



Legal Brief

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L A W Y E R S

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Welcome to the Summer Edition of *Legal Brief*

In this Legal Brief we look at:

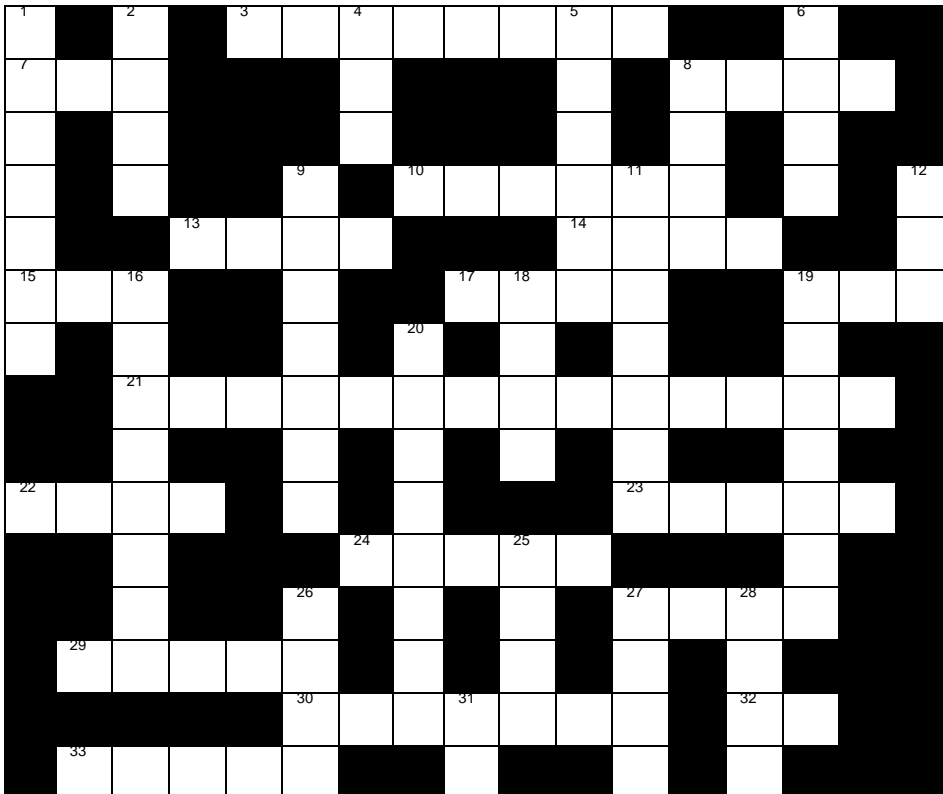
- Self Managed Superannuation Funds – just who is your Employer?
- How Shirley took on the Tax Man and won!
- Can your company live without you?
- Life insurance your weapon against Tax.
- Why a “Simple Will” makes your life complex.

Legal Brief is written for the clients of Accountants and Advisers. You are welcome to send Legal Brief to your clients. Legal Brief is also available on-line at Taxlawyers.com.au/WhatsNew.htm

The festive season is upon us, so now is the time to put your feet up, relax and have some fun with the following Estate Planning crossword (courtesy of Tina Berry).

All the Best,

Jason Styles
Practice Manager
BRETT DAVIES LAWYERS



Across

- 3 Close relatives but can't challenge Wills
- 7 Australian Taxation Office
- 8 Type of property that is land
- 10 All you can give in a Will
- 13 You treat your clients with this
- 14 They look after pets
- 15 The legal ******* is 18
- 17 see 18 down
- 19 Instant communications device
- 21 More than making a Will
- 22 Your tax return is always
- 23 You should review your Will, at least every four *********
- 24 Report just caused a flurry
- 27 Death makes it come to life
- 29 Entity used to hold a business
- 30 People that have Children
- 32 We never say
- 33 Reduce tax to save

Down

- 1 Earns without sweat
- 2 Never to be taxed? This was a lie
- 4 Initials of a tax law firm
- 5 Take time to do this when someone close dies
- 6 Adviser plus capital equals
- 8 Weekends are good for this
- 9 Proving a Will before the Court
- 11 Joint ******** an old fashioned way to hold assets
- 12 Often a voluntary cost
- 16 Administers a Deceased Estate
- 18 (and 17 Across) our Manual ****** ******
Someone Dies
- 19 Helps with grief
- 20 Lawyer's Will Maker
- 25 Need one to succeed
- 26 May not form part of your Estate?
- 27 List, not in your Will
- 28 Important part of a chain
- 31 Estate Planning



Tax and Superannuation Update Summer Edition 2000

How Simple is a Simple Will?

Are all Wills the Same? All that matters is who gets what ... Right? Sadly the Government has changed this.

The Tax Man is often a major beneficiary in your Will. Do you want this? Back in 1981 Death and Probate Duties were abolished by the Government. Great news - but other "defacto Death Duties" crept in to take their place. The most prominent of these defacto Death Duties is Capital Gains Tax. Capital Gains Tax (CGT) started in 1985. Now Deceased Estates are under attack. In 1985 we were promised that CGT would not be a tax on dead people. As CGT expands, we now find that the Capital Gains Tax on Deceased Estates nets the Government more revenue each year, than the entire history of Death Duties. Not even the family home is automatically immune to CGT and other defacto Death Duties.

