



# **Contentious Probate Case Law Update 2016**

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# Our apologies...



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- ...this has not been a vintage year.
- Supreme Court will hear a further quantum appeal in *Hott v Mitson* on 12 December 2016

# Summary



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- *Randall v Randall* – standing to bring a contentious probate claim
- Costs and contentious probate
- The forfeiture rule in action
- Two 1975 Act cases that failed



- Who has standing to bring a contentious probate claim?
- Husband seeking to bring a challenge to the validity of his mother in law's will.
- Husband not a beneficiary. Wife a beneficiary....but husband and wife divorcing and wife's entitlement under the will relevant to AR proceedings.

# An “interest” in the Estate



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- CPR r. 57.7 requires that “the claim form must contain a statement of the nature of the interest of the claimant and of each defendant in the estate”
- Court of Appeal adopted a broad definition of interest – a financial interest in the outcome of the administration of the Estate for a beneficiary is sufficient.
- This includes claims under the 1975 Act.

# Costs 1 – Elliott v Simmonds [2016] EWHC 962 (Ch)



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- A contentious probate claim seeking probate of a will in solemn form.
- D1, the secret daughter of the Deceased, sought to rely on the provision of CPR 57.7(5) to cross-examine the attesting witnesses without putting forward a positive case.



- (a) A defendant may give notice in his defence that he does not raise any positive case, but insists on the will being proved in solemn form and, for that purpose, will cross-examine the witnesses who attested the will.
- (b) If a defendant gives such a notice, the court will not make an order for costs against him unless it considers that there was no reasonable ground for opposing the will.

# Elliott continued...



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Things that don't constitute "a reasonable ground":

- The fact that D1 was excluded from the will having previously been included was simply a matter for the Deceased;
- One comment in a solicitor's attendance note that the Deceased said that he had not executed a previous will was not, in the absence of the wider context, enough to justify cross examining the draftsman of the newer will;
- The draftsman's failure to include a detailed attendance note of the instructions from the Deceased in relation to the final will was not sufficient to justify cross examining him given the simplicity of the will and the other evidence supporting the basis of the instructions
- Limited medical evidence that might give some indication that the Deceased might not have had capacity.



# Elliott consequences



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- D1 not given costs protection from the date when C served the witness statement and supporting documentation of the draftsman.
- At that point D1 had sufficient information to make a reasonable assessment of her case.



- A reminder about the need to sort costs in any deal!
- Deceased father died intestate; brother and sister obtained grant. Later dispute between them; sister applied to remove brother under s. 50 AJA 1985; counterclaim by brother to remove sister.

# Hutchinson continued...



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- Brother in person; after comments from judge parties agreed in principle for both to be removed and independent third party solicitor to be appointed, but could not agree costs.
- Judge made clear that he would determine the issue of removal unless all terms agreed; brother left; judge removed him but not sister.
- Court of Appeal upheld the judge's decision – where no agreement on costs then the dispute was not settled!



- Application of the forfeiture rule.
- Mother and son: son guilty of mother's manslaughter. Son had a serious mental disorder, being a combination of moderate depression, a learning disorder, and autistic spectrum disorder.

# Henderson continued...



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- Son benefited from (a) entirety of mother's will and (b) as an object of discretionary trusts including the family home (where he lived).
- Effect of the forfeiture rule was the son could not benefit from mother's will – but could benefit from the trusts, which were not a benefit arising as a consequence of the killing.

# Henderson continued...



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- Son applied under s. 2 Forfeiture Act 1982 for the rule to be modified in relation to the will.
- Application refused. Notwithstanding a lower culpability level as a result of his mental disorder, the son still had capacity and had pleaded guilty. He benefited from the trusts. Overall justice did not require any further modification.

# 1975 Act failures 1



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- *Ames v Jones [2016] EW Misc B67 (CC)*
- Claim by adult daughter from first marriage dismissed.
- Father's net estate of £702,000 entirely to second wife.
- Beware the judge's conclusion– "...that her lack of employment is a lifestyle choice. That alone is sufficient to defeat her claim." Is that right?

# 1975 Act Failures 2



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- *Wooldridge v Wooldridge* LTL 27/5/2016
- Spousal claim failed: "Thandi has enough".