

# 5 Stone Buildings

---

## CAPACITY DISPUTES

Penelope Reed QC

---

7<sup>th</sup> February 2018

[www.5sblaw.com](http://www.5sblaw.com)

# Introduction

- Three types of evidence in capacity disputes:-
  - The solicitor
  - Lay witnesses
    - Family
    - Friends
    - carers
  - experts

# The test for capacity

## **Banks v Goodfellow**

- *Scammell v Farmer*
- *Walker v Badmin*
- *James v James*

## **MCA 2005**

- *Simon v Byford*
- *Fischer v Diffley*
- *Bray v Pearce*

# The Vital Importance of the solicitor

- Solicitor winning the day
  - *Burgess v Hawes*
  - *James v James*
- Solicitor doing a wonderful job but will be invalid
  - *Sharp v Adam*
- Criticism of solicitor
  - *Key v Key*

# No solicitor

- *Blackman v Man*
  - Testatrix with dementia
  - Left substantial estate to two friends
  - Used Barclays Bank will form
- *Simon v Byford*
  - Will made at 88<sup>th</sup> birthday party
  - Testatrix had dementia
  - Son who happened not to be there cut out.

# Anecdotal evidence



- family
- friends
- Carers
- G.Ps
- social workers
- nurses
- anyone who came into contact with the testator

# Expert Evidence

- Not to decide whether the testator had capacity
  - *Otuka v Alozie*
  - *Key v Key*
- Opinion to assist the Court on all the material as to how the disease of the mind would have affected capacity
- Provide witness statements

# *Key v Key*

*Without in any way detracting from the continuing authority of Banks v Goodfellow , it must be recognised that psychiatric medicine has come a long way since 1870 in recognising an ever widening range of circumstances now regarded as sufficient at least to give rise to a risk of mental disorder, sufficient to deprive a patient of the power of rational decision-making, quite distinctly from old age and infirmity.*

**Evidence of doctor who had examined him preferred**

# Vegetarian Society v Scott

- Testator suffering from schizophrenia and logical thought disorder.
- In spite of being a meat eater left 80% of his estate to the Vegetarian Society.
- Appearance was unkempt and tramp-like, his living conditions were below basic and he kept an annotated school geography book containing mostly incoherent writings from the mid-1960s onwards
- Will valid

# Kostic v Chapman

- testator, left his £8m estate to the Conservative Party
- cutting out his son
- suffered from a delusional disorder.
- believed that there was an international conspiracy of dark forces against him in which family members were implicated
- Delusion material to his capacity

# Answer

**what evidence of (1) distorted memories, (2) false beliefs and (3) personality change is likely to persuade the court and secure a successful outcome?**

- Extremely difficult question
- Courts want to find for Wills.

# 5 Stone Buildings

---

Thank you,  
any questions?

---

t 020 7242 6201

w [www.5sblaw.com](http://www.5sblaw.com)

 [@5sblaw](https://twitter.com/5sblaw)