

Probating King Lear's will: Shakespeare reimaged

By Hon. Clifford L. Klein (Ret.)

In the vast library of legal matters, few volumes contain more drama, heartache, and sheer madness than the tome devoted to probate matters. Family members must confront and try to comprehend decisions that could radically change their lives, but the decision-maker is notably absent.

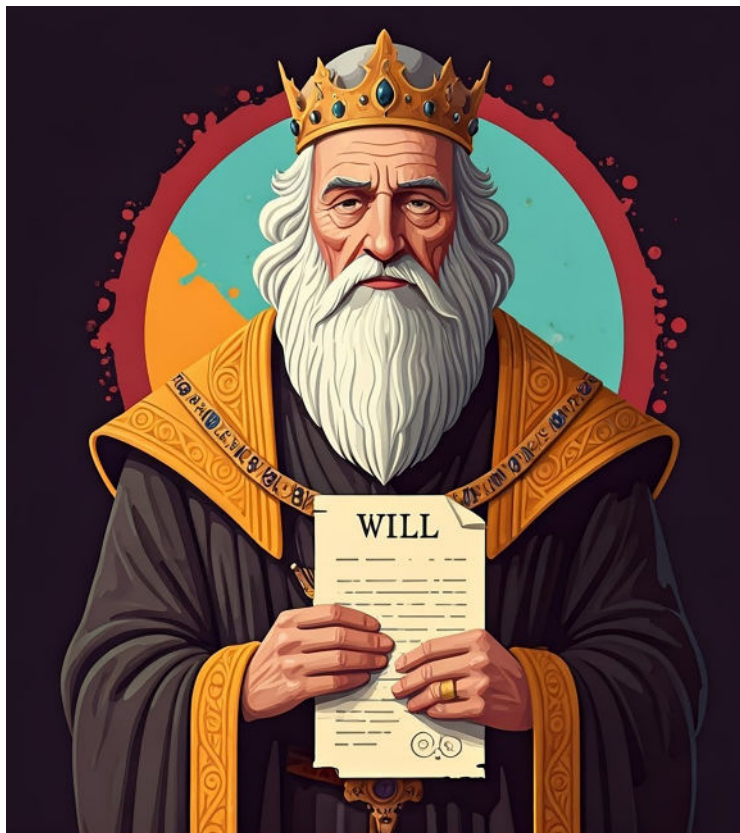
How to explain the reasons behind a last-minute change cutting a prospective heir out of the will? How to understand a seemingly random gift to an unrelated person or entity? Can one equitably return the estate to a position from which anticipated distributions can be made?

How inconvenient that the one person who could solve the puzzle is not around to help make sense of things or is not compos mentis.

King Lear's origins

It's not a new problem. In 1603, Lady Grace Wildgoose sought to have her father, Sir Brian Annesley, certified as incompetent so that she and her husband, Sir John Wildgoose, could assume management of his affairs. Lady Grace had two sisters, one of whom - by the name of Cordell - successfully challenged this attempt. When Sir Brian passed away nine months later, his will left most of his estate to Cordell, who two years later married the recently widowed executor of her father's will.

That this was great story material was not lost on contemporary dramatist William Shakespeare. In his hands, the fate of Sir Brian and his three daughters takes on the depth and dimensions of a morality tale. Tragic *King Lear* is blessed



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with three daughters of his own. He makes decisions about his estate based on flawed perceptions of his daughters' intentions and capabilities. As he descends into madness, an entirely different landscape is revealed to him.

As he enters old age, Lear decides to divide his kingdom up among his daughters, but he sets a test to see who loves him best. The older daughters, Goneril and Regan, flatter him with excessive declarations of love. Youngest daughter Cordelia, however, is incapable of expressing the deep love she feels for her father. Lear misreads her silence and

banishes her from his kingdom. He then proceeds to divide his estate between Goneril and Regan, the flatterers.

Their sycophantic declarations of love ultimately prove to be hollow, and Lear is cruelly turned away from their homes. Hearing of her father wandering through a storm clinging to the last vestiges of sanity, Cordelia - the daughter who truly loves him - returns with an army to fight on his behalf. They are reunited for a blissful moment, sent to prison where Cordelia is hanged, and Lear dies with his daughter in his arms.

