

The Risks with Unequal Inheritances

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In order to avoid conflict, many parents and/or grandparents may decide to leave their children the same inheritance, although equal may not always be equitable. With the pandemic bringing the drafting and execution of more Wills, this issue is coming up more frequently.

One stark example of this situation occurred with a recent Massachusetts Appeals Court case of Haddad v. Haddad. Where Antoine Haddad wanted to designate Marcel as the sole beneficiary of his estate and give this one son more than the other two because Marcel had never moved out of the family home, and eventually became Antoine's primary caretaker, looking in on him daily, taking care of the house, and taking Antoine to medical appointments. Antoine felt the other two sons had their home homes and were "all set" and Antoine wanted Marcel to have a place to live after Antoine died. Antoine ultimately executed new estate planning documents with an attorney naming Marcel as sole beneficiary. Antoine suffered from "a long period of cognitive decline" beginning in 2010 and progressing to "profound Alzheimer's disease" by 2017 when he passed away.

Upon Antoine's passing, the other sons, Joseph and Alain, asserted a number of claims, including undue influence and lack of testamentary capacity. Joseph and Alain presented evidence that Antoine's cognitive abilities declined both before and after the execution of the estate planning documents. The Appeals Court held that the "critical question" is whether the creator of the Will had testamentary capacity **at the time of execution**. No other time period is dispositive. Because the Superior Court judge focused on

periods of time outside the date of execution, the decision was overturned.

Families should take note of this decision and be aware that the facts and circumstances at the time of execution of [estate planning](#) documents is critical.

Further, the decedent in the Haddad case, Antoine, had a limited understanding of the English language, yet his new estate planning documents were not translated to his native language, Arabic. The Court noted that “in order for execution to be valid, the meaning and effect of the documents must be understood by the testator before he executes them.” This is usually achieved through independent translation, which was not done in this case. Therefore it is always encouraged that estate planning documents be translated into the testator’s native language.

According to a survey by Merrill Lynch Wealth Management and the consultant Age Wave, “two-thirds of Americans 55 and older said a child who provided them care should get a bigger inheritance than children who did not.”

If you are considering distributing assets in an unequal way, consider including a “no contest” clause within your Will. (Click this [link](#) to learn more about this important clause.) There is a difference between leaving an equal inheritance, where each child receives the same amount, and an equitable inheritance, where each child receives what’s fair, given his or her circumstances.

Planning your estate carefully may not be easy, but it is essential for the peace of mind that your hard earned assets will pass the way you intend.

The information contained in this article is not intended to make you an expert on estate planning nor is this article intended to replace the need for the advice of a professional. Rather, this article is simply intended to provide a basic

understanding of why estate planning is important for everybody and a basic understanding of some of the more common estate planning tools. This article does not constitute legal advice.