

5 Stone Buildings

Forgery in contentious probate

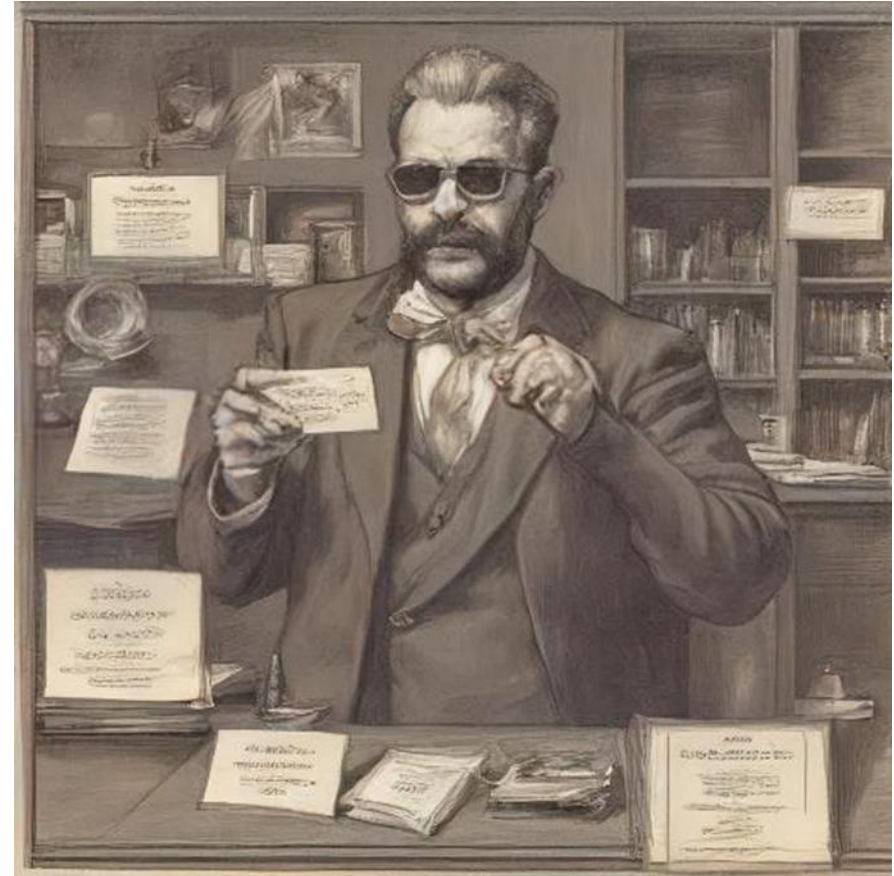
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Introduction

- Private client fraud:
 - Somewhat different in flavour to commercial fraud;
 - Generally involves the deception or manipulation of the vulnerable.
- What should we be on the lookout for?
- How does one challenge a fraudulent will?



More common than one might think...

- *“‘Greedy’ sheep farmer jailed for forging will documents in £1m+ fraud”* [R v Turner, Preston Crown Court, August 2023]
- *“Businessman who forged his mother's will to get £40m share of family's Malaysian palm oil plantation is jailed for five-and-half years”* [Patel v Patel, Southwark Crown Court, 13 April 2023]
- *“Gold-digger blasted for ‘ridiculous’ fake £600k will”* [Davies v Henderson, Mayor & City of London's Court, April 2017]
- To say nothing of all of the cases where the forger got away with it: by definition, if someone has smelt a rat, the fraud has not been totally successful.

Forgery claims

Successful:

- *Supple v Pender* [2007] WTLR 1461. [Peter Leaver QC, sitting as a Deputy High Court Judge].
- *Patel v Patel* [2017] EWHC 133 (Ch) [Andrew Simmonds QC, sitting as a Deputy High Court Judge].
- *Ball v Sisson* [2020] 1 WLUK 544 [HHJ Kramer, sitting as a Deputy High Court Judge].
- *Face v Cunningham* [2020] EWHC 3119 (Ch) [HHJ Hodge KC, sitting as a Deputy High Court Judge].
- *Rainey v Weller* [2021] EWHC 2206 (Ch) [Deputy Master Linwood].

Unsuccessful:

- *Cooper v Chapman* [2020] EWHC 1000 (Ch) [HHJ Klein, sitting as a Deputy High Court Judge].

First principles

- *“Darkness and suspicion are common features in will cases: the truth too often is the secret of the deceased or the dishonest”.* [Scarman J in *Re Fuld’s Estate* [1968] P 675].
- English law has for centuries recognised the risk of freedom of testation being subverted by fraud or forgery.
- A will which is fraudulent is a genuine document which does not represent the freely-expressed wishes of the testator, either because its creation was fraudulent, or because a subsequent valid will has been fraudulently suppressed or destroyed. A will which is forged is not a genuine document.
- As we all know: a will must comply with section 9 of the Wills Act 1837 in order to be valid. The attestation requirements are intended to provide a safeguard against fraud.

Red flags

- By definition, if the forger has done things at all competently (often not a given), the forgery generally will not be obvious. Potential red flags include:
 - Wills appearing after death, in the hands of people who would not be expected to have custody of them and/or in unusual places (i.e. "I found this in a Doritos bag");
 - Unusual behaviour by those people (e.g. vagueness about whether they believe a will exists; unwillingness to disclose it if they do have it);
 - Unexpected or incongruous terms in the suspicious will;
 - A testator who had previously used solicitors to draft wills nonetheless apparently having drafted a DIY will, or asked someone else to do so;
 - Witnesses who would not be obvious people for the testator to ask to witness a will and who are more closely associated with the beneficiary/person producing the will.

