PUMP COURT

CHAMBERS

Inheritance Act 1975 round-up

2025 case law update

Annie Ward

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Keilaus v Houghton [2024] EWHC 2108 (Ch)

- The deceased died in December 2022 leaving four children. Two were left nothing in the will (the Claimants). The other two benefitted under the will and were appointed executors (the Defendants).
- Grant of Probate was obtained on 1st June 2023, limitation to bring a claim expired on 1st December 2023.
- A protective claim form was issued on 29th November 2023, but not served. The expiry of the 4 month period was 28th March 2024.
- The parties were in correspondence and moving towards mediation.

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Keilaus v Houghton

- On 13th March the Claimant solicitor emailed the Defendant solicitor to check that they were instructed to accept service. The Defendant solicitor emailed back to confirm that they were.
- On 25th March the Claimant solicitor emailed again, saying they could not find confirmation on their file, and could the Defendant solicitor confirm immediately given the impending service deadline. The Defendant solicitor did not reply.
- On 27th March the Claimant solicitor chased again, and received an out of office reply. As a result the Claimant solicitor served the Defendants personally, and copied the documents by email to their solicitors.

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Keilaus v Houghton

- Service on a party personally where their solicitor has confirmed that they are instructed to accept service is not valid service: CPR 6.7 and *Nanglegan v Royal Free* [2001] EWCA Civ 127.
- In the absence of express agreement to accept service by email, it is not a valid method of service (CPR PD6A para 4.1)
- CPR 6.15 provides a discretion to allow the court to permit service by an alternative method, where there is "good reason".
- CPR 7.6(3) provides a mechanism for applying to extend the time for compliance as long as the party applying has "taken all reasonable steps" to comply, and has "acted promptly" in making the application.

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Keilaus v Houghton

- The Claimant's solicitor said it would be unfair if the claim was barred because of their innocent oversight of the original email confirming that the Defendant solicitor would accept service. That unfairness was the "good reason" why the court should authorise the service.
- The court disagreed. Once the Defendant had confirmed, that confirmation should have been specifically flagged up in the file, and not left buried in the email correspondence. The second error was in not finding that confirmation when the file was reviewed. There was no good reason to authorise service, because the error had been avoidable.

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Hirachand v Hirachand [2024] UKSC 43

- The conclusion to the argument about the recoverability of a success fee.
- The claim was by an adult daughter against the estate of her late father. The claim was defended by her mother, the deceased's wife, who received the whole estate.
- At first instance Cohen J found that the success fee was a financial need and added a lump sum to make provision for it.
- The widow appealed to the Court of Appeal, who upheld Cohen J's decision
- The widow appealed to the Supreme Court.

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Hirachand v Hirachand

- The Supreme Court unanimously allowed the appeal, ruling that to make provision for a success fee wholly undermined the prohibition in the Courts and Legal Services Act 1990 for their recovery.
- A success fee was not a debt which constituted a “financial need”
- Costs could only be recovered by way of a costs order.

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Klein v Cripps TC [2025] EWHC 688 Fam

- Mr. Klein was aged 87 when he died in 2020. He left a wife, Elena, aged 46, and a son Elliott, aged 12.
- There was an adult daughter from a previous marriage.
- His will left Elena £300,000 “on the understanding she makes no claim against my estate”. They had been married for 17 years.
- He left Elliott £100,000 on trust.
- There were various other pecuniary legacies, then the residue was split 10% to the adult daughter, and 90% to charities.

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Klein v Cripps TC

- The court described the provision for the wife as being "surprising" given that the estate was said on the grant of probate to be worth over £8 million.
- Elena claimed for 50% of the net estate, to include the family home. She sought a minimum of £3 million
- Cripps TC had been appointed to administer the estate because the adult daughter had been hopeless in that role. Cripps did not oppose Elena's claim in principle.
- Cripps TC warned that the value of the estate was very hard to determine and might be as low as £6 million

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Klein v Cripps TC

The court conduct a very detailed needs analysis. The final award was:

- The FMH worth £1 million
- A Duxbury fund worth £1.61 million
- A lump sum to fund one off capital needs eg car and building work of £83,000
- A lump sum to fund child maintenance for Elliott and his tertiary educations costs of £170,000
- Total £2,863,000 from the first £7,160,000 to be realized, then 40% of any sum realised over that amount.

