

ENGLAND AND WALES / JUDGMENT

Peter Wilkinson v Jacqueline Ann Kirkham & Ors

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Neutral Citation Number: [2026] EWHC 1006 (Ch) Case No: PT-2025-000068 IN THE HIGH COURT OF JUSTICE BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES PROPERTY TRUSTS AND PROBATE LIST (ChD) Royal Courts of Justice, Rolls Building Fetter Lane, London, EC4A 1NL Date: 7/5/2026 Before: MASTER CLARK

- ----- Between: PETER WILKINSON Claimant (as executor of the estate of John Whewell deceased)
- and - JACQUELINE ANN KIRKHAM (1)
- (2) GILLIAN MARY BOND
- (3) THE ESTATE OF MARK JOHN MASON (DECEASED) SUSAN CHRISTINE KILLAWAY (4)
- (5) ROBERT IAN FAVELL
- -----
- ----- Defendants Sarah Harrison (instructed by Farleys Solicitors LLP) for the Claimant Richard Oughton (instructed by Acklam Bond Solicitors) for the 1st & 2nd Defendants Hearing date: 10 December 2025
- ----- Approved Judgment This judgment was handed down remotely at 10.00am on 7 May 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives. Master Clark: 1. This is my judgment on a Part 8 claim seeking determination of an issue of construction of a will. Parties and the claim 2. The claimant, Peter Wilkinson (“the executor”), is the sole executor of the estate of the John Whewell (“the deceased”), who died on 22 December 2020, leaving a will dated 17 August 2007 (“the will”). 3. 4. 5. 6. 7. The first and second defendants, Jacqueline Kirkham and Gillian Bond, are the daughters of the deceased’s cousin, Lily Mason (“Lily”). I refer to them, without intending any disrespect, as “Jacqueline” and “Gillian”, and collectively as “the daughters”. Lily sadly died before the deceased, in 2018. She had a son, Mark Mason, who also sadly died on 8 October 2023. His estate is the third defendant. On 28 July 2025, Master Bowles ordered that
- (1) Marcus Mason represent the estate of Mark Mason;

- (2) The fourth and fifth defendants, Susan Killaway and Robert Favell, represent those entitled on intestacy of the deceased, other than the first, second and third defendants. The total number of persons entitled on intestacy (“the intestacy beneficiaries”) is not clear, but it would appear to be at least 18. The third, fourth and fifth defendants have acknowledged service stating that they do not intend to defend the claim. The will leaves a number of pecuniary legacies totalling £77,000, including a legacy of £40,000 to Ms Rose Graham, with a gift over to her two (named) daughters. The clause in respect of which the issue of construction arises is clause 4, which gives the residuary estate: “to my cousin Lily Mason ... for her own use and benefit absolutely PROVIDED that should my said cousin predecease me then I DIRECT that my Trustee shall pay my said residuary estate to the daughter of Lily Mason for her own use and benefit absolutely” 8. Since, as I have said, Mrs Mason had two daughters, not one, this clause gives rise to the issue of construction. 9. The executor is not a beneficiary of the will, and is neutral as to the construction of the relevant clause. In his claim form dated 20 January 2025, he seeks the court’s determination as whether on the true construction of clause 4, the expression “the daughter of Lily Mason”
- (1) means Jacqueline;
- (2) means Gillian;
- (3) means the daughters of Lily Mason in equal shares;
- (4) means the children of Lily Mason in equal shares; (5) is void for uncertainty so that the residuary estate of the Deceased passes on a partial intestacy; or bears some other meaning. (6)
10. The daughters were represented by the same solicitors and counsel and made common ground. They have agreed that if the Court finds that only one is entitled to the residuary estate, they will share it between themselves. 11. Since the daughters’ position is unopposed by the other defendants, the executor advanced the arguments that could be deployed in favour of the intestacy beneficiaries.
12. As at 15 August 2022 (the date of the most recent estate accounts), the gross estate was worth £369,873.59 and that the net residue held by the estate’s solicitors was £281,145.39. Evidence
13. The evidence comprised the following witness statements: (1) (2) (3) (4) (5) (6) 1st witness statement of the executor dated 16 January 2025; 1st witness statement of Gillian dated 3 April 2025; 1st witness statement of Jacqueline dated 3 April 2025; 2nd witness statement of the executor dated 8 July 2025 2nd witness statement of Jacqueline dated 13 August 2025; 2nd witness statement of Gillian dated 12 August 2025.
14. None of the witnesses were cross-examined. Legal principles General principles

