

## Capacity Evidence In Will and Trust Contests

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## Principal Contest Grounds:

1. Incapacity; and
2. Undue Influence

## Capacity Standard Applicable

### Testamentary Capacity:

- Wills
- Inter vivos Trusts signed with Pour Over Wills

### Contractual Capacity

- Irrevocable Trusts?

## Testamentary Capacity

Free from delusion and knowledge and understanding of:

1. Nature of property;
2. Roles and identities of persons who would have claim to testator's remembrance; and
3. Testamentary act and dispositional scheme.

## Contractual Capacity

- ❑ Higher standard than testamentary capacity.
- ❑ Requires an appreciation of the consequences of the transaction for the individual.
- ❑ “[P]resupposes something more than a transient surge of lucidity.”  
*Farnum v. Silvano*

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## *Maimonides School v. Coles*

- ❑ Held testamentary, not contractual, capacity applied to trust signed with pour-over Will because:
  - Trust instrument was not complex;
  - Trust disposed of property at death “in the manner of a will;” and
  - The Trust and Will “comprised parts of an integrated whole.”
- ❑ Leaves unanswered capacity standard governing irrevocable *inter vivos* Trust

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## Undue Influence

### Elements:

1. Unnatural disposition;
2. Susceptibility to undue influence;
3. Alleged perpetrator had opportunity to exercise undue influence; and
4. Alleged perpetrator procured the disposition through improper means.

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## Capacity Opinion Witnesses

1. The witnesses to the Will;
2. Treating physicians; and
3. Witnesses qualified as experts in the knowledge and treatment of mental diseases

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## Self-Proved Will Witness Attestation

"We, ... hereby sign[] this will as witness to the testator's signing, and that to the best of our knowledge the testator is 18 years of age or older, of sound mind, and under no constraint or undue influence."

MGL c. 190B sec 2-504

## Capacity Evidence

- ❑ Attending physicians may offer opinions only within scope of competence
- ❑ Medical records often critical
- ❑ "[I]n circumstances when medical and other evidence call into question a testator's capacity, we have relied on the drafting attorney in resolving the testamentary capacity issue" *Paine v. Sullivan*



10/25/2017

Mr. [redacted] came to the office of [redacted] at approximately 10 a.m. and left the office at 11:15 a.m. When [redacted] returned the conference room he was reading Mr. [redacted]'s will and [redacted] and [redacted] said that if he was old we to sign his will. He said he had a question about his tangible property. He stated that they took his business correspondence from his desk for him to see. Tangible property meant boxes, cases, clothes, jewelry, books, watch. These go to Alice.

Mr. [redacted] got to the part about cash bequest. He asked where the cash coming from. I have nearly forgotten. They will have to call the executor.

Then he got to the part about the trust. He stated that the trust is for the benefit of [redacted] and [redacted]. After they die it goes to [redacted] and [redacted] and [redacted].

Mr. [redacted] said \$10,000 and his wife gets \$20,000, \$5,000 to Elliot. Can [redacted] challenge it? I think he will challenge it.

When [redacted] got to [redacted] and [redacted] probably will challenge it.

After Mr. [redacted] signed the trust, [redacted] said trust is in office. No assets in it. I thought it happened when I die.

When signing the date of the trust he recognized that [redacted] had typed in the year. He voluntarily signed and signed and knew it was the words of him on page 6. He voluntarily stated "that the document was his will. This is to prevent me from my son. Yes, I want everything to Alice. Everything to Alice except gifts and real estate."

When asked if his signing was voluntary he stated "yes" loud and clear.

When asked if he was 18 he stated he was not and [redacted] asked him when his birthday was and he answered October 3, 1912.

When asked if he was of sound mind he answered appropriately and then recited "being of sound mind and body I signed it."

How did you acquire property in Franconia? My wife's family had a house in Franconia and she like the town. When I was in college around 1935 I first went to Franconia. When did you go to college Harvard. I found Harvard boring. I went to Northeast Prep School in Cape Plym on a scholarship and was on the crew. However, I was not good enough to make the team at Harvard, also did some sailing.

[redacted] did a lot of sailing at Green-Mountain College. When is that in Vermont.

Date	Medical Record Event
3/3/01	He asked staff over and over again: Where is his wife? Where is his home and all his furniture? Why was he here? Was he bad? Has he lost his mind?
3/4/01	He asked about arrival time of his wife (deceased)
3/8/01	He asked when his wife (deceased) would arrive
3/15/01	He was up most of the night hollering for help and kept trying to answer his phone when no one was on the phone
3/23/01	He stored dirty, moldy coffee cups in his drawers
3/26/01	He did not recognize his own furniture and had no idea of the place or date
3/28/01	He had no insight into his mental problems
5/31/01	The day after a six-day trip with his daughter, he said, "What trip[?] I've been right here."
6/3/01	He asked for wife (deceased) often
6/10/01	He asked for wife (deceased) frequently

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## Contemporaneous Evaluations

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