



# Viewpoint

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Spring is the time of plans and projects\*, but also a time of green shoots and muddy boots, caked from ventures back into our gardens after the cold winter months. Spring is certainly the season that I, for one, embrace the most.

If you are planning some projects of your own, our free workshops on Inheritance Tax Planning on 20 April and Wills on 11 May could be just the cue you need to tick some tasks off your 'to-do' list. In these ever-popular sessions you will have the chance to connect with members of our Estates, Trusts and Tax Planning team and talk about your individual circumstances.

We are seeing growth this season too, with the arrival of Associate Henry Garden, and Solicitor Hannah Swales to our Bristol Office, as well as Associate Courtney L'homme in our Birmingham office, who all join the team.

In this edition, we talk to Partner Nicola Bickham, who leads Augustines Injury Law, who are accredited as specialist advisors on accidents or injuries that happen overseas as well as nationally.

Finally, thank you to all who gave their feedback in our recent hamper draw questionnaire. I always find it interesting and helpful to hear how Viewpoint is received and how it might be improved.

I hope you enjoy this edition.

\* Leo Tolstoy (Anna Karenina)



## Leaving Jointly-Owned Property in Your Will - Avoiding Pitfalls

### Did you know that the way you share ownership of jointly-held property really matters when making your Will?

The consequence of not recording this correctly can mean your chosen people miss out on their inheritance. The recent case of *Dunbabin & Ors v Dunbabin* explains why.

#### A Costly Mistake

Angela and John Dunbabin, a married couple, had four sons, Michael, Timothy, Simon and Adam.

In 1983 the couple bought their family home jointly but there was no record stored of how their individual beneficial interests in the property were owned, either as:

- **tenants-in-common** - meaning that they each owned a divisible half and when making their Will, they were free to leave their half to whomever they chose
- or as **joint tenants** - meaning that on the first death, the survivor would automatically inherit the whole property, regardless of any Will made by the first-to-die

In this case to determine the couple's type of ownership at the time of purchase, the Court followed the well-established default position that Angela and John held the property as joint tenants as there was no evidence to contradict this.

The problems began when Angela and John both made Wills in 2003 and then made new Wills in 2008, in which a trust of the first-to-die's 'share' in the family home was created. The terms can broadly be summarised so that the surviving spouse was entitled to live in the property until their death, following which the property would pass to the couple's four sons equally.

Angela died in December 2016 and their son Michael also died in December 2019.

In November 2019, John made a new Will in which he directed that 75% of his entire estate (including the family home) be left to Simon and 25% to his other sons between them. John died in April 2020.

#### Dispute Over Entitlements

The claim made by Timothy, Adam and Michael's widow and son to the Court, was that Angela and John had in fact severed their joint tenancy before Angela's death. This would mean that John only owned half the property and could not pass 75% of the whole property to Simon.

#### The Court's Decision

The Court reviewed the evidence to determine whether it was more likely than not that the couple had severed their joint tenancy when they made their Wills. Crucially, the Court found that there was evidence provided by the Will writer that he had advised the couple about the need to sever a joint tenancy, even though there was no permanent record of a Notice of Severance having been signed or kept on the Will file. The Court concluded therefore that the couple had severed the tenancy.

As a result, only 75% of John's half of the property passed to Simon with the remainder of the property passing to the others.

This case illustrates the risk of a costly dispute arising if the correct advice is not given and the correct details are not stored on the Will file.

**If you have any questions on this complex area, please contact:**



**Fiona Lawrence**  
Partner  
07909 901370  
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## Remote Witnessing of Wills Extended

### When the first lockdown began in March 2020 the execution of Wills became problematic.

Fears about mortality in the light of the pandemic meant that large numbers of people decided it was time to put their affairs in order, in case they succumbed to coronavirus. At the same time, actually meeting anyone, outside of your immediate family, was not possible, and so the question of how to sign a Will validly became pressing.

Section 9 of the *Wills Act 1837* provides that, in order to be validly executed a Will must be signed by the testator "in the

This led to people signing Wills through windows and on car bonnets, as so long as they had a clear line of sight of the two witnesses on the other side of the glass the Will would be valid.

#### Signing Wills Virtually

As the nation learned to use Zoom so the Government moved quickly to bring in an amendment to the *Wills Act 1837* and allow Wills to be signed virtually. The amendment, which was retrospective to the beginning of the pandemic and was scheduled to expire in January this year, has now been extended until at least January 2024.

of the sound and video is sufficient to see and hear what is happening.

Many practitioners are very cautious about remote witnessing, with recent research by the Law Society finding that only 14% of legal professionals who had drafted Wills since the amendment was made had used videoconferencing to witness Wills. However, in certain cases, for example where someone is extremely clinically vulnerable, the ability to execute a Will in this way is welcome.

