

Typically, [standing](#) to contest the validity of a will is limited to two classes of persons:

1. Those who are named on the face of the will (i.e. any beneficiary);
2. Those who would inherit from the testator if the will was invalid

The most common grounds, or reasons, for contesting a Will are:

- Lack of [disposing mind and memory](#)
- [Duress](#)
- [Election](#) against the Will by a [widowed spouse](#) or [orphaned children](#)
- [Fraud](#) a **fraud** is a [deception](#) made for personal gain or to damage another individual
- [Insane delusion](#)
- [Testamentary capacity](#)
- [Undue influence](#) is an [equitable doctrine](#) that involves one person taking advantage of a position of power over another person. It is where free will to bargain is not possible

In the [common law](#) tradition, **testamentary capacity** is the [legal term of art](#) used to describe a person's legal and mental ability to make a valid [will](#). This concept has also been called **sound mind and memory** Adults are [presumed](#) to have the ability to make a will. [Litigation](#) about testamentary capacity typically revolves around charges that the [testator](#), by virtue of [senility](#), [dementia](#), [insanity](#), or other unsoundness of mind, lacked the mental capacity to make a will. In essence, the doctrine requires those who would challenge a validly executed will to demonstrate that the testator did not know the consequence of his conduct when he executed the will.

Certain people, such as [minors](#), are conclusively deemed incapable of making a will by the common law; however, minors who serve in the [military](#) are conceded the right to make a will by [statute](#) in many jurisdictions.

The requirements for testamentary capacity are minimal. Some courts have held that a person who lacked the [capacity](#) to make a [contract](#) can nevertheless 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:

1. The extent and value of their property
2. The persons who are the natural beneficiaries
3. The disposition he is making
4. How these elements relate to form an orderly plan of distribution of property. [\[1\]](#)[\[2\]](#)[\[3\]](#) [\[4\]](#) [\[5\]](#)

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 defense](#), one of four of the most important justification defenses<sup>[1]</sup>, by which [defendants](#) argue that they should not be held [liable](#) because the actions that broke the [law](#) were only performed 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]."

In order for duress to qualify as a defense, four requirements must be met:<sup>[1]</sup>

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

A person may also raise a duress defense 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

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