

## WILL CONTEST

The requirements for testamentary capacity are minimal. Some courts have held that a person who lacks the capacity to make a contract can still make a valid will. While the wording of statutes or judicial rulings will vary from one jurisdiction to another, the test generally requires that the testator was aware of:

- The extent and value of their property
- The persons who are the natural beneficiaries
- The disposition he is making
- How these elements relate to form an orderly plan of distribution of property.

The legal test implies that a typical claimant in a will contest is a disgruntled heir who believe he should have received a larger share than what he received under the will. Once the challenging party meets the burden of proof that the testator did not possess the capacity, the burden subsequently shifts to the party propounding the will to show by clear and convincing evidence that the testator did have the requisite capacity.

Duress or coercion (as a term of jurisprudence) is a possible legal basis to set aside or otherwise modify a will, in that, the execution of the will by the Testator/Testatrix arises out of an immediate fear of injury. *Black's Law Dictionary* (6th ed.) defines duress as "any unlawful threat or coercion used... to induce another to act [or not act] in a manner [they] otherwise would not [or would]."

To establish duress, four requirements must be met:

- Threat must be of serious bodily harm or death
- Harm threatened must be greater than the harm caused by the crime
- Threat must be immediate and inescapable
- The defendant must have become involved in the situation through no fault of his or her own

A person may also raise duress when force or violence is used to compel him to enter into a contract, or to discharge one.

Depending on the grounds, the result may be

- Invalidity of the entire Last Will and Testament, resulting in an intestacy.
- Invalidity of a clause or gift, requiring the court to decide which charity receives the charitable bequest, using the equitable doctrine of cy pres
- Diminution of certain gifts, and increase of other gifts to the widowed spouse or orphaned children, who would now get their elective share.