15. The general principles of interpretation of wills are found in *Marley v Rawlings* [2015] AC 129 at [19] - [22]. At [19] Lord Neuberger said: "... the court is concerned to find the intention of the party or parties, and it does this by identifying the meaning of the relevant words, (a) in light of (i) the natural and ordinary meaning of those words, (ii) the overall purpose of the document, (iii) any other provisions of the document, (iv) the facts known or assumed by the parties at the time that the document was executed, and (v) common sense, but,
(b) ignoring subjective evidence of any party's intentions."
16. These principles subsume what is known as "the Armchair Principle" governing the interpretation of wills, explained in *Boyes v Cook* (1880) 14 Ch. D. 54 at 56 by James LJ: "You may place yourself, so to speak, in [the testator's] armchair, and consider the circumstances by which he was surrounded when he made his will to assist you in arriving at his intention."
17. In addition, the *Marley* principles are modified in the case of wills by section 21 of the Administration of Justice Act 1982 ("the 1982 Act"), which allows evidence of the testator's subjective intention in certain limited circumstances. It provides: "21.— Interpretation of wills—general rules as to evidence.
(1) This section applies to a will— (a) (b) (c) in so far as any part of it is meaningless; in so far as the language used in any part of it is ambiguous on the face of it; in so far as evidence, other than evidence of the testator's intention, shows that the language used in any part of it is ambiguous in the light of surrounding circumstances. (2) In so far as this section applies to a will extrinsic evidence, including evidence of the testator's intention, may be admitted to assist in its interpretation."
18. As is explained in *Theobald on Wills* (19th edn) at 13-007, extrinsic evidence admissible under s.21 of the Administration of Justice Act 1982 in the three situations identified in the section is admitted "to assist in ... interpretation" of the will: "Traditionally, such evidence alone could not make words in a will bear a meaning which on the face of the will they are incapable of meaning (making "black" mean "white"). However, in the light of *Marley v Rawlings* and *RSPCA v Sharp* ... and the endorsement of the modern approach to construction derived from the line of authorities including *Mannai Investments Co Ltd v Eagle Star Life Assurance Co Ltd*, where Lord Hoffmann held that "allegory" could be interpreted as "alligator" after Sheridan's *Mrs Malaprop*, this rule may no longer be quite as inflexible. ... If the extrinsic evidence shows that the testator was unclear, or undecided, on what they meant by the ambiguous word or phrase, the court does not reject the word or phrase altogether if the court can construe it without the aid of extrinsic evidence, and provided that such would not amount to mere speculation." Mistake in enumeration of legatees - the rule in *Garvey v Hibbert*
19. The authorities which pre-date the 1982 Act and *Marley* establish a rule referred as the rule in *Garvey v Hibbert* (1812) 19 Ves 125 ("the Rule"). The Rule is set out in *Hawkins on the Construction of Wills* 5th edn at 10-01: "Where a gift to children describes them as consisting of a specified number, which is less than the number in existence at the date of the will, the

court rejects the specified number on the presumption of mistake, and all the children in existence at the date of the will are held entitled, unless it can be inferred who were the particular children intended.” and in Jarman on Wills 8th edn at page 1702: “Misstatement as to Number of Children ... It often happens, that a gift to children describes them as consisting of a specified number, which is less than the number found to exist at the date of the will. In such cases it is highly probable that the testator has, mistaken the actual number of the children; and that his real intention is that all the children, whatever may be their number, shall be included. Such, accordingly, is the established construction, the numerical restriction being wholly disregarded. Indeed, unless this were done, the gift must be void for uncertainty, on account of the impossibility of distinguishing which of the children were intended to be described by the smaller number specified by the testator.”

