What Constitutes a Valid Will in Pennsylvania:

In order for a Will to be valid in Pennsylvania the following must be met – (1) the testator must be 18 years of age or older, (2) the testator must be of sound mind, (3) the testator's wishes must be in writing (typed or handwritten), and (4) the testator's signature (or mark) must appear at the end of the writing. *See,* 20 Pa.C.S.A. §§ 2501 and 2502. A writing need not assume any particular form or be couched in language technically appropriate to its testamentary character to take effect as a will. *See, Estate of Logan*, 413 A. 2d. 681, 682 (Pa. 1980). If the instrument is in writing and signed by the decedent at the end thereof and is an otherwise legal declaration of his intention which he wills to be performed after his death, it must be given effect as a will. *See, In re Oerman*, 279 A.3d. 1287 (Pa. Super. 2022)(a non-precedential opinion), *citing, In re Kauffman's Estate,* 76 A.2d. 414, 416 (Pa. 1950), *see also, Estate of Logan*, 413 A. 2d. 681, 682 (Pa. 1980). The form and language of a writing are simply factors to be considered; an informal instrument may be a fully effective will if the language suffices to show testamentary intent. *Oerman*, *supra, citing, In re Ritchie's Estate,* 389 A.2d. 83, 87 (Pa. 1978).

The intention of the testator must be determined from what appears upon the face of the will. Id., *citing, In re Kauffman's Estate*, 76 A.2d. 414, 417 (Pa. 1950). The testator's intention must be ascertained from the language and scheme of his will; it is not what the court thinks he might or would have said in the existing circumstances, or even what the court thinks he meant to say but is "what is the meaning of his words." Id., *citing, In re Estate of Tyler*, 80 A.3d. 797, 803-03 (Pa. Super. 2013), *see also, In re Good's Estate,* 34 Pa. D. & C. 2d. 14, 16 (Clinton Cnty., 1963). The correct meaning of a word is determined by the particular context of its use. *Good's Estate* at 16. If the Will is so indefinite and uncertain as to be incapable of intelligent interpretation and enforcement, it is void. Id. Testamentary intent is an indispensable element for the finding of a valid will. *Oerman*, *supra, citing, In re Ritchie's Estate,* 389 A.2d. 83, 87 (Pa. 1978).

Where a writing is presented for probate, and upon petition testamentary character is denied, it becomes the duty of the court in the first instance to examine the paper, its form and its language, and therefrom determine as a matter of law whether or not it shows testamentary intent with reasonable certainty. *Oerman*, *supra, citing, In re Kauffman's Estate*, 76 A.2d. 414, 417 (Pa. 1950), *see also, Estate of Logan,* 413 A.2d. 681, 682 (Pa. 1980). If testamentary intent is satisfactorily revealed from such an examination by the court, the paper should be probated as a will. Id. On the other hand, if from such an examination, the court should determine that a real doubt or real ambiguity exists, the court generally permits the use of extrinsic evidence in aid of

resolving the uncertain character of the paper. Id. If from such examination, the paper is shown not to be a testamentary disposition, but is shown to be a document of another type, then it is not to be probated as a will. *See, Estate of Logan,* 413 A.2d. 681, 682 (Pa. 1980). Where a writing by its terms clearly does not constitute a testamentary disposition, evidence of testamentary intent is not admissible. *Oerman*, *supra, citing, In re Mannarelli's Estate*, 259 A.2d. 169, 170 (Pa. 1969).

In addition, the writing (i.e., the Will) must be dispositive in character. *Oerman*, *supra, citing, In re Ritchie's Estate,* 389 A.2d. 83, 87 (Pa. 1978). Disposition has been construed as meaning the destination of the maker's property. *Oerman*, *supra, citing, In re McCune's Estate,* 109 A. 156, 157 (Pa. 1920). Thus, an essential element of a valid will or codicil is that it disposes of property. *Oerman*, *supra, citing, In re Estate of Fleigle*, 664 A.2d. 612, 615 (Pa. Super. 1995). To make a testamentary disposition of property, a decedent must set forth both the thing given and the person to whom it is given with such certainty that a court can give effect to the gift when the estate is to be distributed. *Oerman*, *supra*, *citing, In re Estate of Fleigle*, 664 A.2d. 612, 615 (Pa. Super. 1995). For a will to be effective, a disposition regarding assets is necessary; otherwise, an intestacy results; i.e., there is no will. *Oerman*, *supra, citing, In re Sando's Estate,* 66 A.2d. 312 (Pa. 1949)(a writing appointing an executor but making no disposition of the estate is an intestacy by implication).

Probating a Will in Pennsylvania

In order to probate a Will, the Will must be proved by the oaths or affirmations of two (2) competent witnesses. *See,* 20 Pa.C.S.A. § 3132. The proof of subscribing witnesses can be done at the time of execution of the Will, subsequently before a notary public or at the time of probate. *See,* 20 Pa.C.S.A. §§ 3132 and 3132.1. If presenting a Will for probate which has not been proven, the presenting party must also (along with the Will) present/obtain either an "Oath of Subscribing Witness(es)" or an "Oath of Non-Subscribing Witness(es). These Oaths are forms which can be obtained from the Register of Wills Office.

