

**JURISDICTION** : SUPREME COURT OF WESTERN AUSTRALIA  
IN CIVIL

**CITATION** : TANDY -v- GLASKIN [2017] WASC 313

**CORAM** : TOTTLE J

**HEARD** : 25 OCTOBER 2017

**DELIVERED** : 25 OCTOBER 2017

**FILE NO/S** : CIV 1172 of 2016

**BETWEEN** : MICHAEL BRIAN TANDY  
Plaintiff

AND

MARY ANN GLASKIN  
Defendant

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*Catchwords:*

Probate - Proof of will in solemn form - Establishing testamentary capacity -  
Where testator diagnosed with dementia - Proof of testamentary capacity

*Legislation:*

*Rules of the Supreme Court 1971 (WA), O 73 r 15*

*Result:*

Grant to plaintiff of probate in solemn form of will dated 9 October 2009

*Category:* B

**Representation:**

*Counsel:*

|           |   |               |
|-----------|---|---------------|
| Plaintiff | : | Ms W F Gillan |
| Defendant | : | Mr R J Nash   |

*Solicitors:*

|           |   |                   |
|-----------|---|-------------------|
| Plaintiff | : | Biddulph & Turley |
| Defendant | : | Munro Doig        |

**Case(s) referred to in judgment(s):**

Lock v Phillips [2014] WASC 92

Public Trustee v Alzheimer's Australia WA Ltd [No 2] [2014] WASC 337

**TOTTLE J:**

(This judgment was delivered extemporaneously on 25 October 2017 and has been edited from the transcript.)

**Introduction**

1           The plaintiff, Mr Michael Brian Tandy, seeks a pronouncement of the force and validity of the will of the late Frank Cox, made on 9 October 2009 (the Will), and a grant of letters of administration, with the Will annexed, to him.

2           The defendant, Ms Ann Mary Glaskin, gave notice in her defence that she insisted on the Will being proved in solemn form and that she wished to cross-examine the witnesses produced to support the Will (pursuant to *Rules of the Supreme Court 1971* (WA) O 73 r 15).

3           Without intending any disrespect, in these reasons I will refer to Frank, his wife, Mrs Eunice Cox, and their children by their first names.

4           The sole issue in these proceedings is whether Frank had testamentary capacity when he made the Will.

5           In these reasons, I deal with the following:

- (1)     some procedural matters;
- (2)     the factual background;
- (3)     the evidence adduced that bears on Frank's testamentary capacity;
- (4)     the relevant legal principles;
- (5)     my reasons for concluding Frank had testamentary capacity.

**1. Procedural matters**

6           In the Will, Frank appointed his stepson, Mr Philip John Tandy, as executor, and stated that if Philip predeceased him or renounced the appointment, Ann should be appointed executrix in his place. Ann is Frank's daughter.

7           The present proceedings were commenced by Philip by a writ of summons issued on 3 February 2016. Philip died on 11 March 2016. On 8 April 2016, Ann renounced her right and title to probate and execution of the Will, and to letters of administration, with the Will annexed. On 20 May 2016, the Court ordered that Michael be substituted as plaintiff. Michael is a beneficiary under the Will.

## Affidavits of scripts

8 Affidavits of scripts have been sworn by each of Philip, Michael and Ann. It is common ground that the only testamentary script of which any party is aware is the Will. The original of the Will is attached to an affidavit sworn by Philip for the purposes of obtaining a grant of probate in common form in the Court's non-contentious probate jurisdiction.

## **2. Factual background**

9 The following factual findings are derived from the affidavit evidence, principally the affidavit evidence of Michael and his evidence in cross-examination.

10 Frank was married to Eunice on 24 October 1987. Frank had two children from his first marriage, Mr John Cox and Ann. Eunice had six children at the time she married Frank. They were Michael, Philip, Ms Trena Browning, Ms Cushla Wann, Mr Sean Tandy and Ms Donna Dolan. Frank's children and stepchildren are beneficiaries under the Will.

11 At the time they married, Frank and Eunice lived in Western Australia. Eunice owned a property in Bicton, upon which she built two townhouses. She sold one and - after they were married - she and Frank lived in the other, Frank having sold a property owned by him on Canning Highway. In 1988, Frank bought a 50% interest in Eunice's townhouse and Eunice transferred the property into their joint names as joint tenants.

