

**Private Client Law Bulletin****Case law update: Clarification of when Trustee actions can be set aside**

The Court of Appeal has clarified the law applying to when Trustee actions can be set aside. If Trustees act on advice taken from seemingly competent advisors which turns out to be incorrect, they will not have breached their fiduciary duties and their action will not be set aside. Instead, the proper course of action is a claim in negligence against the person who gave the faulty advice. This applies even where one of the Trustees is a partner in the firm who incorrectly advised the Trustees, as a distinction is drawn between the individual in his capacity as Trustee and as advisor. It follows that a Trustee could have to sue himself, albeit in different guises.

The Court further held that a voluntary disposition can only be set aside on grounds of mistake where the person making the disposition was mistaken as to the legal effect of the gift rather than the consequences. A mistake as to the tax consequences of the gift would not qualify and the gift would stand. A distinction will need to be drawn between 'legal effects' and 'consequences' and this may prove difficult.

Practical effects

The Court of Appeal has made clear that in the future, if Trustees find themselves in a situation where an action or disposition did not have the intended effect or had adverse consequences that they did not expect, their proper course of action should be to bring an action against their advisors for professional negligence. Of course, if they did not take any advice then they are likely to have acted in breach of fiduciary duty and the action/disposition may be set aside but they would be personally liable for any losses incurred.

Further, the Court suggested that it should be up to the beneficiaries to challenge the Trustees' actions if they wish to have them set aside, rather than the Trustees. Any such application may be joined by HMRC if the tax liabilities of the Trust are to be affected.

Gone are the days of self-correction for Trustees – it seems that negligence claims are the way forward.

A birth right to inherit - Animal charities lose in Inheritance Court of Appeal Case

March 2011 saw the Court of Appeal rule that Heather Ilott has the right to overturn her own mother's will which had left her entire £460,000 estate to three animal charities, the Blue Cross, the RSPB and the RSPCA.

Irrational

The Court of Appeal ruled that the Deceased's only child has a right to make a claim against her mother's estate as it was "unreasonable" of her mother, Melita Jackson, to have made no provision for her. It was argued that the Deceased had acted irrationally and that she had left her estate to three animal charities out of spite.

Sir Nicholas Wall, president of the Family Division sitting in the Court of Appeal said there was no evidence that Mrs Jackson "had any connection with the charities, or that she had any particular love of, or interest in, either animals or birds".



Mrs Jackson died aged 70 in 2004. She left a letter explaining that she had not provided for her daughter in her will as the two of them were estranged. Mrs Ilott had left home aged 17 and a proper reconciliation had never been achieved. Mrs Ilott's final breakdown with her mother was said to be over the naming of her daughter, Ellen, after Mrs Jackson's sister-in-law, whom she did not like.

Instructions to defend

Mrs Jackson's letter accompanying her will said that if her daughter brought a claim against her estate she wanted her executors to "defend such a claim, as I can see no reason why my daughter should benefit in any way from my estate bearing in mind the distress and worry she has caused me over the years".

Mrs Ilott, who has 5 children and lives in housing association accommodation in Hertfordshire, was awarded £50,000 from the estate when she initially challenged her mother's will. Mrs Ilott then appealed the sum asking the court for a higher provision. The three animal charities cross-appealed the decision and won leaving Mrs Ilott with nothing.

Adult children have rights

The Court of Appeal has now however ruled that Mrs Ilott has the option of continuing her claim in the High Court on the basis that she was an "adult child" in financial need. The court said that Mrs Ilott is entitled to the original sum of £50,000 and that if either party wants to appeal the sum, they should do so in the High Court.

Lady Justice Arden made it clear in her judgment that adult children have the right to make a claim on their dead parents' estates even if they are able to live without any inheritance.

The case may return to the High Court for a decision over how much Mrs Ilott should receive, although the judges urged Mrs Ilott and the charities to try to settle the case amicably without the need for a further hearing.

Impact

The charities involved have publically expressed dismay at the ruling and said it could open the floodgates for legal challenges from aggrieved relatives. The charities are concerned about the impact of this judgment on their income streams.

Brabners Chaffe Street comment ...

This is an interesting decision and proper professional advice should be taken at the time wills are drafted for guidance on how best to mitigate the consequences of a claim being brought.

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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