

CORRECT WORDING IS VITAL IN WILLS

There have been two recent cases where the Court has been required to decide what was meant by seemingly simple wording in Wills. In the first case, in June, the Will contained what is the fairly standard clause to the effect that the residuary estate would pass to the deceased's children and, if any of her children died before obtaining a vested interest, that the "issue" of that child take the share which their parent would have received.

The surrounding facts were somewhat bizarre. One of the deceased's sons predeceased her, having been murdered by his own son (the deceased's grandson). Obviously, this meant that that son had not obtained a vested interest. There is a very long-standing rule of public policy that a wrongdoer cannot benefit from his wrong, so the grandson was also unable to inherit. The question for the Court was whether or not the deceased's great grandchild should inherit his grandfather's share.

The Court held that, in context, the word "issue" was qualified by the statement that such issue inherit his or her parent's share. In those circumstances, it was held "issue" only referred to grandchildren, and so the great grandchild could not inherit.

We have mentioned previously the decision in the case of *Crajanin*. In this case, the relevant clause combined both a specific gift and a residual gift. This became important because the residuary estate (not including the specific gift in clause 8) was insufficient to pay all liabilities of the estate – it seemed the deceased had not submitted tax returns for many years. This meant that the specific gifts would have to be reduced to pay the liabilities. If the first part of the relevant clause was also a gift of residue, this would reduce the amounts to be paid from the specific bequests.

The Court found that this first part of the gift was a specific gift, and did not form part of the residue.

These two cases show the importance of ensuring a Will is phrased properly. In the past, we have had to dissuade clients from using terms such as "next of kin", which depending on context could mean anything.

This why we recommend you should have your Will professionally drawn. Please contact us on 07 3849 6263 or at reception@oneillslawyers.com.au to discuss how we can help you with drawing up your Will and all other aspects of estate planning.