

# Landmark Cases in Succession Law

Edited by  
Brian Sloan

• H A R T •

OXFORD • LONDON • NEW YORK • NEW DELHI • SYDNEY

HART PUBLISHING

Bloomsbury Publishing Plc

Kemp House, Chawley Park, Cumnor Hill, Oxford, OX2 9PH, UK

HART PUBLISHING, the Hart/Stag logo, BLOOMSBURY and the Diana logo are trademarks of Bloomsbury Publishing Plc

First published in Great Britain 2019

Copyright © The editor and contributors severally 2019

The editor and contributors have asserted their right under the Copyright, Designs and Patents Act 1988 to be identified as Authors of this work.

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording, or any information storage or retrieval system, without prior permission in writing from the publishers.

While every care has been taken to ensure the accuracy of this work, no responsibility for loss or damage occasioned to any person acting or refraining from action as a result of any statement in it can be accepted by the authors, editors or publishers.

All UK Government legislation and other public sector information used in the work is Crown Copyright ©.

All House of Lords and House of Commons information used in the work is Parliamentary Copyright ©.

This information is reused under the terms of the Open Government Licence v3.0 (<http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3>) except where otherwise stated.

All Eur-lex material used in the work is © European Union,  
<http://eur-lex.europa.eu/>, 1998–2019.

A catalogue record for this book is available from the British Library.

Library of Congress Cataloging-in-Publication data

Names: Sloan, Brian, 1984- editor.

Title: Landmark cases in succession law / edited by Brian Sloan.

Description: Oxford ; New York Hart, 2019. | Series: Landmark cases | Includes bibliographical references and index.

Identifiers: LCCN 2019029558 (print) | LCCN 2019029559 (ebook) | ISBN 9781509919000 (hardback) | ISBN 9781509919017 (EPub)

Subjects: LCSH: Inheritance and succession—England—Cases. | LCGFT: Textbooks.

Classification: LCC KD1500 .L36 2019 (print) | LCC KD1500 (ebook) | DDC 346.4205/2—dc23

LC record available at <https://lcn.loc.gov/2019029558>

LC ebook record available at <https://lcn.loc.gov/2019029559>

ISBN: HB: 978-1-50991-900-0

ePDF: 978-1-50991-902-4

ePub: 978-1-50991-901-7

Typeset by Compuscript Ltd, Shannon

Printed and bound in Great Britain by CPI Group (UK) Ltd, Croydon CR0 4YY



To find out more about our authors and books visit [www.hartpublishing.co.uk](http://www.hartpublishing.co.uk). Here you will find extracts, author information, details of forthcoming events and the option to sign up for our newsletters.

# 1

## *Introduction*

BRIAN SLOAN

SUCCESSION LAW'S LONG pedigree, near-universal application, immense capacity for human interest stories and somewhat uncertain future in England and Wales<sup>1</sup> make it an ideal candidate for a *Landmark Cases* volume. This is particularly true as the field faces challenges such as the ageing population and varying family structures and expectations.<sup>2</sup> For the purposes of this volume, 'succession law' mostly encompasses the destination of a person's property after his or her death, although Heather Conway's chapter on *Williams v Williams* is an important reminder of the importance of the destination of one's earthly remains.<sup>3</sup> The aim of the series, edited by Paul Mitchell, is 'to highlight the historical antecedents of what are widely considered to be the leading cases in the common law ... and ... to provide a context, or contexts, in which to better understand how and why certain cases came to be regarded as the "Landmark" cases in any given field'.<sup>4</sup> The contributors to this collection have considered diverse cases with this objective in mind, ranging in decision date from 1720 to 2017. While some of the cases considered in earlier volumes inevitably have relevance to succession law,<sup>5</sup> care has been taken to ensure that the cases at the centre of this volume do not duplicate those earlier targets.

In this short introduction, I have the opportunity to explain the somewhat unorthodox structure of the book and provide an overview of its content, to highlight some themes that emerge from the chapters and to consider the nature of a 'landmark case in succession law'. I must recognise the immense contributions not only of the contributors, but also of the discussants at the conference in Cambridge<sup>6</sup> to the content of this chapter, and to the volume as a whole.

<sup>1</sup> Law Commission, *Making A Will* (Law Commission Consultation Paper 231, 2017).

<sup>2</sup> See, eg B Sloan, *Borkowski's Law of Succession*, 3rd edn (Oxford, Oxford University Press, 2017) 8–12.

