stevens-Hoare QC
John Collins
Constance McDonnell
(Instructed by Wright
Hassall)

LORD HUGHES: (with whom Lord Neuberger, Lady Hale, Lord Kerr, Lord Clarke, Lord Wilson and Lord Sumption agree)

1. Unlike some other systems, English law recognises the freedom of individuals to dispose of their assets by will after death in whatever manner they wish. There are default succession rules in the event of intestacy, but by definition those only come into play if the deceased left no will. Otherwise the law knows of no rule of automatic succession or forced heirship. To this general rule, the statutory system of family provision imposes a qualification. It has provided since 1938 for the court to have power in defined circumstances to modify either the will or the intestacy rules if satisfied that they do not make reasonable financial provision for a limited class of persons. That power was first introduced by the Inheritance (Family Provision) Act 1938 (“the 1938 Act”). The present statute is the Inheritance (Provision for Family and Dependents) Act 1975 (“the 1975 Act”). ...

.... 3. The present case concerns one kind of claimant, namely an adult child who has lived quite independently of her parent, the deceased testator, for many years, but who is in straitened financial circumstances. That is only one of the types of case which may raise difficult individual questions under the 1975 Act, which have to be resolved on a case-by-case basis. Applications by spouses may do so, whether living with the deceased at the time of death or separated or divorced. Some cases involve difficult balancing of competing claims by several persons upon limited estates. Yet others involve assessing the circumstances in which the deceased was supporting the claimant in some way up to the time of his death; those circumstances may give rise to a claim that future maintenance is reasonably required, or they may demonstrate that support was given in circumstances in which there is no obligation to continue it after death. Some of the factors inevitably dealt with in this judgment may apply also to types of case other than those of adult children living separately from the deceased, but there is no occasion for this court to attempt to meet every difficulty to which claims for family provision may give rise. ...

... 5. District Judge Million reviewed in some detail the evidence of the very limited contacts which mother and daughter had over the extended intervening years. Mrs Jackson had kept a diary and Mrs Ilott gave her own detailed account. There had been three attempts at reconciliation, but all had foundered. The first, after the birth of the first of Mrs Ilott’s children in Spring 1983, had lasted the longest. It had been fostered by Mr Ilott’s mother, and had resulted in Mrs Jackson visiting the new mother in hospital and in several subsequent telephone calls between them. However, these had not in the main been amicable and they ended after an unpleasant row between Mr Ilott and Mrs Jackson, as to which the District Judge held that Mrs Ilott’s evidence about what her husband had said was deliberately evasive. Later conversations between mother and daughter occurred many years later in 1994 and 1999 after chance encounters in public places, but these were very short lived and also failed to establish significant common ground. District Judge Million went on to find that Mrs Jackson was capricious and unfair in many of the criticisms of Mrs Ilott recorded in letters, and that her decision to exclude her altogether from her estate was harsh and unreasonable. He found that the hurt felt by Mrs Jackson at the original and sustained rupture of her family, and what she saw as being deprived of her grandchildren, was so entrenched that little short of rejection by Mrs Ilott of her husband would have satisfied her; a written apology sent at one stage by Mrs Ilott did not meet her needs. Equally, he found that Mrs Ilott and her husband contributed to some of the difficulties in sustaining a reconciliation. It will be necessary later to refer to the limits to the relevance of these findings.

... *Reasonable financial provision*

16. The condition for making an order under the 1975 Act is that the will, or the intestacy regime, as the case may be, does not “make reasonable financial provision” for the claimant (section 1(1)). Reasonable financial provision is, by section 1(2), what it is “reasonable for [the claimant] to receive”, either for maintenance or without that limitation according to the class of claimant. These are words of objective standard of financial provision, to be determined by the court. The Act does not say that the court may make an order when it judges that the deceased acted unreasonably. That too would be an objective judgment, but it would not be the one required by the Act.

17. Nevertheless, the reasonableness of the deceased’s decisions are undoubtedly capable of being a factor for consideration within section 3(1)(g), and sometimes section 3(1)(d). Moreover, there may not always be a significant difference in outcome between applying the correct test contained in the Act, and asking the wrong question whether the deceased acted reasonably. If the will does not make reasonable financial provision for the claimant, it may often be because the deceased acted unreasonably in failing to make it. For this reason it is very easy to slip into the error of applying the wrong test. It is necessary for courts to be alert to the danger, because the two tests will by no means invariably arrive at the same answer. The deceased may have acted reasonably at the time that his will was made, but the circumstances of the claimant may have altered, for example by supervening chronic illness or incapacity, and the deceased may have been unaware of the full circumstances, or unable to make a new will in time. *In re Hancock, deceased* [1998] 2 FLR 346 illustrates another possibility. The deceased had acted entirely reasonably in leaving his business land to those of his children who were active in the business, but after his death part of the land acquired a development value six times its probate assessment, and, that being the case, there was a failure to make reasonable provision for another daughter who was in straitened circumstances. Thus there can be a failure to make reasonable financial provision when the deceased’s conduct cannot be said to be unreasonable. The converse situation is still clearer. The deceased may have acted unreasonably, indeed spitefully, towards a claimant, but it may not follow that his dispositions fail to make reasonable financial provision for that claimant, especially (but not only) if the latter is one whose potential claim is limited to maintenance. In *In re Jennings*, for example, the deceased had unreasonably failed, throughout the minority of his son, the claimant, to discharge his maintenance obligations towards him. Many might say, as indeed the trial judge did, that this failure imposed an obligation on the deceased belatedly to provide for his son. But by the time of his death many years later the son had made his own successful way in the world and stood in no need of maintenance; his claim accordingly failed, correctly, in the Court of Appeal.

