



EVERSOL'S weekly law

Contributed by John Boag

Choosing between children and charity

In a recent case, the deceased left a home unit worth \$300,000 to his two nephews and the rest of his estate valued at approximately \$280,000 to the Fred Hollows Foundation.

The deceased was divorced and there had been a property settlement with his ex wife. He had two children, both in their 20's, who had not had any contact with him in recent years.

The Court has commented previously about the difficulty of working out fault for the lack of communication when one is dealing with children who are separated from their parents. However, the opportunity to reconnect normally arises as the child matures, comes of age and leads a separate life. The community often would expect that a child would at that stage in life make an attempt to reconnect.

In this case, there was evidence that, while the deceased was not physically abusive to the children, he had been an angry man with abrupt mood swings, who could shout at the children in a manner which was very upsetting to them.

The Court reviewed the relationship between the deceased and his children, its breakdown and the absence of contact following that breakdown.

In relying upon comments made in the High Court regarding the readiness of the Court to disturb a testamentary provision in favour of a beneficiary, such as a charity, with whom the deceased had no connection, rather than a provision in favour of dependent relatives based on concepts of moral obligation, the Court ordered that each of the deceased's children should receive a legacy of \$150,000.00 and for those legacies to be paid as to one third out of the bequest of the home unit to the deceased's nephews and the remainder out of the bequest to the charity.

At Everingham Solomons, have the expertise to assist you in considering the issues that are relevant when considering the manner in which you wish to distribute your estate, as *Helping You is our Business*.



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