

**Impact case study (REF3b)**

<p><b>Institution:</b> Birmingham City University</p>
<p><b>Unit of Assessment:</b> 20</p>
<p><b>Title of case study:</b> Human Rights and the Law of Succession in Jersey</p>
<p><b>1. Summary of the impact</b> (indicative maximum 100 words)</p> <p>Under Jersey law, the right to inherit property has historically been affected by factors such as the legitimacy of a child and the gender of a spouse. This research, which was commissioned by the Jersey Community Relations Trust, concluded that aspects of the law were discriminatory and did not comply with human rights legislation. As a direct result of the research the law was amended so that illegitimate children were given the same fixed rights of inheritance as legitimate ones, and the fixed rights of inheritance of a widow and widower are now unified.</p> <p><b>2. Underpinning research</b> (indicative maximum 500 words)</p> <p>In 2009 the Jersey Community Relations Trust (the Trust), which was set up by the States of Jersey in September 2004 with the aim of eliminating discrimination and seeking to achieve equality of treatment of persons, commissioned Professor Meryl Thomas to consider whether the succession laws in the Island complied with the Human Rights (Jersey) Law 2000. The report, entitled 'Human Rights and the Law of Succession in Jersey' was published in September 2009 (<a href="http://www.jerseycommunityrelations.org/Campaigns/Inheritance">http://www.jerseycommunityrelations.org/Campaigns/Inheritance</a>).</p> <p>A summary of the findings are as follows:</p> <ul style="list-style-type: none"> <li>• Very weighty reasons would have to be advanced within the State's margin of appreciation for the dichotomy that existed in the inheritance rights afforded to legitimate and illegitimate children. However, the jurisprudence of the European Court of Human Rights does not afford protection of inheritance rights to <i>all</i> illegitimate children. Only children who have been recognised by the father in some way are so protected.</li> <li>• The Legitimacy (Jersey) Law 1973, which grants the illegitimate child rights of succession only in relation to the mother's estate, is unjustifiably discriminatory in nature, since it prevented the child inheriting from remoter relations in the maternal line. Furthermore, where a father recognises the child these rights of inheritance should extend to his relations.</li> <li>• The different nature of and conditions attached to dower and <i>viduité</i> are rooted in the history of Normandy and Jersey. It was difficult to determine what contemporary legitimate aim this difference achieves, and there was no objective and reasonable justification for the differences in the amount of an inheritance given to men and women. Where inheritance rights are granted to widows and widowers they must be equivalent or broadly similar, and as a result of the differences in <i>viduité</i> and dower, discrimination based on sex in Jersey violated the Human Rights (Jersey) Law 2000.</li> </ul> <p>The key researcher in the project was Meryl Thomas (Professor of Property Law, Birmingham City University) and Sarah Cooper (Birmingham City University) was research assistant to the project.</p> <p>The report was commissioned as a result of Meryl Thomas' reputation in this area. She was appointed as Visiting Professor of Succession to the Institute of Law in Jersey in 2009. Her initial task was to write a guide to the law of succession in the Island, since there was no book which contained an account of this law. The book, entitled 'Testate and Intestate Succession', and which is an exposé of the succession laws in Jersey, was subsequently published by the Institute of Law (ISBN 978-1-908716-07-1). It is the first such book of its kind in Jersey.</p> <p>In addition and apart from the change in the law, two peer-reviewed papers have been published from the report together with a number of papers delivered by Professor Thomas, in which she has explained the problems and issues that have arisen in Jersey.</p>

Since the introduction of the Civil Partnership (Jersey) Law 2012 Professor Thomas has been in discussion with the Chief Justice Minister of Jersey in order to ensure that the succession rights of civil partners are human rights compliant.

### 3. References to the research (indicative maximum of six references)

A copy of the report can be found at:

<http://www.jerseycommunityrelations.org/Campaigns/Inheritance/>

Peer-reviewed research outputs related to the research:

2010: Thomas M. and Cooper S., Inheritance rights of children born outside wedlock in Jersey – The event horizon, 2010 *Jersey and Guernsey Law Review* 192-207 (Article)  
 2012 Thomas M., Codifikace a nenormativní judikatura ve světle měnících se hodnot u Evropského soudu pro lidská práva – případová studie z oblasti práva dědění po rodičích (Codification and Non-Normative Case Law in the light of Shifting Values in the European Court of Human Rights – a Patrimonial Law Case Study), in Hulmák, M. - Bezouška, P. et al.: *Stará judikatura ve světle nových zákonů*. 1. vyd. Olomouc: Iuridicum olomoucense, o. p. s., 2012, s. 189. ISBN 978-80-87382-26-4 (Chapter in book – Jersey referred to in the chapter)

Papers presented to profession/ public/academic institutions:

2009: Oral presentation of findings to Jersey Community Trust, (Thomas M.) September 2009  
 2010: The effect of the new Wills and Succession (Amendment)(Jersey) Law on inheritance rights of the child born outside of wedlock, Institute of Law Jersey, (Thomas M. and Cooper S.) June 2010  
 2010: Codification and Non-Normative Case Law in the light of Shifting Values in the European Court of Human Rights – a Patrimonial Law Case Study, Thomas M., paper presented at conference at University of West Bohemia, Pilsen, Czech Republic, November 2010

Grants received:

2009: Grant received from the Jersey Community Relations Trust to examine and report on human rights issues and the law of succession in Jersey.

