

## Will, trust and estate disputes

Legal update: January 2012

### Co-habitant dispute over interests in property - Jones v Kernott [2011] UKSC 53

By Julie Exon Law Society Gazette 15 December 2011  
p17

This was a co-habitant case looking at what the parties intended in order to ascertain what the proprietary interests of each were. This case was reported by our property dispute resolution team in their December 2011 article by Rebecca Nash: [click here](#) to read the article.

This is an issue which can easily arise on the death of one of the interested parties and their executors may be required to argue that an interest in property exists.

This Law Society Gazette article helpfully summarises the position. Where a dispute arises between co-habitees as to their property interests Julie Exon says the starting point is to try and work out what the parties can be inferred, from their conduct, as having intended.

If it is possible to adduce the intention of the parties then the court cannot impose its own view despite whether the outcome is fair or not.

Where no intention can be shown, the court should impute an intention which delivers a fair outcome looking at all dealings between the parties.

The full judgment can be found on [Baillii](#)

### Will challenge, undue influence - Wharton v Bancroft, Bancroft, Wharton, Fagan and Wharton [2011] EWHC (Ch) 3250

The high court have upheld the validity of a deathbed Will made by 78 year old George Wharton which benefited his life partner and recent wife, Maureen, solely.

George Wharton was a Kent businessman and at his death in September 2008 his estate was valued at around £4m.

George Wharton's daughters challenged the validity of his Will on the basis of undue influence which they argued had been exerted by Maureen.

George Wharton suffered from terminal cancer and when he knew he had only days to live he returned

home to deal with his affairs.

He had been co-habiting with Maureen for over 30 years when he returned from hospital with only days to live. They married at home the same night that he returned from hospital.

Just before the wedding ceremony he executed his Will. It was a handwritten Will prepared by Mr Wharton's solicitor. It was read to him aloud and signed and witnessed by the solicitor and his wife. It was made in contemplation of his marriage to Maureen.

Three days later George Wharton died.

The Will was challenged by the daughters on the ground of undue influence. Mr Justice Norris said that it was clearly a deathbed marriage and Will and whilst a large estate leaving nothing to his children could cause tension between the family, there was no evidence Mr Wharton was coerced in making a Will benefiting the lady who he treated as his wife for over 30 years.

He also noted the IHT advantage of the marriage of which Mr Wharton was aware. It would have caused Maureen difficulties in respect of the business they had built up if tax had been payable.

The judge upheld the deathbed Will.

The full judgment can be found on [Baillii](#)



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