

WHERE THERE'S A WILL...

... there is also the possibility for dispute. Kavita Rana from Edwards Duthie Solicitors talks us through this tricky and sensitive subject

There are a number of grounds to contest a will. One ground considered by the courts is whether the deceased had the relevant mental capacity to understand their decisions at the time the will was signed. A person making the will must be of “sound mind, memory and understanding”. Dementia and old age is often a common complaint in deciding whether the deceased had capacity. A failure to satisfy the test could result in the will being invalid.

It is important that any lawyer advising on the will checks whether the person making it understands the consequences of their actions, and is in sound mind. If this did not happen, you may have a claim in negligence against the professional.

A will can also be overturned for undue influence. If you feel that the deceased was pressured, forced or coerced in to making the will or the content of it, this may give rise to an action to declare the will invalid.

If, however, an individual feels that they have been inadequately



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To make a will a person must be of sound mind, memory and understanding

provided for in a will, this might result in a claim under the Inheritance (Provision for Family and Dependents) Act 1975. The law allows close family members and dependents to apply to the courts for reasonable financial provision from the estate, where there is inadequate provision in the will. Here, the will remains in place but the law protects individuals in certain circumstances. The court's award will depend very much on the individual facts.

In the case of *Ilott v Blue Cross & Others*, the deceased expressly excluded her estranged adult daughter, Mrs Ilott, from any benefit under her will by a written letter of wishes. Instead, she chose to leave her estate of £486,000 to three animal charities of her choice. Mrs Ilott made a claim for financial provision from her mother's estate and on appeal, she was awarded £143,000 and a further £20,000 for ongoing maintenance. On further appeal to the Supreme Court, this decision was overturned and the court reduced the award to Mrs Ilott to £50,000.

What if the deceased made a promise to provide property for

an individual, but the will fails to make the bequest? If an individual relied on the deceased's assurance of property and acted to his detriment as a result, the courts have jurisdiction to enforce the promise and order that the property is transferred from the estate to the individual, even if the will does not provide for this.

In the recent case of *Gee v Gee*, the Court found in favour of a son who was cut out of a promised inheritance of farmland worth in the region of £8m. John worked on his father's farm since the 1970s for low pay, and gave up his own career in reliance on his father's promise that he would receive “the lion's share” of the farm. Before he died, the father transferred the asset to his other son, Robert in 2014. Despite this, the court awarded John a 52 per cent controlling interest in the farm and 48 per cent interest in the land. ■

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