



For Life

NEWS AND ADVICE FROM BIRKETT LONG

A costly mistake



Everyone knows that a will must be signed but what happens when an error in signing affects its validity?

The Wills Act 1837 states that a will must be “in writing and signed by the testator, or by some other person in his presence and by his direction”. In *Marley v Rawlings* (2014), a husband and wife signed each other’s wills by mistake, resulting in an argument that raged all the way to the Supreme Court.

Alfred and Maureen Rawlings made mirror wills in 1999 leaving their combined estates, when they both died, to Terry Marley, who was taken in as a teenager by the couple and whom they treated like a son. The couple’s natural sons sought to challenge the validity of the wills when Alfred Rawlings passed away in 2006, three years after his wife.

The solicitor who drafted the wills had confirmed that he switched wills in error before they inadvertently signed them. Mr Marley applied to the court using the rarely used Doctrine of Rectification, which under the Administration of Justice Act 1982, provides the opportunity to retrospectively ‘correct’ a will where it fails to carry out the testator’s intentions in consequence of a clerical error or of a failure to understand his or her instructions. The Court of Appeal had previously agreed with the High Court and ruled that Mr Rawlings’ will could not be rectified since it was not a valid will in the first place.

The Supreme Court disagreed, likening the process of interpreting a will to that of a contract, referring to the court’s role to ascertain the intention of the party or parties. The decision has been hailed by some as the application of common sense. There seems no doubt that Mr and Mrs Rawlings wanted to leave their combined estates to Mr Marley and so, on the face of it, it seems absurd that a technicality should defeat those wishes. However, the judgment ought not to be viewed as a relaxation of the long standing rules on the validity of a will. Even where it is possible to rectify such mistakes, the costs of doing so will be significant. Where a dispute arises as to the validity or interpretation of a will, it is vital to seek specialist advice and to consider all options carefully.



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Your digital afterlife - are you prepared?

Recent news stories have highlighted how we do not take seriously the issue of what happens to our digital records after we die. We live in a world where many of us have digitally stored financial details, emails, music collections, social media interactions, photos and other precious items that have monetary and emotional value to their owners and potentially their loved ones. According to a survey, Britons are storing £2.3billion worth of music, film, applications and subscriptions online.

So why are we leaving our digital identities hostage to fortune? Historically, it was thought that part of the problem was that internet users tended to be too young to worry about their mortality. However, more recent statistics show that almost 70% of all 65-74 year olds in the UK are online.

When the family and friends of 15 year old Eric Rash from Virginia, who committed suicide in 2011, wanted to find out answers, they turned to Facebook to find them. After failing to guess Eric's password, Facebook refused to grant them access as it was against the social network's privacy policy. Yahoo takes a similar stance, refusing to hand over data without a court order. Cloud-based services have different policies on data ownership, making it more

difficult to bequeath your iTunes library to a loved one than it is to leave your CD collection in a shoe box! Most of the time families don't even know which online accounts their relative had signed up to, let alone their passwords. Email in particular can be the master key to many other accounts.

Those who do not take care of their digital possessions also risk leaving relatives with unpaid bills, such as magazine subscriptions.

People are beginning to realise just how much is at stake. Google is the first major company to deal with the issue of what happens to their users' data after they die; users can choose to have their data deleted after a set period of time or for it to be passed on to specific people. 'Cirrus Legacy' is a service which allows users to record login details of all their online accounts and leave instructions to a nominated person. 'My Wonderful Life' allows members to write messages to be sent to their loved ones from beyond the grave. For a fee, 'iCroak' provides an online service where the user can categorise their assets and create guardian accounts for those assets they want to preserve and bequeath.



Bare essentials

Legal facts you can't do without

Collaborative law might be the answer

There have been some high profile divorces in the news in recent months, for all the wrong reasons. Michelle Young received £20 million from the businessman, Scott Young. During the case the judge rightly criticised Ms Young's "eye watering" legal fees of around £6.4 million.

All those faced with a divorce need to be aware of the options open to them to avoid costs spiralling unnecessarily. Collaborative law might be the answer. Talking things through can sometimes seem the hardest challenge of all, especially when relationships break down

as hurt, bitterness and anger are often the strongest feelings. But almost always, the very best solutions are those which you work out for yourselves, together.

