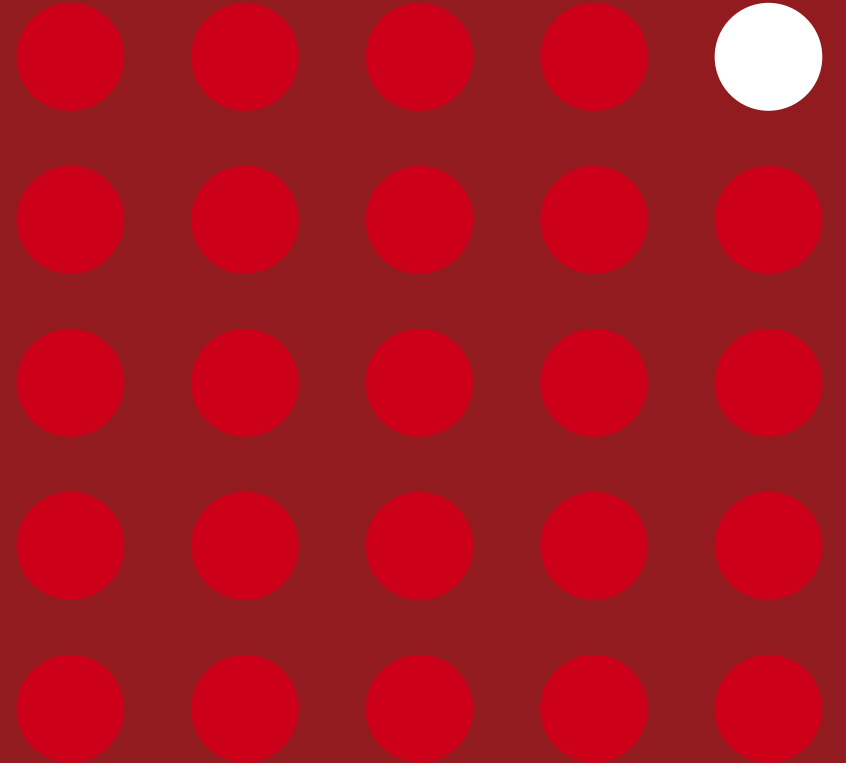


ILM Conference 2024

Session 1: Contentious Probate Update

Roman Kubiak TEP, Partner and Head of Private Wealth Disputes
Ellen Shipton, Associate, Private Wealth Disputes

10 May 2024

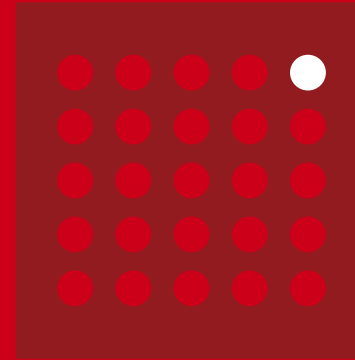


ILM Conference 2024

Session 1: Top of the CoPs

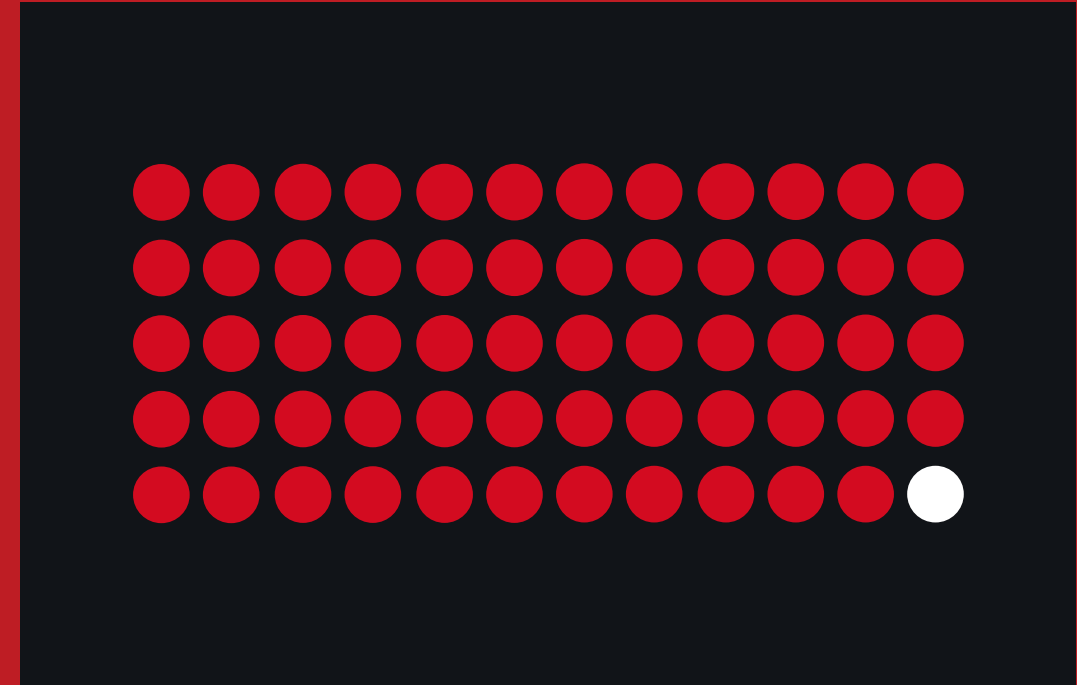
Roman Kubiak, Partner and Head of Private Wealth Disputes
Ellen Shipton, Associate, Private Wealth Disputes

