

# 5 Stone Buildings

The background of the slide features a close-up, low-angle shot of a stone building's facade. The stone blocks are arranged in a regular, repeating pattern, creating a strong sense of depth and texture. A large, semi-transparent purple diagonal shape is overlaid on the left side of the image, framing the text.

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## Pitfalls in the administration of estates

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## **Gifts to charities which have ceased to exist**

- Has a relevant charity merger been registered? Section 311 of the Charities Act 2011
- Does the will contain any relevant provision? E.g. STEP para 4.16.2
- Is the gift to the institution itself or on trust for its purposes? N.B. the distinction between unincorporated and incorporated bodies: Re Finger's Will Trusts [1972] Ch 286; Re Vernon's Will Trusts [1972] Ch 300.
- If on trust for its purposes, are those purposes still being carried out? → Administrative scheme
- If to the institution, is there a general charitable intent? → Cy-près scheme

## **Failure of specific and residuary gifts**

- Failure of specific gift.
  - General rule → falls automatically into gift of residue.
  - But wording could produce a different effect:
    - gift to two or more beneficiaries - wording could enlarge shares of beneficiaries who do take.
    - intention to exclude from residuary estate - would pass on intestacy.
- Failure of residuary gift.
  - Passes on intestacy.
  - Can avoid this through use of:
    - accruers.
    - substitutionary gifts.

*...I gyve and bequeath unto my saied Daughter Judyth One Hundred and ffyftie Poundes more if shee or Anie issue of her bodie Lyvinge att thend of three yeares next ensueing the daie of the date of this my will during which tyme my executors to paie her consideracion from my deceas according to the Rate afore saied. And if she dye within the saied terme without issue of her bodye then my will ys and and I doe gyve and bequeath One Hundred Poundes therof to my Neece Eliabeth Hall and ffiftie Poundes to be sett fourth by my executors during the lief of my Sister Johane Harte and the use and proffitt therof cominge shalbe payed to my saied Sister Jone and after her deceas the saied L li shall Remaine Amongst the childredn of my saied Sister Equallie to be devided Amongst them...*

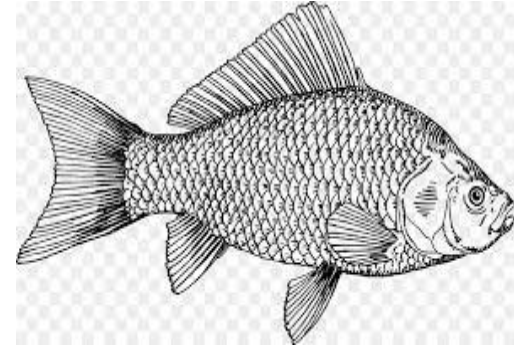
**Shakespeare's will (1616)**

## **Section 33, Wills Act 1837**

- (1) Where-
- (a) a will contains a devise or bequest to a child or remoter descendant of the testator; and
- (b) the intended beneficiary dies before the testator, leaving issue; and
- (c) issue of the intended beneficiary are living at the testator's death,
- Then unless a contrary intention appears by the will the devise or bequest shall take effect as a devise or bequest to the issue living at the testator's death.
- Similar provision in relation to class gifts (a class of persons consisting of children or remoter descendants of testator): section 33(2).

## Section 33, Wills Act 1837

- Ling v Ling [2002] WTLR 553: “such of my children living at my death who attain 21 and if more than one as tenants in common in equal shares”: no contrary intention
- Rainbird v Smith [2013] WTLR 1609: “such of my daughters, A B and C, as shall survive me and if more than one in equal shares”: contrary intention
- Hives v Machin [2017] EWHC 1414 (Ch): “for such of my sons, A, B and C, who shall be living at the date of my death and if more than one in equal shares absolutely”: no contrary intention.



## Payment of expenses in relation to devise of property

- The will provides for a beneficiary to receive a property that is subject to a mortgage. Estate is solvent.
  - Where does liability for payment of the mortgage fall: on the property or the residuary estate?
  - Section 35, Administration of Estates Act 1925: general rule is that it falls on the property interest bequeathed...
    - ...unless contrary intention signified by will / deed / other document.
  - If multiple beneficiaries with different shares of the property, each share bears a proportionate part of the mortgage liability according to its value.
- *Re Ross (Deceased)* [2013] EWHC 2724 (Ch).



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## Payment of expenses in relation to upkeep

- Who pays for the upkeep, insurance and maintenance of the property?
  - Generally, the expenses are borne by the devisee / legatee from the date of the testator's death.
    - *Re Pearce* [1909] 1 Ch. 819 → followed in *In re Rooke* [1933] Ch. 970.
  - But if the gift is of property to be selected by the devisee / legatee, they only pay such expenses from the date of selection. Prior to this, the expenses are borne by the residuary estate.
    - *Re Collins' Will Trusts* [1971] 1 WLR 37.



## Payment of expenses and partial intestacy

- Section 34(3) of the Administration of Estates Act 1925: solvent estate shall... subject to the provisions, if any, contained in his will be applicable towards...funeral, testamentary and administration expenses, debts and liabilities payable in the order mentioned in part II of First Schedule.
- Schedule 1 part II: 1. property of the deceased undisposed of by will, subject to retention thereof of a fund sufficient to meet any pecuniary legacies...
- What about the following? “My executors shall hold my estate upon trust to pay, discharge or provide for my debts, funeral, testamentary and administration expenses and subject thereto...”: Contrast Re Sanger [1939] Ch. 238; and Re Taylor [1969] 2 Ch. 245



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**Thank you**

**Please email any further  
questions to:  
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