THE HIGH COURT

[2014 No. 10022 P.]

BETWEEN

D.C.

PLAINTIFF

AND

D.R.

DEFENDANT

THE HIGH COURT

[2015 No.2 S.P.]

IN THE MATTER OF SECTION 194 OF THE CIVIL PARTNERSHIP AND CERTAIN RIGHTS AND OBLIGATIONS COHABITANTS ACT 2010

BETWEEN

D.R.

PLAINTIFF

AND

D.C.

DEFENDANT

JUDGMENT of Ms. Justice Baker delivered on the 5th day of May, 2015

1. Section 194(1) of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act, 2010 (the "Act of 2010") for the first time in Irish law makes possible an application by a person who claims to have been in an intimate cohabiting relationship that financial provision be made out of the estate of a deceased cohabitant. The plaintiff claims to have been in an intimate cohabiting relationship with JC who died intestate on the 7th August, 2014, and now seeks that provision be made for him from her estate. The defendant is the personal representative in the estate of the said J.C., having extracted letters of administration intestate in her estate on the 3rd December, 2014.

2. The case raises a number of questions of law and fact, and the defendant denies that the plaintiff was a cohabitant of his late sister, and further denies that if is found that the plaintiff was a cohabitant that it is proper that provision ought to be made for him from the estate.

3. The proceedings were consolidated by order made on the 2nd February, 2015 with other proceedings, 2014 No. 10022 P., brought by the estate against this plaintiff and it was accepted that the cohabitation proceedings would be heard and determined first.

4. At the inception of the hearing I made an order under s. 199 of the Act that proceedings be heard *in camera* and that nothing would be published that might identify the parties.

5. I am told by counsel that the area is effectively free of authority and no written or *ex tempore* judgment of any of the Superior Courts exists that might guide my deliberations and whilst it seems likely that the legislation has been considered in the Circuit Court no judgment of that Court was offered to assist. For that reason the judgment is perhaps longer than I might have hoped, and some degree of repetition has crept into my considerations of the legislative factors.

Introduction

6. The plaintiff is 64 and is a farmer and horse trainer. He was party to a previous marriage which was annulled and he has no children by that relationship or by any other marriage or relationship. The deceased J.C. never married and had no children, and was 69 when she died. The couple met in and around the year 1994 when the plaintiff first assisted the deceased in the training of her ponies and in the preparation of the ponies for show. At that stage the deceased was living with her mother in her former family home in a town in the south of Ireland. The evidence of the plaintiff is that he and the deceased became intimate in 1995 and the relationship became a committed one when the mother of the deceased died in 1996. His evidence was that between then and 2004 when his own mother died he spent two or three nights a week with the deceased at her home at K House, a detached house some miles from a market town in the south of Ireland. On the day his own mother died in 2004 he moved to the house at K and has resided there since. He says that his move was in the context of an intimate and committed relationship which continued until J.C. died of cancer in August 2014.

7. The couple shared an interest in horses, and specifically in the training and showing of ponies, and the plaintiff was acknowledged as being an excellent horse trainer with expertise in this particular niche area. The respondent and his two brothers do not deny that the plaintiff played a part in the life of their deceased sister but it is denied that they were ever sexually intimate and they assert that the relationship was one of close friendship.

8. In 1982 the plaintiff took an *inter vivos* transfer from his mother of lands comprising 112 acres or thereabouts situate in a townland not far from the home of the deceased. The brother of the plaintiff at that time or some time thereafter received a gift from his mother of the old family homestead, where he still lives, and an adjoining field.

9. The plaintiff derives a relatively small income from his horse training activities and from his farming, and the plaintiff has no interest in any dwelling house nor has at any time since his own mother died rented or been a tenant in any residential premises.

10. The deceased inherited substantial lands from their mother when she died in 1996 and these lands were rezoned as a result of which they came to have a very significant value. Lands were sold in and around the year 2005 as a result of which the deceased realised the net sum after tax of €3.1 million. The plaintiff says that this had the effect that their lifestyle as a couple changed to some extent, and that they each acquired a larger car, that the deceased spent a large sum of money refurbishing her old family home, and that they enjoyed a good social life, became members of a leisure club, had frequent holidays, had meals out and joined the local golf club.

11. In 2009 the deceased was diagnosed with cancer but she recovered. However, in late 2013 the cancer returned and it soon became clear that her prognosis was poor and that the secondary cancers she had developed were not amenable to a full cure. The deceased spent some time in hospital in the months leading up to her death but she primarily resided at K House, and she died in a hospice some two weeks or thereabouts after she was admitted into its care.

12. The deceased was 69 at the date of her death and she died intestate leaving her surviving three brothers as her only next of kin entitled to succeed in her estate. She died leaving an estate with an approximate value of €1.4 million, comprising the former family home of the C family at K House, two rental properties in the same housing estate in a local town, fourteen acres of land close to K House, and personal chattels.

13. The applicant claims to have been a cohabitant of the deceased and seeks that provision be made for him out of her estate pursuant to s. 194 of the Act of 2010. Under s.172(1) a cohabitant is defined as:

> *"one of 2 adults (whether of the same or the opposite sex) who live together as a couple in an intimate and committed relationship and who are not related to each other within the prohibited degrees of relationship or married to each other or civil partners of each other."*

14. Section 172(5) provides that the Act applies only to relationships of five years or more, unless the couple had children:

> *"(5) For the purposes of this Part, a qualified cohabitant means an adult who was in a relationship of cohabitation with another adult and who, immediately before the time that that relationship ended, whether through death or otherwise, was living with the other adult as a couple for a period—*
>
> *(a) of 2 years or more, in the case where they are the parents of one or more dependent children, and*
>
> *b) of 5 years or more, in any other case."*

15. A claim may be made provided the relationship had not ended two years or more before the death of the other, save where the payments from the deceased were being made either under court order or agreement.

16. The power of the court to make provision for the applicant is contained in s. 194 (3) and this provides as follows:-

> *"The court may by order make the provision for the applicant that the court considers appropriate having regard to the rights of any other person having an interest in the matter, if the court is satisfied that proper provision in the circumstances was not made for the applicant during the lifetime of the deceased for any reason other than conduct by the applicant that, in the opinion of the court, it would in all the circumstances be unjust to disregard."*

17. The court must have regard to the rights of any other person having an interest in the estate and may make a provision for a qualified cohabitant provided it is satisfied that proper provision was not made for him or her during the lifetime of the deceased. The court is also entitled to refuse to make an order if it would in all the circumstances be unjust to disregard certain conduct of the applicant.

18. It is noteworthy that there is no requirement in the legislation that an applicant seeking relief under the section show that he or she was financially dependent on the deceased.

19. There is no legislative constraint on the provision that may be made by the court, save s. 194 (7) which provides that a court may not by order under the section award to an applicant more than that amount to which that person would have been entitled had he or she been a spouse or a civil partner of the deceased. Section 197 of the Act provides that each of the qualified cohabitants and *ipso facto* the personal representative of a deceased cohabitant, shall give to the other particulars of his or her property or income that may be reasonably required for the purposes of the proceedings. The court must accordingly look not merely to the value of an estate but also to the other income and financial resources of an applicant who seeks provision.

The evidence of cohabitation

20. A claimant under the legislative scheme must be a qualified cohabitant as defined in the Act. The fact of cohabitation is denied.

21. The legislation requires that a cohabiting relationship be more than one of mere friendship but involved or had involved sexual intimacy. The legislation defines a "cohabitant" in s. 172, and although I will come back later to the definition, at this juncture I merely pause to note that the relationship must be shown to be intimate and committed, although a relationship does not cease to be an intimate relationship for the purposes of the relationship merely on account of the fact that it was no longer sexual in nature.

22. The evidence of the plaintiff was that the relationship between himself and the deceased became intimate some months after they met, and that it remained close and intimate until she died. At that time the deceased was living with her mother at K House, and while he was a frequent visitor to that house he did not stay over but he and the deceased saw one another almost every day during the working week, and spent holidays together.

23. It would be fair to say that both the plaintiff and the deceased were dutiful children to their elderly mothers, and neither felt free to fully and openly engage in an intimate relationship until their mothers had died. The plaintiff gave evidence that while the mother of

the deceased was alive he never spent a night with the deceased at K House, but that when Mrs C died in 1996 he thereafter came to spend two or three nights a weeks at the house.

24. The couple then discussed their living arrangements, and the discussion focused on the possibility of obtaining planning permission to build on the plaintiff's lands, or on lands adjoining K House. However, the deceased had a great affection for her old home and good memories of living there, and although the plaintiff was not entirely comfortable with the arrangement he was persuaded by the deceased to come and live permanently with her in her home once her mother died and the house became hers.

25. As his own mother had became unwell and needed full time care, the plaintiff cared for her jointly with his only sibling, his brother, who owns and continues to live in their former family homestead. I consider it noteworthy that the plaintiff says that he moved to reside fully with the deceased on the day his own mother died.

26. The plaintiff said that he and the deceased shared a double bed and continued to do so until her illness came to interrupt her sleep to such an extent that both of them preferred to sleep in single beds, albeit that they remained sleeping in the same room.

27. The plaintiff's evidence was that he and the deceased always breakfasted together and that as neither of them was interested in cooking, they ate their main meal out in a restaurant together almost every night. The deceased paid for these meals, and it cannot be doubted that the income and resources of the plaintiff were not such that he could support a lifestyle such as the one they enjoyed. They joined a leisure centre and the plaintiff was particularly animated in describing the pleasure they got from using the facilities at the centre several nights a week.

28. The main and abiding interest of the deceased was in ponies and this was an interest which the couple shared and in which they continued to be jointly involved up to the time of the death of the deceased. They both went to shows and a particular enthusiasm was shown by them for the annual Dublin Show. The ponies belonged to the deceased but they were kept on the lands of the plaintiff who was mostly involved in their day-to-day care and in training them and preparing them for shows.

29. The plaintiff's evidence was that in the course of their 20 year relationship they attended some 40 weddings together as a couple, including the wedding of one of the nephews of the deceased in Canada and to which he was invited as the companion of the deceased by her three brothers. He says that they openly stayed in the same hotel and in the same room. They also attended together the weddings of two nieces of the deceased.