<sup>3</sup> Chapter 14.

<sup>4</sup> Hart Publishing, 'Landmark Cases' [www.bloomsburyprofessional.com/uk/series/landmark-cases/](http://www.bloomsburyprofessional.com/uk/series/landmark-cases/).

<sup>5</sup> See, eg W Pintens and J Scherpe, 'The Marckx Case: A "Whole Code of Family Law"?' in S Gilmore, J Herring and R Probert (eds), *Landmark Cases in Family Law* (Oxford, Hart Publishing, 2011).

<sup>6</sup> David Foster, Jamie Glister, Anthony Good, Si on Hudson, Ruth Hughes, Janet O'Sullivan and Penelope Reed QC.

## I. AN OVERVIEW OF THE BOOK'S STRUCTURE AND CONTENT

The vast majority of the volumes in Hart's *Landmark Cases* series arrange the chapters according to the date of the case. In formulating my proposal, I had the thought that arrangement according to subject matter might more easily allow common themes to emerge. It seemed a shame, for example, for Nicola Peart<sup>7</sup> and John Mee's chapters,<sup>8</sup> addressing testamentary promises in New Zealand and England and Wales respectively, to be separated by Judith Skillen and James Lee's on the liability of will drafters to would-be beneficiaries<sup>9</sup> because of the order of events. Discussion at the Cambridge conference revealed opinion to be sharply divided on the question. After much thought, I decided to retain a thematic structure, notwithstanding the risk that the cases might be robbed of their historical context, the necessity of attempting to justify the order of chapters (a task undertaken later in this section) and the inevitable provocation of disagreement that a non-chronological order involves. In any event, it goes without saying that the chapters are self-contained and that the reader is entirely free to read them in any order desired!

With Hart's forbearance, I have also broken with convention both by including several chapters on cases that are not directly relevant to English law (Walter Pintens's on *S and S*,<sup>10</sup> Nicola Peart's on *Re Welch*,<sup>11</sup> Daniel Carr's on *Lashley v Hog*,<sup>12</sup> Prue Vines's on *Re Estate Wilson, deceased*<sup>13</sup> and to a lesser extent Ying Liew's on *Birmingham v Renfrew*)<sup>14</sup> and by commissioning two on cases decided just around two years before submission of the manuscript (Prue Vines's again<sup>15</sup> and my own on *Ilott v The Blue Cross*).<sup>16</sup> I hope the reader will agree that there were good reasons for these decisions: the former allows the English cases to be set in their comparative context (even extending beyond the common law that is generally the hallmark of the series), and while the latter inevitably limits the extent to which the cases can be reflected upon in the light of subsequent developments, in my view this is outweighed by the very significance of the judgments. On a related note, contributors to this collection may have experienced less of the 'free choice of case, and complete freedom of method in how to approach their material' that has characterised previous books in the series.<sup>17</sup> While I dread to think what this says about my approach to editing and my personality more generally, I do at least hope that I have aided the coherence of the volume.

The volume opens with two older cases on construction. Birke Häcker tells the fascinating story of *All Souls v Codrington*, involving how a bequest of a 'library' contributed to the establishment of the rule that a will speaks from death.<sup>18</sup> *Jesson v Wright* is the

<sup>7</sup> Chapter 12.

<sup>8</sup> Chapter 11.

<sup>9</sup> Chapter 7.

<sup>10</sup> Chapter 18.

<sup>11</sup> Chapter 12.

<sup>12</sup> Chapter 19.

<sup>13</sup> Chapter 20.

<sup>14</sup> Chapter 9.

<sup>15</sup> Chapter 20.

<sup>16</sup> Chapter 19.

<sup>17</sup> C Mitchell and P Mitchell, 'Preface' in C Mitchell and P Mitchell (eds), *Landmark Cases in the Law of Contract* (Oxford, Hart Publishing, 2008).