18. The right test was well set out by Oliver J in *In re Coventry* [1980] Ch 461 at 474-475 in a passage which has often been cited with approval since:

“It is not the purpose of the Act to provide legacies or rewards for meritorious conduct. Subject to the court’s powers under the Act and to fiscal demands, an Englishman still remains at liberty at his death to dispose of his own property in whatever way he pleases or, if he chooses to do so, to leave that disposition to be regulated by the laws of intestate succession. In order to enable the court to interfere with and reform those dispositions it must, in my judgment, be shown, not that the deceased acted unreasonably, but that, looked at objectively, his disposition or lack of disposition produces an unreasonable result in that it does not make any or any greater provision for the applicant - and that means, in the case of an applicant other than a spouse for that applicant’s maintenance. It clearly cannot be enough to say that the circumstances are such that if the deceased had made a particular provision for the applicant, that would not have been an unreasonable thing for him to do and therefore it now ought to be done. The court has no carte blanche to reform the deceased’s dispositions or those which statute makes of his estate to accord with what the court itself might have thought would be sensible if it had been in the deceased’s position.”

19. Next, all cases which are limited to maintenance, and many others also, will turn largely upon the asserted needs of the claimant. It is important to put the matter of needs in its correct place. For current spouses and civil partners (section 1(2)(a) and (aa)), need is not the measure of reasonable provision, but if it exists will clearly be very relevant. For all other claimants, need (for maintenance rather than for anything else, and judged not by subsistence levels but by the standard appropriate to the circumstances) is a necessary but not a sufficient condition for an order. Need, plus the relevant relationship to qualify the claimant, is not always enough. In *In re Coventry* the passage cited above was followed almost immediately by another much-cited observation of Oliver J:

“It cannot be enough to say ‘here is a son of the deceased; he is in necessitous circumstances; there is property of the deceased which could be made available to assist him but which is not available if the deceased’s dispositions stand; therefore those dispositions do not make reasonable provision for the applicant.’ There must, as it seems to me, be established some sort of moral claim by the applicant to be maintained by the deceased or at the expense of his estate beyond the mere fact of a blood relationship, some reason why it can be said that, in the circumstances, it is unreasonable that no or no greater provision was in fact made.”

20. Oliver J’s reference to moral claim must be understood as explained by the Court of Appeal in both *In re Coventry* itself and subsequently in *In re Hancock*, where the judge had held that there was no moral claim on the part of the claimant daughter. There is no requirement for a moral claim as a sine qua non for all applications under the 1975 Act, and Oliver J did not impose one. He meant no more, but no less, than that in the case of a claimant adult son well capable of living independently, something more than the qualifying relationship is needed to found a claim, and that in the case before him the additional something could only be a moral claim. That will be true of a number of cases. Clearly, the presence or absence of a moral claim will often be at the centre of the decision under the 1975 Act. ...

...The decision of the Court of Appeal now under appeal

29. The Court of Appeal [2016] 1 All ER 932 held that the District Judge had fallen into two “fundamental” errors of principle. It was these which justified it in re-evaluating the claim for itself.
...

... Conclusions

42. It follows that the District Judge did not, on fuller analysis, make either of the two errors on which the Court of Appeal relied to revisit his award. That is enough to require this court to set aside the order of the Court of Appeal.

... Disposal

48. For all these reasons, the appeal of the charities should be allowed. The order of the Court of Appeal should be set aside and the order of the District Judge restored. This court was told that this appeal was brought by the charities largely on principle because of the possible impact of the decision below on other cases, and that some arrangement has been arrived at between these parties in the event that the appeal succeeded. Given the very protracted nature of these proceedings, that is clearly likely to have been sensible, but the court has rightly not been concerned with its details, and it has no relevance to the order now made.

