

## Lottery winnings and syndicates

*Who owns lottery winnings? Asks Mark Pawlowski*

It is not uncommon for a number of persons to form a syndicate to subscribe for weekly tickets to the National Lottery. Invariably, there will be no written rules of the syndicate and the members will rarely address their minds to the question of how any winnings (large or small) should be divided, particularly in the event of a member failing to pay the required sum or if the required subscription is paid not by the member himself but by a partner or friend. To whom will the winnings belong in these circumstances?

### **A resulting trust solution**

In *Abrahams v The Trustee of the Property of Anthony Abrahams* [1999] BPIR 637, the claimant paid £1 a week for her own place in a lottery syndicate plus a further £1 for her husband. The syndicate won over £3 million pounds and the claimant's one-fifteenth share amounted to £242, 155.13. The claimant, however, also claimed her husband's share relying on the presumption of a resulting trust on the ground that she had advanced the purchase money (£1) for the share of the stake which gave rise to her husband's winnings. The disputed share, therefore, should be presumed to result to her, in the absence of any contrary evidence or presumption of gift. On behalf of the husband (who was now bankrupt), it was argued that there could be no resulting trust as there was no purchase of any property as a result of her payment of £1. Nothing more had been acquired than a mere hope which was not property.

Lindsay J disagreed. In his view, when money was paid by a member of a lottery syndicate for the purposes of the syndicate, the payer gained a right to have any winnings duly administered in accordance with the syndicate rules. That right would become valueless regarding a losing draw, but acquired great importance should there be a big win. To that extent, the "right" (akin to a chose in action) fell to be characterised as having the description of property. Accordingly, the claimant was entitled to her husband's share of the winnings which did not form part of the assets of his bankruptcy.

Significantly, however, in *Abrahams*, there was no syndicate rule prohibiting the purchase of a lottery ticket by a member's spouse or partner. Undoubtedly, a breach of any such rule would have prohibited the claimant from seeking her husband's share of the winnings.

### **A presumption of gift solution**

Certain relationships will automatically give rise to a presumption of gift, most notably, that between father and child. In *B v B* (1976) 65 DLR (3d) 460, a decision of the British Columbia Supreme Court, it was held that the presumption operated where a father had purchased an Irish Hospitals' Sweepstake ticket, the stub of which was made out in the name of his 12 year old daughter. The horse race was run at Doncaster, England. The ticket drew the horse "Double

Cream” which came in first in the race resulting in prize money in the sum of £50,000. Schultz J stated, at p.466:

“It is settled law that, where the person in whose name a purchase is taken is the child of the man paying the purchase money, there is a presumption that a gift was intended. This presumption of advancement is rebuttable. The onus of rebutting the presumption of gift is upon the [father] in this trial.”

The judge concluded that the presumption had not been displaced and so the prize money belonged to the daughter. Had, however, the daughter been aged over 18 managing her own affairs, the presumption of gift would probably not have applied: see, *Laskar v Laskar* [2008] EWCA Civ 347, *per* Lord Neuberger, who noted that the presumption between father and child was a weak one. Moreover, the presumption would have been displaced had the father been able to adduce sufficient evidence that he had intended to retain ownership of the sweepstake despite placing it in his daughter’s name.

The presumption of advancement also applies as between husband and wife. In *Abrahams*, as we have seen, the deciding factor was that the wife had paid for the ticket. This brought into play the presumption of a resulting trust. But had it been the other way round, so that the husband had bought the ticket in the name of his wife, the law would then have presumed that he had intended a gift to her unless he was able to show a contrary intention.

This legal anomaly, which puts wives in a far better position than husbands to lay claim to lottery winnings if a dispute arises between them, is soon likely to disappear with the bringing into force of s.199 of the Equality Act 2010. The presumption of advancement will be abolished in respect of any act done after the commencement of the section.

### **Drafting a syndicate agreement**

The *Abrahams* case also illustrates the importance for members of lottery syndicates to have proper written rules so as to avoid a win resulting in litigation. A simple set of rules should, at the very least, state the following:

1. *The maximum number of members shall be [20].*
2. *The share of each member is one-twentieth or an equal distribution between the number of members if less than 20.*
3. *Each member may only have one share.*
4. *Each member is required to pay a weekly subscription to the syndicate. A failure to pay the subscription prior to the lottery draw will automatically disqualify the member from participating in any winnings for that week.*
5. *The weekly subscription may only be paid by the member and not by any other person on his or her behalf.*
6. *Where a vacancy occurs in the membership, it will be offered outside the syndicate.*
7. *The syndicate shall appoint an organiser who shall be responsible for collecting the subscriptions, purchasing tickets and entering them in time into the weekly draw.*
8. *Members may retire from the syndicate by giving notice to the syndicate organiser either verbally or in writing, or by the syndicate organiser giving notice of the member’s default in paying the weekly subscription.*

In addition to the foregoing, it should also be made clear that any winnings will be held upon trust for the members of the syndicate in equal (or other) shares and that shares will be paid out promptly by the organiser to those entitled. To avoid any doubt, a list of current members (with full names and addresses) should be attached to the syndicate rules. Some members may wish to avoid any publicity in the event of a big win, so this too should be included in the agreement.

It is important that all members of the syndicate fully understand (and, ideally, sign) the rules before participating in their first draw. To this end, each member should be given a copy of the rules and list of current members. The National Lottery website has a useful Syndicates Pack containing a simple syndicate agreement: <https://www.national-lottery.co.uk/c/files/syndicate-pack.pdf>.

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