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### **TAX PLANNED WILL PRECEDENTS, 4TH**

**Butler**  
**Release No. 6, July 2025**

Written by a tax and estate planning specialist with over 30 years experience practicing law, this fourth edition of Tax Planned Will Precedents is an invaluable handbook for any lawyer engaging in estate planning. It features significant updates to commentary as well as a reorganization of relevant clauses in a more intuitive manner. It also features many useful forms and checklists including: the Estate Planning Information checklist, the Information for Executors form, the Checklist of Information about Testator, Directions to Executors and Trustees, and the Will Checklist.

### **What's New in this Update:**

This release features updates to Part II—Expositive Clauses, Part VII—Trusts and Trustees and Appendix E—Advance Tax Rulings.

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## Highlights

- **Part II—Expositive Clauses—Testamentary Capacity—Undue Influence**—The testator left a document that was proposed to be a codicil to her will that if valid would transfer a cottage to one of the testator's children rather than providing him with a right of first refusal as provided for in the testator's will. There was no doubt that the document was in the testator's handwriting, was signed by her, that she had the mental capacity to make the will and that it was valid on its face. The court found that there were suspicious circumstances which pointed to the fact that the testator did not understand the effect of the codicil. The testator's son who benefitted from the codicil was unable to show that the testator had knowledge of and approved the codicil. The testator would not have known and understood the issue of capital gains attributable to the cottage and the impact on the value of her estate as she did not manage her financial affairs. The codicil did not address the impact of these taxes or whether the estate or the intended beneficiary was responsible for the capital gains resulting from the cottage's deemed disposition on the testator's death. The value of the cottage had risen significantly over the years while the value of the testator's other assets and investments declined with the result that the equitable distribution of the estate that was the effect of the distribution in previous wills would have been upset by the effect of the codicil. The effect of the codicil would have been to favour one child at the expense of the testator's other two children – there was no evidence that this was what was intended by the testator. The court declared the testator's will to be the only valid testamentary instrument to the exclusion of the purported codicil: *Re Douglas Estate*, 2025 MBKB 25.