12 In the early 1990s, Frank and Eunice sold the townhouse and bought another property in Bicton which they subdivided. They built a home on one of the subdivided blocks.

13 In 1996, Frank and Eunice moved to North Queensland, where one of Eunice's children lived. They bought a property in Kuranda, on which they built a house. While it was being built, Frank and Eunice lived in Cairns. In the mid to late 2000s, they sold the Kuranda property and moved to a suburb of Cairns.

14 On 30 September 2009, nine days before Frank signed the Will, he was diagnosed by Dr Michael Allan, a medical registrar, and Dr Edward Strivens, a consultant geriatrician, as 'more than likely' suffering from 'cortical and sub-cortical dementia of an Alzheimer or vascular origin'.<sup>1</sup> Dr Allan prepared a letter to Frank's GP dated 30 September 2009, reporting on Frank's condition. That letter was reviewed and signed by

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<sup>1</sup> Plaintiff's Trial Bundle, 7.

Dr Strivens, who was the senior medical practitioner responsible for reviewing Frank at that time.

15        On 6 October 2009, Magnetic Resonance Imaging of Frank's brain was undertaken. A report on the imaging was prepared by a Dr McMenamin, who was a radiologist at the Cairns Base Hospital (as it was known) at the time.

16        On 7 October 2009, Frank and Eunice had a meeting with Mr John McWilliam, a solicitor practising in Cairns. At that meeting, Frank and Eunice gave instructions for the preparation of wills for each of them. For the purpose of this factual overview, it is sufficient to say that Mr McWilliam was unable to recall his meeting with Frank and Eunice, but considered, on the basis of notes he had made in the course of the meeting on 7 October 2009, that there was nothing said then that caused him to have any concerns about Frank's testamentary capacity. That is because, he said, that had there been, he would have made a record of it and would not have proceeded to prepare the Will.

17        Frank and Eunice attended Mr McWilliam's office on 9 October 2009. Mr McWilliam went through the wills he had prepared with Frank and Eunice. Frank signed the Will in the presence of Mr McWilliam and Ms Tiffany Draper (a receptionist employed by the firm of solicitors for whom Mr McWilliam worked). They each signed the Will as witnesses in the presence of Frank and in the presence of each other.

18        In the Will, Frank disposed of his estate as follows:

- (1)    he gave legacies of \$5,000 each to the Red Cross and to one of Frank's granddaughters, Ms Heidi Weisess (Frank having, I find, had at least two other granddaughters);
- (2)    he left his personal domestic property (including any motor vehicle) to be held on trust for Eunice, but if she did not survive him for 30 days then for his surviving children and stepchildren in equal shares; and
- (3)    he left the residue of his estate (after payment of liabilities) to be held on trust for Eunice absolutely, but if she did not survive him for 30 days, for his surviving children and stepchildren in equal shares, provided that if any one of them did not survive him but left their own children, then for those grandchildren to have their deceased parent's share.

19           On 9 October 2009, Eunice also made a will that had been prepared for her by Mr McWilliam. Eunice's will was in similar, though not identical terms to the Will as made by Frank. In short, Eunice left a legacy of \$5,000 to the Red Cross, and the residue of her estate to Frank in the same terms as Frank had left the residue of his estate to her. That is, if Frank did not survive her, it was to be held on trust for her children and stepchildren in equal shares, or - if they did not survive Eunice for 30 days - for their children. Eunice appointed Philip to be her executor, but in the event that he predeceased her or renounced the appointment, she appointed her daughter Cushla as executrix in his place.

20           In about November 2009, Frank and Eunice returned to live in Western Australia, and bought a unit in Applecross not far from Canning Highway.

21           In May 2010, Frank consulted a general practitioner, Dr John Tomasich, who sought Frank's medical records from Queensland. To secure the release of those records, Frank was required to sign a written authority, which he duly did. Michael relies in part on the fact that Frank had the capacity to understand and sign the authority in May 2010 in support of the conclusion that Frank had testamentary capacity in October 2009.

22           In May 2011, Dr Tomasich referred Frank to Dr Emma Johnston, a consultant geriatrician practising at Fremantle Hospital. Dr Johnston saw Frank in company with Eunice. Dr Johnston observed that on cognitive testing Frank had moderately severe cognitive deficits. She concluded that Frank presented with dementia of moderate severity.

