

CONTESTED ESTATES

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BARRISTERS & SOLICITORS

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QUESTION #1

Who can make a claim under the Wills Variation Act?

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Answer #1

- Children
- Not step children

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QUESTION #2

What is a spouse?

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Answer #2

“ is married to another person” or

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Answer #2

“Is living and cohabiting with another person in a marriage-like relationship, including a marriage-like relationship between persons of the same gender, and has lived and cohabited in that relationship for a period of at least 2 years”

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QUESTION #3

What if you die at 92, have an \$18 Million Estate, have a 21 year relationship with a woman, and have two sons?

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- What if you only leave the common law wife:**
 - 1. \$300,000. Condo;**
 - 2. \$100,000. of personal effects;**
 - 3. \$2,000. per month for life plus CPI;**
 - 4. Use of condo in Hawaii 3 months per year and if sold greater of 10% or \$75,000.**

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- You leave sons:**
 - older one 40%; and**
 - younger one 60%.**

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Adequate, just and equitable is not just based on your needs, it is the reasonable expectation of society as to what a judicious person would do based on contemporary community standards.

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What would the law impose on a person during their lifetime?

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Legal and moral duty.

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- 1. What does the spouse get on intestacy.**
 - 2. What is the size of the estate.**

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- The moral obligation to the spouse (long term caring and dedicated) is greater than the moral obligation to the sons (adult independent). Wills cannot substantially or entirely prefer adult independent children over spouses with moral claims.**
 - Testamentary autonomy has to be considered.**

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Answer #3

- 1. \$5 million;**
- 2. Family home;**
- 3. Personal effects;**
- 4. Amount for Hawaii condo.**

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Question #4

- What if the oldest daughter lives with parents and last parent dies leaving mostly a house (\$500,000.) to her as a life tenant and residue to two other children. Oldest daughter doesn't want to move.**

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- Has oldest daughter benefitted from living arrangements with parents.**
 - Maybe a caregiver.**

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- Did the testator consider the ramifications effecting the other two children if the oldest daughter decided to live there forever, so to speak.**

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Considerations:

- 1. Contribution and expectation**
 - 2. Misconduct/poor character**
 - 3. Estrangement/neglect**
 - 4. Gifts and benefits during lifetime**
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- 5. Unequal treatment**
 - 6. Testator's reasons for disinheritance (valid, rationale)**
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Answer #4

- 45% oldest,**
 - 30% middle daughter, and**
 - 25% son**
- from proceeds of sale of home.**
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Questions?

We would be pleased to answer any questions.

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