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- Please let us know if there are any topics you would like us to speak on in the future
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Future Seminars

-21 May 2020 *'The decision in ACC & Others [2020] EWCOP 9 and what it means for deputies'* (Fay Collinson)

-28 May 2020 Wills, Trusts and Probate Case Law update Part 2 (Nathan Smith, Nigel Clayton, Fay Collinson)

-11 June 2020 *'Will Execution During the Pandemic – Your Liability?'* (Paul Lakin and Matthew Hall)

-25 June 2020 *'Probate Applications You Need to Know About'* (Nathan Smith and Fay Collinson)

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Wills, Trusts and Probate Case Law Update – Part One

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Part One

- Administration of Estates
- Inheritance (Provision for Family and Dependents) Act 1975
- Proprietary Estoppel

Part Two

- Will validity
- Personal Representatives
- Testamentary Capacity

Administration of Estates



Amos v Mancini [2020] EWHC (Ch)



The Facts

The testator, Mr A, died in a road traffic accident.

-T's wife, Mrs A, was driving the vehicle in which he was a passenger.

-Mrs A charged and pleaded guilty to causing death by careless driving under section 2B of the Road Traffic Act 1988.

- Sentencing court held that *'lapse in concentration was a significant one'*

The Will

-By his will, Mr A left his entire residuary estate to Mrs A

-If Mrs A predeceased him:

-£20K to Mr A's daughter by previous marriage

-RE between Mrs A' son by previous marriage and Mr A's granddaughter.

The Problem

The Principle of Forfeiture

section 1 of Forfeiture Act 1982

The rule of public policy which in certain circumstances precludes a person who has unlawfully killed another from acquiring a benefit in consequence of the killing

The Claim

-Mrs A sought a declaration on whether the forfeiture rule applied to her

-If it did, Mrs A sought modification of the effect of the rule under section 2 of the Forfeiture Act 1982

The Issues

First issue – Did the rule apply to the offence of causing death by careless driving?



-The rule of forfeiture did apply:

- No direct authority of whether this offence was caught by the rule
- *Dunbar v Plant* [1998] Ch 412- CoA held applied to all cases of manslaughter
- *Dunbar* decided prior to creation of section 2B offence
- Courts consistently held that rule applied to all cases of forfeiture
- Illogical and unjust to apply to all cases of manslaughter but not cases are causing death by careless driving.

Second Issue – Should the court use its power to modify the rule?

Section 2 of the 1982 Act

- Court may modify the rule
- Can only do so if satisfied that the justice of the case requires it taking into account
 - (i) the conduct of the offender; and
 - (ii) the conduct of the Deceased; and
 - (iii) Other material circumstances

Section 2(3) of the 1982 Act

*‘in any case where a person stands convicted of an offence of which unlawful killing is an element, the court shall not make an order under this section modifying the effect of the forfeiture rule in that case unless proceedings for the purpose of brought before the expiry of the period of **three months** beginning with his conviction’*

Outcome

- Court held that it would be unjust for rule to apply so as to deprive Mrs A of H's share in home and RE.
- Pleaded guilty at first opportunity
- Driving to funeral. Mrs A driving for long period as they were lost.
- Lapse significant but for a few moments
- Joint intention that surviving spouse would become entitled to the matrimonial home
- Placed *'little if any weight'* on statement by Mr A's daughter that he wanted to change his will

*'Significantly out of proportion to her culpability
in the offence in question'*



Johnson v Persons Unknown [2020] EWHC (Ch)



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- Deceased suffered from dementia. In March 2011, he attended a dance class and never returned home.
- 1996 Will revoked by civil partnership in 2008. Died intestate with no children.
- In 2016 D's partner, C, severed the joint tenancy of property owned by him and D.
- In 2017 C died leaving a will.

Claim made under Presumption of Death Act 2013, section 2(1)

‘On an application under section 1, the court must make the declaration if it is satisfied that the missing person –

(a) has died, or

(b) has not been known to be alive for a period of at least 7 years.’

Section 2(2) states that any declaration:
‘must includea finding as to the date and time of the missing person’s death’.

Key Issue

On what date is D presumed to have died?

-Critical issue because:

- (1) Prior to severance of JT, C (and his estate) entitled to entire BI in property
- (2) After severance of JT but before C's death, C would inherit D's estate on intestacy
- (3) After C's death, D's brothers entitled to D's estate on intestacy.

Section 2(3)

*(3) Where the court –
(a) is satisfied that the missing person has died,
but
(b) is uncertain at which moment during a period
the missing person died,
the finding must be that the missing person is
presumed to have died at the end of that period.*

-What is 'that period'?

-'*troubling provision*' – Chief Master Marsh in *CD, re AB [2019] EWHC 2785 (Ch)*

-the date of the **hearing** will be the end of the period

Conclusion

- time of death fixed at time of decision granting declaration (11:30Am 5/2/20)
- *'I do not regard this as according with common sense' but 'accords with what the law requires of me'.*

Jakimaviciut v HM Coroner For Westminster [2019] 10 WLUK 523

- Dispute between two daughters over how their mother's body should be disposed.
- L maintained that body should be cremated in UK and ashes scattered there.
- R agreed that body should be cremated, but ashes should be scattered in a particular graveyard in Lithuania. Claimed these were M's wishes.

- M's Will July 2017 appointed R as executrix and sole B.
- L, despite knowing about Will, applied and obtained grant of LOA. Sought injunction restraining coroner from releasing body to R.
- Issue at trial was to whom should M's body be released.
- L also issued probate proceedings disputing July 2017 Will (undetermined at time of trial of this issue)

- Duty to arrange proper disposal of body rests, primarily, with PR
- PR's view will often be given high priority.
- Here there was:
 - (i) dispute over validity of the 2017 Will;
 - (ii) divergence of view of near relatives.

The Court considered the powers it had to deal with the dispute.....

-section 116 of Senior Courts Act 1981?

-Inherent jurisdiction to supervise the administration of estates?

The court ordered the coroner to release M's
body to R.



- no convincing evidence supporting challenge to will
- Likely therefore that R would, in due course, establish that she is entitled to act as PR
- evidence pointed firmly in favour of M wishing her remains to be returned to Lithuania. R made clear she would not fulfill that wish.
- M remained closely connected with UK, but had not forgotten her Lithuanian roots
- Strained relationship between M and L
- Most important consideration is disposing of the body decently and without delay.

Over to Sarah.....



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