23           Frank and Eunice continued to live independently in their Applecross unit until November 2012, when Frank moved into the Concord Nursing Home. A short time later, Eunice moved into the Regents Gardens Nursing Home. In August 2013, Frank also moved into the Regents Gardens Nursing Home. The Applecross unit was sold and at least part of the proceeds was applied in the payment of an accommodation bond that was required for Eunice to reside at the Regents Gardens Nursing Home.

24           Eunice died on 2 September 2014. Her estate comprised a balance of approximately \$4,500 in a bank account, and a refund of the accommodation bond of \$242,894. This refund was paid into a bank account held by Frank.

25 Frank died on 16 September 2015. The main asset in Frank's estate is a balance of \$305,593 held in a bank account. This sum comprised the accommodation bond refund and some savings.

### **3. The evidence bearing on Frank's testamentary capacity**

#### **The affidavit evidence**

26 In addition to the affidavits of scripts, Michael relied upon:

- (1) an affidavit sworn by him on 14 October 2016;
- (2) an affidavit sworn by Mr McWilliam on 12 October 2016; and
- (3) an affidavit affirmed by Dr Strivens on 23 May 2017.

27 Each of the deponents was cross-examined on their affidavits.

28 A bundle of documents comprising attachments to the affidavits and a copy of the Will were tendered.

#### **Dr Allan's letter of 30 September 2009**

29 In his letter of 30 September 2009, Dr Allan noted the following concerning the capacity of Frank:

- (1) Frank's medical history included '[m]ild cognitive impairment, likely dementia? Alzheimer's? Vascular', and a 'two year progressive decline in memory, most specifically short term according to [Frank]';
- (2) Frank was 'adamant that he continues to perform all activities of daily living without too much concern ... cleans when required, independently showers, is able to do cooking, shopping, and continues to take care of finances for himself and [Eunice]' (Michael's counsel drew attention to the fact that Frank reported that he was taking care of finances not only for himself, but also for Eunice);
- (3) Eunice indicated 'that at times during the night ... [Frank] ha[d] been found wandering around the house slightly confused', and noted her concern about Frank 'going for walks with the dog independently as she [did] not feel confident that [Frank would] be able to relocate their residence';
- (4) His diagnosis of Frank as 'more than likely' suffering from 'a combination of cortical and sub-cortical dementia of an Alzheimer

or vascular origin' was founded on 'the constellation of symptoms exhibited by [Frank] and his significant[ly] worse ... mini mental [state examination] than expected for age', along with Frank's 'worsening memory, typographical deficiencies and shuffling gait' and evidence of 'cardio vascular disease and ... possibly ... a degree of cerebra vascular disease contributing to his cognitive status'.

30 Dr Allan concluded that Frank should undertake further tests including 'dementia screen bloods', an 'MRI brain', and a 'more thorough cognitive review and mini mental [state examination]'. He prescribed cognitive enhancing medications with a cholinesterase inhibitor.

31 There are two other things to note about this letter and the consultation that took place on 30 September 2009.

32 First, Dr Allan took the history from Frank and Eunice and prepared the letter. Dr Strivens, however, joined the consultation after the history was taken and reviewed Frank himself, and subsequently reviewed and signed the letter that Dr Allan had prepared.

33 Secondly, it is evident from the terms of the letter that Frank was capable of providing, and did provide, much of the history to Dr Allan himself. Moreover, there is nothing in the letter that suggests the history given by Frank was inaccurate or that Eunice had to correct any aspect of that history.

### **Dr Strivens' evidence**

34 In his affidavit, Dr Strivens deposed that he is the Regional Geriatrician and Clinical Director for Older Persons, Sub Acute and Rehabilitation, Cairns and Hinterland Hospital and Health Service.<sup>2</sup>

35 Dr Strivens stated that he treated Frank in September 2009.<sup>3</sup> In preparing his affidavit, Dr Strivens reviewed the Will and Frank's hospital records, the report of Dr Allan, the affidavit sworn by Mr McWilliam, and the mini mental state examination (MMSE) completed by Frank on 30 September 2009.<sup>4</sup>

36 Dr Strivens noted that Frank's score on the MMSE 'falls within the range of mild cognitive impairment and would not preclude any finding

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<sup>2</sup> Affidavit of Dr Edward Strivens affirmed 23 May 2017, par 2 (Strivens Affidavit).

<sup>3</sup> Strivens Affidavit, par 3.

