

Court Decision

The case involving the family of famous retailer Solomon Lew (Lew), in *Solomon Lew & Ors v Adam Priester & Ors* [2012] VSC 57 is a useful of how plans can unravel.

Broadly the situation was as follows –

- a Based on tax advice about an impending tax change (which was ultimately never implemented), certain distributions were made by a trust ultimately controlled by Lew to each of his children
- b The potential change was proposed in the late 1990's and was known as the 'profits first rule' which would have seen a mandatory requirement that any distribution from a trust would presumed to be of profits and therefore taxable.
- c 2 of Lew's children some years later were caught up in (separate) property settlements following the breakdown of their respective marriages.
- d The former spouses claimed the outstanding loans were assets of Lew's children and therefore able to be subject to orders of the Family Court.
- e Lew argued that his children did not have any beneficial interest in the loan accounts due to agreements entered which resulted in the amounts in fact being held by the children on a trust for Lew and his wife Rose.

While the exact outcome as to whether the loans were in fact assets of the children appears to be unknown (it is assumed the cases must have settled out of court or the decisions de-identified), the fact that the former spouses were able to mount the arguments is a reminder that the wider commercial implications of any tax planning strategy should always be considered carefully.

Here, as in many estate planning 'fails', a unifying principle is Murphy's Law – that is anything that can go wrong, will.
