

# **WILLS AND ESTATES PRACTICE PRACTICAL GUIDE**



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## 1. HOW TO USE THIS PRACTICAL GUIDE

This practical guide has been developed for your assistance in the College of Law elective unit Wills and Estates Practice. Will drafting and administration of deceased estates are fundamental areas of legal practice.

This practical guide is structured in a way that aims to assist your development of key practical skills in the following key areas of the unit:

- taking instructions from clients;
- advising clients about wills;
- drafting wills in accordance with clients' instructions;
- obtaining grants of probate;
- obtaining letters of administration;
- administering deceased estates.

The types of assessment in the College of Law elective unit currently involve two tasks with activities. The final task is an oral assessment comprised of areas including the following:

- a. presenting your second task to your assessor;
- b. reflecting on your learning in the unit;
- c. reviewing the tasks you have submitted in the unit;
- d. answering questions regarding the learning materials in the unit.

This practical guide is structured in a way that simulates this type of assessment. Lawskool Pty Ltd recommends that you follow this practical guide in the order as it appears, and work through the fact scenarios to each practical task in a way that ensures you understand the steps taken along the way. The tasks in this practical guide are presented as examples of the types of tasks in Wills and Estates Practice in the College of Law, culminating in the oral assessment with oral assessment tips at the end of this guide.

Throughout your studies, you may adopt an engaged learning style which enables you to actively explore ideas and issues about a topic, and connect with your peers and mentors about real life situations and how they apply to the topic. Lawskool Pty

Ltd hopes that you may use this practical guide as a tool in your engagement with the learning materials and practical skills of Wills and Estates Practice in the College of Law.

Sample

## PART A: WILLS

### 2. FILE NOTE OF INTERVIEW, RESEARCH AND FURTHER ADVICE

**Names:** Adam Johnson attendance with Michael James Thornton

**Date:** 1 December 2015

**Time Spent:** 10 units (60 minutes)

**Client Details:** Michael James Thornton

**Name of Matter:** Will of Michael James Thornton

#### Instructions from client:

1. Michael James Thornton comes to you and instructs you that he wants you to make a will for him. He requests that it be done as soon as possible. He provides you with the following information:

#### Family details

2. His name is Michael James Thornton of 14 Bennett Street, Burwood, Victoria.
3. He is an Electrician with United Energy.
4. He is 47 years of age.
5. He has a wife named Elizabeth Jane Thornton who is 46 years old and is a trained nurse.
6. He has four children, namely, Heather Jane Harrison, aged 23, married with no children, but likely to start a family later; Warren Michael Thornton, aged 20, apprentice electrician (United Energy); Brian Murray Thornton, aged 16, student in Year 11 at Burwood Secondary College, likely to go to university;

Fiona Meredith Thornton, aged 13, student in Year 8 at Burwood Secondary College.

### Assets

7. The matrimonial home at 14 Bennett Street Burwood is in joint names. It is worth about \$195,000.00 but there is a mortgage to the Commonwealth Bank under which approximately \$50,500.00 is owing.
8. The general household furniture is valued for Insurance purposes at \$20,000.00. Included is an antique sideboard worth \$4,000.00 that belonged to Mr. Thornton's father, which he would like to pass on to his brother Adrian John Thornton, or if his brother predeceases him to his son Warren when he turns 25.
9. A 2015 Volvo sedan.
10. There is no life insurance but he does have superannuation entitlements with United Energy for whom he has worked for 23 years. He has nominated his wife as the beneficiary but understands that if his wife predeceases him then it will be paid to his executor unless he nominates another beneficiary, which he has not done. The exact value of the superannuation depends on the date of retirement or death.
11. There is a beach house in Sorrento in joint names with his wife that he would like kept family use. This property has a clear title, but there is a Personal Loan of about \$20,000.00 used to purchase the house still owing to Credit Union.

### Disposition

12. He would like the sideboard to go to his brother or son as appropriate. The residue of estate to his wife if she survives 30 days.
13. If his wife does not survive for 30 days, then the residue of the estate is to be divided between his children, subject to:
  - (a) Legacies of \$4,000.00 each to his brother Adrian, and his wife's sisters Margaret Helen Reid and Alison Joan Simpson, but if any of them also predeceases him the legacy should be divided between that person's children.
  - (b) A payment of \$2,000.00 to the National Heart Foundation, in appreciation of its work and in memory of his late father Brian Michael

Thornton.

14. Mr. Thornton has endorsed his driving licence with the sticker about kidney donations and hopes this will be complied with.

Executor

15. He has nominated his wife Elizabeth, but if she predeceases him, then he would like his brother Adrian and his daughter Heather to be joint executors.
16. If both he and Elizabeth die in the next few years, eg. in a motor accident, he would like the Executor to try to keep the house at Burwood for as long as appropriate as a home for the three young children, say until Fiona and Brian finish their education. Heather is to be their guardian.
17. He does not want the children to be able to have access to their shares of the estate until they are 21. However, their Trustees should be able to pay money for their maintenance etc., even if it bites into their shares of the capital.
18. Mr. Thornton wants these wishes reflected in the will that is written for him.

NOTE: It is important to ask a number of questions in the initial client interview to ensure that all relevant instructions are obtained in key areas for the will.

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