<sup>18</sup> Chapter 2.

focus of Neil Jones's contribution, the case being the leading one on the ill-fated rule of construction known as the rule in *Shelley's Case*.<sup>19</sup>

We then move to attributes that a testator must have to make a valid will, specifically capacity (both retrospective and prospective), knowledge and approval. Juliet Brook analyses the highly cited case of *Banks v Goodfellow* on testamentary capacity, inter alia highlighting its ambitious theorising of the mind, nuance and emphasis on testamentary freedom, but also its role in facilitating submissions to the effect that the testator failed to make the 'right' will.<sup>20</sup> Barbara Rich then considers a leading case on statutory wills for living persons judged incapable of making a will, *Re D(J)*. She highlights the fact that although the case pre-dates the significant change from a 'substituted judgment'- to a 'best interests'-oriented approach heralded by the Mental Capacity Act 2005, it may yet have an influential afterlife as a landmark case in succession law.<sup>21</sup> Roger Kerridge emphasises the background to and role of *Hastilow v Stobie* in first permitting the plea of want of knowledge and approval, before analysing the difficult subsequent history that in his view has encouraged dishonest pleading until the present day.<sup>22</sup>

The contributions of other fields to succession law, namely tort, land (whatever the actual facts of the chosen case) and trusts law, form the subject of the next informal section of the volume. Judith Skillen and James Lee continue the theme of will drafting by analysing *White v Jones*, the seminal decision establishing that a professional drafter who fails to draft a will expeditiously can be liable in negligence to would-be estate beneficiaries.<sup>23</sup> They highlight the significance of the case for the laws of tort and contract more generally (on assumption of responsibility and pure economic loss) as well as for succession law, albeit that on their analysis it is less significant in retrospect than some expected. Martin Dixon considers the key decision in *Williams v Hensman* on severing a joint tenancy, a vital succession-related device that can change the posthumous destination of property without the need to amend a will per se.<sup>24</sup> Dixon describes severance as 'Janus personified' because it both relieves people from the restrictive effects of a joint tenancy and frustrates the once-clear intentions of purchasers or donors. He highlights the number of vital questions that *Williams* left unanswered. *Birmingham v Renfrew*, an Australian case on mutual wills with much international influence, is then discussed by Ying Liew.<sup>25</sup> He brings attention to the case's impact in sowing seeds of doctrinal difficulty that still persists.

The volume then moves to consider formalities (albeit that they are also relevant to mutual wills) and how they may be circumvented. Simon Cooper's chosen case is the extraordinary one of *Sugden v Lord St Leonards*, involving probate of a missing will,<sup>26</sup> which Cooper uses as a springboard to consider the broader rationales of formality requirements and how they are arguably undermined by *Sugden*, rather than merely

<sup>19</sup> Chapter 3.

<sup>20</sup> Chapter 4.

<sup>21</sup> Chapter 5.

<sup>22</sup> Chapter 6.

<sup>23</sup> Chapter 7.

<sup>24</sup> Chapter 8.

<sup>25</sup> Chapter 9.

<sup>26</sup> Chapter 10.

focusing on the rules of evidence, procedure and revocation more directly raised by the case.<sup>27</sup> There are then two chapters on the enforcement of testamentary promises. The leading English proprietary estoppel case, *Thorner v Major*, receives a comprehensive critique from John Mee, who highlights its role in disrupting the strict application of succession rules. Nicola Peart then considers a very prominent case under the Law Reform (Testamentary Promises) Act 1949 (New Zealand), *Re Welch*.<sup>28</sup> She highlights (with considerable reference to the legislative history) that while the difficulties with testamentary promise enforcement do not disappear simply because it is achieved via statute rather than judicial innovation, *Re Welch* in fact managed to introduce some clear principles into the jurisdiction.

The position of personal representatives and will beneficiaries are analysed next. The rule in *Strong v Bird* is assessed via the case that bears its name, with Elizabeth Drummond accepting that there is reason to be sympathetic to the executor on the facts of the case but querying whether the rule thus developed is sufficiently coherent to be justifiable.<sup>29</sup> Heather Conway then takes us beyond property law to *Williams v Williams*, and the status of directions to personal representatives and others on funerals and on related expenses claims.<sup>30</sup> She considers the case for funeral directions being binding, with reference to modern technologies with the potential to be just as controversial as cremation was at the time of *Williams*. Moving to beneficiaries, Charles Mitchell considers the Privy Council decision in *Commissioner of Stamp Duties (Queensland) v Livingston* on the nature of a beneficiary's interest in an unadministered estate, engaging in the process in a very useful comparative study of the nature of such rights as compared to those of a trust beneficiary.<sup>31</sup> On a related matter, Dominic de Cogan then argues that *Gartside v IRC*, concerning the nature of an interest in a testamentary discretionary trust, has had its significance overestimated as a general authority on property law but underestimated in the context of tax and succession law.<sup>32</sup>

