



16 October 2019

PRESS SUMMARY

Routier and another (Appellants) v Commissioners for Her Majesty’s Revenue and Customs (Respondent)

[2019] UKSC 43

On appeal from [2017] EWCA Civ 1584

JUSTICES: Lady Hale (President), Lord Reed (Deputy President), Lord Carnwath, Lord Hodge, Lord Lloyd-Jones

BACKGROUND TO THE APPEAL

The appellants are the executors of Mrs Beryl Coulter, who died in Jersey on 9 October 2007, leaving her residuary estate on trust for charitable purposes (the “Coulter Trust”). The appellants were domiciled in Jersey and the will specified that the trust was to be governed by Jersey law. The estate included substantial assets in the United Kingdom.

In October 2010, the appellants retired as trustees (but not as executors) and were replaced by a UK-resident trustee. The will was amended to make the proper law of the Coulter Trust the law of England and Wales. In 2014, the Coulter Trust was registered as a charity under English law.

In 2013, Her Majesty’s Revenue and Customs (“HMRC”) determined that Mrs Coulter’s gift to the Coulter Trust did not qualify for the relief from inheritance tax in respect of gifts to charities provided by section 23 of the Inheritance Tax Act 1984. This was because section 23 limited relief to trusts governed by the law of a part of the United Kingdom, the Coulter Trust was governed by the law of Jersey at the date of Mrs Coulter’s death, and Jersey was not a part of the United Kingdom for the purposes of section 23.

The appellants appealed against HMRC’s determination on the basis it is incompatible with article 56 of the Treaty Establishing the European Community (“EC”) (now article 63 of the Treaty on the Functioning of the European Union (“TFEU”)), which prohibits restrictions on the free movement of capital between EU member states, and between member states and third countries. HMRC argues that article 56 does not apply here because a movement of capital between the United Kingdom and Jersey should be regarded as an internal transaction taking place within a single member state. The Court of Appeal accepted the appellants’ submission that Jersey is to be regarded as a third country for the purposes of article 56, but decided that the restriction of section 23 to trusts governed by the law of part of the United Kingdom was nevertheless justifiable under EU law.

The issues arising in this further appeal are: (1) whether a movement of capital between the United Kingdom and Jersey should be regarded as an internal transaction taking place within a single member state for the purposes of article 56; and (2) if not, whether the refusal of relief under section 23 in respect of the gift to the Coulter Trust is justifiable under EU law.

JUDGMENT

The Supreme Court unanimously allows the appeal. Lord Reed and Lord Lloyd-Jones give the judgment, with whom all members of the Court agree.

REASONS FOR THE JUDGMENT

Article 56 prohibits all restrictions on payments or the movement of capital between member states, and between member states and third countries. It is common ground between the parties that article 56 applies to gifts to charities and that Jersey is not a member state. The issue therefore turns on whether Jersey is to be regarded as a third country [7].

The Bailiwick of Jersey is a Crown Dependency which, along with the other Channel Islands, enjoys a unique relationship with the United Kingdom through the Crown [8]. Jersey is not an independent state in international law; the UK government is responsible for its international relations and has the power to extend to Jersey the operation of a treaty concluded by the United Kingdom [10]. Article 29 of the Vienna Convention on the Law of Treaties 1969 provides that a treaty is binding upon each party in respect of its entire territory unless a different intention is expressed [11]. Article 299(1) EC (now article 355 TFEU) makes express provision for the territorial scope of EU law [13]. Protocol 3 to the Treaty of Accession 1972 provides that the free movement of goods applies to the Channel Islands [14]. However, other rules of EU law do not apply in Jersey, including the EU rules on free movement of capital [15].

Decisions of the Court of Justice of the European Union (the “CJEU”) provide a systematic and consistent approach to this issue. The question of whether a territory is to be regarded as a third country is context-specific and will depend on whether, under the relevant Treaty of Accession and supplementary measures, the relevant provisions of EU law apply to that territory [35]. The decision of *Prunus SARL v Directeur des services fiscaux* (Case C-384/09) [2011] I-ECR 3319, in which the CJEU held that the British Virgin Islands were to be treated as third countries, is determinative of the issue in the present case [36]. Jersey is to be considered a third country for the purpose of a transfer of capital from the United Kingdom [37].

Accordingly, EU rules on the free movement of capital do apply to transfers of capital between the United Kingdom and Jersey, and it is accepted that the refusal of relief under section 23 is a restriction on that free movement. The remaining question is therefore whether the restriction is justifiable under EU law [38].

On its face, section 23 does not impose any restriction on the free movement of capital and is therefore compliant with article 56 [50]. The only restriction is that imposed by the judicial gloss placed on the words now found in section 989 of the Income Tax Act 2007 by the House of Lords in *Camille and Henry Dreyfus Foundation Inc v Inland Revenue Comrs* [1956] AC 39 (“*Dreyfus*”) a restriction which, when incorporated into section 23, has the effect of confining relief under that provision to trusts governed by the law of a part of the United Kingdom and subject to the jurisdiction of the UK courts. There can be no doubt that the *Dreyfus* gloss on section 989, as applied to section 23, is incompatible with article 56. It is plain that the restriction of relief from inheritance tax to trusts governed by the law of a part of the United Kingdom cannot be justified under EU law [51]. Article 56 is directly applicable and must be given effect in priority to inconsistent national law, whether judicial or legislative in origin. The *Dreyfus* gloss on section 989 cannot be applied to section 23 in situations falling within the scope of article 56. Since it is undisputed that the Coulter Trust satisfied the conditions at the time, it follows that it qualifies for the relief [52].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

<http://supremecourt.uk/decided-cases/index.html>