

The Rectification of Wills: Mistake and Re MacDougall [2026] EWHC 1142 (Ch)

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1. Re MacDougall [2026] EWHC 1142 (Ch) is something of a beast of a case. The judge was faced with no fewer than six major principles relating to testamentary disposition and the circumstances leading up to them, with a side-track into consideration of ademption. Five of the main principles addressed are on fairly well-trodden paths (Testamentary Capacity; Knowledge and Approval; Testamentary Undue Influence; Undue Influence over Lifetime Gifts; Duties of Attornies). The sixth was far less clear, and it is that point with which this article is concerned:

Can a will be rescinded on the grounds of mistake?

2. The background to the case is sadly familiar. One child and spouse looking after mother. A fresh will executed to the detriment of the other child. Lifetime gifts procured by those looking after mother at a time when she arguably lacked capacity. Amongst the many claims brought, the Claimant sought to have the will rescinded on the grounds of mistake following the obiter comments of Lord Neuberger in Marley v Rawlings [2014] UKSC 2; [2015] AC 129.
3. The legal path leading to this case is not, in itself, straightforward. Ambiguity in wills is a long-standing issue, leaving the court to construe their meaning and the intentions of the deceased. However, what happens when the court is unable to interpret the meaning of words to fit with what the deceased intended? What if the surrounding admissible evidence does not support the interpretation of the specific words used?
4. Prior to 1982, the common law was restrictive. The court had no power to rectify, unless fraud or insertions without the deceased's knowledge could be shown. Even in those circumstances, the practice was that the words would be extracted, and they would not be replaced. The presumption was that the deceased was deemed to have knowledge of the words used, and the court would not save a gift if the extraction of words would alter the meaning (see Re Horrocks (1939) P 198).

5. In 1982, along came the Administration of Justice Act 1982, the relevant portions commencing at s20. That statute provides a statutory basis for the rectification of wills in England and Wales. At s20:

If a court is satisfied that a will is so expressed that it fails to carry out the testator's intentions, in consequence—

(a) of a clerical error; or

(b) of a failure to understand his instructions

it may order that the will shall be rectified so as to carry out his intentions.

6. So it was that in Marley v Rawlings [2015] AC 129, Lord Neuberger (giving the single judgment of the Court, save for its applicability to Scottish Law) made *obiter* comment on the interpretation of wills. The approach to interpreting wills, he said, should be the same as interpreting a contract (Rainy Sky SA v Kookmin Bank [2011] WLR 2900):

a. what is the natural and ordinary meaning of words used?

b. what is the overall purpose of the document?

c. what other provisions are there within the document?

d. what facts were known or assumed at the time?

e. the application of common sense.

7. S.21 AJA 1982 affirms the view that a will should be interpreted as a contract but goes further:

S21:

(1) This section applies to a will—

(a) in so far as any part of it is meaningless;(

b) in so far as the language used in any part of it is ambiguous on the face of it;

(c) in so far as evidence, other than evidence of the testator's intention, shows that the language used in any part of it is ambiguous in the light of surrounding circumstances.

(2) *In so far as this section applies to a will extrinsic evidence, including evidence of the testator's intention, may be admitted to assist in its interpretation.*

8. These are the general gateways to interpretation. Can the combination of s.21 and the comments in *Marley* be combined to go further than that? The doctrine of mistake is well known in the contractual sphere. If a will is interpreted in the same way as a contract, can the doctrine apply to a will?
9. In *Re MacDougall*, the Claimant sought to persuade the Court that mistake could lead to rescission, whilst the Defendants asserted there was no such cause of action known to law in the context of wills.
10. The Claimant first sought to rely upon the general equitable jurisdiction of the court to rescind in other contexts, which was said to equally translate over to wills. The Supreme Court in *Pitt v Holt* [2013] UKSC 26 considered rescission on the ground of mistake in the context of discretionary trusts. The court was dealing with two broad issues, firstly the rule appropriately phrased as the rule in *Mettoy* from the decision of Warner J in *Mettoy Pension Trustees Ltd v Evans* [1990] 1 WLR 1587 (concerning trustees who make decisions without proper consideration), and mistake. The following principles are taken from Lord Walker's judgment (unanimously agreed) when considering mistake:
 - a. A mistake must be distinguished from mere ignorance, inadvertence or mispredictions;
 - b. In *Lady Hood of Avalon v Mackinnon* [1909] 1 Ch 476, the court considered that the doctrine of mistake applied in circumstances where Lady Hood sought to achieve equality by appointing further amounts from a trust fund to her elder daughter, having forgotten that she had already apportioned half of the fund some circa. 14 years before;
 - c. Whilst mere ignorance is insufficient, the court can draw inferences;
 - d. A mistake is to be judged by the extent of injustice, or rather the unconscionability, which must be considered objectively. That requires a close examination of fact;
 - e. There cannot be a set of rules to decide unconscionability; it is for the court to consider in the round the existence of whether there is a distinct mistake, the degree of its centrality, and the seriousness or consequence of leaving it uncorrected.