20. The Rule applies where the actual number of children is both more than the number stated in the will and where it is less: *Re Sharp* [1908] 2 Ch 190 CA.
21. The basis of the Rule is the presumed intention of the testator, as is explained in Jarman at page 1704: “The ground on which the Court has proceeded is that it is a mere slip in expression, and the circumstance that the testator knows the true number of children is not a sufficient reason for departing from the rule.” [“slip in expression” being a direct quote from Garvey] Legal principles – issues between the parties
22. The above legal principles were common ground. The parties differed however as to whether the Rule extended to cases where a gift was to a single child, but there were 2 or more children.
23. The executor submitted that such a gift was void for uncertainty unless the admissible evidence (including evidence which is now admissible under the 1982 Act) showed which child the testator intended to benefit. His counsel relied upon the following authorities: *Dowset v Sweet* (1753) 27 ER 117; *Asten v Asten* [1894] 3 Ch 260; *Stephenson v Bamber* [1897] 1 Ch 75. 24. In *Dowset v Sweet* (1753) 27 ER 117 the testator left a gift to the son and daughter of A. A had four sons and a daughter. It was held that none of the sons could take because of the uncertainty in the description, and whole gift went to the daughter.
25. *Dowset* predates *Garvey v Hibbert*. Following that decision, the Rule was applied in cases where the testator had described the intended beneficiary in the singular, and in fact there were multiple members of the class: *Harrison v Harrison* (1829) 1 Russell & Mylne 71, (1829) Tamlyn 273, at 278; *Hare v Cartridge* (1842) 13 Simons 165. 26. 27. In *Harrison*, the testator bequeathed “to the two sons and the daughter of Thomas Lovell £50 each”. At the time the will was made, and when the testator died, Thomas Lovell had 5 children: one son and 4 daughters. It was held that each of the 5 children was entitled to a legacy of £50. Neither report of the case records any detailed reasoning. In *Hare v Cartridge*, the testator bequeathed part of his residue to his first cousins, the children of his father’s brother of the name of Cartridge. In fact, the testator’s father had 2 brothers called Cartridge, both of whom had children. It was held that the bequest was not void for uncertainty; and that the

children of both brothers were entitled to share in the residue. The Vice Chancellor said: “it has been said that the trust is void, because, having had two brothers of the name of Cartridge, he has used the word “brother” in the singular number. He has not, however, used any negative words so as to exclude the children of any brother of his father of the name of Cartridge from taking. And, therefore, it does not appear to me that there is anything inconsistent in holding that all the testator’s first cousins, who were children of his father’s brothers of the name of Cartridge, are entitled to take.”

