

JOINT ASSETS
Handle with care!

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JOINT ASSETS: how do you get your case over the line when challenging ownership of joint assets after death, excessive lifetime gifts and the presumption of Survivorship?



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Joint tenancies and tenancies in common; rebutting the presumption of survivorship

Gifts of jointly owned assets

**Joint bank accounts: (i) elder abuse;
(ii) HMRC and Form IHT404**

The Form A Restriction

“No disposition by a sole proprietor of the registered estate (except a trust corporation) under which capital money arises is to be registered unless authorised by an order of the court.”

Section 44(1) of the Land Registration Act 2002
Rule 95(2) of the Land Registration Rules 2003

Severance of the joint tenancy

Williams v Hensman (1861) 70 ER 862

- Acting on a joint tenant's own share
- Mutual agreement
- Mutual conduct

And also:

- Writing
- Murder
- Merger of interests
- A third party act (bankruptcy, charging orders)

Cases

Swift v Roberts (1764) 97 ER 941

Carr v Isard [2006] EWHC 2095 (Ch)

Burgess v Rawnsley [1975] Ch 429

Re Wilford's Estate (1879) LR 11 Ch D 267

Perkins v Borden [2002] WTLR 595

Quigley v Masterson [2011] EWHC 2529 (Ch)

Chadda v HMRC [2014] UKFTT 1061 (TC)

Davis v Smith [2011] EWCA Civ 1603

Boycott v Williams [2011] EWHC 2969 (Ch)

Dunbabin v Dunbabin [2022] EWHC 241 (Ch)

Joint bank accounts: elder abuse

The Marcou-v-Christodoulides litigation

Marcou-v-Christodoulides [2017], unreported, Feb 2017, Recorder Cohen QC, CLCC

Marcou-v-Christodoulides [2017] EWHC 2632 (Ch), Morgan J

Marcou-v-Christodoulides [2017] EWHC 2691 (Ch), Morgan J

Marcou-v-Christodoulides [2021], unreported, Feb 2021, HHJ Johns QC, CLCC

Joint bank accounts: HMRC and Form IHT404

Form IHT 404 asks for the following information:

- a description of the asset
- who the joint owner(s) (other than the deceased) were
- when the joint ownership began
- how much each joint owner provided to obtain the property
- who received any income or interest generated by the property
- whether the deceased's share passed by survivorship to the other joint owner(s) or under the deceased's Will or intestacy
- the value of the whole item and the value of the deceased's share of it
- details of any liabilities that are to be deducted
- details of any exemptions that are due.

Extracts from HMRC's IHT Manual (1)

IHTM15060

A transfer of money into a joint account does not automatically involve any immediate gift of a beneficial interest by the provider of the money to the other account holder(s). But, any withdrawals made from the joint account by any of the account holders over and above their contribution may be lifetime transfers. For example, if the deceased had transferred £20,000 into a bank account in the joint names of himself and his son, the transfer into the account did not necessarily constitute a lifetime gift of £10,000 by the deceased to the son. However, if the son had subsequently withdrawn £15,000 from the account, this could have been a transfer of value made by the deceased at the time of the withdrawal.

Extracts from HMRC's IHT Manual (2)

IHTM15042

“Applying the Inheritance Tax provisions to joint accounts can be particularly difficult. In practice:

- You should normally regard each account holder as beneficially entitled to the proportion of the account which is attributable to their contributions.*
- When calculating this proportion you should assume that any money withdrawn by each person should be set as far as possible against their own contributions, despite, the rule in Clayton's Case [1816] 1 Mer 572*
- You may want to make enquiries about any withdrawals made from funds the deceased provided by the other joint owner(s) as these are likely to be lifetime transfers. You should pay particular attention to joint accounts opened shortly before the death.*
- In most cases each joint owner has an unrestricted right to withdraw any part of the amount in credit in the account and keep the funds for their own use (for example, see Re Bishop [1965] Ch 450).*

Contd

- *When establishing the share based on the deceased's contributions you should note that the true legal position is far from clear so it is important to establish the facts and obtain any relevant documents, such as application forms, withdrawal mandates, passbooks, terms and conditions of account before considering the legal and equitable rules. Refer to Technical any case in which the taxpayer or agent disputes the claim. Remember you do not need to consider the question if the deceased's interest passes to an exempt beneficiary, such as a surviving spouse or civil partner. You should also avoid enquiries on this subject unless the amount of tax at stake is substantial."*

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