

History of the testators intentions law equity essay

Law



Succession is an inseparable component of the law of property.

Consequently, the rules concerning succession, i. e. the rules which determine how the wording of a will is to be interpreted/construed are contained either in court decisions or enacted in relevant statutes, such as the Wills Act 1837 (setting out how the testators assets are to be distributed after death), the Administration of Estates Act 1925 (as amended AEA), and the inheritance (Provision for Family and Dependents) Act 1975. The first principle rule, known as the rule of construction is that effect should be given to the testator's intention, as to how his assets are to be distributed after his death, at the time the will was made. The second principle concerning how wills should be considered/interpreted is that they should be viewed as a whole (without focusing on isolated expressions or without discarding provisions redundant or contradictory) not just the part about which the testator's intentions are in doubt. The fundamental court duty is " to ascertain the intention of the testator as expressed in his will read as a whole" Re McAndrews 1964, to " look at the whole instrument" Higgins v Dawson 1902, ACT not to rely only on one part or a passage of it. In case the testator's intentions are unclear the courts apply the rule of construction so as to determine the meaning of the will. The enactment of these particular rules was imperative, since problems arise in the construction or interpretation of wills because the meaning of words, phrases or passages in a will is not clear and, therefore, doubts about the testator's intention/wishes as to how to dispose their property in wills may be raised. The function of the courts, therefore, is not to bring about improvements to the will but to deduce the testator's intention from the will itself. Needless to say that the judges application of the rules of construction as they have been laid by the <https://assignbuster.com/history-of-the-testators-intentions-law-equity-essay/>

courts and Parliament, will not be identical. Most likely some judges may apply the prevailing approach using the literal, or grammatical or ordinary meaning of the words used in the will (the former known as the literal the latter known as the grammatical approach) while others may follow a more flexible, purposive approach even when the words of the will are clear regardless of whether they reflect the testator's intentions when the will was drafted, (known as the intentional, inferential or purposive approach).

However, there may be cases in which the testator may define a word in another part of the will or the meaning of words may be inferred from the way these words were used in other parts of the will. In these cases, considering the surrounding/circumstances of the will, or the use of words with technical legal meaning or special words or symbols recognised locally or among the testator's business or workplace, the inferred meaning of the words will be accepted by the court for probate as it happened in Davidson 1964, whereby the word " grandchildren" used in the will included the testator's stepson's children. In contrast, however, words (e. g. money) often have more than one " ordinary" settled meaning which the court has to ascertain according to the particular context and circumstances of each case: Perrin v Morgan. Moreover, in case the testator uses his own special words or symbols the meaning of which is not defined or a definition is not incorporated in the will these words or symbols are not admitted to probate. In cases, however, he belongs to a special group (professional or other) which attaches a special meaning for these words or phrases then that very same meaning will be considered to be identical to the ordinary meaning of the words/phrases for the purpose of the will. Be that as it may, the conclusion which may be drawn from the arguments of the proponents of the <https://assignbuster.com/history-of-the-testators-intentions-law-equity-essay/>

two approaches, namely the literal/grammatical and the intentional/inferential is that the intentions of the testator's must be ascertained from the words/phrases used in the will construed as a whole without considering any extrinsic evidence. However given that words of a will are: (a) ambiguous on its face (Patent Ambiguity) as in *Gord v Needs* 1836, (b) ambiguous in the light of surroundings circumstances (Latent Ambiguity), which occurred in *Re Jackson* 1933 and in *Re Chambers* and (c) part/s of the will considered as a whole is/are meaningless, extrinsic evidence, that is evidence outside the will itself will be permitted as an aid in its interpretation. The admissibility of extrinsic evidence – known as the Armchair Principle – as an aid in the interpretation of wills given to the courts to ascertain all the facts known to the testator at the time the will was drafted, e. g. meaningless words/phrases, words having several meanings, technical idiosyncratic meanings, or the testator's race, religious beliefs, etc. The surrounding circumstances (at the time the will was made) under which extrinsic evidence is allowed are such that there is ambiguity in the face of the will or linking words to subject matter or to objects evidence as to reference which refers to (a) cases in which words used in the will are applicable to two or more persons or to two or more items and property that is evidence that links the testator to particular people i. e. evidence about the children he had, stepchildren, nephews by blood or marriage, his wife, or particular things such as my mother's diamond ring, earrings (*Doe & Gord v Needs* 1836), (b) evidence as to sense of the testator's use of language – evidence as to the sense derived from the testator's use of language e. g. the reference he made by habitually speaking of children when he spoke of stepchildren or the fact that he covered shares and investments when he

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spoke of money, and (c) evidence of dispositive intention, that is statements made by the testator when he spoke about the dispositions of his will e. g. having said that he beneficiaries of his property will be his nephews and nieces by marriage. Moreover, the Armchair Rule provides that the court should ascertain whether the testator was aware both of the nature of the act as well as the consequences, whether any mental disorder had any effect on his affections towards the persons. He was benefiting or disinheriting perverted his sense of right or wrong, or the exercise of his mental faculties. In case the mental faculties of the testator are found normal and functional capacity cannot be considered questionable by any inequities of the disposition. If, however, the Arm-Chair rule is applied and the exclusion cannot be justified/determined by the court the testamentary capacity of the testator would be considered questionable and, therefore, negated. The abandonment of Liberalism, brought about in a unanimous decision in *Perry v Morgan* and the adoption of the intentional approach the rise of extrinsic evidence in the interpretation of home-made wills was admitted? Concurrently, the admissible types of such extrinsic evidence (e. g. background facts and surrounding circumstances) were agreed upon. Consequently, the courts, placing themselves in the arm-chair of the testator, were not only in a position to reach appropriate resolution of cases, but more importantly family members were satisfied as they reach agreements as to the actual intention and wishes of their deceased testator.