28. *Asten v Asten* was a decision where there was held to be uncertainty in the subject matter of gifts. The testator owned 4 freehold houses in Sudely Place, Colchester. His will made 4 gifts to each of his 4 sons of properties each described as “All that newly built house, being No. , Sudeley Place, Cotsfield Road, ... in Colchester”. Since the property to go to each son could not be identified from the description in the will or from extrinsic evidence, it was held that the gift failed for uncertainty.
29. In *Stephenson v Bamber* the testator left the residue of his estate to “the children of the deceased son (named Bamber) of my father’s sister share and share alike.” The testator’s aunt had 3 sons named Bamber, all of whom had died by the time the will was made and each leaving children. The testator knew this.
30. At first instance, the judge construed “named Bamber” as referring to the whole phrase “the children of the deceased son”, and concluded that the testator intended every child named Bamber (i.e. excluding married daughters) of a deceased son of his aunt to benefit.
31. In the Court of Appeal, Lindley LJ expressed the Rule as: “If the Court comes to the conclusion, from a study of the will, that the testator’s real intention was to benefit the whole of a class, the Court should not and will not defeat that intention because the testator has made a mistake in the number he has attributed to that class. The Court rejects an inaccurate enumeration.”
32. However, the Court held that this principle did not apply in the case before it. It distinguished *Hare v Cartridge*, whilst acknowledging that it had never been overruled. It held that, in the absence of extrinsic evidence, it could not construe “son” as “sons”. It was, therefore, it held, bound to say that the object of the gift was uncertain, and therefore void.
33. In considering the above authorities, it is in my judgment necessary to have in mind that they were all decided within a narrower framework than now applicable in the construction of wills, and to bear in mind the cautionary words in *Theobald* at 14-001 (footnotes omitted): “It is therefore sometimes said that the first rule of will construction is that every will is different, and that prior cases are of little assistance. This is not mere flippancy; in *Sammut v Manzi*, the Privy Council approved the approach of considering wording of the will first without initial reference to authority, and commented that “little assistance in construing a will is likely to be gained by consideration of how other judges have interpreted similar wording in other cases”. Now direct evidence of the testator’s intention may be admissible as an aid to construction as well as evidence within the will bearing on the question of what a particular testator meant by a particular word or phrase, and the approach of the court in all cases (even where such evidence is not admissible) is concerned with the use of words in

their proper context as confirmed by the Supreme Court in *Marley v Rawlings*. The range of possible interpretations that can be adopted to give effect to a testator's intention is broader than ever. The usefulness of the rules and principles of construction that were built up during a time of a literal approach to construction has therefore diminished." Factual circumstances surrounding the making of the will

34. The deceased was born on 8 July 1929, so was therefore 78 when he made the will. He never married and had no children.
35. 36. Jacqueline was born on 18 August 1957, and Gillian was born on 25 February 1960. The daughters met the deceased occasionally when they were children, at his mother's house, where they visited with their mother. In about 1982 or 1983, following the death of his younger sister, Jean, the deceased moved to Whalley in Lancashire. He maintained a very close relationship with Lily and they ensured that they saw each other as often as they could. They would exchange birthday and Christmas presents. The deceased was a keen walker and went on many walking holidays. He would always phone Lily to tell when he was going away. Lily was named as his next of kin when he was admitted to hospital. Overall, there is clear evidence that the deceased was very close to Lily.
37. As to the daughters, he knew them reasonably well. He was always invited to family events or family celebrations, and was a guest at Gillian's wedding. There is no evidence that he knew one daughter better than the other or was closer to one of them.
38. In 1983, the deceased made a will by which he left Lily £1,000, and other relations similar pecuniary amounts, with his residuary estate divided between 2 charities.
39. By the time of the will (2007), 3 of the cousins named as legatees in the earlier will had died, but two remained alive. They are not legatees in the will.
40. The will was prepared by Anthony Wilde, who was a private client clerk at Woodcocks Haworth Nuttall, solicitors ("WHN"). That firm has provided an apparently incomplete copy of their will file; and information which seems to have been provided by Mr Wilde. Regrettably, WHN have not provided a witness statement from Mr Wilde, although this has been asked for.
41. The deceased provided a hand written note of his wishes to Mr Wilde. This included a gift of his residuary estate to Lily, with no substitutionary gift. There are then words which are crossed out "(or for her benefit and the rest of the living members of our family at her discretion)". The notes also included a gift of £30,000 to Rose Graham.
42. On 1 August 2007, the deceased met Mr Wilde and gave him the note of his wishes. Mr Wilde's attendance note of that meeting ("the attendance note") records: "Residue to LILY MASON or to her children grandchildren daughter"
43. The draft will prepared by Mr Wilde was not in evidence. However, after receiving it, the deceased wrote to Mr Wilde to increase the legacy to Rose Graham to £40,000; and if she predeceased him, to be "divided equally between her two daughters, namely Angela Brown

and Natalie Robinson”. The final version of the will was then signed on 17 August 2007, but there is no attendance note of that occasion. Discussion and conclusion 44. Self evidently, the deceased did not intend his residuary estate to go to the intestacy beneficiaries – that was why he made the will. That would however be the outcome if the object(s) of the gift in clause 4 of the will cannot be determined. 45. It was common ground that, in the factual circumstances of this case, the expression “the daughter” is ambiguous, and that extrinsic evidence of the Deceased’s intention is therefore admissible.

