

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



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### 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)