Further, will your family lose pensions and Pharmaceutical entitlements because of the "gifts" in your Will? What happens if your children are bankrupt or separated? (Ed - it's the same thing, isn't it?) Does a non-family member stand to gain from your Will?

By putting in place such tools as a **3 Generational Testamentary Trust Will**, you can ensure that your Estate goes to those you wish it to, without endangering their own situation.

When preparing your Estate Plan, it is important that you seek the advice of your Accountant and Adviser. They can alert you to the pitfalls unique to your circumstances and make enquiries on your behalf as to how to best put your customised Estate Plan into action.
See Taxlawyers.com.au/Manuals.htm

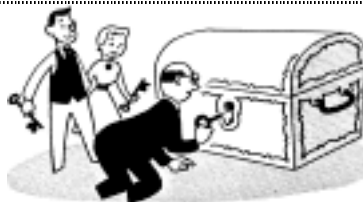
Life insurance policies – Reap the benefits now!

Do you currently hold a Life or Income Protection Policy? Are you aware of the tax benefits of your policies. If not, don't be alarmed. A recent survey found that 52% of people surveyed were not aware of the tax benefits of their Income Protection Policies. A staggering 71% of those surveyed didn't know that there can be tax benefits from Life Policies!

While most of us know that we can

claim for work uniforms and home computers used for work as tax deductions, we often don't consider our Insurance policies as a deductible expense.

Ask your Adviser and Accountant about the tax treatment of the different types of risk products available, and how you can advance your own proactive strategy of Wealth protection



Will a stranger help himself to your worldly goods?

Self Managed Super Funds – The picture becomes clearer

In the battle to gain the approval of the Senate, the Self Managed Super Legislation was amended. Now Self Managed Superannuation Funds (SMSF) can have unrelated members.

The legislation as it was originally proposed stipulated that to be a member of a SMSF, you first had to be in either a business relationship or the same family as other Members of the Fund. This narrow focus severely limits who you could invite to join your SMSF.

Following last minute amendments, the Senate has now passed into legislation that SMSF's can have unrelated members. This change is only limited by the requirement that no Member can be an employee of any of the other members.

You can now therefore start a Super Fund with 1 to 3 other persons who aren't necessarily related to you or business partners. You must still of course all be trustee's of the Fund or Directors of a company which is a trustee.

Ask your Accountant and Adviser how you can take advantage of these changes to further your own Superannuation Strategy. Your Accountant and Adviser can contact Brett Davies Lawyers to set-up your Self Managed Super Fund today.

For more information on Self Managed Superannuation Funds. See:

Taxlawyers.com.au/Manuals.htm

Brett Davies Lawyers is a private law firm. They only accept clients referred by their professional advisers.



My Company will live on after I'm gone..... Won't it?

Who will run your company when you are dead? If you die without a valid Will and are the sole director of a company, your company may die with you. There is an emerging concern of the problem of sole directors dying without leaving valid Wills.

But Can't the Corporations Law help us?

If a Will does exist, s224A of the *Corporations Law* allows the Executor named in the Will to appoint a new, perhaps interim, director of the company. The Interim Director can maintain normal trading until shares are transferred to beneficiaries who can appoint new directors.

What happens when I don't have a Will?

If you die with no Will (intestate), the Public Trustee is appointed as Executor.

Your family can also seek Letters of Administration from the Supreme Court. Unfortunately neither of these options occur overnight. It can often take months before someone can act on behalf of your company. The question therefore arises – How long can my company continue to operate without any leadership?

During the period where there is no director, your company may be completely unable to operate. No one is properly authorised to make management decisions or act for the company. Normal trading becomes impossible. Banks and other financial institutions may be unwilling to accept instructions if they are not convinced that the instructing person has sufficient authority.

What was once a strong profitable company may well find itself significantly devalued by its inability to pay creditors and move decisively.

Don't let your Company be buried with you. Talk to your Adviser and Accountant about ensuring that you have proper Estate Planning done before it is too late.

See: Taxlawyers.com.au/Manuals/Succession.htm



Will your Company be cast adrift when you're no longer at the helm?

Shirley's battle with the Tax Man

Malek (trustee of the dead Antoine Malek) v Tax Office

The Court upheld that your Super when you die is not included in your beneficiary's assessable income – but only if the beneficiary is reliant on you for support.

Shirley was in receipt of a disability pension. She lived with her son Antoine. Her son contributed to her living expenses. He took responsibility for repairs and alterations to her home. He arranged his shift work to drive her to medical appointments. He borrowed money to send her on a holiday. (*He is the Super Son! – Ed*)

Shirley was the sole beneficiary of her son's estate. Shirley received a Super death benefit of \$157,384 when

he died. The Government accused Shirley of "not being a dependent of her son either at the date of his death or at the date of payment of the ETP (Super) to his estate." The Government taxed all of her son's Super at a high tax rate. This was because Mum was not a "dependent"

The Court said the Government was wrong. Shirley was a "dependant" of her son. While Shirley was in receipt of a disability support pension (which some may regard as adequate to meet the necessities of life – *obviously not those who have tried Ed*), the evidence demonstrated that she was reliant on the regular continuous contributions of her son to maintain her normal standard of living.

Warning! Where your Super goes is up to the Government and the Super Trustees. Do Estate Planning if you have Super and you love your Mum.



Shirley spoke to her Accountant and Adviser – She knew the Government was taking too much from her!

See: Taxlawyers.com.au/InstructionForms/EstateInstruct.htm