

76517 Succession Law Notes 2018

Table of Contents

An Introduction to Succession Law	5
Studying Succession in Different Ways.....	5
Succession as a Reflection of Western Society's Theories of Property.....	5
A Case Study of Changes Over Time in Women's Property.....	6
Succession as a Reflection of Society's Theories About the Individual.....	7
Succession as a Reflection of Society's Theories about State, Church and Court.....	8
Rules against Perpetuities.....	10
Succession Law in Australian Colonies.....	10
Towards a Contextual Theory of Succession Law.....	11
Succession in Today's Society.....	11
Topic 1: Death and its aftermath: What is Family?	13
What is Family?	13
How English Law Defined Family for Succession Purposes	13
The Heir-at-Law.....	13
Next of Kin.....	14
Children.....	14
How Australian Law Defines Family for Succession Purposes	17
Topic 2: Why a will? What is Family?	23
The Boundaries	23
Testamentary v Inter Vivos Transactions	23
Contracts involving Wills	26
Contracts to Leave Specific Property.....	26
The Rule Against Delegation of Testamentary Power	29
The Dying Testator	30
The Fact of Death	31
The Body as Property	35
The Common Law.....	35
Monsters, Mummies and Relics.....	35
Dealing with the Body	37
Topic 3: Valid Wills, Taking Instructions for a Will, Introduction to Will Drafting	41
The Testator's Mind	41

Capacity.....	41
Intention.....	43
Knowledge and Approval of a Free and Capable Testator.....	44
The Formal Process.....	46
History and Rationales of the Formalities.....	46
Execution by the Testator.....	46
Powers of Appointment.....	49
Secret and Half-Secret Trusts.....	49
Incorporation by Reference.....	50
The Presumption of Due Execution.....	51
Topic 4: Dispensing with Formalities, Will Drafting	
Issues.....	54
Dispensing with the Formalities.....	54
Privileged Testators.....	54
Dispensing Powers.....	56
Topic 5: The Testator’s State of Mind: Mental Capacity to Make a Will;	
Undue Influence; Fraud; Burden of proof.....	63
The Testator’s Mind.....	63
Capacity.....	63
Intention.....	68
Knowledge and Approval of a Free and Capable Testator.....	69
Issues in Evidence as to the Testator’s Mind.....	71
Topic 6: Republication and Revival; Testator Changes Mind: Revocation	
& Alteration of Wills.....	74
Republication.....	74
Revival.....	75
The Testator’s Changing Mind: Revocation and Alteration of Wills.....	76
Involuntary Revocation - Revocation by Marriage.....	76
Revocation by Divorce or Termination of Marriage.....	77
Voluntary Revocation.....	77
Lost Wills.....	80
Mistake and Conditional Revocation.....	81
Alterations.....	82
Topic 7: Establishing the text: Mistake, Rectification and the Probate	
Court.....	85

The Courts of Probate and the Courts of Construction.....	85
Mistake and Rectification in the Probate Court.....	86
The Common Law Position.....	87
Statutory Rectification Powers.....	88
The Power to Deal with the Unforeseen Circumstances.....	92
Establish its Meaning.....	92
The Problem of the Testator’s Intention.....	92
The General Principles for Admissibility of Evidence.....	92
Statutory Changes Regarding Evidence of Testator’s Intention.....	95
Introduction to Construction.....	96
The ‘Ordinary Meaning’ Rule.....	96
The Dictionary Principle.....	96
Class Closing Rule.....	97
Some Specific Rules of Construction.....	98
Public Policy and Succession.....	101
Maintaining Public Order.....	102
Protecting the Family.....	105
Preservation of Property Rights.....	107
Topic 8: Failure of Gifts and Intestacy.....	111
Where There is No Will - Intestacy.....	111
Background.....	111
Intestate Distribution in Australia Today.....	112
When Gifts Fail: Technical Rules.....	113
The Objects of Gift.....	113
The Subject Matter of Gifts.....	116
Topic 9: Legal Personal Representatives of Estates; Administration of Estates.....	121
The Appointment of Executors.....	121
Who can be an Executor?.....	121
Unsuitable Executors.....	122
How the Executor is Appointed.....	122
The Unwilling Executor.....	123
Death of the Executor.....	124
The Appointment of Administrators.....	124
Intestacy.....	124
Where there is a Will.....	124