### 4. Details of the impact (indicative maximum 750 words)

#### Rights of Illegitimate Children

In 2001, the Legislation Committee presented a report to States Assembly on succession rights. This report recommended that the current laws of succession should be repealed so as to allow any person freely to dispose of moveable estate subject to the right of the court to provide a proper sum out of the estate for the maintenance and support of the dependants of the deceased. The report also recommended that there should be no difference in treatment between legitimate and illegitimate children of the deceased and expressed concern (but nothing more) that such discrimination could be contrary to the European Convention on Human Rights. No such legislation was ever implemented.

In light of the failure of States to rectify the alleged deficiencies in succession laws, the Trust commissioned Meryl Thomas to report on whether the existing laws were human rights compliant. Her report was completed in autumn 2009 and concluded that the current succession laws violated the Convention rights in several respects.

The Trust as a result wrote to the Legislation Advisory Panel (the Panel) presenting them with the findings from Professor Thomas' report and asked them to confirm that the Panel would make certain that legislation was brought forward within three months that would ensure that the Island's obligations under the European Convention on Human Rights were complied with. Questions were raised in States Assembly debates (Hansard, 20<sup>th</sup> October 2009) as to the lack of proposed

legislation in light of the law being non-compliant with Convention principles.

**The Panel decided to concentrate on the area of difference that existed between legitimate and illegitimate children and a proposition was debated in the States Assembly on 23rd March 2010 (P7/2010) and was approved. The Wills and Successions (Amendment)(Jersey) Law 2010, which came into force on 29 January 2011, granted an illegitimate child the same rights of inheritance as a legitimate child.**

### **Douaire (dower) and Viduité**

The Legislation Advisory Panel published their Draft Report on 2 March 2012. In parts 6 and 7 of this Report they discuss the 'Thomas Report'. They quoted large sections of the Report and following the recommendations in the Thomas Report said, "...the Panel felt bound to accept that the discriminatory elements inherent in the workings of douaire and viduité were in substance at odds with the egalitarian norms of the modern western world of which Jersey... is part. The Panel therefore accepted the need for legislative change to equalise the treatment of surviving spouses insofar as their reserved rights of life enjoyment of property were concerned."

As a result the Wills and Successions (Amendment No 2) (Jersey) Law 201- was drafted and published on 27 February 2012. The result of this Law is to abolish viduité and extend douaire to widowers as well as widows, so that the property rights of both surviving spouses have been equalised.

Moreover, this right to dower has also been granted to surviving civil partners.

### **5. Sources to corroborate the impact** (indicative maximum of 10 references)

1. References to the report and the resultant action of the Trust with regard to legislation feature in the Jersey Community Relations Trust website (Campaigns):  
<http://www.jerseycommunityrelations.org/Campaigns/Inheritance/>
2. It was mentioned on several occasions in the press:  
<http://www.thisisjersey.com/latest/2009/06/11/inheritance-laws-go-under-spotlight/>;  
<http://www.bbc.co.uk/news/world-europe-jersey-21940807>
3. Progress of Bill raised as a question on 20<sup>th</sup> October 2009 (States Assembly, Hansard). See  
<http://www.statesassembly.gov.je/AssemblyQuestions/2009/Deputy%20of%20St%20Martin%20to%20CM%20re%20legislation%20in%20respect%20of%20inheritance.pdf>
4. 2010 law adopted 23<sup>rd</sup> March 2010 (States Assembly, Hansard).  
[http://www.statesassembly.gov.je/Pages/Hansard.aspx?docid=1ad5dd6fa2f475af20a79018a470eaa5\\_StatesAssembly&qtf\\_teaser=query=AND\(bcalcontent.bidxcontentlv11:%22wills%22,ANY\(bcalcontent.bidxcontentlv11:%22successions%22,bcalcontent.bidxcontentlv11:%22succession%22\)\)](http://www.statesassembly.gov.je/Pages/Hansard.aspx?docid=1ad5dd6fa2f475af20a79018a470eaa5_StatesAssembly&qtf_teaser=query=AND(bcalcontent.bidxcontentlv11:%22wills%22,ANY(bcalcontent.bidxcontentlv11:%22successions%22,bcalcontent.bidxcontentlv11:%22succession%22))) (see section 6 Public Business)
5. Draft Report of the Legislation Advisory Panel 2 March 2012 (copy attached)  
<http://www.statesassembly.gov.je/AssemblyPropositions/2013/P.038-2013.pdf>
6. Annual Report of the Jersey Community Relations Trust 2012  
<http://www.statesassembly.gov.je/AssemblyReports/2013/R.059-2013.pdf>
7. Wills and Successions (Amendment No 2)(Jersey) Law 2010  
<http://www.jerseylaw.je/Law/display.aspx?url=lawsinforce/htm/LawFiles/2010/L-22-2010.htm>
8. Corroborating contact, Chief Minister of Jersey.