

Contentious Wills, Trusts and Inheritance Disputes

Case Studies

1. Multi Party Inheritance Dispute

We represented an 8 year old boy via his litigation friend in a complicated multi party mediation concerning the estate of his late father. Multiple claims were made under the Inheritance (Provision for Family & Dependents Act) 1975. The dispute involved:-

- 13 individuals;
- three (possibly four) separate competing claims;
- a deceased (estate) with a history of three marriages, the first two ending upon divorce, the third upon death;
- multiple step-families, two protected parties (one an infant, and one a disabled adult child of the deceased);
- one commercial and seven residential rental properties/units; and
- a self-represented litigant.

The matter was further complicated by the impact of the Brexit referendum and the property market turmoil impacting the efforts to market the largest estate asset – commercial investment property in London. Additional complicating factors included inheritance tax liability of over £500,000 under the Will as originally structured.

The case successfully resolved after a lengthy mediation and following the court approval of the settlement on behalf of the infant party and protected party.

Matter value: £2.3m

2. Defendants to Inheritance Act claim with Limitation aspects

We represented five (out of a total of six) residuary beneficiaries in responding to an Inheritance Act claim made by the adopted daughter of the deceased. Unusually this matter

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also raised issues in respect of the s.4 time limit as the claimant made her application to court outside of the time limit.

We also advised the executors of the estate. The deceased created two trusts during her lifetime that became the focus of attention from the claimant. Debenhams Ottaway additionally represented the trustees of the lifetime trusts.

Complications include the step family background situation and dispute in respect of lifetime gifts received by the claimant from her father / step mother.

The case also involved a charity beneficiary party and as a result had significant similarities with the high profile *lott -v-Mitson* case which was appealed to the Supreme Court.

The matter was successfully concluded at a mediation in March 2017 shortly following the publication of the decision in the *lott v Mitson* case.

Matter value: £1.3m combined estate plus lifetime trusts

3. Debtor died and executor didn't pay

Problem

Our client, a not for profit organisation providing care and accommodation services for the elderly was owed over £30k including interest by Ethel. When Ethel died her son Nigel acted in the role of executor but without obtaining an official grant of probate. Naughty Nigel helped himself to Ethel's money but did not pay the liabilities owed by her estate. Liabilities should be paid before distributions to beneficiaries.

Nigel failed to co-operate with our client and for a long time instead attempted to blame a third party - the local authority. He assumed the authority should be responsible for paying our client. The local authority was adamant that was incorrect. That was probably because Nigel was also suspected to have benefited from the proceeds of the sale of Ethel's home during her lifetime, money he spent on work to his own property. Our client was caught in the middle in the situation.

Nigel would not recognise that Ethel (her estate) contractually was responsible for the payment and it was a separate matter for Nigel to resolve the issues he had with the authority.

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How we helped

The deadlock was broken by pursuit of an Insolvent Estate Administration Order offering a springboard option to put under the spotlight the dealings Nigel had with Ethel's money.

Complexities

This type of petition is routinely served upon the executor responsible for the estate but in this case because the evasive Nigel (who was also frequently out of the country) had not obtained an official grant of probate an extra layer of complication arose. This was overcome by simultaneous application to gain authorisation to serve the petition on Nigel and for the service method to be via post and email.

Result

The deadlock was broken, Nigel engaged legal representatives and faced up to the matter he had long ignored. He was keen to avoid his previous actions being scrutinised and agreed to make payment in full to our client plus costs.

- Names changed for anonymity reasons.

4. Character attack as part of Inheritance Act claim

We represented the main beneficiary (also the personal representative) in a claim against her under the Inheritance (Provision for Family & Dependents) Act 1975. The claim related to the estate of her late mother-in-law and was made by the daughter of the deceased.

We helped the client to preserve as much of her interest in the estate as possible and sensitively handled a highly emotive situation when allegations were made that the client's late husband (the son of the deceased/brother of the claimant) was the cause of estrangement between the claimant and her mother.

