

## **INHERITANCE ACT CLAIMS BY ADULT CHILDREN**

Under English Law, if an adult child has not been provided for under the terms of their parent's Will, or has not been provided for sufficiently, that adult child may be able to bring an Inheritance Act claim. Such claims must be brought within 6 months from the date of the Grant of Probate, otherwise the adult child will be out of time and would have to apply for leave from the court.

In order to be successful in bringing such a claim, the adult child has to prove that either the Deceased was financially maintaining them immediately before their death, or was under some sort of obligation to make provision for their child.

If it can be held that the provision made for the adult child is unreasonable, it must then be determined what would have been reasonable in the circumstances for that adult child's maintenance. The adult child must be able to demonstrate need in order to be successful. A number of factors will be taken into account by the Court, including the income, outgoings, assets, and liabilities of the adult child, as well that of any other beneficiary under the Will. The Court also considers the size and nature of the Estate and the conduct of the parties.

Conduct becomes relevant if the adult child has been denied proper or adequate provision because of his or her conduct in effect, disentitling himself or her. When Judges are faced with issues of conduct and alleged lack of provision, they have to undertake an investigation into the circumstances surrounding the relationship in being able to decide the issue.

Where there has been an estrangement between an adult child and his or her parents it is clear from recent authorities that certain principles may be applied to cases of this type. The following principles were highlighted in the High Court case of *Singer v Berghouse (No.2)*.

If an adult child has needs, whether currently or likely in the future, a Court will consider the evidence and if it is satisfied that the child is in need it will ordinarily favour need before conduct of an adult child, which would explain why the parent has chosen not to provide for them under the terms of their Will.

Nevertheless, a Court may take into account the poor conduct of the child and discount the amount it would otherwise have awarded for that adult child because of the conduct. This approach is more likely to be taken where there has been an estrangement between an adult child and a parent, but a subsequent reconciliation between the parties shortly prior to the parent's death.

Where a Court cannot attribute blame to either the parent or the child, or where the parent has been unfair in his or her assessment of their child, a Court is more likely to disregard conduct and to assess the needs of the adult child more positively.

Where however, the conduct of the adult child is callous and completely unsatisfactory, a Court may well find that the parent was justified in their reasoning for excluding their child from any benefit whatsoever from his or her Estate.

In short, conduct should not be regarded as disentitling, unless it has been of such character as to induce the Court to hold that it was such, that there was no moral

obligation upon the Deceased to make any provision for that child in their Will. Where a Court considers that an Estate is particularly large, any competition between the adult child and any other beneficiary is much reduced or even eliminated. If however the Estate is small, the adult child is competing with other persons who have a moral claim on the Deceased as well, which includes those named beneficiaries in the Will.

Case: Singer v Berghouse (No. 2) [1994] HCA 40