



Rogers v Wills [2025] EWHC 1367

- How do you present or attack post-death claims for lifetime care and the intention to create legal relations?

Matthew Hodson - Barrister

February 2024



Judgecraft - Rogers v Wills [2025] EWHC 1367

[3] The moral position of any of the parties or their siblings is simply irrelevant [...] Accordingly, nothing that I say in this judgment is intended to reflect directly on the moral position of any of the parties.

[9] judges do not possess supernatural powers that enable them to divine when someone is mistaken, or not telling the truth



Consequences of Disclosure Failures

*Armory v
Delamirie
(1722) Str
505*

- "that unless the defendant did produce the jewel, and shew it not to be of the finest water, they should presume the strongest against him, and make the value of the best jewels the measure of their damages: which they accordingly did."



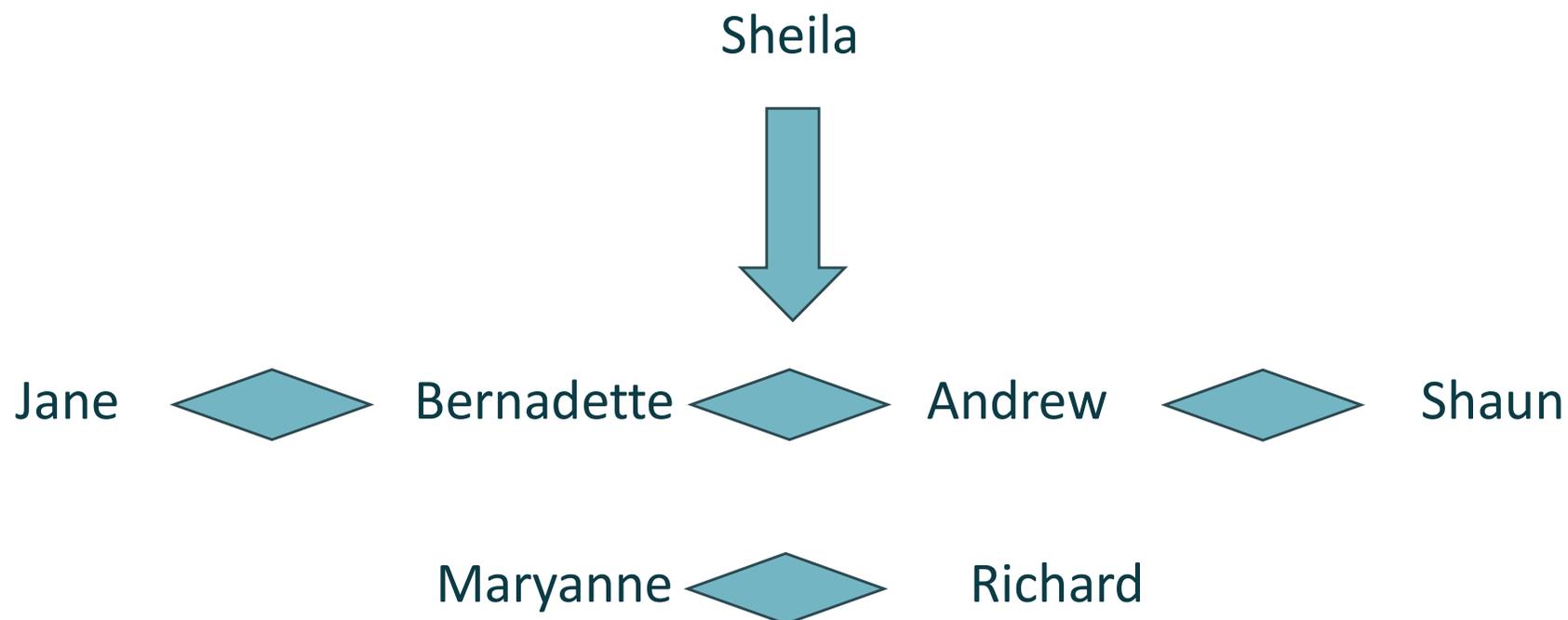
Consequences of Disclosure Failures

*Vardy v
Rooney
[2022]
EWHC
2017 (QB)*

- an order was made for the inspection of the mobile telephone of the claimant's witness, but the phone was allegedly "lost overboard" whilst on a boat trip a few days later



