

ASK THE EXPERTS

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I heard about a daughter overturning her mother's Will because the daughter thought she should have the farm. I thought if you made a Will that was that - what's the point of making a Will if it can be overturned?

The starting point is the Will – but there are various grounds for challenging a Will. A Will can be contested if the circumstances suggest that the testator (the person who made the Will) did not understand the Will or their own situation, or because someone used “undue influence” to get them to make the Will, or there is fraud involved. Certain people can challenge a Will if the testator “should have” made provision for them – ie a spouse or someone who was dependent on the testator such as a child or disabled relative. By addressing these issues at the time the Will is made, you can make it harder for any claim to succeed. But if you do not make a Will, or make a Will without working through any problems, there is more likelihood of a claim being made (with the expense and family disharmony that may result).

One area for challenging a Will which particularly affects the farmer is “proprietary estoppel” which was one of the grounds successful in the Gill -v- RSPCA case which hit the headlines recently – partly due to the astronomical costs of the court case (some £1 million). This was the latest in a series of farming cases where the testator has given an “assurance” that the claimant would receive certain property; the claimant relied on that assurance and acted to their detriment in some way (working on the farm, not buying a home, caring for a relative, etc) and, as a result, the courts have decided that it would be “unconscionable” for the claimant not to receive the farm or at least some of it.

Another recent case, Thorner -v- Major, was particularly worrying for some farmers. Previously it had been established that the “assurance” of inheriting had to be clear whether verbal or in writing. In this case, the farmer (Peter) never told the claimant (David) of an intent to leave the farm to David. Instead there were several seemingly insignificant events, such as Peter giving David a letter relating to two life insurance policies saying that the policies were for his death duties; and pointing out a cattle trough that did not freeze over in winter. The judgment in the case was that, given the character of the two men, the assurance that David would inherit the farm was sufficiently “clear and unequivocal”.

So what does this mean for farmers? Be careful what expectations you might raise in the minds of others by anything that you might say, do or imply. Common situations where proprietary estoppel may arise are where one relative of the testator works on the farm while other relatives do not. If a farming child has acted on an expectation of inheriting the farm, you may find that you cannot share the farm between the children as you might expect.

It is important to consider estate planning and make a Will – but as the best time to address potential claims against a Will is when making it, you must ensure that your legal adviser knows all the facts.



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