10 May 2024



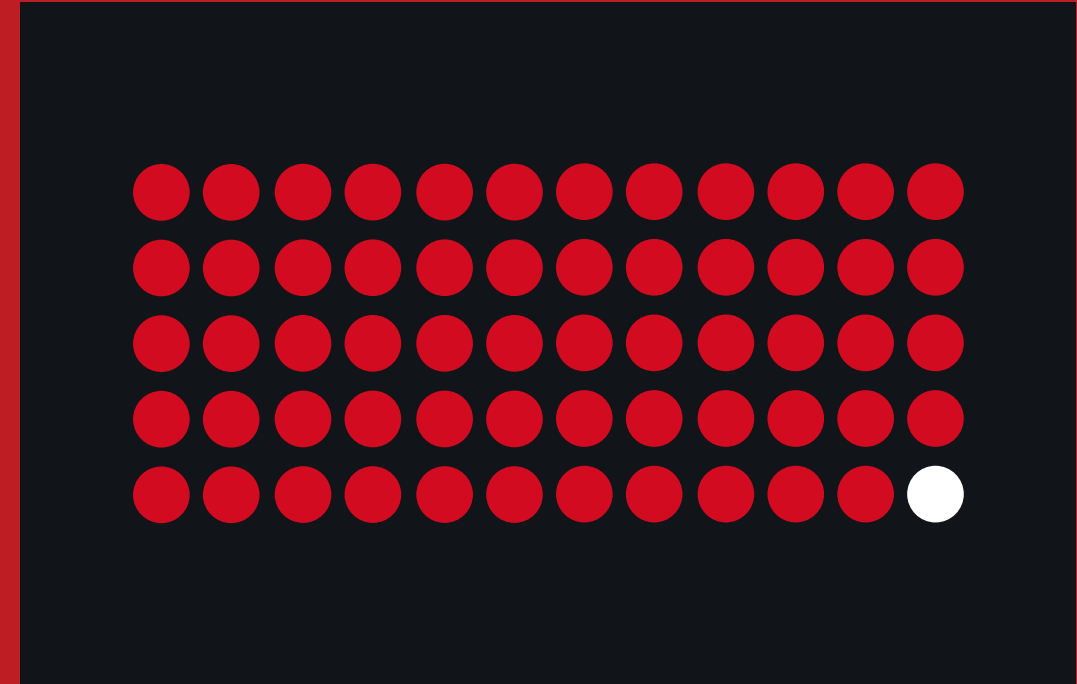
Hirachand v Hirachand [2021] EWCA Civ 1498

- Awaiting Supreme Court's decision regarding whether success fees under Conditional Fee Agreements should qualify as a financial need under section 3(1) of the Inheritance Act
- Originally claim under the Inheritance Act
- Ramifications on future claims under the Inheritance Act, irrespective of outcome



