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Testamentary Capacity

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Synonyms

[Capacity](#)

Definition

Testamentary capacity is a measure of an individual's competence to determine how his/her assets will be allocated after his/her death. Adults are assumed to have the ability to make a will. When litigation occurs involving the issue of testamentary capacity, it usually charges that the individual who made the will lacked the mental capacity to do so because of senility, dementia, insanity, or

some similar mental disease or defect. Ultimately, the person who challenges a properly executed will must demonstrate that the testator did not know what he was doing when the will was developed. Minors are generally considered incapable of making a will by the common law unless they serve in the military. In those cases, some are given the right to make a will by statute in many jurisdictions.

References and Readings

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- Melton, G. B., Pettila, J., Poythress, N. G., & Slobogin, C. (2007). *Psychological evaluations for the courts* (3rd ed.). New York: Guilford.