The General Discretion.....	124
Special Types of Grants.....	125
The Gap between Death and the Grant.....	126
Doctrine of Relation Back.....	126
Acts of the Representative.....	126
Executor De Son Tort.....	126
Intermeddling.....	126
Preconditions to the Making of Grants.....	127
Revocation of Grants.....	127
Foreign Grants.....	128
Payment of Representatives.....	129
Topic 10: Family Provision or ‘Forced Succession’.....	137
Eligibility to Apply.....	137
Approach to Applications.....	137
The Discretionary Stage.....	139
Applicants.....	139
Claims of Spouses.....	139
Claims of Children.....	140
Claims of Other Applicants.....	141
Former Spouses.....	141
Contracts not to Apply for Family Provisions.....	142
Jurisdictional Reach.....	142
Procedural Matters.....	143
Appendix A: Glossary of Succession Terms.....	144
Appendix B: Will Drafting Skeletons (For Take Home Exam).....	150

Topic 3: Valid Wills, Taking Instructions for a Will, Introduction to Will Drafting

The Testator's Mind

The validity of a will depends upon it being executed according to the formal requirements and on the testator being capable of making a will:

- he/she is old enough and has the *mental capacity* required.
- he/she approves of the terms of the will
- Testator's approval must be freely given → cannot be vitiated by undue influence or fraud

Capacity

In General

The testator must be of sane mind, memory and understanding. This doesn't mean that all people who are diagnosed or seem insane are incapable of making a will, but a sub group of people is regarded as not having the requisite capacity.

Age

- A person over the age of 18 years may make a will, as this is the age of majority: **s5 SA**
- Minors may make wills if they are married (**s5 SA**) or if a court approves of the will (**s16 SA**)

Sound Mind, Memory and Understanding

The testator must be of sound mind. This has several elements: (**Shaw v Crichton [1995]**)

- The awareness that what the testator is engaged in is a testamentary act
- The awareness of what is in the estate and its value
- An appreciation of the various people who might be thought to have a claim on the testator
- Testator had no delusions

Sound mind is presumed until the **contrary** is proved: **Re Hodges: Shorter v Hodges (1988)**

In the past, any unsoundness of mind at all could be sufficient to prevent the testator from having capacity: **Smith v Tebbitt (1867)**

Banks v Goodfellow (1870) LR 5 P&D 549

Facts:

- Banks suffered from namely that he was pursued by spirits and that a man long since dead came to molest him had "affected the general faculties of his mind, and could have no affect upon the will"

Held:

- There was "no sufficient reason why the testator should be held to have lost his

right to make a will, or why a will made under these circumstances should not be upheld”.

- makes it clear that a partial unsoundness of mind, not affecting the person’s general faculties and not operating on the person’s mind in regard to a particular testamentary disposition, will not be sufficient to deprive the person of the power to dispose of their property in a will.

Powell J stated it is essential to the exercise of such a power that a testator:

1. Understands the **significance of making a will**, that is, understand the nature of a Will and its effect;
2. Understands the **nature** and **extent** of the **property** of which he is **disposing**;
3. Be able to **comprehend** and **appreciate** the claims to which he ought to give effect;
4. **Evaluate** and **discriminate** amongst those who have a moral claim on his bounty;
5. With a view to the latter object, that **no disorder of the mind shall poison his affections, pervert his sense of right, or prevent the exercise of the natural faculties** - that no insane delusion shall influence his will in disposing of his property and bring about a disposal of it which, if his mind had been sound, would not have been made.

Statutory Wills for Persons Lacking Capacity

Now possible for a will to be made and approved by a court. There are 2 major ways in which these cases arise:

1. The “**nil capacity**” case: **where the testator has never had capacity or lacked it from an early age.**
2. The “**lost capacity**” case: **where a person has previously had capacity and then lost it.**

The legislation generally requires that it be established:

1. Testator lacked testamentary capacity
2. The will proposed to be made is in some way like what the testator might have intended had he/she had capacity
3. Reasonable for a court to make the order

Reasonably likely to be one that the testator would have made

The following case shows the different approaches required to determining statutory wills for lost capacity and nil capacity cases.

Re Application of Fenwick & Re Charles [2009] NSWSC 530

Facts:

- Fenwick was a 60 year old man who had made a previous will about 10 years before an accident incapacitated him.
- Charles was an 11 year old child who had suffered a permanent brain injury at the age of 4 months
- It was suspected that his parents had injured him, but they maintained their innocence
- He received a sum as victim’s compensation which was being held by the Public Trustee of NSW on trust during his minority, and a statutory will was sought to give his estate to his sister rather than to his parents
- Charles was cared for by a carer instead of his parents, who visited him regularly
- The parents did not object to the proposed statutory will

Issue:

Considered the issue of capacity and it was the first time the court was required to consider the power under the Succession Act which confers a power to the court to authorise the Registrar to make, alter or revoke a will on behalf of a person who lacks testamentary capacity.

