

## Where there's a Will ...

I an Marsh\*

Funny thing, a Will. You sign it now, but hope no one will need to look at it for years, hopefully for decades. It needs to deal – as best it can – with how that far off future might be, but it also needs to work if you drop dead five minutes after signing it. It can only deal with property (I know some include non-property matters, but I was always taught not to – so embarrassing to get back from the crematorium, open the envelope and read "*I wish to be buried at . . . .*"), but what it says can affect family relationships for generations to come.

It is probably the most personal document you will ever sign. It's the ultimate "I" statement: "*I, Ian Arthur Marsh declare this to be my last will and testament . . . .*"; I'm in charge, and I'm telling you what's going to happen, even when I'm no longer around to make sure it does. But whether that actually happens depends entirely on others.

All may go entirely to plan. Your executors gather in your assets, pay your debts, distribute what's left in accordance with your Will, and your children and grandchildren carry on pretty much as before – well, as far as they can without you.

But, for far too many, it's just not like that. A YouGov poll for Scottish Widows in around 2006 suggested that a quarter of British families fall out over a Will, with more than half never repairing their family relationships. Remember, this is a poll, so these are just the people who will admit to it! Research in the US suggests that as many as 70% of succession plans fail.<sup>1</sup>

Some will go to law, and there is no shortage of grounds for them to choose from if they are minded to: lack of capacity, undue influence, want of knowledge and approval, not to mention finding technical faults with the Will itself, or making a claim under the Inheritance (Provision for Family and Dependents) Act 1975. However the lawyers frame those claims, my experience of mediating them is that they nearly always come down to, "*That's not fair!*"

And that's the point. Lawyers at dawn or not, something as "simple" as a feeling unfairness can sour family relationships for generations.

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<sup>1</sup> Williams R. & Preisser V. (2003). *Preparing Heirs: Five Steps to a Successful Transition of Family Wealth and Values*. Robert D Reed Publishers. San Francisco.

But what is "fairness"? It certainly isn't a rational, objective, standard. Rather, it's a label we give to an emotional response. Whilst it's probably wrong to say that if we're comfortable with what happens we will call it fair (who has never said "*that's not fair, but I can live with it*", or words to that effect?) but, if we're uncomfortable with what happens, the label we're most likely to reach for first, before we have time for rational analysis (or, more likely, for rationalisation), is "*unfair*", be it unfair to us or to someone else - and that's a strong motivator.

Bear in mind that when all this hits the fan, everyone will be in a complete state of turmoil: your kids will have just lost a parent, probably their surviving parent, and that has a huge impact on how they see the world.

For a start, they will be in a state of grief, that cycle of denial, anger, depression, bargaining and acceptance that we all go through in response to loss. If I ruled the world, I wouldn't let anyone make an important decision while they were grieving, because they're just not in a fit state to do so. Small things that would be brushed off as sibling banter in any other situation now stick. They get under the skin, and easily get blown up out of all proportion. Shooting wars have been started over less!

Moreover, they have likely just lost the glue that held the family together. Many parents remain firmly "in charge", even when their children reach middle age, and still arbitrate, however informally, their inevitable differences. Even when the children haven't been brought up (as many have) to compete for everything, that often leaves them with no practical experience - or role model - of solving shared problems together.

For another thing, sibling bonds change, generally weaken, as they each find partners of their own, and again when they start families of their own but, at the same time you, their parents, become grandparents, taking on a still more crucial role in tying the branches of the family together. When grandparents are gone, though, their children become heads of their own families, and attention tends to become much more focussed down the family tree, than across the tree tops.

So, just when you would most want your offspring to work harmoniously together to sort out your affairs, to give effect to your last wishes, and to help each other through their grief, they are quite likely in a state of mind (and of brain/body chemistry) in which they will either want to argue about everything (fight), refuse to have anything to do with each other (flight), or just sit there, dumb, overwhelmed, unable to do

anything at all (freeze). Three kids and, believe me, you have a good chance of one of each!

And what did you say in your Will to help them through all this?

"I leave the residue of my estate to such of my children as survive me and attain the age of 25 years and if more than one in equal shares absolutely."

Wonderful!

It's amazing just how many parents feel compelled (and I choose my words carefully) to treat their children equally, by which they mean that they want their children to receive the same monetary value, down to the last penny, often taking into account every gift, and all the help, they gave them while they were alive.

