

# Wills and Trusts

UCT RETIREMENT SEMINAR

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# The importance of having a will

- ✿ A will may be described as a written, unilateral, voluntary , deliberate, revocable expression in a legally prescribed way which effectively disposes of a competent testator's property on his death.
- ✿ The problems with dying intestate.
- ✿ Freedom of testation: the freedom of a person to dispose of his or her estate as he or she pleases.

# Testamentary vehicles

- ✿ Bequest
- ✿ Residue
- ✿ Usufruct
- ✿ Fideicommissum
- ✿ Trust

## Advantages of a trust:

- ✿ An instrument to set out one's aims and objectives
- ✿ Perpetual
- ✿ Interests of young children protected
- ✿ Possible charitable bequests
- ✿ Protect the interests of the vulnerable or disadvantaged
- ✿ Provide for one's parents

# Freedom of testation

- ✿ The freedom of a person to make any provision he or she wants to make in a valid will, and the right to have his or her estate divided in whatever manner he or she wishes.
- ✿ Limitations to freedom of testation:
  - ✿ Constitutional provisions: embodiment of public policy.
  - ✿ Statutes: e.g. Maintenance of Surviving Spouses Act.
  - ✿ The common law duty of support: maintenance of spouses and children.

# Formalities required for a valid will

- ✿ When a testator signs or executes his or her will, it has to be done in accordance with certain rules set out in the Wills Act. A will that is not executed in accordance with the formalities required by the Act is invalid.
- ✿ Consequences of invalidity: the will is of no force or effect, unless a court condones it.
- ✿ The 'CNA will'.

# Restrictions and conditions in bequests

- ✿ Condition.
- ✿ Time clause.
- ✿ Modus.
- ✿ It is preferable to leave a bequest without any restrictions so that there is little scope for people to challenge the will.

# Common errors

- ✿ Nominating laypeople as executors.
- ✿ Making no provision for the power of assumption.
- ✿ Not giving the executor the power to appoint an agent.
- ✿ Drafting obscurely-worded wills – the need for plain English.
- ✿ Not having sufficient liquidity in the estate. Estate tax and duty must be taken into account.
- ✿ Not revising one's will every 5 years.

# The importance of estate planning

- ✿ It is a part of your overall financial planning.
- ✿ You are able to structure your estate according to your own wishes.
- ✿ There are tax and estate duty implications.
- ✿ You may want to place your property out of reach of your creditors.

# Steps to take before you visit your lawyer to draft a will

- ✿ Find out your lawyer's fees for consultation and drafting.
- ✿ Plan:
  - ✿ What are your needs?
  - ✿ What are your aims for your estate?
- ✿ The 'Death File'
- ✿ Make arrangements for your lawyer to send you a draft via email.