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Grounds to challenge a Will

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This note provides a brief overview of the grounds that need to be met for those wishing to challenge a Will. Challenges are usually brought in the High Court typically falling under one or more of following headings:-

Want of Due Execution

No Will is valid unless it is in writing and signed in a particular manner. In most cases this involves the person making the Will (the Testator) signing at the end of the document and this signature being made in the presence of two or more witnesses who are present at the time and who additionally sign the Will in the presence of the Testator. Challenges can therefore be made if these requirements were not met if for example there are allegations of forgery or the witnesses were not present at the time.

Capacity

When a person executes a Will he or she must at that time have the requisite mental capacity to do so. This means he or she must understand what he or she is doing, and the extent of the property which is given away in the Will. The test as to whether a testator has the requisite capacity is something which is covered by the Mental Capacity Act 2005 and can be quite complicated but in simple terms, the Act says that a person lacks capacity in relation to any matter if at the material time he or she is unable to make a decision for themselves in relation to it because of an impairment of, or a disturbance in the function of, the mind or brain, whether the impairment or disturbance is permanent or temporary.

Those wishing to challenge a Will on the grounds that the Testator lacked capacity will need to bring evidence demonstrating the testator was at the time of signing the Will lacking in the requisite capacity - typically this will require supportive medical reports.

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Undue Influence

It may be possible to challenge a Will on the grounds that the Testator made the will at a time when he or she was under undue influence. This could include for example a frail and vulnerable Testator who has deliberately been misled by a family member and the affect of this influence is to cause the testator's own discretion and judgment to be overridden by the relative.

Fraud

This should only be raised if there is clear and credible evidence in support. For example it might occur, where it can be established that there was a false representation to the testator about the character of another person for the purpose of persuading the Testator to change his will.

Sham

It is an essential requirement of a valid Will that the Testator at the time of signing it intends that it shall take effect as a testamentary document i.e. the Testator must intend the document to be his or her will.

Revocation

A Will can be said to be revoked i.e. made not valid by for example:-

- The later marriage or civil partnership of the Testator
- The annulment or dissolution of the marriage or civil partnership of the Testator
- The existence of a subsequent Will
- Testator choosing to destroy their Will

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Forfeiture

A beneficiary named in a Will cannot inherit if for example he or she unlawfully killed the Testator or unlawfully aided and abetted the death.

When must you act?

A court will always initially assume that the will is valid so to challenge a Will the first step is to seek immediate legal advice and apply for what is called a “Caveat” this will prevent the estate/assets of the Testator being distributed for the next 6 months.

You should ensure at the very latest that the Will is formally contested within 6 months of what is called the grant of representation.

If after reading this note you have concerns as to the validity of a will in which you have an interest then please do not hesitate to contact us as we may be able to assist you.

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