If an individual wishes to attack a probated Will raising issues of testamentary capacity, undue influence or the validity (interpretation) of decedent's will, they may do so by filing with the Orphans' Court either an Appeal to the Register of Wills Decree or a Petition raising said issues. Pursuant to 20 Pa.C.S.A. § 908, "any party in interest seeking to challenge the probate of a will or who is otherwise aggrieved by a decree of the register . . . may appeal therefrom to the court within one (1) year of the decree." *See,* 20 Pa.C.S.A. § 908(a). In addition, the Court, upon cause shown and after notice . . . may

require a surety bond to be filed by anyone appealing from a decree of the register. *See*, 20 Pa.C.S.A. § 908(b).

Will Challenges based on Testamentary Capacity and Undue Influence (in Pennsylvania):

(1) Testamentary Capacity

The burden of proving testamentary capacity is initially with the proponent. *See, In re Estate of Andrew Kuzma*, 408 A.2d. 1369, 1371 (Pa. 1979). However, a presumption of testamentary capacity arises upon proof of execution by two subscribing witnesses. Id., *see also, Williams v. McCarroll*, 97 A.2d. 14, 19 (Pa. 1953). After proof of execution by two subscribing witnesses, the burden of proof as to incapacity is on contestants to overcome the presumption by clear, strong, and compelling evidence. Id.

A testator possesses testamentary capacity if he knows those who are the natural objects of his bounty, of what his estate consists, and what he desires done with it, even though his memory may have been impaired by age or disease. *See, In re Estate of Andrew Kuzma*, 408 A.2d. 1369, 1371 (Pa. 1979), *see also, In re Skrtic's Estate*, 108 A.2d. 750, 752 (Pa. 1954)(the test of capacity is whether the testator appreciates, in a general way, who his relatives are and what property he possesses, and indicates an intelligent understanding of the disposition he desires to make of it). Old age, sickness, distress or debility of body neither proves nor raises a presumption of incapacity. Id. In Pennsylvania, less capacity is required to make a valid will than is sufficient in most cases to transact ordinary business. *Williams* at 16.

It is the condition of the testator at the very time of execution that is crucial. *See*, *In re Estate of Andrew Kuzma*, 408 A.2d. 1369, 1371 (Pa. 1979), *see also*, *Williams v. McCarroll*, 97 A.2d. 14, 16 (Pa. 1953)(the capacity of the testator at the time of the execution of the will is the decisive and focal point of the inquiry). However, evidence of capacity or incapacity for a reasonable time before and after execution is admissible as indicative of capacity. Id. In every case in which the question of testamentary capacity is raised [or undue influence is alleged] the Court must examine the disputed document itself to ascertain whether the testamentary scheme is natural and reasonable and in harmony with the family background. *See, In re Thompson's Estate*, 126 A.2d. 740, 743-44 (Pa. 1959), *see also, In re Skrtic's Estate*, 108 A.2d. 750, 752 (Pa. 1954).

(2) Undue Influence

Even if a person has testamentary capacity but is so weak physically or mentally as to be susceptible to undue influence, and a substantial part of his estate is left to one occupying that confidential relation, the burden is upon the latter to show that no improper influence controlled the making of the will. *See, In re Skrtic's Estate*, 108 A.2d. 750, 753 (Pa. 1954), *see also, Williams v. McCarroll* 97 A. 2d. 14, 21 (Pa. 1953). That is, the burden is upon the person occupying the confidential relation to prove that the act or gift or bequest was the free, voluntary and clearly understood act of the testator and that the entire transaction, gift or bequest was unaffected by undue influence or imposition or deception or fraud. *Williams* at 21. However, in the case where the decedent's testamentary capacity is conceded, and there is no evidence of weakened intellect, the burden is upon those asserting undue influence to prove it, even where the bulk of the estate is left to one occupying a confidential relationship. Id.

A "confidential relationship" appears when the circumstances make it certain the parties do not deal on equal terms; that is, on the one side there is an overmastering influence and on the other side there is weakness, dependence or trust, justifiably reposed. *See, In re Thompson's Estate*, 126 A.2d. 740,744 (Pa. 1956). A confidential relation is not confined to any specific association of the parties; it is one wherein a party is bound to act for the benefit of another and can take no advantage to himself. *Williams* at 20. In some cases, the confidential relation is a conclusion of law, in others, it is a question of fact to be established by the evidence. *See, In re Thompson's Estate*, 126 A.2d. 740,744 (Pa. 1956).

When a will is attacked on the grounds of undue influence, it is necessary to bear in mind the meaning of the term – as a legal phrase it is used as denoting . . . something violative of a legal duty. *See, In re Thompson's Estate*, 126 A.2d. 740,744 (Pa. 1956), *see also, Williams v. McCarroll*, 97 A.2d. 14, 20 (Pa. 1953). In order to constitute undue influence sufficient to void a will, there must be imprisonment of the body or mind, fraud, or threats, or misrepresentations, or circumvention, or inordinate flattery or physical or moral coercion to such a degree as to prejudice the mind of the testator and destroy his free will. *Williams* at 20. The word influence does not refer to any and every line of conduct capable of disposing in one's favor a fully and self-directing mind, but control acquired over another (i.e., the testator) which virtually destroys his or her free agency. Id. The burden of proving undue influence or confidential relationship rests upon the person asserting the same. *Williams* at 21, *see also, In re Thompson's Estate*, 126 A.2d. 740,744 (Pa. 1956).