Rogers v Wills [2025] EWHC 1367



August 2017 - Sheila reaches 90 years old, and is becoming forgetful

- September - Sheila has a mini-stroke



Living alone near Norwich, children scattered across England and even Canada



Discussions of who she could live with

- Maryanne, 100 miles away in Lincolnshire?
 - Would have to give up her job
- Bernadette, 230 miles away in Bristol, takes Sheila on a temporary basis
 - Maryanne suggests charging £50/week at this point



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Oct. 2017

Sheila returns home after a couple of months but asks to live with Bernadette

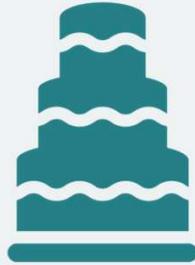
- Shaun says Bernadette should be paid

Sheila goes back to Bernadette in Bristol

- Sheila insists she “wanted to pay her way”
- Bernadette would be “paid properly” for looking after her
- “I don’t want charity. You must make sure that [B] is paid for looking after me.”
- Sheila has capacity at this time



November



January – February 2018

Andrew texts “You also need to be compensated for mum living with you”

“You also need to ensure you are not out of pocket while grannysitting Mum, she should cover your costs of return trips to Norfolk, contribute to the household budget etc.”



February 2018

Andrew obtains power of attorney

Rogers v Wills [2025] EWHC 1367



June 2018 – the options

Back home with live in carer – 2.4 - 4k pcm (9)

Stay with Bernadette (7)

Stay with Maryanne (7)

Stay with Shaun (7)

Care home – 3.5-5k pcm (0)

Stay with Jane (5)

Stay with all 4 for three months each (3)



July 2018 – vascular dementia diagnosis

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2019

- “Thanks Bern, you really should get Mum to pay towards the care you are both providing”
- "We (you and me) really need to sort out Mum's method of financing her care for the time she is with you.”
- “do you have access to her savings?, if not, then we need to make sure you can 'draw down' on Mum's account"

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Sheila ultimately lived with Bernadette from November 2017 until her death in April 2020 – 2.5 years.

She had falls, a prolapse, illnesses and dementia, requiring full time care

- It's a huge learning curve in unconditional love and compassion which is sorely and often tested! I hope you are ok - and don't take it personally! There is very little logic or rationale in her behaviour or her reasoning but she is so frustrated that she lashes out. I am sorry you got such a lot this morning ...



[40] The defendant, who is now retired, but whose most recent employment was (as set out in his witness statement) "in senior management within the information technology sector"



[48] On 6 and 7 March there was a series of strongly worded exchanges between the defendant and Shaun about child abuse by Catholic priests. They disagreed on a number of points.



[53] Although on 6 April the claimant had asked the defendant whether he would "be up for taking Mum home to her house this week", his reply was "that'd be difficult as we only have one car right now".

Rogers v Wills – no moral judgment on D

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[64-66]

"NO, sorry Shaun. It does matter. If it can be fixed with little effort and cost then it should be done."

"If you want to organise a plumber then take several days off while you wait in for them not to show then go ahead!"

[67] On 31 August the defendant complained to his siblings that although he had "had a month in Belgium & Holland in June/July, a few days in the New Forest and a week up in York", it "just feels like I need another holiday as I am also doing the damn DIY and not getting out on the bike".



[43] Shaun – "Seriously though!! Watching the dynamics of Bern with mum I'm utterly humbled!! But also grateful to be a part of the whole circle of life thing".

[45] Jane's mother-in-law had recently gone into a care home, and Jane confirmed to me that she 'wouldn't care for Mum for less than £3,000 per month and she would expect additional carers to help manage Mum's needs effectively'

[58] Once Grandma moved into Mum's, she came out of her shell and would tell me when I visited how much that she enjoyed staying at Mum's ...

Rogers v Wills – no moral judgment on C

Rogers v Wills – the moment it all went wrong!



"Several days before my Mum's passing, Andrew and I had a telephone call where I confirmed that I had still not taken money for my Mum's care and expenses after all this time. To which Andrew responded, just take it'."

Bernadette proceeds to take £100k

"I deny speaking with the Claimant on 18 April 2020 telling her to just take funds directly out of Mum's bank account. I would never have done this without an agreement from my Siblings and a firm understanding of what the Claimant was seeking and why."



