

Goodman Lawyers

2017 THE LAW & YOU

Management Rights, Estates and Binding Financial Agreements

Presented by: Anthony Lin, Principal Lawyer

Tayla Gorman, Lawyer

Avis Hung, Paralegal

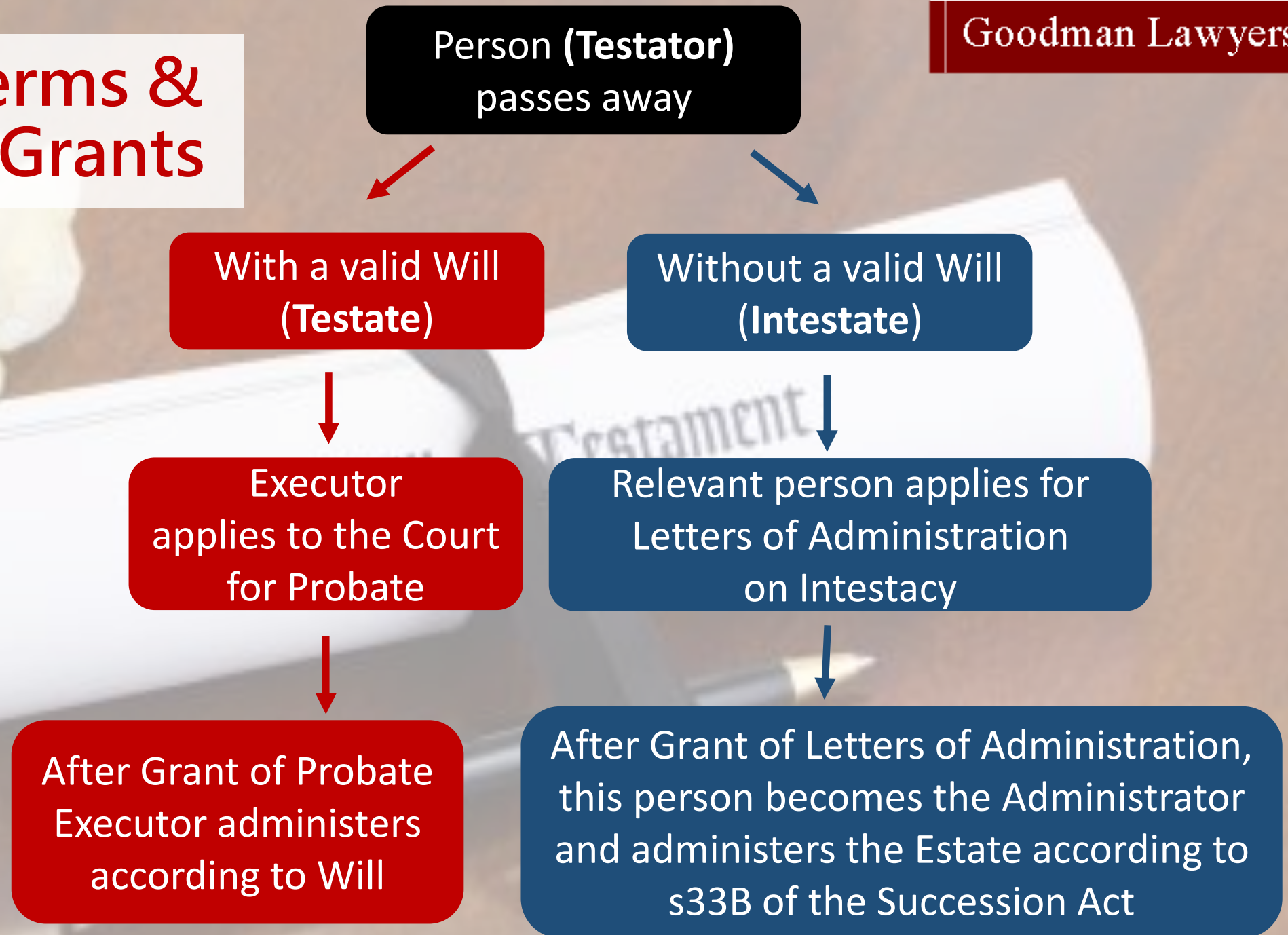
Alexandria Tu, Law Clerk





2. ESTATES

2.1 Key Terms & Different Grants



2.2 What happens if an Executor doesn't want to act?

- In Queensland, Executors may renounce their role under s 46 of the *Succession Act*
- In other states of Australia, Executors cannot renounce their position after they have taken steps to administer the Estate (e.g. paying bills of the Testator)



