

Wills and Estates of the Rich and Famous

Class Notes



KAPLAN FINANCIAL
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WILLS AND ESTATES OF THE RICH AND FAMOUS CLASS NOTES
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Course Overview

The public, and even many insurance and financial services professionals, often misunderstand probate and the estate administration process. There is a great deal of discussion and emphasis on avoiding probate; but, what does this mean and what purpose does probate serve?

Students in this course will learn what probate really is by examining case studies and reviewing the wills and estates of rich and famous personalities such as Elvis Presley, Michael Jackson, and Heath Ledger. You'll explore the probate process and gain understanding of when probate is and is not required, when property is exempt from the probate process, specific ways to make the process easier and less costly, and when to avoid probate altogether.

The knowledge you'll gain in this course is essential for anyone, whether you're an insurance agent, financial adviser, or simply interested in learning how to best provide for your own family and heirs.

VI. CONSENTS

A. SPOUSE CAN CONSENT TO THE DISPOSITION OF A SPOUSE'S ESTATE AND WAIVE STATUTORY RIGHTS.

VII. WILL CONTESTS

A. CAPACITY ISSUES What capacity is required? The test for mental competency varies depending on the document challenged, but the crucial factor in the test is whether the individual reasonably understood the nature of the document or transaction when it was signed. For someone with Alzheimer's or dementia, who has both good and bad days, this does not always have an easy answer. Medical records are often the best way to determine if a person was considered competent at the time. Independent witnesses are also a great source of information and help. However, the law presumes that a will or trust is valid, and it is up to the person challenging it to convince the court otherwise.

1. Cassius Clay estate General Cassius Clay, a famous author and abolitionist in the 19th century, and whom President Lincoln appointed US Minister to Russia died in 1903 and left five wills. Unfortunately, all of the wills conflicted with the others. The latest will, brought forward by a woman that Clay married when he was 89 and she was 13 left her Clay's land in Clay County, Kentucky and \$10,000 in US bonds. Another will left Brutus, one of Clay's sons, Clay's entire estate. A judge, after a year of court battles, threw out all of the wills as invalid. The reasoning, as his children had him declared legally insane shortly before his death, was that that Clay did not have the proper legal capacity to create any of the wills.¹

2. Brook Astor estate Brooke Astor, a philanthropist and society queen in New York, died in 2007 at the age of 105 and left an estate of nearly \$200 million dollars.

Under the will that Astor executed in 2002, Anthony Marshall, her only son, was to receive tens of millions of dollars, with most of her estate going to various charities. Marshall wanted much more. Along with his attorney, Francis Morrissey, Jr., the two convinced Astor, who was suffering from dementia, to sign a series of codicils to the 2002 will allowing Marshall to leave much of the Astor fortune to his younger wife, who his mother reportedly detested, instead of to a charity.

After a trial in 2009 that lasted six months, both Marshall and his attorney were found guilty of grand larceny, fraud, and a host of related charges. Marshall was sentenced to one to three years in jail; but, at 87 years old, Marshall has not served any time because of a pending appeal.

The fighting did not end with the criminal trial, however. Sorting out which documents were valid and invalid (due to incompetency and undue influence) fell to lawyers representing Astor's grandchildren and great-grandchildren; lawyers representing dozens of charities including the Metropolitan Museum of Art, Carnegie Hall, the New York Public Library, Rockefeller University, and the United Nations; a judge from Surrogate's Court for Westchester County; and the New York Attorney General. A global settlement, reached after two and a half years of negotiating, was accepted on March 28, 2012.

¹ Source: Flusche, Andrew. "5 Famous Will and Estate Contests," accessed May 16, 2012, <http://www.andrewflusche.com/blog/5-famous-will-and-estate-contests/>.

The documents reveal that Marshall settled, accepting the 2002 will as the valid one, but not the three codicils that came later. Under this will Marshall would have received real estate, cash and interest on a \$60 million trust fund and other sums that altogether total more than \$70 million gross. The will also made Marshall responsible only for the estate taxes due on the real estate.

Marshall officially accepted \$14.5 million, but after restitution of \$12.3 million to the Manhattan District Attorney's Office for costs of prosecution and other legal fees, Marshall walked away with less than \$3 million. Other than Astor's grandchildren, who received one million and the great-grandchildren and others close to Aster who received lesser amounts, the bulk of the fortune will pass directly to New York charities.²

B. FORGERY/FRAUD

1. **Howard Hughes estate** The billionaire Howard Hughes died in 1976 without a will. The one will that was brought forward turned out to be fake. Because there was no will, the estate was settled in 1983 under the laws of intestacy. The outcome was that Hughes's \$2.5 billion estate was split among his 22 cousins—a result that probably didn't mirror his wishes. In addition, a dispute with the IRS went on for over 20 years after his death.³
2. **Marlon Brando estate** Marlon Brando's son's ex-wife claimed that the Codicil (will amendment) dated less than two weeks before Brando's death was forged, and that the co-executors of the Estate committed fraud to hide the forgery.⁴

