

# LITIGATION SERVICES

## About Estate Litigation

An estate is one's rights in real and personal property. Testator's leave their estates in the hands of executors and trustees pursuant to the terms of a will. The will instructs the executor as to how to administer the estate. Estate litigation often involves disputes surrounding the administration of estates, either by a will or without a will (intestacy). Dependents not named in a will may feel the will is not fair and seek variation. Beneficiaries may not approve of how the estate is being administered by the executor.

The competency or free will of the testator may be brought into question at the time the will was made. Estate litigation may also occur before the testator passes away. If aging or ill people lose their capability to manage their affairs or person due to loss of competency. Steps may have to be taken to appoint a committee to look after the affairs of an incompetent person so as to protect their estate from intruders. Abuses may arise under powers of attorney. Transfer of assets based on joint tenancy and the right of survivorship may be an issue.

These are but some of the areas which comprise the subject of estate litigation.

### **What is Probate?**

Probate is the process of proving the will. This may be done in common form in a registry or in solemn form as a final decree pronounced by the Court. Probate proceedings involve wills, settlement of decedent's estates and other steps relating to administration of estates.

### **Contesting a Will?**

Someone may feel a will is not valid because the testator lacked mental capacity sufficient to make a valid will or was subject to duress or influence. A will may not reflect the testator's true intentions. The Wills Variation Act permits a defined class (close relations) to challenge the fairness of a will.

### **Executors' Duties**

Executors have many duties and responsibilities which they should seek legal advice on before administering an estate or accepting appointment under a will. If the appointment is accepted the Executor should obtain advice on all steps to be taken and interpretation of the will.

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