Capacity to make a will and knowledge and approval of the contents.

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The next case is one where the deceased makes a home made will substantially benefitting his carer and cutting out his brother,

It is a home made will prepared by the carer.

The witnesses to the will change their minds about whether they were both present when the will was signed by the deceased.

It was held that you need very strong evidence of non-compliance with section 9 of the Wills Act before court hold will invalid.

Whilst the judge held that the deceased did have capacity to make the will, he held that he did not have the necessary knowledge and approval.

Undue influence means that a person knew and approved of the contents of the will but had been coerced into making the will.

Poole and anr v. Everall and anr [2016] EWHC 2126 (Ch).

The mother of the deceased had three children by different fathers. She had left the father of the deceased because was violent to her, and the three boys had been taken into care. The deceased had been involved in two motorcycle accidents when he was a teenager, and as result of the second accident when he was a pillion passenger, he had suffered serious head and physical injuries which reduced the use of his limbs on one side. Afterwards, he had a history of serious cannabis abuse, and had been admitted to hospital under the Mental Health Act on several occasions. He had received damages in excess of £1 million, and a receiver (later renamed deputy) has been appointed to manage this financial affairs.

After his discharge from hospital, he was placed by Worcestershire County Council with Mr Everall who looked after the deceased. The Public Guardian, who had been appointed as his receiver, assessed the services provided by Mr Everall and approved payment from the deceased's funds of £825 per week.

The deceased developed a relationship with Susan White, and ultimately moved in with her. Mr Everall was then being paid £935 per week to the care for the deceased, and a solicitor who had been appointed as deputy became concerned about whether this was excessive.

It was alleged that Sean, one of the brothers of the deceased, was harassing him, and ultimately a limited injunction was obtained against him.

There was evidence that Mr Everall was pressing for a will in his favour.
The deceased made a will in February 2012 under which brothers of the deceased were beneficiaries. This will had been prepared by the solicitor who had been appointed as the deputy of the deceased. He then executed a home-made will in December 2012 in which he left 95% of his estate to Mr Everall and 5% to Susan White.

The witnesses to the signature of the deceased in the December 2012 will changed their minds about whether they were both present when the deceased signed the will. It was held that the court needed the strongest evidence of non-compliance with section 9 of the Will Act 1837 before it can hold that there had been non-compliance. On the facts of this particular case, the judge was satisfied that there had been compliance with section 9.

It was also held that the deceased did have capacity at the time he executed the December 2012 will.

However, it was held that the court must be satisfied that the time of execution the deceased understood what he was doing and the effects of the will. It was held that the deceased did understand that he was executing a will. However, it was held that the burden of proof that the deceased knew and approved of the contents of the will was on Mr Everall, and that he had failed to discharge that burden. Master Matthews said:

'The vigilance of the court is plainly engaged by the circumstances in which a vulnerable and suggestible person such as David, whose capacity was impaired in significant respects, makes a will in which the great bulk of his estate is given to a person upon whom he has been dependent for his care in many aspects of his day-to-day life, when the terms of the will have been drafted by that same person and not apparently discussed with anyone else except the carer's partner. The concerns that would have to be assuaged are magnified when the terms well are such that previous gifts to members of his family and charities whose interest he had previously wished, over a long period, to advance are removed altogether and a gift in favour of the person regarded as his partner is reduced by half.'

With regard to undue influence, this presupposes that the deceased knew and understood the terms will, but his agreement to those terms was produced by coercion. If the deceased did not know and understand the terms of the will, then the doctrine did not apply.