

What has Jilly Cooper got to do with your inheritance rights?



Katharine Riley,
senior associate

Some readers of this article may have spent the long winter nights reading Jilly Cooper's latest excellent blockbuster "Jump! (Back in the Saddle)".

Set in the glamorous world of horseracing with attendant trainers, wealthy owners and the usual lusty loveable, and not so loveable, rogues, it features the rescue by the heroine, an impecunious widow called Etta Bancroft, of an

abandoned and abused racehorse. The horse is nursed back to health, adopted by a syndicate based in the local pub, and goes on to... well I won't spoil the rest for those who haven't read it.

It does, however, raise some interesting issues relevant to your inheritance rights. For those not well acquainted with the law, one thing worth taking away from the story is the very real legal problems which can arise where no adequate provision is made for a person upon the death of a spouse or a person upon who they depend financially.

At the beginning of the novel Etta's bullying, rich industrialist, husband dies. He has gifted most of his wealth to their obnoxious adult children in an attempt to avoid Inheritance Tax, and left the rest to them in his Will, on the understanding that they will look after their mother (he regards his wife as a fool for lost causes and lame dogs, and not to be trusted with the assets). The children treat the resulting obligation to their mother with staggering selfishness. The large country property with beautiful gardens is sold from under her, and her elderly dog put down. She is consigned to a tiny uncomfortable bungalow where she cannot keep a pet or plant a garden. She is at the beck and call of her son and daughter-in-law as an unpaid nanny and domestic help.

Having set this scene, Mrs Cooper's plot digresses into the dramatic world of jump racing and jet-setters, and most entertainingly for us too! However, there appears not to have been any dashing (or just helpful) QCs living in the village dispensing timely advice between race-meetings. In real life

Etta should have been consulting her solicitor and obtaining advice on a claim under the Inheritance (Provision for Family and Dependents) Act 1975, to be made within 6 months of a grant of probate of her late husband's estate.

Under the Inheritance Act, claims can be made by people who fall into one of a number of categories if they have not had "reasonable financial provision" made for them out of a deceased's estate. The categories include not only spouses (like Etta) but co-habitees of more than two years, civil partners, ex spouses or civil partners who have not remarried or formed other civil partnerships, children of the deceased, children being "treated as a child of the family" of the deceased in relation to a marriage or civil partnership, and other persons who were being maintained by a deceased immediately before death.

Regardless of the Will, a Court may make an Order for a financial settlement, or a division of assets, or provision to satisfy income or accommodation needs, or ensure a fairer distribution of the estate in favour of a claimant.

In a claim by a spouse, the Court is likely to take into account what the claimant would have received upon divorce, rather than as a widow/widower, regardless of whether that is required for their maintenance. It may take into account for example the style of living to which they were accustomed (taking Etta's small gloomy bungalow out of the equation).

In other cases, what is required for the claimant's maintenance will be considered. This may take into account their needs, resources, earning capacity, and disabilities or special needs, as well as the needs and resources of other people involved, and the parties' conduct.

In Etta's case, as a widow, a claim would no doubt have provided far more than the pittance provided for her by her children. It might not, however, have made for quite as good a story.

If you would like any further information, please contact Katharine Riley, senior associate at Henmans LLP, on 01865 781000 or by emailing katharine.riley@henmansllp.co.uk.