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Ducent v Ducent

- Case concerning domicile of the deceased, Herbert Ducent, who was born in Jamaica in 1943, came to England in 1963.
- In England he met his wife Dorothy, bought property, had children, and took over a bakery business.
- In the late 1970s he had gone back to Jamaica, fathered another child, not with his wife, and bought property there as well. He moved between London and Jamaica at this time.
- In 1983 he sold the family home in London and moved all the family to Jamaica

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Ducent v Ducent

- In 1996 Dorothy moved back to London while Herbert stayed in Jamaica. In 1997 Herbert had a stroke which had an impact on the amount of long haul travel he could do.
- Herbert died in Jamaica in 2007
- He left a will made in 1981 in Jamaica which left everything to Dorothy.
- Herbert had a daughter named Sarah (not by Dorothy) who had lived with the family from 1982 (in London) then in Jamaica from 1983, moving back to London in 1986. Sarah made a claim pursuant to the 1975 Act

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Ducent v Ducent

- Dorothy disputed domicile.
- It was common ground that Herbert's domicile of birth was Jamaica.
- Sarah said Herbert made England his domicile of choice in the 1970s because that is where he established his family and business.
- Dorothy said Herbert had always talked about "going home" and backed that up by continuing to visit, buying properties there, having children there, and returning permanently in 1983.

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Ducent v Ducent

- The court found that Herbert did not abandon his domicile of birth in the 1970s, and even if he had, he chose to return to Jamaica permanently in 1983 and at that point would have given up England as a domicile of choice and regained Jamaica as his domicile.
- Sarah's evidence was flimsy and vague, whereas the evidence of Dorothy and the other family witnesses was more detailed, and corroborated by the documentary evidence.
- Conclusion: Herbert was not domiciled in England on the date of his death and so Sarah's claim could not proceed.

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AB v B and C and Z Ltd [2025] EWHC 1891

- Interim case management decision of Francis J in the Family Division.
- 1975 Act claim by a widow, who had been married to the deceased at the date of his death. The marriage had produced 3 children.
- The will made no absolute provision for the widow at all. It established a discretionary trust for her and the children and further issue.
- The estate was said to have a value of “an eight figure sum”, so between £10 million and £99 million

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AB v B and C and Z Ltd.

- The trustee and executor was B Trustees, who had been appointed by the court following a successful application to remove the executors and trustees appointed by the deceased.
- A solicitor, C, was appointed by the court to represent the children and remoter issue.
- Z Ltd was a company in which the deceased had owned 50% of the shares. The other 50% were owned by a relative of the deceased, YB. YB wanted to buy out the estate's shares. Z was a respondent to the interim application, but not a party to the proceedings.
- The Z Ltd shares were said to comprise 75% of the value of the estate, but that value was based on a valuation carried out in April 2020 at the start of the Covid lockdown.

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AB v B and C and Z Ltd

- B and C made an application for specific disclosure against Z Ltd because they wanted to obtain a valuation of the company.
- Z Ltd robustly resisted the application, arguing that the jurisdiction to make disclosure orders against non-parties was very limited and should be exercised sparingly, and that the documents sought were commercially very sensitive and disclosure could harm the business.

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AB v B and C and Z Ltd

- Francis J made short work of the application:

a) In order to assess a claim under the 1975 Act, the court had to have regard to "the size and nature of the net estate"

b) It was impossible to make findings about that, because of the lack of a reliable company valuation

c) This was a claim by a spouse, so the court would also be obliged to carry out the "deemed divorce test". It could not do that either without knowing what the shares were worth.

d) B and C had proposed a suitably qualified company valuer, and that proposed expert had set out a list of the documents he required to carry out the valuation. Absent cogent reasons, if the expert said he needed those documents then the court would accept that he needed those documents.

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AB v B and C and Z Ltd

- The matter was proceeding in the Family Court and all parties, and their lawyers, were bound by a duty of confidentiality. This was sufficient to protect commercial secrets. The judge even offered to sign a confidentiality agreement himself.
- The evidence was “necessary” to enable the court to determine the claim fairly.
- The orders sought were therefore made. It is not known if they have been complied with.

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Isaacs v Green [2025] EWHC 1951 (Fam)

- Claim by an adult child
- Sybil Isaacs died in April 2013. She left a will dated 2006 which left her estate to her two daughters Ruth (aged 72) and Susan (aged 74). She made no provision for her son, David.
- David (aged 74) claimed for financial provision. Ruth (who had always lived at home with her mother) supported his claim, Susan (who now lived in America) opposed it.
- David had moved out of his parent's home in 1990, got married and had a child. The marriage broke down in 2008. In 2010 Sybil's husband, David's father, died. In 2011, David moved back to live at the house with Sybil at the invitation of Ruth. By then he was 60.

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Isaacs v Green

- In 2002 Sybil and her husband made mirror wills leaving their estates to each other and on the death or the survivor to the three children equally. In 2006 they changed them to exclude David.
- Susan said that was because David had a poor relationship with David. David said it was because he was getting divorced and his parents wanted to protect their estate from his ex-wife.
- It was agreed that by 2011 Sybil's capacity was very impaired and she would not have been able to change her will to include David by this stage.

