

Critically Examining Wills for Genealogists

by James L. Tanner

The language of a will

The language of a will written in the 1700s sounds similar to one written today.

The form and language of a will are governed by the law of the place where the will was or is made.

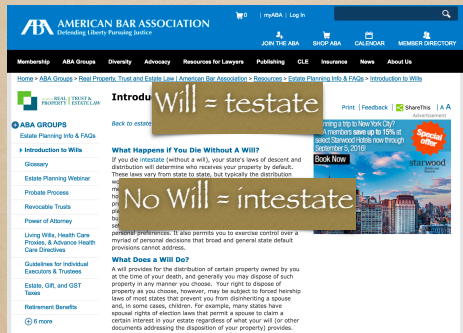


United States: Inheritance Laws in the 19th and 20th Centuries

Inheritance in the United States is generally a matter of state law.



American Bar Association



The formal prerequisites for making a will

- ♦ A statement of the name of the testator
- ♦ An expression of a desire to dispose of the testator's property upon death
- ♦ A statement revoking any prior wills (whether or not there actually were any)
- ♦ A statement naming an executor (aka personal administrator)
- ♦ A reference or list of the testator's property and the disposition of the property
- ♦ A expression concerning the disposition of all the remaining property of the testator
- ♦ A date and a signature of the testator and usually the signatures of two witnesses

Must show testamentary intent

The intent to dispose of your property upon your demise (death)

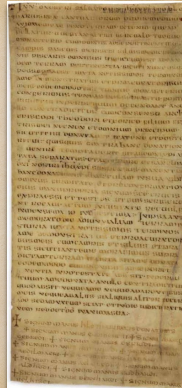
...now pleased God to bestow on me I Stephen, of the County of ...
and John as follows
I do hereby give to Richard, being a negro man, named Bill
and his heirs forever, all five hundred pounds
containing a long
Item I give unto my Daughter, Lizabeth, a slave, Negro
woman, with all her children, negro boy, woman and child,
upon this bill and these witnesses for ever
Item I give unto my slave David, being a white man, I
do here and do hereby give unto him, the plantation of
William Brown, according to its limits and bounds
except in Person David, who hereby said David with
the appearance thereof, being given unto him
the said David Brown and his heirs for ever
Item I give unto my son William Brown the land, being all of
the negro man, being part of a tract called the ...

Current will introduction

I, [Name of testator] of [testator's location including state] being of sound mind and memory, do make, publish and declare this to be my Last Will and Testament, hereby revoking all prior Wills and Codicils.

Oldest surviving Anglo-Saxon charter issued in 679

Some of these charters include wills



Will written in 1682

In the name of God Amen ye 11 day of April in ye thirty fourth year of ye reign of o'r Sovereign L'd Charles ye second by ye grace of God of England Scotland ffrance & Ireland King Defender of ye ffaith &c & in ye year of o'r l'd God 1682 I [name of testator] ye elder of ye p'sh of Kirtlington in ye County of Oxon yeoman do mak being very sick & weake but in perfect memory do make & ordaine this my last will & testam't in manner & forme following...

The Thorn

Ye is also the second person, plural,
personal pronoun (nominative)

Gothic and Icelandic

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Abbreviations

- ◆ Those generally used
- ◆ Those made up by the person writing the will
- ◆ Those used to save ink

Let's go back to the old will

In the name of God Amen ye 11 day of April in ye
thirty fourth year of ye reign o' o'r Sovereign
L'd Charles ye second by ye grace of God of
England Scotland ffrance & Ireland King
Defender of ye ffaith Ec & n ye year of o'r l'd
God 1682 I [name of testator] ye elder of ye p'sh
of Kirtlington in ye County Oxfordshire man do
mak being very sick & weake but in perfect
memory do make & ordaine this my last will &
testam't in manner & forme following...

