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VIDEO WILLS CAN PUT ESTATES IN JEOPARDY, SAYS EQUITY TRUSTEES

A recent Court case in Western Australia has demonstrated the problems and risks of recording yourself on video outlining your instructions and wishes in the hope that it might be interpreted as your last intended Will.

In a recent Western Australian case*, the Supreme Court was asked to accept 4 videos made by Peter Pitman in 2011, 5 years before he died, as his last intended Will.

"In this case," explained Stephen Hardy, National Manager of Estate Planning for Equity Trustees, "the Court was not persuaded that the videos were a 'complete' expression of Mr Pitman's intentions regarding the distribution of his estate after his death, and concluded that Mr Pitman's actions did not demonstrate that he intended the videos to be his last Will. As the Court did not accept the videos as Mr Pitman's Will, Mr Pitman's estate was to be distributed in accordance with legislation relating to the estates of persons who die without a Will."

Mr Hardy said that this case was another example of the sometimes unusual estate planning matters that the Courts must decide on.

"From time to time we hear about an unusual document or other record being accepted by a Court as a person's last Will. This may be an unsent text message, a document not witnessed correctly or a note written prior to surgery," he said.

"In Mr Pitman's case, the Court agreed that he was the person in the videos, and that he had the necessary understanding to execute a valid will, but a number of other factors came into play – including the quality of the videos, and that he had not told anyone about them."

Mr Hardy said that the bottom line with all Wills is that in order to be valid, they must comply with the appropriate State laws specifying how a Will must be executed.

"This usually means that a Will needs to be a document in writing, correctly signed and correctly witnessed, however in Australia, unlike in many other countries, Courts are authorised to decide that in special circumstances the usual requirements for executing a Will do not apply," Mr Hardy said.

"It is unusual, but in these exceptional situations, the Court can order that a record (e.g. document, video, audio recording) is the last Will, even where the record is executed incorrectly."

Mr Hardy urged everyone making a will to consult an expert adviser who can guide you through the process and ask the "What if?" questions that need to be answered.

"Probably the most common reason for Wills to be challenged and overturned is that the person who made the Will didn't receive adequate professional advice and assistance in the first place. Taking the time now can help ensure a smooth process later for those left behind," Mr Hardy said.

Read Mr Hardy's [short summary of the case here on our website](#).

* *In the Estate of Peter Anthony Pitman (Deceased); Ex Parte Rosemary Machin Pitman & Another [2018] WASC 237 (7 August 2018)*



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