



Rea v Rea [2024] EWCA Civ 169

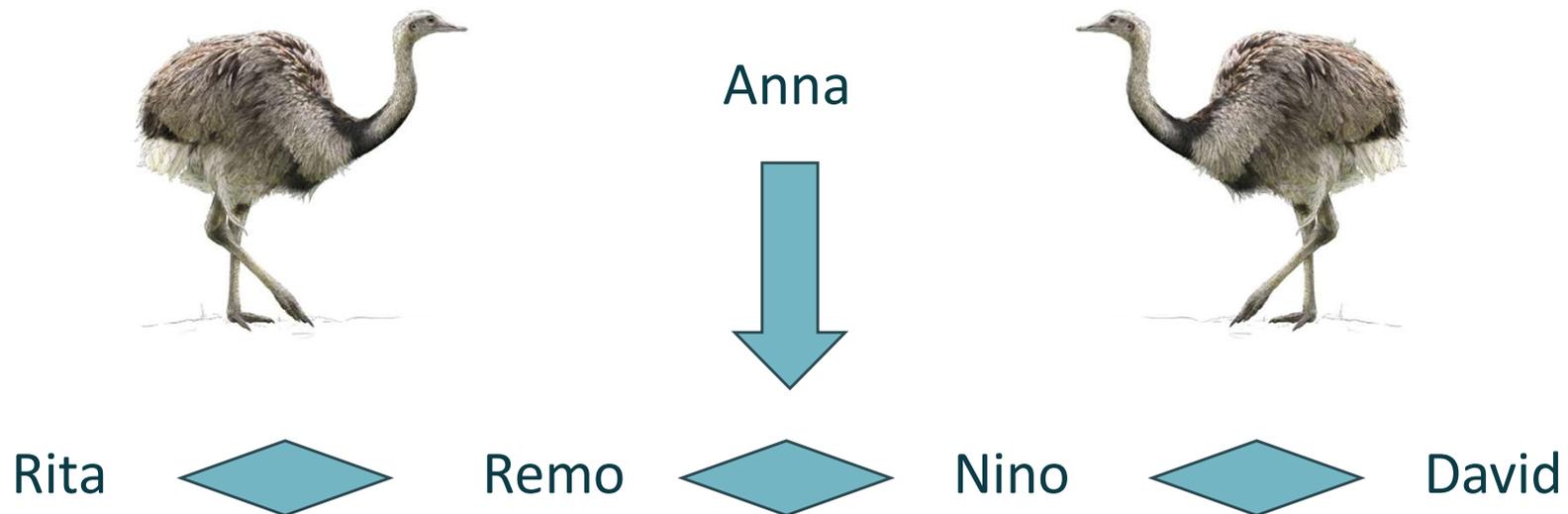
- Proving Undue Influence

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Rea v Rea [2024] EWCA Civ 169



Hall v Hall (1865-69) LR 1 P&D 481

overpower
the volition
without
convincing
the
judgment

a testator
may be led
but not
driven



Wingrove v Wingrove (1885) 11 PD 81



"if the testator has only been persuaded it is strictly legitimate in the sense of its being legal"

"It is only when the will of the person who becomes a testator is coerced into doing that which he or she does not desire to do"

"if he could speak his wishes to the last, he would say, 'this is not my wish, but I must do it'".





Home Secretary v Rehman [2001] UKHL 47

-Lord Hoffman



“The civil standard of proof always means more likely than not. The only higher degree of probability required by the law is the criminal standard. But ...some things are inherently more likely than others.”

*In re B (Children) [2008]
UKHL 35, [2009] 1 AC 11
-Baroness Hale*

"... there is no logical or necessary connection between seriousness and probability. [...] If it is seen in the zoo next to the lions' enclosure when the door is open, then it may well be more likely to be a lion than a dog."



Rea v Rea – Inherent Probabilities

it will commonly be appropriate to proceed on the basis that undue influence is inherently improbable. As I have said, "undue influence" signifies coercion in this context, and potential beneficiaries are surely less likely to resort to coercion than to rely on affection, gratitude or even persuasion.



Schrader v Schrader [2013] EWHC 466 (Ch)

no direct evidence of
the application of
influence

The proof has to come,
if at all, from more
circumstantial evidence

Battle of the Hypotheses



Boyse v Rossborough (1857) 6 HL Cas 2, 10 ER 1192

- "in order to set aside the will of a person of sound mind, it is not sufficient to show that the circumstances attending its execution are consistent with the hypothesis of its having been obtained by undue influence. It must be shown that they are inconsistent with a contrary hypothesis."

Cowderoy v Cranfield [2011] EWHC 1616

Edwards v Edwards [2007] W.T.L.R. 1387



Battle of the Hypotheses



Rea v Rea

- the circumstances must be such that undue influence is more probable than any other hypothesis
- undue influence is inherently improbable.

Rea – The Evidence



- (1) Frailty
- (2) Dependency
- (3) Decision to make the new Will
- (4) Timing of new Will
- (5) Making the arrangements
- (6) Terms of the new Will
- (7) Motivation behind the legacy
- (8) Failure to disclose existence of new Will

Rea – Court of Appeal



Role of the appellate court



an evaluative decision
would only be overturned
if:

the decision was an unreasonable one or wrong as a result of some identifiable flaw in reasoning, such as a gap in logic, a lack of consistency, or a failure to take account of some material factor, which undermined the cogency of the conclusion



Emphasis on the battle of the hypotheses?

- there is obviously no question of Rita's personality being consistent only with her having coerced her mother. People with forceful personalities do not routinely, let alone invariably, exercise undue influence
- The Judge detected in that "a sense that Anna was in thrall to her only daughter, and carer". The Judge presumably had in mind that Anna's remark indicated that she saw herself as in Rita's power. Surely, though, it might have indicated, say, that she wished Rita to know that she was grateful for Rita's help.
- Would not the failure be just as consistent with Rita having been reluctant to reveal, for example, that she had encouraged (without coercing) her mother to make a new will?

