

NEWS IN BRIEF

Inheritance Act Claims

2017 has been a busy and formative year for claims under the Inheritance (Provision for Family and Dependents) Act 1975 (the "Act"), so here's a round up and summary of some of the key cases of 2017:

Ilott v The Blue Cross and others [2017] UKSC 17 (commonly referred to as Ilott v Mitson)

The long awaited and somewhat disappointing judgment of the Supreme Court was handed down on 15 March 2017 following over a decade of too-ing and fro-ing, appeals and cross appeals.

Melita Jackson had been estranged from her daughter Heather Ilott for a number of years, after Heather ran away from home to live with her boyfriend, of whom Jackson disapproved. He and Heather married and had five children together, but Heather and Jackson remained estranged.

Heather had a modest family income of around £20,000 which came mostly from state benefits. Heather lived within her means but had no money to update household items or have holidays.

Jackson made a will excluding Heather, leaving everything to charities. Heather applied to court under the Act for reasonable financial provision, and at first instance was awarded £50,000 in the County Court.

After appeals and cross appeals, the trial was heard in the Supreme Court in 2016, with the judgment being handed down on 15 March 2017.

The Supreme Court upheld the first instance decision, and held that the judge at first instance did not err in his judgment and that his judgment should be upheld.

This case was seen by practitioners as a perfect opportunity for the Supreme Court to provide guidance on an otherwise unclear area of law: claims under the Act by adult children.

Lord Hughes made the point that the testator's wishes are relevant and ought to be considered, and that charities do have a "competing need" as they depend on gifts for their work. This will give some comfort to defendant beneficiaries and defendant charities.

However, the main point to come from the judgment was that this area of law remains unclear, and it was emphasised by Lord Hughes in his leading judgment that in these applications, judges make a value judgment based upon the individual facts of the case and different judges will reach different conclusions. It was highlighted by both Lord Hughes and Lady Hale that there is a distinct lack of guidance in this area which ought to be rectified by Parliament.

This case has not changed the law, it is not easier or harder to bring these sorts of claims.

Nahajec v Fowle [2017] EW Misc 11 CC

A case with similar facts to *Ilott*, involving an estranged adult child bringing a claim against a parent's estate. The Leeds County Court found in favour of the adult child and awarded her £30,000 from the £240,000 Estate.

Ball and Ors v Ball and Ors [2017] EWHC 1750 (Ch)

Another claim by adult children against the Estate of their late mother under the Inheritance Act, and also a challenge to the validity of the will on the basis of lack of mental capacity and undue influence. All claims failed. With regard to the claim under the Act the fact the Estate was relatively modest, and the maintenance needs of the claimants were not dissimilar to the beneficiaries' maintenance needs.

British Red Cross & Ors v Werry v Ors [2017] WTLR 441

This was an unusual case involving the successful appeal of an order made under the Act, on the basis it resulted from a fundamental mistake. When the order was made there was a mistaken belief that the deceased had died intestate when, five years later, it was discovered he had made a will.

Lewis v Warner [2017] EWCA 2182 (Civ)

This case involved "unusual" and "exceptional" circumstances in a claim by a cohabitee under the Act. The Court of Appeal confirmed that reasonable financial provision for maintenance, could be satisfied by the making of an order transferring the deceased's property to her surviving co-habiting partner for full value, even though he could afford to purchase an alternative property from his own resources and had no expectation of being able to remain in the property after death.

The Claimant was 91 years of age and in ill health. His neighbour, who was a doctor, had provided him with an emergency button which he wore around his neck and she would immediately respond to. The house was situated in a village where he had lived his whole life. Had the claimant had to move out of the property, then it would have affected his health and taken him away from familiar and supportive surroundings.

The Court of Appeal agreed that in the circumstances reasonable financial provision had not been made for the Claimant and that he ought to be able to purchase the property from the Estate for full value.

Martin v Williams [2017] EWHC 491 (Ch)

This involved a claim under the Inheritance Act by a cohabitee of the Deceased. The Deceased separated from his wife many years before, but never divorced. The Deceased did not update his will and his entire Estate was left to his estranged wife, leaving nothing for his cohabitee partner. Here the cohabitee was awarded a life interest in the Deceased's share of their jointly owned property.

Summary

The cases following the Iott judgment show that claims under the Act by adult children and claims under the Act generally are very much alive and well. Iott has not changed the law, it has in many ways emphasised the lack of clarity in the law – which adds risk to Claimants and Defendants alike, ultimately highlighting the need for early ADR. I have found these cases generally lend themselves very well to mediation and I have mediated a number of claims under the Act, the majority of which have settled.

Quantum in claims by adult children under the Act is always difficult, but there has been a pattern in recent cases of awarding around the 10% of the Estate mark (although this is certainly not a rule, and judges are keen to emphasise that each case turns on its own facts).

These cases also highlight the flexibility of the court's discretion to make an award under the Act – Martin v Williams for example, allowing the Claimant to purchase the property for full value (albeit this was an exceptional case).

If you would like a free initial consultation to discuss your situation and options open to you then contact me Chris Berry at:

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