46. As to the evidence, this shows that the deceased was closer to Lily than to any other living member of his family. She was his named next-of-kin when he went into hospital; and he had benefitted her in an earlier will. The gift to her of his residuary estate reflected that closeness.
47. The evidence does not show that the Deceased had a close or particular relationship with any of Lily’s children as opposed to with Lily herself. There was evidence from Jacqueline that the deceased was “old school” and may have intended to refer to her as the eldest daughter who was Lily’s next-of-kin (for medical purposes), and held a power of attorney. On the other hand, the deceased attended Gillian’s but not Jacqueline’s wedding.
48. Both sides agreed and I find that “daughter” is not apt to refer to a male child, so that an intention to benefit Mark cannot be inferred. This is supported by the fact that “children” was crossed out in the attendance note; and by the executor’s evidence that, rightly or wrongly, the deceased did not have a favourable view of Mark.
49. The executor’s primary argument was that the ordinary and natural meaning of the words used in clause 4 indicated a gift to a single person: “daughter” and “her” are both singular expressions. His counsel submitted that, applying the relevant rules of construction and considering the admissible evidence: (1) it was impossible to say which daughter the deceased intended to benefit; there was insufficient evidence to show an intention to benefit both daughters; (2) and the gift therefore fails for uncertainty. She particularly relied upon *Re Stephenson* in support of this conclusion.
50. As indicated above, I accept the daughters’ submission that only limited help can be derived from the numerous decisions on the interpretation of wills, many of which were decided in the 19th century (as are those cited in this case).
51. Applying the principles in *Marley*, the following factors show, in my judgment, that the most likely (on the balance of probabilities) intention held by the deceased was to benefit both daughters.
52. The first factor is his closeness to Lily, so that his primary relationship was with her, rather than with the daughters. Clause 4 itself shows that his primary intention was to benefit her. The substitutionary provisions applying if Lily predeceased him show that the person(s) he intended to benefit were to be benefitted primarily because of their relationship to Lily (rather than because of his relationship with them as individuals) . Equally, the fact that he

was not closer to one daughter than another indicates that he did not intend to favour one over the other. This factor points towards the most likely intention to be attributed to the deceased being to benefit the class comprising the daughters of Lily.

53. The second factor is found in the will itself. In it, the deceased does not refer to “the daughter” by name. The evidence shows that he knew both daughters well enough to know their names. If he had intended to identify one daughter rather than another, he could have referred to her by name; and the fact that he did not, is also evidence that he intended to benefit the class of daughters rather than one particular individual daughter. This position is to be contrasted with his gift to Rose Graham’s daughters to whom he did refer to by name. Again, the inference to be drawn is that he intended to benefit the daughters as a class, rather than an individual daughter.
54. Thirdly, I consider the position when the deceased reviewed the will before signing it. If he had intended to benefit only one daughter, but forgotten to give Mr Wilde her name, he would have been likely to notice the omission from the will of her name. If, on the other hand, he had intended to benefit the daughters, the use of the singular pronouns in the will is less likely to have been noticed by him. 55. In my judgment therefore, the use of “the” and “her”, is most likely to reflect a mistake or “slip in expression”. This may have been by Mr Wilde or by the deceased himself when giving instructions. The fact that these words in their ordinary natural meaning are singular does not prevent the court from finding an intention to benefit both daughters, as occurred in *Harrison v Harrison and Hare v Cartridge*. 56. For the reasons above therefore, I reject the submission that the gift in clause 4 of the will is void for uncertainty; and hold that the expression “the daughter” refers to the daughters, who take under clause 4 of the will in equal shares. 11

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