WORDSCAPE: WILLS AND SPECIAL CASES

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Let's consider what happens to a will and the terminology of the twists and turns that may occur.

PROBATE PROCESS

Under normal circumstances, after the testator or testatrix dies, his or her will is submitted for *probate* by the executors. The witnesses appear in probate court to swear that they did, indeed, see the *decedent* sign the will and that he or she was of sound mind at the time (remember that key phrase in the preamble?).

I've recently been doing some twentieth-century research and noticed *joint wills* (the husband and wife had virtually identical wills, dated the same day) that were identified as *self-proved wills*. The testator and testatrix had signed the wills and immediately appeared before an official to say they had done so, hence there were no witnesses.

Now let's talk about wills that do not follow the above path, those that follow byways.

SPECIAL CASES: NUNCUPATIVE WILLS

The first byway may occur before or during the writing of the will. The testator may die before the will is written. There may be only enough time for him to express his wishes verbally.

This is called a *nuncupative* will. During probate, some of the individuals who were present and heard these wishes tell the court what they were. Often others who were present will give confirming testimony. It is interesting to note how often those presenting a nuncupative will would probably have been the scribe and witnesses for the written will, had there been one. In other words, our ancestors often waited until the very last minute to prepare their wills, and sometimes they waited just a little bit too long.

A verbal nuncupative will is expressed in the third person, "he wished," rather than the first person of a written will, "I wish." But I have seen several cases in which a will on file was in the first person, but had no signature or witnesses. Clearly, the will had been dictated and scribed, but the testator died before he could sign it. The clerk found it easier (and safer) to copy the already-written document into the record than to rely on the memory of witnesses.

SPECIAL CASES: HOLOGRAPHIC WILLS

A *holographic* will is one written in the testator's own hand and, more importantly, one that has no signing witnesses.

The legal status of nuncupative and holographic wills varies. Courts aren't very fond of them. They expect nuncupative wills to be probated very quickly after they are dictated, usually within days to assure that no one's memory has become clouded. Some jurisdictions don't accept holographic wills as legal. When we are most likely to see them in a probate file is when an administrator presents one, saying he or she intends to follow the terms of the holographic will.

SPECIAL CASES: CODICILS

Another byway may occur soon after the signing of the will, unofficially known as an "oops!" It is not at all unusual for someone to realize fairly quickly that the written will contains an error or omits a "what if." A *codicil* will be added correcting the problem (clearly it was cheaper to add the codicil than to rewrite the entire will). The codicil may have the same date and the same witnesses as the original.

Codicils were also written much later because things had changed. The most common reasons were the death of a legatee, spouse, or executor. Thus, the testator had lived much longer than he expected. I'm surprised at how often these were testators who had claimed to be "very weake of body."

SPECIAL CASES: WITNESSES

Sometimes a testator is so healthy that he outlives one or more of the witnesses (or they move westward for better prospects). In this case you may find statements from individuals that they recognize the handwriting of the witness and from other individuals who were present at the signing, but had not signed as witnesses. These are still considered valid probates.

SPECIAL CASES: EXECUTORS

Sometimes testators completely overlooked the necessity to name an executor. In other instances the executor died before the will entered probate. A third type of problem arose when an executor said "No way! I don't want to do that." In this latter instance it is said that the executor *renounced* executorship. I see it most often when the widow had been named as executrix and was probably overwhelmed when faced with the legal tasks involved.

Technically, in all three of these cases, the will is not valid. To be valid a will must have executors. As you can imagine, these were not uncommon situations, and the courts were used to dealing with them. When someone has a will, he or she is said to have died *testate*. Someone who dies without a will is said have died *intestate*. Testate estates are handled by executors. Intestate estates are handled by *administrators*.

Someone who wrote a will that is for some reason invalid is deemed to have died intestate. In this case, the court appoints an *administrator* or *administratrix*, but recognizes the existence of a will by granting *letters of administration CTA* (*cum testamento annexo*, with will attached). It was understood that the administrator, who may have been a surviving executor, would carry out the terms of the will so far as they still applied.

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