

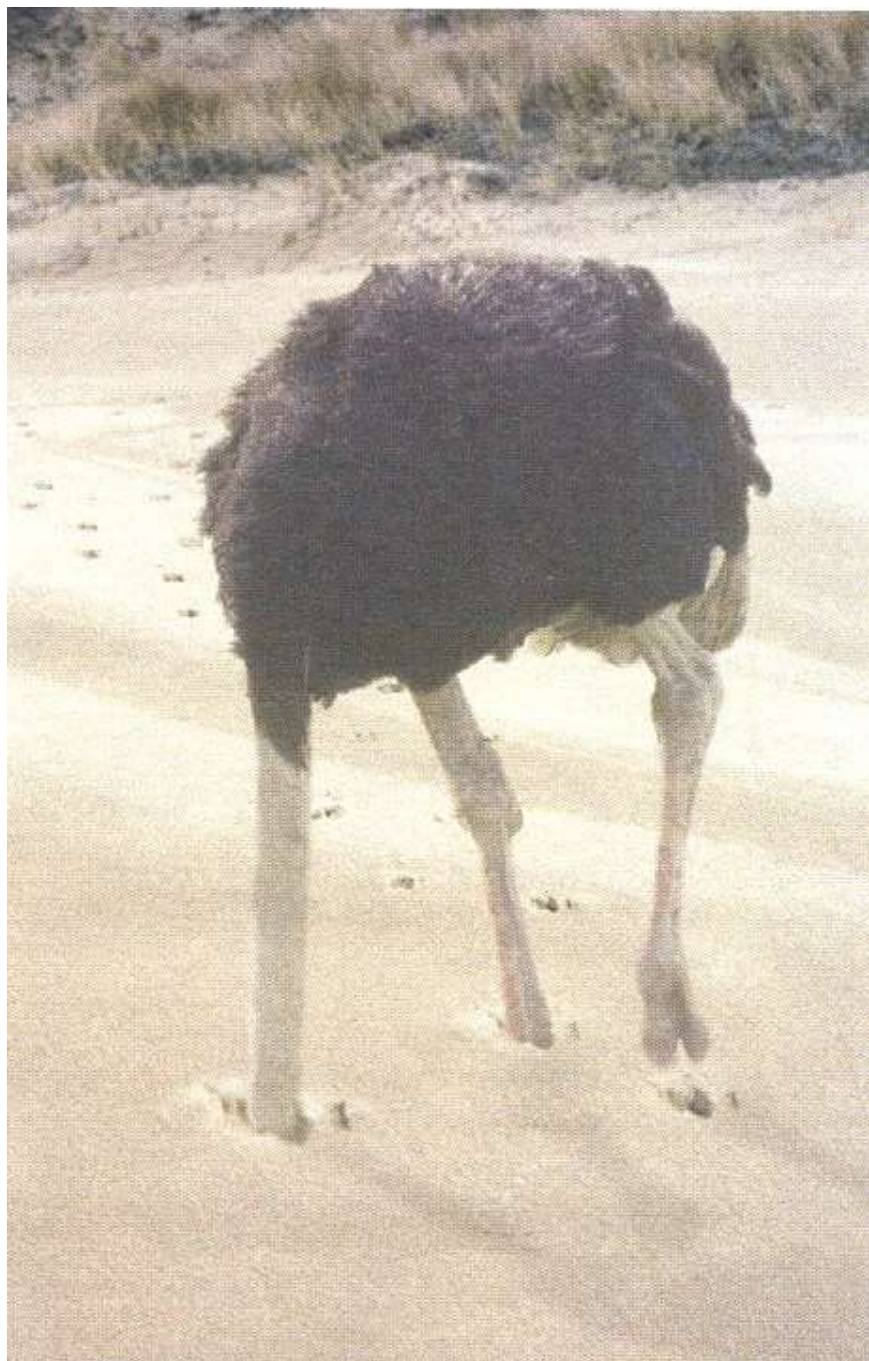
**GOOD WILL
BAD WILL
NO WILL**
Does it matter?



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Where is your World?







The World of Things

No Thing

Seeds of Avoidance

- Fear
- Yuk factor
- Too hard
- WIIFM
- Pleasure Principle

“If you don’t spend a little bit of time and money on yourself – you’re a bad judge of a good investment!”

Death

Death

- Two Types
 - D1 - Final
 - D2 - Semi Final

D1 Death

- Certain!
- Only 52% of Australians have Wills
- The rest = a lawyer's picnic
- Complex Life = Complex D1Death

D2 Death

- Possible!
- Only 14% of Queenslanders have Enduring Power of Attorney
- The rest = a lawyer's picnic
- Complex Life = Complex D2 Death

Confronting Death (D1)

- No Will
- Bad Will
- Good Will

No Will

- Types of 'No Will'
 1. No will
 2. Lost Will
 3. Invalid Will
 4. 'Gunna' Will
 5. 'Too late' Will
 6. 'SKINS' Will

No Will - Consequences

- Law prescribes who gets what
- Law (Qld)
 - First \$150k and household chattels to spouse
 - Rest to spouse and children equally

RESULT

- Usually not fair or intended
- Often calamitous
- Spurs family breakdown
- Almost inevitable legal dispute!

