

People	
Heirs	Individuals entitled to receive property by intestate succession
Spouse	Decedent's marital partner
Issue/ Descendants	Decedent's lineal line
Ancestors	Decedent's parental line
Collaterals	Decedent's relatives through an ancestor

Intestacy	
Intent	irrelevant- follow legislatures guide
heirs	entitled to take an intestate share
survival	key factor in taking from the decedent
Simultaneous death	Uniform Probate Code (UPC)- an heir must be proven by clear and convincing evidence to have survived the decedent by 120 hours
Without Heirs	Property will escheat to the state

Spouse's Share	
who qualifies?	Legally married partner
Spouse + Shared Descendants	surviving spouse takes the entirety
Spouse + parent	Surviving spouse takes \$300,000 and 75% of remainder of estate
Spouse+ shared descendants+ Spouse's kids	Surviving spouse takes \$225,000 and 50% of remainder of estate
Spouse + non-spousal kids	Surviving spouse takes \$150,000 and 50% of remainder of estate
Just spouse	Surviving spouse takes the entire estate

Issue	
Lineal line	must be a parent-child relationship
Adoptive children	inherit from decedent just like biological children
Stepparent adoption	Will not prevent adoptee from inheriting from other genetic parent
Posthumously Born children	If child is born 280 (or 300 under UPA) days of husband's death, there is a rebuttable presumption that the child is husband's and will inherit from the husband

Calculating Issue's Share	
Per Stirpes	Divide shares into the total number of children who survive or leave issue who survive and then divide by representation
Per capita by representation	Divide property equally at the first generation where a member survives decedent; if a deceased member of a generation is not survived by living issue, then that member does not take a share
Per capita at each generation (UPC)	Divide property into equal shares at the first generation where there is a surviving member; pools the remainder share after each generation and divide equally

Definitions	
Decedent	Someone who has died
Will	Legal document used to dispose of the decedent's property
Testate	Decedent dies with a will
Intestate	Decedent dies without a will
Codicil	Supplement that either amends or revokes a decedent's will in whole or in part
Probate	Judicial process for administering and settling decedent's estates
Intestate Succession	Default estate plan for distributing property

Will Substitutes	
Joint tenancy	Avoids probate because it has a right of survivorship
Revocable Trust	Avoids probate because it has an inter vivos transfer
Pour-Over Will	Avoids probate because it distributes property under a trust
POD Contract	Avoids probate because it distributes by inter vivos transfer
Deed	Avoids probate because it is an inter vivos transfer

Revival	
Republication	UPC/ majority does not recognize automatic revival of a revoked will
Dependent Relative Revocation (DRR)	Safe valve for testators who revoke a will on the basis of mistake (of law or fact); invalidates the mistaken revocation and revives the earlier revoked will



Revoking Codicils

by testator also revokes any codicil
 revoking attached to the will; revoking a
 a will codicil does not revoke the will

Third Party Revocation

Third party can at testator's direction
 revoke on behalf and in testator's
 of testator if conscious presence

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Revocation of a Will

Ambulatory altered or revoked any time
 until the testator's death; can
 be revoked in whole or in
 part

Subsequent express revocation; implied
 Instrument revocation/ inconsistency

Physical act intent for physical act to
 revoke will; majority-
 particular language must be
 destroyed; UPC- destructive
 act affect some part of the
 will

Lost will creates a rebuttable presump-
 tion that the testator
 revoked the will by physical
 act; burden on proponent to
 show will's existence by
 clear and convincing
 evidence

Operation divorce revokes all will
 of Law provisions in favor of former
 spouse (UPC extends to ex's
 relatives); subsequent
 marriage does not revoke a
 will because of elective
 shares

Codicils

Supplement Does not replace an
 underlying will

Formalities executed with the same
 formalities as a will

Holographic Wills

informal handwritten will

requir- must be signed but doesn't need
 ements witnesses

How some jurisdiction- anything not in
 much handwriting will invalidate will;
 writing? UPC- only requires material
 provisions be in handwriting

Intent look for words or phrases
 suggesting intent; UPC
 authorizes looking to extrinsic
 evidence

Execution of Wills

Three signed writing, witnesses, and
 Formal testamentary intent

Will
 Requir-
 ements

Signed must be written, signed at end
 Writing or anywhere under UPC- must
 show intended to be signature;
 nothing after signature will be
 valid; doesn't need to be formal
 signature

Capacity must be at least 18 years of age
 and of sound mind at the time of
 signing

Witness majority- presence of witnesses
 (Attes- and testator; UPC- witnesses
 tation) must sign within a reasonable
 time of original signature by
 testator

"in the Traditional- line of sight; Modern
 presen- approach- conscious presence
 ce"

Execution of Wills (cont)

Interested Has a direct financial interest
 witness in the will- common law (not
 competent witness), UPC
 (abolished doctrine), and
 Purge theory

Purge Interested witness does not
 theory affect the validity of a will BUT
 probate court will purge any
 gain in excess of what the
 witness would take under
 intestate succession

