

Wills, Trusts,
and Estates

Class 9

Extrinsic Evidence to Define a Provision in a Will

- To re-define a clear term in a Will:
 - Extrinsic evidence NEVER admissible (allowing in extrinsic evidence for this purpose would defeat the whole purpose of the Will requirement)
- To clarify a **latent ambiguity** (a provision that looks clear, but circumstances show that it's hard to tell what was meant)
 - Extrinsic evidence IS admissible
- To clarify a **patent ambiguity** (a provision that is unclear on its face)
Ex: “all of my worldly possession both personal and moneys”
 - Old rule: Extrinsic evidence IS NOT admissible
 - New rule: Extrinsic evidence IS admissible

Extrinsic Evidence to Define a Provision in a Will (cont.)

- To show that a will was meant to be conditional
 - Extrinsic evidence IS NOT admissible to prove the existence of the condition
 - Extrinsic evidence IS admissible to show whether certain questionable language was meant to be a condition or not

Types of Bequests

- **Specific:** A bequest of a specific piece of property (irrelevant regarding money)
 - “I give to Jane, my blue 1981 Yugo.”
- **Demonstrative:** A bequest of money from a specific source
 - “I give to John, \$10,000 from my Microsoft shares.”
- **General:** A bequest of money from no particular source
 - “I give to Ellen \$50,000.”
- **Residuary:** A bequest of the remainder of the estate after the other bequests are accounted for
 - “I give to Jake the rest, residue and remainder of my estate.”

Ademption

- Definition: The property that is given in the will no longer exists in the estate
- Applies to specific bequests:
 - If the specific property is no longer in the estate, the gift is nullified and the beneficiary is not reimbursed for that loss.
 - Even if the testator contracted to sell it (if it's land), the gift still adeems because of the rule of equitable conversion (the rule that an executory contract for the sale of real estate makes it as though the buyer owns the property).
- Exception:
 - In some states, if the specific property is destroyed, the insurance proceeds from that property go to the specific beneficiary

Quiz Time!

Abatement

- Relevant where the estate is too small to accommodate all the gifts after estate expenses and applicable taxes.
- Order of abatement:
 - (if there isn't enough money to go around to everyone, the beneficiaries lose out in the following order)
 1. residuary estate (not really abatement- it's just there is no residuary estate if there's nothing in it)
 2. general bequests and demonstrative bequests when the source property is no longer in the estate
 3. demonstrative bequests when the source property is in the estate
 4. specific bequests
- Between beneficiaries on the same level, they each lose out on a pro rata basis (each loses an equal percentage of their gifts)

Ademption and Abatement - Hypothetical

- Batman makes the following gifts in his will:
 - The Batcave to Robin
 - The Batmobile to Robin
 - \$50,000 from the Bruce Wayne bank account at Chase Bank, to Alfred
 - my cowl to Riddler
 - \$25,000 to Joker
 - \$75,000 to Penguin
 - \$50,000 from the Batman account at Chemical Bank, to Vicky Vail
 - The rest, residuary and remainder of my estate, to Robin
- In 2013, Batman sells the Batmobile to Archer.
- In 2013, Batman closes the Bruce Wayne account at Chase bank and withdraws the money.
- In 2014, Batman dies while still owning the other property mentioned above. After estate expenses, he has **\$170,000** left.
- *Who gets what?*