
Intestacy rules of the Succession

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Order of death can be important where it is relevant to the determination of the destination of the estates of the deceased. This was demonstrated in NSW Trustee and Guardian v State of New South Wales [2015] and demonstrates the need to have a Will Lawyer prepare a Will for you.

In this case a mother and son were found dead in their shared home. Both the mother and son died without a Will, so the destination of the estates and the persons entitled on intestacy would be determined by the sequence of death. The mother was a widow, with one child and there was no evidence that the mother had remarried, entered into a de facto relationship or had an issue after her husband's death. The son was unmarried and there was no record that he had ever had any children.

Depending on the sequence of death, there are two potential outcomes. If the son had died first the entirety of his estate would pass to his mother. From there the assets would be distributed according to the intestacy rules of the Succession Act 2006. Alternatively, if the mother died first her estate would pass to her son and then be distributed in accordance with the intestacy formula.

In determining the sequence of death, the court heard circumstantial evidence from detectives that had found the deceased. The court also referred to s 35 of the Conveyancing Act, which provides that where two or more people die in circumstances where it is uncertainty in the order of death, then the deaths are presumed to take place in the order of seniority. As such, the younger is assumed to have survived the elder. This only applies where circumstantial evidence cannot be used to establish who died first.

In this case, due to the circumstantial evidence presented, the court found that on the balance of probabilities it had been established that the son had died first.

Contact a Will Lawyer at Matthews Folbigg on 9635 7966