The claim settled via without prejudice settlement discussions at a low 'nuisance level'. This ensured that almost the entire estate was preserved for the benefit of the client and her late husband's good name was not subject to further character attack.

Matter value: Estate valued at £175,000

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5. Executor removal dispute

We advise an executor involved in High Court proceedings regarding his position as executor. The case includes an inquiry into what has become of the income relating to eight rental units held on a Will Trust. The executor also faces demands for an explanation of the expenditure incurred in the management of the properties.

There are additional complications caused by parallel divorce proceeding also taking place with animosity between the divorcing couple (who were the two individuals originally named as the executors of the estate), and a significant history of cash only dealings during the deceased's lifetime.

The executor aspect of this matter has been determined at trial with the client successfully avoiding any liability for the Claimant's significant costs claim.

Matter value: £1.3m+

6. Claim by infant child of the deceased

We represented the main beneficiary in a claim against her under the Inheritance (Provision for Family & Dependents) Act 1975. The claim related to the estate of her late partner and was made by the child of the deceased, via his mother (ex-partner of the deceased) as litigation friend.

Significant animosity and mistrust gave rise to hostility between the present partner and ex-partner of the deceased.

It was important to the client to preserve to the maximum possible extent her interest in the estate and also her separate interest under a life policy. During court proceedings, the claimant also sought to challenge on technical grounds that the life policy formed part of the net estate and was capable of being targeted by the 1975 Act claim. We successfully defeated this argument and the claim against the remainder of the assets ultimately settled via mediation avoiding the costs of trial. The settlement was approved by the court as the claimant is a minor.

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The client commented

"I just wanted to drop you a short note by way of a personal thank you. I know it's your job, but there are many ways to do a job and I appreciate the care and consideration you showed to (client) at your meeting yesterday. She was very anxious and upset prior to the meeting but came out feeling more buoyant and comfortable with the situation and the agreed next steps. You really made a difference to her during this very difficult time. Thank you."

Matter value: £245,000 estate and life policy

7. Property trust dispute

We advised a client who faced the ongoing challenges of living with bipolar mental health issues. The client benefits from a right to reside in a property held on trust following the death of her late husband. We advised her on a trust dispute concerning the nature and effect of the Will trust terms pertaining to the property.

The client is faced with challenging circumstances given that her step-family stand to benefit when her right to reside comes to an end. The roof over this client's head is therefore at risk of challenge from the step-family in terms of argument about the early termination of the rights under the trust.

It was important to build a good connection with this client who can find it difficult to establish trust with others.

Matter value: Property valued at estimated £1m+

8. Cross border independent administrator. Limited grant to preserve estate assets

We are assisting in a cross border matter involving the estate of the client's late mother, the substitution of executor and the appointment of an independent administrator on a limited grant basis to preserve estate assets. The estate includes assets in Europe and the UK and contested issues including the question of domicile and associated tax and estate distribution issues.

Matter value: £2m + estate worldwide

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9. Inheritance dispute following death abroad, and incomplete disclosure on divorce

We have advised this client in an inheritance dispute claim on the estate of his late father. The matter includes cross border aspects with assets in the UK, Morocco and Spain and the majority of the worldwide estate was left to the deceased's former maid/housekeeper. This was complicated as the death occurred abroad. The deceased also had a complex family structure following four marriages, three ending in divorce, and as a result of this he had multiple step families. There were also possible questions of incomplete financial disclosure by the deceased within the divorce proceedings concluded during his lifetime.

Matter value: £2m worldwide estate

10. Inheritance dispute and parallel fatal accident compensation claim

We advised the Personal Representative and sole beneficiary in disputes concerning the estate of her late husband (they were going through a divorce that had not been completed prior to his death). The case has implications for the financial future of the infant child of the couple. The case is complicated due to:-

- Associated Fatal Accident compensation claims, a threatened Inheritance Act claim by the deceased's new partner, and a property occupation dispute with that same partner with the risk of a mortgage lender possession action.
- Additional disputes regarding the beneficial ownership of the property registered in the names of the deceased and his new partner and the proceeds of an accidental death insurance policy.