30. The deceased was described by all of the witnesses as a very warm and sociable woman and she held in the course of the year a number of parties to which she invited her friends and family, and which were a matter of some local interest. Formal invitations were sent to these parties, one of which was always held just before Christmas and the form the invitations took came to take on importance in the course of the trial. Several invitations were tendered in evidence. The plaintiff said that the invitations were generally speaking sent by the deceased, and that the parties were known as J's parties rather than their joint party. The invitations requested that an RSVP be sent to either the deceased or to the plaintiff himself, although some invitations shown to me made reference only to J. herself. The plaintiff said he took a lead role as host at these parties and that his role in a committed relationship with the deceased was well known and recognised in their circle of friends, and that the three brothers of the deceased could not but have known this.

31. A source of controversy in the case was the postal address used by the plaintiff. He accepted that at all material times, his post was sent at his direction to the home farm. He explains this by virtue of the fact that he was farming the lands there, and maintained an office on those premises. The defendant asked me to note that it had to be significant that the plaintiff never received any post at K House.

32. The plaintiff produced a number of Christmas, birthday and Valentine cards sent from the deceased to him, and in each of these he is referred to "My Dear" or "My Dearest" and love and friendship is expressed. The cards sent by the deceased during 2013 and 2014 thanked him also for his help during her illness and the card sent in December 2013 contained a promise by the deceased that she would get well so that they could "continue to enjoy a great life together".

33. In Christmas 2006 the deceased gave the plaintiff a gift of a Land Rover motor vehicle, and in the course of the relationship she also gave him some cash gifts.

34. The plaintiff also said that he sent Valentine cards and other greeting cards to the deceased but although these were kept by her and were displayed for long periods of time by her these were not with the papers of the deceased.

35. The plaintiff gave evidence that the first person he called with good news was the deceased and she equally shared her good, and indeed bad, news with him and that they were confidants and close friends and supported one another through good times and bad times. He said they were in phone contact every two hours or so during the working week.

36. When the deceased developed cancer in 2009 she recovered quickly and no surgery was indicated. They continued with their old lifestyle and in particular continued with their mutual interest in ponies and preparing ponies for show. Even in November 2013, when a secondary cancer was diagnosed, the deceased insisted on continuing with her old life and continued to work in her job as a school secretary until the summer term in 2014, taking then just the normal school holiday, and expressing a firm intention to return for the new school year. She had extensive chemotherapy treatment during her final illness, and the plaintiff says, and this is not contraverted, that it was he who brought her to hospital for treatment, stayed with her there and brought her home. The plaintiff says that the deceased showed great courage and resilience through her illness but that when she became despondent he bought her a horse which then went on to win a number of races and from which she derived great enjoyment. The plaintiff says that he was the person with whom doctors engaged in discussing treatment options and the progress of the disease.

The events at the hospice

37. The deceased had been admitted to a private hospital some time in July 2014, and even though it was clear that her disease was progressing and incurable, she persisted in a belief that she would be discharged from hospital and be restored substantially to her former life. She very reluctantly agreed to avail of hospice inpatient care and on the 28th July, 2014 she was admitted to a hospice and died there some two weeks later.

38. In the course of the case before me evidence was given as to various exchanges and interactions between the plaintiff and the brothers and other family members of the deceased at the hospice. The plaintiff said he was ignored, and that active steps were taken to exclude him from the company of the deceased in the days leading up to her death. This was denied although the brothers of the deceased, who clearly loved her dearly as their only sister, did accept that they knew the time with her was short and they

took advantage of as much of that time as they could.

39. An important event occurred about a week before the deceased died. The plaintiff says that he received a phone call from the deceased and also from one Father O'B. and in the course of these conversations the deceased expressed a wish that he and she would get married. She suggested that he would contact his solicitors to ascertain how this could happen and the evidence was that this did occur and he did attend at his solicitor to discuss marriage, and he was by then aware of the three months' notice requirement in civil law for such a marriage. It would seem that the priest who advised both the deceased and the plaintiff told them of the three months' notice requirement, but no advice was given to them as to the possibility of court application to abridge that time. Part of the difficulty that the plaintiff envisaged with the possible marriage was that he had previously been married and did not have ready access to the decree of Church and State annulment.

40. The evidence was that the couple had discussed marriage a few years earlier and a number of considerations are apparent in the minds of both the plaintiff and the deceased arising from these conversations. The plaintiff described himself as having been "burnt" as a result of his previous marriage which had been annulled but not before he had built and paid for a house on the lands of his then partner, and in respect of which he received no recompense. The plaintiff in the course of evidence expressed a view that the money that had been inherited by the deceased was capable of and did on occasion act as a barrier in their relationship, and he recalled a conversation when the deceased, albeit jokingly said to him that were they to marry he could be seen locally as a "gold digger". I regard the fact that the couple discussed marriage as an indicator of the strength and nature of their bond, and that it is noteworthy that they continued to live together after each of them in their own way, and for their own reasons, chose not to marry.

41. Two Roman Catholic priests attended at the bedside of the deceased in the days leading up to her death and one of these priests gave evidence before me and he said that the deceased told him that she wanted to marry. This was the night before she died.

42. When she was in the hospice the deceased directed the plaintiff to a document which she kept in a box in their bedroom. This document she described as her will, but the document was not executed and could be described as nothing more than instructions for a will or a statement of intent. The deceased did tell the plaintiff to ring her solicitor, which he did, but, it being August, the solicitor was about to go on annual holiday and no arrangement was made for him to attend at the hospice to take instructions for or arrange the execution of a will by the deceased.

43. I have been furnished with this document which refers to the plaintiff as "my best friend" and gives his address as the address of his own home of origin and not at K House.

44. I will return later to the contents of that document insofar as it might guide me in making provision should provision be required to be made for the plaintiff.

Marriage?
45. The plaintiff said that he asked the deceased to marry him on a few occasions, but the last time this had happened was five years before her death. He said his mother wanted him to marry and her mother had also expressed the same wish to him. He says he was not going to "rush into" marrying the deceased and he was "cautious about marriage" having been badly burnt both financially and emotionally in his previous relationship which had resulted in an annulment. The deceased herself had an attitude to marriage, and she often said that her view was that women post childbearing age had no reason to marry, and she had said to him that marriage would not improve or change their situation "one bit". The plaintiff said however that his own attitude to marriage changed in the time leading up to the death of the deceased and that he would have at that stage have enthusiastically married her because that is what she wanted. He said it would have meant at that stage a lot to him to be married to her and that that would have provided both of them with comfort in her final illness.

46. He said in evidence that the relationship was sexual until close to the end of the life of the deceased.

Independent evidence
47. The deceased had a number of close personal friends and developed relationships with a number of members of staff, some of who gave evidence before me. Each of them gave evidence that they knew the plaintiff and the deceased as partners and as a couple. Some of these witnesses described the deceased and the plaintiff as friends, but not one viewed them as "mere friends" and each of the 10 witnesses described their relationship as being close and supportive. The brother of the plaintiff gave evidence that the plaintiff had never stayed in the old family homestead on any night since 2004 when their mother died.

48. One of the witnesses one A.M., was aware that the deceased was in receipt of the living alone Department of Social Welfare pension and she had tried to dissuade the deceased from claiming the pension for fear there would be penalties were it to be discovered that she was, as this witness believed, residing with the plaintiff.

49. The principal of the school where the deceased had worked described them as a couple in a long relationship and described a lot of communication between the deceased and the plaintiff during the day about very small things. This witness, E.M., confirmed that it was the plaintiff who collected the deceased from school to take her to chemotherapy sessions and that he occasionally delivered her medication to the school for her. She described the deceased as being private about her illness, and that she remained insistent until very close to her final days that she would return to her job in the new school term.

50. Another teacher at the school, A.M., became friendly with the deceased and came to meet the plaintiff and the deceased at social occasions as a couple and visited them at home. She said the deceased was constantly talking about the plaintiff and was frequently on the phone to him during the day. She said that he considered them to be a "normal, happy couple devoted to one another". She said that on one occasion when she was visiting the deceased in her home and had cause to go upstairs with her the deceased identified to her the single beds in her bedroom as being her bed and that of the plaintiff. This witness also confirmed that it was the plaintiff who took the deceased to hospital for chemotherapy appointments.

51. Mr McC is formerly from the townland were the plaintiff grew up and now resides in a midland town gave evidence that he knew the plaintiff since he was 13 years of age and he knew him through his own interest in horses and horse riding. He said he knew the deceased through the plaintiff and considered the relationship to be "no different from that of other married couples I knew". He described their relationship as being physically intimate and "natural and normal". He spent a lot of time in K House, and considered it to be the home of the deceased and the plaintiff and described how he would visit them there at night and that the plaintiff clearly in his view treated that house as his own. The deceased and the plaintiff were guests at his own wedding and he said his own wife never met the couple other than at K House. He describes the deceased as a very warm woman, very affectionate towards him, whom she treated almost like a son, and towards his wife and his young children. He said that the plaintiff and the deceased were to some extent like an aunt and uncle to him. Mr McC gave evidence of having made three visits to see the deceased at the hospice. He

described what was confirmed by other witnesses, namely that she was quite convinced that her stay in the hospice was short term and that she expected to be out and ready to resume her school job in September. He described the atmosphere around her room as hostile and that the relationship between the plaintiff and the family of the deceased was almost one of strangers, and where there was no shared sadness, and where indeed he felt that the plaintiff was not even acknowledged by the family of the deceased if they met in a corridor.

52. On the first visit that he made on Monday 29th July the deceased asked him to take care of the plaintiff and she spoke to him about marriage and said that it would give her "the greatest honour" to marry. She told him that the process had begun towards them marrying and that she was ecstatic about the thought as they were devoted to one another and that it seemed to her that it would "feel right" that they would marry. On that occasion she spoke in some detail about a ring that she wanted to have to celebrate her wedding and indeed talks of commissioning a ring were mentioned by other witnesses. On the second visit Mr McC said that the deceased seemed mentally very well and happy, but on his third visit, he stayed with the plaintiff and the deceased throughout the night until she died.

53. Under cross-examination Mr McC confirmed that he lived in a midlands town some 100 miles or thereabouts from the home of the deceased and that his visits to that town became less after he married and had children. In response to a question as to how he knew the couple shared an intimate type of relationship he pointed to the fact that he himself had booked a double room for them at the hotel when he himself got married and they were guests.

54. Evidence was also given by C.L. a manager in a restaurant which the deceased and the plaintiff frequented. She became friendly with them and considered them to be a couple from their descriptions of their lives and from visits she made to K House home, and from socialising with them together both there and in public. She also had an interest in horses and she often for that reason called to K House early in the morning at 6am and she would ring the house phone to wake them. She said that she received birthday cards and other cards marking events in her life jointly from the deceased and plaintiff.

