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SEGMENT 2: Legal Potpourri

Probate Litigation Trends

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November 5, 2021

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Common Estate Administration Challenges: Elements and Application

When a decedent’s assets (or the conspicuous lack thereof) are exposed to the scrutiny of surviving legatees during the estate administration process, questions may arise. As attorneys, we need to be able to identify what legal recourse is appropriate for a given fact pattern. This guide is intended to provide a general overview of some of the more common challenges that can be asserted in these circumstances.

<p style="text-align: center;"><u>Undue Influence</u></p> <ul style="list-style-type: none"> - Defined as “[U]nfair persuasion of a party who is under the domination of the person exercising the persuasion or who by virtue of the relation between them is justified in assuming that that person will not act in a manner inconsistent with his welfare.” <i>Russo v. Miller</i>, 559 A.2d 354, 358 (Me. 1989), quoting Restatement (Second) of Contracts § 177 (1) (1981). - Can be brought as a separate common law claim seeking “to avoid or impose a constructive trust.” <i>Estate of Sylvester v. Benjamin</i>, 2001 ME 48, ¶ 6, 767 A.2d 297. - Often also arises in the context of / in conjunction with tortious interference and lack of capacity. 	<p style="text-align: center;"><u>Lack of Testamentary Capacity</u></p> <ul style="list-style-type: none"> - “A testator possesses sufficient testamentary capacity if he has, at the time when he executes his will, a sound mind: that is, if he has a knowledge, in a general way, without prompting, of his estate, and an understanding of the disposition he wished to make of it by his will, and of the persons and objects he desired to participate in his bounty.” <i>Estate of Mitchell</i>, 443 A.2d 961, 963 (Me. 1982), quoting <i>In re Loomis' Will</i>, 133 Me. 81, 85, 174 A.3d 38, 41 (1934). - Most jurisprudence establishes a relatively low standard for capacity. - Often established through medical records.
<p style="text-align: center;"><u>Improvident Transfer</u></p> <ul style="list-style-type: none"> - A powerful statutory tool with limited applicability. - 33 M.R.S. §1021. - Claimant MUST be one of the following: <ul style="list-style-type: none"> - An elderly dependent person (EDP); or - An EDP’s legal representative; or - Personal Representative of EDP’s estate. - There is a statutory presumption of undue influence, IF EDP transfers 10% or more of the EDP’s estate to a person with whom the EDP has a “confidential or fiduciary relationship” AND IF the EDP is not represented by independent counsel in the transfer. 	<p style="text-align: center;"><u>Tortious Interference</u></p> <ul style="list-style-type: none"> - Common law claim. - Elements (<i>Cote v. Cote</i>, 2016 ME 94): <ol style="list-style-type: none"> (1) expectancy of inheritance; and (2) intentional interference with expectancy through tortious conduct; and (3) reasonable certainty that inheritance would have been realized but for the defendant’s interference; and (4) damages resulting from interference. - Undue influence is presumed when “the plaintiff shows by a preponderance of the evidence that a confidential relationship existed between the defendant and the decedent.” <i>Therriault v. Burnham</i>, 2010 ME 82, ¶ 6, 2 A.3d 324.
<p style="text-align: center;"><u>Breach of Fiduciary Duty</u></p> <ul style="list-style-type: none"> - Can be asserted against Trustees and Personal Representatives (<i>see</i> M.R.S. Title 18-B) as well as others with a heightened legal duty. - Duty of loyalty to administer trust or estate in best interest of beneficiaries. - Some transactions that breach fiduciary duties are voidable by beneficiaries. - Heightened fiduciary duty applies to wrongful actions occurring after appointment as Personal Representative or Trustee. 	<p style="text-align: center;"><u>Other (Less Common) Estate Administration Claims:</u></p> <ul style="list-style-type: none"> • Lack of Testamentary Intent • Fraud • Forgery • Duress • Mistake • Revocation • Unjust Enrichment