C. BENEFICIARY DISPUTES

1. **Jimi Hendrix estate** Jimi Hendrix died without a will. While he was the father of two children out of wedlock, his father and sole heir, Al Hendrix, denied the children any claims to the estate. Al, who was a gardener by trade and had no knowledge of the music business, hired a lawyer in 1974 who sold the rights to Jimi's music. Al was to receive a fixed annual annuity. In addition, he sold Jimi Hendrix's likeness to a separate company.
Al claimed that he was unaware of these transactions, and, with the backing of Microsoft cofounder Paul Allen, Al sued his lawyer in 1993 to win back the rights to both Jimi's image and music. While Allen was a Jimi Hendrix fan, he also hoped to benefit by a planned \$60 million Jimi Hendrix museum. In 1995, Al won back the rights to Jimi's work for his company, Experience Hendrix LLC. When Al died in 2002, it was discovered that Al had cut Jimi's brother Leon out of his will. Leon, a former drug addict, sued his adopted sister Janie, claiming that she had mishandled the finances for Experience Hendrix and had pressured Al to excluded Leon from the will.⁵

2 Source: Mayoras, Danielle and Andy, "Brooke Astor Estate Settlement: Marshall Gets His Just Deserts," accessed May 16, 2012, <http://blog.trialandheirs.com/estate-planning/brooke-astor-estate-settlement-marshall-gets-his-just-deserts>.

3 Source: Flusche, Andrew. "5 Famous Will and Estate Contests," accessed May 16, 2012, <http://www.andrewflusche.com/blog/5-famous-will-and-estate-contests/>.

4 Source: Mayoras, Danielle and Andy, "Marlon Brando Estate Wins Victory on Appeal," accessed May 16, 2012, <http://www.probatelawyerblog.com/2009/08/marlon-brando-estate-wins-victory-on-appeal.html>.

5 Source: "Jimi Hendrix's Messy Afterlife," accessed May 16, 2012, <http://www.legacy.com/ns/news-story.aspx?t=jimi-hendrixs-messy-afterlife&id=103>.

D. NO CONTEST CLAUSES

1. No contest clauses are unenforceable in Minnesota. Minnesota Statute 524.2-517 states that a provision in a will purporting to penalize an interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings.
2. Jackie Cooper estate

E. CHILDREN OMITTED

Each state has a different law regarding children omitted from a will. Minnesota Statute 524.2-302 provides that after born or after adopted children would be entitled to a share of the decedent's estate as follows.

1. Minnesota Statute 524.2-302 OMITTED CHILDREN

- a. Except as provided in paragraph (b), if a testator's will fails to provide for any of the testator's children born or adopted after the execution of the will, the omitted after-born or after-adopted child receives a share in the estate as follows:
 - 1.) If the testator had no child living when the will was executed, an omitted after-born or after-adopted child receives a share in the estate equal in value to that which the child would have received had the testator died intestate, unless the will devised all or substantially all the estate to the other parent of the omitted child and that other parent survives the testator and is entitled to take under the will.
 - 2.) If the testator had one or more children living when the will was executed, and the will devised property or an interest in property to one or more of the then-living children, an omitted after-born or after-adopted child is entitled to share in the testator's estate as follows:
 - The portion of the testator's estate in which the omitted after-born or after-adopted child is entitled to share is limited to devises made to the testator's then-living children under the will.
 - The omitted after-born or after-adopted child is entitled to receive the share of the testator's estate, as limited in item (i), that the child would have received had the testator included all omitted after-born and after-adopted children with the children to whom devises were made under the will and had given an equal share of the estate to each child.
 - To the extent feasible, the interest granted an omitted after-born or after-adopted child under this section must be of the same character, whether equitable or legal, present or future, as that devised to the testator's then-living children under the will.
 - In satisfying a share provided by this paragraph, devises to the testator's children who were living when the will was executed abate ratably. In abating the devises of the then-living children, the court shall preserve to the maximum extent possible the character of the testamentary plan adopted by the testator.

- b. Neither paragraph (a), clause (1) or (2), nor paragraph (c), applies if:
 - 1.) it appears from the will that the omission was intentional; or
 - 2.) the testator provided for the omitted after-born or after-adopted child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.
- c. If at the time of execution of the will the testator fails to provide in the will for a living child solely because the testator believes the child to be dead, the child receives a share in the estate equal in value to that which the child would have received had the testator died intestate, unless the will devised all or substantially all of the estate to the other parent of the child the testator believes to be dead and the other parent survives the testator and is entitled to take under the will.
- d. If a deceased omitted child would have been entitled to a share under this section if the omitted child had not predeceased the testator and the deceased omitted child leaves issue who survive the testator, the issue who represent the deceased omitted child are entitled to take the deceased omitted child's share.
- e. In satisfying a share provided by paragraph (a), clause (1), or (c), devises made by the will abate under section 524.3-902.

- 2. **Heath Ledger estate** Heath Ledger, who died in 2008, had not updated his 2003 will two years before his daughter Matilda was born. Thus, Matilda was not included in the will. The laws of Minnesota have special provisions granting a share of the estate to omitted children, but New York does not. When his will was probated in New York, Ledger's entire estate, estimated at \$20 million, was distributed to his siblings and parents per the 2003 will. His daughter received nothing. After some dispute, however, the Ledger family agreed to give the entire estate to the daughter.⁶

VIII. TAX CONSIDERATIONS

A. SUMMARY OF ESTATE, GIFT, AND GST TAX RULES

- 1. Minnesota decoupled from the federal estate tax system and became a stand-alone estate tax post The Economic Growth and Tax Relief Reconciliation of 2001. There are two estate tax systems in Minnesota: the Federal estate tax system and the Minnesota estate tax system.

⁶ Source: Flusche, Andrew. "5 Famous Will and Estate Contests," accessed May 16, 2012, <http://www.andrewflusche.com/blog/5-famous-will-and-estate-contests/>.