2. Case Study

The issue in this problem question is the intestate succession. Peter recently died without leaving a will, leaving behind a spouse three children the one

adopted, his parents and two brothers. In order to determine how the estate should be distributed it is necessary to follow the Administration of Estate Act (AEA) 1925. Total intestacy occurs when the Deceased (D) dies without leaving a valid will or, very exceptionally, when the deceased leaves a will which contains no disposition of property: *Re Skeats* 1936. The (D's) personal representatives usually the surviving spouse or close relations hold the estate on trust with power to sell it according s. 33 AEA 1925. Then they must first collect in all the D's assets and convert them all into money. Then they must pay all the expenses of funeral, testamentary, debts and other liabilities of the intestate. Next, are required to distribute the residuary estate (what is net left) in the order of the entitlement set out in s. 46 AEA 1925. In order to follow the above procedures, someone must sign the relevant documents and transfer the ownership, either on a sale or on a transfer to a beneficiary. Provided that he is able to pay the debts so that the D is effectively released from them. This is called the administration of the estate. In the case of the administration of D person's estate, the authority of the administrator can only be granted by the High Court, called a Grant of Representation. The person's next of kin - e. g. the spouse (or civil partner) or children - can usually apply for a grant of representation. There are three types of grant of representation: probate which applies only in testate succession, letters of administration which applies only in intestate succession and letters of administration with will annexed in case the D died testate but failed to validly appoint executors. According to the facts this case deals with letters of administration. Further, the persons who are entitled under the Non-Contentious Probate Rules 1925 to apply for grant of representation according the order of priority and the facts of the case, is the <https://assignbuster.com/history-of-the-testators-intentions-law-equity-essay/>

surviving spouse, the children of the D, the one adopted, the parents of the Intestate, and his two brothers. If nobody of the above is willing full to apply, application for a grant can be made by the treasury Solicitor on behalf of the Crown or by a creditor of the Intestate. Notably that letters of administration cannot be granted to more than four persons entitled to the grant.

Application for a grant of letters of administration should be made to either the Principle Probate registry of the Family Division in London or to a local District Probate Registry. If there is no dispute there is no court hearing, but the applicant is required to file the following documents: an oath for administrators, an Inland Revenue affidavit, such other documents as the Registrar may require. The Administrators authority to collect in the assets and pay the liabilities comes from the grant of the Letters of Administration and he can take no part in dealing with the estate until the grant is made.

The D was married with Andrea since 1980 that is still alive. He had three children, one son 23 years old, one daughter 17 years old and one adopted daughter 19 years old. Concurrently, the D had both parents still alive and two brothers. From the facts and according s. 46 AEA 1925 the parents and brothers are excluded from the intestacy. The law that in case where the Intestate leaves both, a spouse and issue, s. 55 AEA makes three provisions. Accordingly the spouse is entitled to: (a) all the D's personal chattels, (b) a statutory legacy of £250, 000 and (c) a life interest of one half of the remainder of the estate. According to the first provision personal chattels include tangible goods such as motor cars (not being used for business purpose), jewellery, clothing, linen, personal ornament and other articles of personal use, Andrea is entitled to take jewellery, clothes etc priced £600 and the motorcar priced £12000 (if not used for business purposes,

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otherwise it will be disposed differently), but not money. In case where couples jointly own their home, there are two different ways of jointly owning it. These are beneficial joint tenancies and tenancies in common. If the partners were beneficial joint tenants at the time of the death, when the first partner dies, the surviving partner will automatically inherit the other partner's share of the property. However, if the partners are tenants in common, the surviving partner does not automatically inherit the other person's share. Consequently, considering the facts of the case Andrea has the right to take the house. According the second provision, statutory legacy, the spouse is entitled to £250, 000. From the given facts the D left £ 80, 000 (the net value of his business owned solely by him), £120, 000 (his life assurance policies), £ 140, 000 (in the form of various investments) and £ 7, 800 (as cash in the bank), a total of £ 347, 800. Thus £347, 800 minus £ 250, 000(the spouse's statutory legacy), the remaining amount is £ 97, 800. The third provision that of life interest in half of residue means that Andrea is entitled to one half, but she is not entitled to the capital which is £48, 900. The other amount of £ 48900 is divided equally to the three children. Specifically, due to s 47 (1) AEA 1925 the issue will take on statutory trust, £ 48, 900 (divided by three children is £ 16, 300). Thus, the 23 year old son takes £ 16, 300, the 17 year old daughter take the same amount when she reaches the age of eighteen and the 19 year old adopted daughter the same amount as she is treated (for the purpose of the devolution of property), as a child of the adopting parents and not as a child of her natural parents. Further, after the death of the spouse (Andrea's) the three children are entitled to the other half residue equally. It should be noted that the Intestate's spouse will benefit, under intestacy rules only if she survives the

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intestate for at least 28 days. Note that the spouse's right to a life interest in half the residue may be capitalised, i. e. the spouse may prefer to take a capital sum in place of income.