

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.

The dispute at the heart of *Rogers v Wills* [2025] EWHC 1367 (Ch) is one that is all too familiar to contentious estates practitioners. The deceased's surviving children had fallen out over whether one of them (Bernadette, the claimant) should receive payment out of their mother's estate for the two-and-a-half years of care she had provided.

The claimant successfully established that her mother's estate was liable to pay her for the care. It was held that the claimant succeeded in contract and, in the alternative, in unjust enrichment.

It is the alternative decision on unjust enrichment which gives *Rogers* wide significance. HHJ Matthews held, controversially, that the claimant would have made out an unjust enrichment claim against her mother's estate based on 'free acceptance'. *Rogers* decides that 'free acceptance' is a recognised 'unjust factor' in English law, in the face of strong *obiter* comment to the contrary from Lord Burrows in *Barton v Morris* [2023] A.C. 684 and in direct opposition to the recent High Court decision in *H&P Advisory Ltd v Barrick Gold (Holdings) Ltd* [2025] 1 W.L.R. 4919.

Rogers may inspire a flurry of unjust enrichment claims in estate disputes, leaving practitioners and the courts to grapple with a complex legal question over which there continues to be heated academic debate.

The Facts

Mrs Ursula “Sheila” Wills died in April 2020, a widow survived by six children. When her health declined in 2017, Sheila told her daughter, Bernadette (the claimant), that she did not want to stay in her own home with live-in carers. She asked to move in with the claimant in Bristol. The claimant agreed, but *“before they left, Sheila insisted to the Claimant that her return to Bristol would be on terms that she “wanted to pay her way”, and the claimant would be “paid properly” for looking after her. The claimant agreed that she would be. There was no discussion as to the amount that would be paid. That was left over for the future”*.¹

The claimant, a retired nurse², cared for Sheila until her death. This was a demanding role, *“involv[ing] hard work, and unsocial hours, and impacting considerably on [her] existing lifestyle, including preventing her from earning money in other ways.”*

The Decision

The claimant sought £135,000 from Sheila’s estate as payment for the care she had provided. She advanced two claims, one in contract and the other in unjust enrichment. As there was a split trial, the judgment deals with liability only.

¹ *Rogers v Wills* [2025] EWHC 1367 (Ch) at [38]

² <https://www.4kbw.co.uk/news/comment-rogers-v-wills-2025-ewhc-1367-ch-intention-create-legal-relations-and-free-acceptance>

HHJ Matthews held that there was indeed a contract between the claimant and Sheila for services at a reasonable price (reasonable price being implied by s.15 of the Supply of Goods and Services Act 1982).³

Interestingly, the Judge went on to hold that, if he was wrong on the contractual claim, *“Sheila’s estate would be liable to the claimant in unjust enrichment for the value of that care so provided.”*⁴

Implications and Significance of the Decision

While it is unusual to see a child of the deceased successfully establish that they provided care to their parent pursuant to a contract (evidencing the agreement and establishing the requisite intention to create legal relations can present challenges), there is nothing exceptional about this from a legal standpoint.

It is in the alternative decision on unjust enrichment that the significance of this case truly lies.

When determining an unjust enrichment claim, courts will consider four questions⁵:

- (i) Has the defendant been benefited, in the sense of being enriched?
- (ii) Was the enrichment at the claimant's expense?
- (iii) Was the enrichment unjust (i.e. are any of the recognised ‘unjust factors’ present)?

³ *Rogers v Wills* at [176], [238]

⁴ *Rogers v Wills* at [248]

⁵ *Banque Financière de la Cité v Parc (Battersea) Ltd* [1999] 1 AC 221, approved in *Investment Trust Companies v HMRC* [2018] AC 275.

(iv) Are there any defences?

The dispute in *Rogers* centered around the third question. HHJ Matthews concluded, controversially, that ‘free acceptance’ is a recognised unjust factor in English law. The principle of ‘free acceptance’ can be described as follows:

*“[A defendant] will be held to have benefited from the services rendered if he, as a reasonable man, should have known that the claimant who rendered the services expected to be paid for them, and yet did not take a reasonable opportunity open to him to reject the proffered services. Moreover, in such a case, he cannot deny that he has been unjustly enriched.”*⁶

If the decision in *Rogers* is accepted and followed, any person who provided unpaid care to a deceased during their lifetime might be able to successfully recover money from their estate. They would not need to show that they were promised payment or property, or that the deceased’s will failed to make reasonable financial provision for them (as they would with claims in contract, proprietary estoppel and under the 1975 Act). Significantly, with ‘free acceptance’ unjust enrichment, the unpaid carer may not need to establish anything more than the mere fact that they provided care to the deceased when they had capacity. If the carer can show that the level of care provided was such that the deceased “should have known” that payment was expected and that the deceased had the opportunity to reject the proffered care, ‘free acceptance’ would be made out. The only real barrier then remaining to a successful unjust enrichment claim would likely be any applicable defences.

