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Defining the Limits of Mental Capacity to Make a Will under New Jersey Law

Under New Jersey law, a will that deals with land or personalty, or both, is invalid if made by one of unsound mind at the time the will is executed. The present statute uses the phrase "of sound mind," N.J.S.A. 3B:3-1. The former statute, N.J.S.A. 3A:3-1, repealed effective September 1, 1979, provided that a will made "by an idiot, lunatic or person of unsound mind and memory shall not be valid." Despite the Legislature's use of the phrase "sound mind" the test for mental capacity is not whether the testator is sane in a medical sense. N.J. Practice, Vol. 5, Sec. 36.

A person has sufficient mind and memory to make a will if he is capable of understanding the general nature of the business in which he is engaged and the particular distribution he is effecting; of recollecting the property of which he means to dispose and the persons who naturally are the objects of his bounty; and of comprehending the interrelation of these factors. N.J. Practice, Vol. 5, Sec. 36.

A person has been said to understand the general nature of the business in which he is engaged if he is capable of understanding the general nature of a testamentary act. In re Rein, 139 N.J.Eq. 122 (Prerog.1946). If there is a prior will, the mind of the person making the will (called the "testator") must be clear enough to be capable of interfering with it, with some degree of judgment. Matter of Delmar's Will, 243 N.Y. 7 (1926). N.J. Practice, Vol. 5, Sec. 36.

It is sometimes said, the testator must be able to reasonably understand the nature and effect of his act. In re McComb, 118 N.J.Eq. 119, 130 (Prerog.1935). But his comprehension need only be that of a layman, not a lawyer. If he understands the practical effect of his will, he need not understand the legal principles operating to that end, Sloan v. Maxwell, 3 N.J.Eq. 563 (Prerog.1831),

nor the legal terminology. Harris v. Betson, 28 N.J.Eq. 211, 221 (Prerog.1877). A testator's ignorance of the practical effect of his will (even if due to mistaken advice from an attorney) is no bar to probate, assuming that the testator at least knows what is said in the will. In re Gluckman's Will, 87 N.J.Eq. 638 (E. & A. 1917). N.J. Practice, Vol. 5, Sec. 36.

As noted above, one requirement to establish that a person has sufficient mind and memory to make a will is that he is capable of recollecting the property involved. However, actual ignorance of the kind or amount of property is not invalidating if the ignorance results from mental incapacity to comprehend the kind and amount of such property. In re Livingston's Will, 37 A. 770 (N.J.Prerog.1897). The testator must, however, have the faculty of memory over and above that of comprehension. The Supreme Court, in Gellert v. Livingston, 5 N.J. 65, 77 (1950), said that absent-mindedness or forgetfulness does not disclose a lack of testamentary capacity. Furthermore, if the testator knows his property has value, it makes no difference that he does not know its full value. McCoon v. v. Allen, 45 N.J.Eq. 708, 17 A. 820 (Prerog.1889). N.J. Practice, Vol. 5, Sec. 36.

Continued on reverse page...

Great Quotations

"I must be getting absent-minded. Whenever I complain that things aren't what they used to be, I always forget to include myself."
- George Burns

"First you forget names, then you forget faces, then you forget to pull your zipper up, then you forget to pull your zipper down."
- Leo Rosenberg

Capacity to recollect the property involved may be a very simple matter, e. g., where the estate consists entirely of property upon which the testator has resided for many years. Clifton v. Clifton, 47 N.J.Eq. 227, 242 (Prerog.1891). However, the standard rightly implies that a greater capacity is required for a complex will than for a simple one. A contrary rule, however, is stated in the case of Meeker v. Boylan, 28 N.J.L. 274, 277 (Sup.Ct.1860). N.J. Practice, Vol. 5, Sec. 36. Also as noted above, another requirement to establish a person has sufficient mind and memory to make a will is that he is knows the persons who naturally are the objects of his bounty. The phrase "natural objects of a testator's bounty" has also been used to describe those who would take his estate on intestacy. Page v. Phelps, 108 Conn. 572, 580 (1929). But this gives the phrase an unwarranted, artificial significance. In re Jacobs' Estate, 24 Cal.App.2d 649, 650 (1938). N.J. Practice, Vol. 5, Sec. 36.

