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Grounds for contesting a Will ^[1]

To be valid, a Will must meet certain requirements both in its preparation and in its execution. If it does not, then it can be contested.

A will can be contested for a number of reasons and these are noted below.

If you have concerns surrounding a will, you may be able to bring a claim to contest its validity or ask for an interpretation or rectification.

On what grounds can I contest a Will?

Lack of testamentary capacity

To be valid, the person making the will must have had 'testamentary capacity'. In other words, they must have been of sound mind when making the Will.

This means that the person making the Will must:

- understand the fact that they are making a Will and the effect of that Will
- have some idea of the type and value of the assets they own and are leaving in the Will
- be aware of any persons who may reasonably expect to be left something in the Will, and
- be free from any delusion of the mind that could cause them not to benefit those people

These requirements were established in the well-known case **Banks v Goodfellow (QBD 1870)**, where the drafting solicitor has to satisfy themselves that a testator has capacity when preparing their Will.

Knowledge and approval is presumed where instructions were taken correctly and the Will was executed in accordance with the law.

However, in certain circumstances further evidence is required to show that the testator knew and understood the contents of the Will, these include when:

- The testator cannot speak or write
- The testator is paralysed
- The testator is blind or illiterate

Undue influence

This is when a person is persuaded to act in a way that they wouldn't under usual circumstances. This could be by removing somebody from the Will entirely or reducing what they will receive by making a gift to someone who would not usually have benefited in such a significant way. This is often claimed where the deceased was vulnerable or easily influenced. Someone has influenced the testator to favour themselves over others.

Fraudulent and forged wills

Clearly, fraud and forgery are criminal activities and if either can be proven in connection with a Will it will be deemed invalid.

In such cases we would instruct a handwriting expert to assess the validity of the signature on a Will. We would also obtain statements from the witnesses and gather evidence surrounding the circumstances of the drafting and execution of the Will.

Lack of valid execution

For a Will to be valid, it must comply with the stringent requirements of the Wills Act 1837:

- The Will must be in writing and be signed by the testator (person making the Will), or alternatively be signed by someone in their presence and at their direction
- It must appear that the testator intended by signing the document to give effect to the Will
- The testator's signature must be made or acknowledged in the presence of at least two witnesses who are present at the same time
- Each witness must either attest and sign the Will, or must acknowledge the signature in the presence of the testator (necessarily the witnesses do not in the presence of the other witness)

If a Will does not comply with these requirements, then it will be invalid.

Links

[1] <https://www.sydney-mitchell.co.uk/main-menu/grounds-contesting-will>