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Inheritance Act  
Claims

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## INHERITANCE ACT CLAIMS

THIRD EDITION

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## INHERITANCE ACT CLAIMS

## FOREWORD BY LORD JUSTICE MUNBY

This new and carefully up-dated edition of Sidney Ross' important book triumphantly maintains the distinguished standards of its predecessors.

This may be a practitioners' book—and all practitioners in this ever topical field will be in debt to our author—but it is much more than that. It benefits from the discerning eye and keen analysis of an author who is master of his material. It is comprehensive. It is both descriptive and critical, but never pedantic.

The logical structure of the book and organisation of individual chapters makes it easy for the practitioner, whether tyro or seasoned campaigner, to find what he or she is looking for. The task of navigation is made all the easier by the clearly laid-out tables of contents which begin every chapter and the sub-headings which helpfully divide up the text.

Seven chapters are supplemented by appendices which provide all the supporting materials a practitioner could want.

The author's handling of authority is particularly helpful. An appendix contains concise and accurate case summaries. Cases are woven into the text in welcome detail. Enough of the facts and the principles in play are set out to tell the reader exactly what the case was about. So the busy practitioner can easily identify the cases relevant to the task in hand.

The wealth of new material which has found its way into this latest edition shows the continuing vitality of a branch of law which, human nature being what it is, will probably always flourish. The process, of course, continues, and an intriguing appendix discusses various proposals for reform which, if implemented, will have a significant impact. The work of the Law Commission is given due prominence whilst being subjected to helpful if in parts critical analysis. One hopes that the pace of reform will call for a new edition sooner rather than later!

For those old enough to remember the days before the 1975 Act, when claims were brought under the 1938 Act, the jurisprudence our author analyses reflects not merely the profound changes in our society over recent decades but also the way in which the judges have adapted to these changes. There will, no doubt, be further changes in the years ahead. In the meantime this invaluable book will serve us well as guide and friend.

James Munby  
July 26, 2011

## PREFACE TO THE THIRD EDITION

The previous edition of this book (2006) was published in the Practitioner series as the First Edition, so this, although the fourth version to appear, is the Third Edition. The structure of the main text follows that of the Practitioner edition, but the organisation within individual chapters, particularly Ch.6 (Reasonable Financial Provision) and Ch.7 (Practice and Procedure) has been changed, and the bulk of the material relating to benefits and taxation which was in Appendix 2 of that edition has been incorporated into Ch.7 of the main text. The new Appendix 2 surveys what might colloquially be termed "Forthcoming Attractions", pride of place among which goes to the proposals contained in the Law Commission Consultation Paper (CP 191) on the reform of the law of intestacy and family provision. It is not anticipated that the Report and draft Bill will be published before this work goes to press. Appendix 3 (Rules, Forms, and Precedents) has been expanded and the precedents are cross-referenced to the questionnaires which form Appendix 4 of this edition. It is hoped that this will assist practitioners in formulating claims and witness statements. There are substantial additions to the list of important cases (Appendix 5) and the case summaries (Appendix 6); a few of the less significant 1975 Act cases summarised in earlier editions have been omitted. It is hoped that the usefulness of the case summaries will be enhanced by the annotations which indicate where the text of unreported cases may be found and listing articles and case comments from a selection of legal journals.

Of the legislative developments during the lifetime of the Practitioner edition, the Civil Partnership Act 2004 has yet to make a significant impact on the law of family provision, and there have been very few cases involving any human rights issues. The alterations to the trust taxation regime brought about by the Finance Act 2006 are unlikely to exert a more than peripheral influence, and the law on post-death variations has not significantly changed. *Land v Land Deceased*, [2007] 1 W.L.R. 1009 is an important decision on s.3 of the Forfeiture Act 1982. The Estates of Deceased Persons (Forfeiture Rule and Law of Succession) Bill, introduced by Greg Knight MP, received the Royal Assent on July 12, 2011, though s.4(3) provides that it is not to come into force before the end of three months beginning with the day on which it is passed.

In contrast with this period of legislative calm, the substantive case law has developed significantly in three areas. The decisions of the Court of

Appeal in *Fielden v Cunliffe* [2006] 1 F.L.R. 745, and of Black J. (as she then was) in *P v G, P and P (Relevance of Divorce Provision)* [2006] 1 F.L.R. 431 have brought a welcome degree of clarity to the treatment of claims by surviving spouses, and it is to be hoped that this will not be obscured by attempts to apply principles formulated in the course of dealing with high-value ancillary relief claims whose circumstances bear little, if any, resemblance to those of even the highest value family provision claims.

