



Inheritance Act

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Introduction



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- *Hott v Mitson (No 2)* [2015] EWCA Civ 797, [2015] 2 FLR 1409
- Permission to appeal to the Supreme Court granted in February 2016.
- Deceased died in 2004, and District Judge decision was 2007.

The Ilott Saga



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- Court of Appeal dismissed appeal in respect of liability in *Ilott v Mitson (No 1)* [2011] EWCA Civ 246, [2012] 2 FLR 170.
- But they remitted the appeal against liability back to the High Court.

Claimants



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- S.1 sets out a list of persons who have standing to make a claim.
- Spouses,
- Common law partners,
- Children.

Claimants (2)



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- Spouses have a different standard.
- The others: s. 1(2)(b) 'such financial provision as it would be reasonable in all the circumstances of the case for the applicant to receive for his maintenance.'

Spouse Claimants



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- 1(2)(a) in the case of an application made... by the husband or wife of the deceased ... means such financial provision as it would be reasonable in all the circumstances of the case for a husband or wife to receive, whether or not that provision is required for his or her maintenance...

Spouse Claimants (2)



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- S3(2) 'In the case of an application by the wife or husband of the deceased, the court shall also... have regard to the provision which the applicant might reasonably have expected to receive if on the day on which the deceased died the marriage, instead of being terminated by death, had been terminated by a decree of divorce...'

Spouse Claimants (3)



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- Inheritance and Trustees' Powers Act 2014
- Deaths after 1 October 2014
- 'but nothing requires the court to treat such provision as setting an upper or lower limit on the provision which may be made by an order under section 2.'

Big Money, Long Marriage



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- *Berger v Berger* [2013] EWCA Civ 1305 [2014] WTLR 35.
- Not just a time limits case.
- Large estate: £7.5 m.
- Widow given life interest in FMH, and family company.

Berger (2)



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- Widow had income from family company of £50K per year. Claimed was insufficient.
- Real reason was probably desire by her children to increase their inheritance.
- Claim was 6.5 years after probate.

Berger (3)



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- Judge said provision was reasonable.
- Court of Appeal held that Judge was plainly wrong to think that, and had not considered the divorce cross check.

White v White [2001] 1 AC 596



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- 'They said that the claimant's financial needs or reasonable requirements should not be regarded as determinative in arriving at the amount of an award and an assessment of financial needs was only one of several factors to be taken into account, particularly when the financial resources of the parties exceeded their financial needs.'

White (2)



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- **'In principle, a wife's wish to have money so that she can pass some on to her children at her discretion is every bit as weighty as a similar wish by a husband...'**



- 'It is at least arguable that the starting point for an ancillary relief order in this case, given the very long period during which the appellant and the deceased had been together, would have been a 50:50 division of their assets.'

Berger (5)



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- However, no good reason for delay,
- Substantial period of delay,
- Estate had been administered,
- No hardship to claimant,
- No change of circumstances leading to late application.



- *Iqbal v Ahmed* [2011] EWCA Civ 900, [2012] 1 FLR 31.
- Small estate: £115K house, £28K other property.
- Widow (61) of 22 year marriage given occupation right and 3K.
- Judge gave her half the house, a full life interest over the rest, and the £28K.



- Son appealed, on the grounds that will could only be re-written to the extent that was required to make reasonable financial provision for the widow. Widow's needs were met by a secure life interest. This was giving widow substantially more than 50% due to the value of the life interest. House had been owned prior to marriage.



- Appeal dismissed.
- *Miller v Miller* [2006] 2 AC 618
'The parties' matrimonial home, even if this was brought into the marriage at the outset by one of the parties, usually has a central place in any marriage.'
- This will provide the answer in many 'small money' cases.

Big Money, Short Marriage.



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- *Cunliffe v Fielden* [2006] Ch 361
- Very short marriage.
- £1.28m net estate.
- All left on discretionary trusts.

Cunliffe (2)



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- Widow got £226K from policies.
- Estate offered another £200K.
- Judge said that she should get another £800K.
- Court of appeal reversed and said it should be £600K.
- Almost half (46%), more if you include policies (and her costs of £250K!).

Cunliffe (3)



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- £200K housing needs, was not reasonable for her to stay in Chaddock Hall.
- £30K per year income.
- To get this figure 'for life' the Duxbury tables produce a figure of £560K. Less the £150K the widow had left.



