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Topic 1: Intestate Succession

Halbert v Mynar [1981] NSWLR 659

- **Simultaneous Disappearance:** A testator and a potential beneficiary disappeared together, leading to a later presumption of death, which complicated whether conditional beneficiaries could inherit.
- **The Precedent:** The party asserting survivorship bears the onus of proof, as presumptions of the continuance of life do not establish who died first; thus, conditional gifts fail if survival cannot be proven.

Re Estate Jerrard, Deceased [2018] NSWSC 781

- **Indigenous Estate Distribution:** The court had to decide if the intestate estate of an Indigenous deceased person should follow standard statutory rules or be altered to reflect traditional customs.
- **The Precedent:** The Succession Act permits a special distribution if it is just and equitable, meaning community customs and a mother's primary caregiving role can justify deviating from an equal parental split.

Topic 2: Definition and Nature of a Will

Russell v Scott (1936) 55 CLR 440

- **Joint Bank Account:** A deceased person left funds in a joint bank account, raising the question of whether the balance belonged to the estate or passed to the survivor.
- **The Precedent:** A disposition is not testamentary if it creates an immediate, present proprietary interest (a chose in action) during life, meaning the balance passes outside the will by survivorship.

Baird v Baird [1990] 2 WLR 1412

- **Pension Scheme Nomination:** A member nominated a beneficiary to receive death benefits under a pension scheme without executing the document with standard will formalities.
- **The Precedent:** Nominations operating under an existing contractual or trust framework do not dispose of the member's own estate, making them valid non-testamentary arrangements that bypass will formalities.

Public Trustee v Bussell (1993) 30 NSWLR 111

- **Deathbed Share Delivery:** A dying individual handed over share certificates shortly before passing away, questioning if this constituted a valid lifetime gift in contemplation of death.
- **The Precedent:** A valid *donatio mortis causa* requires contemplation of death, conditionality upon death, and delivery of the essential indicia of title, which share certificates satisfy.

Schaefer v Schuhmann [1972] AC 572

- **Contract to Leave Property:** A testator contracted to leave specific assets to a promisee by will, but the court later faced a family provision claim seeking to redistribute those same assets.
- **The Precedent:** A promisee under a testamentary contract acquires equitable and contractual rights that stand ahead of ordinary beneficiaries, constraining the court's power to recast those assets under family provision laws.

Barns v Barns [2003] HCA 9; (2003) 214 CLR 169

- **Mutual Wills Agreement:** A couple executed mutual wills via a deed, which was later challenged by a family provision claim attempting to access the contractually bound estate.
- **The Precedent:** While mutual wills create binding equitable obligations, they do not remove property from the estate for the purposes of family provision legislation, leaving the assets vulnerable to statutory claims.

Palmer v Bank of NSW (1975) 133 CLR 150

- **Carer Estate Promise:** A deceased person promised to leave his estate to his carers but later

placed funds into a joint account that passed to another party via survivorship.

- **The Precedent:** A promise not to revoke a will does not inherently prevent a testator from diminishing their estate through lifetime transactions, meaning joint account survivorship rights remain effective.

Birmingham v Renfrew (1937) 57 CLR 666

- **Mutual Wills Enforcement:** One party to a mutual wills agreement died having fulfilled their bargain, but the surviving party altered their will, breaching the original arrangement.

- **The Precedent:** Though wills remain legally revocable, equity imposes a constructive trust on the survivor's assets to prevent fraud, ensuring the property ultimately reaches the contractually agreed beneficiaries.

Topic 3: Formal Requirements

Estate of Slavinskyji (1988) 53 SASR 221

- **Wall Writing:** A testator wrote his last wishes directly onto an interior wall instead of utilizing paper, leaving the court to determine if it constituted a valid writing.

- **The Precedent:** Testamentary writing is not restricted to paper; it is legally sufficient if the words are recorded on any surface in a visible and enduring form.

Dodd v Lang (SC(NSW), 20 July 1989, unreported)

- **Ill Testator's Mark:** An extremely sick individual made a simple mark on a document rather than a traditional signature to execute their will.

- **The Precedent:** The signature requirement is fulfilled if the testator intentionally makes a deliberate mark for the purpose of authentication, as intent takes precedence over the exact form of the mark.

(2) Gifts to interested witnesses

Re Bunting [1974] 2 NZLR 219

- **Beneficiary as Witness:** A witness to a will stood to receive a beneficial gift under its terms, triggering statutory provisions that void benefits to attesting witnesses.

