



# The problem with homemade wills

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## Meaningless gifts in home made wills

Laura Booth signed a homemade will. She gave her house and contents to her nephew Dean Brant. She then added "Should he decide to sell my house I request that he give \$50,000.00 to Helen Murray and \$50,000.00 to Justin Arnold". What did this mean? What, for instance, was the executor required to do? (The executor has a legal obligation to ensure that the will-maker's wishes are met.) What was Dean Brant's obligation? What was Helen and Justin's entitlement?



The Supreme Court said that the executor had to transfer the house to Brant, but nothing more as the doubtful clause was considered a condition subsequent – at most the gift vested in Brant but could be divested in part. As to Brant's obligation, the Court's considered the clause was ineffective because its requirement was uncertain. For instance, Brant could divest himself of the house by means other than sale. Also it seemed to require payment on making the decision rather than a sale. And then it used the word "request". This meant that Helen and Justin had no entitlement to ever be paid.

This is another example of a poorly drawn homemade will costing beneficiaries a lot of money.

## Can a letter identify an unnamed beneficiary

David Brown died in September 2015. Five days before his death he signed and properly executed a document from a will kit which purported to be a will. (By the way, this is how the document was described by the judge.) In one clause of the document, David Brown listed a number of sizable specific gifts (including his house, ski



boat, car and truck) but didn't identify a beneficiary for them. Four days later, that is, the day before his death, Brown wrote a letter to a friend in which he stated "As you know already I have left my house and all belongings to you in my will". He made comments about the contents of his workshop, his boat, trailers and car.

These circumstances threw up many issues. The first was the legal effect of the letter. Was it an amendment, alteration, revocation, explanation or confirmation of the will kit document? In other words, did it effect a transfer of any property on Brown's death? The benefit of the letter was that it identified the intended beneficiary of the gifts in the "will".

The court found that the letter didn't have that effect. Apart from reasons based on the wording used, the court observed that Brown plainly understood the necessity for particular formalities to be observed to make a document having testamentary effect because he'd attempted to make a formal will 4 days earlier. It was therefore unlikely that he intended the letter to have testamentary effect. The result meant that there was no obvious beneficiary of the gift in the "will". This created further issues.

The case is therefore another reminder of the care needed to put testamentary affairs in order.

## Making sense of non legal expressions

Cecil Rhodes completed a will kit. He gave "All my worldly goods to my ex-wife who will distribute it to my children as she sees fit". The problem was not the failure to identify the ex-wife by name – thankfully Cecil had only had one. The problem was deciding whether the words meant that the gift was for the ex-wife absolutely or created a testamentary trust.

The Court noted that no special words are required to create a trust, merely words which establish that intention. The Court did not find an absolute gift to the ex-wife because, if that was the testator's intention, reference to the children would be unnecessary. Also, the word "will" bespoke an obligation, rather than a choice. The Court found that a testamentary trust was intended. What do you think was the cost of working out the meaning of this will clause?

## Doubt over appointment of executor

Chetwynd Cox completed a will kit whereby his wife and son, Stephen, were appointed to be the executor. It also included a contingency clause whereby he appointed his son Sean. His wife died before the testator. Stephen applied for probate. The Court had to decide who was entitled to apply for the grant of probate. The Court considered that there were three alternatives: both Sean and Stephen, Stephen alone, or none. The last option arose because the clause could have been void for uncertainty.



In another clause of the will, the testator directed: "my executors" to divide the residue of the estate. The Court considered that the plural clearly stated the intention to appoint more than one executor. This meant that both Stephen and Sean were appointed. Both needed to apply for probate and not just Stephen, or Sean needed to renounce.

It also meant another lot of wasted money because of a poorly prepared will.



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