Held: (Palmer J)

Distinguished between 3 categories of people on whose behalf an application for a statutory will might be made:

- Adults with prior testamentary capacity ('lost capacity' cases)
- Persons who have never obtained testamentary capacity ('nil capacity' cases)
- Minors with prior testamentary capacity ('preempted capacity' cases)

In a case where a person has made a valid will but, since lost it:

"... the Court may be satisfied as to what the incapacitated person is "reasonably likely" to have done, in the light of what is known of his or her relationships, history, personality and the size of the estate. The previous will may give a very good indication of the incapacitated person's testamentary choices and preferences such as to provide evidence of what it is likely he or she would now do in the changed circumstances."

Intention

In general

It is possible for a testator to make a will that, prima facie, is formally **valid**, but that nevertheless is **invalid** because the testator did not have the required intention or *animus testandi*.

The testator must intend the will to operate as his/her will. The intention is from the solemn form or document. However, in such a case it may be proved that the testator lacked testamentary intention.

So where the document was produced as a *joke*: **Nichols v Nichols (1814)**, the court will not admit it to probate.

If the document was intended to operate *inter vivos*: **The King's Proctor v Daines (1830)**, where the words, '**I do give...**' were held to import an intention to give an *inter vivos* gift or where it was executed by mistake: **Estate of Fanny Deborah Meyer [1908]**, the will will **not** be valid.

What is required is that the deceased intended the particular document to operate on his/her death as his/her final disposition: *Goods of Slinn (1890)*; *Milnes v Foden (1890)*.

Where the document is **not in solemn form the question of intention** is more of an issue. Historically, this question often arose in the context of *privileged wills*, which are wills made by soldiers in certain circumstances.

***Estate of Knibbs* [1962] 2 All ER 829**

Facts:

- Deceased was a sailor (ie qualifies for privileged will)
- Spoke twice to a friend in a bar his intentions for disposing property after death.

Held:

- Court: In order to be a testamentary act, what they say must be more than for conversation or interest to the audience – it must convey an explicit or implicit request to see that his wishes are acted upon.
- A casual conversation in a bar is not a situation to infer a conscious, testamentary act.
- Will not admitted to probate. C&V 250.

Knowledge and Approval of a Free and Capable Testator

Knowledge and Approval

In order to be valid the provisions in a will must be **known** and **approved** of by the testator who is exercising his/her free will.

A prudent will drafter will always ensure that the testator reads or has read over to him/her the will. At one time, the fact that this had been done before the will was executed was regarded as creating a **conclusive presumption that the testator knew and approved of the will**. The only exception is **fraud**.

This view has gradually been crafted so that the presumption has changed from being conclusive to being rebuttable (*Gregson v Taylor* [1917]), and finally no presumption at all (*Re Morris, Lloyd's Bank Ltd v Peake* [1971]).

***Astridge v Pepper* [1970] 1 NSWLR 542**

Facts:

The testator correctly assumed that the document she executed will dispose of her property as she wished, without having read over the draft will.

Held: (Helsham J)

- If the testator knows that the document will deal with her property in a certain way because of the instructions provided to the drafter, **the execution of the will, will be sufficient to establish knowledge and approval of its contents**.
- Court discusses difference between *testamentary capacity and knowledge and approval*.
- Note that certain parts of will can be excluded whilst remainder of will can be admitted to probate.
- CONTRAST this to way in which court deals with effect of finding that a delusion affected a particular clause of a will

Undue Influence and Fraud

There are 2 classical types of case in relation to fraud:

1. Where the testator has been **deceived about his/her relationship** to the beneficiary and has made the disposition to the beneficiary on the basis of that relationship

2. Where the testator has been deceived by a B who has **created a false impression** about a person who would ordinarily have received the benefit

It is recognised that in the law of wills **there is no presumption of undue influence** arising from particular relationships.