The vital issue of limitations on testamentary freedom, both in England and Wales and abroad, comes next. In my own chapter, I trace the history of claims under the Inheritance (Provision for Family and Dependents) Act 1975 leading up to the recent Supreme Court decision in *Ilott v The Blue Cross*, highlighting the importance of the case in confirming key principles but also the clarification still needed on some fundamental principles.<sup>33</sup> Walter Pintens considers the very different starting point of compulsory portions present in civil law jurisdictions, before analysing the German case of *S and S* and the circumstances in which that expectation can be departed from.<sup>34</sup> He analyses the vital issue of the impact of compulsory portions in cross-border cases. Daniel Carr then analyses compulsory portions (mainly 'legitim') closer to England via the Scots law case of *Lashley v Hog*, which also raised thorny issues relating to the conflict of

<sup>27</sup> Chapter 11.

<sup>28</sup> Chapter 12.

<sup>29</sup> Chapter 13.

<sup>30</sup> Chapter 14.

<sup>31</sup> Chapter 15.

<sup>32</sup> Chapter 16.

<sup>33</sup> Chapter 17.

<sup>34</sup> Chapter 18.

laws and domicile.<sup>35</sup> Finally, Prue Vines rounds off the volume by continuing the theme of ‘alternative’ views on succession. Her chosen case is the fascinating one of *Re Estate Wilson, deceased*, which was the first to apply the provisions inserted into the Succession Act 2006 (New South Wales) to allow the recognition of Aboriginal traditions and customary laws in the context of intestacy.<sup>36</sup> While Vines makes clear the significance of both the case and the legislation applied, she cannot conceal her disappointment about some of the conclusions reached.

## II. EMERGING THEMES

In such a lengthy and diverse collection, readers will no doubt decide for themselves what the implications of the chapters are. That said, it might be helpful to highlight some common themes, and particularly to attempt to give readers the benefit of the fruitful Cambridge discussion.

One discussant expressed the view in email correspondence that the cases in this volume could often be described as ‘very English’, and it is certainly true that many of them reflect the concerns of the Caucasian, privileged classes existing at a particular time. Nevertheless, there is a sense in which familial disputes about succession are both timeless and classless, and chapters such as Rich’s,<sup>37</sup> Conway’s<sup>38</sup> and mine<sup>39</sup> illustrate the potential for succession law to deal with what might be termed ‘ordinary’ people. The chapters by Pintens and Carr take us beyond England,<sup>40</sup> and Vines’s chosen case could plausibly be described as ‘anti-English’ in light of the legislation applied in it.<sup>41</sup> It is interesting how colonialism features in the collection at opposite ends of the book, of the historical spectrum and of the possible responses to it. While the property in dispute in *All Souls v Codrington* is, as Häcker puts it, ‘inextricably linked to both the glory and the unspeakable abominations of England’s colonial past’ even today,<sup>42</sup> the legislation at issue in *Re Estate Wilson* arguably facilitates limited relief from the effects of colonialism by permitting the application of Aboriginal custom and law in the light of ‘pillow births’, forced adoption and the stolen generations.<sup>43</sup>

Issues of culture are also significant in many cases, with culture-related assumptions being made about what a person means by his or her sheep, horses, library (see Häcker’s chapter) or farm (see Mee’s chapter).<sup>44</sup> Culture may help to explain the civilian approach to compulsory portions in Germany (analysed by Pintens), given the solidarity more generally present in German law.<sup>45</sup> Succession legislation and cases also make assumptions

<sup>35</sup> Chapter 19.

<sup>36</sup> Chapter 20.

<sup>37</sup> Chapter 5.

<sup>38</sup> Chapter 14.

<sup>39</sup> Chapter 17.

<sup>40</sup> Chapters 18 and 19, respectively.

<sup>41</sup> Chapter 20.

<sup>42</sup> Chapter 2.

<sup>43</sup> Chapter 20.

<sup>44</sup> Chapter 11.