Person (Testator)
passes away

With a valid Will
(Testate)

Executor is unable
or unwilling to act

Without a valid Will
(Intestate)

Executor
applies to the Court
for Probate

Relevant person applies to
the Court for Letters of
Administration of the Will

Relevant person applies for
Letters of Administration
on Intestacy

After Grant of Probate
Executor administers
according to Will

This person becomes
the Administrator and
administers the
Estate according to
the Will

After Grant of Letters of Administration,
this person becomes the Administrator
and administers the Estate according to
s33B of the Succession Act

2.3 What happens if a beneficiary passes away?

- For a gift to a beneficiary to be valid, the beneficiary must survive the testator by 30 days (s 33B *Succession Act 1981*).
- If the beneficiary does not survive the testator by 30 days, then the gift will fail and remain in the Testator's residuary estate
- Some exceptions – for example if expressly stated otherwise in the Will



2.4 What happens if a beneficiary does not want their gift?

If a beneficiary does not want a gift under a Will, they can **disclaim** the gift.

To be effective, a disclaimer must be:

1. Timely
2. Peremptory
3. Communicated to the personal representative of the Estate

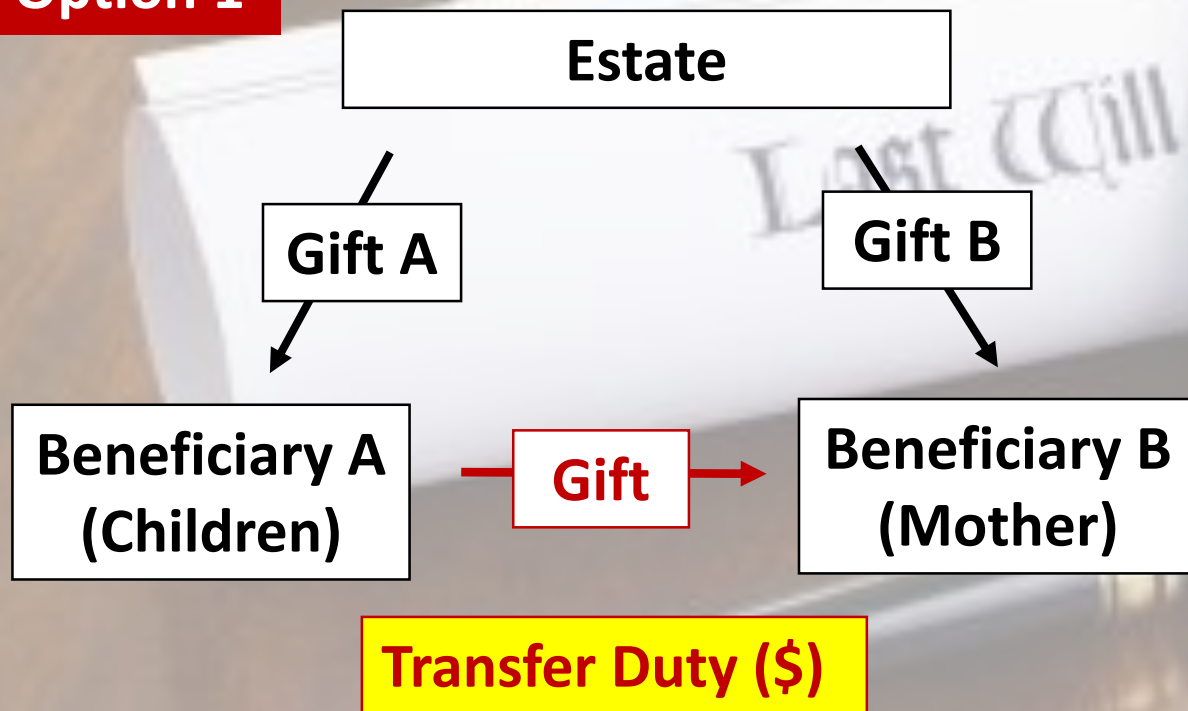


STANDARD SCENARIO

Executor/Administrator administers Estate with 2 Beneficiaries.

Beneficiary A (e.g. sons or daughters) is entitled to a Gift.
 If Beneficiary A wants to give their gift to someone else,
 (Surviving Spouse, e.g. their mother), they have two choices.

Option 1



Option 2

