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## What is a junk Will?

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Friday, 29 January 2010

When comes to Will writing, some people either do a DIY Will or get a lawyer to do it. Most of the time the Will is either invalid or is valid but practically useless. Why? A Will is merely a tool. If the tool is used wrongly, it is a rubbish tool. An analogy is like buying an insurance product:

If you ask an insurance salesperson for specific product advice, the insurance person can give product advice and help you transact it. However, it does not mean that the insurance product is suitable. You may have bought an insurance product that is exactly what you wanted but whether it is suitable is quite another story. That's why countless people have bought junk insurance products that are as good as no insurance. This happens because the insurance salesperson did not conduct a financial needs analysis and make a recommendation. Similarly, when it is the Will writing, countless people have made Wills that are either not recognized by law or legally correct but practically rubbish. I shall give two real life examples of how and why this happened.

My client A approached lawyer B to write a Will. Client A instructed lawyer B that she would like her assets to go to a few people and one of them is her brother. In the Will, nothing was mentioned about giving to her children. Privately, Client A told her brother that the monies to be given to him is actually meant to be given to her children who are all still young and unable to own assets currently. This arrangement was not mentioned in the Will. When client A told me this, I immediately realized that she had committed two mistakes. The first mistake is that her intention was not documented in the Will. She only wanted her brother to act as a trustee for her children. She should have mention it in her Will through a testamentary trust that her children are to inherit some monies with her brother to be appointed as a trustee until her children are of legal age. The "private" arrangement is dangerous because her brother has no legal obligation to hand over the money. Second problem is that since she did not provide anything for her children in the Will, this is against the law. Parents must make provision for unmarried daughters and sons below aged 21. By not providing for her children in her Will, her Will can be challenged and contested. Of course, her children will have to contest her Will of which at the end of the day the lawyers will get all their fees and that there will be nothing much left in the estate. What exactly went wrong in the entire process of Will writing? Two things must happen which resulted in a practically useless Will. These are (1) the testator (client A) was not knowledgeable enough to analyse her entire situation and (2) lawyer B did not conduct a full fact finding analysis to study her situation and provide a recommendation. If the lawyer had asked more facts, he would have uncovered that she has children and thus advised her that her wishes will be challenged because legislation makes it compulsory to provide for her two minor children. As I had known her for sometime already, it was easy for me to give her the advice. But a stranger like lawyer B has no time to conduct a full fact find. For a full fact find analysis, the Will would not have cost a few hundred of dollars! It probably would cost thousands of dollars! As the saying cost, pay peanuts and get monkeys. Isn't it the same as buying insurance? Get free or cheapo advice and you get junk insurance.

The second case is Client X. Client X told his lawyer J that he wants to give his assets to his two children in equal proportion. This is quite a simple Will and so it cannot be wrong right? Wrong! The lawyer assumed that the children are minors and thus drafted the Will to mention that all assets of X is to be given to "all surviving children of X". Well, sounds good except that X's children are all grown up with families on their own. The phrase gifts "to all surviving children in equal share" means that if one child predeceased the testator, the gift will be distributed to the remaining surviving children. This makes sense if all children are minors since minors do not have any dependents. But since X's children are all grown up with their own families, the lawyer should have consulted X whether does he wants to have his grandchildren inherit should one of his own children predecease him. In fact, it isn't fair that all assets only go to the surviving children when it is the predeceased child's family that needs the asset most. Why does this happen? Again because of two reasons: (1) the testator (client X) was not knowledgeable enough to analyse his entire situation and (2) the lawyer did not conduct a full fact finding analysis to study his situation and provide a recommendation. So it is identical to buying a junk insurance product.

However, I must admit that both lawyers charged rock bottom prices. One charged \$150 and another charged \$120. These are below market rates. I really feel that in this world, paying peanuts seriously will get you monkeys. So if you want to get a Will done, for goodness sake don't bring home a monkey!

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So should you get the most expensive Will? No of course not. Some junk insurance cost 42% more expensive than others but it is still junk. Even if a Will cost \$100,000 it is still junk if it is really junk. A junk Will is junk regardless of the price tag. I think it is more important to ask yourself whether the Will writer is willing to conduct a full fact finding analysis and provide a suitable recommendation. Frankly speaking, I doubt any lawyers have the time to conduct a full fact find. If they do, be prepared that their fees will cost you your entire estate!

For further reading, you may wish to read this related article on [Advanced Estate Planning](#).