

An aerial photograph of a medieval castle, likely the Chateau de Beaucourt in France. The castle is a complex of stone buildings with several towers, some featuring conical roofs. It is surrounded by a deep, dark blue moat. The surrounding landscape is lush green with rolling hills and trees. The lighting suggests a bright, sunny day.

THE MOAT

A REVOLUTION IN ADVISING

This will impact so many estates




Legal fee scandal: Lawyers 'feast' on Perth family estate

A SUPREME Court judge has launched a scathing attack on lawyers who “feasted” on a small family estate with their “indefensible” legal fees, describing it as a “scandal” that brings the profession into “disrepute”.

Justice Jeremy Curthoys’ withering takedown was aimed at the lawyers involved in the case of Angela Miller, who was contesting the will of her late de facto partner Andre Taylor, who left his entire estate – worth about \$600,000 at the time of the three-day trial last October – to his two adult children, Elizabeth and Philippe.

In a recent judgment, it was revealed the combined legal costs were potentially more than \$500,000 – in a case involving six lawyers, one from interstate, but which only should have had two, according to the judge.

The small estate had been “ravaged” by legal fees, he said.

 *The costs on this matter are not, as counsel for the executor described them, ‘unfortunate’. They are a scandal to the administration of justice and bring the legal profession into disrepute in the eyes of the public.*

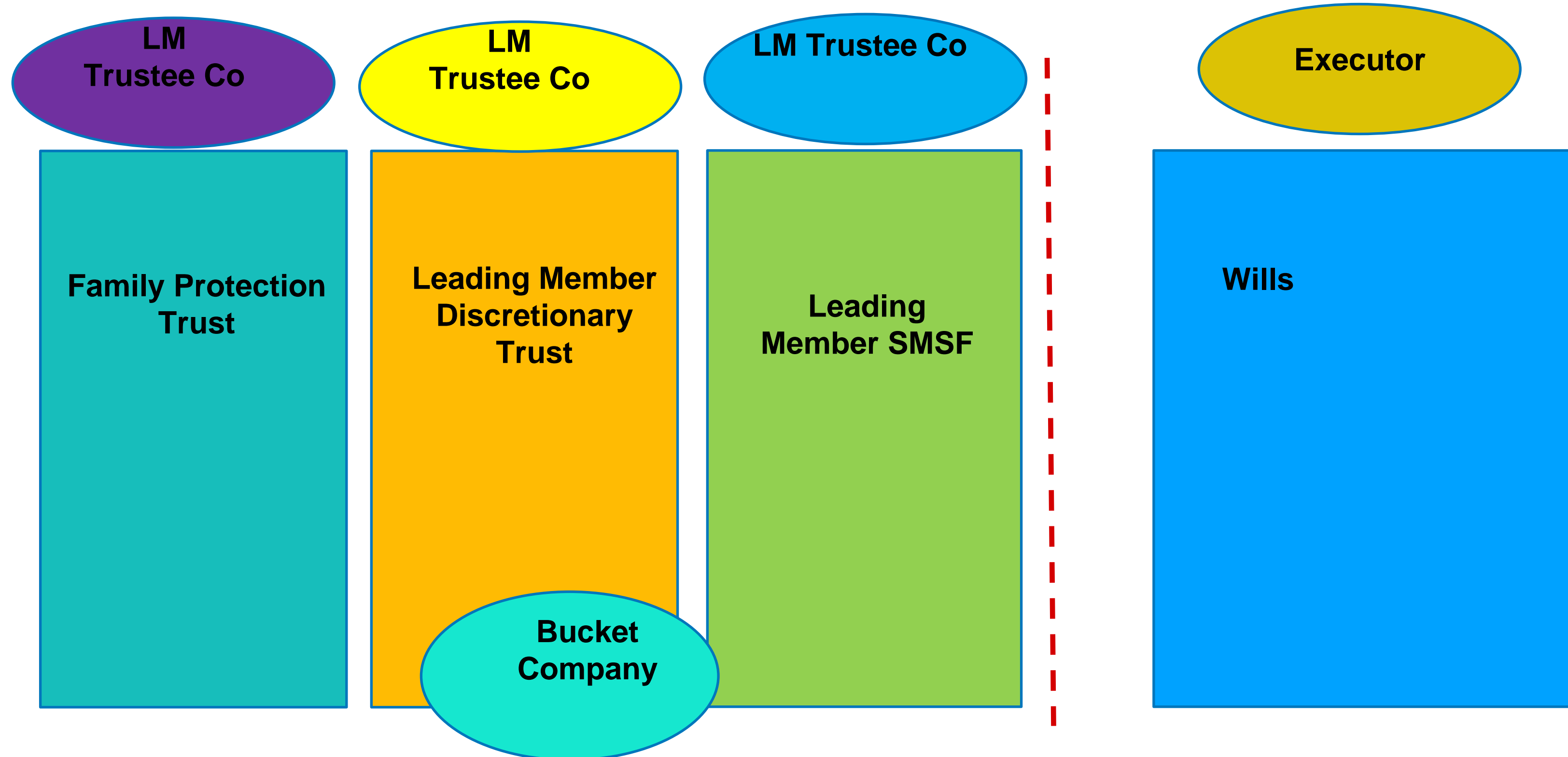
Justice Curthoys.