- **The Precedent:** Beneficial gifts to attesting witnesses are presumptively void to protect against fraud and undue influence, rendering the gift vulnerable unless saved by a specific statutory exception.

(3) The judicial dispensing power

Estate of Graham (1978) 20 SASR 198

- **Informal Execution:** A document containing clear testamentary intentions failed to meet technical execution rules, prompting an application for probate under a dispensing provision.

- **The Precedent:** Courts can excuse non-compliance with formal execution rules if they are affirmatively satisfied that the deceased genuinely intended the informal document to operate as their final will.

Re Application of Brown: Estate of Springfield (1991) 23 NSWLR 535 —

- **Preliminary Instructions:** A deceased individual left behind an informally drafted document that had not been formally executed, raising the issue of whether it constituted a final will or mere preparatory thoughts.

- **The Precedent:** The judicial dispensing power requires absolute satisfaction that the specific document embodies the deceased's final dispositive intention, rather than acting as a temporary brief or a set of instructions for a future will.

In the Estate of Masters (1994) 33 NSWLR 446

- **Multiple Informal Notes:** A taxpayer left behind several separate informal writings, forcing the court to determine which pieces of paper were operative documents and which were simple tentative notes.

- **The Precedent:** Informal documents can only be admitted to probate if they were intended to have immediate, present testamentary effect, as opposed to notes merely indicating a future intention to create a will.

Hatsatouris & Ors v Hatsatouris [2001] NSWCA 408

- **Extrinsic Evidence Dispute:** A family disputed whether an informal document truly represented the deceased's final testamentary wishes, highlighting a conflict over what type of evidence could prove intent.

- **The Precedent:** Testamentary intention under the dispensing power is assessed objectively using a broad range of extrinsic evidence to determine whether the deceased intended that very document, without more, to regulate their estate.

Topic 4: The Mental Element

Testamentary Capacity

1. Did the testator understand what the will was
2. Knows property must dispose/bounty
3. Did they know the people what they going to get.
4. Suffering from any delusion of mind.
5. If suffering – does it affecting the ability to understand first three factors.

Banks v Goodfellow (1870) LR 5 QB 549 —

- **Delusional Testator:** An individual executed a will while suffering from persistent mental disorders and delusions, raising the issue of whether he possessed sufficient mental capacity to make a valid disposition.
- **The Precedent:** A testator has capacity if they understand the nature and effect of a will, the extent of their property, and potential claims, provided no mental disorder poisons their affections or influences the specific dispositions.

Timbury v Coffee (1941) 66 CLR 277

- **Suspicious Circumstances:** Serious doubts were raised regarding a testator's mental state at execution, forcing the court to determine who carried the burden of establishing capacity under suspicious circumstances.
- **The Precedent:** The party propounding a will bears the ultimate onus of affirmatively proving testamentary capacity, and any suspicious circumstances surrounding execution will displace the standard presumption of capacity.

Bull v Fulton (1942) 66 CLR 295

- **Insane Delusion Impact:** A testator incorporated false, ungrounded beliefs into their thinking, questioning whether general mental abnormality is enough to invalidate a will or if a direct connection is required.
- **The Precedent:** An insane delusion only invalidates a will if it directly influences or causes the testamentary provisions; general mental illness does not affect validity unless it has a causal impact on the gifts.

Woodhead v Perpetual Trustee Co (1987) 11 NSWLR 267

- **Elderly and Impaired Testator:** An elderly, physically frail, and cognitively impaired individual executed a will, forcing the court to weigh conflicting medical and lay evidence regarding their actual understanding.
- **The Precedent:** Testamentary capacity is task-specific and time-specific, meaning age or illness does not automatically negate capacity as long as the deceased possessed a practical understanding at the exact time of execution.

Knowledge and approval

Astridge v Pepper [1970] 1 NSW 542 —

Beneficiary Drafted Will: A major beneficiary was actively involved in preparing the testator's will, creating highly suspicious circumstances surrounding its execution and actual knowledge.

- **The Precedent:** Mere execution does not prove knowledge and approval; when suspicious circumstances exist, the propounder must provide affirmative proof that the testator fully understood and intended the dispositive scheme.

Fraud and undue influence

Wintle v Nye [1959] 1 All ER 552 —

- **Solicitor-Beneficiary and Blind Testatrix:** A solicitor prepared a will under which he was a substantial beneficiary for a testatrix who was blind and highly dependent on him, raising intense suspicion regarding her actual approval.

- **The Precedent:** A heavy burden of proof lies on a substantial beneficiary who drafts or procures a will; they must completely dispel the resulting strong suspicion by proving the testator had full, informed knowledge and approval.