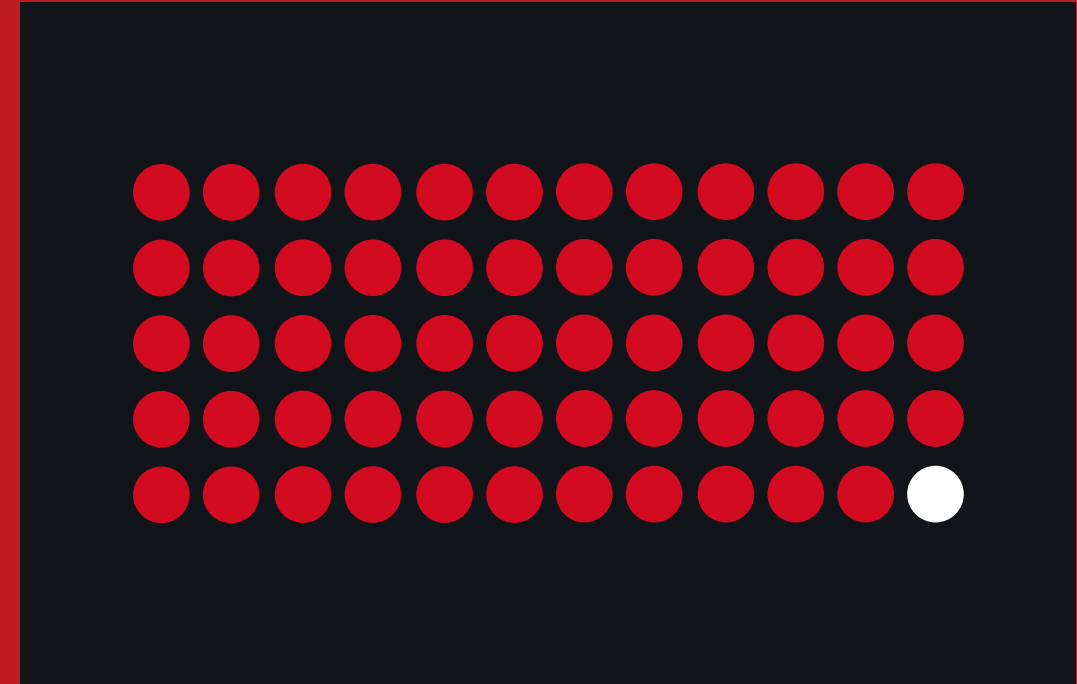
Kenig v Thomson Snell Passmore [2024] EWCA Civ 15

- Original fee estimate of £10,000- £15,000 plus VAT
- Final bill of £54,000 plus VAT
- Judgment clarifies the difference between applications under section 71(1) of the Solicitors Act 1974 and section 71(3) of the same act.



Brealey v Shepherd & Co Solicitors [2024] EWCA Civ 303

- Executor costs again- the impact of not having a charging clause in a will
- In order to take advantage of section 29(2) of the Trustee Act 2000 to justify costs of £153,500, all executors must have agreed to its application in writing

