Reference Goods

WILLS & TRUSTS



FREEDOM & POWER TO TRANSFER PROPERTY AT DEATH

To the extent that the Constitution protects property transfers at death, protections arguably apply only to the decedent's power to dispose of property

 Dead band control: Decedent can make a conditional testamentary gift to beneficiary ("bene") (i.e., bene gets gift upon meeting condition). This is typical in incentive trust" and valid unless it violates public policy or judicial enforcement of condition would constitute state action in violation of the Constitution.

1. Conditions invalid for violation of public policy:

A. Almolute restraint on marriage (partial restraint on marriage that imposes only reasonable restriction(s) is valid (e.g., requirement to marry within a reasonable time period or to someone of a particular religious background()

B. Requirement to remain faithful to particular religion

C. Encouraging separation and/or disonce (gift in event of disonce/separation is valid, controlling factor is decordently dominant intent, which is to provide support in that event, not to encourage it)

D. Promoting family strife

- E. Directing destruction of property
- 2. Remedies for conditions that violate public policy:
- A. Gift over clause: Directs disposition of gift if condition is not satisfied
- B. No gift-over clause: Condition is stricken and bene receives gift
- The Restatement (Third) of Trusts arguebly expands power of courts to limit testamentary freedom; authorizes invalidation of conditions that are "unnecessarily pumitive" or "unreasonably intrasive" (see \$29)

Limitations on testamentary power to transfer:

- Under a separate property system, each spouse owns his/her earnings acquired during marriage. Upon death of spouse, the surviving spouse is entitled to share of deceased spouses property, regardless of the terms of the deceased spouse's will; how much of which property varies with jurisdiction.
 - A. Traditional/Common law: Surviving spouse is entitled to share of deceased spouse's probate estate
 - Modern trend: Surviving spouse is also entitled to share of deceased spouse's augmented extate (some posperobate extate assets which vary by jurisdiction)
 - C. UPC adopts the partnership esodel of marriage, employs three-step process to ensure surviving spesses receives half of marital property. First Combine both spesses' total assets and calculate the percentage of the
 - total that is marital property (based on length of marriage)
 - Second: Determine how reach of the marital property the surviving spouse will end up with after distribution of deceased's probate and nonprobate property
 - Third: If latter total is not half the marital property, surviving spouse has elective share claim for the difference
- 2. Under community property system, earnings acquired by either spouse during marriage are owned equally by apounes. Each spouse owners an undivided half of the interest in every community property asset. Upon the death of a spouse, the surviving spouse owns half of the interest in every community property asset outright. The deceased spouses half interest in every community property asset goes into probate, where it can be devised to arryone.

3. Omitted spouser Individual executes a valid will, marries, and dies without nevoking or revising the will. The presumption is that the bestator did not intend to distriberit spouse; presumption is rebuttable if will expressly indicates otherwise, testator provided for spouse outside of will and intended for that transfer to be in lieu of taking under will, or spouse waived right to claim share.

- 4. Omitted childs Individual executes a valid will, has child, and dies without revoking or revising will. The presumption is that the testator did not intend to distriberit child or the individual mutakendy thought the child was dead; presumption is rebuttable if will expressly indicates otherwise, testator provided for child outside of will and intended for that transfer to be in lieu of taking under will, or testator had at least one child when executed will and devised substantially all of the extate to the parent of the omitted child.
- Testamentary capacity: Testator must have requisite capacity at the time of executing/revoking will. Testator must be at least 16 years old and of sound mixed (ability to know (not actually know) nature and extent of property, natural objects of bounty, nature of testamentary act, and how all relate), can be lacid interval

 Standing to contest will: Only party who will financially benefit if the challenge is successful has the standing to contest the validity of the will or a provision in the will

Burden of proof:

- Majority: Once will proponent offers proof of duly executed will, there is rebuttable presumption of capacity
- Minority: Once will contestant introduces evidence of lack of capacity, will proposent bears the burden of proving testamentary capacity

Possible Defects in Capacity at Time of Will Execution & Possible Remedies

Insane delusion: False sense of reality.