<sup>45</sup> Chapter 18.

about the nature of family, with Vines's chapter perfectly demonstrating the enormous possible range of views on the question.<sup>46</sup>

On a point strongly related to culture, whether or not a testator is doing the 'expected' thing is key to the reality of almost any succession system. Brook highlights the paradox (despite the nuanced approach taken in *Banks*) that the more a testator does what is expected, the more alleged 'freedom' he or she will apparently be given not to do so,<sup>47</sup> and Mee considers behaviour within or outside accepted norms to be crucial to the outcome in estoppel cases.<sup>48</sup> In Peart's chapter, however, it is made clear that what is expected by way of benefits conferred *on* a testator by a claimant can limit a testamentary promises claim.<sup>49</sup> The vast majority of the cases in this book involve a challenge to a will or enactment by someone disappointed and/or surprised by the result, often in the context of some familial turmoil, and it is inevitable that most such litigants will care much more about achieving the 'correct' result (based on a particular version of events: see Mee's chapter)<sup>50</sup> than the precise legal basis on which the original one was 'wrong'. This approach is often perfectly understandable behaviour for litigants, but can cause doctrinal difficulty (as demonstrated by Kerridge and Liew's contributions, for example).<sup>51</sup> The issue of whether the state (sometimes via the imputation of a reasonableness standard) or the individual knows best as to the fate of one's property becomes key not only in obvious cases on family provision and compulsory portions (see the chapters by Pintens, Carr and myself),<sup>52</sup> but also in the context of a 'best interests' decision surrounding a statutory will (see Rich's contribution).<sup>53</sup>

On a related note, different forms of intention (and the significance we choose to attach to them) form a key aspect of cases on succession law, even if intentions and wishes (see Conway's chapter in addition to those considered above)<sup>54</sup> can be overridden. While the formality requirements (analysed by Cooper)<sup>55</sup> are ostensibly given primacy, the chapters of Mee, Peart and, to some extent, Drummond highlight that informal promises can sometimes supplant intentions expressed using those requirements.<sup>56</sup> The courts' willingness to create exceptions to such formal rules (inherently deciding that those exceptions are 'fair') may suggest a level of discomfort with the rules.

Moreover, while in general the courts are anxious to establish the 'last wishes' validly expressed (the mutual wills doctrine considered by Liew being one exception to that),<sup>57</sup> in the context of allegedly doubtful capacity (see Brook's and Rich's chapters),<sup>58</sup> there can be real issues as to what those 'last wishes' are, and courts and relatives may struggle to accept that they have changed dramatically even in a context where wills are ostensibly

<sup>46</sup> Chapter 20.

<sup>47</sup> Chapter 4.

<sup>48</sup> Chapter 11.

<sup>49</sup> Chapter 12.

<sup>50</sup> Chapter 11.

<sup>51</sup> Chapters 6 and 9, respectively.

<sup>52</sup> Chapters 18, 19 and 16, respectively.

<sup>53</sup> Chapter 5.

<sup>54</sup> Chapter 14.

<sup>55</sup> Chapter 10.

<sup>56</sup> Chapters 11, 12 and 13, respectively.

<sup>57</sup> Chapter 9.

<sup>58</sup> Chapters 4 and 5, respectively.

ambulatory by nature. On the other hand, cases on construction, such as *Jesson v Wright* (considered by Jones),<sup>59</sup> suggest that we are not always looking for what the testator meant in any event, but the ‘true’ meaning of the words used. In addition, where cases involve documents containing considerable complexity, it is arguable that it is unreal to think about what the testator meant and the draughtsperson’s intentions will be more influential, which relates to the point about legal practice made below.

The activities of the legal profession and their importance in succession law come under scrutiny in several chapters (though thankfully the academic and practitioner participants left the Cambridge conference on speaking terms). This is perhaps most obvious in the context of Skillen and Lee’s chapter on *White v Jones*,<sup>60</sup> but the point is pervasive (see, for example, Dixon’s chapter),<sup>61</sup> albeit that in the case of *Jesson v Wright* (the subject of Jones’ chapter) it is not clear whether the profession were involved in drafting the will.<sup>62</sup> On a related point, pleadings and conduct of litigation (including court structure) have considerable influence: Häcker detects problems with pleadings in *All Souls v Codrington*,<sup>63</sup> while Kerridge blames practice for the development of want of knowledge and approval, and the confusion surrounding it up to the present day.<sup>64</sup> This is also linked to the point about the strategy of pursuing multiple claims made above. As for the structure of legislation and almost inevitably therefore litigation, Nicola Peart and I both find ourselves wondering whether the outcomes we are discussing would have been fundamentally different if more of the dispute had been open to our higher courts when they had heard our respective cases.<sup>65</sup>