Lear through a probate lens

Shakespeare scholar Philippa Kelly, a scholar, professor, artist and dramaturg, has studied the probate implications of *King Lear*. At its core, she says, Shakespeare's play is about age, pride, loss, abandonment and love: issues that arise in families dealing with estate matters.

The greatest apparent cruelty or injustice may be when a parent disinherits a child, as Lear does with Cordelia. But there are many ways to define love, and for Lear his pride, and shame at being publicly repudiated by his favorite daughter, blinds him to the truth of Cordelia's love. As he contemplates the future of his kingdom, he may place higher value on the transactional nature of the older daughters' affections.

Only when he finds himself alone and abandoned can Lear begin to fully appreciate the injustice he has done to Cordelia: "I did her wrong." By that time, he has fully relinquished control of his land and kingdom and is seen by his older daughters as an unmanageable encumbrance.

Could Cordelia have challenged her father's will on grounds of undue influence or lack of testamentary capacity? His will, in accordance with testamentary documents of the time, would have stated as follows: "I, being at this present sick of body and yet nevertheless in very perfect remembrance, thanks be to Almighty God, make this my last will and testament in manner and form ..."

Given the disposition of Sir Brian Annesley's estate, it seems unlikely that, if a parallel is to be made with the writing of *King Lear*, Cordelia would have prevailed against her sisters. If anything, Lear's increasing

madness might strengthen Goneril and Regan's position that their father was of sound mind when he signed away his kingdom to them but had since declined. Had one not poisoned the other and killed herself, it is likely that the older sisters would have retained full control of Lear's properties.

Mediating Lear's estate

Now let's imagine that King Lear's estate is being challenged in the present day. It is a legal presumption that a testator knew exactly what he or she wanted to happen with their property when they drafted a will, but there may be ambiguities or inconsistencies that complicate the intended distribution. The person who could answer questions is deceased or otherwise incapable of providing answers.

Family members may be left trying to read between the lines, to ferret out hidden agendas in estate documents. In addition to the grief or distress they are experiencing because of a death or incapacity, they may also be dealing with longstanding animosities and conflicts. With a retained forensic psychiatrist or psychologist to opine on King Lear, Cordelia may be able

to argue that there are sufficient doubts as to her father's competence or her sisters' efforts at undue influence, apart from the facts in the play, to encourage a disposition.

These types of disputes come up on a fairly regular basis, and in most cases they can be satisfactorily resolved. A good mediator will listen carefully and, when appropriate, seek out additional documents to clarify issues. There may have been a will or a trust, but how these are to be read and interpreted may depend on the parties' history and relationships. When parties listen to each other - either by sitting across from one another or working through a mediator - they can often piece together critical components of the story.

Siblings who expect to receive an equal share of their parent's estate may contest an unequal distribution. Was the parent under undue influence or not *compos mentis* when the will was drawn up? The mediator can address consent or capacity concerns with the parties and their attorneys and can ask about tests - such as the Mini Mental State Examination (MMSE) - that may have been used to measure

cognitive function. If mental capacity is shown to be an issue, settlement negotiations should reflect it.

There may, however, be legitimate reasons for an unequal distribution. Perhaps one sibling took primary care of the parent, driving them to doctors' appointments and paying living expenses. The other siblings need to understand and recognize this imbalance.

Were Goneril and Regan's professions of love for Lear sufficiently strong that they would overcome Cordelia's challenge? A skillful mediator would look beyond their words and delve into the actual relationships they had with their father. They would also take account of the family (and dynastic) dynamic: Lear is clearly a powerful man, used to be obeyed in all respects.

It may never have occurred to Regan and Goneril that they could publicly disobey him. In our modern-day mediation, it is likely that Cordelia would argue that all three sisters should receive an equal share of Lear's kingdom. Her actual goal, however, would be to salvage some small share of the kingdom. The mediation would likely continue deadlocked until the late hours, with Goneril and Regan refusing to

compromise. Perhaps a mediator's proposal would ultimately resolve the case, with Goneril and Regan each agreeing to a 40% share of the kingdom, with Cordelia receiving 20% - as well as the legal rights to any resulting play.

The storm incited by Lear's cataclysmic action - and its resulting devastation - would thus be averted.

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