Rea – Court of Appeal



Emphasis on the battle of the hypotheses?

- I cannot see how the fact, if it be one, that Anna did not appreciate that Rita still owned a flat lends support to the allegation of undue influence; such a misunderstanding would surely, if anything, have made it more likely that Anna would wish to give Rita 5 Brenda Road, without any coercion having been exercised.
- a wish to ensure that the changes in the 2015 Will "only become known to [Remo, Nino and David] after Anna's death because that would make it more difficult for them to challenge the 2015 Will" would be entirely consistent with Rita having persuaded her mother to leave 5 Brenda Road to her, without any coercion.

Rea – Court of Appeal



Rea – Court of Appeal



Encouragement /
persuasion entirely
lawful



Something more than
mere opportunity is
required



In particular where
that is a plausible
hypothesis then it may
well be preferred to
'inherently unlikely'
undue influence



Evidence from
professionals such as
will writer and any
medical professional is
persuasive



Rea – Court of Appeal



As was pointed out by Mr Robert Deacon, who appeared for Rita, the Judge needed to consider whether the circumstances were as consistent with Anna deciding to make a new will either entirely of her own accord or after being encouraged to do so by Rita. Undue influence was, to my mind, clearly no more likely than at least the latter of these hypotheses.

Undue Influence – How to WIN?!!



Proof of actual undue influence

Schrader v Schrader
[2013] EWHC 466 (Ch)

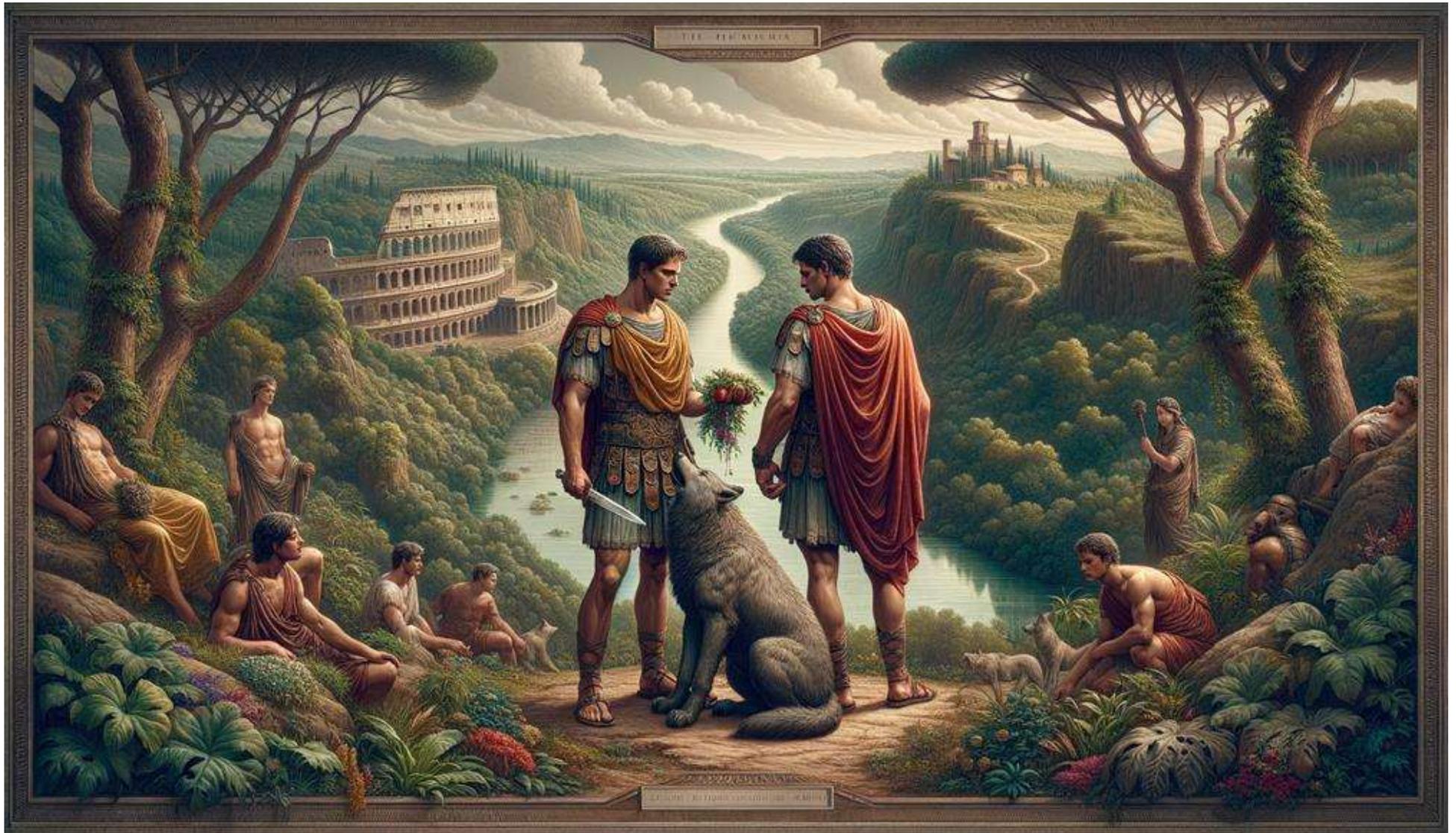
Concentrate on evidence that goes beyond mere opportunity and over into probability

Discord between beneficiary and testatrix?

Indirect evidence from professionals?

Promises made to other claimants?

Inconsistent previous expressions?





Thank you!

Any questions?

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