Resolution outcome achieved on favourable terms and avoiding the time and costs of litigation and court determination at trial. Conclusion via negotiation incorporating sale of property asset on agreed terms

Matter value: Share in property worth c. £1/2m and insurance policy of £202,000

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11. Half sibling claim following upon an intestacy

We advise a main beneficiary defendant in her response to the claim brought by her younger half sibling in relation to the estate of their late father further to the Inheritance (Provision for Family & Dependents) Act 1975.

The matter is complicated as it is multi-party litigation and additionally involves multiple litigation friends for infant Claimant/ protected party Defendant respectively. Mental Health issues for one of the beneficiaries (our client) and the impact on ability to work/study and present/future financial needs and resources were significant factors in the dispute.

The matter is particularly important to the client because retaining her interest in the estate of her late father and protecting it from a challenge that would otherwise see it reduced is necessary to give the young client the best opportunity going forward in life with the significant health challenges she already faces and the death of her parent meaning that other than through the inheritance he is no longer able to support her.

Matter value: £313,000

12. Claim from Down Under, Forgery and undue influence

We represent a client based in Australia in the investigation of possible inheritance dispute challenge relating to the UK estate of his late father. The dispute raises issues of forgery, undue influence and lack of knowledge and approval.

Complications include the inconsistencies between the provisions made by a 2010 Will and subsequent lifetime dealings with assets detailed in the Will including property portfolio and policies of insurance.

With advice from our firm the client has obtained from his opponent a much improved settlement worth approx. £230,000.

Matter value: £1m+

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13. Surviving husband facing eviction

We represented a surviving spouse in the successful pursuit of a financial provision claim per the Inheritance (Provision for Family & Dependents) Act 1975 relating to the estate of his late wife and concerning the valuable estate interest in a Hertfordshire property. The situation arose following negligent property and will writing advice given to the couple by an unregulated will writer.

The case also involved a challenging family dynamic with a strained step child / step parent relationship. Our client was particularly concerned that the roof over his head was at risk and he faced being forced out of the property that had been his home for over 17+ years.

After the issue and service of court proceedings on behalf of our client the Defendant adopted a far more realistic position and settlement negotiations ultimately proved successful.

Complications included the incorporation of an option to purchase arrangement and capitalisation of life interest were overcome in the drafting of the settlement agreement to both secure the home for our client plus flexibility on where he can live in the future and improved financial position for the future.

The client commented

"A friendly solicitor who was sensitive and supportive. The service has been excellent. A consistent, professional manner."

Matter value: property value £500,000

14. Proprietary Estoppel and inheritance Act claim by brother

We represented a main beneficiary defendant (also appointed the executor) in relation to multi-party litigation on a combination of various proprietary estoppel and Will validity claims on multiple grounds as well as claim further to the Inheritance (Provision for Family & Dependents) Act 1975 brought by his brother.

The matter was further complicated by the addition of yet another dispute focussed upon the validity/operation of a discretionary lifetime trust outside of the estate.

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The dispute was resolved via settlement dialogue and a Deed of Variation on favourable terms thus avoiding the time and costs of litigation and court determination at trial.

The client commented

"I had top advice"

Matter value: Approx. total value of £915,000 (estate and additional discretionary lifetime trust)

15. Total defence to Inheritance Act claim

A successful defence to the Inheritance Act 1975 claim was achieved on behalf of this client TM. Our client was the main beneficiary of the disputed estate of her late good friend. The Claimant, a daughter of the deceased from a failed relationship went as far as the issue of court proceedings. Ultimately the arguments we raised to deny any liability for the claim were successful in bringing about a complete back down by the Claimant and discontinuance of the claim.

