



Attwaters Jameson Hill – Guide to Ground to Contest a Will

There is a surprising increase in court cases involving disputed and contested Wills. Such cases can arise for a variety of reasons, some being that there is a belief that the deceased did not have testamentary capacity to make a Will, whether the Will was made as a result of undue influence, forgery, fraud or the deceased failed to provide reasonable financial provision for dependants.

With increasing numbers of second and third families, it is becoming increasingly common for Wills to be contested and for confusion to arise as to who is entitled to what. Wills and the law of intestacy do not always produce a fair result; reasonable financial provision is not always made for everyone entitled to receive it. All is not necessarily lost as the law gives certain people the opportunity of claiming against an estate even if there is no provision for them under the Will or the Intestacy Rules.

There are six main areas where wills can be contested

Lack of testamentary capacity

For a person to make a valid will they must be of a sound mind. Broadly speaking the individual must know what they are doing, be of sound mind as well as have a knowledge of the value of the estate. Crucially they should know the consequences of including and excluding certain people under their will; and,

Lack of valid execution

This area concerns the procedure of the will, it must be in writing and signed by the testator or signed by someone else in their presence, who has been directed to do so by the testator. The signature needs to be witnessed by two people present at the same time. There are also rules and regulations about who can witness a will

Lack of knowledge and approval

A person must have knowledge of, and approve of, the content of their will. They must know that they are signing a will, and approve of its contents.

Undue influence

To prove that a person was unduly influenced, coerced or under duress when making a will you must show 'actual undue influence'.

Fraudulent wills and forged wills

You are able to contest a will if you believe it was forged or fraud has taken place. Typically this area will include forged signatures on wills or when fraud has occurred. If a beneficiary is removed from a will after a fraudulent accusation then the will may be invalid.

Rectification and construction claims

A will may be rectified where it fails to carry out the testator's intentions either because of a clerical error or because of a failure on the part of the person preparing the will to understand the testator's instructions. When a will is negligently drafted this is often the first port of call before making a claim for professional negligence.