

UK succession law and the tragedy of unlawful killing

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Forfeiture in *Macmillan Cancer Support v Hayes & Another*

Unlawful killing and inheritance

A person who has unlawfully killed another may not benefit from the latter's death. That is the forfeiture rule.

As a matter of policy, those guilty of another's death should not be able to inherit from their victim's estate.

There are circumstances in which the tragedy of the original death is compounded by inflexibility in succession law.

The Forfeiture Act 1982 originated from concern that the forfeiture rule would mean that a woman who killed her husband, even if she were found to have no moral culpability, would forfeit all right to succeed to his estate, his interest in the family home, and receive the social security benefits to which a widow would usually be entitled.

Parliamentary intervention

Parliament has intervened twice in the forfeiture rule. Firstly, and most significantly, with the Forfeiture Act 1982. Secondly, more recently, with the Estates of Deceased Persons (Forfeiture Rule and Law of Succession) Act 2011.

Both statutes featured in the very recently published decision of *Macmillan Cancer Support v Hayes & Another*.

- modifying the Forfeiture Act

The Forfeiture Act 1982 allows a Court to modify the effect of the forfeiture rule where it is satisfied that *'having regard to the conduct of the offender and of the deceased and to such other circumstances as appear to the Court to be material, the justice of the case requires the effect of the rule to be so modified.'*

Someone who is convicted of murder cannot benefit but those convicted of other offences such as manslaughter or encouraging or assisting suicide may.

- the 'deemed predecease' rule

The effect of forfeiture on innocent third parties was highlighted in the case of *Re DWS* [2001] in which a son killed both of his parents, neither of whom left a Will. The son was not allowed to inherit from them under the forfeiture rule. But a by product of the forfeiture rule was that the deceased parents' grandson (who would have inherited if his father had predeceased the parents), was also excluded. The parents' estate went to more distant relatives and not their only grandchild.

This gave rise to a 2011 amendment to the 1837 Wills Act which inserted what is known as the deemed predecease rule. It reads as follows:

'This section applies where a will contains a devise or bequest to a person who ... (b) has been precluded by the forfeiture rule from acquiring it.

The person is, unless a contrary intention appears by the will, to be treated for the purposes of this Act as having died immediately before the

testator ...'

The amendment was intended to ensure that those who would have benefitted on intestacy or under the terms of the deceased's Will in the event of the forfeiter having predeceased should benefit. Unfortunately, due to a drafting error the statutory amendment does not work in wills.

Macmillan Cancer Support v Hayes & Another essential facts

In the Judge's words a *'tragic set of circumstances led to Peter Thomson ('Peter') unlawfully killing his wife Sheila Thomson ('Sheila') and then taking his own life ...'*

Peter and Sheila were respectively 84 and 88. They were *'a loving and devoted lifelong married couple who had no children'*

Peter anticipated he might shortly die of cancer. Sheila had been diagnosed with dementia and the local NHS trust had moved her into residential care. The Judge recorded that Peter was *'devastated that he could no longer care for his wife and was concerned that the care home would not give Sheila the quality of care that he had provided for his wife over recent years.'*

On the day of their death Peter collected Sheila from the home promising to return her the next day. He drove her to their favourite restaurant for lunch. He then took her to their home and, having heavily sedated her, suffocated her. Having written farewell notes to close friends, and a note to the Coroner explaining his actions, he then proceeded to hang himself.

The Coroner recorded that

'This is a very tragic case involving a couple of who were totally devoted to each other. It appears that Peter Thomson's health was failing. He could not bear the fact that he could not continue to care for his wife who was suffering from dementia and needed fulltime care.'

Peter's note to the Coroner explained that they had previously discussed the future and concluded that, when their normal lives were over, it would be better for both to bring their lives to a close whilst still being capable of doing so.

The Coroner accepted that it was a case of assisted suicide but because that remains unlawful the Coroner recorded that Sheila was unlawfully killed.

Who should benefit under Sheila's Will?

Sheila left all to Peter if he survived failing which to her default beneficiaries a mixture of friends, relatives of Peter, and charities. Peter's Will was similar but there were differences.

Peter did survive, albeit briefly. The effect of the forfeiture rule was that Peter (or his estate) could not benefit.

If the deemed predecease rule applied Sheila's estate would pass to her default beneficiaries.

If the Court did not grant relief from forfeiture, and/or if the deemed predecease rule did not apply, the estate passed on intestacy to distant relatives, most of them in Australia.

The beneficiaries of Sheila's and Peter's Wills (many of whom overlapped) agreed that Macmillan Cancer Support should bring a claim for relief from forfeiture and/or for a declaration that the deemed predecease rule should apply.

That co-operation meant the additional costs of representing the two ostensibly conflicting interests could be avoided.

Genealogists were instructed to locate all those who would be entitled on intestacy. Subsequently, through correspondence and telephone conversations the majority lent their support to Macmillan's application and none opposed.

The Judge however still had to be persuaded to grant relief and / or make the declaration.

Should Peter's estate be relieved from the effect of forfeiture?

Peter had not been convicted of murder therefore the Court was entitled to consider whether the forfeiture rule should be modified. But the only evidence that Sheila would have consented was in the form of letters from Peter.

Nevertheless, the Judge found that in the circumstances it was *'morally justifiable that he would take an active part in assisting with her death and that in doing so he genuinely considered that he was acting in her best interests.'*

Also material was that Peter went out of his way to ensure that Sheila did not suffer.

The Judge described Sheila's killing as *'premeditated, fastidious, open, honest and straightforward from the point of view of those who had to investigate this killing.'*

The relationship between Peter and Sheila was a happy marriage between two devoted people. Peter's involvement in his wife's death was based on his belief that they had an agreement.

Peter of course secured no financial benefit given he committed suicide afterwards. The beneficiaries under his Will were largely identical to those of his wife and he could bring about no financial advantage for his named beneficiaries.

None of those who would take on intestacy asserted a claim. At most, they said the Court should determine the application.

Finally, one of the important factors was that they had no children and that it appeared *'from all accounts that their lives were given over to each other.'*

This made the case unusual in that in the majority of cases which have been before the Court on forfeiture have concerned the legal and moral claims of children.

The upshot is that the Judge held that in all the circumstances, justice should permit Sheila's wishes to be put into effect through her husband's Will and therefore he gave total relief against forfeiture.

Should the deemed predecease rule apply?

The Judge did comment briefly on the background to the 2011 amendment to the Wills Act 1837.

The original Law Commission recommendation was that where a child of an intestate is disqualified for having killed the intestate, property should be distributed as if the child had died immediately before the intestate (the 'deemed predecease rule') and thus the killer's children should be allowed to inherit. It went on to recommend the same principle should be applied where the deceased had made a Will to the potential heirs (whether a relative or not) under the Will. It is clear that Parliament intended to adopt the recommendations but unfortunately the amendment to the Wills Act contains a restriction which means it does not actually do what is intended.

There is authority that where an Act of Parliament contains an obvious drafting error which undermines the legislative intent the Court is able to construe the act in a way that corrects the obvious drafting error, thereby giving effect to Parliament's intention.

However, having reached the conclusion that relief from forfeiture should apply in totality, he decided that he did not need to answer the second question (and thus avoided having to opine on whether Parliament was wrong). That question remains for another day.

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