Claims by dependants under s.1(1)(e) are becoming rarer, and, when made, are often alternatives to the primary claim as a cohabitant. Three important decisions in that field are *Baynes v Hedger* [2008] 2 F.L.R. 1805, *affd* on an additional ground, [2009] 2 F.L.R. 767 (CA), where there were claims under both sub-sections; *Lindop v Agus* [2009] W.T.L.R. 1175 in which the question whether the claimant was eligible under either sub-section was determined as a preliminary issue, and *Negus v Bahouse* [2008] 1 F.L.R. 381 which exemplifies the general approach to claims by cohabitants and, in particular, to the relevance of the standard of living enjoyed by the claimant during the joint lives of the parties.

Finally, the line of authority beginning with *Re Coventry* [1980] Ch. 461 and continuing through the decisions of the Court of Appeal in *Re Hancock Deceased* [1998] 2 F.L.R. 346 and *Espinosa v Bourke* [1999] 1 F.L.R. 747 has been considered in depth by the Court of Appeal in *Ilott v Mitson, Land, Blue Cross, RSPB and RSPCA* [2011] 2 F.C.R. 1; [2011] W.T.L.R. 779; [2011] EWCA Civ 346. That decision is now the last word in the matter, as permission to appeal was refused by the Appeal Committee of the Supreme Court on June 27, 2011. Whether that decision was an unjustified departure from the much-vaunted principle of testamentary freedom or a welcome addition to and clarification of an established line of authority will no doubt be the subject of debate for some time to come.

As the law of family provision has evolved, it has overlapped to a greater extent with other areas of law—not only matrimonial law, but contentious probate, property law, trust law, taxation, social security, conflict of laws and human rights. There have been important decisions on what one could broadly call status-domicile, residence, human rights—*Mark v Mark* [2006] 1 A.C. 98, *Cyganik v Agulian* [2006] W.T.L.R. 593, *Witkowska v Kaminski* [2007] 1 F.L.R. 1547 and *Holliday v Musa* [2010] W.T.L.R. 839. In the procedural field, the judgment of Briggs J. in *Nesheim v Kosa* [2007] W.T.L.R. 149 continued the welcome trend exemplified by *Hannigan v Hannigan* and *Parnall v Hurst* in which justice required that cases with real prospects of success should be decided on the merits in spite of substantial procedural imperfections.

Practitioners are having to take into account an ever-increasing number of factors when making decisions as to what is in the best interests of the client and how to approach the claim or defence in the most cost-effective way. I have attempted to indicate, particularly through the extensive discussion of the case law in Chs 6 and 7, the nature of the matters which affect those decisions and the pitfalls which beset the path to the optimum outcome. If the views which are expressed in Ch.1 about the manner in which

cases should be conducted appear to be excessively critical, or idiosyncratic, or both, I can only say that they represent my own experience of many years of handling 1975 Act cases and that I have encountered every one of the errors identified in that chapter on several-indeed, as to one or two of them, on many occasions. Furthermore, study of the reported cases, particularly those involving applications to commence proceedings out of time, shows that the commission of those errors is not confined to firms with limited resources or relatively little experience of handling 1975 Act cases.

It is, as always, a pleasure to give credit and thanks where they are due, and I feel that it is time, as this book approaches twenty years of existence in its various guises, to acknowledge a debt to two precursors in the field whose work has helped me to formulate and refine the structure of my own. The first is Michael Albery's little classic, *The Inheritance (Family Provision) Act 1938*, published by Sweet and Maxwell in 1950, from which I drew my first ideas of structure and the realisation of the value of including case summaries, as he did at Appendix C. Although I have not discovered any case in which Albery's Appendix D (Precedent for Evading the Provisions of the Act) was employed, *A Settlement on Mistress and Illegitimate Child*, as the precedent was entitled, might perhaps be resurrected in a version adapted for use in the ever-increasing number of claims by cohabitants. The second is *Tyler's Family Provision*, for many years the only compendious work in the field, with its wide range of subject matter and its extensive appendix of notes of unreported cases, which was such a valuable resource when there were relatively few reported decisions and the coverage in Lexis (then the only available database) was not as comprehensive as it now is. A good many of those decisions are commented on in this text, as they are worth studying even today.

There are many individuals whose help and support I gratefully acknowledge. Simon Calhaem of 29 Bedford Row volunteered, out of the blue, to assist in any way I wished; at my request, he read and commented on the main text and helped substantially in updating the appendices containing the precedents and questionnaires. My sincere thanks go him and to Nigel Meares, my long-term colleague in Chambers, who also read and commented on the main text, as he has done with previous editions. Their helpful and perceptive suggestions have led to significant improvements. Michael Couling and the clerking team in Chambers have managed my practice with great efficiency during the six months of gestation and thanks are due to them for their continuing support, and to colleagues in Chambers for their support and interest generally. Finally, it is a particular pleasure to thank Taryn Dullisear of Sweet and Maxwell not only for her unflagging enthusiasm for this project, but, together with her colleagues, Richard Hepton and Pamela Hoggatt, for their contributions to the production of this book. Thanks are also due to Laura Archbold, the compiler of the tables, the indexer, who remains anonymous by choice, and all the other members of the Sweet and Maxwell team. Should this book be well received, they are all entitled to a substantial share of the credit. For any



errors or infelicities which have escaped their attention, the responsibility is mine alone.