Present must have the present intent
 Testam-
 entary
 Intent

Failure to Common law/ majority- strive
 Satisfy compliance; UPC- substantial
 Formal- compliance by clear and
 ities convincing evidence

Construction/ Interpretation

Plain assume the testator meant the
 Meaning plain meaning of what he said

Incorp- Wil refers to document outside
 oration by will can incorporate if:
 Reference document exists at time of
 execution, testator intends
 incorporation, document
 described with sufficient
 certainty

Acts of Testator can dispose of
 Indepen- property based on some act or
 dent event that is unrelated to the
 Signif- execution of the will
 icance



Construction/ Interpretation (cont)

Lapse Common law: testamentary gift would lapse if intended beneficiary did not survive the testator; failed gift dumped into the residuary gift

Anti-lapse Prevents certain gifts from lapsing. Requires protected relationship, survived by issue,

Exception to lapsed gifts rule Class gifts- if member's gift lapses, the rest of the class share that member's gift unless anti-lapse controls

Abatement If the estate does not have sufficient funds to pay debts or make gifts, the gifts will be abated, or reduced, in a specific order.

Abatement hierarchy intestate property, residuary gift, general gifts, special gifts

Ademption by Extinction specific piece of property no longer in estate. Traditional- devise is extinct; UPC- look at testator's intent at time she disposed of property (preference for replacement property)

Ademption by Satisfaction testator satisfies a specific or demonstrative gift by inter vivos transfer. Testator must intend for gift to adeem and must be supported by writing

Construction/ Interpretation (cont)

Ambiguities traditional- can only use extrinsic evidence to resolve latent (not on face) ambiguities; modern rule- both can use extrinsic evidence

Mistakes Courts are less forgiving when it comes to mistakes

Power to Transfer

Rights of Surviving Spouse elective share (forced share- 50% under UPC); waiver to elective share must be in writing after fair disclosure and with representation

Gifts to Children- Advancements lifetime gift that satisfies child's intestate share. Common law- lifetime gift is presumed to be advancement; UPC- only advancement if contemporaneous writing or writing that gift should be taken into account in computing division of estate

Calculating effect of advancement: "Hotchpot" analysis Add the value of the advancements back into the intestate estate, Divide the resulting estate by the number of children taking, Deduct the child's advancement from the child's intestate share.

Power to Transfer (cont)

Omitted Children intentional disinheritance; unintentional- takes intestate share or portion from what is devised to children

Slayer Rule A beneficiary who murders the decedent is barred from taking under the decedent's will; UPC allows killer's issue to take when relevant

Disclaimer signed writing that is filed with court OR declared to estate distributor AND Identify the decedent, describe the interest being disclaimed; within 9 months of decedent's death

Elder Abuse Someone who is convicted of financial exploitation, abuse, or neglect of a person under her care is prohibited from inheriting from that person.

Will Contests

standing only an interested party

time for filing 6 months after will is admitted to probate

Testamentary capacity burden on contestor to show that when will was executed, testator lacked the ability to know: nature of act, nature and character of property, natural objects of bounty, plan of attempted disposition



Will Contests (cont)

Insane Delusion testator has general capacity but has an insane delusion as to some belief. Measure against actions of a rational person (also need to prove but-for causation)

Undue Influence contestant bears burden of showing: beneficiary received a substantial relationship, beneficiary had a confidential relationship with testator, and testator had weakened intellect. THEN burden shift to proponent to show no undue influence by preponderance of the evidence

Fraud contestant bears burden of showing beneficiary made misrepresentation with the intent to deceive the testator and the purpose of influencing the testamentary disposition. Remedied by constructive trust

Forfeiture Clauses in terrorem: no-contest clause designed to dissuade a beneficiary from suing about his share; under UPC clause is unenforceable if probable cause to challenge

Probate Process

classify each piece of property is probate or non-probate

probate passes by will or intestate succession

non-probate property is transferred by another document

Probate Process (cont)

Primary purpose Orderly administration of a decedent's estate

Filing under UPC Probate proceedings must be brought within _____ - _____ years of death, after which there is a presumption of intestacy. Can choose informal or formal probate

Creditors Non-claim statutes: bar claims after time; must be given notice by personal representative

Personal Representative person who acts on behalf of estate during probate process (administrator if by court or executor if by will)

Duties of Personal Representative inventory and appraise estate, contact interested parties, satisfy debts, close the estate

Duties owed by personal representative loyalty and care

Choosing a personal representative surviving spouse who is a devisee, other surviving devisee, surviving spouse, other heirs, any creditor (45 days after decedent's death)

Probate Process (cont)

Power of Appointment Ability of decedent to select an individual to dispose of certain property under the will. General- no conditions; special- donor limits donee's power

Powers of Attorney An authority to act on another's behalf in a legal or business matter. Must be in writing, signed, and dated. Types: General, special, Advanced healthcare directive (living will or durable power of attorney for healthcare)

