



Private Client Law Bulletin

Will drafting – Charity successfully challenges a Will

The recent decision by the Court of Appeal in the case of *RSPCA v Sharp* [2010] has highlighted the importance of Will drafting to ensure that the document reflects your wishes accurately and there is no confusion on its interpretation on death.

The case attracted much media coverage last year when the RSPCA challenged the Executors' interpretation of two clauses in George Mason's Will.

The two clauses in dispute were:

- Cash legacy of an amount equal to the "maximum which I can give...without Inheritance Tax becoming payable in respect of this gift"
- Gift of property with direction that "the Inheritance Tax (if any)" to be paid from residuary estate left to RSPCA.

The courts had to decide whether the cash legacy was:

- A gift of the full Inheritance Tax allowance (£300,000); or
- A gift of the available Inheritance Tax allowance (£131,000) after deducting the value of the bungalow (£169,000).

The Executors interpreted the pecuniary legacy as a gift of the deceased's entire IHT allowance which had the effect of reducing the RSPCA's entitlement by £280,000.

In December 2010 the Court of Appeal unanimously upheld the RSPCA's argument that Mr Mason intended to pass his estate free of Inheritance tax and so the pecuniary legacy was limited to the available allowance (£131,000) after deducting the value of the property.

Concluding thoughts on the case:

- The court decision does reinforce the importance that a client fully understands the legal and taxation consequences of his instructions and equally importantly that the client's Will is drafted with accuracy and with clarity so as to avoid any ambiguity (and significant legal costs) between the Executors and beneficiaries.
- Secondly one wonders how much of an impact ("if any") the adverse publicity the RSPCA received last year will have on their reputation for future legacies despite being vindicated by the Court of Appeal's decision.

If you require any specific advice in connection with the material contained in this bulletin, or on any other Private Client issues, please contact: Duncan Bailey in Liverpool on 0151 600 3451, Richard Bate in Manchester on 0161 836 8840 or Stephen Marriott in Preston on 01772 229 816.

If you no longer wish to receive the bulletin please let us know by return e-mail to kimberley.malcolm@brabnerscs.com

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