

Construction of Wills: What happens if a clause appears ambiguous?

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On occasions a Will may have been prepared in such a manner that it is not clear precisely what the Testator intended.

In these situations there is often two (or more) competing interpretations, and this can often lead to a dispute between the competing parties.

How do you interpret a Will?

Interpreting a Will typically involves examining the language used, considering the overall context and sometimes referencing external evidence and case law to ascertain the testator's intentions.

These disputes over intention and interpretation are often referred to as questions of 'construction' i.e. how the Will should be 'construed'.

Construction of Wills

A construction claim in the context of a Will involves asking a court to interpret or clarify ambiguous terms in the Will to determine the testator's intentions.

The starting point with any construction claim in relation to a Will is to ascertain the intention of the testator. In a lot of cases that will be straightforward. But how do you work out their intention where there is ambiguity in the language used in the Will?

What happens if a Will is ambiguous?

Thankfully over the years the courts have given guidance on how this is to be done. The test can neatly be summarised as "ascertaining the intention of the testator as expressed in their Will, when it is read as a whole, in the light of any extrinsic and admissible evidence for the purpose of its construction".

What evidence can you use to establish 'intention'?

In 2014 the Supreme Court decided the case of *Marley v Rawlings* and gave further guidance on how Wills must be construed, and what evidence can, and cannot, be considered by the court for this purpose.

The court said that finding the intention of the Testator involves identifying the meaning of the relevant words in light of:

- (i) the natural and ordinary meaning of those words;
- (ii) the overall purpose of the Will;
- (iii) any other provisions in the Will;
- (iv) the facts known (or assumed) by the Testator at the time that the document was executed; and
- (v) common sense.

Crucially however, the Supreme Court confirmed that the above factors must be considered whilst “ignoring subjective evidence of the Testator’s intentions”. In other words, whilst one has to try and understand the Testator’s intentions, actual subjective evidence of those intentions will not be admissible in the court proceedings; the testator’s subjective intention must be ascertained applying objectivity.

Bonham v Stringer: A recent example

A good example of the sort of ambiguity that can be resolved by ‘construction’ can be found in the case of *Bonham v Stringer*, decided by the High Court in January 2025.

In that case, the Testator had left a Will which had been drafted by a firm of solicitors. That Will created a trust over the residue of his Estate, by clause 6 of his Will. That clause, as is fairly standard, commenced by stating that his residue was to be divided into four parts of equal value, and then shared on the terms of the trust that followed.

Unfortunately the parts that followed only went on to name three beneficiaries. If the residue was to be divided into four parts, then that fourth part was not dealt with by the Will, meaning it would pass on a “partial intestacy” to those entitled in accordance with the intestacy rules.

Thankfully the court was able to save the day and make a declaration that the Testator intended for the word “four” to in fact read “three” and that the Will could be interpreted in that manner. Taking into account the Will as a whole it was glaringly obvious, the court felt, that he intended for the residue of his Estate to benefit the three people named in clause 6, and that the alternative interpretation was lacking any evidence to support it.

Thoughts

As can be seen from the above, this is a complex area of law, and questions around what evidence can (and cannot) be admitted to court will need careful consideration from the outset.

It will often also be necessary to consider issues around construction of a Will in conjunction with a possible claim for Rectification (which usually need to be made within six months of any Grant of Probate being made).

For those reasons, taking urgent expert advice will usually prove to be a prudent course of action.

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