55. The evidence of C.L. was particularly important in the context of objective evidence of intimacy. She described when the deceased was very unwell and weak through her last illness and she would frequently assist the deceased in the personal hygiene matters and in dressing and undressing. When cross examined with regard to the possibility that the deceased and the plaintiff might have married she said that she remembered a conversation once with them where they described themselves as "happy out" without being married and she recalled no further conversation about marriage.

56. I also heard evidence from T.O'B, a local vet who is married to the sister of the plaintiff and who is a brother of Father O'B. He described the mutual interest that the couple had in horses and in particular in showing their ponies at the Dublin Horse Show. He said that he recalled an event when he called to K House late at night and that the plaintiff was there. He also described being in the house late in the evening on social visits and that the plaintiff would lock the gate after him when he left. He said that, while the couple seemed to share their lives, each of them paid separately for the veterinary fees of their own animals. He described the parties at K House as being parties thrown by the couple, and that each of them played a role as host at these events.

57. I also heard evidence from Father O'D, a priest, who was visiting the hospice and who did not know the plaintiff or the deceased save by repute. He said that the deceased raised the question of marriage with him and asked him how this could be arranged and who might be witnesses to the marriage. Under cross examination he denied that he had raised the question of marriage and said that the topic had been raised by the deceased herself and that he would never have raised such a topic with a woman whom he believed to be terminally ill and in hospice care, and that such intimate matters would not be appropriate for him to raise with a woman he barely knew. He described her as being "confident in her love" for the plaintiff and said it was quite clear to him from description that the relationship was not platonic or not one of mere friendship.

Evidence of the defendant

58. What is remarkable about the case is the degree of lack of unanimity in the perception of the relationship between the witnesses who gave evidence for the plaintiff and those who gave evidence for the defendant. The difference was not so much one as to whether the deceased and the plaintiff were friends, and it was acknowledged by all parties that they presented as friends and that they had a number of interests in common which resulted in them spending time together both in their home town and at horse shows, in particular the annual Dublin Horse Show at the RDS. It is the intimate nature of the relationship, and whether the couple lived together that is in dispute.

59. The deceased died leaving her surviving three brothers and each of them gave evidence. One of the brothers in particular, C.C., had a strong bond with the deceased and she and he spoke almost daily.

60. The youngest brother D.C., the personal representative of the estate, described frequent visits to K House, as often as once or twice a week, and he would call when he was in the area although he lived in a town some 60 or 70 miles away from that house. He said he was not aware that the plaintiff was living with the deceased and that she never mentioned it to him. He said he thought that they were "best friends", and their friendship was centred on their love of horses. He outlined how the deceased was in receipt of a social welfare (living alone) allowance and he believed that she obtained this in the year 2010 and noted on the documentation submitted by her on the 12th August, 2010 to the Department of Social Welfare that she described herself as "single" and did not select the option of "cohabitating" which was available on the standard form. This witness described the visit from Father O'D and gave evidence that it was the priest who had first mentioned marriage, and he asked the deceased after she herself had mentioned the plaintiff whether they had ever thought of "tying the knot".

61. This witness gave what I regard to be a particularly important piece of evidence and he said that his mother had always said to her children that a woman who was not of child bearing age, or indeed any person not intending to have children, ought not to marry. He also said that the deceased while she was brought up as a Roman Catholic had, as he put it, had "a foot in both camps" and she played the organ at a Church of Ireland Church, and supported local Roman Catholic churches and Church of Ireland churches. Their parents were from what used to be called a "mixed marriage" and he described a comfortable childhood in their old family home which was inherited by the deceased. He said that the deceased moved into the bedroom of her parents after her father died and that she slept in the same bedroom as her mother during her mother's last years.

62. After the inherited lands were rezoned and sold the deceased spent considerable monies in refurbishing the house and changed it from a five bedroom to a three bedroom house and did other extensive renovations to the house and gardens. He was firm in cross examination that he did not believe that the deceased and the plaintiff were intimate but he did admit that he never asked either his sister or the plaintiff what the precise nature of the relationship was. He said he had a very good relationship with his sister and that there was no trace of a man in the house, and that there were no male toiletries in the bathroom, and after his sister died he found very few men's clothes in the wardrobe in the main bedroom. He did admit that he did not know many of his sister's close friends, and

he could not really identify who these friends were as he had gone to live in his now home town in 1979.

63. He knew the plaintiff casually, and he also knew his sister who was his hairdresser. He never met the plaintiff in his sister's house.

64. He accepted that the plaintiff was a guest at several family weddings of and that he came as the guest of his sister who in the normal way was invited to come herself and bring a guest of her choosing. He said that he never saw between his late sister and the plaintiff any signs or expressions of affection or sharing of emotions. He was unable to say who had looked after his sister when she was ill, who had cooked for her, looked after her house and taken her to and from the hospital for chemotherapy treatment.

65. He accepted in cross examination that neither he nor his two brothers thought to concern themselves with regard to the security of his sister's house when she was in the hospice because, as he put it, he knew the plaintiff was there and would look after that house. He described the plaintiff very affectionately as the "constant companion" of his sister, but was surprised at any suggestion that they might have been intimate.

66. This witness gave useful evidence as to the expenditure by the deceased of the proceeds of her inheritance. The amount realised by each of the four siblings on the sale of the inherited lands was €3,100,000 after tax, the first €750,000 of which was received in 2004, and the balance in 2005. The deceased purchased two residential investment properties, one for €600,000 and the other for €400,000, and a farm of 14 acres with €300,000. She spent up to €500,000 refurbishing the house and gardens at K House which she had also inherited. She bought new and expensive cars. Another residential investment property had been purchased by her which she was unable to manage and was sold to one of her brothers after the economic crash, and it appears that she made a significant loss in that transaction.

67. He was surprised how little cash was left in the bank accounts of the deceased and she seemed not to have been careful with her money, and his surprise was also in the context of the fact that the deceased had a rental income and from her job as a school secretary. He said her tax affairs were up to date.

68. The second brother of the deceased, C.C., was very close to the deceased and he described the deceased as his "best friend". He said he had no idea that the plaintiff was living in the house, and he said that he saw the plaintiff in the house only three or four times although he visited frequently, at least every week. In retrospect he thinks the plaintiff may have "joined" the deceased at her home in 2011, after the deceased had been involved in a road traffic accident, and that the relationship might have evolved into an intimate relationship, because the deceased was then feeling particularly vulnerable, and because she was having a problem with a tenant in one of her residential investment properties. He said his sister never told him however that this had happened, but if there had been an intimate relationship it was very short lived. He said his sister described the plaintiff as her friend, and introduced him as such, and sometimes in fact mentioned that he was her horse trainer. He says that because he was particularly close to his sister he would have expected that she would have told him of an intimate relationship if such existed. He also said he did not see any special or intimate expressions of affection between them.

69. He was of the view that the plaintiff's grief at the death of the deceased was similar to that expressed or felt by many of her other friends.

70. This witness struck me as a warm man, very close to his sister and still grieving her loss. He was tearful in some of his evidence. He also struck me as particularly private in his grief and somewhat old fashioned in his views of intimacy. He thought of his sister, who was older than him, as being unlikely to have engaged in a sexual relationship at her age, and given that she was unmarried. He was quite clear from the history of his sister's relationships that she never wanted to marry, and that she had had close relationships with other men but marriage was not part of her life choice.

71. He described their mother as a strict Presbyterian who would never have approved of any of her children living with a member of the opposite sex or being in an intimate relationship outside marriage. He said that some of his children had lived with their respective partners before they married and that he himself was open minded about such matters.

72. This witness also accepted that he knew little or nothing of his sister's financial affairs, save that he did know that she had acquired certain residential investment properties but only after she had closed those sales.

73. W.C., a chartered accountant, and another brother of the deceased, also gave evidence. He made tax returns for the deceased, but was not involved in her daily financial affairs. He was in the hospice when Father O'D came into the room and he too rejected any suggestion that the issue of marriage was raised by his sister, and his description of the conversation is that the priest in a light hearted fashion, when the conversation turned to her relationship with the plaintiff, commented, rather than asked, that the couple had "never made it down the aisle". His sister's response was consistent with that described by other family members, that she said that marriage was "not for me" and that marriage was for females of childbearing age.

74. This brother also said that he found it incredible that the question of marriage was discussed either in the hospice or elsewhere, and that he expected that he would have known had his sister intended to marry. He said he was a frequent visitor to her home after she became ill first in 2009 and that he visited at least once a week for an hour a day or so. He said he never met the plaintiff at K House, although he did accept that he and the plaintiff would have kept different hours and that the plaintiff would have been involved early every morning with his farming and horse training activities. He too said that there is no evidence of any male toiletries or clothing in the house but admitted that he did know that the plaintiff stayed in the house once his sister became very ill in her last illness. He said that she, and the family, were happy that her close friend would be there to protect her and again her fear of being on her own in an isolated house was noted.

75. This witness put it simply that he would be surprised to hear that his sister and the plaintiff were ever lovers. He himself was on his annual holidays in August 2014 when the deceased was admitted to the hospital and he did not cut short these holidays. This is consistent with evidence already given, that the deceased seems not to have accepted that she was terminally ill and believed that, even if she were, that her life would not be cut short so quickly at the end.

76. I also heard evidence from D.M., a first cousin of the family, who said he frequently did meet the plaintiff in his cousin's house but he thought that this was because the deceased was very nervous of being alone in her house which was quite isolated and detached from any neighbours. He described an occasion when he saw the plaintiff in the bedroom of his first cousin and although he was somewhat surprised to see him there, he did not ask any questions, as it was "none of my business". He did tease his cousin in friendly banter or chat afterwards. He said he knew there was a friendship but that that it had never been intimate. He said he was surprised that this was now being asserted by the plaintiff.

The legislative framework: what constitutes cohabitation?
77. To make claim under the legislation a person must satisfy the court that he or she is a cohabitant within the meaning of s. 172 of the Act. To claim relief persons, whether of the same sex or the opposite sex, must show that they have lived together as a couple, for a period of two years or more where there are dependent a children, or five years or more in any other case. The relationship must be between two persons living together as a couple in *"an intimate and committed relationship"*.

