

Episode Summary

Episode number: 105
Episode name: Contesting Provision: The Deeply Human World of Family Provision Claims
Guest(s): Adrian Corbould

What area(s) of law does this episode consider? Family provision claims.

Why is this topic relevant? A family provision claim is an application to the court in the circumstance that an individual believes they have been left out of a will or that they have received less than they're entitled. They can be exceptionally complex proceedings, they can be emotive, and they can be very hard fought. The process is a crucial one and it goes to the heart of ensuring fair distribution of a deceased person's estate.

What legislation is considered in this episode? *Family Provision Act 1982* (NSW)
Succession Act 2006 (NSW) (**Act**)

What cases are considered in this episode? *Ye v Fung (No 3)* [2006] NSWSC 635

- Michael Ye came from China to study in Australia, and he boarded with Mrs Fung, the deceased. Mrs Fung was separated but not divorced and invited Ye to live with her. Mrs Fung did not include him in her will. Ye claimed he had formed a domestic relationship with Mrs Fung which, according to the *Property (Relationships) Act 1984* (NSW), entitled him to part of her estate. The judge found that he was in a domestic relationship with Mrs Fung and thus he was awarded \$425,000 from the estate, and had a \$22,000 debt he owed to Mrs Fung forgiven.

What are the main points?

- Despite efforts to avoid ambiguity unexpected issues can arise when wills are contested.
- Under the Act, individuals who believe they have been inadequately provided for in a will can apply to the court for a revision of the estate distribution.
- These proceedings are complex and emotional; "humanistic" in Adrian's words.
- Adrian says that wills and estates litigation is very human because of the impact on clients' lives and the need-based nature of the jurisdiction.
- Broadly, the process is a safeguard to ensure equitable distribution of a deceased person's estate.
- Applicants must fall into specific categories to be eligible to contest a will under the Act.

- These categories include spouses, de facto partners, children, former spouses, dependents, and those in close personal relationships, among others.
- Proving eligibility is complex and requires the airing of things like living arrangements and reliance on the deceased.
- Claims must be made within specific time frames, with some variability across jurisdictions.
- Notional estate provisions in New South Wales can include assets transferred out of an estate to prevent claims.
- Compulsory mediation is designed to encourage settlements and avoid lengthy court procedures.
- Economic considerations and the potential cost implications for the estate make settlement a pragmatic choice in many cases.
- Emotional intelligence is critical when handling emotionally charged matters like wills and contested estates.
- Lawyers should empathise with clients but also maintain professional boundaries.
- For new legal practitioners, it's important to manage email communications, response times, and not get overwhelmed by instantaneous demands.
- Maintaining a level-headed response to disputes and avoiding immediate reactions can prevent unprofessional exchanges and protect one's career reputation.

What are the practical takeaways?