

Jersey Court varies title to jointly owned shares

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Legal jurisdictions / [Jersey](#)

Date / [May 2021](#)

The Royal Court of Jersey has made new law by using a statutory power to vary the title to shares in a Jersey company which had passed by way of survivorship to the surviving joint owners.

Statutory power of variation

In 1998, the Royal Court was given the ability to vary “any disposition (whether effected by will, under the law of intestacy or otherwise) of the movable estate of the deceased person” within a two year period from the date of death by the Probate (Jersey) Law, 1998. This new power was modelled on the High Court of England and Wales’ statutory powers of variation found at Section 142 of the Inheritance Act 1984 and Sections 62(6) to (10) of the Taxation of Chargeable Gains Act 1992.

Although these powers are routinely used by the Courts in England and Jersey to vary the terms of wills and intestate estates, it was uncertain whether the words “or otherwise” extended to property passing by survivorship.

Facts

The Deceased, a Cypriot domicile, died in April 2019. At the time of his death he held the issued shares in a Jersey company jointly with his spouse and son. A few weeks after his death the company’s secretary acknowledged that title to the shares had passed by survivorship to the spouse and son and re-registered the issued shares in their names as joint owners. As the Jersey company owned various residential properties in the United Kingdom it was within scope for inheritance tax (IHT) purposes. The spouse and son sought an order severing the joint tenancy at the point of the deceased’s death so as to

ensure that those shares which passed to the spouse would then qualify for spousal exemption for IHT.

The Royal Court reviewed the relevant authorities and concluded that the prevailing view shared by most tax practitioners and moreover by HMRC was that the statutory power was wide enough to encompass a “disposition” of this type. It granted the relief sought.

Conclusion

The judgment provides helpful clarification of the width of this statutory power and will be a useful precedent for similar cases in the future.

The parties were represented by Advocate Keith Dixon of Carey Olsen, acting on the instructions of Freeths LLP.

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