<sup>4</sup> Strivens Affidavit, pars 3 - 5.



that [Frank] had testamentary capacity at the time when he made a will'.<sup>5</sup> In Dr Strivens' opinion, Frank's inability to write a sentence or draw particular shapes did not support a conclusion that Frank did not have the necessary capacity to make a will.<sup>6</sup>

37 In cross-examination, Dr Strivens said that the report on the MRI brain scan set out findings that were consistent with a combination of Alzheimer's disease and stroke-related dementia. He emphasised that the report was an aid to diagnosis, as opposed to constituting a diagnostic tool itself. Dr Strivens agreed with the proposition that Frank's score on the MMSE neither precluded nor required a finding of testamentary capacity. In answer to questions about his evidence that Frank's MMSE score would not preclude a finding of testamentary capacity, Dr Strivens said that the 'attention and calculation' aspects of the test - on which Frank did not achieve any score - were a poor indicator of executive function, (inferentially) the function most relevant to testamentary capacity. Dr Strivens said that mild dementia does not preclude testamentary capacity. Dr Strivens agreed that the result of the MMSE would have warranted a proper assessment of testamentary capacity. There was no suggestion, however, that Dr Strivens was aware that Frank intended to make a will or that Dr Strivens or Dr Allan had any reason to think that a proper assessment of testamentary capacity was required when they saw Frank on 30 September 2009.

### **Dr McMenamin's report**

38 As I have noted, an MRI of Frank's brain was performed on 5 October 2009.<sup>7</sup> Dr McMenamin reported that:

There is an area of restricted diffusion within the right periventricular white matter adjacent to the body of the right lateral ventricle and extending into the posterior limb of the right internal capsule. Findings consistent with an area of acute infarction. Multiple foci of increased T2 signal within the periventricular white matter and extending in the pons consistent with areas of chronic small vessel ischaemic change. Age-related atrophy. Symmetric distribution. No specific features for a neurodegenerative disorder.

39 Under the subsequent heading 'Impression', Dr McMenamin stated:

Focus of acute infarction in segment branches of the right lateral lenticulostriate vessels. Age related atrophy with diffuse changes of

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<sup>5</sup> Strivens Affidavit, par 6.

<sup>6</sup> Strivens Affidavit, par 7.

<sup>7</sup> Plaintiff's Trial Bundle, 10.

chronic small vessel ischaemia. No specific features for a neurodegenerative disorder.

### Mr McWilliam's evidence

40 Mr McWilliam deposed that he is an admitted solicitor in Queensland. In the course of his oral evidence, Mr McWilliam said that he was first admitted in Victoria in 2006, where he worked for a small firm undertaking commercial and property work. In April 2008, he moved to Cairns and started to work in a small legal practice, that being the practice consulted by Frank and Eunice in October 2009.

41 In cross-examination Mr McWilliam said that by the time he saw Frank and Eunice he had prepared about 12 to 15 wills in his career.

42 Mr McWilliam had no independent recollection of preparing the wills of Frank and Eunice.<sup>8</sup>

43 Based on manuscript notes taken by him and subpoenaed from the files of the practice, Mr McWilliam gave evidence that he met with Frank and Eunice for approximately 40 minutes on 7 October 2009 to take their instructions for the preparation of their wills.<sup>9</sup> Mr McWilliam attached to his affidavit copies of handwritten notes taken by him in the course of his meeting with Frank and Eunice. He also produced a sheet of paper on which were written the names of persons he took to be Eunice and Frank's children and their dates of birth. The writing on that paper was not that of Mr McWilliam.

44 Mr McWilliam stated that it was his practice to record any issues relating to testamentary capacity, and that the fact that he did not record any concerns about Frank in his contemporaneous notes indicated that he had no reason to doubt Frank's capacity to make the Will.<sup>10</sup> Mr McWilliam deposed that, if he had had any reason to doubt Frank's capacity, he would have arranged for Frank to seek a report from a doctor confirming that he did have capacity, but that he 'simply had no cause to do so in this instance'.<sup>11</sup> In cross-examination, he said that had he known that Frank had been diagnosed with dementia he would have refused to prepare Frank's will, and would have spoken to the principal of the practice for further guidance.

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<sup>8</sup> McWilliam Affidavit, par 8.

<sup>9</sup> McWilliam Affidavit, par 11.

<sup>10</sup> McWilliam Affidavit, pars 9, 12.

<sup>11</sup> McWilliam Affidavit, par 10.

