

## Testamentary Trusts: Strategies and Precedents (2nd ed)

By V Sundar, C Rowland, P Bailey | LexisNexis Butterworths | 2016



The first edition title of this text was *Discretionary testamentary trusts: precedents and commentary*. The topic of the second edition is similar but with a perhaps more accurate naming. It complements a text with some similarities of structure in which one of the authors (Dr Rowland) was involved in some earlier editions, *Hutley's Australian wills precedents*.

The first six chapters introduce the place of discretionary testamentary trusts in estate planning and describe the use of discretionary testamentary trusts in relation to tax effectiveness, asset protection, social security and disability legislative tests, insurance, and superannuation.

Chapters 7 to 10 are designed to provide a universal framework base precedent text for testamentary discretionary trusts and then to adapt that text to specialised circumstances with precedential drafting variations that are designed to have been harmonised with the base precedent. As the authors say at [7.1]: 'The system is like a Lego set: because each block is self-contained, a block can be removed and replaced without compromising the integrity of the whole, and removing and replacing one block does not have implications for the rest of the structure. ... The great merit of the system is that it saves the drafter the difficulty and danger inherent in laboriously considering each modification to a precedent, unsure all the time whether the change he or she is making will compromise other parts of the precedent.' However, the explicit disclaimer on the opening pages of the text reminds the reader that a precedent is the start of thought not a substitute for it. As is further recognised at [7.3] et seq, not every human situation will fit neatly within an existing block and changing the block will require checking for harmony with the rest of the precedent.

The text is clearly aimed at providing guidance for practitioners, primarily those who are required to draft and advise on the structures which it expounds and for which it provides precedents. The style is direct and practical and the language of

drafting and commentary or explanation straightforward. Treatment of case law is directed to practical implications. An explanatory note to give to a testator or other client is provided, with a warning to review it if variations of drafting are used. Complete worked examples of specific factual variations are provided.

Chapters 11 and 12 provide strategies concerning the impact of family provision legislation (recognising that effectiveness may be diminished in New South Wales by the broad notional estate regime) and in respect of blended families (recognising the trade-offs and balances inherent in each strategy).

The index is comprehensively helpful.

Although primarily focussed on practitioner drafters and advisers, the text remains of interest to those dealing with the (perhaps litigious) aftermath of drafting, in elucidating the intended purpose and strategy that informs a particular choice of words.

**Reviewed by Gregory Burton SC**