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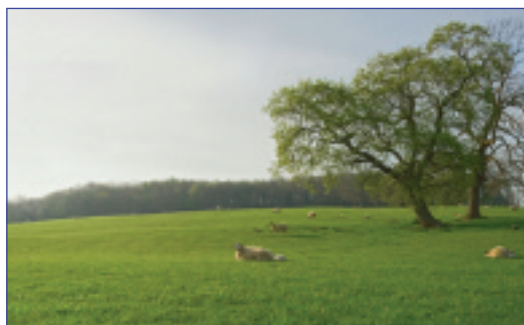
## undue influence without pressure!

Disputes frequently occur in the administration of estates when an asset has been gifted or sold at an undervalue by a person prior to their death. In such cases, if there is no benefit to the person making the transfer and there is no apparent reason for it, it is often argued that 'undue influence' has been exerted by the person who has benefited from the transfer.

In order to sustain an argument that undue influence has occurred, it is necessary that the transferor placed trust and confidence in the person who benefited from the transfer and that the transfer which occurred is not explicable by reference to their relationship.

Sometimes, however, a transfer is challenged while the person who made it is still living. Recently, the legal attorney of an elderly but needy man challenged the transfer of a piece of land, which represented a considerable proportion of the man's total wealth, to his great-nephew.

The attorney argued that the transfer was not carried out with the man's 'free and informed consent'. There was no apparent reason for the transfer, so it stood to be determined whether it was made as a result of undue influence.



Although the man gave evidence that he had not been put under pressure by his great-nephew to make the transfer, in the Court of Appeal's opinion, the lack of pressure of itself could not determine the presence or absence of undue influence.

What the great-nephew needed to show was that the transfer had been made with the informed knowledge and consent of the transferor. In this case, the fact that his great-uncle had not taken legal advice was crucial in the Court's decision that undue influence did apply. It was not easy to explain why the man would deprive himself of such a large proportion of his total wealth.

It is always sensible to seek legal advice when transferring property or valuable assets to others.

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## case sounds foreign will warning



Making a 'local will' if you have property abroad is normally very sensible – but thought needs to be given regarding its wording.

A man who died in Barbados leaving a will there as well as a will made in the UK created a problem for his family. The will made in Barbados was drawn up after his English will and contained the usual clause 'revoking all former wills and testamentary dispositions'.

Fortunately, the court accepted that the later will was an additional will, intended only to deal with the man's assets in Barbados, and therefore his English will was the basis under which his other assets should be distributed.

An inappropriately drafted overseas will may revoke an earlier English will, but at the very least it is likely to add time and expense to the administration of the estate.

### In brief

#### overseas tax dodgers – HMRC Act

Following the expiry of the recent amnesty, HM Revenue and Customs have announced that they will proceed immediately to send out enquiry letters where they are aware of undeclared offshore income-bearing accounts held by UK taxpayers.

The taxation of foreign income is a complex area. If you have income arising from abroad, take professional advice on dealing with your tax affairs.

#### unlikely will – papers passed to DPP

When a will appears 'out of the blue' and contains unexpected provisions, trouble often

follows, and so it was in a case involving a Kent farmer's estate. The will gave his estate to his daughter and was contested by his son, who claimed it was forged. The judge ruled that the will was not valid and passed the papers to the Director of Public Prosecutions.

#### Inheritance Tax nil rate band trusts – pitfall exposed

IHT 'nil rate band' trusts (in which property is passed into trust in exchange for a debt or IOU from the survivor) are a common estate planning device, but are not without pitfalls.

A recent case highlighted one such pitfall when property passed into the trust was ruled to be derived from the property of the survivor, preventing the planned IHT saving.

## time running out for Enduring Powers of Attorney



In October 2007, Enduring Powers of Attorney (EPAs) will be replaced by new Lasting Powers of Attorney (LPAs).

After that time, EPAs will no longer be available. However, EPAs already in existence at that time will continue to be valid.

EPAs are relatively simple to operate compared with LPAs and the latter are also likely to be more expensive to implement. Although the scope of

an EPA is limited compared with the LPA – e.g. an LPA can be set up to give an attorney powers over health and welfare decisions – an EPA can be used at any time after it is executed, whereas an LPA will have to be registered with the Office of the Public Guardian before it comes into effect.

For many clients, an EPA will be a better option than an LPA.

If you would like to discuss the options available regarding the arrangements you can make to allow your affairs to be managed in the event of your incapacity, please contact us.