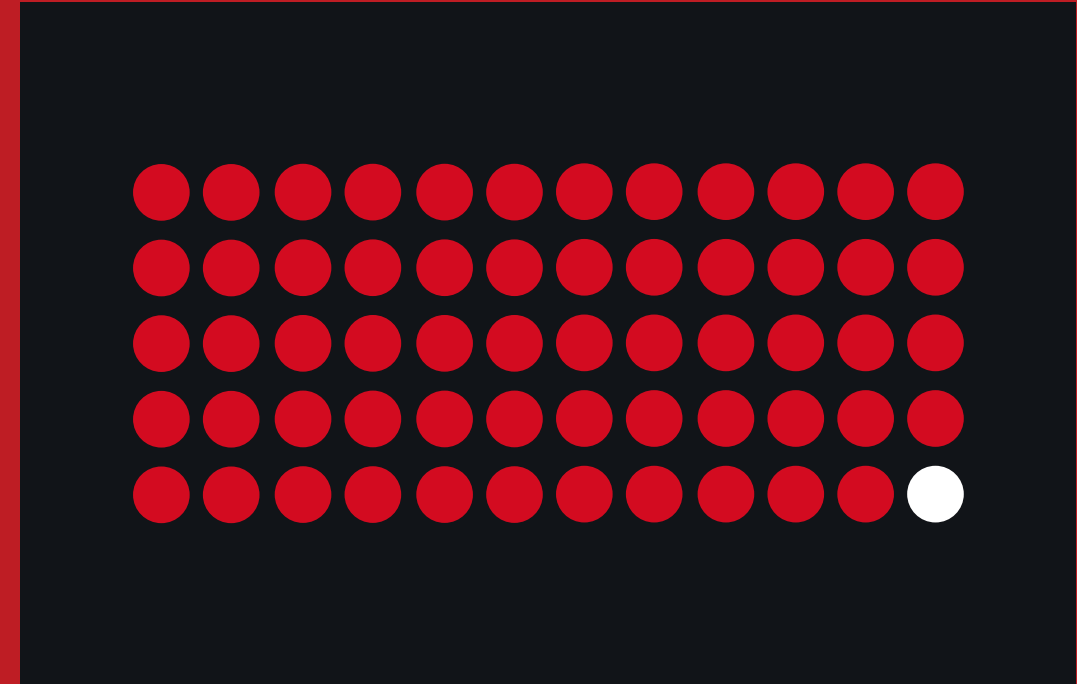


“a trustee who acts in a professional capacity, but is not a trust corporation, a trustee of a charitable trust or a sole trustee, is entitled to receive reasonable remuneration out of the trust funds for any services that [they] provide to or on behalf of the trust if each other trustee has agreed in writing that [they] may be remunerated for the services.”

Section 29(2) Trustee Act 2000

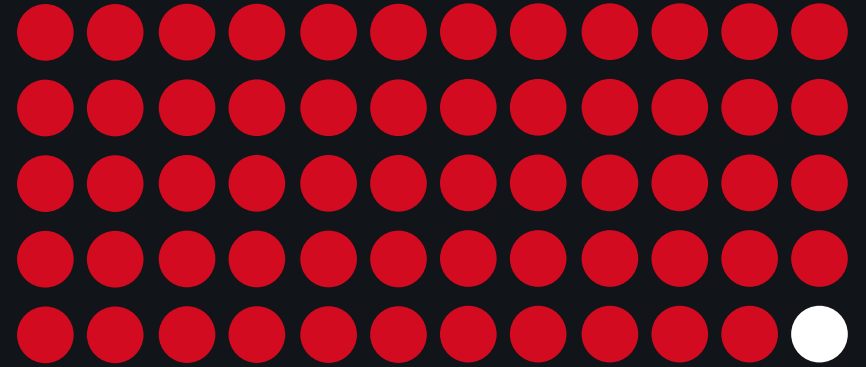
Gowing & Ors v Ward & Anor [2024] EWHC 347 (Ch)

- Claimants were the grandchildren of the deceased and advanced claims of lack of capacity, lack of knowledge and approval, undue influence and fraudulent calumny
- Master Brightwell found that “... *by some considerable margin, I find that [Mr Ward] made the 2018 Will as a free agent and that it was not vitiated by undue influence or fraud*”



Naidoo v Barton [2023] EWHC 500 Ch

- Involved the court's consideration of whether a mutual wills agreement can constitute a contract, therefore shifting the test for undue influence to the contractual test set out in *Royal Bank of Scotland Plc v Etridge (no 2)* [2002] 2 AC 773



“the burden of proving it lies on the person who asserts it. It is not enough to prove that the facts are consistent with the hypothesis of undue influence. What must be shown is that the facts are inconsistent with any other hypothesis. In the modern law, that is, perhaps no more than a reminder of the high burden, even on the civil standard, that a claimant bears in proving undue influence as vitiating a testamentary disposition”.

Re Edwards [2007] EWHC 1119 (Ch)