Important notes

- ♦ Testator is "Elder" of the parish
- ♦ There is likely another person of the same name
- ♦ There might be enough to identify the testator

Of course, you will have to deal with the handwriting



I noie amen quinto die Maij anno
Lord Agte is commaunded to make the
I make my

Look for the same words and phrases



I noie amen quinto die Maij anno
Lord Agte is commaunded to make the
I make my

Use a legal dictionary

Black's Law Dictionary

See The Law Dictionary
<http://thelawdictionary.org/>
for words and phrases

Internet Archive <https://archive.org/>
Free complete text of Sixth Edition

Stare Decisis

- ♦ Judge made law is very conservative
- ♦ Any changes in the wording of a will would mean a reevaluation of the law
- ♦ In the law "old is good"

Words, grammar and spelling
change with time

The earliest will on FamilySearch.org
from Maryland 1698

Original Image of Will Records, 1625-1800, Images: FamilySearch, Images: FamilySearch.org, 1/1/17
NAID: 31,711-0142-2425-578-075-0420060, accessed 17 Aug 2020, Prince George's Reg, Will MS
1698, image 5 of 105, Will of Records, 1698-1700

Enlarged view of 1698 will

The wording is the same as many more modern wills

Earliest wills in recognizable form

Date from the late 13th Century

ONLINE
INTERNATIONAL BIBLIOGRAPHY OF
MEDIEVAL AND EARLY MODERN
WILLS AND PROBATE INVENTORIES

<http://campus.belmont.edu/honors/WILLBIBHOME.htm>

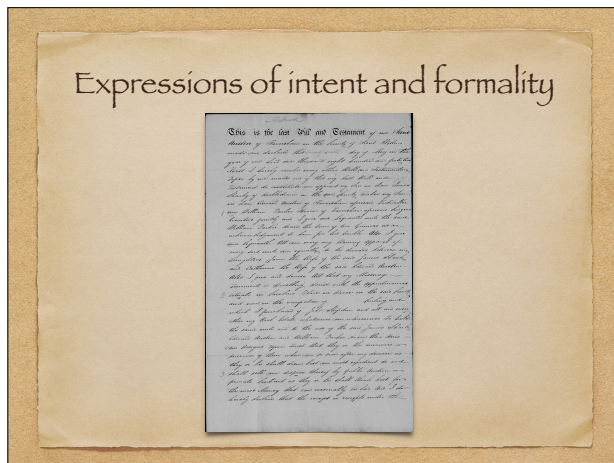
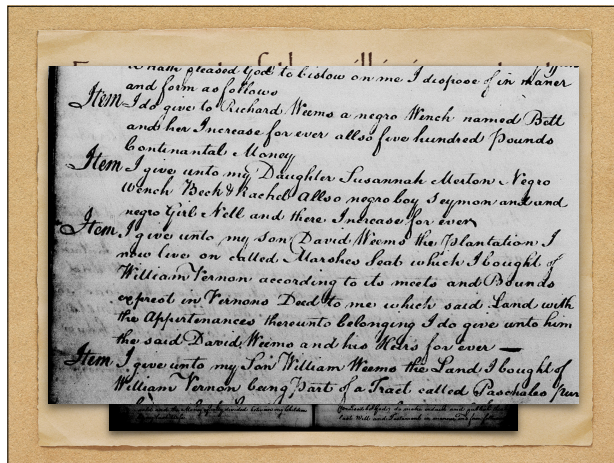
Will transcription continued

Bequest = leave to a
first person or other beneficiary by a will.
maker my body to be
buried with my daughters Margaret
Dorothy Anne ten pounds a peece to be paid to each of them at *illegible*
Mich^l Feast of St. Michael hereof. Item I give to my wife Judith my
best *illegible* September 29 to my son Abraham to five pounds to be paid
at Michaelmas next ensuing ye date hereof. Item I give to my wife Judith all
ye corne now growing upon ye land belonging to her. Item I make my *illegible*
sons John Abraham Joint Executors of this my last will testament, wch
goods I have mony I have to be equally divided *illegible* Legacy = money or
ye five p^{ds} given to Abraham is deducted ye *illegible* property left in a will
Witness my hand and seale ye day and year above written

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Will transcription continued

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Expressions of intent

- ♦ make and declare
- ♦ constitute and appoint
- ♦ aforesaid
- ♦ jointly
- ♦ give and bequeath
- ♦ give and devise

Other expressions

- ♦ appurtenances
- ♦ my decease
- ♦ share and share alike
- ♦ signed, sealed and declared
- ♦ messuage or tenement (house and land)

Thanks for watching