

# 5 Stone Buildings

---

## Contracts to leave property by will: an introduction

Arabella Adams

21 May 2021

[www.5sblaw.com](http://www.5sblaw.com)

---

## Contracts to leave property by will

- Can they be enforceable?
  - Yes, in the right circumstances.
  - Could be a:
    - Contract to leave property by will.
    - Contract not to revoke a will.
- Testamentary freedom?
  - Rights arise contractually, not under the will.

---

## Key principles: contractual

- Intention to create legal relations.
  - Must be more than a representation or an informal family arrangement.
- Valuable consideration or a deed.
- Terms must be sufficiently certain. A promise to leave:
  - A specific property (e.g. promisor's house);
  - A pecuniary legacy;
  - A share or all of the promisor's residuary estate.
- If land is involved, must comply with s.2 LP(MP)A 1989.
  - Void if not in writing signed by each of the parties.

## Duties of a post-contract promisor?

- Personal representatives must give effect to promise after death.
- Other duties depend on nature of promise:
  - Promise to leave specific property → repudiation if promisor disposes of that property during his lifetime.
  - Promise to leave share/all of residuary estate → promisor generally at liberty to spend/give away prior to death (but can't make inconsistent testamentary or inter vivos dispositions).
  - Promise to leave specific pecuniary legacy → depends on construction: is there an obligation to make the gift effective?

## Duties of a post-contract promisor?

- Promise not to revoke a will:
  - Confined to prohibiting acts of intentional revocation (destruction, executing new will, executing new codicil...)
  - Prohibition can't encompass automatic revocation by law (e.g. automatic revocation upon marriage of promisor).
  - Contract which purports to prohibit revocation through marriage is void on grounds of public policy unless offending term severable (*Robinson v Ommaney* (1883) 23 Ch. D. 285).
  - Revocation through marriage is only an exception to promises not to revoke: could be a breach in cases of a promise to leave property.

---

## Remedies

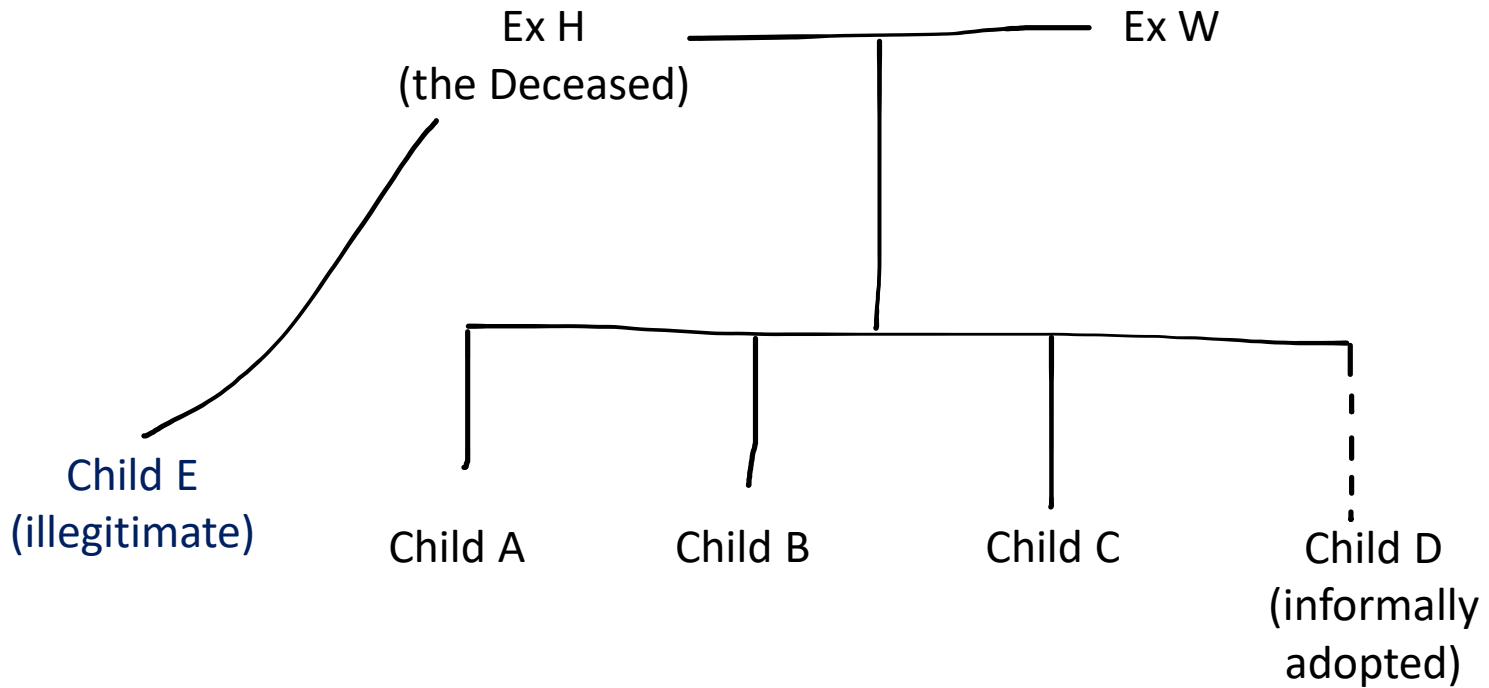
- Depends on nature of the promise.
  - General rule: damages.
  - Some circumstances: specific enforcement (e.g. specific property can be transferred by personal representatives; share of / all of residuary estate can be transferred although this will be subject to funeral expenses, debts etc).
  - Specific property, breach in promisor's lifetime: could get damages immediately (likely subject to a reduction), and if you get there in time, a declaration of your right and an injunction preventing the disposition.
  - Promise not to revoke a will: can't get specific performance or an injunction to stop revocation; can only sue for damages.