- Relationships such as parent and child, husband and wife, solicitor and client, etc..., one expects there to be gifts by will: *Nye v Sewell* (1894)

However, suspicion raised by the circumstances e.g. where the person who drafted the will gains a significant benefit under it or the testator is illiterate and frail (*Tyrrell v Painton* (1894); *Kenny v Wilson* (1911); *Wintle v Nye* (1959))

Undue influence must be distinguished from persuasion. To be undue influence sufficient to invalidate the will there must be **coercion** → influencing the testator to do something they would rather not do.

It must be shown that **the power to overbear the testator's will was used, and that the power affected the will that was made.**

Fraud means **knowledge** and **approval** are **vitiated**: *Trustee for the Salvation Army (NSW) Property Trust v Becker* [2007]. Fraud can take many forms e.g. deceiving the testator as to a beneficiary's true identity or relationship with the testator, deception about other's conduct, forgery etc.

Where fraud is proved, the parts of the will affected by it will be **severed** if the rest will remain intact; otherwise the entire will is refused probate: *Osborne v Smith* (1960)

***Winter v Crichton* (1991) 23 NSWLR 116**

Facts:

Deceased changed will to give large gift to someone right before they died. Family seeking to have it invalidated based on undue influence.

Held: (Powell J)

- It is not sufficient to establish that a person has the power unduly to overbear the will of the testator. It is necessary also to prove that in the particular case that power was exercised and that it was by means of the exercise of that power that the will such as it is has been produced.
- Court found no undue influence was established, and that they could challenge the will on other grounds if they wished.

To SUM up: just because someone could have influenced another, that's not enough.

***Nicholson v Knaggs* [2009] VSC 64**

Facts:

- Betty Dyke died aged 84, having made her last will in 2001.
- She left gifts to charities and the remainder to 3 couples, her neighbours Denise and Tim Knaggs, Robert and Sandra Allen, and Gary and Diane Smith.
- She had made a very similar will in 1999.

- A will made in 1985 left most of her estate to charities and \$20,000 to Denise Knaggs.
- In her later years Dyke became very dependent on her neighbours.
- The wills of 1999 and 2001, and codicil of 2000 were challenged by family members and charities on the basis that **Dyke lacked testamentary capacity, did not know and approve of the contents of the will and was unduly influenced in making them.**

Held:

- It was satisfied that the preparation and execution of the 1999 Will and the March 2000 Codicil were obtained by Knaggs' influence over the testator, such that the testamentary instrument did not embody the testamentary intentions of the deceased.
- Important distinction between undue influence in the probate context and fraud as a ground for the invalidation of a T instrument.
- Undue influence is constituted by **conduct that overbears** the will of the testatrix so that her mind does not accompany her act in making the will.
- To prove undue influence, it must be shown that the testatrix **did not intend and desire the disposition**. It can no longer be said that the exercise represents the free, independent and voluntary will of the Testator.
- Does not need to be intentional, but undue influence refers to the effect rather than the means.
- The judge established that a provision that is found to have occurred because of undue influence can be invalidated, and separated from the rest of the will leaving the rest validated, and intact and operating.

The Formal Process

Formalities of a will: must be in writing, must be signed by testator over 18, intention and knowledge to provide a will, etc.

History and Rationales of the Formalities

- The Statute of Frauds and Perjury (29 Car II c3) of 1677 set up extremely stringent formalities requirements for wills.
 - They were complicated in that they varied according to the type of will and property being passed.
- In 1837 a new Wills Act was passed following the Fourth Report of the English Real Property Commissioners of 1833
 - They found that multiple laws for regulating the execution of wills caused problems and that there was no evidence that they prevented fraud.
- It is the 1837 Wills Act on which **all Australian Acts providing wills formalities are based.**

Appendix A: Glossary of Succession Terms

Ademption	A gift is adeemed, or fails for ademption if the testator no longer owns the property, which is given away in the will, at the time of the testator's death. We must draft wills carefully to avoid ademption.
Administration Cta	A person is appointed as an administrator, because there was no executor, and administers the estate in accordance with the will
Administration of an Estate	The activity of gathering in the assets, paying any liabilities of the deceased or the estate.
Affidavit of Executor	The evidence that the executor relies upon to prove the will, to identify the beneficiaries and provide evidence of the assets and liabilities of the deceased – standed from document (UCPPR Forms NSW – Affidavit of Executor)
Ambulatory	Wills are ambulatory in that the words the testator states when the will is made only have effect at the time of the testator's death.
An Attesting Witness	A competent witness who was present with the testator, and with another attesting witness the testator signs the will, and who signs and attests in the presence of the testator.
Application for Probate	an application made to the Supreme Court of NSW by an executor for an order of probate of the testator's will.
Attestation	The act of making a statement that something is true
Attestation Statement	A statement made on a will by an attesting witness that the testator and the witness complied with s6 of SA

