

Please choose a key case or trend in recent case-law pertaining to a will, trust and/or estate dispute within the last two years and critically analyse why the decision has wide implications and significance.

Introduction

It is 2015, and Mr Al-Mahmood executes a will leaving his UK assets to his wife's brother and nieces. Five years pass, he has suffered the loss of his wife and he is now facing the decline of his own health. The fear dawns that he may die soon. Mr Al-Mahmood instructs a will writer to draft a new will leaving his estate to his friend Mr Rahman. Time runs out, Mr Al-Mahmood dies eight days later with no executed will. Were his intentions thwarted? No, because in His Honour Judge Matthews' judgment, three days before his death Mr Al-Mahmood made valid deathbed gifts (*donatio mortis causa*) to Mr Rahman, including of registered land and online accounts for banking and share-dealing¹. The UK estate was worth well over a million pounds and, while the exact value of the deathbed gifts is not clear they were a substantial part of the estate.

The crux of this essay's argument was pithily summarised in the following ground of appeal: '*The issues raised in this case regarding bank accounts and registered land are novel, and the decision in this case will set a precedent of importance*'². Rahman widened the doctrine of deathbed gifts and considered how to apply principles originating in Roman law to modern society³.

Deathbed Gifts

Deathbed gifts are a narrow exception to the formal requirements to transfer property on death. However, in the right case deathbed gifts can be decisive and this doctrine's caselaw can significantly impact the mechanism of inheritance. HHJ Matthews describes the importance of the doctrine as '*a legal solution to a human need*'⁴.

¹ *Rahman v Hassan and others* [2024] EWHC 1290 (Ch), [2024] W.T.L.R. 1069

² *Rahman v Hassan and others* [2024] EWHC 2038 (Ch) [12]

³ *Rahman* (n 1)

⁴ *Ibid* [162]

A deathbed gift requires, firstly, to be made in contemplation of the donor's impending death, secondly, to be contingent on the donor dying, thirdly, the donor must part with the dominion of the subject matter and finally, the donor must have capacity to make the gift. The interesting discussion in *Rahman* centres around the third requirement⁵.

An anomalous feature of this doctrine is the use of the uncommon concept of 'dominion', found also in the tort of conversion. It is a somewhat nebulous concept that requires little by way of real-world actions in stark contrast to the formalities required under the Wills Act 1837.

Where the asset is not capable of delivery by either actual or constructive delivery⁶, the courts have accepted the passing of the indicia of title as sufficient for parting with the dominion of the subject matter for a deathbed gift. *Rahman* has significantly developed the law in this area by being the first authority to determine that registered land, and dematerialised assets held in online financial accounts such as shares, can be the subject of a deathbed gift⁷.

Registered Land

Historically, it was thought no land could be passed by deathbed gift⁸. This changed in 1991 with the decision of the Court of Appeal in *Sen v Headley*⁹. It was determined that handing over the title documents to unregistered land, as indicia of title, was sufficient to satisfy the requirement of parting with dominion.

The indicia of title must be more than mere evidence of title: it needs to entitle the possessor to the asset¹⁰. Since the Land Registration Act 2002 it has not been clear

⁵ *Rahman* (n 1)

⁶ *Re Cole* [1964] Ch. 175

⁷ *Rahman* (n 1)

⁸ *Duffield v Elwes* (1827) 1 Bligh (N.S.) 497 HL(E) was often cited for this proposition but does not explicitly decide this point.

⁹ [1991] Ch. 425

¹⁰ *Birch v Treasury Solicitor* [1950] 2 All E.R. 1198 [308]

what document, if any, would be sufficient to achieve this for registered land. *Rahman*¹¹ provided the answer, subject to any appeal.

HHJ Matthews determined that handing over the land certificates of registered land was sufficient parting with dominion as the certificate did not cease to be indicium of title after the enactment of the Land Registration Act 2002¹², notwithstanding that *'the title is the register, and that is that'*¹³.

HHJ Matthews went further and stated obiter that he *'would have held that the handing over of an office copy entry of the register with the relevant donative intent would have sufficed'*¹⁴. This is a controversial statement with significant implications. Land certificates or indeed title deeds are quite different from office copy entries, which anyone can get hold of for a small fee.

Apparently drawing on *Woodard v Woodard*¹⁵ HHJ Matthews stated, *'the question is really one of evidence: with what intention was the document handed over? In my judgment, Mr Al Mahmood meant to give the house to the claimant.'*¹⁶ There is a significant conceptual difference between (1) intention being the fundamental ingredient making the requirement to part with dominion an evidential requirement and (2) the parting with the dominion being essential to the transaction itself. Office copies may well suffice as an evidential token of intention, but not necessary for handing over the indicia of title.