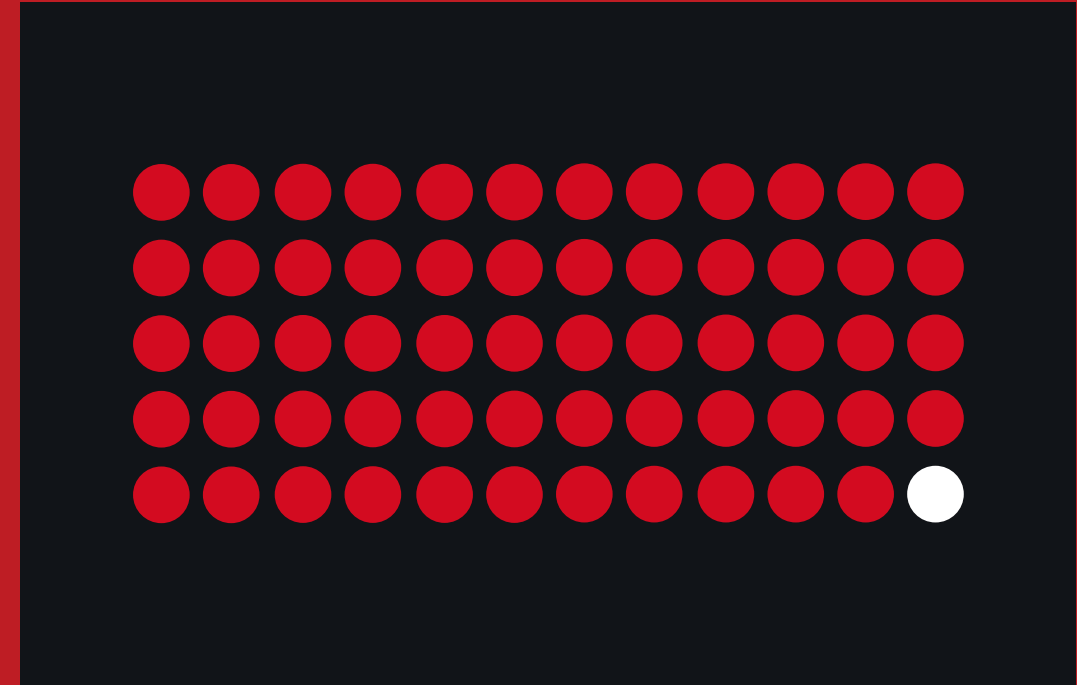
“a mutual wills agreement is a contract first, before there is any basis for equity to intervene. Such a contract may be found explicitly in the wills, or explicitly or implicitly outside it. But either way, it is not a testamentary provision, and it lies outside the wills. It does not need to be executed in the way that a will needs to be executed. When considering whether a mutual wills agreement is void or voidable, there seems no possible reason in principle why a distinction should be drawn between agreements expressed in the will, and those not so expressed.

“it is impossible to see why a test of undue influence developed for probate purposes and concerned with the validity of a will should be pressed into service to undo a contract”.

Naidoo v Barton [2023] EWHC 500 Ch

McElroy v McElroy [2023] EWHC 109 (Ch)

- The defendant sought to strike out the claim on the basis of laches
- The key question was whether laches can act as a defence to a probate claim or whether it can only apply to claims for equitable relief
- Conclusion that a probate claim can be dismissed for laches where certain criteria are met

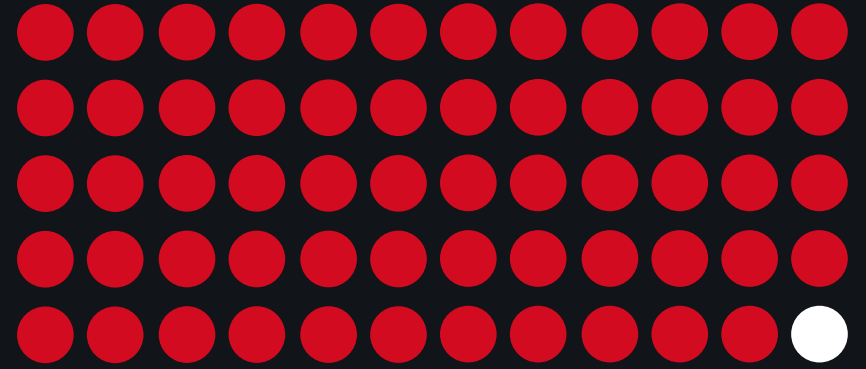


“where a will is expressed to apply to specific, identified property in a particular jurisdiction, is made in that jurisdiction with the assistance of lawyers established and qualified in that jurisdiction, and has no other connecting factor with any other jurisdiction, the starting point should be an assumption that the will as a whole is only intended to apply to that property in that jurisdiction unless there is some good reason to believe otherwise”

