



Guernsey Inheritance Law Further Change?

by Sarah Wallis

Guernsey Inheritance Law - Further Change?

There have been a number of recent articles relating to changes to Guernsey's laws of inheritance introduced in May 2008 by the 2007 Law, and whether further change is desirable. Some consider that the current position is satisfactory, others that forced heirship (i.e. being required to leave a proportion (or all) of one's assets to certain specified individuals, (e.g. spouse and children) results in injustice).

Problems arise under the present laws specifically where parents are unmarried.

One anomaly is that while a person can leave their real (immovable) property to their illegitimate children, they cannot leave it to their common law wife/husband, the parent of those children. Furthermore, it is impossible for a person to leave a life interest/enjoyment in real property to their partner by will.

In a society where an ever increasing number of couples are choosing not to marry these laws are more than an inconvenience, they result in real injustice.

Married couples who were, prior to 8 May 2008, advised that they did not need to make wills of realty if they wished the children of their marriage to inherit their home equally, are now being advised to make wills. If no will is made the question may arise as to whether the deceased had any illegitimate children who would be entitled to an equal share of their late parent's real property.

A problem which does not seem to have been envisaged within the recent changes is the predicament of the single person or couple without children. Whilst in theory they have freedom to leave their property to whomever they wish it may well be that the beneficiary of the will is required to produce evidence that the deceased did not have any illegitimate children. A negative which may be difficult to prove!

The same is true regarding personal (movable) property. It used to be the case that legitimate children received one-third of such property, the surviving spouse another third, and the remaining third could be left to anyone. Now, illegitimate children share in the portion previously reserved for legitimate children, but the unmarried partner has no protected entitlement. (With no surviving spouse, the children are entitled to one-half of the personal property between them). An unmarried partner can therefore inherit no more than half of their deceased partner's personal property if the couple has children, which is the freely disposable part of the deceased's property. (Of course it is possible to avoid this scenario by couples holding all assets in joint names. However this may not be how they wish to own their property during their respective lifetimes).

The current law also causes other problems with regard to the division of property. For example, some parents wish to leave their real property to one child, and divide the whole of their personal property between the other children. This is impossible under the current regime, as whilst it is possible to favour one child in respect of real property all of the children are entitled to a share in the personal property.

The Guernsey laws also make a distinction between real property inherited through intestacy (i.e. without a will) known as *propres*, and real property acquired by other means, known as *acquêts*. The law of inheritance treats both types of property differently. This is an illogical archaism that serves only to complicate matters.

These laws were originally meant to preserve property held by the same family from time immemorial, when property was rarely bought and sold. We no longer live in a world where property necessarily passes from generation to generation, and Guernsey's laws remain in need of further modernisation. The 2007 Law has helped the situation, but it has not gone far enough and has ironically given rise to more complications and additional injustices in our laws of inheritance.

The States, at their April 2009 meeting, approved proposals for the abolition of remaining restrictions. There are many families who will be able to arrange their affairs more easily following these proposed changes.

(The recent reform to the Guernsey laws of inheritance are particular to Guernsey. Sark and Alderney have their own, sometimes quite different, laws).

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