Slide 1

WILLS & ESTATE DISPUTES
DONOR COMPETENCY

hobbs | giroday
BARRISTERS & SOLICITORS

www.hobbsgiroday.com

Slide 2

Donor

The person conferring power.
The person making a gift.
Examples:
1. **Power of Attorney**
2. **Gift of Right of Survivorship**
3. **Testator**
4. **Settlor**

www.hobbsgiroday.com

Slide 3

Competence

That a person is fit and qualified to do something.
Examples:
1. **Giving Testimony**
2. **Making a Contract**
3. **Mental Capacity to make a gift (Lifetime/Will)**

Does the person understand the nature and object of the event?

www.hobbsgiroday.com

Slide 4

Testamentary Competence

Does the person understand:

1. **general nature and extent of property;**
2. **the relationship with people named in a Will or disinherited;**
3. **what a Will is; and**
4. **simple business transactions.**

Slide 5

Evidence of Competence

1. **Solicitor**
2. **Medical Evidence**
3. **Lay Witnesses**
4. **Relevant Time**

Slide 6

Presumptions of Fact

1. **If testator read Will or it was read to the testator it is presumed testator knew and approved the content of the Will, was sane and, if the Will is rationale and properly executed, that the testator had testamentary capacity.**

Slide 7

Presumptions of Fact Cont'd

2. **If there are suspicious circumstances then the presumption is lost and the propounder must establish testamentary capacity.**

www.hobbsgiroday.com

Slide 8

Caveat

Procedure to stop probate proceedings.

www.hobbsgiroday.com

Slide 9

Proof in Solemn Form

Action in Court to formally prove Will.

www.hobbsgiroday.com

Slide 10

Delusions

1. Psychiatric expert evidence
2. Causation as to instructions
3. Effect on dispositions
4. Calculated to influence

www.hobbsgiroday.com

Slide 11

Inter Vivos Gifts

1. Same issue as testamentary capacity
2. Presumption of resulting trust casting onus
3. Presumption of advancement
4. Notes of Donor
5. Independent Advice/Notes

www.hobbsgiroday.com

Slide 12

Other Topics

1. Geriatric Psychiatry
2. Suspicious Circumstances
   a) Radical, sudden change to estate plan
   b) Mental/neurologic disorders
   c) Vulnerability
   d) Multiple changes to Will
   e) Controlling persons present

www.hobbsgiroday.com

Slide 13

Other topics cont'd

3. **Undue Influence**
4. **Dementia, alcohol, mood disorder**
5. **Cognitive Testing**

Slide 14

Questions?

We would be pleased to answer any (further) questions you may have.