The case was complicated by the references the deceased made in this lifetime via a letter of wishes to a form of trust arrangement and which trust proved challenging to tack down. Additionally, impact of inheritance tax on the estate and the desire to avoid the need for a sale and instead keep the property asset added another layer of complication.

We successfully preserved all of our client's interest in the estate and avoided the need for any payment to the Claimant.

The client commented

"I would like to express my heartfelt gratitude to you, I really appreciate your guidance, advice and humour during my inheritance claim, without your knowledge, negotiating and analytical skills I am sure the claim would have gone to court and the matter would not have been settled by now, I remain completely dazzled by your letter writing skills. This was my first experience of Solicitors and the legal world, you have shone out as an outstanding solicitor with a strong passion for your clients' cases.

I cannot thank you enough for all of the hard work and effort you put into my case. Thanks once again for your legal advice, time, and support."

Matter value: estate of £570,000

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16. Will validity threatening to delay distribution of the estate

We acted on behalf of the executors of the deceased's estate. The deceased made two Wills in the two years prior to his death. The last Will being made shortly before death. During the administration of the estate per a grant issued in relation to the last Will a validity challenge was advanced by two nephews of the deceased.

The executors had to be cautious not to proceed to distribute the estate until such time as the nephews' claim was withdrawn or a claim was issued and the dispute resolved. The nephews switched legal representatives a number of times but failed to take any substantive steps either to pursue a probate action or withdraw the claim – they dragged matters out but neither got on or got out of the way. The executors faced pressure from the residuary beneficiaries to distribute the estate, but were effectively caught in the middle between the parties.

A firm stance was communicated to the nephews that it was not acceptable to leave the estate in deadlock with no action underway to resolve the deadlock. Ultimately deadlock was broken after the threat of pursuit by the executors of a **Cobden-Ramsey** court order to permit the executors to distribute the estate. Through engagement with the claimant nephews and residuary beneficiaries, we were able to break the deadlock and allow the executors to proceed with the administration of the estate. The executors were able to protect their position against any future claim that they be required to personally reconstitute the estate after distribution.

Matter value: Estate £500,000

17. DNA testing to establish proof of parentage

Assisting client in bringing claim to entitlement as a beneficiary of the estate of her biological father.

The client was the secret lovechild of the deceased a married man who had an affair in the 1970s with a married woman. Multi party dispute involving one claimant, two beneficiaries, and two executors.

The matter involved proof of parentage dispute and the need for DNA scientific testing. After initial resistance from the executors of the estate co-operation was gained in progressing the

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DNA testing which ultimately confirmed our client as a biological child of the deceased entitled to benefit from his estate.

Matter value: Estate £350,000

18. Executor fighting application for removal

Assisting executor client in successfully fighting off the application brought by the daughter of the deceased - one of the two main beneficiaries of the estate - seeking his removal and replacement by a substitute executor.

The matter was made more challenging by the fact that the applicant opponent was acting as a litigant in person and ADR efforts did not lead to a resolution meaning the case went all the way to contested court hearing. The successful resolution was particularly important to the client as his personal integrity was challenged by the allegations the applicant pursued.

Matter resolved at trial with successful outcome for the client as the application was dismissed, the client's name cleared and the opponent ordered to pay the client costs.

Matter value: c. £1m estate

19. Variation of Trust Act 1958 application

Assisting client in investigation of matters of potential will validity challenge on grounds of lack of testamentary capacity or want of knowledge & approval and/or Inheritance Act claim and/or application under the Variation of Trusts Act 1958.

The client faced the prospect of receiving nil benefit from the estate of his deceased wife after she had changed her Will a matter of only days before her death during the period of her hospital stay.

The Will was particularly inefficient in tax terms and resulted in an unnecessary extra c. £200,000 inheritance tax liability.

The matter is complicated by the involvement of minors and need for litigation friend and also fact that shortly before her death the deceased had contemplated pursuing divorce proceedings.