- Majority applies "any factual basis test" (if there is any factual basis for belief, it is not insane delusion)
- Minority applies "rational person test" (if a rational person in testator's situation could not have reached the same conclusion, it is insune delusion)
- Irrelevant unless shown that belief caused testator to dispose of property in a way testator otherwise would not have
- A. Majority applies "but for" casuation (but for the insume delusion, the testator would not have disposed of property as he did. Some courts only require that insume delusions "materially affected" provisions in will)
- B. Minority only requires that insune defusion might have affected disposition of testator's property
- Under influence or "substituted intent": When one influences the testator to the
 extent that the will expresses influencer's intent. Communication defence, inferred
 if susceptibility, opportunity, motive, and causation. Generatant bears the burden
 of proof: traditionally, most states required proof of a confidential relationshipbetween testator and will proposent, proposent received bulk of estate, and
 decedent's intellect was weakened.
- Modern trend (Restatement (Third)): Presumption of undue influence if confidential relationship between defendant and testator (fiduciary, reliant, and/or dorminant subservicest) and suspicious circumstances (relatively new and not widely adopted yet)
- A. If contestant can prove elements, presumption of undue influence arises and burden of proof shifts to the defendant to robut presumption (clear and convincing in some jurisdictions (minority award punitive damages); prepondenance of evidence in others)
- Duress: Wrongdoor performs, or threatens to perform, a wrongful act that
 corners dessor into making a domative transfer he otherwise would not have made
 to g, undue influence with physical for threatened) act); transfer is invalid.
- Fraud: When someone intentionally/recklessly misrepresents a material fact to testator with the intent of influencing for knowledge that such influence would substantially likely result) and misrepresentation causes testator to dispose of property in a way that he would not have otherwise. Fraud also can occur when someone intentionally fails to disclose
- Fraud in inducement: When a person misrepresents a material fact to testator to induce execution of the will with a certain provision or revocation of the will
- Fraud in executions When a person misrepresents the nature of the document that instator is signifing (e.g., person in tricked into signing the will or testator realizes be is signing the well but the person misrepresents some of the content of will):
- Remedies: Court will strike as much of the will as was caused by the defect; if strucks in whole, and there is no prior valid will, decodernt disc intestate. Where there is fraudulent failure to revolu, will or clause is nevolud. Where there is fraudulent failure to execute, court can impose constructive trust on parties who take decodent's probate property and order property distributed to the parties who would have taken the property had will been executed (i.e., gives effect to will decodent did not execute)
- Tertions interference with an expectancy or "interference-with-inheritance": Third party has intentionally committed tortions conduct in tentamentary process against decodent. Those who would have taken, but for the misconduct, can use the third party for tortious interference with an expectancy. Plaintiff typically has to prove existence of expectancy, reasonable certainty that it would have been realized, intentional interference, involvement of tortious conduct with interference, and damages. Plaintiff is eligible for puntitive damages. If the will contains a "no contest"

EXECUTION OF VALID WILL

- Validity: Depends on jurisdiction's statutory wills act (evolved from statute of frauds) and jurisdiction's position as to what degree of compliance with wills act is acceptable. Traditional attented (i.e., witnessed) will minimally includes signed and witnessed writing. Common law requires strict compliance with wills act; modern trend favors substantial compliance or harmless error
- Signature: Can be any mark; if testator intends to sign full name and doesn't, partial signature does not qualify. Will can be signed by another as long as person signs.
- testator's name, in his presence, and at his express direction. In most jurisdictions, testator does not have to sign in front of witnesses as long as he adonowledges the signature already on the document as his own.
- Witnesses: Most jurisdictions require at least two witnesses present at same time, the
 assumption is that the witness assesses testator's capacity and esecution ceremony and
 protects testator. Traditionally, witnesses must sign in the presence of testator ("line
 of sight" test). Testator can see or has the opportunity to see witnesses sign; witnesses.

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