Succession Case notes

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Topic 1: Definition and nature of a will		
Case	**Facts**	**Rule**

Russell v Scott (1936) 55 CLR 440*
 	
Joint account ≠ automatic survivorship in equity
 	
Intention matters
	Mr. Russell died leaving money in a bank account that was operated jointly with nephew.
	
	The account was in both names, but the source of funds was entirely Ms Russel''s.
	
	The issue was whether, on her death, the funds belonged to nephew as the surviving joint account holder) or to her estate.
		Decision:
		• Funds remained part of Russell's estate.
		• No evidence of intention to gift the funds to Russell.
		• The joint account arrangement was for convenience only (to allow Russell to assist with banking).
		Principle
		• **Joint account ≠ automatic survivorship in equity.**
		• **Beneficial ownership depends on intention of depositor:**
		  ○ **If intended as gift or advancement → survivor takes beneficially.**
		  ○ **If intended as convenience/trustee → estate retains beneficial ownership.**
		• Equity looks behind the legal form of the account.
		
		Significance for Succession Law
		• **Joint tenancy in bank accounts** is not conclusive — must examine intention.
		• **Presumption of resulting trust** applies where one person provides funds but account is in joint names.
		• **Burden of proof**: survivor must prove a gift or advancement was intended.
		• Frequently applied in family provision and intestacy disputes where surviving relatives claim bank account funds.

Baird v Baird [1990] 2 WLR 1412* **death benefits usually bypass the estate**	Milton Baird, employee in a pension scheme with a death benefit and nominated his brother (Dickson). Later married Luvinia, but did not change nomination. On his death, both brother and widow claimed benefit. Widow argued nomination invalid as an attempted will (not complying with formalities).	**Decision** • Privy Council held the nomination valid, therefore Dickson entitled. • Nomination was not testamentary, but an exercise of a power of appointment under the trust deed. • Benefits were payable under the scheme rules, not as part of the estate. **Principle** • Pension nominations are not wills where they operate by force of the trust deed/rules. • **Such benefits pass outside the estate**, unless the rules give the member a proprietary right (cf *Re MacInnes*). **Significance** • Shows how **death benefits usually bypass the estate** and do not need wills formalities.

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	Issue: Was the nomination a testamentary disposition or a valid exercise of a power under the pension trust?	• Key authority for distinguishing **testamentary dispositions** from **trust/contractual nominations**. • Precursor to Australian superannuation law on **binding vs non-binding nominations**.

***Public Trustee v Bussell (1993) 30 NSWLR 111**
 	
Death bed gift (donation mortis)
	Alfred Staples (deceased) diagnosed with terminal lung cancer, died 10 January 1989.
	
	Defendant Bussell cared for him in final years. Staples told Bussell repeatedly: "you can have the shares when I die".
	
	On 7 January 1989, Staples (weak and near death) handed Bussell an envelope containing share certificates and said: "you may as well take these shares now and I'll have them transferred over".
	
	Issue: Did the shares form part of the estate, or were they the subject of a valid donatio mortis causa (DMC) (deathbed gift)?
		Decision (Cohen J): Held: Valid donatio mortis causa → Bussell entitled to shares
		• **Condition 1:** satisfied – donor aware he was dying soon.
		• **Condition 2:** satisfied – delivery of share certificates sufficient indicia of title.
		  ○ Distinguished mere evidence of ownership from documents essential to effect transfer.
		  ○ Compared to ***Duffield v Elwes (1827), Re Beaumont (1902), Public Trustee v Young (1940).***
		  ○ Supported by ***Dufficy v Mollica*** (NSW) – share certificates can ground a DMC.
		• **Condition 3:** satisfied – gift conditional on death, not intended as immediate absolute transfer.
		
		Principle
		• A DMC requires:
		  1. Gift in contemplation of death.
		  2. Delivery of essential indicia of title (not just evidence).
		  3. Gift must be conditional on death, revocable on recovery.
		• **Share certificates** can constitute sufficient indicia of title for DMC in NSW.
		
		Significance
		• Confirms **donatio mortis causa** can apply to **shares** (personal property / choses in action).
		• Important in succession law: such property bypasses the estate and executor.
		• Distinguishes between "mere evidence" of ownership and "essential indicia" necessary for transfer.
		• Shows flexibility of DMC doctrine in modern contexts.

***Schaefer v Schuhmann [1972] AC 572; 1 All ER 621** **contracts to leave property by will (sometimes framed as "contracts to make testamentary provision")**	Widow with kids, via codicil, left house and contents to housekeeper and ceased to pay her wages after she sighted the document. Competing claims: • **Housekeeper:** argued she had a **contractual right** to the	**Decision (Privy Council, majority)** • Held: the housekeeper's right was that of a **creditor of the estate**. • A valid contract to leave property in return for services confers a **contractual claim** enforceable against the estate. • That claim takes **priority over beneficiaries** under the will. • This contrasts with the view in *Dillon* (earlier case): in *Dillon*, testator fulfils promise simply by naming promisee as beneficiary, leaving them subject to the ordinary risks of beneficiaries (e.g. family provision orders). **Principle**

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= enforceable obligation	house (as consideration for her services). • **Other beneficiaries of the will:** argued she was merely a **beneficiary under the will**, subject to all the ordinary risks and limitations.	**A contract to leave property by will creates an enforceable obligation against the estate, not just a testamentary gift.** • The promisee is treated as a **creditor**, and their claim must be satisfied before distribution to beneficiaries. • Thus, contractual rights survive death and bind the estate, regardless of testamentary changes.
Barns v Barns [2003] HCA 9; (2003) 214 CLR 169* **Mutual will do snot override family provision claims**	Deceased and wife wanted to keep their Wudinna farm intact for their son. Adopted daughter had previously received $100,000 (lost in bankruptcy). Parents executed a mutual wills deed, covenanting: • Each would leave estate to the other; • Survivor would leave the farm to the son; • Daughter excluded. On death, daughter brought a family provision claim.	**Issue:** Does a contract to make a will (mutual wills agreement) give the promisee rights as a creditor of the estate (like in *Schaefer v Schuhmann*), or are they subject to family provision legislation? **Decision (Majority)** • Promisee's rights are drawn through the will. • Property first becomes part of the estate; then family provision claims may affect distribution. • The promisee's contractual interest must compete with the statutory rights of dependants. • Public policy: family provision legislation has primacy. • Kirby J: clear that unwritten/common law (mutual wills contracts) must yield to statute. • Callinan J (dissent): favoured *Schaefer* view — promisee should be treated as a creditor, not merely a beneficiary subject to claims. **Principle** **Contracts to leave property by will (mutual wills) do not take precedence over family provision legislation.** • The estate remains subject to statutory rights of eligible claimants, even if contractual promises are in place.
Palmer v Bank of NSW (1975) 133 CLR 150* **Promise to Leave vs. Promise to Preserve**	Deceased promised not to revoke will, but then paid money into a joint account with another which entitles the person to that amount upon death.	HCA held that the deceased was entitled to do so, he didn't revoke his will so he kept his contractual promise. It was a genuine arrangement that he had made during his lifetime that was not inconsistent with the contact. **A promise to leave one's estate to another upon their death is not a promise to preserve the property of the estate until death.** An express contract is necessary to curtail how a testator uses his or her property in their lifetime.
Birmingham v Renfrew (1937) 57 CLR 666*	Husband and wife made an oral agreement to execute mutual wills:	**Decision (High Court)** • Held: Agreement created **binding obligations**.

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