Finally, in the context of a subject that affects essentially everyone, it is remarkable that the contribution of individuals to it can sometimes be very considerable, even if not always intentionally. For example, although the associated cases were by no means chosen for this reason, we encounter Lord St Leonards as renowned counsel (*sub nom* Edward Sugden) in *Jesson v Wright* (considered by Jones),<sup>66</sup> as an influential Lord Chancellor on the issue of reform of and practice in Kerridge’s contribution<sup>67</sup> and eventually as the testator of the ‘missing will’ in Cooper’s chapter on *Sugden v Lord St Leonards*.<sup>68</sup> This is a clear reflection of the absence of diversity, highlighted by the corresponding discussant, characterising the practice of succession law at one particular time that is thankfully less present today.<sup>69</sup> More positively, Skillen and Lee highlight the considerable jurisprudential contribution of Lord Goff on practical justice leading up to the decision in *White*.<sup>70</sup>

It now remains to consider the nature of a ‘landmark’ case in this field, a task undertaken in the next section.

<sup>59</sup> Chapter 3.

<sup>60</sup> Chapter 7.

<sup>61</sup> Chapter 8.

<sup>62</sup> Chapter 3.

<sup>63</sup> Chapter 2.

<sup>64</sup> Chapter 6.

<sup>65</sup> Chapters 12 and 17, respectively.

<sup>66</sup> Chapter 3.

<sup>67</sup> Chapter 6.

<sup>68</sup> Chapter 10.

<sup>69</sup> That said, while we were very fortunate to have three female members of the chancery bar participating in our Cambridge conference, it is telling that one of them asked me to draw attention to an event aimed at encouraging more women to consider joining it.

<sup>70</sup> Chapter 7.

## III. THE NATURE OF A 'LANDMARK CASE IN SUCCESSION LAW'

I make absolutely no claims that the chapters chosen for this volume represent a definitive collection of landmark cases in succession law. Moreover, while it was clear that some broad areas very much had to be included, no doubt some of the contributors would be similarly diffident about whether their chosen case is the best example of a landmark within that particular sub-field, and in some instances there was some debate before the relevant case was finally settled. Nevertheless, it might be helpful to reflect on what the chapters in this volume tell us about what makes such a landmark case.

It will become clear to the reader that the cases in this book are landmarks for different reasons. *Strong v Bird*, for example, gives its very name to a doctrine, even if that doctrine is rarely invoked and arguably difficult to justify.<sup>71</sup> Similarly, the '*Banks v Goodfellow* test'<sup>72</sup> and the '*Williams v Hensman* methods'<sup>73</sup> have become part of the core language of property law, even if Dixon describes *Williams*' status as a leading authority as 'a combination of chance, time and opportunity'.<sup>74</sup> *Hastilow v Stobie* did establish a doctrine, namely want of knowledge and approval, even if it is not widely known for having done so.<sup>75</sup> *White v Jones* established a key principle on tortious liability whose potential reach extends well beyond succession law, even if Skillen and Lee argue that it was more of a 'high-water mark' that was 'temporal[ly] contingent' and whose implications seem more limited in retrospect.<sup>76</sup> *Williams v Williams* 'establishes core principles' outside the purely proprietary context.<sup>77</sup> Similarly, Carr heralds *Lashley v Hog* as a landmark case because of the legal principles relating to the conflict of laws and avoidance of obligations that can be derived from it.<sup>78</sup>

Some cases represent important firsts: *Re Estate Wilson* was the first case to consider New South Wales provisions allowing the recognition of Aboriginal traditions and customary law in intestacy (and thus represents a turning point);<sup>79</sup> *Ilott v The Blue Cross* was the first House of Lords/Supreme Court case concerning the Inheritance (Provision for Family and Dependents) Act 1975;<sup>80</sup> and *Re Welch* was the first (and only) time that the Privy Council applied the Law Reform (Testamentary Promises) Act 1949 (NZ).<sup>81</sup> Some, such as *Thorner v Major* on proprietary estoppel,<sup>82</sup> *S and S* on German compulsory portions,<sup>83</sup> *Sugden v Lord St Leonards* on presumed revocation and relevant rules of procedure and evidence,<sup>84</sup> arguably *Commissioner of Stamp Duties (Queensland) v Livingston*

<sup>71</sup> Chapter 13.

<sup>72</sup> Chapter 4.

<sup>73</sup> Chapter 8.

<sup>74</sup> Chapter 8.

<sup>75</sup> Chapter 6.

