



with  
**Wes Hosking**  
publicdefender@heraldsun.com.au

# PUBLIC DEFENDER

**qa** YOUR QUESTIONS ANSWERED

**LEGAL DILEMMAS**

**Q** MY mum died a few months ago and I am the sole executor of her estate. She held term deposits with three banks. Probate was proved, but all refused to deal with me in a branch when the accounts matured, referring me to their legal departments. Are they acting illegally?

Roland Horvath, Cranbourne

**A** WITH regard to probate, the legal position is clear. If you have a grant of probate and have provided the bank with a certified copy then the bank has to deal with you as the grant of probate proves that you represent your mother's estate. It may be that the bank's internal procedures require their legal department to check this, but once checked they have to deal with you.

**Q** I JOINED a gym in May. The computer wasn't working and the consultant used a hard copy contract and gave me a duplicate. I am now trying to terminate my membership and it appears the contract I am being held to is different from the one I have. Where do I stand legally?

Tracy Bartie, Langwarrin

**A** The contract is the agreement you made. If you have a duplicate, then that's the one that you have agreed to when you joined and it's this agreement that binds you and the gym to termination.

**Q** I AM aged 71 and trying to consolidate my superannuation funds before I retire. One of the funds is only allowing me to retrieve small amounts of money at specific "windows". What action can I take?

Trevor Gough, Ferntree Gully

**A** IT sounds like you are trying to roll over all of your superannuation into one fund. Whether this is possible largely depends on whether you are in an accumulation fund or defined benefits fund. For accumulation funds there should be no problem. If, however, you are in a defined benefits fund it's more complex and the rules of the fund may restrict your access. For free help in relation to this you can contact the ATO.

**COMPLAINT OF THE WEEK**

**Q** OUR insurer refused a claim on a stolen wooden carved statue, received as a gift, because we did not have the original receipt or a photo. Our home insurance covers up to \$1000. We think the statue is worth \$750. We have a police report. What recourse do we have?

Charles & Joan Small, Port Melbourne

**A** FIRST, use the insurer's own internal dispute resolution procedures. They typically have 45 days to respond. If the insurer maintains its refusal to pay then you can challenge the decision through the Financial Ombudsman Service. You don't need a lawyer for this and it's completely free. The cost of court proceedings would be far greater than the statue's value.



**Wants her money:** Val Doherty is battling breast cancer and other health problems.

## Denied her inheritance

A PENSIONER who is battling breast cancer fears she will be dead before being allowed access to a \$33,000 inheritance frozen during the financial crisis.

Rosebud's Val Doherty said fund manager Colonial First State was refusing to release the money, transferred after the death of her 92-year-old mother in March.

Mrs Doherty, 67, said she was advised the money wouldn't be released in full for a decade because of the global downturn.

"If they hang on to it for 10 years I am going to be 77," Mrs Doherty said.

**FROZEN FUNDS**

"I might be dead by then. "It's not what my mum would have wanted."

Mrs Doherty, diagnosed with breast cancer the day after her mother's funeral, had chemotherapy and radiation treatment during her fight with Colonial and is due for an operation for more health worries.

She said she would want the money regardless of her health. "I am not destitute but it's the principle of the thing," Mrs Doherty said.

A Colonial First State

spokeswoman said the company couldn't disclose information about individuals, but promised to contact Mrs Doherty.

The spokeswoman said the Australian Securities and Investments Commission required Colonial to suspend redemptions for all investors when funds were frozen.

"ASIC have granted us some relief in this circumstance, to allow us to make payments from the fund to investors who are suffering financial hardship."

An ASIC spokeswoman advised Mrs Doherty to file an application for hardship.

## Wills in dispute

**ANDREW DIMSEY**



**PRINCIPAL LAWYER MAURICE BLACKBURN**

WHERE there's a will, there's a way.

The loss of a loved one and the grieving process that follows is hard enough.

This experience unfortunately can turn from grief to anger when disputes between people arise over the contents of a will.

Will disputes are common and our firm has seen disputes over significant assets, such as ownership of the family home, how other assets are divided or even a family heirloom, worth more for sentimental reasons than monetary value.

Sometimes people find that a person close to them has left a will, but believe the deceased failed to address their moral and/or financial responsibility towards a living person.

Some people simply feel they have missed out on their rightful inheritance.

A well-constructed will can help avoid ugly and destructive disputes between family members and others following the loss of a loved one.

But when disputes arise, the law plays a role to help resolve the conflict.

There are several laws you need to be aware of if you are considering contesting a will. What has been your experience with wills?

Have you been involved with or are dealing with a will dispute?

**Blog live with Andrew from noon-1pm today [heraldsun.com.au](http://heraldsun.com.au)**

**Send your legal question to Andrew [publicdefender@heraldsun.com.au](mailto:publicdefender@heraldsun.com.au)**

**If you have to fight the system, don't fight it on your own.**

**Maurice Blackburn Lawyers**

Since 1919

At Maurice Blackburn we understand that you don't get anything in this world without a fight. Which is why we fight and win for people with TAC, WorkCover, asbestos, superannuation and insurance claims.

**We fight for fair.**

**Call 1800 241 262 or visit [mauriceblackburn.com.au](http://mauriceblackburn.com.au)**

Melbourne • Dandenong • Frankston • Geelong • Mildura • Reservoir • Ringwood • Sunshine • Traralgon • Wangaratta  
By appointment in: Bairnsdale • Ballarat • Box Hill • Cranbourne • Lilydale • Melton • Oakleigh • Pakenham • Shepparton • Warragul • Werribee • Wodonga