Offer / Acceptance

Questions of capacity

Presumption of capacity –
s.1 MCA 2005



Consideration



Intention to Create Legal Relations

Rogers v Wills – Contract Claim?



Certainty of consideration



Barton v Morris [2023] AC 68

The law gives effect to this common understanding by imposing, in the absence of contrary agreement, an obligation to pay a reasonable sum which represents what the services were worth (quantum meruit).



S.15 SGSA 1982 – “where [...] consideration [...] is not determined the party contracting [...] will pay a reasonable charge.”

Rogers v Wills – Consideration

[177] “It is sometimes thought that, where an arrangement is entered into between members of a family, even close members, then as a matter of fact there is no intention to create legal relations. This is wrong.”



Balfour v Balfour [1919] 2 KB 571

- “whether what took place between them was in the domain of a contract or whether it was merely a domestic arrangement such as may be made every day between a husband and wife who are living together in friendly intercourse”

Rogers v Wills – Intention to Create Legal Relations

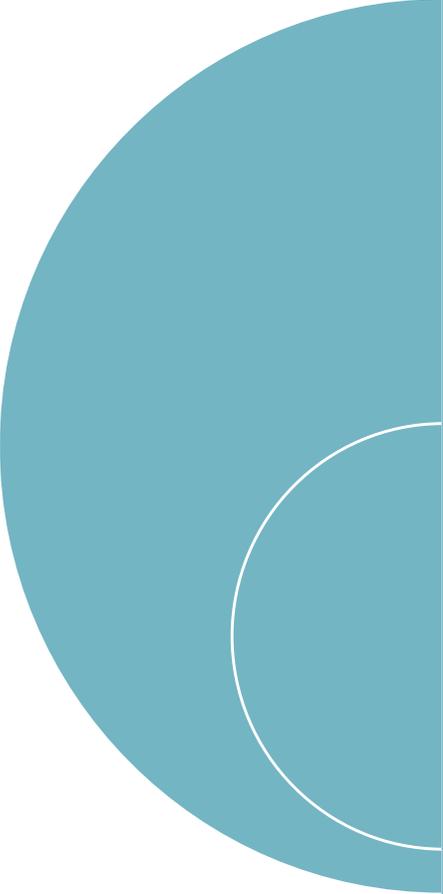
Rogers v Wills – Intention to Create Legal Relations



[182] When one person gives another a present for the latter's birthday, or at Christmas time, no one doubts that both parties intend the transfer of legal ownership of the article given to be effective. It was formerly in the legal ownership of the giver, and now it is in the legal ownership of the recipient.

It is also perfectly lawful, and quite common in family businesses, for a business owner to employ a close relative in that business and undertake to pay the employee under the terms of the contract of employment.

Rogers v Wills – Contract - Findings



[240] Sheila plainly intended to create a legal relationship with the claimant. Sheila was a lady who knew she had sufficient resources, who did not want charity, and wanted to be looked after properly. She insisted that the claimant had to be paid "properly" for looking after her, notwithstanding that the claimant was her daughter.

This was not a short-term family or social treat by one family member to another. It was an important long-term living arrangement, involving hard work and unsocial hours, and impacting considerably on the contractor's existing lifestyle, including preventing her from earning money in other ways.

Rogers v Wills – Unjust Enrichment?

*Investment
Trust
Companies
v HMRC
[2018] AC
275:*

- (a) Has the defendant been benefited, in the sense of being enriched?
- (b) Was the enrichment at the claimant's expense?
- (c) Was the enrichment unjust?
- (d) Are there any defences?

Goff & Jones:

"It often happens that the plaintiff claims restitution of money paid by him to the defendant under some ineffective transaction between the parties. The rule is that the plaintiff can only recover his money if the consideration for his payment has wholly failed."



Barnes v Eastenders Cash & Carry plc [2015] AC 1:

extended to where goods (*quantum valebat*) or services (*quantum meruit*) were rendered *on a mutual basis* but not paid for

"failure of the consideration for 'a payment' would apply equally to failure of the consideration for the provision of services".

