



## WHO BENEFITS FROM A GIFT TO AN UNINCORPORATED ASSOCIATION?

Alexander Kipritidis died in July 2013. It was initially thought that he'd died intestate but eventually a will was found made by the deceased in 1995, 18 years before his death. The beneficiary of the whole estate was the Communist Party of Australia. That is an unincorporated association, which means it is not a legal entity, just a group of people. The estate was worth \$1.85 million. So, of course, there were many reasons to argue over it.

One argument was whether the effect of the gift was to give a portion of the estate to every person who was a member of the Communist Party of Australia at the date of the deceased's death. It was held that it was. So the moral for this case is not just to make a will, keep it up to date, store it carefully and tell the executor where it is stored. That's just the beginning. It's important to make sure you really know what the effect of your will is; that is, have it prepared properly.



## MARTIN SHARP'S WILL

The Supreme Court of New South Wales also needed to consider the Will of the famous artist Martin Sharp because its meaning was not clear. Sharp owned a home in Bellevue Hill. It appeared that he wanted that home retained for the purpose of displaying his works of art and educating the public in relation to art and artists. The Court decided those objectives were for the public benefit. The Will could therefore be treated as creating a charitable trust. As a result the executors were justified in allowing the Bellevue Hill home to be used as a public gallery, centre for research and for artists in residence. All these were objects not clearly stated in the Will. The charitable trust had assets worth more than \$11 million. So, on one view, it could well afford the legal costs of having the Court rewrite the Will. But wouldn't it have been preferable for Sharp to have more carefully recorded his intentions so as to avoid the cost and delay involved in that process?



## WHEN IS A REVOCATION NOT A REVOCATION?

The Probate Court sometimes has to make sense of the non-sensible and so it was for the estate of Victor Yee. He died in May 2013 with a typewritten will dated February 2013 and a handwritten Will dated 1 May 2013. Normally a later will, which disposes of all of a person's assets, is treated as revoking an earlier Will even if it doesn't say so. However Victor Yee's later will didn't dispose of all his assets but it did expressly say that it revoked earlier wills. That outcome would produce a partial intestacy. However, to add more complications to the situation, the court considered that the first and second wills could be seen as making sense when read together. In the event, the court found that the statement in the later will that it revoked earlier wills didn't revoke the earlier will. The later will was read as if it was a codicil to the earlier will. All of this was decided about two and a half years after Victor Yee's death, at the cost of very many properly prepared wills.



## DEATH BENEFIT INSURANCE COVER

The Member joined a superannuation fund in 2003. He elected 1 unit of insurance cover in 2011. The Employer sent a contribution remittance to the fund listing a shortened version of the Member's first name and an incorrect address. The date of birth and Tax File Number (TFN) were correct. As a result of the incorrect information, the fund did not match the contributions to an existing member and so it created a provisional membership account with 4 units of default insurance cover. The Member died in 2013. The fund merged the two memberships into the first membership. All the member fees and insurance premiums on the second membership were refunded. An insurance benefit of \$52,000 was paid to the fund by the Insurer, this being 1 unit of cover. The deceased Member's mother complained that 4 units of insurance benefit should have been paid. The Superannuation Complaints Tribunal decided that, had the correct date of birth been loaded onto the fund's administration system, the duplicate account would have been identified earlier. The Tribunal determined that the fund should pay an additional \$208,000, plus interest at the rate applying to the fund's cash investment option.



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