



More and more families are unhappy with the inheritance they have been left

Court overrides mother's will

The principle that you can leave your estate to whoever you like has been undermined in a shock decision by the Court of Appeal

MOIRA O'NEILL

English law gives you the freedom to leave your estate to whosoever you please, even cutting out your family to leave it to the local dogs' and cats' home. This freedom has long been cherished, because it doesn't apply in many countries. For example, in France a deceased's estate must go to spouses and children under forced heirship rules. However, following a shock decision by the Court of Appeal, it is becoming more likely that your wishes might not be followed.

Although the Budget has made it more advantageous to leave money to charity, your family might dispute it if you do. From April 2011, donors who leave at least 10 per cent of their estates to charity when they die will cut the inheritance tax (IHT) on the remainder from 40 per cent to 36 per cent. However, there has been a rise in the number of court cases launched by family members unhappy with the inheritance they have been left.

The latest case to go against a charity involved Heather Ilott, whose estranged mother, Melita Jackson, bequeathed the whole of her £486,000 estate to animal charities.

When Mrs Jackson died on 10 July 2004, aged 70, her will stated that her estate was to be divided between the Blue Cross, the RSPB and the RSPCA. The will made no provision for her only child, 50-year-old Mrs Ilott.

Mrs Jackson left a letter to her executors explaining that she had made a conscious decision not to provide for her daughter. They had long been estranged and they had only seen each other twice in the 24 years since Mrs Ilott left home aged 17. She also expressed her wish that the executors should defend any claim brought against her estate.

However, under the Inheritance (Provision for Family and Dependents) Act 1975, an adult child is entitled to make a claim for reasonable financial provision. It was under this Act that Mrs Ilott made her claim.

Despite Mrs Jackson's great care, the District Judge at the initial hearing upheld her daughter's claim and awarded her £50,000. It seems that the sole grounds for this were that she has five children and lives on benefits.

The daughter decided that £50,000 was insufficient and appealed against that award, which triggered the charities to cross-appeal on the basis that it was reasonable for the daughter not to receive an inheritance from her mother. The High Court Judge agreed with the charities and dismissed the daughter's appeal. Mrs Ilott appealed that decision and the Court of Appeal upheld her appeal.

Nick Mendoza, a solicitor at Howard Kennedy, says: "The judgment is significant as in cases where an adult child is not financially dependant upon a parent, the factor that is given the most significance by the court is whether the deceased owed a moral obligation towards the applicant.

"However, the daughter was able to succeed her, despite her having no financial dependence upon her mother and despite

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the court finding that there was no moral obligation owed towards the daughter due to the length of their estrangement. The court also seems to have given little regard to the mother's carefully expressed reasons as to why she has made no provision for her daughter."

On the other hand, the case gives fresh hope to adult children who were left out of their parents' wills – in which case the amount that Mrs Ilott should receive is extremely important. It remains to be seen whether the reconsideration of the sum to be awarded will result in an increase or a decrease in the £50,000 awarded by the District Judge.

So what can you do to make sure your wishes are followed?

- Write a "side letter" to your will that explains why the family member was not included (it does not have any legal power but could help your case).
- Consider leaving a small amount to someone who has a claim on your estate rather than nothing, as this could help to discourage a claim.
- Give it away before you die. Robert Horsey of Ashfords Solicitors says: "Had Mrs Jackson decided to give her entire estate away just before she died, there would have been no material estate out of which to make any award under the Act and Mrs Ilott would have received nothing – as Mrs Jackson intended."