11. However, in the context of testamentary dispositions the court has to consider the competing aspect of testamentary freedom, and specific legislation to cater for rectification. Does the court's equitable jurisdiction on mistake extend to wills, notwithstanding the 1982 Act?
12. In Ball v Ball [2017] EWHC 1750 (Ch), HHJ Matthews considered the doctrine of mistake in the context of wills, and considered the decision in Re Belliss (1929) 141 LT 245. The court emphasised that the question was not whether the will could be avoided on the ground of mistake of fact (which would not stand in the way of probate). Rather the question was whether the decision made by the testatrix was an insane delusion to displace the proof of testamentary capacity. HHJ Matthews held in Ball that [57]:
- "In my judgment, this case make clear that mistake does not by itself operate to invalidate a will. What it can do, however, is to provide a basis upon which to say in an appropriate case that the testator is either suffering from an insane delusion or does not possess a sufficiently sound memory for the purposes of making a will..."*
13. The Claimant in Re MacDougall, contended that HHJ Matthews' statement was *obiter*, and not binding on the court. There is no reason in principle why a lifetime gift should be capable of rescission for mistake, whereas a disposition of the same by a will would be unaffected.
14. Returning to the decision of the Supreme Court in Marley v Rawlings, Lord Neuburger doubted the position at common law that the court had no power to rectify a will, and that (*obiter*) in the context of rectification *"it was as a matter of common law open to a judge to rectify a will in the same way as any other document..."*. The Claimant relied upon this to show support for the scope of the applicability of mistake.
15. Unsurprisingly, the Defendants in Re MacDougall strongly opposed the idea that a will could be invalid by reason of a mere mistake on predictable grounds:
- Re Belliss stands as authority for a mistaken belief being inimical to testamentary capacity (Re Templeman [2020] EWHC 632 (Ch);
 - A mistaken belief does not invalidate a will; however, it may be a basis for arguing that the will is invalid on other grounds, such as the testator being of an unsound mind;

- c. Allowing the invalidity due to mistake would run contrary to the requirements for capacity, knowledge and approval, which do not require reasons for making a will, nor explanation of any change;
 - d. Allowing mistake to have application could open the floodgates to challenges to wills on the basis of mistaken factual circumstances; and
 - e. Even if a will could be rescinded by reason of a mistake, considering Pitt v Holt, such would only arise if there was a mistake as to the legal character of the transaction or some basic fact: minor errors such as a property address or perception of an imbalance in treatment would not meet such a high threshold.
16. Sadly for the Claimant, Nicola Rushton KC (sitting as a Deputy High Court Judge) was unpersuaded of the novel and brave submissions. She agreed with the Defendants and held that the court had no freestanding power to rescind a will on the grounds of mistake. Such would run contrary to the principles of testamentary capacity and knowledge and approval; it would potentially open up the floodgates to claims, which is exacerbated by the concern that the testator is no longer present to give context to their intentions, and Parliament has specifically calibrated the circumstances for when wills can be rectified (s.20 AJA 1982).

Conclusion

17. Whilst on the one hand, one can see the argument that, when pairing the principle that wills are to be interpreted as contracts, and the potential for unconscionability, the doctrine of mistake could be cross-applied. However, the application of such a doctrine runs against the nature of testamentary freedom, which, albeit restricted, is heavily statutorily controlled (compare, for example, s.20 AJA 1982 and claims under the Inheritance (Provision for Family and Dependents) Act 1975). The concept of allowing challenges to wills on the basis of a mistake, would significantly water down the ability to dispose of assets in a manner which does not need to be explained or reasoned.
18. That being said, Re MacDougall shines a careful light on the importance, particularly in testamentary capacity challenges, of how mistakes or misapprehensions can feed into the arguments to support that a testator lacked the requisite capacity. By being able to explain that the mistake that the testator made reaches such a high degree of unconscionability, it may very well support an argument that there has been delusion, or an unsound mind. Further than that, however, the law does not go.

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