Topic 6: Republication and Revival; Testator Changes Mind: Revocation & Alteration of Wills

Republication

A testator may decide to republish a will **by re-executing it** or making a codicil and executing it as required by the relevant provisions for formal validity of wills (s6 requirements)

The republication operates to confirm an existing will (rather than being revoked)

Intention

Intention to republish is required for valid republication, and re-execution will establish a **rebuttable presumption that the testator did have such an intention**: *Dunn v Dunn* (1866)

Where a codicil is used as the agent of republication it appears that it should **refer to the will in some way in order to establish intention**: *Re Champion; Dudley v Champion* [1893]

Date of Will

There is a general principle that republication operates to **bring the will up to the date of the republication**: *Goonewardene v Goonewardene* [1931]

***Hawkins v Perpetual Trustee Co Ltd* (1960) 103 CLR 135**

Facts:

- The testator made a will in 1952 and 3 codicils to it in 1953.
- By each codicil the testator confirmed the prior testamentary instruments
- Clause 5 of the will gave a series of legacies to the testator's sisters, nephews and nieces.
- At the end of clause 7 there was a clause directing the ultimate residue of the estate amongst the nephews and nieces who had been mentioned previously in the will

Held: (Fullagar J)

- Republication operates to bring the will up to date
- Mr Wood (nephew) did not take any interest in the residue
- However it was found that by the first codicil, Wood should be taken into account in calculating the share of the testator's residuary estate to which he is entitled

Important to Note: republication may **affect the beneficial interests given by the will**.

This may occur because the circumstances surrounding the testator at the time of the republication may be different from the circumstances that surrounded the testator **at the time the will was written**, and therefore different persons or items may appear to be indicated by the terms of the will.

Revival

A will may be revived in the same way as it was re-published → by re-execution or by a codicil duly executed.

It is possible for only part of a will to be revived, in which case the intention must be clearly shown: *Estate of Mardon* [1944].

The provisions for revival in NSW (s15 SA):

15 How a revoked will may be revived

(1) A will or part of a will that has been revoked is revived by re-execution or by execution of a will showing an intention to revive the will or part.

(2) A revival of a will that was partly revoked and later revoked as to the balance only revives that part of the will most recently revoked.

(3) Subsection (2) does not apply if a contrary intention appears in the reviving will.

(4) A will that has been revoked and is later wholly or partly revived is taken to have been executed on the day on which the will is revived.

***Goods of Steele, Goods of May, Goods of Wilson* (1868) LR 1 P&D 575**

Facts:

- These 3 cases were heard together
- Steele (S) made a will in 1866 by a new will revoking the former will.
- In 1868 he made a codicil which he declared to be to his will dated '16 Jan 1867'
- He then confirmed his last will and mentioned a legacy which only existed in the first will

Held:

- **To effectively revive a will, the will or codicil relied on must show an intention to revive the will.**
 - Not by implication, the intention must be express.
- **The revoked Will must be in existence**
 - No precise form is necessary to revive a revoked will, but the revoked will must still be in existence. "... If the codicil refers to a will with the intention of reviving it, and it turns out that such will had been entirely **burnt or destroyed by the testator *animo revocandi***, the codicil cannot affect its revival

***Estate of Brian* [1974] 2 NSWLR 231**

Facts:

- The testator made a will prepared by solicitors, appointing her son Albert executor and trustee
- Later she made another will, also prepared by solicitors, appointing her grandson Brian Douglass executor
- She made a 3rd disposition which was endorsed upon the first will and stated: 'I [EAB] revokes all wills made out by me as from this day [date], the codicil to this will is to take the executor and trusteeship from my grandson and give it to my son

Issue:

This case considered the issue of whether or not extrinsic evidence can be used when ascertaining the intention of the testator to revive a will.

Held:

- Extrinsic evidence of the testatrix's knowledge when preparing the will was admissible on the basis that there was an ambiguity in that the words 'this will' could apply to both wills.

The Testator's Changing Mind: Revocation and Alteration of Wills

Involuntary Revocation - Revocation by Marriage

History of the Rule

- Before the 1837 Wills Act, there was a rule in ecclesiastical and common law that marriage could revoke a will.
- For women, marriage meant a loss of the capacity to make and revoke a will
 - Therefore, a woman's marriage revoked her previous wills.
- For men, the situation was different:
 - Their previous wills were revoked if, after subsequent marriage, they had kids.

