

# Wills And Trusts (Quick Study: Law)

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WILLS & TRUSTS	
REFER TO THE STATUTES OF EACH JURISDICTION TO DETERMINE THE APPLICATION OF THE UNIFORM PROBATE CODE	
WRITTEN OR ORAL EXPRESSION OF INTENTION REGARDING DISPOSITION OF PROPERTY AT DEATH	
<b>WILL:</b> <b>TYPES OF WILLS</b> <b>A. ATTESTED WILL—SIGNED BY WITNESSES AND EXECUTED WITH CERTAIN FORMALITIES AS PRESCRIBED BY STATE LAW</b> <b>B. Holographic Will—ENTIRELY IN TESTATOR'S HANDWRITING AND HAS NO ATTESTING WITNESSES</b> <b>C. NUNCUPATIVE WILL—ORAL</b> <b>D. LIVING WILL (NOT AN INSTRUMENT EFFECTIVE FOR DISPOSITION AFTER DEATH)</b>	<b>2. Some states provide that personal property shall vest in surviving spouse before and among.</b> <b>C. SPOUSAL ELECTIVE SHARE—IF SPECIFIC PROPERTY IS NOT IN ESTATE OR SUBSTANTIALLY CHANGED AT TESTATOR'S DEATH</b> <b>1. By Election.</b> Specific share no longer in estate or substantially changed. <b>2. By Satisfaction.</b> Beneficiary has received beneficiary gift during life of testator. <b>3. Testator's provision in some states after adoption rules.</b> <b>B. LAPSE</b> <b>1. Beneficiary predeceases testator and gift fails.</b> <b>2. Anti-lapse Statutes.</b> Survive gift if: <b>3. Beneficiary was descendant of testator (consanguinity) and</b> <b>4. Descendant of beneficiary survived testator.</b> <b>5. Child applies if will does not provide otherwise.</b> <b>E. EXTRINSIC MATTERS</b> <b>1. Incorporation by Reference.</b> <b>2. Written documents (i.e., law describing personal property) referred to in will; document must be in existence at time of execution; language must sufficiently describe writing and establish intent to incorporate the document. <b>A. Incorporation.</b> List describing of specific personal property may be prepared separate. <b>2. Ambiguities.</b> <b>3. Certain language.</b> Will, extrinsic evidence admissible to clarify language in will susceptible to differing interpretations. <b>4. If no evidence of testator's intent, rules of construction and statutory presumptions apply.</b></b>
<b>EXECUTION</b> <b>A. TESTATOR</b> <b>1. To Will to be valid (admissible to Probate), Testator (person who executes Will) must meet formal execution requirements of a particular jurisdiction.</b> <b>2. In writing.</b> <b>3. Signed by Testator.</b> <b>4. May be signed by another or Testator's Director and or Testator's personal.</b> <b>5. Executed in legal and</b> <b>6. Retainable Presumption that material fraud after signature was added after execution and, therefore, fails to make contract. <b>7. Some states, Testator must "publish" will—declare to witnesses what they are signing.</b> <b>8. A will is valid, Testator must intend to be constrained to comply as will.</b> <b>B. WITNESSES</b> <b>1. Signed in presence of and attested to by two witnesses (objectivity, jurisdictional differences as to number of witnesses (some require three)).</b> <b>2. Witnesses must be disinterested, contemporaneous and</b> <b>3. Execution Presumed Not (objection).</b> <b>4. Each witness must attest to testator and witness' signing, unless general intent and signature of other parties.</b> <b>5. Age of Minor Test (Minority).</b> <b>6. Witnesses are persons if qualified to give signing if they lack C. AGE AND COMPETENCY</b> <b>1. Testator.</b> Must be at least 18 years at time of execution, and sound mind. <b>2. Witnesses.</b> Must be competent—sound and of sufficient mental capacity to understand act. <b>D. COERCION</b> <b>1. Must be executed with sane intention as a Will.</b> <b>2. Supplement to a Will that alters, amends or revises it.</b></b>	<b>REVOCAATION</b> <b>A. GENERAL. A PERSON WITH TESTAMENTARY CAPACITY MAY REVOKE WILL AT ANY TIME PRIOR TO DEATH.</b> <b>1. By subsequent instrument.</b> Executed with same formalities as pre- revocation, and intent to revoke. <b>2. By destruction.</b> Last in time properly executed document revokes (and to any instrument) between test. <b>3. By physical act.</b> Burning, tearing, cutting, destroying, mutilating, cancelling, obliterating, or destroying. <b>4. By operation of law.</b> Some states may be revoked by acts of divorce, subsequent marriage, birth or adoption of children. <b>5. Majority view.</b> Marriage following execution of Will has no effect on earlier Will—new spouse is presumed and can be provided by test's elective share statute. <b>6. Majority view.</b> Divorce will revoke any correspondence to former spouse, and any replacement or personal representative, remainder of Will valid. <b>7. Only divorce relevant in Testator, not those named in instrument.</b> <b>8. Majority view.</b> Children not provided for in Will can claim under potential child statute as their inheritance. <b>B. COMMON LAW. REVOCABLE. PRESUMPTIONS OF REVOCATION</b> <b>1. Will not final after death.</b> <b>2. Will final modified.</b> <b>3. Extrinsic evidence admissible to show Testator's intent.</b> <b>C. PARTIAL REVOCATION</b> <b>1. Striking lines through language.</b> <b>2. Remanence of Will admitted to Probate.</b> <b>3. Extrinsic evidence admissible to determine period of full acceptance.</b> <b>4. In jurisdictions where not permitted, entire original Will admitted to Probate. <b>5. Revocation of Certain Wills (Revocable Will).</b> <b>6. Partially Revocable Wills (Revocable Will).</b></b>