<sup>76</sup> Chapter 7.

<sup>77</sup> Chapter 14.

<sup>78</sup> Chapter 19.

<sup>79</sup> Chapter 20.

<sup>80</sup> Chapter 17.

<sup>81</sup> Chapter 12.

<sup>82</sup> Chapter 11.

<sup>83</sup> Chapter 18.

<sup>84</sup> Chapter 10.

on the nature of beneficiary rights<sup>85</sup> and *Birmingham v Renfrew* on mutual wills,<sup>86</sup> *Ilott* on family provision<sup>87</sup> and perhaps even *Banks* on testamentary capacity<sup>88</sup> and *White* on drafters' liability to beneficiaries,<sup>89</sup> had a vital role in confirming fundamental principles, often in the face of doubts. Substantive influence is also given as a reason for regarding a case as a landmark, internationally in the cases of *Birmingham* (even if it has been relatively infrequently cited in a formal sense in England and its influence has been gradual)<sup>90</sup> and *Thorner*,<sup>91</sup> and within New Zealand in the case of *Re Welch*.<sup>92</sup>

In some instances, the reasons for 'landmark' status are less obvious but still valid. Some of the cases in the volume have been chosen for their narrative value, and some (such as *Thorner*)<sup>93</sup> have such value even if their status can be justified for other reasons. The story is Häcker's justification for choosing *All Souls v Codrington*,<sup>94</sup> and the same reason must surely have influenced Cooper's selection of *Sugden v Lord St Leonards*.<sup>95</sup> It is interesting, conversely, that however compelling the series of events leading to the decision in *Hastilow v Stobie* are, the facts of the case itself are unknown,<sup>96</sup> while Dixon finds 'nothing unusual about the trials and tribulations of the moderately comfortable ... family' at the centre of *Williams v Hensman*.<sup>97</sup> Jones draws inspiration from Brian Simpson's *Leading Cases in the Common Law*<sup>98</sup> in justifying *Jesson v Wright* as a landmark case.<sup>99</sup> Others, such as *Gartside v IRC*<sup>100</sup> and arguably *White v Jones*,<sup>101</sup> may even have had their 'landmark' status overestimated in some respects, but remain key because of the extent to which they are still discussed. Even if the reader disagrees about the 'landmark' status of some of the cases, the discussion that may thus ensue, as well as the analysis of the cases' background and implications, still has value.

In closing, I wish to point out an irony. It is that, as this collection is published, some of the cases considered in it are at risk of having their influence considerably reduced as the Law Commission (perfectly reasonably) suggests that they be replaced by statutory principles, even if this occurs after more than a century of influence. This is particularly noteworthy in the case of *Banks v Goodfellow*, which sits uneasily with the approach to statutory wills in the Mental Capacity Act 2005 and uses language that is out of step with modern times.<sup>102</sup> Moreover, *Hastilow v Stobie*'s doctrine of 'want of knowledge and

<sup>85</sup> Chapter 15.

<sup>86</sup> Chapter 9.

<sup>87</sup> Chapter 17.

<sup>88</sup> Chapter 4.

<sup>89</sup> Chapter 8.

<sup>90</sup> Chapter 9.

<sup>91</sup> Chapter 11.

<sup>92</sup> Chapter 12.

<sup>93</sup> Chapter 11.

<sup>94</sup> Chapter 2.

<sup>95</sup> Chapter 10.

<sup>96</sup> Chapter 6.

<sup>97</sup> Chapter 8.

<sup>98</sup> AWB Simpson, *Leading Cases in the Common Law* (Oxford, Oxford University Press, 1995).

<sup>99</sup> Chapter 3.

<sup>100</sup> Chapter 16.

<sup>101</sup> Chapter 7.

<sup>102</sup> Law Commission (n 1) ch 2.

approval' has caused much uncertainty, grief and (on Kerridge's analysis) subterfuge.<sup>103</sup> There may be a tendency at times to fetishise the case and the case law method in the common law realm, with the result that venerable authorities are allowed to outlive their usefulness until a body such as the Commission is able to suggest reform. That said, even if some of the cases in this volume are 'formally' replaced by statute in the future (as, for example, *All Souls v Codrington* and to some extent the broader principle in *White v Jones* already have been),<sup>104</sup> they will still represent landmarks on succession law's endless journey.

<sup>103</sup> *ibid* ch 7.

<sup>104</sup> Chapters 2 and 7, respectively.