78. Section 172 (2) provides certain factors to which a court must have regard in determining if two adults are cohabitants and I will set these out in full: -

> *"In determining whether or not 2 adults are cohabitants, the court shall take into account all the circumstances of the relationship and in particular shall have regard to the following:*
>
> *(a) the duration of the relationship;*
>
> *(b) the basis on which the couple live together;*
>
> *(c) the degree of financial dependence of either adult on the other and any agreements in respect of their finances;*
>
> *(d) the degree and nature of any financial arrangements between the adults including any joint purchase of an estate or interest in land or joint acquisition of personal property;*
>
> *(e) whether there are one or more dependent children;*
>
> *(f) whether one of the adults cares for and supports the children of the other; and*
>
> *(g) the degree to which the adults present themselves to others as a couple."*

79. A relationship must be or have been sexually intimate, and this is implicit from s. 172 (3) which provides that a relationship does not cease to be an intimate relationship for the purposes of determining whether a person is a qualified cohabitant merely on account of the fact that it is no longer sexual in nature. The requirement that the relationship be a committed one remains, and the couple must be residing together.

80. I turn now to my findings of fact having regard to these statutory tests

Were the parties living together?
81. Turning now to the elements of the test, the first question I must ask is whether the applicant has satisfied me that he was living with the deceased for a period of five years or more. His evidence is that he took up permanent and full time residence at K House with the deceased in 2004 when his mother died, and indeed his evidence was that he did so on the precise day his mother died. The brothers of the deceased do accept that the deceased came to live under the same roof as their sister some time around the time when she became ill with cancer in 2009, or in the case of one brother, in 2013 when her illness returned and when she became both more physically fragile and psychologically fearful of being on her own. I accept the evidence of the plaintiff that he took up full time permanent residence in the home of the deceased on the day his mother died in 2004, I do so for a number of reasons as follows:

82. The plaintiff resided with his mother for approximately half of every week in his old family homestead until his mother died. He did this to care for her in her old age, and he shared that care with his brother. He never made provision for his own accommodation needs outside of this arrangement, and I consider this to arise from the fact that he commenced a committed and long-term relationship with the deceased some ten years earlier in 1995 or 1996. Some evidence was given in the course of the trial that the plaintiff left little or, indeed in the case of the evidence from one brothers of the deceased, no personal effects at all at K House, but the plaintiff himself in the course of cross examination, and in his affidavit evidence, pointed to the fact that much of his clothing was in drawers which were not searched and not in the wardrobe of which photographs were adduced in evidence, and that he did keep personal toiletries in the bathroom. He struck me as a man of modest and minimal material needs, and I accept that he kept his relatively few personal effects at the house. I also accept that they came to permanently reside together in 2004.

Was the relationship committed and intimate?
83. I regard as particularly significant the plaintiff's evidence that he went to reside with the deceased on the day his mother died, and that suggests quite clearly that the reason he and she did not live together on a full time basis before then was because of his arrangement with his brother that they would jointly share the care of their widowed mother. This is also consistent with the scheme of the Act which entitles the court to look *inter alia* to the duration of the relationship and the "basis" in which the couple lived together and I consider it improbable that this couple discussed their living arrangements and agreed to move to live together on the day the plaintiff's mother died. It is much more probable that they had for a number of years wanted to share their living arrangements but the care of the plaintiff's elderly mother prevented this happening.

84. In that regard I consider the duration of this relationship between the plaintiff and the deceased was 19 years and that the relationship commenced in 1995 or thereabouts in the context of their shared interest in horses, and that they became committed to one another shortly thereafter.

85. The next question that must be determined as a matter of fact is whether this couple was or had been at some stage in an intimate and committed relationship. The court is mandated to have regard to certain matters to determine in particular the extent of commitment which a couple have to one another, and those matters include the duration of the relationship, the degree of financial interdependence, the nature of any financial arrangements, and the way in which the couple present themselves to the world as a couple. As this couple had no children either from this relationship or from any other relationship some of the other parts of the test in s. 172(2) have no relevance.

86. The Act offers no assistance as to what is meant by an intimate relationship, but having regard to s. 172 (3) it is clear that a relationship must have been at some point in time a sexual relationship for intimacy to be found. The intimacy that is intended is a sexual intimacy and not merely the intimacy of close friendship.

87. I accept the evidence of the plaintiff that he and the deceased became intimate many years ago sometime in 1995 or thereabouts. I also accept his evidence that this intimate sexual relationship lasted up to a short period before the death of the deceased. He was not cross examined as to exactly when this was, but that was a sensitive and realistic approach to the question

having regard to the fact that the Act does not require intimacy to continue through all of the vagrancies of a relationship, provided sexual intimacy can be said to have been part of the relationship at some time in the past. It is unlikely in the absence of illness or other disability that a person would be very briefly intimate with another and commence to cohabit many years after the sexual intimacy had ended between them. I accept that the brothers of the deceased were not aware of the intimate nature of the relationship, although I do note that none of them expressed any surprise that the plaintiff might have been living under the same roof as their sister, albeit it they did not accept that this arrangement had continued for as long as 10 years, and that they wholly discounted the possibility that some degree of intimacy was an element in their relationship.

The perspectives and state of mind of the deceased

88. I was in a position to assess the perspectives of the deceased from certain evidence I heard. I have already noted the evidence of her first cousin D.M. who said that while he was somewhat surprised to see the plaintiff in the bedroom of his first cousin, he did not ask him on the occasion when he saw this why or for what purpose he was present in her room. It strikes me that this witness was honest and forthright in giving his evidence, and that he did not consider that he ought to pry in the private and intimate relationship of his cousin, or indeed of the plaintiff whom he hardly knew. Thus his evidence has limited value as to the fact of intimacy, although I consider the fact that the plaintiff was openly present in the bedroom of the deceased showed the degree of ease he had in the house, and points to him at least treating the relationship as one of shared living there. It is unlikely in my view that the plaintiff would have been in the bedroom of the deceased had they not been in an intimate and committed relationship, especially if one considers the degree of privacy in her life that the deceased sought.

89. This evidence, and that of C.C., offered me a key to the state of mind and perspectives of the deceased and the context of the relationship of the deceased and the plaintiff. Her strict family upbringing, and perhaps to some extent her age, and the role that her family had played in the local area as good living and staunchly Roman Catholic in their behaviour and social attitudes, might have led her not so much to hide her relationship with the plaintiff, but not to shout it from the roof tops. Each of the brothers in their evidence described the value they placed on personal privacy, and each of them in their own way in evidence said that they would not have considered it proper or appropriate to have asked their sister the precise nature of her relationship with the plaintiff. Each of them had a clear view of what was or was not their business, and how certain private and intimate matters might not be shared between members of a family.

90. Each of the brothers also gave evidence that marriage was seen by them as partly for the continuation of the family, or at least that people married in the hopes that they would have children. I also consider that each of the brothers took the view that marriage has the inevitable effect of diluting an inheritance and that such dilution should occur only in the context of marriage.

91. One factor that influences me in any consideration of the evidence is that C.C. one brother of the deceased, gave evidence that he never witnessed the plaintiff preparing any of his sister's ponies for show and although he accepted that the plaintiff was a very good horseman and trainer he did not know of his interest in Connemara ponies specifically. That evidence is striking because of all of the other witnesses who gave evidence in the case accepted that the relationship between the deceased and the plaintiff found its roots in their mutual interest in these ponies and this gap, as I consider it to be, in the knowledge of C.C. of his sister's social and personal life explains to some extent how he might not have known of his sister's intimate and close relationship with the plaintiff. I consider that the evidence points to some considerable degree of separation in the life of the deceased of various activities involving her close family and her friends, and she did, I believe intentionally, keep these separate although her friends and family did mingle at weddings, her very popular Christmas parties and at other social events. She seemed however to me to have lived her social life, primarily with her friends, and her social life to some extent revolved around her interest in the ponies, which was not an interest any of her family members shared.

92. I was struck by a number of features in the personality and family background of the deceased, and one factor that weighed heavily on her lifestyle was the degree of privacy and separateness that she sought in her life. This was a characteristic that she shared with the three brothers, and the plaintiff kept various elements of her life separate, Thus it seems to me that the deceased enjoyed a very close relationship with her three brothers, and particularly with her middle brother C, but she did not share with him all of her interests. I accept that she was a very creative woman, full of life and full of interest in the world, and full of affection for her family, her nieces and nephews and those with whom she came in contact with, but she had the wish and the energy to enjoy certain parts of her life separate from the others. It is understandable too that she might not have wanted to upset her siblings by informing them of her, what I believe to have been a sexual relationship with the plaintiff, and that was because of their shared religious beliefs, and shared social and interpersonal values. All of the brothers were married, all of her brothers had children, and she was the only one of the four siblings whose life was different. That context also explains how Mr M, the first cousin of the deceased, who lived in Northern Ireland, was unaware that the plaintiff was living under the same roof as his first cousin for at least 10 years. He said he visited almost every year but that he never saw the plaintiff in the house. I consider that there are two reasons for this, one was Mr M's sensitivity to the privacy of his cousin, which is precisely the factor which lead him not to question the plaintiff when he saw him in his first cousin's bedroom, and on the other hand the sensitivity that the deceased herself felt was necessary to show towards the values and mores or her first cousin.

93. I consider that the couple had a very close and intimate relationship, and that they exchanged tokens of their relationship on a frequent and appropriate basis. I note that W.C. did accept in cross examination that there may have been old Valentine cards in some of the boxes removed by the family from the house after the deceased died. I consider that response to indicate that there were such Valentine cards, although I expect having regard to the degree of privacy which the family respected in one another, that the brothers never looked to see from whom these cards had been sent.

94. I also consider as important and accept the evidence of C.L. that she did not think the deceased, who was after all a woman in her late 60's, would have permitted a man to assist in the intimate and personal task of dressing if he had been merely a friend.

The basis of cohabitation

95. As to the statutory test of the "basis" in which a couple live together, found in 172(2)(b) this is a broad test and encompasses much more than financial or property arrangements which are specifically dealt with in subs. (c) and (d) of s. 172 (2), and which I consider below. The basis of a relationship involves a number of interconnected elements such as the degree of shared activities that persons enjoy, such as shared meals, especially evening meals and breakfast, shared activities, shared division of household chores and shared holidays. I am of the view that this couple did live together in a committed relationship and that their commitment was found in the degree of contact that they had with one another on day-to-day basis, which I accept was very frequent indeed, and I accept in particular the evidence of the friends of the deceased and of her work colleagues that the couple phoned and exchanged text messages with one another very frequently during the normal working day.

