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Issue 80 Winter 2009

INTESTACY AND FAMILY PROVISION CLAIMS ON DEATH

Readers who attended the lecture at the IALS on November 17 – *Inheritance Law in the 21st Century: the Law Commission's Consultation on Intestacy and Family Provision Claims on Death* – may have been struck by the unusually high number of non-lawyers among the large audience who squeezed into the lecture theatre.

It was gratifying that so many members of the public had taken the time and trouble to attend. One of those in the audience had travelled down to London from Harrogate to listen to the presentation and comment on the importance of making a will, prompted by his own experiences following the death of his brother.

But perhaps this level of interest should not be surprising. People say "if I die…" but we are all going to die. And inheritance disputes have the potential to generate very intense emotions. The last thing anyone needs amidst the pain of bereavement is difficult law, or law that produces unexpected or unwanted results.

That is why our current work is so important and so relevant for lawyers and non-lawyers alike. The questions raised in our recent consultation paper, *Intestacy and family provision claims on death* (CP 191, published on October 29, 2009) are for the most part questions that could be just as well addressed to a crowded pub as a group of legal specialists.

When a spouse dies, should the survivor inherit the whole estate or should the deceased's children get a share? And what if the children are not also the children of the surviving spouse? We ask questions about the way that the spouse and the children should be treated both under the intestacy rules and by the law of family provision. And what of cohabitants – by which we mean unmarried/non-civil partnered couples living together in a joint household, and not those who share a house on a commercial basis, nor those who "live apart together". They have long been part of the family provision legislation. In the light of social change over the past decades, should they now have a place within the intestacy rules so that they automatically inherit from one another in the absence of a will? If so, how much should they get? As much as a spouse would have received or something less?

Some other issues may appear at first to be of interest only to lawyers (and the subset of trust and probate lawyers at that). For example, we ask whether trustees' powers of advancement (under s 32 of the Trustee Act 1925) should be extended for the purposes of the statutory trusts that arise on intestacy to the whole of the share of a beneficiary who is not yet beneficially entitled. It should be remembered that most administrators will be lay people, often elderly, with no previous experience of administering a trust. The administration of estates should not be made any more complicated than at present; ideally, the process should be made simpler (without introducing unfairness).

We ask more than 50 consultation questions. Some are provisional proposals on which we seek views. Others are open questions. We hope to hear the views of as many consultees as possible, lawyers and non-lawyers alike. Consultation is the key to the success of all Law Commission projects and the strength of our final recommendations is in the quality and breadth of responses that we receive.

The IALS lecture is very much part of our consultation process and we will take on board all of the views expressed by audience members (though we would still encourage the submission of formal responses from those who attended). We have also been greatly assisted by our advisory group, comprised of academics and practitioners, who give up their time to meet with us at key points during the life of the project and act as a sounding board for our policy ideas. And we regularly undertake what might be called targeted consultation with key "stakeholders" such as the Probate Service, Law Society committees and the Treasury Solicitor's Bona Vacantia Division.

The present project has also made extensive use of social research techniques to obtain a clear and up-to-date picture of public attitudes to inheritance in general and the particular issues we have addressed. Our consultation paper was informed by qualitative research – a series of focus groups undertaken on our behalf by the National Centre for Social Research (NatCen) – giving a fascinating insight into the complex and often conflicting views individuals hold about the proper distribution of their property on death. By the time we come to draft our final recommendations, we will have available the findings of a large-scale quantitative public attitudes survey (again conducted by NatCen, in collaboration with Professor Gillian Douglas and her team at Cardiff University). This

will provide an important context in which to analyse the responses to our consultation exercise.

We are also indebted to HMRC and the Probate Service, whose statistical work has revealed significant differences in the median size of testate and intestate estates and allowed us to estimate the proportion of estates which pass in their entirety to a surviving spouse under the current levels of statutory legacy. This new empirical evidence has enabled us to put the "all to spouse" debate (which readers with long memories may recall from the Law Commission's previous work in this area in the late 1980s) into a revealing context.

Our consultation paper is available to download free of charge from our website (www.lawcom.gov.uk/intestacy.htm) and contains details of how to respond. The consultation period runs until February 28, 2010. We would urge all readers, whether or not you were able to attend the seminar, to respond to the consultation. If you have any questions please email propertyandtrust@lawcommission.gsi.gov.uk.

Professor Elizabeth Cooke

Law Commissioner for England and Wales.

Articles for Amicus Curiae

Amicus Curiae welcomes contributions, which should be accompanied by the name and contact details of the author. The journal publishes articles on a wide variety of issues, ranging from short pieces of 700-1,200 words and longer articles of 4,000 words of so (the upper limit can be extended where appropriate). Articles should be written in an informal style and without footnotes.

Anyone interested in submitting a piece should email Julian Harris (julian.harris@sas.ac.uk).