

Will, trust and estate disputes

Legal update: February 2012

Inheritance (Cohabitants) Bill [HL] – first reading 11 January 2012

A Bill to make provision for the property of deceased persons who are survived by a cohabitant.

The Bill was introduced by Lord Lester of Herne Hill, read a first time and ordered to be printed.

The Law Commission's proposals to amend the Inheritance (Provision for Family and Dependants) Act 1975 was introduced to the House of Lords as a private member's bill on 11 January 2012.

For comment, see the Daily Telegraph here:

Inheritance changes bode badly for expats

By Robin Paul, The Daily Telegraph 20 December 2011

Howard v Howard – Lawson [2012] EWCA Civ 6 – father and son dispute entitlement to proceeds of sale from thirteenth century ancestral home.

This case involves a dispute between father and son over the sale of a £2.5 million thirteenth century ancestral home.

Phillip Howard, claimed he was entitled to £1.5 million from the sale of Corby Castle. His father, Sir John Howard- Lawson, had sold the property in 1994. Included in the sale were all contents and land. It sold for £2.5 million.

Phillip claimed his father had no right to sell the property as his father had failed to comply with the terms of a Will made in 1934 by Philip's great-great grandfather.

The Will included a clause which required an heir to apply for and endeavour to obtain the Royal Licence, or take such other steps to authorise the use and bearing of the name and arms concerned within one year.

It stated that if an application for Royal Licence was made within one year there was no independent need to take up the name before the Royal Licence was granted.

Philip claimed that his father failed to do this and so should not have benefited from the sale of the property. In response Sir John argued that he had indeed begun to

use the name within the required time and stated that the sale of Corby Castle was only necessary to assist Philip when he got into financial difficulties.

Lady Justice Proudman ruled at first instance that Sir John had inherited the property. The case was appealed by Philip and the decision at first instance was upheld in the Court of Appeal who also awarded Sir John £22,000 by way of costs.

Following this decision Philip has applied to take the matter to the Supreme Court. [Click here](#) for a link to the decision:

Perdoni v Curati [2011] EWHC 3442 (Ch) – This case looks at a testator's domicile of choice and the implication of that in terms of the revocation of an earlier Will.

The testator made a Will in 1980 in England. It gifted his estate to his wife. If she predeceased it passed to the claimants whose uncle was the testator.

The testator also made a Will in Italy in 1994. This allowed only for the testator's wife to inherit his estate. She predeceased so intestacy arose in respect of that Will.

If the 1994 Will were treated as valid the defendant in the action stood to inherit under the rules of intestacy. The issues the court had to determine were whether English or Italian law was applicable and whether the 1994 Will had implicitly revoked the 1980 Will.

It was decided that in 1994 it was clear the testator had



the requisite intention to reside in England as his domicile of choice. Accordingly the effect of the 1994 Will on the 1980 Will was to be determined by English law not Italian.

There was no specific revocation clause in the 1994 Will and so the question as to whether or not it had been revoked depended on whether it could be shown to have been revoked by implication. *Dempsey v Lawson* applied. Here, there was a presumption against implied revocation because an implied revocation could only be found from looking at the terms of successive testamentary instruments where there was a logical inconsistency between them. Here the 1994 Will did not wholly revoke the 1980 Will.

There was no inconsistency between them except that if the testator's wife had not died before him she would have taken the whole of his estate under the 1994 Will. It was held that the material part of the 1980 Will leaving the English estate to the claimants continued to be valid.

The judgment can be read [here](#)



Russell Simpson

Partner

T: +44 (0)1892 506 139

E: russell.simpson@crippslaw.com

Cripps Harries Hall LLP
Wallside House
12 Mount Ephraim Road
Tunbridge Wells
Kent TN1 1EG

T: +44 (0)1892 515 121
F: +44 (0)1892 544 878
E: reception@crippslaw.com
DX: 3954 Tunbridge Wells
www.crippslaw.com

London office: 53 Chandos Place, London WC2N 4HS
T: +44 (0)20 7930 7879

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