Bad Will

Types of Bad Will

- Cheap Will
- Simple Will
- Ignorant Will
- Old Will
- Pre-Love Will
- 'Clayton's' Will
- 'Despots' Will
- DIY Will

Bad Will - Consequences

See “No Will – Results” above

Good Will

Good Will – A Process

- Understanding and matching
 - Your aspirations
 - Your family dynamics
 - Your wealth
 - Your options
 - The Law

Good Will – Aspirations

- Your Will is your Wish!
 - Sort of
 - Imagine you are dead
 - You're looking down from above
 - What would you like to see
-
- Your celestial desires are fundamentally the basis for a good Will irrespective of what others may later want to do to it
 - Avoid crafting your Will as a defensive document against future attack or to be like 'Caesar's Wife'

Good Will – Family

- *'Family'* is not what it used to be
 - Mum and Dad
 - Blendeds
 - De-factos
 - Compactos
 - Mixed bag children
 - Disabled children
 - Grand/Great Grand children
 - Charities
 - Business entities & structures
 - Pets
 - Neighbours
 - Later life love and divorce
 - Losing your marbles
 - Your parents

Good Will – Wealth

- *Wealth* is not what it used to be
 - Home
 - Bank accounts
 - Superannuation
 - Life insurance
 - Inheritances
 - Trusts
 - Companies
 - OS assets
 - Shares
 - Debtors
 - Creditors
 - Guarantees
 - Aged care assets
 - War medals

Good Will – Options

Decisions

1. Who to appoint as Executor/s
2. Who to give what to
3. Who to pass control to
4. What are the possible consequences

Good Will – Executor/s

Not necessarily a simple decision

- Spouse lost capacity
- Lots of children
- They may have control over other things
 - See discussion re Trusts below
- Having alternatives handy
- Attempts to de-feud family
 - ‘objective’ executors
 - Trustee companies

Good Will – Who & What

Crucial facts:

- A Will can only dispose of what you own or what you owe
- What do you own?
- What don't you own?
 - But think you do

Good Will – Who & What

Some crucial law:

- You don't own the assets of your family trust
 - You do own your unpaid present entitlements or loans to the trust
- Your trust deed may say that your executor is appointed the new controller of your trust on your death
- You don't own your super death benefit
- You can't appoint someone a director of your company to replace you in your Will

Good Will – Who & What

Some crucial factors:

- Will a Mum & Dad Will suffice
- Do you want to disinherit someone
- Is the Will tax effective
 - Eg are those shares you're giving in your Will engorged with CGT
- Have you given unequal benefits to your children in life that you want to balance out in your Will

Good Will – Who & What

Some crucial factors:

- Is that money you gave to your child to give them a leg up a gift or a loan
- Do you want to make sure the much loathed son or daughter in law doesn't get a look in
- Is your spouse in aged care
- What about the Ken & Barbie syndrome
- Can you stop a challenge to your Will

Good Will – Who & What

Some crucial factors:

- Can you rule from heaven or hell
- Can I give to charities and grandchildren
- How can I provide for my disabled child
- What is a statutory will
- What is a Special disability trust
- How should I deal with my super

Good Will – The Process

- Your Family Trust
- Types of assets
 - Your Super
 - Shares and CGT
 - Aged care
- Testamentary Trusts
- Mutual Wills
- Disinheriting
- Your parents' Wills
- Ken and barbie
- Business succession

Good Will – The Family Trust

- What happens to it when you die?
- Trustee
- Beneficiaries
- Appointor

Good Will - Superannuation

- What happens to it when you die?
- Death Benefit
- Death Benefit Nomination
- Binding Death Benefit Nomination
- Tax

Good Will – Testamentary Trusts

- The cheap ‘Mum and Dad’ Will is dead!
- Long live the testamentary trust Will!
- Consider their:
 - Tax advantages
 - Creditor protection
 - Family Law protection

Mutual Wills

- The 'Ken & Barbie' syndrome
- Blended families
- Second marriages
- Balancing competing interests
- Legal Solution – Mutual Wills

Disinheriting

- Almost as big a business as inheriting
- Reflection of changing family structures & dynamics
- Intelligent devices to disinherit
 - Statement of Wishes
 - Joint tenancy
 - Super
 - Family law Financial Agreements

Does it all matter?

- No Will – I don't care
- Bad Will – Who cares
- Good Will – I care
- Do you care?
- If not, just 'SKIN' it

D2 – Semi-Final Death

AKA - Losing your Capacity

- What happens if you lose the capacity to make your own financial decisions – who can?
 - Next of kin/spouse?
 - Public Trustee?
 - Anyone else?

It won't happen – Right?

- Longevity says otherwise
- Chances of contracting dementia
 - 60-80 – 1 in 20
 - 80-85 – 1 in 5
 - 85 - ? – 1 in 2
- Problem
 - Lot of us getting to the magic age of 85 and above

Debunk the Myth!

- Next of kin has no power to make financial decisions

UNLESS

- They are the Enduring Power of Attorney for you

The Law

- If you lose your capacity and have not appointed someone as your Enduring Power of Attorney

CONSEQUENCE

- No one can make financial decisions for you

Enduring Power of Attorney

- A document appointing someone to make decisions for you if you lose capacity
- Financial, Personal and Health Care Decisions
- Can make one in every State and Territory
- Interstate one recognised in every other state and territory

Some Free Advice

Get:

- A good Will
- A good Enduring Power of Attorney
- Do some 'family planning'

**IF YOU DON'T LIVE IN THE
FUTURE TODAY YOU WILL LIVE
IN THE PAST TOMORROW**

THE END (or is it?)



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