96. This couple shared a joint interest which was in part the source of income for one of them, and enjoyment for both. They each had farming land, albeit that only the plaintiff was a farmer in any true sense, but both of them frequented the farmlands of the other

and both of them publicly and visibly spent time together in each property.

97. Counsel for the plaintiff asked me to take particular note of the fact that the plaintiff cared for the deceased during her illness and that it was this time of crisis in particular that brought their relationship into sharp focus. I accept that the couple had some discussion about marrying in the days before the deceased died, and they took advice from the Roman Catholic priest who visited the deceased in the hospice with regard to the legal requirements. Whilst they were told that three months' notice was required under State law before a marriage could be solemnised, they were not told that the court could abridge the notice period on application.

Presenting as a couple
98. The degree to which the adults presented themselves to others as a couple is a factor to which the court under 172(2)(g) is mandated to have regard in assessing whether a couple is in a committed relationship and while expressions of physical affection in public might in some cases be a mode by which a couple show their intimate and committed relationship to the world, this is not always the chosen means by which a couple present themselves. Some of the witnesses described the couple as being physically affectionate towards one another in company, and others said they were not. It can easily be the case that some physical expressions of friendship such as hugging are found even when a relationship has no sexual element. I find that the evidence on balance points to the fact that this couple did present themselves to the world as a couple in a sexual and intimate relationship, and one must recall in that context that both the plaintiff and the deceased were in their 60's and the deceased was almost 70 when she died. Even deeply committed and devoted married couples show relatively little obvious physical affection in public and I consider that this couple was no different from any other in that regard.

99. I take particular note of the fact that the friends of the deceased regarded her and the plaintiff as a couple, and indeed the witnesses called by the plaintiff described the relationship as that of a "normal couple" and not one of them regarded the relationship as remarkable in any way. Some of the witnesses indeed considered the couple to be married as they behaved like any other married couple who got on well with one another and spent a lot of time together.

100. Marriage of course is regarded by many persons in our society as the ultimate way by which a couple show the world the degree of commitment that they have to one another, and I return below to the question of how and why this couple never came to marry but the legislation is specifically designed to allow provision to be made for cohabiting couple who choose for one reason or another not to marry. This legislation is the first time that the Oireachtas has recognised a legal basis for a claim by a cohabitant, and the Oireachtas did so in the clear knowledge that the cohabitant relationship was one which might have arisen through choice or circumstance, and where neither was anxious to or in a position to wed. The law recognises a fact of modern life, namely that a couple can present themselves to the world as cohabiting partners, or indeed as partners who do not cohabit, when they are not married or when they do not intend to marry. The relationship in this case was in my view one in which the couple presented themselves to the world as a couple, albeit I accept that the deceased did not for her own reasons present the full nature of her relationship with the plaintiff to her immediate family. I have already explained what I believe to be the reasons for this.

Financial dependence and interdependence
101. The Act also regards the degree of financial dependence as relevant to the question of cohabitation: 172(2)(c) and (d). The couple had relatively little financial interdependence in the early years of the relationship, and indeed in certain aspects of their relationship they continued to maintain separate financial arrangements, such that for example the deceased paid all household utilities and other bills, they had an informal arrangement for buying food and groceries for the household, but each of them separately paid their veterinary and other similar bills. The degree of financial interdependence changed once the deceased came to be a woman of means and it was at that stage that they came to enjoy a fuller life, possible then because of the resources of the deceased. They played golf together and joined a health club, each of which activity involved membership of a private club at a cost which was way beyond the income resources of the plaintiff. Neither of them was interested in cooking and they ate their main meal in a restaurant almost every evening. Again that was outside the income resources of the plaintiff but this is how the deceased chose to live with her chosen companion and is how this couple in their joint lives chose to enjoy the fruits of the inheritance from the deceased's mother. I consider that the deceased wished to have the company of the plaintiff, and that the "relationship cost" meant that it was she who paid for these extras, which she wished to enjoy and would best enjoy in his company. This is a financial interdependence, albeit it is not a dependence for the basics of life, and the financial interdependence was one that evolved in the context of a significant discrepancy between the income and financial resources of each of the parties.

102. I accept what was said by the plaintiff with regard to the inheritance that the deceased received. Their relationship had started long before the lands were rezoned and that inheritance came to have a significant value when the mother died and the lands were rezoned and although the deceased had a high standard of living and lived in a beautiful detached home, neither she nor the plaintiff had any great financial resources in the form of income until the inherited lands were sold or were agreed to be sold. The plaintiff expressed on a number of occasions a view that to some extent "the money came between us", and that he would have been happier had their financial resources been more equal. I consider that the plaintiff was not interested in having money from the defendant and that this was one reason why he felt that it might not be necessary or indeed proper for them to marry. They kept their financial resources separate, each of them to some extent had a concern to do this. The plaintiff was cautious financially, and he had been financially damaged as a result of a financial commitment to his first marriage which was ultimately annulled. The deceased it seems to me had relatively little knowledge of financial affairs, had come from a family where there was no great financial pressure, but she was conscious of the role of inherited wealth in her life and considered that one purpose of marriage, possibly even the only purpose, was to preserve wealth and pass it to the next generation. Thus while kept many of their finances separate, this arose because of their respective attitudes to money, and because of the very significant difference between them in financial resources. I consider that the relationship was no less committed by reason of the absence of financial interdependence, and agreed financial interdependence is to be found in the fact that the deceased paid for holidays, most if not all social events and meals out, and new and expensive motor vehicles for each of them. This was, as I have said, the "relationship cost" which the deceased in my view was happy to incur.

103. The degree of financial interdependence as opposed to financial dependence may of course be relevant when a court comes to consider whether and what provision ought to be made from the estate of the deceased person on an application by his or her cohabitant. I find as a matter of fact that this couple were not financially dependent for the basics of life, but that a degree of financial dependence had come to evolve between them with regard to certain elements of their personal and social spending. The degree of this was such as to suggest a relationship of shared commitment.

The rituals of death as indicative of the role
104. I am conscious of the importance in community of the rituals of death. The deceased was removed from and waked in her home and this was done at her express request. The funeral arrangements were made by the plaintiff and Mr McC and the plaintiff remained during the wake and removal ceremony positioned at the head of her coffin to receive sympathisers. Before the coffin was closed he was given time by the family to be with her alone. At the removal he walked directly behind the hearse and he was in the front row in

the church at the funeral mass itself. He was one of the persons who carried the coffin, and he played this role at the beginning of the walk from the church to the graveyard and at the end, as did her brothers. Other family members carried the coffin in between. I consider that the funeral arrangements acknowledge the degree of commitment between the deceased and the plaintiff and the importance of that relationship in her life. The rituals around death are important in Ireland and are an important way by which a person's relationships are recognised in the community. The funeral arrangements often give rise to difficulty when married couples are divorced or informally separated and when the deceased was cohabiting or remarried. This is because as a society we place particular importance on the ritual, and positioning in the ritual of members of the family of a deceased and of their friends and loved ones.

105. I am also very conscious of the fact that the three brothers of the deceased themselves had a particular approach to the funeral and removal rituals and her closest brother in particular expressed his choice of expressing his grief privately and of avoiding a public display of grief. I do not accept the argument that the fact that the plaintiff carried the coffin at the beginning and at the end of the deceased's last journey from her church was a matter of no great consequence, and this particular ritual is one which is only given to close and intimate friends and family. I accept the evidence of the brothers of the deceased that their way of expressing grief and their family rituals surrounding death were different from those of the plaintiff and some of these rituals were informed by the rituals of the Presbyterian Church of which their mother was a member.

Conclusion on cohabitation
106. It seems to me to be that the various indices of the relationship and the public presentation of that relationship must be taken as a whole and in the context of the social mores and perhaps even of the age of the participants in the relationship, and I do not consider that the fact that the brothers of the deceased were unaware of the intimate element of the relationship to be a determining factor. Their knowledge must be seen in the context of their relationship with their sister, and with their wider family social mores and in particular with the fact that they regarded emotional matters as private.

107. The scheme of the Act envisages the court looking at the seven identified factors in s. 172(2) not as conclusive as to the nature of the relationship but as indicative of that relationship and how it is to be properly characterised. I consider that the test requires the court to determine whether a reasonable person who knew the couple would have regarded them as living together in a committed and intimate relationship, and that the individual and many factors in how they are perceived must be taken into account

108. I conclude having regard to the evidence and to the factors indicating the state of mind of the deceased that I have identified, some of which explain why the fact of cohabitation is so controversial, that the plaintiff was cohabiting with the deceased in an intimate and committed relationship at the date of her death and had been so cohabiting in excess of five years prior to her death. I consider that the cohabitation commenced when the mother of the deceased died in 2004, and that the couple would have to come to cohabitant before then were it not for the care needs of the mother of the plaintiff.

Provision from the estate
109. The Act provides for application by a qualified cohabitant for provision out of the net estate of a deceased cohabitant. I will turn below to the meaning of net estate for the purposes of the section. The court has a discretion as to the provision it may make on an application by a qualified cohabitant but the provisions of s. 194(3) and (4) temper this discretion.

110. Section 194 (4) of the Act sets out a number of factors to which the court shall have regard as follows:-

> *"In considering whether to make an order under this section, the court shall have regard to all the circumstances of the case, including—*
>
> *(a) an order made under section 173 (6), 174 , 175 or 187 in favour of the applicant,*
>
> *(b) a devise or bequest made by the deceased in favour of the applicant,*
>
> *(c) the interests of the beneficiaries of the estate, and*
>
> *(d) the factors set out in section 173 (3)."*

111. Section 194(3) gives the court power to make such provision as it considers appropriate but the court is mandated to have regard to the rights of any other person having an interest in the matter. I consider that there is no other person to whom the deceased had a financial commitment or in respect of whom she might have had an obligation to provide. The court is at large as to what provision it may make save that it may make what is described as *"proper provision"* if it is satisfied that provision was not made for the plaintiff in the lifetime of the deceased, and it must in the light of the statutory factors make provision only if it is just and equitable to do so. The court is entitled to have regard to the conduct of the plaintiff if it would in the circumstances be unjust to disregard that conduct in refusing to make relief but no question arises with regard to any conduct of the plaintiff that might disentitle him to relief in this case.

