A bequest or legacy is a gift by will of personal property, whereas a devise is a testamentary disposition of land or realty.

Re Maurer Estate, 2025 BCSC 1539

1(1) Personal property

Reproductive material, such as stored sperm, may constitute "personal property" resulting from rights of use and ownership, and may vest on death in a deceased's spouse and sole beneficiary.

W. (K.L.) v. Genesis Fertility Clinic, 2016 BCSC 1621

[Note: The cases noted below were decided under s. 96(1) of the former *Estate Administration Act*; the relevant provisions are similar but not identical to those in the *WESA*.]

1(1) Spousal home—Jointly owned

The phrase "jointly owned" is used in its generic sense, and includes a "tenancy in common". However, the life interest of the petitioner under s. 96 of the *Estate Administration Act* is an interest that applies only to the interest held by the deceased before his death. In other words, the petitioner has a life interest in the undivided one-half tenancy in common.

Khan v. Khan, 2004 BCSC 186

1(1) Spousal home—Parcel

The court decided that the word "parcel" in the *Property Transfer Tax Act* had the limited meaning ascribed to it in the *Land Title Act*; that is, a tract of land that bears a parcel identifier under the land titles registration system.

Claridge Development (Hawthorne) Ltd. v. British Columbia, 1999 BCCA 702, supplementary judgment 2000 BCCA 104

1(1) Spousal home—Ordinarily resident

Where it can be found that the widow or widower and a deceased spouse formed an intention to occupy a home before the deceased's death and established a presence in the home in the form of their furniture and effects, it can be said that the spouses were "ordinarily resident" in the home so as to qualify the home as a "matrimonial home" notwithstanding that the spouses never actually moved into the home before the deceased's death.

Re Fidler Estate, 1995 CanLII 2471 (BC SC)

PART 2—FUNDAMENTAL RULES

DIVISION 1—MEANING OF SPOUSE, EFFECT OF ADOPTION AND CONSTRUCTION OF INSTRUMENTS

When a person is a spouse under this Act [§1.2]

2 (1) Unless subsection (2) applies, 2 persons are spouses of each other for the purposes of this Act if they were both alive immediately before a relevant time and

(a) they were married to each other, or

(b) they had lived with each other in a marriage-like relationship for at least 2 years.

(2) Two persons cease being spouses of each other for the purposes of this Act if,

(a) in the case of a marriage, an event occurs that causes an interest in family property, as defined in Part 5 *[Property Division]* of the *Family Law Act*, to arise, or

(b) in the case of a marriage-like relationship, one or both persons terminate the relationship.

(2.1) For the purposes of this Act, spouses are not considered to have separated if, within one year after separation,

(a) they begin to live together again and the primary purpose for doing so is to reconcile, and

(b) they continue to live together for one of more periods, totalling at least 90 days.

(3) A relevant time for the purposes of subsection (1) is the date of death of one of the persons unless this Act specifies another time as the relevant time.

[am. to 2014-9-51, effective April 9, 2014.]

Marriage-like relationship

Molodowich v. Penttinen, 1980 CanLII 1537 (ON SC) at paras. 381 to 382 sets out a frequently-cited list of 22 factors that may be taken into account in determining a marriage-like relationship. The factors are helpful indicators, not a checklist. *McDowell v. Andrews*, 2018 BCSC 2216 at para. 23 also sets out a shorter, more manageable list of factors that effectively capture many of the *Molodowich* indicia.

Turner v. Stabeck, 2020 BCSC 1553

Re Glass Estate, 2024 BCSC 142 also has a list of factors at para. 39 considering *Turner v. Stabeck* and *Re Connor Estate*, 2017 BCSC 978.

Matossian Estate v. Clark Estate, 2024 BCSC 2214 (cited with approval in *Clark v. Matossian Estate*, 2025 BCCA 274 (Chambers)), provides an overview of the law in this area.