Sangha v Sangha [2023] EWCA Civ 660

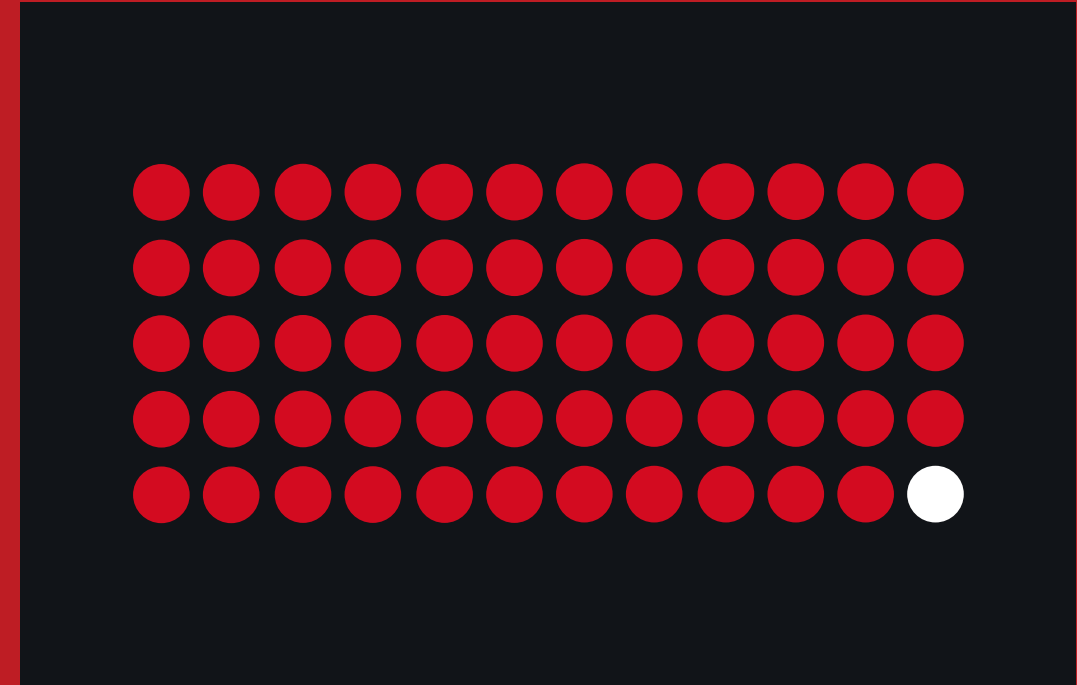
Sangha v Sangha [2023] EWCA Civ 660

- Revocation clauses where different wills deal with assets in different jurisdictions
- 10 day trial in the Court of Appeal
- Expressly approves the law set out in *Lamothe v Lamothe* [2006] WTLR 1431 regarding the consequence of general revocation clauses



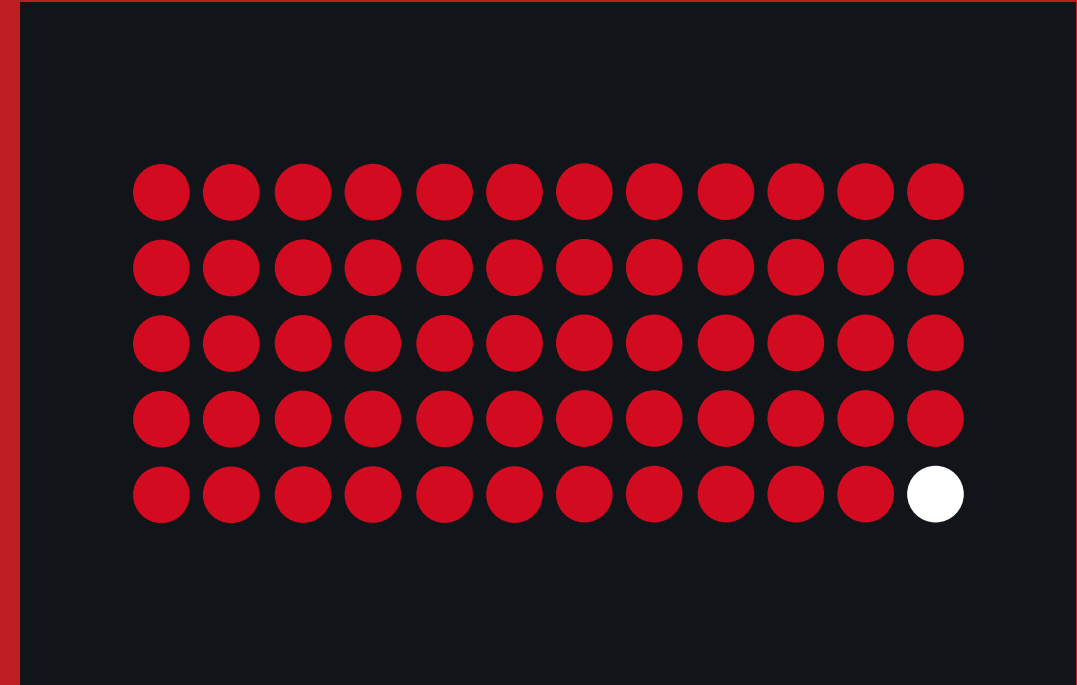
Withers Trust Corporation v Estate of Hannah Goodman [2023] EWHC 2780 Ch