However it is vital to ensure that safeguards are observed, for example recording the meeting, to ensure that there is no question of fraud, or undue influence,

“ The Ministry of Justice has indicated that remote witnessing via video technology should be a last resort. ”

*presence of two or more witnesses present at the same time”.*

Given that a Will should not be witnessed by anyone who is a beneficiary under it, close family members were out and Private Client lawyers turned to old case law, in particular the 1781 case of *Casson v Dade* in an attempt to find ways around the problem. In *Casson v Dade* it was found that a Will was valid when the testator, sitting in her carriage outside her solicitor's office, could have seen the witnesses adding their signatures to her will inside.

What this means is that while a Will must still be signed in the presence of at least two witnesses, the testator and the witnesses do not have to be physically present in the same room and a 'virtual' meeting via Zoom or Teams would enable a Will to be validly executed.

The Ministry of Justice has indicated that remote witnessing via video technology should be a last resort, and physical witnessing should be used in preference where it is safe to do so. In addition virtual witnessing is recognised only if the quality

and when the Will is sent to the witnesses for signing registered post should be used.

**For help deciding or advice on preparing your Will, please contact:**



**Leila Goodarzi**  
Partner  
07909 682364  
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## Free Workshops This Spring

The workshops detailed below will be held online via Zoom and are an opportunity for you to have your questions answered. We hope to see you there!

### Inheritance Tax Planning - 20 April 2022, 4.00-6.00pm

Careful estate planning can significantly reduce the inheritance tax bill on your death, ensuring that the maximum possible is passed on to your loved ones. This session will explain the popular methods for reducing your inheritance tax bill.

### Wills - 11 May 2022, 3.00-5.00pm

Our workshop will look at:

- the importance of having an up-to-date and valid Will
- what you should think about when making your Will
- problems that can arise along the way
- how to avoid common pitfalls

To register to attend, please contact our Events team on 0117 992 9730 or at [events@vwwplus.co.uk](mailto:events@vwwplus.co.uk).

# Meet Our Personal Injury Team

We are delighted in this edition of Viewpoint to shine a spotlight on our Personal Injury team - Augustines Injury Law, who are dedicated to dealing with personal injury claims on behalf of our clients.

The team, whose work involves accidents or injuries that happen overseas as well as nationally, are accredited by Headway as being specialist solicitors who have experience in dealing with brain injury cases.

## The Team

Nicola Bickham, Partner, leads the team and has over 20 years' experience in dealing with personal injury claims - 17 of those years being here, at VWV.

Nicola's team consists of Partner Jonathan Peacock who has 30 years' experience in this field along with four solicitors and three paralegals.

Amazingly, during the past year alone, the team have settled four claims with a combined compensation of £13.5 million.

Nicola answers some of our questions in this article.

## What Typically Does the Team Deal With?

We deal with a wide range of personal injury claims, ranging from accidents at work, road traffic accidents and public liability accidents involving local authorities, accidents in private premises and accidents involving animals. We also deal with accidents which have occurred overseas and with industrial disease claims. We also have a large medical negligence practice. No claim is too big or too small.

## Please Share a Highlight from the Past Year

There have been lots and it is hard to choose just one! It has been incredibly rewarding to have settled some cases where the compensation has made a very real difference to our clients lives and those of their families. It has enabled them to receive the care and support they need and to receive ongoing therapy much needed for their rehabilitation.

## What Makes the Personal Injury Team at VWV Stand Out from the Rest?

The team at VWV has been practising in this area of law for a very long time. As a result, we have a very experienced team of qualified solicitors and we are able to

offer a bespoke service to clients tailored to their needs. A dedicated solicitor will deal with a case from start to finish, so clients always know who to contact. Many of our competitors take a different approach. We pride ourselves on giving clients the best service we possibly can and always going the extra mile. It is pleasing to see that the feedback we receive from our clients at the end of each case confirms this.

## Tell Us One Interesting Fact About You

I decided when I was 13 that I wanted to be a lawyer.

## If You Weren't Working in Law What Would You Do?

That's a difficult one as I love what I do! Maybe a psychologist?

## For free, impartial personal injury claims advice, please contact:



**Nicola Bickham**  
Partner  
07788 313461  
nbickham@vww.co.uk

## Find Out More About Our Services

Please contact Michelle Rose if you would like to receive a copy of the below:

- *Lasting Powers of Attorney* - losing mental capacity could happen to anyone, at any time
- *A Guide for Attorneys* - learn more about your duties as an attorney
- *Family Matters* - guidance on matrimonial and family issues
- *Five Good Reasons to Review Your Will*
- *Ten Good Reasons Why You Should Choose VWV to Prepare Your Will*
- *Private Wealth Planning for You and Your Family*
- *What Happens to Your Digital Assets When You Die?*
- *Managing Your International Assets*

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Would you like to receive Viewpoint by email rather than hard copy?

If so, please contact Laura Loveridge on 0117 314 5371 or at [lloveridge@vww.co.uk](mailto:lloveridge@vww.co.uk)