

Court of Appeal to the rescue on deathbed gifts

11 JUNE 2015

Paul Hewitt

PARTNER | UK

CATEGORY:

ARTICLE

Recent Legacy Labyrinth attendees have heard of the alarming broadening out of the deathbed gift doctrine (often referred to by its Latin name of *Donatio Mortis Causa*, or DMC for short).

The Court of Appeal handed down Judgment two days ago (Tuesday 9 June) in *King v Chiltern Dog Rescue* reining in the recent expansion in the doctrine of deathbed gifts. In *Vallée v Birchwood* the doctrine was held to accommodate the alleged gift of a house many months prior to actual death.

In *King v Chiltern* a nephew claimed that his increasingly frail aunt had handed title deeds of her property to him four to six months prior to death. He therefore claimed the house by virtue of the doctrine of deathbed gifts (and for good measure brought a 1975 Act claim as dependent on the basis that he had been living in the property prior to the aunt's death). Various charities, whom the aunt had chosen to benefit under her will, stood to lose out significantly.

The Judge at first instance believed the nephew, notwithstanding a past criminal record for dishonesty, and in July 2014 awarded him the house, and, in the alternative, awarded him £75,000 on the basis that if the deathbed gift failed, the will did not make reasonable financial provision for the nephew.

The charities appealed both decisions (and the nephew cross-appealed saying £75,000 was not enough and that he should have £150,000).

The leading decision is given by Lord Jackson. He summarises the requirements for a valid deathbed gift which are that

- the donor is contemplating his or her own impending death;
- the donor is making a gift which will only take effect if the contemplated death occurs, and until it does occur, the donor has the right to revoke the gift; and
- the donor 'delivers dominion' over the subject matter of the gift, (in short, dominion constitutes the item itself, or the means of control, such as a key).

He then outlines the development of the deathbed doctrine (from ancient Rome to the modern day) at paragraphs 35 to 48 of his Judgment (see link below).

Importantly, at paragraph 51, he highlights the fact that the *'doctrine paves the way for all of the abuses'* which the strict requirements for making a will are intended to prevent, and in his Judgment, with which the other two Lord Justices agree, makes it clear that it is *'important to keep DMC within its proper bounds'* and urges the courts to avoid the temptation to extend the doctrine to an ever wider range of situations.

In allowing the appeal against the deathbed gift Lord Jackson rules that the first requirement of the deathbed gift doctrine, namely that the aunt be contemplating her impending death when the crucial conversations took place, was not fulfilled. In Lord Jackson's words *'it cannot be said that [the aunt] was contemplating her impending death at the relevant time. She was not suffering from a fatal illness. Nor was she about to undergo a dangerous operation or to undertake a dangerous journey.'*

Importantly, he makes the point that she had the time and the capacity to make a new will if she had indeed intended to make the kind of disposition for which the nephew contended.

Lord Justice Patten, giving a concurring Judgment, emphasised the importance of unequivocal evidence and said that the doubts expressed by the Judge at first instance should have led him to find that the gift had not been proved.

This decision represents a very positive outcome for the charities.

The only downside is that the appeal against the award of £75,000 was upheld (although this does not appear to have been a major plank of the discussion on appeal, and also positive is the fact that the nephew's cross-appeal, arguing that the £75,000 should in fact have been £150,000 also failed).

[Read the case here.](#)

Authors

Paul Hewitt

PARTNER | LONDON

Trust, estate and inheritance disputes

 +44 20 7597 6197

 paul.hewitt@withersworldwide.com