112. The court is mandated to have regard to the factors set out in s. 173(3) of the Act, and certain of these factors are relevant and I turn now to consider these. Some overlap is found between the facts that give rise to a finding of cohabitation, and those to which regard it to be had in making provision, and I have already made findings in regard to some of them. I deal now with those factors I consider relevant.

The nature of the relationship
113. Section 173(3)(e) requires regard to be had to the duration of the relationship, the basis in which the couple entered into the relationship and the degree of commitment of the parties to one another. This relationship is one of 20 years duration or thereabouts, and the relationship was entered into on the basis that the couple had no particular wish or need to marry, both of them not wishing to have children, and in the case of the deceased she being no longer of child bearing age when the relationship commenced. I consider that the evidence points to the fact that the relationship was a happy one, and I take particular note of the fact said to have been made to the plaintiff by the deceased during her lifetime, which was repeated by one of her friends, that being married would have added nothing to the relationship, and that the couple was perfectly happy without marriage. I consider that the couple might have married in the last days of the lifetime of the deceased had they been able to arrange a marriage, and had they understood that the law enabled them to apply to dispense with the three months notice requirement imposed by s. 46(1)(a) of the Civil Registration Act, 2004. I consider that their reluctance to marry however, was to some extent still present even in the last days of the life of the deceased, and there were a number of reasons for which I consider bear comment.

114. The plaintiff regarded the significant financial disparity between himself and the deceased as somewhat of a burden, although no

difficulty arose in the relationship from the fact that the deceased that paid for most of their social events and holidays. The plaintiff was conscious of public perception, and conscious not to in any sense appear to be, as I accept he was not, a "gold digger". He is a modest man and money did not interest him. I am satisfied that he may not have brought this application at all had it not been for the fact that he found himself in his mid-60's without any home and where he did not have the resources to house himself. I note too in this context that the first proceedings issued were those brought by the estate for an injunction requiring him to deliver up possession of K House and the lands nearby and of the animals of the deceased.

115. I have already made findings as to the nature of this relationship and noted the fact that the couple chose not to marry, perhaps because the deceased may have been somewhat reluctant to upset her family members and that she perceived that a marriage to the plaintiff might have that effect, as all of her family were of the view that the purpose of marriage was the continuation of the family line, and that a woman who was post child bearing age had no reason to marry. This is not an unknown consideration in families, particularly in families with a history of landownership or wealth, and while the family of the deceased would not have been called wealthy they were certainly financially comfortable and were such even at a time when many people in Ireland had relatively few financial resources. They were all well educated and had university or post school qualifications and degrees, and they would have received their education at a time when there was little or no State aid in the form of grants and where their education was paid for by their family. I consider that this couple entered into this relationship on the basis that it was a committed and an intimate one, but one in which they had no particular desire or wish to cement by means of a marriage, and that the question of marriage in the last days of the life of the deceased came to have an emotional importance to her and to offer her comfort in her final days. I consider that had her final illness not been terminal or had she not died as quickly as she did that arrangements may have been made for a marriage, but I do not consider that marriage was in any sense a key factor in the relationship, or a key wish of either the plaintiff or the deceased.

Contribution to welfare and resources
116. The court is also required under s. 173(3)(f) to have regard to the contributions made by the cohabitants to the welfare of either of them and to any contribution made by either of them to the earning capacity or property and financial resources of the other. I consider that the plaintiff made a considerable contribution to the mental and emotional welfare of the deceased in the years of her illness, and in particular in the last few months of her illness when he was her constant companion and assisted her in the difficult chemotherapy treatments that she received. I however consider that the home activities of the deceased included her hobby of ponies and that the plaintiff played a considerable part in advancing and encouraging that activity, and indeed his part resulted in her achieving many awards and prizes at competitions. This it seems to me is was a factor in the enjoyment she had in her life and such an element is in my view an element of her welfare which I ought to have regard.

117. I accept that the plaintiff and the deceased each made contributions to the welfare and life of the other, and I consider that the term "welfare" in s. 173(3)(f) of the Act includes welfare in the broad sense and not merely the physical welfare of a person.

118. The other part of ss. (f) requires the court to have regard to any contribution that the cohabitants made to the income earning capacity, property or financial resources of the other. I consider that the plaintiff made little or no contribution to the income or earning capacity or other property of financial resources of the deceased, but equally I do not consider that the couple's relationship was based on such financial contributions, and this test is often more useful when a couple have children, or when one of them is ill and in need of physical care. Indeed apart from her relatively small income her assets were derived from her family inheritance. The import of s. 173(3)(f) is to allow the court on an application under the Act of 2010 to have regard to the source of the financial resources of each party to a cohabiting relationship. Thus I consider that the fact that both the plaintiff and the deceased each had the benefit of substantial inheritance, and that the deceased derived the bulk of her income from those assets is a factor that must be taken into account in making financial provision. Inherited property, and property and financial resources acquired before the relationship commenced and independently of any direct or indirect contribution form the other, must in my view be treated as somewhat different from property acquired in the course of a cohabiting relationship, whether that property was acquired in joint names or in the sole name of either of the parties to that relationship. This is not in my view to say that inherited property cannot be called into account, but that it does not readily fall to be considered as joint property, and if other financial resources are sufficient to enable provision to be made then some caution should be exercised in bringing the entire of an inherited estate into account. I deal further with this question below.

Contributions in looking after the home
119. The court is also obliged under 173(3)(g) to have regard to the contribution either of them made in looking after the home, and traditionally this particular provision would have benefited a cohabiting woman who did not work outside the home but who provided services such as cooking and home making in a general sense. The deceased had the benefit of a full time housekeeper nearly all of her adult life, and it would be fair to say that neither the plaintiff nor the deceased had any interest in, or engaged in, any particular degree of activity in the form of cooking etc. They breakfasted together and each of them bought the basic necessary groceries that would have been demanded, and the deceased had an active interest in gardening.

Conduct
120. Section 173(3)(j) mandates the court to have regard to the conduct of each of the cohabitants if in the opinion of the court it would be unjust to disregard it. The conduct thus referred to does not have to be poor conduct or bad behaviour towards the other. The conduct can equally be conduct that has had a beneficial effect on the other party to the relationship, and overlaps to a large extent with the provisions in s. 173(3)(f), and, as with my findings with regard to that part of the test, I consider that the dedication that the plaintiff showed to the deceased in her last illness ought not to be disregarded by me, and his care of the deceased, taking her to hospital visits, looking after the home when she was ill, all combine to positively supports the application of the plaintiff.

Financial circumstances
121. Section 173(3)(a) requires consideration be given to "the financial circumstances, needs and obligations of each qualified cohabitant existing as at the date of the application or which are likely to arise in the future".

122. The deceased died leaving the substantial property at K House and the balance of her assets, leaving aside the small liquid assets and personal effects, comprised of investment properties, and a small farm of land, acquired by her with the benefit of inherited resources. The plaintiff himself has an inherited farm albeit that it produces a small income. He has no pension and no home. The financial factors are more fully considered at the end of this judgment.

Statutory requirement to have regard to the interests of others
123. The deceased did not leave a surviving spouse or a civil partner or a former spouse or former civil partner, and accordingly Section 194(4)(c) mandates that I must have regard to the interests of the beneficiaries following her death intestate, The persons entitled to inherit on the death intestate of the deceased are her three brothers who will share equally in her estate. No guidance is given in the legislation as to what factors the court should take into account in displacing the rights of the beneficiaries on a death

whether testate or intestate of a deceased, but having regard to the fact that the scheme of the legislation is to make financial provision for a qualified cohabitant following the death of the other, it seems to me that the interests to which I primarily must have regard are the financial interests, and *ipso facto* the financial demands or needs of those beneficiaries. I have heard nothing in the course of evidence before me that would suggest that the three brothers of the deceased are in any financial difficulty, and indeed they too inherited an amount equivalent to the amount inherited by the deceased from their late mother and each of them is in professional employment. Thus it seems I must engage to some extent in weighing the financial demands or needs of the plaintiff against those of the other persons who would benefit in the estate of the deceased, and while it is the case that provision may be made under s. 194 even when financial dependence is not shown, the degree of financial needs must inform the extent of provision that the court will make if any, and the extent to which the court will displace an interest of a beneficiary.

Proper provision

124. A qualified cohabitant may make application to the court for provision under the net estate of a deceased cohabitant. The court may make such provision if it is satisfied that proper provision was not made for the applicant during the lifetime of the deceased. I consider that the direction to the court to have regard to the factors set out in s.173 (3) imports a degree of objectivity, thus the motivation of a deceased in not making provision in his or her lifetime for a cohabitant is not of itself determinative of the question, and the court must look to the provision actually made *inter vivos* and test that against a provision that the court would consider to be appropriate in the circumstances of a surviving cohabitant.

125. I also accept the argument by counsel for the defendant that as this legislation is part of the nexus of family and succession legislation and that some assistance can be derived from the jurisprudence of the courts under s. 117 of the Succession Act 1965. In particular she asked that I note the judgment of Kearns J. in *X.C. v. R.T. (Succession: Proper provision)* [2003] 2 IR 250 to the effect that an adult child with sufficient financial resources is not likely to obtain an order that provision be made out of the estate under s. 117 and this approach has found favour in the approach of the courts. As with a claim under s.194 there is no automatic right to a share but successful claims may be made by adult children under s.117 even when they are financially independent, but the courts have pointed to a *"relatively high onus"* to discharge, see *Re IAC* [1990] 2 IR 143.

126. I reject the proposition advanced by counsel for the plaintiff that section 117 is not useful as an analogy merely on account of the fact that proceedings under that section may be brought only on the death testate of a parent, as the law provides for an automatic inheritance by a child on the death intestate of a parent. There is no such automatic inheritance in the case of a cohabitant, and this can explain why s. 194 does not depend on whether a deceased died testate or intestate.

127. Proceedings under s. 117 are founded on a claim that a parent has failed in a moral duty to a child to make proper provisions for that child and section 194 uses also the language of "proper provision". The power of the court to make provision under s.194 is however constrained by statute by the requirement to have regard to the factors identified in s. 173(3), and the right to make a claim is not, as with a child, founded on the mere fact of the relationship, and regard has to be had to the indices of the relationship and all of the circumstances. This imports an obligation on the court to engage with a consideration of the duration and nature of the relationship and the mutual contribution to welfare made in the cohabiting relationship.