I have endeavoured to state the law as it is on July 1, 2011.

Sidney Ross  
11 Stone Buildings  
Lincoln's Inn  
July 21, 2011

## TABLE OF ABBREVIATIONS

ENTRIES MARKED WITH AN ASTERISK INDICATE REPORTS WHICH FORM PART OF THE ENGLISH REPORTS

A.C.	Appeal Cases
All E.R.	All England Reports
App.Cas	Appeal Cases (1875–1890)
A.T.C.	Annotated Tax Cases
Beav.	Beavan*
B.C.L.C.	Butterworth's Company Law Cases
C.A.T.	Court of Appeal transcript
C.F.L.Q.	Child and Family Law Quarterly
Ch.	Chancery
Ch. App. Cas.	Chancery Appeal Cases (1865–1875)
Ch.D.	Chancery Division (1875–1890)
Ch. Div. (NI)	Chancery Division (Northern Ireland)
C.L.J	Cambridge Law Journal
C.L.Y.	Current Law Yearbook
C.O.D.	Crown Office Digest
Conv.	The Conveyancer
Cox Eq Cas	Cox's Equity Cases*
Cr. App. R.	Criminal Appeal Reports
C.T.P.	Capital Tax Planning
Denning L.J.	Denning Law Journal
D.L.R.	Dominion Law Reports
E.C.A.	Elderly Client Adviser
E.G.	Estates Gazette
E.R.	English Reports
EWCA Civ	England & Wales Court of Appeal, Civil Division
EWHC	England & Wales High Court
Fam.	Family Division
Fam. Law	Family Law
Fam L.J.	Family Law Journal
Fam. M.	Family Matters
F.C.R.	Family Court Reports
F.L.R.	Family Law Reports
F.L.T.	Family Law Today

Hag. Con.	Haggard (Consistory) *
H.L.C.	House of Lords Cases *
H.L.R.	Housing Law Reports
H. & C.	Hurlstone and Coltman*
H. & N.	Hurlstone and Norman *
I.C.L.Q.	International Comparative Law Quartely
I.C.R.	Industrial Cases Reports
I.H.L.	In-House Lawyer
J.P.	Justice of the Peace
J.P.N.	Justice of the Peace Journal
Jur.	The Jurist
Jur. N.S.	The Jurist (new series)
K.B.	King's Bench
L. Ex.	Legal Executive
L.G.R.	Local Government Reports
Lit.	Litigation
L.J.	Law Journal
L.J.Ch.	Law Journal, Chancery
L.J.K.B.	Law Journal, King's Bench
L.J.P.C.	Law Journal, Privy Council
L.J.P	Law Journal, Probate
L.J.Q.B.	Law Journal, Queen's Bench
L.J.R.	Law Journal Reports
Lloyds Rep.	Lloyd's Reports
L.R. P. & D.	Law Reports, Probate and Divorce cases (1865-75)
L.S. Gaz.	Law Society Gazette
L.T.	Law Times
L.T.J.	Law Times Journal
L.T.O.S.	Law Times (old series)
M.L.B.	Manx Law Bulletin
M.L.R.	Modern Law Review
Mod.	Modern Reports *
M. & W.	Meeson & Welsby*
New L.J.	New Law Journal
N.I.	Northern Ireland Law Reports
N.I.J.B.	Northern Ireland Judgments Bulletin
Nott. L.J	Nottingham Law Journal
N.Z.L.R.	New Zealand Law Reports
O.J.L.S.	Oxford Journal of Legal Studies
P	Probate
P.C.B.	Private Client Business
P. & C.R.	Property and Compensation Reports
P.I.L.J.	Personal Injury Law Journal
P.N.	Professional Negligence
Q.B.	Queen's Bench
Q.B.D.	Queen's Bench Division (1875-1890)
R. & I.T.	Rating and Income Tax Reports

S.J.	Solicitors' Journal
S.T.C.	Simon's Tax Cases
T.C.	Tax Cases
T.E.L.J.	Trusts and Estates Law Journal
T.E.L. & T.J.	Trusts and Estates Law and Tax Journal
T.L.I.	Trust Law International
T.L.R.	Times Law Reports
T.Q.R.	Trust Quarterly Review
T.R.	Times Reports
Tr. & Est.	Trusts and Estates
UKHL	United Kingdom, House of Lords
UKSC	United Kingdom, Senior Court
Ves.	Vesey*
V.R.	Victorian Reports
W.L.R.	Weekly Law Reports
W.N.	Weekly Notes
W.R.	Weekly Reports
W.T.L.R.	Wills and Trusts Law Reports
W.W.R. (NS)	Western Weekly Reports (new series)
Y & CCC	Yonge and Collier's Chancery Cases*

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