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INHERITANCE—CUTTING SOMEONE OUT

A popular misconception in respect of Wills amongst a lot of people is that they can give away their property to whoever they please in their Will.

Nothing could be further from the truth.

There are any number of personal reasons why someone might cut a family member out of their Will.

For example an estranged child or one that has a serious drug dependency.

Robert Stedman, a widower had three sons. His wife had died when the children were young and he had never remarried. All his children were now grown up. Gary and Paul lived nearby and had regular contact with Robert.

Steven however was a different story. He also lived nearby with his wife Josephine. Both Steven and Josephine were hopeless drug addicts. They were both on benefits and lived in a state house. Steven had chosen to have nothing to do with his father and although he lived close by his father had not heard from him in over 10 years.

As much as he loved his son Robert never got over the fact that Steven had wasted his life through drugs and spent any money he got on drugs.

For that reason Robert only left Steven \$10,000.00 in his Will whereas his entire wealth of just over \$1,000,000.00 was split between Gary and Paul.

Whilst Robert was upset that Steven had not contacted him for such a long time his main concern was that if he gave any significant sum to Steven both he and Josephine would simply waste it on drugs and his inheritance would be completely lost.

When Robert died Steven found out that both Gary and Paul had each received over a half a million dollars and filed a claim in the High Court seeking an order that he have a share of the funds that Robert had given to Gary and Paul.

His application was successful and he received \$200,000.00.

The reason he was successful is, the law imposes a moral obligation on certain family members in relation to inheritance. There is no clear rule on how much as every individual set of facts must be considered on their own merits.

If Robert had set up a Family Trust and put all his assets in the Family Trust Steven would have had nothing to challenge.

Unlike the moral obligations the law imposes on you in respect to your personal estate that passes through your Will, no such obligation applies to a Family Trust.

Robert could have ensured that Gary and Paul received their full entitlement and Steven his \$10,000.00 through a Family Trust and there would have been nothing Steven could have done about it.

If you are unsure of your position in relation to your Will if you are cutting out any family member please feel free to contact any of our team to discuss your circumstances.

20 MINUTE FREE

WANT to review your Family Trust structure? THEN call us and take advantage of our 20 Minute Free interview