- Assisted suicide/ mercy killing case
- Consideration of the forfeiture rule and the court's jurisdiction to grant relief from the forfeiture rule



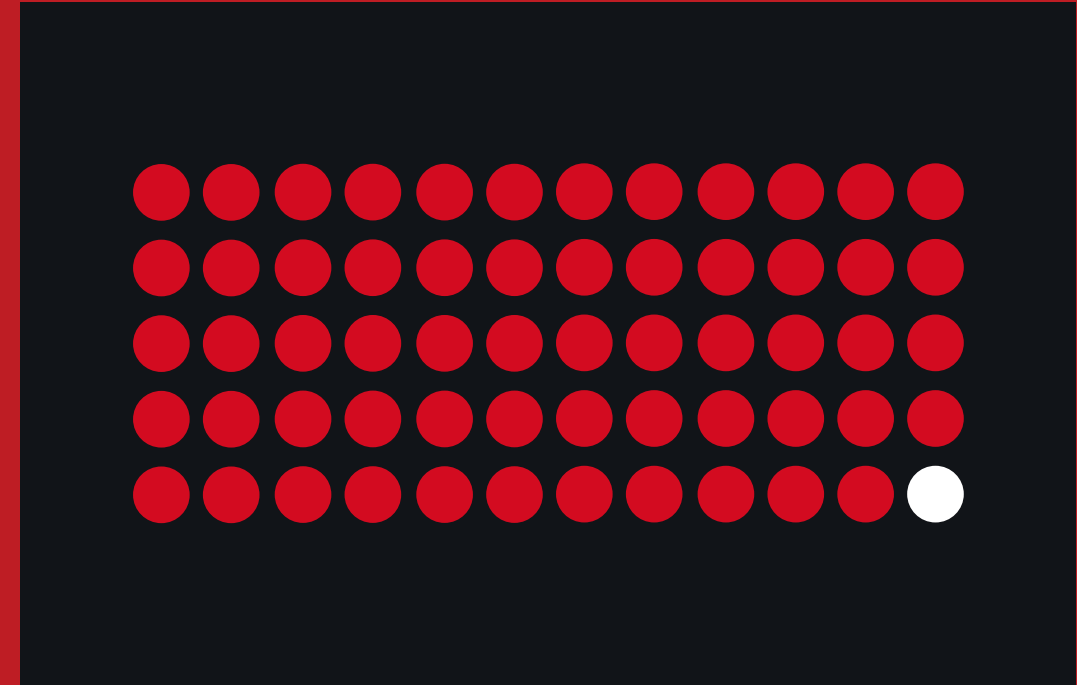
Fraser v Khawaja [2023] EWHC 3143 (Ch)

- Will forgery case
- Concerning factual matrix which alerted suspicions immediately
- The will was ultimately found to be fraudulent with the sole purpose of deceiving and acquiring the deceased's Estate unlawfully



Parsons v Reid [2022] EWHC 755 (Ch)

- An older case but relevant due to the discussions surrounding Cobden-Ramsay orders (also known as “put up or shut up” orders)
- Full and frank disclosure is relevant in these types of applications



Rea v Rea [2024] EWCA Civ 169

- Undue influence case
- Court of Appeal found against the court at first instance and determined there was no evidence of undue influence
- Mere “persuasion” or “encouragement” is not sufficient to show undue influence
- May be appealed and end up in the Supreme Court



Leonard v Leonard [2024] EWHC 321 (Ch)

- Relevant case for lack of capacity/ knowledge and approval cases
- Judgment focuses on three main areas:
 - clarification of the Banks v Goodfellow test;
 - the role of expert evidence in lack of capacity cases; and
 - the role of lawyers



Any questions?



