



Good Reasons to properly prepare a Will

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Three recent cases

Sullivan: About four months before her death, Doreen Sullivan made a Will which said "I give my friend my framed tapestry picture" but she didn't name the person she referred to as her "friend". She gave the balance of her estate to Brian and Janet Coates. She then gave the whole of her estate to be divided equally between her children.

After her death the Executor and then the Supreme Court needed to work out what she meant by purporting to give away her estate twice, and what was meant by the gift of the tapestry. The Court concluded that the gift of the whole of the estate to the deceased's children was a mistake; it should not have been included in the Will and didn't have any testamentary effect.



The Court found that Mrs Sullivan had given the tapestry to a particular person in a previous Will and concluded that that person was the friend who Mrs Sullivan intended to

benefit. The Court put the errors in the Will down to a misused precedent and a failure to properly read the Will.

Cobcroft: Gavin Cobcroft died in 2005 but issues arising from his Will continue to occupy the Supreme Court. This is because a gift to his wife Denise was not clearly expressed. So the Court has been continuously engaged to find clarity in the confusion created by the Will.



By his will Gavin Cobcroft gave his wife some shares in public companies and added that she could deal with them as she saw fit, on condition that she gave the shares, or the remainder, to his nephews David and Nicholas.

What did this mean? Was it a gift to the wife absolutely? The Court said no because that would mean the rest of the gift would be meaningless. Did the wife have a life's interest in shares or hold them on trust? No to both, because in either case the wife would not be allowed to deal with the shares as she saw fit.

The Court said that the Will created an equitable obligation on the wife to leave whatever shares she had not dealt with during her lifetime to the nephews. When there is confusion with the meaning of a Will the Court will attempt to provide clarity. But the cost and delay to the estate can be very significant and exceed by many hundreds of times the cost of a properly prepared Will.



Gonda: Ivan Gonda died in 2011 leaving an estate worth \$14,500,000.00. His Will made gifts of specific assets to various beneficiaries, including his wife, his son and grandchildren. However, there were also debts and the Will didn't clearly state which gifts bore the burden of the estate's debts or were required to pay the deceased's funeral and testamentary expenses.

Legislation sets out the gifts from which recourse is had to pay debts if the Will does not state which gifts are to be used. However, the first question for the Supreme Court was how certain gifts should be classified pursuant to the legislation.

Having resolved that issue the Court was required to determine the effectiveness of a provision in the Will that stated that the gift to Gonda's son was subject to and conditional upon the son not making a claim upon the estate for any additional entitlements. What was the outcome? The Court held that the lapsing provision was void as it was against public policy of allowing recourse to courts. The clause therefore had no effect.

The Rub

These three decisions aren't isolated instances...far from it. Why is it that the Court is being engaged so frequently to fix badly prepared Wills? A Supreme Court judge recently said this:

"The draft is a fairly amateurish effort with minor internal inconsistencies and other problems, which hopefully will not lead to problems in the future. It has all the features of being drafted by a non-lawyer who has some familiarity with the jargon of willmaker's."

The judge was referring to a not infrequent problem of non-lawyers using legal words but not fully understanding their meaning or the context in which they can be used. This ignorance causes particular difficulties with wills because, when the problem is identified, the willmaker is dead and the problems cannot easily be remedied. Also, the words used in Wills reflect almost 500 years of law which means that some words don't have the same meaning in Wills as they do generally.



The moral, again, is to take great care to properly prepare Wills.



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