



MAKING A GIFT TO CHARITY CAN BE HARDER THAN YOU THINK

Mia Polykarpou died in March 2015. Her last will was made in March 2004, that's 11 years earlier. By her will she gave her dogs to friends and two paintings to another friend. She left half the rest of her estate to be used for research into the causes and cures for Multiple Sclerosis. So far so good. However she left the rest of her estate to Oprah Angel Network in Chicago Illinois. The Oprah Angel Network was a not for profit organisation established by a media personality, Oprah Winfrey, in 1998 but dissolved in 2010. That's 5 years before Mia's death.

The gift was therefore made in favour of an organisation which didn't exist. The Will did not contain a gift over provision (so that someone or something else could inherit if the gift failed) or a substitution clause (so that the executor could choose a like-minded charity as the replacement). Accordingly, the Court had to decide whether the gift was valid and, if so, who received the benefit of the gift. If the gift was not valid it fell into intestacy and the deceased's parents inherited the amount of the gift. The Supreme Court determined that the gift created a charitable trust which failed because of the non-existence of the

charitable object but that the Attorney-General could create a scheme to apply the gift for charitable purposes.

Violet Sand's will gave vacant land to the Cancer Council provided it was used "for a research facility or a clinic for the treatment for cancer". The land was impractical for either use. The court decided that there was a failure of the gift but a general charitable intention existed, so the gift could be saved by the application of legal principles that the charitable purpose be achieved as nearly as possible.

The moral remains: prepare Wills properly (including with gift over or substitution provisions) and review wills regularly.



OVERSEAS ASSETS OF BENEFICIARIES

Two recent Supreme Court cases highlight the problems with testamentary gifts of assets situated overseas and gifts to beneficiaries living overseas. In the most recent



case an Australian resident died without a will. He left a widow who lived in a remote village of a middle-eastern country. She inherited his estate but she had no postal or residential address. She was illiterate and she used her thumbnail as her signature. She didn't have a bank account. The administrator of the estate sought a court order as to how it could satisfy its legal obligation to distribute the estate to the widow.

A different problem existed with Peter Vezmar's estate but the Court was also involved. In his Will Vezmar left real estate in Serbia to a named beneficiary. However, that gift was ineffective under Serbian law. The executor of the Will had to obtain Court advice about the appropriate action for it to take in the circumstances.

The message is that the care that is always needed with will-making is increased where there are assets or beneficiaries located overseas.



WE DON'T CUT COOKIES

Sir Anthony Mason is a former Chief Justice of Australia. He recently spoke about the problem with financial planners. He said: "Financial planners don't have a good name. What's the best way to restore that situation? I've always said dedication to the professional ideal".

He added "it's not just good enough to give the client superficial advice. I think that's one of the problems with financial planners. Do they sufficiently investigate the financial situation and requirements of the individual client rather than, as it were, just lay out for the client what might be regarded as a pre-ordained plan that the advisor happens to be familiar with - a "cookie-cutter approach"?"

He could have mentioned undisclosed commission as another problem or giving advice without adequate training or knowledge. Essentially good advice is the opposite of the cookie-cutter approach: it's treating every client as an individual with unique circumstances, issues and concerns. That takes knowledge, patience and experience. That's the Browne Linkenbath way.



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