

Wills & probate

Widow's might

Michael Tringham reports on a successful challenge

IN BRIEF

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Mr Iqbal's non-provision declaration explained why he was leaving his estate to his son by a previous marriage but to his wife only an £8,000 legacy and lifetime right to occupy the £115,000 marital home: "she has not been a loving and caring wife [and] acts compulsively and repetitively and gives me verbal abuse and physical abuse."

Nonetheless Mrs Mussarat Bano Iqbal challenged the will under the Inheritance (Provision for Family and Dependents) Act 1975. In the High Court HHJ Bidder QC accepted that the widow may not have been an easy person to live with, may have irritated the deceased—particularly in his last years—and was somewhat eccentric. But she had looked after and cared for the deceased when he was ill, and kept house for him during a 22-year marriage. Nor could she meet the requirement to carry out an estimated £30,000 of repairs. He ordered that she should have a half beneficial share outright in the home.

That is now unanimously confirmed by the Court of Appeal (*Iqbal v Ahmed* [2011] EWCA Civ 900, [2011] All ER (D) 32 (Aug)), which ruled that constrained by the relatively small size of the estate, the judge had to grapple with the need to make reasonable financial provision for the widow. Lord Justice Gross concluded: "Realistically, the only candidates for providing support to the widow are the state or the estate." He added: "Given the deeply hostile relationship between widow and son, it is only by making the capital provision which the judge ordered, that there is the prospect of a clean break—if the property is sold."

Legal lottery

Lajos Szanto often invested a few dollars in the Queensland state lottery. But after the last ticket he ever bought won AU\$1.8m—his four children faced each other in Queensland's Supreme Court.

Clause 3 of the deceased's will gave "all furniture and chattels" in his home to his daughter Christina and her husband. Clause 4 left "the rest and residue" of his estate equally to his other three children—Margie, Alexander and Stephen Louie. As the winning lottery ticket was found in his home, which clause would determine who got the prize money?

In construing the will, Hon Justice Cullinane noted that under lottery rules the ticket remained the lottery operator's property, but gave the purchaser the right to claim the prize money. Thus His Honour, referring extensively to *Theobald on Wills*, held that the deceased's rights in relation to the winning ticket amounted to a *chose in action*. "As such those rights were incorporeal property having no locality and cannot fall within the terms of clause 3...because of the limitation as to locality contained in the words 'that are in the house'...The said prize money forms part of the residuary estate."

Caite Brewer of Brisbane law firm McInnes Wilson, to whom I am indebted for the details of this report, tells me a separate case is going on about the same estate, as to whether the deceased bought the lottery ticket for himself alone or for himself and his son Stephen Louie.

Probate briefs

When the late Sloma Rosenberg died intestate, a Canadian court appointed a liquidator—who instructed the deceased's accountant to prepare and file the terminal return and quickly send in a payment on account of the tax that might be owing. But the accountant failed to file the return, there were disputes between

the heirs and an undeclared offshore bank account was uncovered. Meanwhile the Canadian Revenue Agency levied significant late filing penalties. The liquidator appealed. But the federal court, while understanding why the liquidator might be distracted by all the complexities, held (*Estate of the Late Sloma Rosenberg v Minister of National Revenue* 2011 FC 445) that:

- Just because a tax return may not be accurate should not prevent it from being filed on time with a letter explaining that the tax has been estimated in the absence of all the information required to calculate the tax accurately.
- The dispute among heirs did not constitute extraordinary circumstances sufficient to justify cancellation of the late filing penalty.

The British Medical Association (BMA) is challenging an NHS rule under which the widower of a female doctor receives a lower pension than a widow. Iain Cockburn, 56, whose Warwickshire GP wife Dr Clare Boothroyd died of cancer, receives £3,200 a year less in pension than if he had been female. Lawyers for the secretary of state for health accept that the rule is discriminatory but argue it is justified to allow the discrimination for NHS employees aged over 55 due to the government's belief that women occupied a disadvantaged position owing to childcare responsibilities and their historically lower earning potential. The BMA replies that such stereotypical assumptions are—particularly as a significant proportion of women within the NHS are significant breadwinners for the family.

A Berkshire will-writer has been jailed for 14 months following prosecution by Bracknell Forest Council, whose trading standards officers had warned him to stop telling more than 100 clients that changes in the law had invalidated their wills. He charged them between £30 and £60 to "remedy" their wills. He also claimed to store clients' wills in a secure facility—but these were found in an airing cupboard at his home. The money he earned is to be confiscated. **NLJ**

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