

Wills, Trusts,  
and Estates

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Class 8

# Invalidating a Will – Part 1

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- **Fraud**
  - The will is invalid if someone made to the testator:
    - False statements of material facts,
    - known to be false by the party making the statements,
    - made with the intention of deceiving the testator,
    - who is actually deceived, and
    - that caused the testator to act in reliance on the false statements.

# Invalidating a Will – Part 1 (cont.)

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- **Undue Influence**
  - This occurs when someone in a position of power over the testator uses that power to coerce a provision in the will
  - Standard: Invalid if the influencing party “substituted his will for that of the testator”

# Invalidating a Will – Part 1 (cont.)

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- **Undue Influence**
  - Elements:
    - a susceptible testator;
    - another's opportunity to influence the testator;
    - improper influence in fact; and
    - the result showing the effect of such influence.
  - **Very difficult to show**
    - Must go beyond the fact that a person who received a gift had the opportunity to influence.
  - Spouses get a lot of latitude to influence each other.

# Invalidating a Will – Part 2

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- **Mistake**
  - Mistake only invalidates a will if the mistake is about the nature of the document or the fact that the testator is signing a will.
  - Mistake that leads to the drafting of certain provisions of the will does not invalidate the will (contrast with fraud).

# Invalidating a Will – Part 2 (cont.)

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- **Special undue influence rules:**
  - If a special trust relationship exists between the testator and a party in the will, e.g.
    - The attorney who drafts the will is also a beneficiary
    - The attorney who drafts the will is also a fiduciary (e.g. executor)
    - Non-relative executor is also a beneficiary
    - Financial consultant is a beneficiary

# Invalidating a Will – Part 2 (cont.)

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- Many states provide for protections against undue influence.
- Examples:
  - Setting up a presumption of undue influence that must be rebutted
  - Forcing the beneficiary to prove in a special hearing that there was no undue influence (NY)
  - Disallowing any gift to a drafting attorney who is not related to the testator (Texas)

# Will without the Ceremony

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- **Holographic Wills** (some states only)
  - Must be in the testator's handwriting and signed
  - Some states require a fear of impending death or dangerous situation before they will accept a holographic will
- ***Nuncupative Will*** (oral!)
  - Allowed by some states if the testator is in fear of impending death and has no time to execute a formal will
  - Various procedural requirements (e.g. multiple witnesses) are also required

# Quiz Time!

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# Significance of Will Provisions

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- A Will is, by definition, **fully revocable** at any time by the testator
  - (we will discuss how to revoke a will later)
- A “**codicil**” is an additional “mini-will” that is designed to supplement, not replace, an old will.
- At testator’s death, all his or her validly executed wills and codicils are admitted to probate.
- To the extent that they are consistent with each other, they all control
- To the extent that they are inconsistent with each other, the later provision controls because it, by implication, revoked the previous provision.

# Significance of Will Provisions (cont.)

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- Incorporation by reference:
  - A provision in a will can refer to an extraneous document, but only if it already exists when the will is made.
  - Otherwise, a person can not do something for the sole purpose of altering the will; the proper way to change a will is to revoke it or make a new will or codicil.
  - But, if the action has an “independent significance,” it can change the effect of the will.
- Pour-over provisions