Litigating forgery claims

- Allegations of fraud and forgery in probate claims are frequently and enthusiastically made by disappointed beneficiaries convinced of the existence of a conspiracy to deprive of them of the inheritance they expected.
- Such allegations call for dispassionate analysis before embarking on or defending litigation marked not only by the hostility and potential for irretrievable damage to family relationships inherent in many probate disputes, but the pursuit of allegations which may give rise to criminal proceedings and penalties as well.
- A claim of forgery should never be put forward unless there are reasonable grounds to support it, and the litigant who lacks reasonable grounds risks a penal costs order.

Expert evidence

- Handwriting evidence is often key in forgery claims – however its importance can be overstated, for a number of reasons:
 - Even at best, the conclusions of handwriting experts will rarely be conclusive;
 - Getting a reliable expert opinion is dependent on obtaining a sufficient number of genuine signatures as a 'control' group; that is an increasingly difficult task in an age where far fewer documents are signed in wet ink;
 - There can often be a lack of consensus as regards the sample documents, with each side sending different documents;
 - It is necessary for the original documents to be available for inspection; often they will not be;
 - A genuine signature does not necessarily mean a genuine document!

Anatomy of a forgery claim – *Ball v Sisson*

- A good example of a forgery claim which was contested to trial.
- Dorothy Ball ('Dorothy') died on 17 March 2018, aged 92. She was survived by her adult children, David Ball ('David') and Linda Sisson ('Linda').
- On 17 November 2015, Dorothy executed a professionally drawn will ('the 2015 Will') appointing David as her sole executor and trustee and bequeathing 88 per cent of her residuary estate to David and the remaining 12 per cent to three grandchildren in equal shares.
- Following her death, Linda produced what she claimed was a later homemade will, which was claimed to have been executed on 4 January 2017 ('the 2017 Will'). The later will appointed Linda and her husband, Kenneth, as executors and differed from the 2015 will to the extent that the bequest of 88 per cent of the estate was split equally between Linda and David. The gifts to the grandchildren remained at four per cent each.

Ball v Sisson (2)

- The 2015 Will was professionally prepared; the circumstances of its preparation was that Dorothy had fallen out with Linda over the management of her personal finances and the relationship between them had broken down.
- David's case was that this remained the case until Dorothy's death. Linda contended that the relationship broke down due to a campaign of misinformation by David and that she and Dorothy reconciled shortly before the execution of the 2017 Will (which Dorothy asked Linda to prepare).
- David's case was that the 2017 will was a forgery, in that what was purported to be Dorothy's signature was not genuine. Linda's case was that the 2017 will was genuine, claiming that it was prepared by her at Dorothy's request, executed by Dorothy at Linda's house on 4 January 2017 and witnessed by two friends that she had asked to help, Antony and Tracey Binks.
- There was a problem with this as far as Linda was concerned: it couldn't be true.

Ball v Sisson (3)

- As luck would have it, David had arranged in late 2016 for CCTV cameras to be installed at Dorothy's house, and when the 2017 Will came to light the CCTV footage was checked. It demonstrated other visits to the house on 4 January 2017, such as visits by care workers and later visits by Jayne and David Ball, but it did not show that Linda had visited at all that day, or that her mother had left the house.
- Linda and her solicitors had no answer to this. Their initial response to it was to allege that the footage must have been tampered with or 'doctored' in some way, which prompted David to make an open invitation to Linda's legal team to inspect the CCTV and/or appoint an expert to report on her contentions. Linda's solicitors asserted, in response to that invitation, that it was for David to prove the integrity of the footage, and not vice versa.



Ball v Sisson (4)

- The judge also found that there was another aspect of Linda's evidence which cast doubt on her veracity; specifically that her statement appeared to have been taken from a lengthy handwritten journal. The first dated entry in that diary was 30 August, 2015 (i.e. around the time of the falling out between Dorothy and Linda). This journal was found by the judge to have been largely concocted by Linda in any event, but it contained some important points which undermined Linda's evidence.
- As the judge said, *"Mrs Sisson made an entry in her notebook under the '31st of March 2017'. In reference to talking to the police she notes: "I was also advised, if possible, to get mum to sort out her wishes for a will through a solicitor." She was asked why she was talking to the police about a will in March of 2017 if her discontent concerning the will had been resolved by the making of the new will on 4th of January. She said she had not been talking to the police about the will. She had not mentioned a will to them. But she was not able to explain why the police were giving her advice concerning a will."*

Takeaways

- The most common 'way in' to a forgery claim will be inconsistencies between the date that a will was allegedly executed and the circumstances of its purported execution. Look for diaries, appointments, or other potentially conflicting information.
- Always 'pay out the rope'. Get the defendants to commit to a version of events before showing it can't be true; the impact of the evidence can be lost if it is presented prematurely.



Takeaways (2)

- If the attesting witnesses are available, try to take witness statements from them separately (from each other, if possible), and do so early. If nothing else, this will limit room for manoeuvre by the defendant later and will prevent too much co-ordination between the witnesses.
- Obtain handwriting evidence in the right cases – but instruct the right expert, be mindful of its limitations, and consider carefully what the scope of the instruction should be (i.e. is it the signature only, or a broader enquiry?)
- Be realistic with time estimates. Forgery claims will usually involve cross-examination of at least one, likely three, and possibly more witnesses who are actively lying. Unpicking that takes time. You don't want your judge dividing their attention between the witness and the clock.

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Thank you

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