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Matter value: Estate value £1m

20. Will writer negligence

Professional negligence claim against solicitor will writer on behalf of multiple disappointed beneficiaries.

Claim concerning negligent failure to secure the effective disposition to the multiple beneficiaries in accordance with the Testator's instructions. In an ill-fated attempt to minimise future inheritance tax the solicitor drafted a will including a formula for the calculation of the gift to each beneficiary rather than the straightforward specific gift of a cash sum. Due to an error in the formula wording discovered only after the death of the Testator the beneficiaries miss out on over £231,000 of the gifts that had been intended to go to them.

Matter value: £¼m (including interest) out of estate valued at £1m

21. Inheritance Act claim by the second wife of the deceased

Representing the daughter and three grandchildren of the deceased in handling the claim launched by the second wife of the deceased further to the Inheritance (Provision for Family & Dependents) Act 1975.

The wife (of over 25 years) received very modest benefit under the poorly drafted Will that set her on a course of conflict with the deceased's family from his first marriage. The claim was complicated by a number of factors including the high emotion of the parties, allegations in relation to the lifetime conduct of the deceased, the fact that all three grandchildren were under 18 and required involvement of a litigation friend, the estate assets primarily tied up in property, dual beneficiary and executor role of the daughter and continuing occupation of the main property asset by the wife giving rise to need for consideration of possession action.

Successful resolution on negotiated terms preserving the maximum interest in the liquid assets of the estate and achieving a clean break style conclusion that was then approved by the court at a settlement approval hearing.

Matter value: Estate value over £¼m

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22. Neutral Executor

Representation of the executor son responsible for the administration of the estate of his late father complicated by the pursuit of a claim by the estranged daughter of the deceased.

A 1998 Will left the entire estate to the wife (mother of the executor and of the Claimant) and she also benefits from transfer of joint assets further to the operation of rules of survivorship. The estranged adult daughter received no benefit from the estate and brought a claim pursuant to the Inheritance Act 1975 taking into account her mental health issues and limited capital and income earning potential.

The case is complicated by reason of the significant fire at the property (the main asset in the case), the wife choosing to act in person and not engage legal representatives, her deafness and significant health problems and very limited engagement in the case. It is important to the executor to avoid personally being dragged into the centre of the conflict and to instead maintain a neutral position whilst at the same time complying with his obligations further to CPR 57.16.

Matter value: Estate value £1.23m

23. A claim under the Inheritance (Provision for Family & Dependents) Act 1975

We helped a woman successfully bring a claim as a cohabitee against the estate of her late partner after he overlooked making a Will and she would not have benefited under the rules of intestacy. The multi million pound estate including farm house and farm land plus other properties was due to solely pass to son from previous relationship.

Matter value: Estate value £2m+

23. A dispute over the identity of the correct beneficiary

We worked with a woman to successfully claim over £450,000 as the correct beneficiary to her late father's estate. Her father's sister and nephews had denied he ever had any children so it was necessary to use a caveat to block them from obtaining a grant of probate and then distributing the estate to themselves. This was a contested proof of parentage case that was ultimately resolved after DNA evidence was obtained.

Matter Value: claim over £450,000

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24. A dispute over the interpretation of a Will

We helped save a group of five family beneficiaries £325,000 by successfully arguing their case against two residuary beneficiaries concerning the correct interpretation of a poorly drafted transferable unused spouse nil rate band legacy clause.

This saved the clients the need to pursue an alternative claim for negligence against their former Will writer lawyer which would have been trickier, not least because the practice had been shut down following a Solicitors Regulation Authority intervention.

Matter Value: £325,000

25. Claim against a fraudulent Will

We advised beneficiaries who challenged the validity of a Will. The deceased was in one city when she signed her Will and following investigation it was found that the witness to the Will was at that time in fact seriously ill in hospital in another city altogether and could not have been a witness.