45           Mr McWilliam also gave evidence that he did not think that there was any difficulty in taking instructions from Frank and Eunice together, rather than in separate meetings. He said he did not know whether they had existing wills at the time he saw them. He said it was not his normal practice to ask about existing wills. He did not make a note of Frank and Eunice's assets in his notes.

46           By way of summary, Mr McWilliam stated that he did not find anything unusual in the manner in which the instructions were provided to him or the content of the Will that led him to have any concern about Frank's testamentary capacity.<sup>12</sup>

### **Dr Johnston's report**

47           As noted above, in 2011 Frank was referred to Dr Johnston, a consultant geriatrician practising at Fremantle Hospital. On 22 June 2011, Dr Emma Johnston examined Frank, and prepared a report for Frank's GP. In that report, Dr Johnston set out the history that had been provided to her by Frank and Eunice. She recorded that Frank and Eunice had spent several years living in Cairns, had now returned to Perth, and were living in a villa on Canning Highway. Dr Johnston noted that that villa was close to where Frank had lived, which I take to be a reference to where Frank lived before he and Eunice married.

48           Dr Johnston recorded that Frank and Eunice were assisted by one of their children with shopping, but that Frank was sent across the road to the nearby shops with a brief shopping list to get items in between the weekly shops undertaken by their daughter.

49           Dr Johnston also noted that Frank travelled by bus to Fremantle a couple of times a week, where he 'potter[ed] around'. On one occasion, some weeks before he was seen by Dr Johnston, Frank had become lost and was away for some hours (during which time the police were notified) before he eventually found his way home.

50           Dr Johnston recorded that Frank was aware that he had some memory difficulties, but felt that it was a nuisance which did not unduly distress him.

51           Dr Johnston noted that, on cognitive testing, Frank had moderately severe deficits, and concluded that:<sup>13</sup>

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<sup>12</sup> McWilliam Affidavit, par 16.

<sup>13</sup> Plaintiff's Trial Bundle, 39.

[Frank] presents with dementia of moderate severity, his presentation is consistent with Alzheimer's disease. He has significant short term memory [sic], difficulties with visuospatial tasks, difficulties with word generation and appears to be developing dyspraxia that is making his day to day function more difficult.

#### **4. Relevant principles**

52 In *Lock v Phillips* [2014] WASC 92, EM Heenan J distilled the relevant principles at [32] as follows:

An applicant for a grant of probate whether in common form or solemn form will always need to prove, to the satisfaction of the court, that the deceased made the will being propounded of his own volition; without duress and with a fully comprehending mind; understanding the nature and effect of the will [and] its consequences; [and] with a general knowledge of his property and the persons to whom consideration should be given when determining his testamentary intentions: *Banks v Goodfellow* (1870) LR 5 QB 549; *Timbury v Coffee* (1941) 66 CLR 277; *Bailey v Bailey* (1924) 34 CLR 558; *Worth v Claohm* (1952) 86 CLR 439. See also observations in *Wheatley v Edgar* [2003] WASC 118 [24] and ... *The Public Trustee v Royal Perth Hospital Medical Research Foundation Inc* [2014] WASC 17 [167] - [190].

53 In *Public Trustee v Alzheimer's Australia WA Ltd [No 2]* [2014] WASC 337, Pritchard J set out the requirements for a will to be valid, and the principles in relation to establishing and proving testamentary capacity.<sup>14</sup> Her Honour said at [41] - [47]:

The power freely to dispose of one's assets by will is an important right, and a determination that a person lacked (or, has not been shown to have possessed) a sound disposing mind, memory and understanding, is a grave matter.

The onus of proving that the will is a valid will, which is required to the civil standard, lies on the party propounding the will. The onus on the propounding party will, in the first place, be discharged by establishing a prima facie case.

The propounder of a will may take advantage of the rule that a will which is properly executed, and which is rational on its face, will be presumed, in the absence of evidence to the contrary, to be that of a person of competent understanding. Further, the party propounding the will is entitled to put forward only evidence that is in its favour.

Once the propounder of a will establishes a prima facie case of sound mind, memory and understanding with reference to the particular will, then

<sup>14</sup> *Public Trustee v Alzheimer's Australia WA Ltd [No 2]* [2014] WASC 337 [30] - [48] (Pritchard J).

the evidentiary onus shifts to the person impeaching the will to show that it ought not be admitted to proof. To displace a prima facie case of capacity, mere proof of serious illness is not sufficient. There must be clear evidence that the illness of the testator so affected his mental faculties as to make them unequal to the task of disposing of his property.

