

Interesting times

Araba Taylor provides a case law update on recent *Inheritance Act* claims



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For practitioners who are active in this field, the last couple of years have indeed been interesting times. Usually bogged down with the minutiae of the criteria applicable to particular categories of applicant and hamstrung in our advice to clients by the breadth of the judge's discretion, our attention has been drawn of late to more fundamental principles, relevant across the spectrum and addressing basic issues, such as statutory interpretation and human rights.

Dingmar v Dingmar

The first of these is *Dingmar v Dingmar* [2006] EWCA Civ 942; [2007] Ch 109, which required the Court of Appeal to consider the interaction of section 3(5) and the valuation principle in section 9(1) of the 1975 Act. The former requires the court to have regard to the various factors listed in section 3, 'as known to the court at the date of the hearing' – hence the increasingly common direction for updating evidence to be filed shortly before trial. Under section 9, however, the section dealing with property held on a joint tenancy, the court is empowered to order that 'the deceased's severable share of that property, at the value thereof immediately before his death, shall to such extent as appears to the court to be just in all the circumstances of the case, be treated for the purposes of this Act as part of the net estate of the deceased' (see section 9(1)).

Does this enable the court to take into account any increase in the value as at the date of the hearing? As the property

in the case had increased in value from GBP40,000 at the date of the deceased's death to GBP95,000 at the time of the trial, the issue was of great significance to the widow-applicant. A majority in the Court of Appeal held that it was not just the value as at the date of death, which fell into the deceased's estate for 1975 Act purposes and that the trial judge had not been fettered as he thought. However, in a very persuasive dissenting judgment, Lloyd LJ thought otherwise, and agreed with the trial judge, who had held that reasonable financial provision for the widow would be a half-share of the house, but that he could not award her more than half the value of the house as at the date of the deceased's death. In fact, it does not seem unjust that the court's statutory power to interfere with the property rights of joint tenants should be limited, not just in terms of time (section 9(1) also prevents the severable share falling within the definition of 'net estate' where the claim is made outside the six-month period), but also in terms of value. Nevertheless, although the position is currently a 2:2 judicial score-draw, the majority opinion in the Court of Appeal prevails.

Land v Land

Land v Land [2006] EWHC 2069 (Ch); [2007] 1 WLR 1009 also addresses a 1975 Act issue of wider application, namely its interaction with the *Human Rights Act 1998* and the *Forfeiture Act 1982*. In this case, the claimant, an adult son, had been convicted of the manslaughter of the deceased, his mother. The circumstances of the manslaughter were distressing, the claimant having been an inadequate carer for his mother. To begin with he had, with her consent, left untreated a serious back wound. The level of care he offered continued to deteriorate. After two

years of inadequate care, the deceased was eventually hospitalised and was found to have severe bed sores and breast cancer. She died two days later. Her wounds had been consistent with her lying in one place for a period of time in her own excrement and urine. The estate became divisible between the other children and the grandchildren. The claimant applied for relief from forfeiture, but was four days out of time.

The judge held that he had no discretion to extend time under the *Forfeiture Act*, nor was he able to declare that it did not apply to the particular type of manslaughter of which the claimant had been found guilty. The question was whether he could have received an award under the 1975 Act. Without considering section 3 of the 1982 Act this was not possible. However, in light of the current rules of construction under section 3 of the *Human Rights Act 1998*, the words under section 3 of the 1982 Act should be given their full effect in a manner compatible with Convention Rights. The claimant's right to inherit property, on an intestacy, was a right to possession under the *European Convention on Human Rights 1950* Art.8, and section 3 of the 1982 Act should be read in a way that (1) enabled the court to deprive the wrongdoer of benefit from the estate when it was in the public interest to do so, but (2) conferred a discretion to mitigate the harshness of the absolute rule when it was not in the public interest. It was therefore possible for the Claimant to advance a claim under the 1975 Act for such provision as was reasonable in all the circumstances of the case.

Re Seagrave

While *Re Seagrave (Deceased)* [2007] EWHC 788 (Ch); [2007] 1 WLR 2002 does not hold that the right to make a 1975 Act claim (at best, a chose in action) is a right to inherit, it

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does appear to equate the rights of a potential applicant to those of the beneficiaries under a will or intestacy (mere *spes*). Under Civil Procedure Rules Part 57.7(1), the claim form of a party seeking to challenge the will ‘must contain a statement of the nature of the interest of the claimant and of each defendant in the estate’. In this case, the claimant was a co-habitant, who did not stand to inherit if claims that the will had been forged or obtained by undue influence were successful. In that event, the estate would pass to the intestacy heir, who was the deceased’s brother. It was agreed that the claimant, who had co-habited with the deceased for about 12 years, had a right to make a *1975 Act* claim and common ground that it would be a better claim if she were competing with the intestacy heir rather than the beneficiaries named in the will. The judge considered that as the claimant had a clear and accepted financial interest in the outcome of the probate claim, by reason of her intended (but, obviously, not yet commenced) *1975 Act* claim. There was, he considered, no authority that a claim under the *1975 Act* was not capable of being an ‘interest’, nor was there a definition of ‘interest’ in any decided case with which his proposed broad construction would be inconsistent. Accordingly, the claimant had sufficient standing to bring a probate claim.

In addition, to the above cases, which raise the wider issues, there has, of course, been a number of the more usual decisions, offering guidance in relation to particular classes of applicant.



Surviving spouse

In *Baker (Susan) v Baker (Raymond Robert John)* (2008) (unreported) 4 April, the court had to consider the appropriate nature of provision for a widow, where one of the assets falling into the estate was the deceased’s business, which his sons had developed by their own hard work. His will left the former matrimonial home and the freehold interest in the business to the widow (aged just 57 years) and the goodwill to the sons, who continued to run the business, trading on its good name, to which the deceased had contributed. It was held that reasonable provision consisted of the transfer of title to the former matrimonial home to the widow, together with a lump sum

of GBP410,000, from which she could derive a reasonable income, of which GBP25,000 was to be paid immediately, having regard to the limited liquidity in the estate.

Co-habitant

In *Baker (Cassandra) v Baker (Richard Thomas)* (2008) (unreported) 25 March, the co-habitant was the defendant to a probate claim, being named as one of the executors in a will, which was successfully challenged on the grounds of want of capacity. She was nevertheless held to be entitled to an award of reasonable financial provision under the *1975 Act*. As her financial resources were very limited, and her principal maintenance needs were for a place to live, together with access to a reasonable quantity of capital from which she could supplement a limited income, the court awarded her a life interest in the deceased’s house and its proceeds of sale. The balance of the assets would go to the successful claimant, the deceased’s daughter, under the intestacy rules.

Adult child

Re Garland (Deceased) [2007] EWHC 2 (Ch); [2007] 2 FLR 528 is a case that reinforces just how difficult it can be for an adult child to succeed under the *1975 Act*, notwithstanding that there is no longer any need to prove ‘exceptional circumstances’, and demonstrates that lack of means, by itself, is no basis for making an award under the *1975 Act*. The applicant must first satisfy the court that the provision made is not reasonable. In this case, the nature of the relationship between the applicant and her father and the fact that, some years previously, she had inherited her late mother’s estate, meant that she was unable to satisfy the court on the first limb, even though her present situation was financially extremely precarious. ■