For unmarried persons to be spouses, the two persons must have lived together in a marriage-like relationship for two years, but not necessarily for the two years immediately preceding the deceased's death.

To determine whether parties were living together in a marriage-like relationship, the court will consider a variety of subjective and objective factors (not all of which must be present) such as living arrangements, sexual and personal behaviour, living habits, community perception, and economic support.

A person who is not legally divorced does not have the legal capacity to enter into a common-law marriage. However, such capacity is not a prerequisite for the statutorily contemplated marriage-like relationship referred to in s. 2(1)(b). It is possible for a person to leave behind more than one spouse.

Re Connor Estate

There can be cohabitation for the purposes of determining a marriage-like relationship where the parties maintain two residences.

Re Richardson Estate, 2014 BCSC 2162

Terminating a marriage-like relationship

Marriage-like relationships may be ongoing despite the existence of a separation agreement. The court stated (at para. 147) that "[r]elationships evolve and adapt according to the life circumstances of those involved". The totality of the evidence presented determines whether there was an intention to terminate the relationship, and therefore whether the marriage-like relationship has been terminated.

Razafsha v. Heidary, 2022 BCSC 1357

Evidence of the termination of a marriage-like relationship must be viewed in the context of the specific relationship. Where the parties have a long and volatile relationship, it may be "harder" to find that one or both had a settled intention to terminate the relationship.

Knelsen Estate, 2020 BCSC 134

Unmarried persons may unilaterally and instantly terminate their marriage-like relationship through statements or acts; no period of separation is required, and separation alone may not be determinative of the parties' status as spouses. The court stated (at para. 55) that "[t]he determination is a 'judgment call' for the trial judge—the application of a broad legal standard to the factual circumstances of an individual case".

Robledano v. Queano, 2019 BCCA 150, affirming *Robledano v. Jacinto*, 2018 BCSC 152, leave to appeal refused 2019 CanLII 106998 (SCC)

[Note: The case noted below was decided under s. 1(b) of the former *Estate Administration Act*; the relevant provisions are similar but not identical to those in the *WESA*.]

A common law relationship is not necessarily terminated by a spouse adopting separate living arrangements in order to care for ailing relatives.

Chapman v. Treakle, 2014 BCSC 2127

Effect of adoption [§1.3]

3 (0.1) In this section, **"pre-adoption parent"** means a person who, before the adoption of a child, was the child's parent.

(1) Subject to this section, if the relationship of parent and child arising from the adoption of a child must be established at any generation in order to determine succession under this Act, the relationship is to be determined in accordance with the *Adoption Act* respecting the effect of adoption.

(2) Subject to subsection (3), if a child is adopted,

(a) the child is not entitled to the estate of the child's pre-adoption parent except through the will of the pre-adoption parent, and

(b) a pre-adoption parent of the child is not entitled to the estate of the child except through the will of the child.

(3) Adoption of a child by the spouse of a pre-adoption parent does not terminate the relationship of parent and child between the child and the pre-adoption parent for purposes of succession under this Act.

[am. to 2023-10-1177, effective March 30, 2023.]

A child who is adopted but is named as a beneficiary in the will of the pre-adoptive parent does not have standing to bring a claim for variation of the pre-adoptive parent's will under s. 60 of *WESA*.

Boer v. Mikaloff, 2017 BCSC 21

Construction of instruments [§1.4]

4 (1) If this Act provides that a provision of this Act is subject to a contrary intention appearing in an instrument, that contrary intention must appear in the instrument or arise from a necessary implication of the instrument.

(2) Extrinsic evidence of testamentary intent, including a statement made by the will-maker, is not admissible to assist in the construction of a testamentary instrument unless

(a) a provision of the will is meaningless,

(b) a provision of the testamentary instrument is ambiguous

(i) on its face, or

(ii) in light of evidence, other than evidence of the will-maker's intention, demonstrating that the language used in the testamentary instrument is ambiguous having regard to surrounding circumstances, or

(c) extrinsic evidence is expressly permitted by this Act.