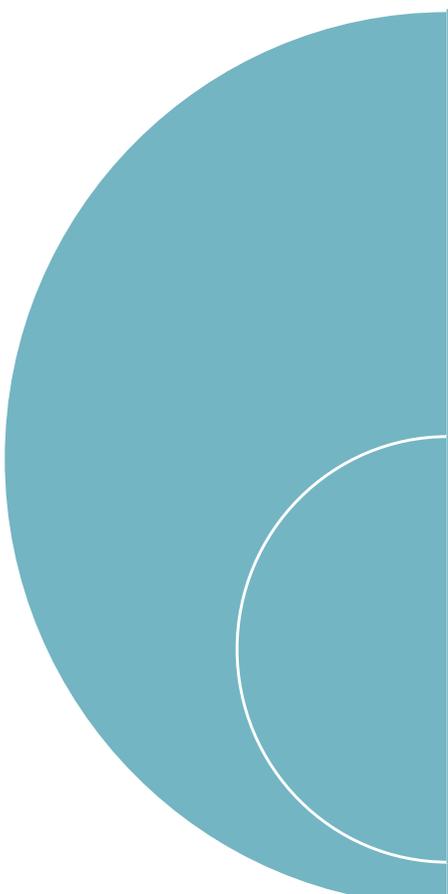
Rogers v Wills – Unjust Factor – Failure of Basis?

Rogers v Wills – Unjust Factor – Failure of Basis?

Barton v Morris [2023] AC 684:

- Commission on sale of property for £6.5m
- But ultimately sold for £6m
- Seller refuses to pay commission
- Supreme Court agree – no contract, no failure of basis
- “The core concept of 'failure of basis' is that a benefit has been conferred on a joint understanding that the recipient's right to retain it is conditional. If the condition is not fulfilled, the recipient must return the benefit.”

Barton v Morris [2023] AC 684



“It would be surprising to conclude that these parties simply did not envisage the possibility that Western would not be prepared to pay £6.5 million for Nash House [...] the fact that neither of them raised with the other what would happen in that event does not suggest to me that they were assuming that the sale would be for at least £6.5 million”

“The real difference between us concerns whether the express term, that Mr Barton was to receive £1.2 million if the property was sold for £6.5 million to a purchaser introduced by him, was a complete statement of the circumstances in which he was promised some reward under the agreement, or only a partial statement, leaving it to be implied that he would also receive some unspecified reward if the property was sold to such a purchaser, but for less than £6.5 million. ...”

Rogers v Wills – Unjust Factor – Free Acceptance?

The window cleaner!



Rogers v Wills – Unjust Factor – Free Acceptance?

Distinguishing failure of basis and free acceptance

[229] the difference between failure of basis and free acceptance lies in whether the services (or goods) supplied were supplied on a shared basis.

- If they are, the relevant principle is – or can be – failure of basis.
- If not, then it may be free acceptance. If, in the window cleaner case, B returned home just as the cleaner was beginning work, and saw what was happening, understanding that the cleaner expected to be paid, but forbore to object to the benefit being conferred, B would have freely accepted the benefit of those services, and should pay a reasonable price for that part which B could have prevented.
- But B's liability would not be because of a failure of basis. It would be because B could have prevented it and did not.

Rogers v Wills – Unjust Factor – Free Acceptance?

[233] Two
step test:

- (i) the recipient knew or should have known that the claimant who supplied the benefits expected to be paid for them, and yet
- (ii) did not take a reasonable opportunity open to him or her to reject those benefits. Mere receipt plus no rejection is simply not enough.



[244]

the conferring of substantial benefits upon Sheila (enrichment), by the claimant (and so at her expense), in circumstances where

- Sheila accepted those benefits,
- having the opportunity to decline them,
- and knowing that they were expected to be paid for (free acceptance).



[247]

no place for failure of basis here where the shared basis is the condition of payment for the services and the failure is a failure to pay for them

- this is simply a contract

Rogers v Wills – Unjust Enrichment - Findings

Rogers v Wills – Unjust Factor – Free Acceptance?

NB: - s.7
MCA 2005:

- (1) If necessary goods or services are supplied to a person who lacks capacity to contract for the supply, he must pay a reasonable price for them.
- (2) 'Necessary' means suitable to a person's condition in life and to his actual requirements at the time when the goods or services are supplied."





Thank you!

Any questions?

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