

| 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  
Indepe- property based on some act or  
ndent 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"** 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 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)