<b>CONSTRUCTION</b> <b>A. CLASSIFICATION OF BEQUESTS</b> <b>1. Specific.</b> Gift of identifiable property (i.e., My Book Room). <b>2. Residuary.</b> Gift to be taken out of identifiable assets (i.e., Bank Account, Stock). <b>3. General.</b> Gift to the three general assets of Testator. <b>4. Beneficiary.</b> Remainder of estate after gifts, taxes and other expenses are paid. <b>B. LEGAL INDETERMINATE WHERE GIFTS ARE SACRIFICED TO SATISFY DEBTS, TAXES AND OTHER EXPENSES IF NOT ENOUGH ASSETS IN ESTATE</b> <b>1. General.</b> Rule of Order unless specified in Will. <b>2. Beneficiary.</b> <b>3. General.</b> Gift over to Beneficiary. <b>4. Debts and taxes.</b> <b>5. Specific.</b>	<b>INTESTACY</b> <b>A. NO VALID WILL OF DEED—STATUTES OF JURISDICTION DISTRIBUTE ASSETS</b> <b>1. Statute governs for orderly distribution of Estate as intestate.</b> <b>2. Spouse.</b> <b>3. Children (and descendants of deceased children).</b> <b>4. Parents.</b> <b>5. Siblings.</b> <b>6. Contingently (blood relationships to those mentioned—grandchildren of grandchildren).</b> <b>B. SURVIVING SPOUSE</b> <b>1. Majority—Elective Share (generally 1/2).</b> <b>2. Community Property (Majority's husband and Will treated as community—survivor takes 1/2 of Estate).</b> <b>3. Separate property excluded from Estate.</b> <b>4. Some states give specific dollar amount plus 1/2.</b> <b>5. If no descendants, majority view give spouse entire Estate. <b>6. Some states (1/3) of decedent's net (total) the descendants who are all descendants of surviving spouse, spouse share entire Estate.</b> <b>C. DIVISION OF ESTATE</b> <b>1. Equal Distribution.</b> <b>A. Per Capita with Representation (per stirpes)—Divided equally at first generational level where there are living descendants; take share decedent's or parent would have received. <b>B. Per Capita at General Level (Heads) (heads)—Divided equally at first generational level where share being remaining share divided and subdivided equally at next generational level with living takes. <b>2. If no spouse or descendants.</b> <b>A. Majority view to decedent's parents. <b>B. If no spouse, descendants of Testator's parent (grandchildren of parents). <b>C. If no mother or father, to decedent's maternal and paternal grandparents. <b>D. If none of above, to nearest kin in next class of family. <b>E. If none of above, entire property passes to State. <b>3. Half-Blood.</b> Majority view has abolished distinction. <b>4. Stepchildren.</b> <b>A. Admitted.</b> Some (mother and not their father (Majority)). <b>B. May inherit from father if legitimated through marriage, or generally acknowledged or adjudicated. <b>5. Adoptive.</b> <b>A. Treated same as natural child of adoptive parent. <b>B. Inheritance rights (restricted to or Natural Parents—recognizes the adoption by spouse of natural parent).</b></b></b></b></b></b></b></b></b></b></b>
<b>CONSTRUCTION</b> <b>A. CLASSIFICATION OF BEQUESTS</b> <b>1. Specific.</b> Gift of identifiable property (i.e., My Book Room). <b>2. Residuary.</b> Gift to be taken out of identifiable assets (i.e., Bank Account, Stock). <b>3. General.</b> Gift to the three general assets of Testator. <b>4. Beneficiary.</b> Remainder of estate after gifts, taxes and other expenses are paid. <b>B. LEGAL INDETERMINATE WHERE GIFTS ARE SACRIFICED TO SATISFY DEBTS, TAXES AND OTHER EXPENSES IF NOT ENOUGH ASSETS IN ESTATE</b> <b>1. General.</b> Rule of Order unless specified in Will. <b>2. Beneficiary.</b> <b>3. General.</b> Gift over to Beneficiary. <b>4. Debts and taxes.</b> <b>5. Specific.</b>	<b>PROBATE &amp; ADMINISTRATION</b> <b>A. PURPOSE</b> <b>1. Orderly transfer of assets.</b> <b>2. Public confidence.</b> <b>3. Efficient execution.</b> <b>B. PROCEDURE FOR PROBATE (AS PRESCRIBED BY STATE STATUTE)</b> <b>1. Filing.</b> Petition comes to admit Will to Probate. <b>2. Notice.</b> <b>3. Service to known creditors.</b> <b>4. Publication to unknown interested parties.</b> <b>5. Hearing.</b> Includes proof of death and conditions, willingness of Will, compliance with jurisdictional execution requirements, and capacity of Decedent.

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The basics of all will and trust structures.