



Chapter 51

Wills, Trusts, and Elder Law

§ 1: Wills

- ✓ Will provides for a *Testamentary disposition* of property.
 - A will is the final declaration of how a person desires to have his or her property disposed of after death.
- ✓ Testate (One who dies after having made a valid will).
- ✓ Executor v. Administrator.

Laws Governing Wills

- ✓ Probate Laws (vary widely among states).
 - To *probate* a will means to establish its validity and carry the administration of the estate through a process supervised by a probate court.
- ✓ Uniform Probate Code.

Gifts By Will

- ✓ Devise: gift of real estate.
- ✓ Bequest or Legacy: gift of personal property.
- ✓ Types of Gifts: specific, general, or residuary .
- ✓ Abatement.
- ✓ Lapsed Legacies.

Requirements for a Valid Will

- ✓ Testamentary Capacity and Intent.
 - **Case 50.1:** *Estate of Klauzer (2000)*.
- ✓ Writing Requirements.
- ✓ Signature Requirements.
- ✓ Witness Requirements.
- ✓ Publication Requirements.

Revocation of Wills

- ✓ Revocation by a Physical Act of the Market.
- ✓ Revocation by a Subsequent Writing.
- ✓ Revocation By Operation of Law.

Rights Under a Will

- ✓ The law imposes certain limitations on the way a person can dispose of property in a will. Some states force the testator to give a certain amount of their estate to their surviving spouse and/or children.
- ✓ Beneficiaries can renounce (disclaim) their shares.
 - Spouses in some states can renounce what is given them in the will and elect to take the forced share.

Probate Procedures

✓ Informal Probate Proceedings.

- Family Settlement Agreements.
- Small Estates.

✓ Formal Probate Proceedings.

- Larger Estates.
- Guardianship appointment to a minor or incompetent person and trust has been created to protect that minor or incompetent person.

Property Transfers Outside the Probate Process

- ✓ Living Trusts.
- ✓ Joint Ownership of Property.
- ✓ Gifts *Intervivos* (while one is alive).
- ✓ Life Insurance Policies.
- ✓ Individual Retirement Accounts (IRA).
- ✓ **Case 51.2: *Bielat v. Bielat* (2000).**

§ 2: Intestacy Laws

- ✓ Statutes of descent and distribution which attempt to carry out the likely intent and wished of the decedent.
 - Surviving Spouse and Children, Not in-laws.
 - Stepchildren, Adopted children, Illegitimate children.
 - Grandchildren.

Surviving Spouse and Children

- ✓ Surviving spouse usually receives only a share of the estate.
 - 1/3 if two or more children.
 - 1/2 if one surviving child.
 - Entire estate if no children or grandchildren.
- ✓ If no surviving spouse or child the order of inheritance is:
 - Lineal descendants.
 - Collateral heirs (if no lineal descendants).
- ✓ Not spouses of the children, in-laws.

Stepchildren, Adopted Children, Illegitimate Children

- ✓ Stepchildren -- not considered children of deceased.
- ✓ Adopted children -- considered children of deceased.
- ✓ Illegitimate -- must prove paternity.

Grandchildren

✓ *Per stirpes* distribution.

- Method of dividing an intestate share by which a class or group of distributees take the share that their deceased parent would have been entitled to inherit had that parent lived.

✓ *Per capita* distribution.

- Each person takes an equal share of the estate.

§ 3: Trusts

- ✓ Trust -- A right of property (real or personal) held by one party for the benefit of another.

Essential Elements of a Trust

✓ Essential Elements:

- Designated beneficiary.
- Designated trustee.
- Fund sufficiently identified to enable title to pass to the trustee.
- Actual delivery to the trustee with the intention of passing title.

Express Trusts

- ✓ Living Trusts.
- ✓ Testamentary Trusts.
- ✓ Charitable Trusts.
- ✓ Spendthrift Trusts.
- ✓ Totten Trusts.

Implied Trusts

✓ Constructive Trusts.

- Arises by operation of the law in the interest of equity and fairness.
- **Case 51.3:** *Nagle v. Nagle* (2002).

✓ Resulting Trusts.

- Arises from the conduct of the parties.

The Trustee

- ✓ Trustee's Duties.
 - Act with honesty, good faith, and prudence in administering the trust and must exercise a high degree of loyalty toward the trust beneficiaries.
- ✓ Trustee's Powers.
- ✓ Allocation Between Principal and Income.

Trust Termination

- ✓ Trust ends when expressly specified in trust; if trust does not provide specification of termination, trust doesn't end at death of beneficiary or trustee.
- ✓ When its purpose has been fulfilled.
- ✓ When trust's purposes become illegal or impossible.

§ 4: Estate Administration

- ✓ Locating the Will.
- ✓ Duties of the Personal Representative.
- ✓ Estate and Inheritance Taxes.
- ✓ Distribution of Assets.

Locating the Will

- ✓ If a will -- an executor is usually named.
- ✓ If no will or not executor -- court will appoint an administrator.

Duties of the Personal Representative

- ✓ Inventory and collect assets.
- ✓ Have assets appraised.
- ✓ Manage the estate prudently.
- ✓ Receive and pay valid claims.
- ✓ Pay federal and state income taxes and estate or inheritance taxes.
- ✓ Post bond -- unless excused.

Estate and Inheritance Taxes

- ✓ Federal tax is levied **upon the total value of the estate** after debts and expenses for administration have been deducted and after exemptions have been allowed.
- ✓ State tax is levied in form of inheritance tax **imposed on the recipient** of the bequest rather than on the estate.
 - The closer the relative receiving bequest - the lower the tax.

Distribution of Assets

- ✓ Executor or Administrator.
 - submits distribution plan to court.
 - court approval.
 - distributes assets pursuant to court order.
 - accounting is rendered to court.

§ 5: Elder Law

- ✓ Legal practice area in which attorneys assist older persons in dealing with problems relating to age.

Planning for Disability

- ✓ Durable Power of Attorney.
- ✓ Health-Care Power of Attorney.
- ✓ Living Will.

Medical Planning

- ✓ Medicaid v. Medicare.
- ✓ Medicaid Planning.
- ✓ Criminalizing Medicaid Planning.

Law on the Web



- ✓ Famous wills.
- ✓ Senior Law Website.
- ✓ Uniform Probate Code at Cornell U.
- ✓ Academy of Estate Planning Attorneys.

- ✓ Legal Research Exercises on the Web.