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Isaacs v Green

- Sybil died in 2013. The estate was valued at £589,000 (the house £425,000 and the balance in cash). There was some discussion between the siblings but basically nothing happened until 2020. David continued to live in the house with Ruth.
- Susan applied for the appointment of a PR and a Mr. Green was appointed pursuant to S.116 Senior Courts Act 1981 and obtained letters of administration. David issued his claim within the 6 month time window.
- David and Ruth were litigants in person and the claim proceeded very slowly from issue in 2022 to final hearing in 2025.

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Isaacs v Green

- David initially sought £265,000 being a housing fund of £225,000 and the rest for furnishings and the cost of care.
- Susan said the claim should be dismissed.
- David's income was £950 a month being the state pension and a modest amount of pension credit. He had an overdraft of £300.
- David lived modestly and spent about half of his income on contributing to the bills on the house and his other needs. He spent about £450 a month on collecting coins and stamps.
- David had a liability of £52,365 under a CFA (not inc any success fee) if he was successful in obtaining provision. The judge did not take this into account, pursuant to *Hirachand.*

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Isaacs v Green

- David had some health problems (osteoporosis, arthritis, kidney stones, and ankle problems leading to mobility issues)
- Ruth and Susan also had clear financial needs. None of the siblings were of an age where they could be expected to earn a living.
- The court found that the only reason David had been excluded was because of his divorce, and that he had been dependent on Sybil for his housing since 2011, and it was unreasonable that the estate made no provision for him.
- By the time of the trial, the court found that the net estate would be worth in the region of £600,000.

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Isaacs v Green

- The court awarded David 25% of the estate (£150,000) which would either buy him a one bedroom flat, or enable him to pool resources with Ruth and spend £375,000.
- The court allowed Ruth and David 6 months to buy another property
- The court ordered them to pay occupation rent to Susan until they vacated
- The court ordered Susan to pay 75% of David's costs, to be assessed if not agreed on the standard basis

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Cockell v Cockell [2015] EWHC 2490 (Ch.)

- Dennis died aged 73 in October 2022. Cindylee, the Claimant, was his daughter from an earlier relationship. Dennis was only 19, and Cindylee's mother only 16, when she was born in Australia in 1967. In 1969 Dennis had returned to his native England. Cindylee and her father maintained sporadic contact which he kept secret. She was aged 57 at the date of trial, and an Australian citizen.
- The Defendant was Fong, Dennis' widow from his second marriage. They had been married for 40 years, were married at the time of his death, and had 5 children. They had lived in London. Fong was 65 at the time of the trial. Neither she, nor any of her children, knew about Cindylee's existence until after the funeral.

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Cockell

- The will was dated April 2022 and left everything to Fong. The executor was their daughter Natalie.
- Natalie had obtained probate and the estate was said to be worth £500,000, but that included the value of the family home. Natalie had thought that was owned as tenants in common, but in was in fact owned as beneficial joint tenants and therefore passed to Fong by survivorship. With this asset extracted, the estate was worth nothing once the funeral costs had been factored in.
- In fact, Fong could not afford to stay in the house so it had been sold and a smaller house purchased, to free up some equity for her to live on.
- The court's first decision was whether to allow a S.9 application to bring in the severable share of the property.

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Cockerell

- A S.9 application will only be successful if it is:

a) Necessary to facilitate the making of financial provision, and

b) "just in all the circumstances of the case"

- Therefore the court has to decide if the claim is going to be successful before deciding if the S.9 application should succeed
- In relation to the second limb, "just" means not only in relation to the claimant, but to all the interested parties.
- The Master said that to deprive a co-owner of the benefits of a joint tenancy which they had worked for and relied on should not be undertaken lightly.

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Cockerell

- Fong was in fairly bad health and had negligible income (being too ill to work but not yet of state pension age).
- She had purchased a more modest property but had depleted the equity released by legal fees, paying debts etc. She only had the house and about £35,000 left.
- The court found that she was in a very vulnerable position financially and that she would not be able to restructure her finances to make the half share of the previous property available. In any event, she did not know about Cindylee, let alone have any obligation towards her, and those factors led the court to dismiss Cindylee's claim

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Cockell

- Master Bowles however went on to say that, even if he had felt that the matrimonial home had been held as tenants in common, Cindylee's claim would still have failed.
- Cindylee is divorced with 3 adult children. She lives in rented accommodation in Melbourne. She lived off benefits but the court found her evidence about her earnings to be unconvincing and found that she could live within her income.
- For that reason, the decision to leave her nothing in the will was not unreasonable.

Howe v Howe [2025]

- Adult child claim against her late father's estate.
- He left her nothing out of his £1.4 million estate, calling her "useless, lazy, grasping and druggy"
- She challenged the will alleging a forgery of the attesting witness' signature but had to abandon it, resulting in a £42,000 costs order in favour of the executors
- In a very good result from HHJ Raeside K.C., she received £125,000 which was calculated to meet these (surprising?) needs:

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- The £42,000 costs bill
- White goods for her local authority flat
- A car
- Breast implants, to be renewed at intervals
- A fund to meet her income shortfall for 10 years