Roman Kubiak TEP

Partner and Head of Private Wealth Disputes

roman.kubiak@hughjames.com

T 020 3911 4238

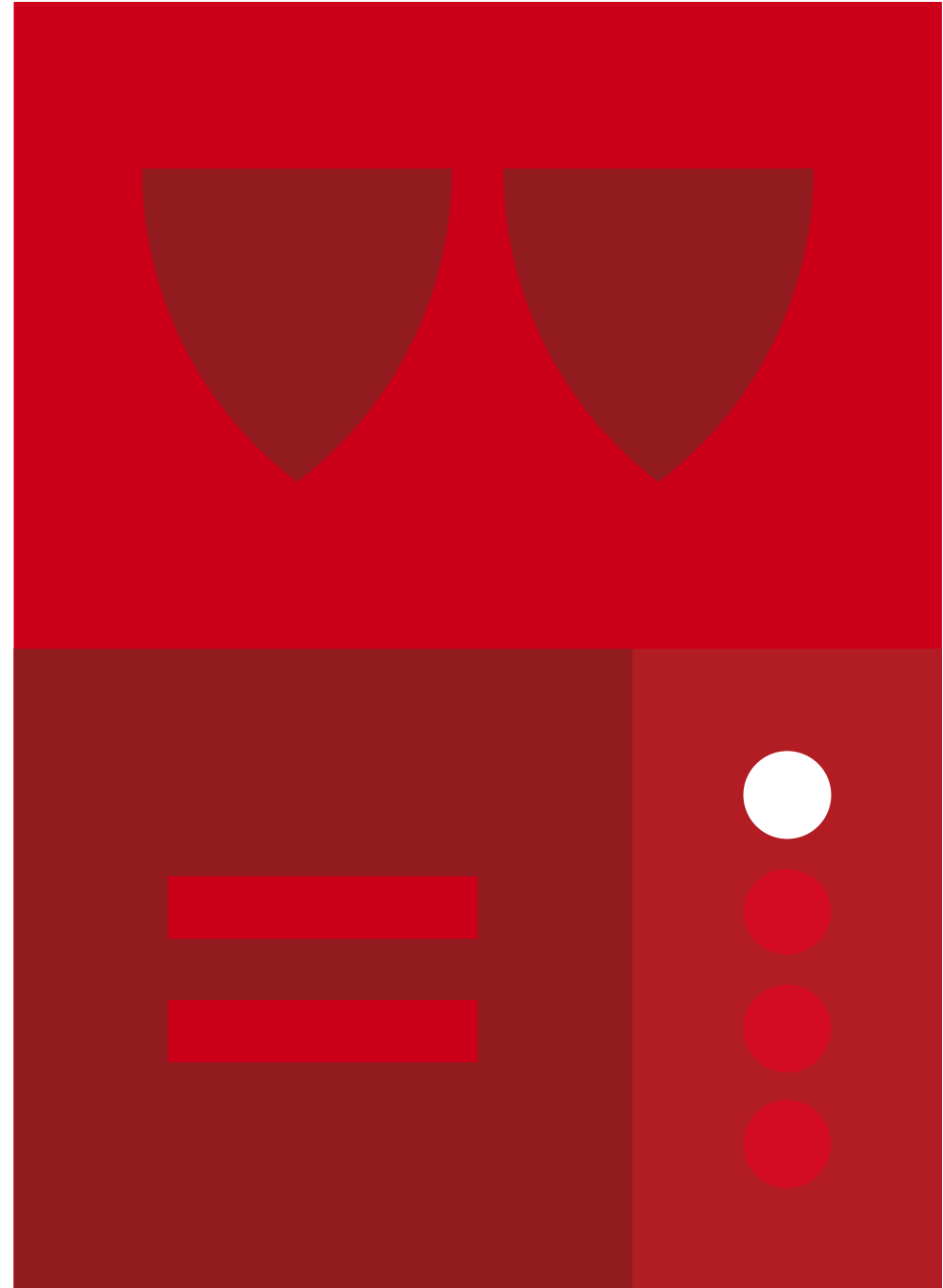


Ellen Shipton

Associate, Private Wealth Disputes

ellen.shipton@hughjames.com

T 023 8201 1816



HUGHJAMES

Contact

charities@hughjames.com
hughjames.com

