

**WHERE THERE'S A WILL, THERE'S A WAY**  
**BUSH BARRISTER Jonathan de Vere Tyndall**

Younger farmers who have been left out of a will can still, in certain circumstances, get the farm.

For instance, say the younger farmer is not a child of the deceased, nor a dependent who lived in the deceased's household, nor a grandchild. They would not be eligible to claim under the Family Provision Act, 1982 so as to get a Court to make provision for what the deceased ought to have done.

The case of Flinn, in the Victorian Court of Appeal last year, demonstrates that there is a remedy for a not uncommon farm problem. The seniors, husband and wife, asked their young nephew and his wife to run the farm, take a very low wage, and in return promised that they would leave the farm, stock and plant to them when they died. The seniors owned the bank accounts and received retirement income from the farm, run by the younger farmers.

The seniors had mirror wills that left their half shares in the farm to the other, but if one predeceased the other, the gift was then substituted to the younger farmers. The end result was that when both had died, the younger farmers would inherit the farm, lock stock and barrel. These wills were discussed with the younger farmers, who were promised the farm.

Years went by of gut breaking effort by the younger farmers, without holidays and being able to draw a decent wage. They worked the farm, which was a run down dairy and irrigation property, 365 days a year and used the farm income to improve it. They turned it into something special.

However, as the senior husband got closer to death, he changed his will, as did she, to provide for a son, who did nothing on the farm, with a payout of \$150,000 on instalments over 10 years. This was discussed with the younger farmers, except the amount of the gift to the son. He then died, his mirror will clicked in, and the senior wife received his share of the farm. Meanwhile, the senior wife had become of unsound mind due to Parkinson's disease. But she then changed her will to give the whole farm to the son, including her power of attorney, and left nothing to the younger farmers. The son then evicted the younger farmers and their kids. They were left with barely nothing for their years of toil and hardship.

Sure she could change her will and revoke it. But because of the verbal representations made to younger farmers years before about leaving the farm to them, by both the seniors, the younger farmers reliance upon them to their detriment of years of toil and minimal income, they were able to bring a claim in *proprietary estoppel* for the whole farm, lock stock and barrel. Through equitable relief, the Court imposed a constructive trust over the farm, in favour of the younger farmers, because it was unconscionable not to intervene, even when contractually it was too uncertain to enforce.

So if you have been disinherited lately, go and see a Solicitor or Barrister. All may not be lost. If there's a will, maybe there's a way.

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