LADY HALE: (with whom Lord Kerr and Lord Wilson agree)

... 66. ... Hence I agree with Lord Hughes that it was entirely open to him to make the order that he did, and just as it should not have been disturbed first time round it should not have been disturbed this time either. I have written this judgment only to demonstrate what, in my view, is the unsatisfactory state of the present law, giving as it does no guidance as to the factors to be taken into account in deciding whether an adult child is deserving or undeserving of reasonable maintenance. I

regret that the Law Commission did not reconsider the fundamental principles underlying such claims when last they dealt with this topic in 2011.

How a £1 million inheritance slipped from our family's grasp

P Collinson 18 Mar 2017 Guardian Newspaper

Challenging a will is never easy, whether the money has been left to an animal charity or a private school. A court ruling this week has made it even more of an uphill struggle

When Sybil Jenazian died last year it was no surprise that her estate was worth a tidy sum. Her Armenian father had made a fortune in the Lancashire cotton trade and left most of it to Sybil. But soon after her death her family were shocked to find that Sybil had changed her will in 2012, leaving the bulk of the money – believed to be more than £1m – to a local £11,000-a-year private school.

A bitter dispute between the family and Manchester High School for Girls since then is just one of a growing number of battles, many involving legacies to charities, that have ballooned as soaring property values have pushed up the value of inheritances.

The number of inheritance disputes brought to the high court has jumped eight-fold in 10 years, with many more ending up in the county court. Warring parties typically claim there was “undue influence” placed on the deceased when he or she wrote a will, or that they did not have the right “mental capacity” at the time. In one case in 2012 involving sibling rivalry over a dead mother’s estate, the judge warned that the legal costs would take every penny of the £120,000 inheritance.

Others make claims under the Inheritance Act 1975, arguing that close family members have not been given reasonable financial provision.

This week saw a ruling by the supreme court over a 10-year legal battle where Heather Ilott from Hertfordshire argued that her mother was wrong to leave £486,000 in her estate to animal charities Blue Cross, the RSPCA and the RSPB. Initially a lower court ruled that Ilott, who had from the age of 17 been estranged from her mother Melita Jackson, should be awarded £50,000 on the grounds that her mother had acted in an “unreasonable, capricious and harsh” way towards her.

Ilott thought she should be awarded more, and in 2011 the court of appeal increased it to £143,000 for a house purchase, plus £20,000 for living costs. It was this ruling that spurred many others to challenge what they see to be unfair wills. However, this week the supreme court overruled that decision – dropping the award back down to £50,000.

Solicitors declared that the ruling reaffirms the “testamentary freedom” of wills in England, compared with the forced heirship rules in some European countries. In other words, so long as the will is correctly drawn up, signed and witnessed, there is virtually nothing to stop an individual leaving everything to a cat’s home should they wish.

But supreme court judge Lady Hale, while ruling against Ilott, criticised the law for leaving judges in the dark when weighing up competing claims.

Janice Booth has been fighting Manchester High School for Girls over Jenazian’s legacy on behalf of the late woman’s cousins, who were previously named as the chief beneficiaries. She says she feels deeply let down by the law, as well as the institutions that regulate charities and fundraising.

“Sybil was a friend of mine [but] her old school influenced her to change her will in her 80th year to leave them nearly her entire estate.” She says that a will in 2000 left all Sybil’s money to her family, but then in 2007 it was changed to add a small sum to the school, then in 2012 it was changed again to leave the vast majority of the estate to the school.

Booth complained firstly to the school, then the Fundraising Standards Board (now called the Fundraising Regulator), and then the Charity Commission for England and Wales, but says she hit a brick wall. The family paid for legal advice, only to be told that mounting a case on grounds of “undue pressure” would be unlikely to succeed. It has subsequently signed an agreement with the school recognising the validity of the will, but Booth says that was partly because they feared they would be open to legal costs if they continued to block the school from accessing the estate.

“I’m just really angry about what happened. The school employs people to find financial donors who have money. She was single and targeted by the school. She was made President of the Old Girls Federation, even though she didn’t really want to be. She was a lonely woman who started getting invitations to meals at the school. She said they were lovely people, all accountants and solicitors.”

Why, she asks, would Sybil leave so much to a rich private school? “I think of a charity as helping sick or poor people. I don’t understand how a private school can be a charity.”

The school vigorously denies Booth’s claims. In a statement, headmistress Claire Hewitt said: “Sybil Jenazian attended our school during the 1940s and returned for a reunion event in 2007. From this point, for almost 10 years until her death, she was a familiar face at school events such as drama productions and concerts.

“We are surprised and saddened by the actions of these distant relatives and the accusations they have levelled at our school. At every step of the way their correspondence has received a response and we have never intimated that we would take any action against them.

“They have signed legal documents that recognise the validity and effectiveness of Sybil’s will and, as such, are aware they cannot contest on the basis that anyone at Manchester High School asserted undue influence. This categorically was not the case and the court has granted probate.

“Sybil was very clear that she wanted her legacy to help extend the opportunity of a Manchester High School education to as many bright and deserving girls as possible. We believe it is important to honour her wishes.”