

Lesson 14: Estate Law

Script:

Will and probate law (cumulatively known as Estate law) deals with the disposition of assets at death and it is very different in common law jurisdictions than it is in Spain. The main difference arises from the fact that individuals in common law countries are free to dispose of their assets as they wish and this is largely not governed by statute. In Spain, of course, the statute determines how at least a part of the estate of the person will be distributed.

Will and probate falls under the general category of **estate** law (also referred to by some as “Law of Succession”); estate simply means all the money and property that an individual possesses at their death.

First of all, during their lifetime people **make or draw a will** in which they set out how they wish to distribute their estate. The main parties involved in the will are the **testator**, also known as **benefactor**, meaning the person who is drawing the will. At death this person becomes known as the **deceased**. On the other hand, the people to whom an estate is left under a will are called the **heirs** or **beneficiaries**. Most often these are the **dependants** of the benefactor, meaning people whose financial well-being depends on the benefactor (such as the children or a spouse).

The benefactor **bequeaths**, meaning he/she makes arrangements for the distribution of his or her estate to the heirs; on the other hand, the heirs **inherit** the estate left to them; the benefactor may also choose to **disinherit** an heir for whatever reason, meaning decide not to leave them any part of their estate.

If upon reading of the will all the heirs are in agreement with its provisions it means that they accept its legal validity - this is called **probate**, meaning the process of proving and accepting a will. If, however, they do not agree with some of its provisions, they have the right to **challenge or contest** such will. One of the common grounds for such challenge could be **the lack of testamentary capacity** on the part of the benefactor. This is also referred to as being or not being of **sound mind**.

There are also situations where a person will die without a will. This is called to die **intestate**. Should this happen, a court will usually appoint an **administrator** who will represent the interests of the deceased.

In the will the benefactor can make provisions for various things in addition to the division and distribution of their estate. One of such provisions is the appointment of an **executor**. This person will be responsible for carrying out the terms of the will. Often they receive some remuneration for this work, however it is crucial that an executor not be also an heir.

Another common provision is the creation of a **trust** in the designation or appointment of a **trustee**. Trust, simply put, is an instrument by which the benefactor can set aside a certain amount of money or property for an heir for a certain period of time, often until the heir reaches a certain age, perhaps an age of majority. The trustee will administer such trust until the heir is eligible to receive it.

More recently in many common law jurisdictions there has also been a trend to create so-called **living wills**. These instruments deal with special healthcare directives which specify how a person

wishes to be dealt with in case of serious injury and the loss of the capacity to make decisions for themselves. It includes provisions for organ donations or instructions on when or when not to maintain someone on life support.