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Revocation of a Will may be ineffective where a new Will is not drafted



[Carolyn Bagley](#)
Partner

A recent High Court decision highlights the importance of creating a new Will, where the testator's intentions have changed.

Mrs Moore's 2008 Will left her estate in four equal parts between her three children and her son-in-law Mr Sykes. On her death in 2016, an envelope containing a certified copy of her Will (dated in 2010), an unsigned draft Will, and an invoice from her solicitors for the preparation of the 2008 Will was found. An original Codicil (a document which amends the Will) dated in 2010 was also found, which changed Mrs Moore's appointed executors. The original Will was absent from the envelope and was never found. Further Mrs Moore's solicitors did not have any record of the original Will, possibly because the firm had changed its storage provider.

Mrs Moore's daughter Debbie Sykes had died in 2015, at which point it is thought she wished to change her Will. Mrs Moore's other daughter, Mrs Blyth, argued that her mother had cancelled the 2008 Will by destroying it, which is why it was not found.. That would mean the statutory intestacy

rules (which applies where an individual died without creating a Will) would apply so that. Debbie Sykes' share of her mother's estate would pass to her children and Mr Sykes would receive nothing. Mr Sykes naturally argued the Will was not destroyed.

The Court decided the 2008 Will should be followed because there was not enough evidence to suggest the Will was destroyed. The court was more inclined to believe that Mrs Moore never held the original copy of her Will. It is unusual for professionally prepared Wills to be held at home – because it risks destruction by unhappy relatives, or by a fire or flood, quite apart from loss. Sadly, no-one will ever know for sure what Mrs Moore's intentions were and the family may therefore remain at odds.

This case shows that absence of a clear intention to revoke an existing Will may result in an unfair distribution of the estate and result in large legal and court fees. It is advised that if you wish to change the terms of your Will, you should contact your solicitor.

If you wish to create a new Will, please contact one of our solicitors below.

- [Jennifer Koch](#) on 01223 532737 or [click here](#) to email Jennifer.
- [Francesca Rossi](#) on 020 7400 5037 or [click here](#) to email Francesca
- [Carolyn Bagley](#) on 01908 247015 or [click here](#) to email Carolyn.
- [Alexandra Howard](#) on 01223 447422 or [click here](#) to email Alexandra

Unusual legacy to mourners



[Francesca Rossi](#)
Associate

An unusual request highlights the importance of obtaining professional advice when drafting Wills. The gentleman concerned is not our client and is still alive.

On first consideration, Mr X's generous decision to leave one third of his estate equally among everyone who attends his funeral sounds a wonderful surprise for them. However, such a clause could fail for uncertainty.

Mr X's request as worded by him has many uncertainties, which could cause it to be invalid, such as:-

- Would the vicar or funeral directors be entitled to a share?
- What if an individual arrives late to the funeral or leaves early?
- Is 'funeral' the church service? or the interment? or funeral tea?
- What if illness, or snow, prevents attendance?
- How will attendance be recorded (i.e. must they sign the Condolences Book and add their address)?

There is a solution: a discretionary trust in the Will would build in the flexibility needed to make his Will more certain and practical to administer.

Should you wish to discuss the content of your Will including creating a discretionary trust, please contact one of our Solicitors below.

- [Emma Satterly](#) on 01223 461155 or [click here](#) to email Emma.
- [Francesca Rossi](#) on 020 7400 5037 or [click here](#) to email Francesca
- [Carolyn Bagley](#) on 01908 247015 or [click here](#) to email Carolyn.
- [Alexandra Howard](#) on 01223 447422 or [click here](#) to email Alexandra.

Lasting Powers of Attorney and Executors



[Rachel Hawkins](#)
Senior Solicitor

The court recently held that an appointed executor under the Will who had lost mental capacity, can be replaced by her Attorney.

John executed a Will in 2003 and appointed his wife Margaret and his niece Christine as joint executors. His wife was the sole beneficiary of his estate. Margaret signed and registered a Lasting Power of Attorney for Property and Financial Affairs (LPA) in 2014, naming Janet as her attorney. Margaret later developed dementia and moved into residential care.

John died in 2016 and Christine applied for probate alone. John's estranged daughter challenged the application for probate and claimed a right to a share of the estate. As a result, Janet applied to court to act as the second executor on behalf of Margaret, so that she could more readily protect Margaret's inheritance.

The court held that the LPA was written in wide terms that enabled Janet to make decisions about Margaret's financial affairs without any restrictions. Margaret was the sole beneficiary of John's estate, and so his estate fell within the definition of Margaret's property and financial affairs.

This case highlights the significance of taking the precaution, as early as possible, of making an LPA .

If you would like to create an LPA, please contact one of our Solicitors below.

- [Tobias Gleed-Owen](#) on 01223 461155 or [click here](#) to email Tobias.
- [Francesca Rossi](#) on 020 7400 5037 or [click here](#) to email Francesca
- [Carolyn Bagley](#) on 01908 247015 or [click here](#) to email Carolyn.
- [Rachel Hawkins](#) on 01604 463165 or [click here](#) to email Rachel.

Danger for Partners with no recent Partnership Agreement



[Kevin Fletcher](#)
Consultant

The recent case of Wild v Wild is a useful (and expensive) reminder to update Partnership Agreements because -

- partnership accounts alone will not be conclusive evidence of the legal owner of the asset;
- courts are unwilling to imply a term into a partnership agreement except where it is absolutely clear and necessary; and
- one partner cannot unilaterally cause their property to become a partnership asset without prior agreement or subsequent acceptance.

[Click here](#) for the full article Farming assets: Do they belong to the Partnership or the Individual Partners?

For advise on your Partnership Agreement, please contact [Kevin Fletcher](#) on 01604 463373 or [click here](#) to email Kevin.

Promises can be unenforceable



[Hauke Harrack](#)
Senior Solicitor

The Court of Appeal rejected the claim by Gary McDonald ("Gary"), who argued his parents had promised him a larger share of their estate.

Mr and Mrs McDonald were survived by six children. Gary argued his parents had assured him several times over the years that he would receive the bulk of the estate if he continued to work in the family farming business. Many such cases recently have been successful (at great legal and emotional cost to all concerned), but not this one.

The court rejected Gary's argument due to evidence given by numerous witnesses. Gary's siblings all argued that the parents intended for the estate to be shared equally and this was backed up by the parents' friends. Further, the farm had been sold by the parents in 1997 and Gary had not received any of the sale proceeds. Gary has since settled down with a family and business of his own, and so could not show that he had worked his whole adult life on the farm for little recompense. The court therefore held that the estate should be divided equally between all children. It might have been different if Gary had pursued his claim after the sale.

This case serves as a reminder that a Will makes clear the testator's intention and a Partnership Agreement is even better.

For advise on drafting a Will, please contact one of our Solicitors below, or for advice on a

Partnership Agreement please contact [Kevin Fletcher](#) on 01604 463373 or [click here](#) to email Kevin.

- [Hauke Harrack](#) on 01604 463131 or [click here](#) to email Hauke.
- [Francesca Rossi](#) on 020 7400 5037 or [click here](#) to email Francesca
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