If there is such evidence as to raise doubt as to the testator's mind, memory and understanding, then it is ultimately for the propounder of the will to establish that the testator was of sound mind at the time of executing the will. If, following a vigilant examination of the whole of the evidence, the doubt as to capacity is felt to be substantial enough to preclude a belief that the testator was of sound mind, memory and understanding at the relevant time, probate will not be granted.

The opinion of witnesses as to the testamentary capacity of the testator is usually of little weight on the issue. And while the opinions of the attesting witnesses that the testator was competent are not without some weight, the Court must judge from the facts they state and not from their opinions.

The general rule is that the testator must possess testamentary capacity at the time he or she executes the will. (References to authority not reproduced)

## **5. Disposition**

54 I am satisfied that Frank had testamentary capacity at the time he made his will on 9 October 2009 for the following reasons.

55 First, the requirements of due execution of the Will have been established. The Will was signed by Frank in the presence of two independent witnesses, and has a conventional attestation clause. This gives rise to a presumption that Frank had testamentary capacity.

56 Second, the Will made rational and cogent dispositions of Frank's estate. It is understandable that Frank would choose to leave his residuary estate to Eunice if he died before her. That choice is entirely unremarkable, given the way in which Frank and Eunice had approached the ownership of their homes, which were the major assets held by them in their lifetimes until they went into residential care. It is also understandable and rational, given his marriage of almost 22 years to Eunice (at the time the Will was made), that Frank determined that his residuary estate should be left on trust for his children and stepchildren in the event that Eunice did not survive him. This was a rational disposition of his estate because, in the event of Eunice not surviving him, he anticipated his estate would include the benefits he received from her estate. The disposition of his estate supports the conclusion that Frank

had testamentary capacity. The fact that Frank had determined to leave a specific bequest to one of his granddaughters does not give rise to any inference that he was not aware that his other grandchildren were persons to whom he should give consideration when making his will. There are a range of other inferences that are equally open.

57 Third, the fact that by the Will, Frank (as compared with Eunice's choices in making her will) selected an alternative executrix and made specific provision concerning his cremation and the division of his ashes, provides clear evidence of the exercise by Frank of independent judgment in providing instructions to Mr McWilliam and in executing the Will.

58 Fourth, the fact that, shortly before making the Will, Frank was found to have been suffering from mild cognitive impairment and was diagnosed as suffering from dementia does not compel the conclusion that he lacked testamentary capacity. Mild cognitive impairment does not necessarily imply a lack of testamentary capacity. It is only a matter to be taken into account in considering whether Frank lacked testamentary capacity. This aspect of my reasoning is supported by Dr Strivens' evidence to which I have referred, and to Dr Strivens' conclusion that Frank's score in the MMSE did not preclude Frank from having testamentary capacity. In assessing the significance of Frank's diagnosis of dementia in 2009, I take into account the fact that Frank lived in the community with Eunice for a further three years. Although Frank's dementia meant his life was not without its challenges, Frank appears to have been able to carry on the activities of daily living, including limited shopping trips and unescorted trips into Fremantle. Although not determinative, this supports a finding that Frank's condition was not so severe in October 2009 that he lacked testamentary capacity.

59 Fifth, Mr McWilliam's evidence supports the conclusion that Frank had testamentary capacity when Mr McWilliam met with him to take instructions on 7 October 2009, and on 9 October 2009 when Mr McWilliam explained the Will to Frank and Frank - in the presence of Mr McWilliam and Ms Draper - signed the Will. Mr McWilliam had experience of taking instructions for wills, preparing wills, and explaining wills to clients. I conclude that had there been any indication that Frank lacked testamentary capacity it would have been noted by Mr McWilliam, and Mr McWilliam would not have taken his instructions in relation to the preparation of the Will any further. At the risk of repetition, Frank's instructions to Mr McWilliam were rational and cogent.

**Conclusion**

60           For the reasons set out above, Frank had testamentary capacity when he signed the Will on 9 October 2009.

61           Accordingly, I pronounce the force and validity of the will of the late Frank Cox, made on 9 October 2009, and will make a grant of letters of administration, with the Will annexed, to Mr Michael Brian Tandy.