

Contesting a Will

In England and Wales the concept of freedom of testamentary expression prevails. In other words anyone can leave their estate to whomever they wish. Provided the Will itself has been correctly drawn, signed and witnessed, and provided the testator has approved the content of his Will and has full testamentary capacity then (subject to a claim under the Inheritance (Provision for Family and Dependants) Act 1975) the Will or legacy will stand. In order to challenge a Will specific grounds have to be made out. It is not enough to contest a Will simply because you find the content to be “unfair” or even surprising.

Sometimes however there are circumstances that require some investigation. Perhaps if it appears that the testator did not really understand the content of his Will, or perhaps if an elderly testator departs from a series of Wills by unexpectedly making provision for a third party with whom he is only recently acquainted.

We can assist in gathering the relevant evidence and analysing it to help you make an informed decision as to whether or not to challenge a Will. Unless the Will is obviously flawed in some way, the onus is on the challenger to produce evidence that justifies overturning what may be a perfectly valid Will. The courts do not overturn Wills easily and it is necessary to gather convincing evidence.

We can also assist you in assessing the cost-risk benefit of such an action. Sometimes, even if a Will is capable of being overturned, the costs involved may be equal to or exceed the benefit under a previous Will or intestacy.

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