HULL & HULL LLP
Barristers and Solicitors
Trust Experience™

20 Years of *White v. Jones*

When taking instructions for a will, it is important not to take too long between taking instructions for the will and having it executed. If something should happen to the testator before the will can be executed, the drafting lawyer can be exposed to liability.

This year marks the 20th anniversary of the seminal UK case of *White v. Jones*, [1995] 1 All E.R. 691. This case opened the door to negligence claims against drafting solicitors by disappointed beneficiaries. In *White v. Jones*, a testator had reconciled with his two daughters, whom he had cut out of his will. He wrote to his solicitors, giving instructions to prepare a new will that included the daughters. There was a delay of approximately two months in having the will drawn up for execution. Unfortunately, the testator died a few days before the will was to be executed.

The House of Lords extended the solicitor's duty of care to include a beneficiary who was reasonably foreseeably deprived of an intended legacy as a result of the solicitor's negligence, which can include a delay in having the will executed.

The late Rodney Hull once compared an open file with an unsigned will to a "loose cannon on the deck of your practice". One way to disarm this cannon is by having a tickler system or other process in place to remind you to frequently follow up with clients with unsigned wills. If the client has abandoned his or her intention to execute the draft will, this should be documented.

Extra care should be taken where a client is in fragile health. Holding on to an unexecuted will for any length of time is a risk, but it is one that can be managed.