128. I reject the argument made by counsel for the plaintiff that there is no person who can be identified in the circumstances of this case to whose interests regard is to be had, and that the scheme of the legislation intended consideration to be given to the interests of spouses or children of a deceased only, and not siblings. I reject this argument because the court is mandated under s. 194 (4)(c) to have regard to the interests of the beneficiaries in the estate, and the siblings of the deceased are such. There is no limiting factor that requires that the beneficiaries be spouses or children or be financially dependent. The mere fact that they are entitled to succeed on intestacy makes their rights ones to which I must have regard.

129. I consider that the provisions of s. 194 import a different test from that found in s. 117 of the Act of 1965 but the myriad of factors relevant to a claim under s. 117, as elucidated by Kearns J. in *X.C. v. R.T. (Succession: Proper provision).*, shows the extent to which the courts have strained to adopt general guidelines: see Re IAC. I am of the view however that there is no *"relatively high onus"* on a claimant under s. 194, as has been identified in the jurisprudence under s. 117, where an adult child is concerned, and of course as the Act of 2010 can confer benefits and obligations on adults only it can be expected that in many cases these adults can have a degree of separate financial resources..

130. Equally, too it seems to me that I must have regard to the fact that under Irish law marriage enjoys a constitutionally protected status, and also that the legislation did not choose to make automatic provision for a qualified cohabitant arising on the death testate or intestate of the other, as is found in the Act of 1965.

131. Had the plaintiff and the deceased been married he would have inherited the entire of her estate on a death intestate, and had she died testate he would have taken by way of legal right share one half of the estate, the deceased not having any children. The legislation makes it clear that the maximum that the court may award by way of financial provision under s. 194 shall not by virtue of s. 194 (7) exceed any share that the applicant might obtain in the estate of the deceased qualified cohabitant had they been married. In many cases that particular provision would guide the making of provision by the court and the maximum would be set by the fact that the deceased had children that would inherit on a death intestate or testate. For that reason it seems to me that there being no children, on the death intestate of the deceased the exercise I must conduct is to balance the interest of the siblings of the deceased who benefit on her death intestate with the factors that suggest that provision ought to be made for the applicant.

132. There might be cases where that approach would mandate equality between the persons succeeding such that a qualified cohabitant might be declared to be entitled to a provision equal to that of other beneficiaries, but I do not believe it is appropriate to consider that provision may be made by virtue of any rule of thumb. Provision must objectively speaking be proper provision in all of the circumstances and the legislation does not lend itself easily to the adopting of a rule of thumb of this kind. I consider that a similar approach is shown in the jurisprudence on section 117 of the Act of 1965.

133. Counsel for the defendant also makes the point that were the plaintiff to be seeking financial orders on a divorce that the case law would suggest that capital provision in the form of approximately one third of the estate would be the most apposite, and that this may be gleaned from the judgment of the Supreme Court in *T. v. T* [2002] 3 I.R. 334 where a lump sum provision of approximately that percentage was directed by the Court. The making of provision on divorce or separation does not depend on the application of a formula nor is the court guided by pre-determined percentages. The one-third provision made in the case of *T v. T* was in the context of an ample resources case, and what was sought was to achieve a class of clean break between the couple.

134. I consider that not much assistance can be gleaned from the jurisprudence of the courts dealing with divorce and judicial separation under the Family Law Act 1995 or the Family Law (Divorce) Act 1996. This is because the decline in existing living standards which will inevitably result from a divorce or judicial separation is not a factor at play in the case of a claim following the

death of a cohabitant and unlike, for example in the case of *J.V. v. R.H.* [1996] 3 I.R. 257 where Barr J. noted the difficulty of the continuation of existing living standards in the context of a distribution or division of assets, no such is required in the case where one party to a cohabiting relationship is deceased.

Is the fact that the deceased died intestate a consideration?
135. I consider that the deceased had sufficient knowledge of legal matters, and sufficient access to local or other solicitors to have made a will, and that accordingly her death intestate did not result from inadvertence. Furthermore, and although that I accept that she was not wholly convinced that her illness was terminal, or at least not immediately so, I consider that she knew by 2013 or thereabouts that the secondary cancer which had been diagnosed was likely to be fatal. I consider that she must have known at that stage that were clear provisions to be made for the plaintiff that this ought to be done by her will.

136. In that regard I note that the document which contains either the plaintiff's wishes and/or draft instructions for her will made on the 1st November, 2013 might have been made in the context of her perceived need to consider the making of clear provision for the plaintiff. I note that in that document she expressed a wish that K House would pass to her brother W, that the premises at 1Cresent and 8 the Fairways, both of which were rented, would pass to the plaintiff whom she described as "my best friend", and that the 14 acres of land be sold and distribution of €10,000 each be made to her three brothers, her six nieces and the plaintiff, and the balance after this payment of €130,000 to be paid to the plaintiff. She also expressed a wish that her monies in AIB would pass to the plaintiff and her shareholding to her brother D. She expressed a wish that the plaintiff would find homes for her animals, and I am confident that she expected him to do so having regard to their mutual love for the animals they kept.

137. I consider that the circumstances point to the deceased having made a choice not to make a will, but I also consider that this document must someway inform my thinking. This is because immediately before she died the deceased directed the plaintiff to where this document would be found, and it may be that she hoped that her estate would be distributed in accordance with its contents, and that she intended some weight to be given to it in the distribution of her estate.

138. I consider that her choice to die intestate however was a deliberate one and must be respected, and this choice may arise from the same individual factors that lead her not to profess her wish to marry the plaintiff until the end of her life. Her desire for privacy and to live the different aspects of her life and to enjoy the different relationships in her life in separate spheres were the factors that influenced her

139. I accept the argument made by Counsel for the defendant that a choice to die intestate is not necessarily accidental or inadvertent, and that to choose to die intestate must be regarded as one way by which a person chooses to dispose of his or her property on death. I find as a matter of fact that the deceased did understand that the plaintiff would not automatically succeed to her estate on her death intestate, and I note in particular that she did give consideration to the making of a will, and chose not to do so.

140. Accordingly I regard it as proper to make provision for the plaintiff not on the assumption that he and the deceased might have married had circumstances been different, and that he should be regarded as her spouse such that the entire estate should pass to him. I must respect the choice of the deceased to die intestate and unmarried, and this points me to the conclusion that provision may be made for him making provision form part of the estate. I turn now for that purpose to consider the value of the estate in regard to which there was some degree of contention.

Valuation of estate
141. I have the benefit of the Inland Revenue affidavit prepared for the purposes of probate on the 25th November, 2014 from which it appears that the estate had a net value of €1,410,901. The bulk of the estate consists of real property, and available liquid assets comprised no more than €1,300 in round figures. A debt claimed by the estate from the plaintiff in the sum of €10,000 was removed by agreement and it is acknowledged that that money was gifted by the deceased to the plaintiff. The liabilities of the estate are stated to be €17,918 comprising funeral expenses and small trade creditors and utility bills.

142. I heard valuation evidence from the plaintiff and from the estate. The real property owned by the deceased at the date of her death is as follows:

> (i) The house and grounds at K House, described as being refurbished to a very high standard and being situate on three acres of cultivated gardens, was valued by the plaintiff at €550,000, and by the defendant at €495,000. The valuation tendered by the defendant was the valuation at the date of death of the deceased, 7th August, 2014 and the valuation given by the valuer called to give evidence on behalf of the plaintiff was the valuation at the date she visited the premises, 5th February, 2015. The difference may have arisen by virtue of some uplift in residential property prices between the two valuation dates, but the difference does not seem to me to be of any great significance. I am prepared to take a value midway between the valuation given on behalf of the plaintiff and that given on behalf of the estate. While splitting the difference between valuations is not always an appropriate way to deal with differences in valuation, that way of dealing with the conflict of valuation evidence is suitable for my purposes having regard to the view that I take, which I explain below, that it is appropriate to distribute assets to the plaintiff *in specie*, the actual market value of the properties is no more than a factor and not a determining factor in my judgment.
>
> (ii) A residential premises at 8 The Fairways, a detached premises in the local market town, valued at €300,000 by the defendant and €320,000 by the plaintiff held subject to a letting agreement made on the 6th April, 2011, the precise term of which is unclear to me, at a monthly rent of €1100. I take the mid value of €310,000
>
> (iii) A residential premises at 1 The Crescent also in the same town valued at €350,000 by the defendant and €345,000 by the plaintiff, held subject to a 12 month letting made on the 10th October, 2013 and for month to month thereafter at the rent of €1200 per month. I take a value of €350,000, as a round figure.
>
> (iv) The contents of one of the rental premises of €26,320, was prepared by the auctioneer who gave evidence on behalf of the plaintiff from "information supplied" to her and without seeing these contents.
>
> (v) Lands comprising 14 acres or thereabouts situate some three miles from K House. The estate valued this property at €140,000, and the plaintiff at €310,000. The land is currently zoned as A2 agriculture, it has limited if not poor access, and the main gas line runs through the premises. While the lands have good road frontage, it is the access and not the road frontage, and the possibility of obtaining an exit onto the road that would give it value outside its agricultural value. I accept the evidence of the defendant's expert that the absence of access, or the likelihood of obtaining access onto the main road and road frontage is a reliable indicator for valuation, and I also accept his evidence that it is unlikely that

planning would be obtained for access directly onto the busy national road. The valuation evidence on behalf of the plaintiff with regard to the value of this land placed too much emphasis on road frontage and not sufficient consideration was given to the improbability that vehicular access would be permitted off the land onto the very busy national road which adjoins it. I do not, however, accept the valuation of the estate of €10,000 per acre and I value this land at €12,000 per acre giving it a value of €168,000.

143. I value the estate then as follows:-

1) 14 acres of land - €168,000

2) Premises at K House - €525,000

3) Premises at 8 The Fairways - €310,000

4) Premises at 1 The Crescent - €350,000

This gives a total valuation of the real property of €1.353 million. Adding another €53,000 for the house contents, (the figure I take from the Inland Revenue affidavit and which I understand to include all house contents of all three properties at €25,000), a motor vehicle at €10,000, jewellery at €5,000, cash in hand of €13,000 gives a total value of €1.410 million.

