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ESTATE LITIGATION

Brian A. Schnurr
Release No. 4, July 2024

Estate Litigation, 2nd Edition, is a comprehensive, practical work covering all facets of estate litigation including mental incompetency disputes, challenges to wills, *Family Law Act* claims, passing of executors' accounts, presumption of death and dependant support claims. The publication includes extensive precedents along with relevant statutory material.

What's New in this Update:

This release features updates to Appendix IF — Issues in Focus and Appendix WP — Words and Phrases.

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Highlights Include:

APPENDIX IF — ISSUES IN FOCUS — § IF:17 May the trustee of an estate disperse or lend monies out of the estate to an intended beneficiary before the beneficiary’s interest in the estate has vested? — Depending on the wording of the Will, it is unlikely that the trustee can either pay out the beneficiary’s interest early or lend monies out of the estate. The trustee would likely require court approval before doing either of these things. The trustee may be able to convince the court that a small advance of the beneficiary’s inheritance would be acceptable. It has been held that court approval of a variation of a trust in a Will is to be measured by reference to the following considerations: first, does it keep alive the basic intention of the testator? Second, is there a benefit to be obtained on behalf of infants and of all persons who are or may become interested under the trusts of the will? Third, is the benefit to be obtained on behalf of those for whom the court is acting such that a prudent adult motivated by intelligent self-interest and sustained consideration of the expectancies and risks and the proposal made, would be likely to accept?

APPENDIX IF — ISSUES IN FOCUS — § IF:33 Whether it is required to have a written deed of gift under seal when legal title has already been transferred into joint ownership — A written deed of gift under seal may not be necessary where a transferor’s intention to make a gratuitous transfer—or, gift—of real or personal property to a transferee is clear and unambiguous (i.e., in light of the documentary evidence and witness evidence), and the transferor has engaged in all the necessary steps to make a complete and binding gift (i.e., has perfected the gift). This is specifically so where legal title has already been transferred into joint ownership.

APPENDIX IF — ISSUES IN FOCUS — § IF:48 Under what circumstances could one challenge the validity of a will and a marriage on the grounds that the deceased did not have capacity — Jurisprudence has established different thresholds for determining capacity depending on the area of law at issue. For example, one may have the capacity to marry, but lack testamentary capacity. The capacity to marry and the testamentary capacity to execute a will, despite raising different legal thresholds, may, in certain circumstances, indirectly overlap with one another, which can have implications for a testator’s property distribution. In such circumstances, a party (or, parties) may wish to commence a proceeding challenging the validity of the marriage and/or will.

ProView Developments

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- The Table of Contents now has internal links to every chapter and section of the book within ProView
- Images are generally greyscale and size is now adjustable
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