

MAKING A WILL

Alan Shatter

Part 1

Everyone should make a Will. It is important to do so whether you are still at work or retired. Too many people make Wills when under stress as a result of an unexpected accident or illness. These Wills are often not fully thought through and after a family bereavement may cause major family upset.

A Will is subject to some specific legal rules. Husbands and wives are required by law to leave at least 1/3 of their assets to the other. This rule does not apply to property in their joint names, such as the family home, which automatically passes to the surviving spouse.

The law also provides certain protections for children, including adult children. While a child of parents married to each other cannot challenge his or her parent's inheritance, he or she may challenge other terms in a Will. Where no or limited provision is made for a child by Will, the law allows the courts to order that a specified portion of a deceased parent's estate be given to a child where a court is of the opinion that the parent *"has failed in his or her moral duty to make proper provision for the child in accordance with his/her means whether by Will or otherwise."* There have been many court cases in which children have successfully challenged Wills made by parents. The resulting redistribution by the courts of a deceased's property often causes acrimony and division within families. Where a parent has substantially provided for a child during his or her lifetime, the courts may dismiss such a challenge by concluding that a deceased parent did properly live up to his or her moral duty.

If a husband or wife dies without making a Will, 2/3 of the deceased's property automatically goes to the surviving spouse and 1/3 is divided equally between children. Implementation of this rule can on occasion cause family difficulties and does not provide a mechanism for taking into account the individual circumstances and needs of family members. Where there are no children and no will everything goes to the surviving spouse.

Unmarried parents have no inheritance obligations to each other but their children have the same inheritance rights as children born to married parents. The children also have the same right to make a claim against a non-married parent's estate.

A Will is a complicated document and has to be carefully prepared. Issues of inheritance tax have to be addressed and the inheritance rights of separated or divorced spouses may differ from those earlier described. I believe it is essential that anyone proposing to make a Will obtains legal advice from their family solicitor.

The above article is by way of introductory information only. Every person's family circumstances and personal background differs and individual legal advice should be sought for guidance on individual family circumstances