

Wills, Trusts,
and Estates

Class 7

Nonprobate Property

- [This property passes automatically at death by “operation of law” and thus need not go through probate before being disbursed]
- **Joint Tenancy or Tenancy by the Entirety**
 - The property passes to the surviving tenant automatically
 - This includes joint bank accounts, which are often set up for this purpose

Nonprobate Property (cont.)

- **Totten Trust**
 - Not a Trust!
 - A bank account that is set up by one person “in trust for” a beneficiary
 - The grantor can revoke the “gift” by removing the money or closing the account
 - If the grantor does not revoke before he dies, it goes straight to the beneficiary by operation of law
- **Life Insurance** on the Grantor’s life
 - At the grantor’s death, it passes by contract to the beneficiary of the policy. Thus, it passes by operation of law and is not a probate asset.

Requirements for a Valid Will

1. Testamentary Intent

- The testator must mean for this document to be her will

2. Testamentary Capacity

- [Low standard: A person can make a will even if he is “insane” as long as the other elements are met]
- Elements: Testator must:
 - a) understand the nature of the act of making a will
 - b) know the “natural object of his bounty” (i.e. who would generally tend to inherit his assets)
 - c) basically understand the nature and extent of the property involved
 - d) have a basic understanding of the provisions in the will

Requirements for a Valid Will (cont.)

3. Will must be signed

- Any mark that was intended by the testator to be a signature is adequate (need not be legible)
- Many jurisdictions require that the will be signed at the end or provisions after the signature are invalidated

4. Will must be witnessed (at least 2 witnesses, usually 3)

- If there are only 2 witnesses and one is a beneficiary of the will, the will is still usually valid, but the gift to the witness is “purged” (the witness is thus made “disinterested”)
- The testator must sign the will in the “presence” of the witnesses

Quiz Time!

Will Execution – Other Factors Affecting Validity

- **“Publication”** (some jurisdictions only)
 - Testator tells the witness that she means this to be her last Will (ceremony)
- When Testator dies, the **witnesses must testify to confirm their signatures**, unless the will is **“self proving.”**
 - [The will had an attached sworn statement made by the witnesses that they saw the testator sign the will and that the testator told them that she meant this to be her will. This **“affidavit”** must be signed by the witness and notarized.]

Will Execution – Other Factors Affecting Validity Example

- “On the above date, John Doe, the testator, declared to us, the undersigned, that this instrument was his last will, and he asked us to sign as attesting witnesses to it. He then signed the will in our presence, we being present at the same time. Each of us signed the will in the testator’s presence and in the presence of each other, we and each of us believing that the testator was of sound mind.”