

Your Legal Questions

Jenny Brading
Solicitor



Q My Aunt gave me a cheque for £2,500 by way of gift and was most insistent that I took it. Sadly she died just 2 weeks later. I had overlooked the cheque but following my Aunt's death I paid it into my bank account. It has been rejected and I have been told by the person handling my Aunt's estate that I cannot now be paid the money. Can this be true?

A I regret to say that, unfortunately for you, it is true. Once your Aunt's bank had been notified of her death, their authority to pay her cheques ceased and they would therefore return all cheques presented to them after that unpaid. Since the cheque was a gift, and not to pay a valid debt, the gift fails. The situation would have been no different if you had paid the cheque into your account and it had not been cleared before your Aunt's death, but a day or so after because, at the time, her bank were unaware of her death. In such circumstances the gift would not have been completed at the time of your Aunt's death as, technically (however unlikely), she could have stopped the cheque from clearing had she not died. In such circumstances although the money would have been in your account it would be repayable to the Estate.

By contrast if your cheque had been to pay a debt and had not cleared the account until after your Aunt's death it would not have to be repaid. Equally a valid debt, where a cheque has not cleared, or payment not made prior to death, remains payable from the estate.

Your only hope would be to ask if the person or persons entitled to inherit the residue of your Aunt's estate (all that remains after all debts, expenses, tax and legacies have been paid) could be approached to see if they might be persuaded to honour your gift.