It has been held it is as necessary for the testator to be capable of knowing the obligations he owes to the natural objects of his bounty, as of knowing the objects themselves. In re Williams, 95 N.J.Eq. 702 (E. & A. 1923); In re Haness, 98 N.J.Eq. 645 (Prerog.1925). New Jersey Practice, Volume 5, Section 36. Accordingly, the Appellate Division in In re Probate of Alleged Will of Landsman, 319 N.J.Super. 252, 267, 725 A.2d 90 (App.Div.1999), held that testamentary capacity exists where the testator can comprehend the property to be disposed of, the natural objects of the testator's bounty, the meaning of the business the testator is engaged, the relation of each of these factors to the others, and the distribution to be effected by the will. N.J. Practice, Vol. 5, Sec. 36.

Having examined the above principles, it is clear that the standard of testamentary capacity is not demanding and that a very low degree of intelligence will suffice. The fact that the testator can manage a business may be used to establish evidence of his testamentary capacity. Loveridge v. Brown, 98 N.J.Eq. 381 (E. & A. 1925). One may therefore conclude that the standard of testamentary capacity requires a lower degree of intelligence than that required to enter into a contract or to manage a business. N.J. Practice, Vol. 5, Sec. 36.

A person may have the capacity to make a will though classified by physicians as insane, In re Phillips, 139 N.J.Eq. 257 (Prerog.1947); or classified by physicians as feeble minded, Howell v. Taylor, 50 N.J.Eq. 428 (Prerog.1942). But if so severe as to constitute idiocy, then of course no valid will can be made. N.J. Practice, Vol. 5, Sec. 36. A person may have the capacity to make a will though he is a drunkard, In re Mannion's Estate, 86 N.J.Eq. 232 (E. & A. 1916). In fact, there may be capacity to make a will even though testator not only was a habitual drunkard, but admittedly had been drinking prior to executing his will. In re Petkos, 54 N.J.Super. 118

(App.Div.1959). N.J. Practice, Vol. 5, Sec. 36. In addition, a person may have the capacity to make a will though he is a drug-addict, Frost v. Wheeler, 43 N.J.Eq. 573 (Prerog.1888); or is old. If one is able to respond mentally to all other callings in life ordinarily expected of an old person, he has the limited degree of intelligence and meager capacity necessary for a will. In re Craft's Estate, 85 N.J.Eq. 125 (Prerog.1915). Making a will is a precious right of the aged. Bennett v. Bennett, 50 N.J.Eq. 439 (Prerog.1893). N.J. Practice, Vol. 5, Sec. 36.

In Ward v. Harrison, 97 N.J.Eq. 309, 127 A. 691 (E. & A. 1925) it was held that senile dementia does not necessarily invalidate a will. In addition, the physically disabled, the childish, the eccentric, or persons suffering at times from a partial loss of memory as to persons and things have also all been held to have the capacity to make a will. N.J. Practice, Vol. 5, Sec. 36. The testator may not recollect at all times the persons or families with whom he has been intimate, he may ask idle questions, he may repeat; but such lapses of memory do not of themselves demonstrate testamentary incompetency. In re Gotchel, 10 N.J.Super. 208 (App.Div.1950). Neither a loss of memory as to recent events, nor a complete failure of memory arising nine months after the execution of the will constitutes a controlling circumstance. Failure of memory, coupled with old age, will not of themselves negate capacity. In re Probate of Alleged Will of Landsman, 319 N.J.Super. 252, 267 (App.Div.1999). N.J. Practice, Vol. 5, Sec. 36.

It is said, however, that a person so incapacitated as to be oblivious of a former testamentary disposition of his property is unfit to make another disposition of it. Haydock v. Haydock's Ex'rs, 34 N.J.Eq. 570 (E. & A. 1881).



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THE LEGAL NEWSLETTER OF
LEONARD S. DEPALMA, L.L.C.

Publisher

Leonard S. DePalma, L.L.C.
Attorney at Law
37 Vreeland Avenue, 1st Floor
Totowa, New Jersey 07512
973-837-1488 • Fax 973-837-1460
lawyers@advocate.org
www.advocate.org

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