Rahman is at risk of diluting the steps required for a deathbed gift with over-reliance on intention¹⁷. This is at odds with the context of the Wills Act 1837 and the position in caselaw both on this doctrine and more widely, that *'mere words of gift do not ever by themselves constitute an effective gift'*¹⁸.

¹¹ *Rahman* (n 1)

¹² *Ibid* [156]

¹³ *Ibid* [145]

¹⁴ *Ibid* [158]

¹⁵ [1995] 3 All ER 980

¹⁶ *Rahman* (n 1) [157]

¹⁷ *Rahman* (n 1)

¹⁸ *Re Cole* (n 6)

This is significant because the potential for fraudulent activity is palpable. The Law Commission has already considered concerns that deathbed gifts are vulnerable to abuse. In *Modernising Wills Law Volume I Report*¹⁹ the Law Commission did not recommend any modification to the current law²⁰, confirming that weight should be given to testamentary freedom, because the courts' current approach provided adequate protection by being careful not to extend the application of the requirements²¹.

The court has a role to protect against exploitation of the doctrine's vulnerabilities. One way to accomplish this is to apply the requirements rigidly, such that some categories of property may not be subject to a deathbed gift. For instance, if actual and constructive delivery are not possible and there are no appropriate indicia of title that can be passed over, which arguably, is the position with registered land.

HHJ Matthews' decision appears reluctant to accept that there is any property not capable of being subject to a deathbed gift. This position is likely linked to the appreciation of the '*human need*²²' that HHJ Matthews' identifies as being the root of this anomalous doctrine. There is perhaps a question whether this '*human need*²³' would be better served by legislative reform, such as the dispensing power recommended by the Law Commission²⁴, rather than an extension of the doctrine beyond the realms that is analytically robust.

The obiter statement in *Rahman* is an important persuasive authority, not least because most land in England and Wales is registered land, and often it will constitute the most significant asset in an estate²⁵.

Online accounts and dematerialised assets

¹⁹ Law Commission, *Modernising Wills Law Volume I: Report* (Law Com No 419, 2025)

²⁰ *Ibid* [1.56]

²¹ *Ibid* [15.4]

²² *Rahman* (n 1) [162]

²³ *Ibid*

²⁴ Law Commission, *Modernising Wills Law Volume I: Report* (n 18) [6.74]

²⁵ *Rahman* (n 1)

Rahman also set a precedent for valid deathbed gifts of digital assets²⁶. *Rahman* is the first case to confirm that shares held in an online account can be passed by deathbed gift without the usual formalities²⁷. It demonstrates common law evolving to address issues arising out of the increasingly digital age. Cases on electronic signatures and remote witnessing of wills also highlight the tension between how formalities were understood when they were imposed versus modern communication. *Rahman* exemplifies a broader trend of loosening and or adapting formal requirements to the digital age²⁸.

Rahman determined that login details and passwords to banking and other financial accounts were the indicia of title in the computer age²⁹. Even if the login details and passwords could not strictly be classified as the indicia of title, there is a rational parallel to be drawn between the handing over a key to provide access to the asset and the handing over of login details and passwords.

In relation to the online financial accounts, HHJ Matthews stated that due to Mr Al-Mahmood's condition it was impossible for him to have memorised the passwords; accordingly, by handing over the details he had put it out of his power to deal further with the accounts and as such parted with dominion³⁰. This analysis allows for the donor's frailty to impact the parting of dominion. It is not clear what role this analysis ought to play: would the gift have worked if the donor did not know the passwords but they were automatically saved on their laptop, or if the passwords were capable of being easily reset by the donor? This uncertainty in the law has wide implications over potentially significant amounts of money.

Conclusion

The modernisation of property law and technological developments pushed this doctrine to an important juncture in *Rahman*³¹. HHJ Matthews' judgment has extended

²⁶ *Rahman* (n 1)

²⁷ *Ibid*

²⁸ *Ibid*

²⁹ *Ibid* [160]

³⁰ *Ibid* [161]

³¹ *Rahman* (n 1)

the doctrine to encompass additional forms of property including registered land and dematerialised assets held in online accounts such as shares for the first time³².

Unsurprisingly, the points addressed in this essay form several of the grounds of appeal which were given permission to progress³³. The appeal will either confirm the significant development made or, equally significantly, impose limitations on the doctrine restricting its application to certain forms of property capable of forming the subject of a deathbed gift.

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³² *Rahman* (n 1)

³³ *Rahman* (n 2) [21]