Contemplation of Marriage

S18 in the *English Wills Act 1837*: 'every will made by a man or a woman shall be revoked by his or her marriage.' This provision formed the basis of all the Australian provisions.

Basic scheme in Australia states that a will is revoked by a subsequent marriage unless the will was expressed to have been made in contemplation of that marriage.

The provision in NSW except from revocation by marriage a disposition to the person the testator was married to at the time of death: s12(2)(a) SA

Animus Revocandi - an intention to revoke - can be partial and full revocation

12 EFFECT OF MARRIAGE ON A WILL

(2) Despite subsection (1), the following are not revoked by the marriage of the testator:
(a) a disposition to the person to whom the testator is married at the time of his or her death,

Layer v Burns Philp Trustee Co Ltd (1986) 6 NSWLR 60

Facts:

- The testator Sidney Layer married Gail Coombs a few minutes after he had executed a will benefiting "my wife Gail Layer".
- At the time the testator was suffering from leukaemia which was assumed to be terminal. The wife would have benefited more on intestacy.

Held:

- The Court of Appeal held that the words "my wife Gail Layer" were an expression of contemplation of a marriage - in fact of a particular marriage which then took place.
- The conclusion was reached in the light of surrounding circumstances.

Revocation by Divorce or Termination of Marriage

The NSW provision is illustrative and similar to the provisions of NT, Vic, Tas and Qld.

S13 SA: What is the effect of divorce or an annulment on a will?

(1) The [divorce](#) of a testator or [annulment](#) of his or her marriage revokes:

- (a) a beneficial [disposition](#) to the testator's former [spouse](#) made by a [will](#) in existence at the time of the [divorce](#) or [annulment](#), and
- (b) an appointment of the testator's former [spouse](#) as an executor, trustee, advisory trustee or guardian made by the [will](#), and
- (c) a grant made by the [will](#) of a power of appointment exercisable by, or in favour of, the testator's former [spouse](#).

(2) Subsection (1) does not apply if a contrary intention appears in the [will](#).

(3) The [divorce](#) of a testator or the [annulment](#) of his or her marriage does not revoke:

- (a) the appointment of the testator's former [spouse](#) as trustee of [property](#) left by the [will](#) on trust for beneficiaries that include the former [spouse's](#) children, or
- (b) the grant of a power of appointment exercisable by the testator's former [spouse](#) exclusively in favour of the children of whom both the testator and the former [spouse](#) are the parents.

(4) If a [disposition](#), appointment or grant is revoked by this section, the [will](#) takes effect in respect of the revocation as if the testator's former [spouse](#) had died before the testator.

Divorce revokes:

- A beneficial disposition (gift)
 - To the former spouse made in a will in existence at the time of the divorce
 - And an appointment of the spouse as an executor or trustee but divorce does not generally revoke a will

Voluntary Revocation

The General Rule

In order to revoke a will voluntarily it is necessary to have the required act and the required intention. Neither one of these alone will be enough to **effect revocation**.

Writing, Duly Executed, indicating Intention to Revoke

Legislation provides for revocation of a will which is not done by the use of a testamentary instrument, but merely by some writing, duly executed and indicating the required intention to revoke a will.

This is not a will, as it is not dispositive in itself, but its effect is revocatory, thereby preventing the admission of another document to probate.

Revocation in Writing (not in a new will)

Must:

- Be in writing
- Declare an intention to revoke
- Be executed in accordance with the s6 requirements for a valid will

Appendix B: Will Drafting Skeletons/ Templates

NOTE: Do not insert title for the Will!!

Start Here → This is the last will of (insert full name, address, state, postcode, occupation).

Definitions

Sometimes in the facts the tutor will write the nicknames of the beneficiaries. The definitions section should be written to clear up any confusion as to which person is receiving the assets.

Revocation Clause

I revoke all previous former wills. **Note the tutor usually docks marks if you write 'I revoke all previous former wills' as 'testamentary dispositions' is a PRECEDENT. Just write 'I revoke all prior former wills'.**

Appointment of Executors

I appoint as my executor **(insert relation i.e. brother, sister etc, full name)**, provided **(insert name)** survives me and accepts appointment as executor, but otherwise I appoint **(insert relation, insert full name)** to be my executor.

Gifts of Goods and Assets Clause

I give:

- A. To my (insert relation), (full name) (insert good or asset that is being passed on to)

.....