Actually, it's not amazing at all. You might well expect parents to want to treat their children equally, and those who don't are often met with "*so you love him more than you love me?*" But you should know better than to think that so simple a solution as dividing your estate equally would solve the problem:

"But I gave up my career to look after you. They didn't."

"But she married a banker. Teachers can never compete."

"But little Johnny could be the next great [Gareth Bale][Damien Hirst] if only we could give him the support he needs."

"But Sarah needs so much more care and support than any of their kids, and it takes all we have just to get by."

The list could go on and on – and I haven't even touched on second families where, say, dad sees all his children as equal, but his widow thinks her predecessor should provide for her brood out of her enormous divorce settlement.

The point is, and as parents you knew this all along: you just can't win!

Whatever you do, it will likely be misconstrued. We all have a great need to make the world make sense to us. When we don't have the whole story (and we never do), we make up the rest. "*Confabulation*" the psychologists call it. And we make it up in the way that makes us the most comfortable – so things rarely turn out to have been our fault. Not only is that unlikely to improve relations between your children, or between theirs, but it can create "*unfinished business*" between you and them where there really wasn't any and, since by now you are dead, that business is likely to stay unfinished.

And a Will is never the whole story. It isn't a story at all. You might leave them a letter to fill that gap, but it will probably come across as being about you, not about them, as a defence, a rationalisation, which, by definition, can never respond to your kids' needs in that moment.

But does it have to be like that? What if your kids were part of the process from the outset? What if you made the time to understand how they see the world? To understand what their wants and needs are? What they each think their siblings' wants and needs are? What they think is fair and unfair?

If you have those conversations, as I do, it's surprising just how often they don't see equal as fair; how often they are comfortable with an uneven sharing, or receiving nothing at all; how uncomfortable they are to see a sibling in need, or one who has given up so much to look after aging parents, go unrecognised, or a cause a parent would have died for in life go unsupported. Of course they could sort it all out among themselves after you're gone, but then one of them has to make the first move, and in the turmoil of grief (even leaving aside any other sibling dynamics) for some asking for more seems shameful (*"I have less, and am in need, so I must be a worse parent than you"*), and offering it arrogant and condescending (*"I have more, so I will look as though I'm saying I'm a better provider than you"*). Not easy. It happens, but not often.

Of course, equity and equality aren't the only models. I have had clients who said, *"We brought you up. We paid for your education. We paid for your wedding. We helped you with your first house. We helped you with your first business. If there is anything left when we're done - and that isn't part of the plan! - you are welcome to it"*, or perhaps what's left goes to charity. But they were always open about it. It was a subject of conversation, of dialogue, almost a running joke, in the family. The kids knew exactly where they stood, as did the parents – they knew their kids would ultimately get to choose their care home!

And that's the point. It's much better to have these conversations when you are still around to be part of them, to see clearly the people your children have grown into, and to continue to provide the glue that holds everyone together, and the grease that allows them all to rub along when things get tough.

That's not to say that these are easy conversations. They are often not. For some, it just comes naturally – what else would they do? Others really struggle, try to duck the issue and, if they can't avoid it, are often shocked, confused, sometimes even hurt or let down, to discover that

their parents/children/siblings see the world very differently than they do. It never ceases to amaze me just how different, for example, attitudes to money, to debt, to perceived status, can vary between brothers and sisters brought up by the same parents, in the same household, at the same time. Add to which that sometimes the family wealth will have been made (or at least cashed out), or perhaps lost, after some children have left home, so their individual experience - and expectations - of the economics of "normal" family life may vary considerably.

I would say this wouldn't I, but these conversations are generally best had with the help of a skilled facilitator: someone to whom everyone can tell their own story, in their own time, and in their own words - and in complete confidence; someone who can see the currents beneath the deceptively calm surface waters, the rip tide beneath the crashing waves; someone who can see issues that the family can't because they're just too close to them, who can give voice to issues they can see but feel unable to articulate.

Does that sometimes get quite raw? Throw up issues that people have shied away from, and which they are really uncomfortable talking about? Of course! But that's the point. If one of your last wishes is that your family should go on as a functioning group down the generations (which incidentally also reduces the chances that its financial capital will be squandered on infighting), you can't leave all that stuff to fester. It is far better to deal with it now, while you're still around to be a major part of the process.

Whatever you do will, inevitably, have unintended, unforeseen, consequences, but some are more foreseeable than others ...

**So, what will your Will say to your kids?**