At its simplest, collaborative law is about reaching solutions together, to ease the pain of relationship breakdown and create the best chance of building a brighter future.

Why not have a look at our website to see if this might be the right approach for you or contact Emma Brunning in our family law team on 01245 453846 or emma.brunning@birkettlong.co.uk.

Putting all your security details in one place potentially puts you at the mercy of a hacking attack, whereas using login details left by a family member who has passed away is potentially illegal, as many online services state in their terms and conditions that nobody other than the owner is allowed to use the account. Furthermore, there are those who would wish some aspects of their online lives to remain private, and would be horrified to find that their family members had uncovered a more secret side of their lives.

Although many of the problems of so-called 'digital will making' are being ironed out, it is not yet possible to put details of your online life in an actual will, as a will is a publicly accessible document. Despite this, I urge readers to do something, even if it is simply writing a manual list and putting it in a place known only to someone you trust. Who knows just how important this could be to your loved ones in the future?



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Meet the team

Kurt Goddard

Kurt is a partner and heads the real estate department. He is also a member of the Board at Birkett Long.

Kurt specialises in high value residential property work and commercial property.

He studied law at University College London, gaining an LLB degree. Prior to joining Birkett Long in June 1999, Kurt was a partner in a firm in Regent's Park, London, for 13 years.

“ I have worked with a number of lawyers over the last 30 years and would recommend, without hesitation, Kurt Goddard to anyone looking for a responsive, client focused, good real estate lawyer. ”
A client recommendation.



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under the spotlight

Financial planning opportunities before the 5 April deadline

Make the most of tax efficient financial planning opportunities before the current tax year ends on 5 April 2014.

1. The lifetime allowance for pension fund values per individual is being reduced from £1.5M to £1.25M. Fund values in excess of the lifetime allowance when retirement benefits are taken will be subject to a tax charge. Those close to the new £1.25M limit should take action by considering applying for one of the two new protection options for 2014 (fixed protection 2014 and/or individual protection) to fix the current lifetime allowance at £1.5M beyond 6 April 2014.
2. Pension funds enjoy virtual tax free growth and the use of pension contributions can, in some instances, mitigate higher rates of personal taxation. Savers can pay the equivalent of their taxable income from employment or self-employment in pension contributions, capped at £50,000 gross with Income Tax relief available at their highest marginal rate. For higher earners wishing to contribute more, "excess" contributions can in certain circumstances be carried back to utilise unused allowances from the 2010/11, 2011/12 and 2012/13 tax years, providing payment is made before 5 April 2014.
3. Pension contributions of £3,600 gross (£2,808 net) can be made by or on behalf of those with no earned income, with full tax relief at 20%.
4. Individual Savings Accounts pay returns free of Income Tax and Capital Gains Tax (CGT). The maximum ISA investment for the current tax year is £11,520.
5. Parents with children under 18 not possessing a Child Trust Fund can subscribe £3,720 to a Junior Individual Savings Account. Income from this investment is paid tax free. Normally where a child's income exceeds £100 based on gifts made by one parent, all the income is then taxed against that parent. This rule does not apply for a Junior ISA investment.
6. Consider utilising the annual CGT exemption: £10,900 for 2013/2014.
7. For those prepared to take a higher risk approach, up to £200,000 can be invested in new share issues of Venture Capital Trusts (VCT) - minimum term 5 years - and £1M in Enterprise Investment Schemes (EIS) - minimum term 3 years - with income tax relief available at 30%. Other tax breaks are conditional on shares being held for the minimum stipulated time period. VCT dividends are tax free and gains made on disposal of shares are free of CGT. Gains on the sale of EIS shares are CGT free after 3 years and Inheritance Tax Business Property Relief is available on the value of the shares after two years. Specialist Seed EIS schemes are available; these carry the greatest degree of investment risk but the higher tax benefits provided can warrant consideration. Income Tax relief (at 50%) and CGT relief (at 50%) are available.
8. The annual gift Inheritance Tax exemption allowance is £3,000. If no gifts were made for the 2012/2013 tax year, £6,000 can be gifted before 5 April 2014. Smaller gift allowances of £250 can be made for the 2013/2014 tax year to anyone who is not a recipient of all or part of the larger gift. Gifts can also be made from surplus income.

Birkett Long's team of independent financial advisers gives specific advice for your circumstances and offers a free initial consultation. Call 01206 217614 for further information.



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