

An unsent text upheld as a valid Will raises questions for Jersey courts

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An Australian case in which a court recognised an unsent text message as a man's Will raises questions that Jersey's Royal Court will one day have to answer, says Ogier Counsel Henry Wickham.

Henry says that the Brisbane Supreme Court case of a man who wrote his last Will as a phone text message shortly before taking his own life, but did not send it, highlights how the law needs to keep up with modern life.

The unsent text message named the man's brother and nephew as his sole beneficiaries and gave nothing to his wife from whom he had recently split.

His wife contested the Will and applied to be appointed as the Administrator on the basis that he died intestate, but because the text ended with the words "my Will", and because of changes to Queensland law in 2006 that now enables less formal documents to be recognised as Wills by the courts – including previously a DVD and a note on an iPhone – the Brisbane Supreme Court upheld it.

Henry, a Jersey Advocate, said that the Brisbane case raises new questions.

He said: "It would be interesting to see what the Royal Court of Jersey would make of something similar. Under Jersey law a document has to be testamentary in character in order to be a Will. The formal validity of a Will of movable assets is governed by Jersey customary law which states that Wills of movable assets must be in writing and signed by two independent witnesses and shall also bear the signature or mark of the Testator.

"However, if the Will is written entirely in the Testator's own hand (a holograph Will), then it requires no witnesses but must be signed by the Testator.

"The formal validity of a Will of Jersey immovable assets is governed by the Loi (1851) sur les testaments d'immeubles which states that a Will of this type, whether holograph or not, must be

signed by the Testator in the presence of two witnesses, one of which must be an 'official witness' as prescribed by Article 8 of this law.

"Previous Jersey case law has determined that a suicide note written on the back of a duty roster could be admitted to Probate as a valid Will of movable assets. A holograph Will of movable assets which was written on a typewriter and signed by the Testator was also held to be a valid Will.

"Could a text message be the modern day equivalent of this and be seen as a valid Will despite the fact that it is not capable of being signed by the Testator? What about an electronic signature? How would this be treated? It all remains to be seen but in the age of modern technology, it will not be too long before we see this kind of application before the Royal Court of Jersey."

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