

# How can you make a 'deathbed will'?

26 June 2024  Daniel Edwards

In **Rahman v Hassan** the claimant sought declarations that the deceased (Mr Al Mahmood) had made various valid transfers of different property and assets to the claimant in contemplation of his death.

Such gifts made in contemplation of death ('**donatio mortis causa**') take effect without reference to a will, provided they can satisfy certain requirements. They are commonly referred to as 'deathbed wills'.

## What is a deathbed will?

1. A **donatio mortis causa** is a gift made in contemplation of impending death, subject to the condition that the person making the gift (the 'donor') then dies;
2. Such a gift is revocable by the donor;
3. The donor has to deliver to the person receiving the gift (the 'donee') the item(s) in question, or some means of accessing or controlling the asset. An example often given is the key to a box in which it is contained, or a document of title for real property for instance.
4. Property which might be the subject of a *donatio mortis causa* includes chattels, choses in action (such as a debt) and interests in land.
5. The level of capacity required to make a valid **donatio mortis causa** is the same as for any other lifetime gift.

## The facts in Rahman v Hassan

The claimant was a friend of Mr Al Mahmood, and he (and his wife) had come to rely on the claimant for support in their old age. The claimant even moved into their home to look after them. Mr Al Mahmood's wife died on 6 October 2020. Shortly after this, the claimant's wife and child also moved into his home.

By this time Mr Al Mahmood was unwell and did not expect to live long. On 15 October 2020, he gave instructions to a will writer to prepare a new will, under which the claimant was to be the sole beneficiary.

Mr Al Mahmood also showed and explained to the claimant various documents relating to his bank accounts, the Land Registry certificate for his home and the leases for two flats, saying that he would die soon and would be giving all those assets to the claimant.

On 20 October 2020, after having been told that the will writer was not due to bring the new will for execution until 22 October, Mr Al Mahmood gave all those documents to the claimant, together with all the logins and passwords needed for accessing online accounts. He told him that 'everything was his' and that he could take the money straight away or wait until after he was dead.

Mr Al Mahmood then passed away on 23 October 2020.

Mr Al Mahmood had prepared a previous will in 2015 will and the defendants in this case were the beneficiaries of that will. If the 'deathbed gifts' to the claimant were found to be valid they would not form part of Mr Al Mahmood's estate for distribution under the 2015 will.

## Was the deathbed will valid?

The court held that the requirements for a **donatio mortis causa** were satisfied in respect of the contents of the bank accounts and the properties, but not the furniture or contents of the properties.

It was found he had met limb (3) above by;

- Handing to the claimant the land certificate for the house and the leases for the rented flats (and where the Claimant already held the house keys); and
- Informing the claimant of the login details and passwords for the online accounts, together with the bank cards.

## What were the legal issues in Rahman v Hassan?

There was some technical legal debate in this case as to whether a gift of registered land could take effect by way of a 'deathbed gift'.

It was held there was no reason to distinguish between registered and unregistered land for the purposes of *donatio mortis causa*; even though a Land Certificate (such as the one given to the claimant in this case) are largely now redundant, the question was with what intention that land certificate been handed over.

The fact there is another means of actually transferring the legal estate in the land was deemed irrelevant.

## Thoughts

There was some (inaccurate) reporting in the wider press that Mr Al Mahmood had made a will by sending a text message in this case. He had not; instead the text message he sent was merely one point evidence of the 'deathbed gifts' he had made to the claimant.

You cannot make a will by sending a text message, given it will not comply with the various requirements of the Wills Act 1837 (not least of all because it will not be signed by two witnesses) and this case did nothing to alter this.

The case is though a useful reminder of the law on such 'deathbed gifts' and a reminder that matters can sometimes prove to be more complex than they might appear at first glance.

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