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Wills - Case Study Four: Will Trusts (Protection of a Beneficiary)

The Facts

Mr Adam had been married twice, his first wife dying many years previously. Mr Adam had two daughters Anne and Lucy with his first wife, both of whom were over the age of 25.

Mr Adam had remarried relatively recently, and the relationship Anne and Lucy had with their father's new wife was good.

Anne, however, had a lifestyle of which her father did not approve. She had had a child through a relationship with an individual of whom Mr Adam did not approve. In addition, Anne had developed a drug habit, although not an addiction, which caused Mr Adam great concern.

Mr Adam's estate consisted of a house valued in the region of £750,000 and investments of £500,000. His second wife had no assets to speak of in her own name.

Mr Adam wanted a new Will leaving half his estate to his new wife, and the other half to be left equally between Anne and Lucy.

The Problem

With such a Will, the following issues arise:

- Whilst Mr Adam trusted his new wife and had every belief that she would execute a Will herself leaving her estate on her death to Anne and Lucy, there was of course no guarantee that she would do this. She could remarry and leave the assets to her new husband.
- The gift of 50% of his estate to Anne and Lucy would result in inheritance tax being paid as it is in excess of the nil rate band (currently £312,000 2008/09).

The Result

After taking advice, Mr Adam placed his entire estate into a life interest trust for his wife's benefit during her lifetime. His wife would receive the income and have the right to live in the house. He also gave the trustees the ability to give capital to any of the beneficiaries if the need arose.

On the death of his wife, the assets in trust would be divided:

- 50% to Lucy absolutely, and
- 50% being held upon the terms of a discretionary trust with Lucy, Anne and Mr Adam's grandchildren as potential beneficiaries.

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Why the Proposed Structure?

There were many reasons for the recommendations made, but the main ones were as follows:

- No Inheritance Tax is payable on the first death as the trust is covered by the spouse exemption.
- Protection of assets for Mr Adam's family.
- The power to advance capital gives the trust flexibility.
- The reason for the discretionary trust is to ensure that Anne can benefit from her father's estate, but at no time is she ever entitled to anything. She will only benefit on the exercise of the trustees' discretion in her favour. This protects Anne from her child's father and, if she manages to resolve her personal problems, the trustees could give her the entire trust fund, if appropriate.

The Will achieved what he wanted to achieve, ensuring protection of his wife and his daughters, whilst at the same time maximising tax-efficiency.

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