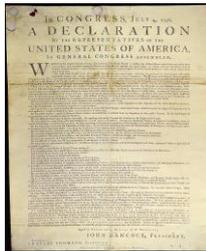




Complications of overseas assets

Do you know about the complications that can arise if you die with assets situated overseas? Let me tell you about Omar Baghdadi. Baghdadi was born in the USA and was a US citizen at death. He lived in Australia from 2002 until his death in 2017. He had become an Australian citizen in 2007. He died intestate with an estate of \$14.6 million. His beneficiaries under NSW law were his parents. They were separated. His mother still lived in the United States. By US law any tax unpaid by Baghdadi could be claimed from a beneficiary, meaning his mother. Baghdadi had never submitted a US tax return.



His potential tax liabilities in the US were first, unpaid income tax. This could be up to \$1.35 million. Second there was potential tax on superannuation benefits of \$5.8 million. Third, US estate tax of 40% could amount to a further \$3.1 million. The mother obtained orders from the NSW

Supreme Court requiring the administrator, her estranged husband, to retain \$7 million to meet the estate tax liabilities.

Now you know why a solicitor will want to tell you about the possible complications with overseas assets!

Another homemade will: more non-existent beneficiaries and meaningless clauses

Judy Walsh made a will which the Supreme Court judge said “appeared to have been prepared without legal advice”. That wasn’t an understatement. She left 25% of her estate to the State Centre for Critical Burns Unit for children’s burns research, Westmead Hospital. No such organisation existed. She left 25% to Dr John Holt Cancer Research Unit. That didn’t exist either. She left 25% to Orbis the flying eye hospital to provide eye surgery for the blind in third world countries. That organisation didn’t exist.

The Court fixed the first problem by substituting the Burns Unit at Children’s Hospital, Westmead. It left it to the Attorney General to fix the second problem by establishing a scheme to serve the general charitable purpose intended by the gift. The court authorised the payment of the third gift to Project Orbis International Inc, a charity operating out of New York. The court also had to solve problems with the remaining gift of 25% to Walsh’s grandchildren.

The will stated that where there were minor grandchildren – as there were – the beneficiaries didn't receive the gift until they obtained the age of 25 years. However there was no trustee appointed to hold the gift until they obtained that age. The court solved that problem by implying a provision appointing the executor as trustees. The will said that the funds "must be made as a diversion of investment (both overseas and Australian)" The court doubted whether the investments could be both offshore and Australian – they'd have to be one or the other. It found the reference to "diversion of investment" meaningless. The trustees were simply required to invest the funds as trustees normally would.



Now Walsh left an estate worth over \$1 million but she appears to have had only a slender interest in it ending up with the beneficiaries she intended. Because, can you imagine the cost involved in the court making sense of Judy Walsh's will?



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Did you think making a binding nomination for superannuation was simple? If so, consider this:

In August 2015 a member of a superannuation fund made a nomination for payment of his death benefit. He wanted the nomination to be binding, so he completed that form. He nominated 25% to his five (5) year daughter, 25% to his two (2) year old son, 30% to his mother, 10% to his father and 10% to his wife.

He died eight (8) months later. The Trustee of the fund decided that the binding nomination wasn't valid. It decided to pay 100% to the wife who was separated from the member. The Superannuation Complaints Tribunal agreed. The reason was that only a dependant or his executor could be nominated to receive the death benefit. The mother and father were not dependant on the member at his death, so they were ineligible nominees. The whole form was invalid. The wife went from receiving 10% if the nomination had been valid to receiving 100%. If only the member



had spoken to my office. There's a simple and relatively inexpensive way that the member could have achieved the result he wanted!