



When is it Possible to
Challenge an 'Unfair' Will?

WHEN IS IT POSSIBLE TO CHALLENGE AN 'UNFAIR' WILL?

Generally speaking, Courts are reluctant to interfere with how a will distributes the assets of a deceased. The rationale behind this is that it would not be fair for a Court to step in and alter the wishes of a will-maker ('testator').

This being said, Courts will intervene where the wishes expressed in the will can be objectively said to be unfair. The classic example of this in action is where the will fails to provide for a person whom the executor had a duty to provide for – this might include estranged children, someone who has given up their employment to care for an ill spouse, de-facto partner or parent, as well as a whole host of other similar scenarios.

At Hentys, we understand that the first step is always the hardest. Contesting a will can often be a very emotional process, but we've helped so many of clients just like you. We are committed to the interests of each of our clients, applying our hard work, knowledge and experience to achieve the best possible outcome for you and your family.

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WHAT WILL A COURT LOOK AT?

Although each case will vary depending on its context, there are a number of questions that the Court will almost always ask. These include:

- How close you were with the deceased
- Your 'need' – particularly in relation to the other beneficiaries
- Whether there was a special relationship between you and the deceased
- If there was an obligation on the testator to provide for you

Although many of these questions are self-explanatory, the common thread is that you were dependant on the testator in one way or another and that your particular need is more pressing than those of the other beneficiaries.

AM I ELIGIBLE?

In all jurisdictions of Australia, with the exception of Victoria (which is slightly more complicated), you will be eligible to apply for a Court to review an unfair will and potentially allow you provision provided that you are any of the following:

- A spouse, de-facto spouse or former spouse of the testator
- A child, step-child or grandchild of the testator
- A dependant of the testator; or
- Parents of the Testator.

While you may certainly be of the above, this does not automatically guarantee that you will succeed in challenging an unfair will. For example, if despite being an estranged child of the testator you have done very well for yourself in life, and the testator's estate is fairly small, you may have your challenge denied on the grounds that you do not have a sufficient 'need' for provision.

WHAT IF I'M CHALLENGING A WILL IN VICTORIA?

In Victoria the situation is significantly more complex. Rather than the hard and fast rules of eligibility in other jurisdictions of Australia, Courts in Victoria perform a far more in-depth examination. Aside from the considerations stated above, Victorian Courts will also consider:

- The size of the testator's estate
- Whether you have any physical, mental or intellectual disabilities
- Your age
- Any contributions you have made to the testator's estate or welfare
- Your character or conduct
- Any other matters that the Court feels is relevant

SO WHAT NOW?

As you can tell, challenging a will can be incredibly complex. Putting aside the legal issues involved with challenging an unfair will, you should also be mindful of the possible stresses that this may put on your relationship with the other beneficiaries of the estate.

Because of these complications, both legal and personal, it is essential that you seek the advice of an estate dispute specialist if you are planning on challenging an unfair will. Your specialist will be able to guide you to the best and fairest outcome for you and your family.

Hentys | Lawyers

Hentys Lawyers has over 25 years of experience in Will Dispute cases. Our dedicated team of Will Dispute specialists are committed to providing you with outstanding legal service and emotional support during the entire dispute.

At Hentys, we care about our clients. We know that in hiring us, you are putting your trust in our hands to deliver the results that you need.

Our team also has the in-depth understanding of these situations to provide you with further emotional support.

We build a trusting relationship with our clients, that's why we are Victoria's Will Dispute Experts.

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