---

## Third parties

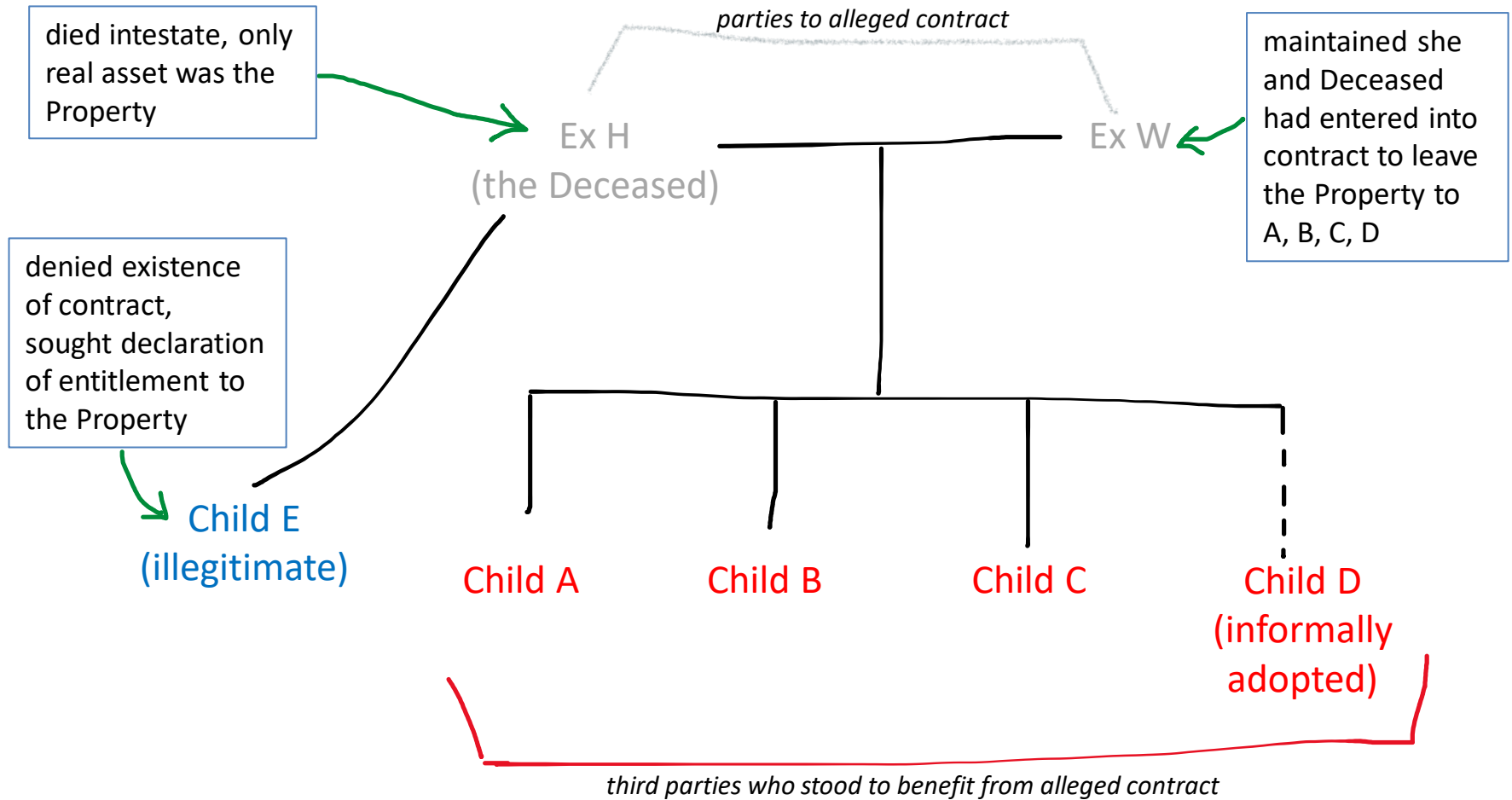
- Where a contract is made on or after 11 May 2000, the Contracts (Rights of Third Parties) Act 1999 applies.
- S.1(5), C(RTP)A 1999: third party could be entitled to any remedy that would be available to him in an action for breach of contract, had he been a party to the contract.
- Not necessary for the third party to have been in existence when the contract was made, but the contract must expressly identify him by name, as a member of a class, or by a particular description.

# Irani v Irani [2006] EWHC 1811 (Ch)





# Irani v Irani [2006] EWHC 1811 (Ch)



## Final points

- A will made in breach of one of these contracts is still a valid will (unless invalid for some other reason).
- S.11 of the Inheritance (Provision for Family and Dependants) Act 1975:
  - Court's powers are discretionary.
  - Aimed at defeating transactions that were intended to prevent a future 1975 Act claim.
  - Court will look at all the circumstances.
- Crossover with other potential claims: there might be easier avenues.

# 5 Stone Buildings

---

Thank you,  
any questions please email  
[Marketing@5sblaw.com](mailto:Marketing@5sblaw.com)

---

[www.5sblaw.com](http://www.5sblaw.com)





# 5 Stone Buildings

---

[www.5sblaw.com](http://www.5sblaw.com)

---

28 February 2019

[www.5sblaw.com](http://www.5sblaw.com)