Simple Case Study



- Ken & Rose are aged 50 and equal shareholders and directors of Butchery Pty Ltd operating a successful retail butchers shop which has been valued recently for \$2M
- They have 2 adult children, Harry (in an 18 month relationship with Sally) an employed apprentice butcher, the other William single in the Army.
- **William hates Sally and vice versa**
- They have a SMSF – the Rose Family Super Fund with \$550,000 member benefits each
- Ken and Rose aspire to purchase the shop they currently lease for \$1.5M
- Ken and Rose have significant equity in their \$1m home with only \$200k mortgage
- They both have old Wills executed prior to children being born and their BDBN points everything into the estate

The New Improved Structuring



Some Cases for Super Estate Planning

- **Meaning of Dependant for Tax Purposes: ATO Private Biding Ruling and Malek v Federal Commissioner of Taxation (1999) 99 ATC. 2294; 42 ATR 1203**

13/10/2019

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Each Beneficiary is entitled to one third of the Deceased's estate.

The Beneficiaries did not reside with the Deceased. Rather, the Beneficiaries lived with their parent.

The Beneficiaries did not receive any financial support from their parent.

The Deceased provided the Beneficiaries with ongoing financial support including the following:

- regular payment of tertiary education course fees for the First Beneficiary;
- provision of supplementary income to the Second Beneficiary for living expenses; and
- provision of supplementary income to the Third Beneficiary for living expenses.

Without the financial support the Deceased provided, the First and Second Beneficiaries have been unable to continue their tertiary studies

The Third Beneficiary had taken a gap year and was reliant on the Deceased for supplementary income.

“The SMSF Death Benefits Trust”

- **A testamentary trust that is created by the Trustee of the SMSF on the death of a member**
- **If set up right it can access the preferential tax rates for minors so they are treated as adult children**
- **The capital must go to the beneficiary or their dependants in order for it to access the favourable tx consequences**

4.1 Death Benefits from the Fund

I hereby direct that the Trustee of the Fund, provided the Fund has the specific assets or resources to do so, make or transfer the following benefits or assets to the following beneficiaries:

a) SPOUSE – SALLY SMITH

DEATH BENEFIT PAYABLE:

- All of my superannuation interests

This benefit may be paid as an income stream if allowed under the Superannuation Laws or transferred directly to the designated beneficiary or any trust, company, person or other entity that the beneficiary directs, including a transfer to the deceased member’s estate for the asset to be held specifically for the beneficiary or in a trust for that purpose. At the direction of the beneficiary or any Leading Member the Trustee may create a SMSF Death Benefits Trust to hold the designated bequest. The SMSF Death Benefits Trust is a discretionary trust whereby the beneficiary or their assign is to be the Trustee and appointor. Further the beneficiary is to be designated primary beneficiary of the Trust along with any lineage or such other beneficiaries as the beneficiary includes in the constituent SMSF Benefits Trust Deed. The exact terms and conditions of the SMSF Death Benefits Trust are to be determined upon advice of any Professional engaged under this SMSF Will to look after the deceased member’s superannuation estate.

i) SALLY SMITH NOT ALIVE

In the event that SALLY SMITH is not alive then their share of the deceased’s superannuation benefits are to be paid to my children Max and Sophia who are to share equally under the same terms and conditions as directed for the original beneficiary, either directly if the Superannuation Laws allow or via the deceased member’s estate.

“The Family Protection Trust” – the Royal Trust

- **It is a discretionary trust that has the protection of a family’s wealth in the mind and is an important tool**
- **Generally goes for 80 years but can be longer if the jurisdiction is South Australia**
- **The Family Protection Trust has at its heart the Family Protection Appointor who is often the enduring power of attorney and also the Executor of the estate**
- **If the FPA resigns or becomes incapacitated or dies then the next family appointor steps in**
- **The beneficiaries and all distributions are for the bloodline or at the discretion of the current FPA**

“The Protector”

- **Accountants, Auditors, Planners, Engineers and Doctors plus so many other business owners are in the firing line for litigation**
- **Seen in full glory in Atia v Nusbaum (2011) QSC 44 where the Court rules that a \$1M security as shown in loan and mortgage documents were valid despite the gift of a \$400,000 property from son to mother**
- **The steps are:**
 - **Accountants Solvency Certificate**
 - **Deed of Gift**
 - **Promissory Note using net asset values**
 - **Loan back with registered mortgage and PPSR**
 - **Won't protect from bankruptcy immediately but long term protection, litigation protection and what we really love, Family Provisions Claims protections**

If you need help

- **Abbott and Mourly are specialist estate planning and asset protection lawyers and use zoom conferencing for all sign offs**
- **Also specialists in property development and the use of SMSFs in that regard**
- **Have enduring powers of attorney that cover SMSF trusteeship as well as running a company in the event of the incapacity of a member**
- **Well skilled in Wills, testamentary trusts and the pioneers of the SMSF Death Benefits Testamentary Trust**
- **Blend Wills with SMSF Wills**
- **Contact Tony – tanamourlis@abbottmourly.com.au**