- *Lilleyman v Lilleyman* [2012] EWHC 821 (Ch), [2013] Ch 225
- 6.5 year relationship, 4 years cohabitation, 2.5 years marriage.
- Widow was 65, as was the deceased.
- Estate was £6m, £5.25 m was the value of the family companies which the children of the first marriage worked in.

Lilleyman (2)



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- Will left only a right of occupation, and the estate contended that this was sufficient provision.
- Unsurprisingly rejected.
- Briggs J ordered £500K lump sum/transfer of property (half of FMH was £165K).
- This was 8% of the gross estate.



- Rejected the submission that Cunliffe meant that on a short marriage a widow was confined to her reasonable needs.
- *Miller* required that there would be sharing, but only of 'matrimonial property' – the family home, and any property built up during the marriage: that would include the increase in the value of the family companies during the marriage (£250K).

Lilleyman (4)



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- In this case £1m was matrimonial property, so half was £500K.
- More would have been awarded if (as in Cunliffe) it had been required to meet claimant's reasonable needs.
- However, in this case claimant's needs were met, as she would own the whole of the former matrimonial home.

Lilleyman (5)



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- Income needs were similar to Cunliffe's around £30K per year.
- However, she had a pension of £10K, so only a shortfall of £20K,
- And was older, so Duxbury fund was £235K – the Duxbury paradox.
- Widow would have more, £355K, after half share of FMH was transferred to her.



- *Lilleyman (Costs)* [2013] 1 All ER 325
- Amphibious nature, brought in the Family Division, but the Civil Procedure Rules apply, in particular Part 36.
- Offered £550K. Paid 80% of costs, 'no holds barred' fashion such as contending the will was reasonable, when it clearly was not.

Lilleyman Costs (2)



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- Would not have followed the Part 36 rules if it would have left widow with less than she required for her maintenance.
- Commented that Inheritance Act proceedings were anomalous, in that ordinarily matrimonial proceedings were on basis of no order for costs, for precisely this reason.



- Briggs, now Briggs LJ, recommended in his report that Inheritance and Trust of Land cases should be part of the work of the Family Court, and presumably therefore use its procedural rules.

Cohabitant Claims



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- Provision is for maintenance only, so technically life interest provision is appropriate.
- *Baker v Baker* [2008] 2 FLR 767
- Small estate – just the home worth £250K.
- Court awarded claimant a life interest, remainder to daughter.

Shotgun Approach



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- Attractive for claimants as a fall back. In *Baker* the claimant also had a probate claim, and a constructive trust claim over the house.
- Both failed, but still got something.



- *Webster v Webster* [2009] 1 FLR 1240
- 27 year relationship, but with three children from first marriage.
- Intestate.
- Estate was £160K house, with 50K free estate.
- Claimant claimed the house via constructive trust.

Webster (2)



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- Judge found that there was insufficient evidence of an agreement with regard to the house.
- But that claimant had an interest of $\frac{1}{3}$ by way of contributions.
- Then awarded her the rest of the house under the Act.

Williams v Martin



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- Williams v Martin [2016] WTLR 1075
- County Court decision.
- Separated from wife for 16 years, but never divorced or revoked will.
- On death wife took whole interest in former matrimonial home, widows pension, and also deceased's half share in house he shared with cohabitant.

Williams (2)



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- The wife contended that the claimant should be restricted to a life interest.
- HHJ Gerald awarded the claimant the half share, a clean break was necessary, and the wife was in far better circumstances than the claimant.

Big Money Cohabitants



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- *Negus v Bahouse* [2008] 1 FLR 381
- 6 year cohabitation
- Claimant gave up work, and deceased paid for everything.
- Proved that credit card bills of £2K per month were paid without question and taken on various lavish holidays, probably spending £82K per annum.

Negus (2)



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- Claimant received £395K via a pension policy.
- And a half share of a Spanish property worth £150K.
- Estate was £2.2 million.
- Will left everything to his son.
- Claimant brought constructive trust claim in respect of flat (£290K).

Negus (3)



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- This failed, but the court transferred it to her under the Act.
- Found that reasonable income needs were £38K per annum.
- Pension policy and spanish property would only provide £20K.
- Topped up by a lump sum of £240K.
- Son would still get £1.7m.

Negus Conclusion



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- Spot the difference between this and Cunliffe or Lilleyman.
- Appeal to Court of Appeal failed, [2008] EWCA Civ 1002.
- Maintenance is assessed by reference to the standard of living. The standard of living in this relationship was very high.