



Gifts in wills: common problems and issues

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Personal effects

Frank Lowe left his “household furniture and furnishings and personal effects” to his wife. His \$3 million dollar estate consisted of bank accounts, money on term deposit, shares in public companies, a house and a motor vehicle. Which of these, if any, were his personal effects?



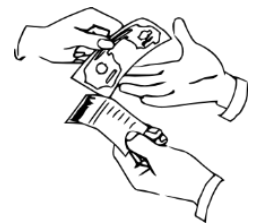
By a separate clause in his Will, Lowe gave an 18 month right of residence to his wife, so clearly "personal effects" did not include his house. However, depending on the meaning of personal effects, his wife could have been left with absolutely nothing or anywhere up to a few million dollars (if the proceeds of bank accounts and the value of shares were included in the phrase).

After examining over a century of legal authority, the Supreme Court judge concluded that personal effects did not include shares in

public companies and money in bank accounts as these were not physical property having a personal connection with Lowe. However, the motor vehicle was included in personal effects. The moral is to be as clear and specific as possible when leaving particular assets in a Will.

Gift to charities: 2 commonly occurring problems

There are two lessons from the Supreme Court decision involving the estate of Lesley Walter Morgan. The first is the old lesson: get the names right. The deceased



left his home to the Salvation Army. That entity doesn't exist. The entity commonly known as the Salvation Army is comprised of various organisations. The one that owns its real estate in this State is the Salvation Army (NSW) Property Trust. The Court said that that was what was meant by reference to the Salvation Army in the Will. So the first problem was solved.

The second problem was that the house was given to the Salvation Army provided it

demolished the house and in its place built a church. The Salvation Army didn't want to demolish the house or build a church. One reason was that the land was unsuitable for a church building. Again, the Court was able to solve the problem but the lesson is: if property is given to a not for profit organisation to be used for a particular purpose, it's essential to make sure the purpose is allowable and that the not for profit organisation will want to carry it out after the deceased's death.



Who was the beneficiary named "John"?

Jim Fleming was married on two occasions. By his first marriage, he had 10 children, one of whom was named "John". His second wife had 5 children, one of whom was Agnes and another John. Jim and his second wife then had 4 further children, one of whom was named Thomas and another Terrence. In Jim Fleming's last will, he gave the residue of his estate to "my daughter Agnes and my sons John and Thomas in equal shares". Now Agnes was his step-daughter, not his daughter. And, by including step children, there were two potential beneficiaries named John. The court heard evidence as to the deceased's meaning. It transpired that the "John" referred to in the will was the son called Terrence, who a friend was in the habit of calling John. Willmakers give beneficiaries their full names

and, if two potential beneficiaries have the same full names, addresses or some other identifier, like a date of birth.



When does a gift fail?

It is common for wills to contain gifts to preferred beneficiaries and state that, if a gift fails, the gift is made to alternate beneficiaries. This provokes the question: When does a gift fail? Some instances are obvious, such as:

- where the beneficiary dies before the willmaker or, unless this timeframe is altered in the will, within 30 days of the willmaker's death, or
- where the beneficiary disclaims the gift, ie says he or she doesn't want it, or
- if there is a gift of a specific asset, where the specific asset doesn't exist at the date of death.

Some instances are probably not so obvious, such as:

- where the gift is to a person who was the willmaker's husband or wife, and the marriage has ended, again unless this effect is altered in the will, or
- where the beneficiary is prevented by law from inheriting, such as where the beneficiary murders the willmaker.

The will may also state other instances where a gift may fail, such as where the preferred beneficiary is bankrupt at the date of the willmaker's death.



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