Valuation of the property of the plaintiff

144. A significant dispute arose between the valuers as to the value of the 112 acres of land in the ownership of the plaintiff zoned A2 Greenbelt in the current county development plan, of which 100 acres are of good agricultural quality. The valuation evidence of the plaintiff is that these good lands are valued at €8,000 per acre and the remaining poor quality lands have a value of only €200 per acre. She took that view on the grounds that she considered those 12 acres to be land locked but I do not accept her evidence, and I do not regard the correct approach is to treat these lands as separate from the entire land holding of 112 acres, of which they are an integral part. No sensible vendor would sell these lands apart from the other 100 acres of which they are clearly farmed as one unit. I accept however that some of the plaintiff's lands do need to be reclaimed although they can still be grazed. No evidence was adduced as to the cost of reclamation works. I also note that the plaintiff's valuer did not value the farm sheds on the lands, and I am of the view that these are an integral part of the farming enterprise carried on there, and in particular I note the evidence from the valuer who was called to give evidence for the defendant that the yard and outhouses includes a shed and lean-to premises and five box stables with open yard front very suitable for horse schooling. There is also a newly constructed farm shed on the property. All the buildings were described as being in excellent condition. The estate values the land holding of the plaintiff at €1,620,000, comprising 100 acres at €12 per acre and valuing the 12 acres at €10,000 per acre and the outhouses at €300,000 in total. The plaintiff gives a total value of €80,000 for the lands and chattels at €20,000.

145. I do not accept that the outhouses and the yard have a value of €300,000 but they must be valued in any attempt to value the entire land take. I accept that they have a value of €150,000, and that the 12 acres of poor land have a value of €8,000 per acre. I accept the valuation of €12,000 per acre as the proper valuation of the 100 acres of good land in this plot. Accordingly I value the plaintiff's land and buildings at €1,446,000. I pause to note that the defendant's valuer values the good lands of the plaintiff at €12,000 an acre and he did not adequately explain how he had a similar value €12,000 per acre is not appropriate in respect of the 14 acres in the title of the deceased.

146. Valuations were also given of the farm machinery and animals of the plaintiff but as these are his stock in trade and income from the animals and he needs the machinery for the purposes of generating that income, I do not consider that they are readily disposable by him without the loss of all of his income. The valuation given by the defendant's valuer of these is €55,000 and this figure is agreed. The animals include yearling bullocks, and a number of sheep and horses. I do not consider the value of the animals to be relevant to my determination as this is a milking farm and their number value will accordingly vary.

Net Estate

147. The legislation provides that provision may be made for a qualified cohabitant out of the net estate of the deceased, and there is express reference to the net estate in s. 194(1) which in turn is defined in s. 194 (11) as follows:-

"For the purposes of this section, "net estate ", with respect to the estate of a person, means the estate that remains after provision for the satisfaction of—

(a) other liabilities of the estate having priority over the rights referred to in paragraphs (b) and (c),

(b) any rights, under the Succession Act 1965 , of any surviving spouse of the person, and

(c) any rights, under the Succession Act 1965 , of any surviving civil partner of the person."

148. I do not consider that the legislation intended that a court would consider the net estate to be the estate after all real property has been realised, and that the court should notionally deduct the likely costs of sale and/or any tax that might reduce the amount available for distribution. The provisions of the Act are clear and define the net estate is the estate, whether it consists of money or real property, after provision had been made for liabilities of the estate and rights under the Succession Act 1965 of any surviving spouse or civil partner of the deceased.

149. For that reason it seems to me that in making provision for the deceased I am not obliged to have regard to the considerations expressed in the Supreme Court judgment of *T. v. T* namely that in making provision the court should deduct the costs of sale or any capital gains tax that might accrue. I consider that the court in looking at the value of an estate for the purposes of making provision under the Act is constrained by statutory provisions which are clear, and that the court is therefore free to direct provision to be made by the distribution *in specie* of certain property, or should it be desirable or appropriate for the sale of some or all of the assets of the deceased and the payment of money.

150. I consider that the difference between the approaches taken by the Supreme Court in *T v. T* and the approach mandated by s. 194 (11) can be explained by virtue of the fact that on a divorce or judicial separation and especially when the court intends to make provision on a clean break basis, and when that provision is to be made not by the distribution of assets *in specie*, that the costs and taxation liabilities arising from the disposal of assets must be bourn in mind in order for the court to understand the true value of the property available for distribution.

151. Further, and while there may be cases where the realisation of the assets in an estate is required for the purpose of distribution following a determination by the court of what is required by way of provision for a cohabitant, the property that is available for distribution in this case in order to make provision for the plaintiff is such that it may not be necessary or desirable that the properties be sold. In particular I am satisfied that provision can be made, as I will explain below, by the distribution *in specie* to the plaintiff of property and that in those circumstances the costs of sale are not required by me to be taken into account in ascertaining the value property out of which provision can be made.

Conclusion on provision
152. Having concluded that the plaintiff is a qualified cohabitant I consider that provision ought properly be made for him out of the estate by an order that there be vested in him the two residential investment premises at 1 the Fairways and 8 the Crescent, together with their contents. I do this bearing in mind the following factors:

153. An application under s. 194 for provision from the estate of the deceased cohabitant does not require that the applicant can show financial dependency, and such dependency must be shown in the case of an application for financial redress in respect of cohabitant who is still alive. In that context I accept that while s. 172(2) requires the court to look to the degree of financial dependence for the purpose of ascertaining whether a couple are cohabiting, such financial dependence is not essential in the case of a claim for provision from an estate. I consider that this means that in a case where relatively little financial dependence or interdependence can be shown, the court may still make provision for a surviving partner provided the court is satisfied that the lack of financial interdependence or dependence did not signify a lack of commitment, and in the light of the provisions of section 173(3).

154. In that regard I take account of the following individual factors, some of which I have dealt with above but by way of summary outlined by me below:-

a) The duration of the relationship: I consider that the deceased and the plaintiff were in a committed and intimate relationship for 20 years or thereabouts and that they were cohabiting or *de facto* cohabiting for almost the entire of that period, since the mother of the deceased died.

b) The plaintiff and the deceased enjoyed many mutual activities, he was closely involved in her day to day life, and in particular in those past-times and activities which gave her most pleasure, primarily the training and showing of ponies. I consider that the deceased and the plaintiff each made substantial and important contributions to the welfare of the other during the currency of their relationship. Their relationship was to an outside observer akin to a marriage, but it would not be appropriate for me to award him the entire estate for the reasons identified, including the fact that they chose not to marry, that they kept some of their finances separate, that the bulk of the estate consists of assets inherited by the deceased, and that the plaintiff has income and real property of his own.

c) I do consider that a degree of financial dependence arose by virtue of the significant discrepancy between the plaintiff's income and financial resources and those of the deceased. The financial resources of the plaintiff do not produce any income of note, and his gross income on an annual basis is stated to be €45,000, which after expenses and tax gives him a very small income of some €15,000 per annum. I consider that the degree of companionship and commitment that the plaintiff and the deceased had to one another lead to their enjoyment of a very full social life, and that at this point after her death to deprive the plaintiff not merely of the company of his long term cohabitant, but also of some of those activities which gave him pleasure, such as membership of a sports club, membership of a golf club, meals out and holidays, while they might not be as enjoyable for him without her company, are still activities from which he can be expected to continue to derive pleasure, and which it would now in my view be unreasonable to expect him to have to forego merely for absence of resources. I consider that the income of the plaintiff is not sufficient for his needs.

d) I consider that there are no other persons in respect of whom the deceased had any obligation to provide financially, and accordingly that the interests of the beneficiaries who will succeed on her death intestate may best be achieved by making provision for the plaintiff of less than the entire estate, leaving the balance to her brothers.

e) I consider that the plaintiff was or became dependent upon the deceased for his accommodation needs. I accept that the legislation does not require actual dependence or financial dependence to be shown, but such dependence must be a factor in considering what provision ought to be made for him. I consider provision may be made for his accommodation needs by directing that there be vested in him the premises at 1 The Crescent together with the contents of that property. This house was for a long number of years perhaps jokingly or perhaps with some degree of banter referred to as "D's house", and I expect that he will derive some pleasure in living there and that it is suitable for his needs. I am of the view having heard him in evidence that while he enjoyed living in the larger detached house in a country setting with substantial gardens, I do not consider that the plaintiff would wish to reside there alone. I also consider that that house has particular emotional importance for the other members of the C family and that due respect and consideration can be given to the fact that it was inherited by the deceased from her mother, by not directing that that house be vested in the plaintiff.

f) Provision can be made for the plaintiff out of the estate of the deceased other than by awarding him the entire of her assets, partly because of the value of the estate and because the estate comprises in the main of real property, some of which is income producing. I consider that I may properly respect the interests of the brothers of the deceased by awarding them the balance of the estate and this also takes account of the fact that the assets of the deceased could broadly be speaking be said to be inherited.

g) That the plaintiff himself has an inherited farm, albeit that it produces a small income. I am conscious of his age and the impossibility of him now taking up another form of employment or of turning his own farm to provide more income. I consider that he has long since foregone the possibility of making investments for himself or of being in a position to purchase a house in which he might live, and that this difficulty has arisen because he was persuaded by the deceased to live with her and not to build or buy a home for himself. I consider that it would be unreasonable to suggest that the plaintiff might now sell his farm, and I heard no evidence at all as to how the proceeds of sale might provide him with a secure income into the future, nor that part of those lands could be sold to provide him with capital with which he might purchase a home, and still leave him with an asset capable of producing an income.

h) The deceased undoubtedly intended to make provision for the plaintiff, and the contents of the document of 2013, while it does not have testamentary force or effect, ought not to be ignored. I say this especially in the light of 173(3) and consider that it is just and equitable to have regard to her wishes. The provision that I mandate now follows to a large extent these wishes, and this fact supports my views, but of itself that document provides no more than one of the many factors guiding my discretion.

155. The effect of my determination is to make provision for the plaintiff of approximately 45% of the estate. The percentage arose

more from the value of the separate assets and because I consider it to be possible and proper to make provision by a distribution of real property *in specie*. A greater or less percentage might be appropriate in another case, and I do not regard that the legislation mandates or permits of a rule or even a rule of thumb that directs a particular percentage, or range.

156. The single most important factors in the provision I direct is the need to provide for the accommodation and income needs of the plaintiff. Whilst it could be said that the plaintiff has lands with a value broadly identical to that of the estate, the fact is that these lands do not contain a house in which he might live, and produce a small income. No evidence was adduced to show that the lands were capable of producing a larger income, and a greater discrepancy is present than appears at first glance. I am conscious too of the fact that the legislation enjoins me to have regard to the likely future needs of the plaintiff and that he has made no pension provision for himself, and that it may be too late for him to do so now.