⁶ G. Jones, *Goff & Jones: The Law of Restitution*, 7th edn (London: Sweet & Maxwell, 2006), para.1–019.

The question of what level of care would need to be provided before it could be said that a reasonable person “should have known” that the carer expected to be paid is an interesting one. It is liable to produce uncertainty. Judges will have diverse views as to the level of care one might reasonably expect a family member to provide gratuitously, out of love and affection. Clearly, the more intensive the caring obligations, the more likely it is that judge would conclude that a reasonable person “should have known” that payment was expected, but there will be grey areas and hard cases.

The larger question, though, is whether the decision in *Rogers* ought to be followed. As is acknowledged by the judgment, there is considerable controversy as to the status of ‘free acceptance’ as an unjust factor. The authoritative *Goff & Jones* espouses the view that it is a recognised ‘unjust factor’ which can found an unjust enrichment claim. However, there is substantial opposition from other authoritative voices like Lord Burrows, Virgo and Day.⁷ The late Professor Birks, the initial proponent of free acceptance as an unjust factor, later changed his view.⁸

Controversy does not only appear in academic commentary. *Rogers* comes less than three months after *H&P Advisory Ltd v Barrick Gold*, where the court considered the same question but reached the opposite conclusion. In *H&P Advisory*, Mr Simon Gleeson reviewed the authorities and agreed with Lord Burrows’ *obiter* comment in *Barton* that “*free acceptance is not an unjust factor in English law. It appears that past*

⁷ A Burrows, *The Law of Restitution* (3rd edn, OUP 2010) 334-339; Day and Virgo, *Risks on the Contract/Unjust Enrichment Borderline* (2020) 136 LQR 349.

⁸ P Birks, ‘Unjust Enrichment’ in *English Private Law* (2000), para 15.47.

*authorities supposedly embracing free acceptance as an unjust factor are better explained as examples of different unjust factors, in particular failure of consideration.”*⁹

In support of his conclusion that “[t]he courts have in recent times generally accepted “free acceptance” as an “unjust factor” justifying recovery for benefits conferred”¹⁰, HHJ Matthews cites a substantial list of cases (at [223]). There are, however, difficulties with it. Unlike *H&P Advisory* (where many of the cases cited by Rogers are individually examined), in *Rogers* we do not have the benefit of the court’s express analysis of each of the underlying authorities.¹¹

The list in *Rogers* at [223] is impressive on its face, but they are not each independent authorities approving free acceptance as an unjust factor. In some, the court appears to be relying on *Goff & Jones* rather than assessing the underlying authorities (e.g. *Jones v Griffiths* [2025] EWHC 797 (KB), [23]-[25], *Harbour Fund III v Kazakhstan Kagazy* [2021] EWHC 1128 (Comm) at [245]). In others, the court was not considering free acceptance’s status as an unjust factor, but rather was dealing with the concept of free acceptance in the context of *enrichment* (e.g. *Chief Constable of Greater Manchester v Wigan Athletic AFG Ltd* [2008] EWCA Civ 1449). Some judgments are procedural and even imply doubts as to the status of free acceptance (“*JLR consents to the amendment and does not seek summary dismissal of the unjust enrichment claim insofar as it is based on free acceptance*” (*Kyndryl UK Ltd v Jaguar Land Rover Ltd* [2024] EWHC 2329 (TCC) at [107])). Finally, there are cases that can be analysed

⁹ *Barton v Morris* [2023] UKSC 3 at [230];

¹⁰ *Rogers v Wills* at [223]

¹¹ *Rogers v Wills* at [235].

as ‘failure of basis’ cases rather than ‘free acceptance cases’ (e.g. *Benedetti v Sawaris* [2013] UKSC 50; *Mate v Andrew & O’rs* [2023] EWHC 238; *Gheewalla v Rasul* [2022] EWHC 3180 (Ch)).

There is much more that can be said about *Rogers* and the ‘free acceptance’ controversy. Whatever side one takes in the debate, all must surely agree that it is undesirable to have conflicting High Court authorities on the point. Input from higher courts is needed. If future claimants seek to replicate *Rogers*, perhaps the answer will come out of an estate dispute.

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