

TEXAS CASE LAW UPDATE

A review of significant cases from the past year

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Interpretation – “Common Disaster”

Stephens v. Beard – Page 1

484 S.W.3d 914 – Supreme Court of Texas

Background

- H murdered W, shot self, died few hours later
- Legacies to nine individuals if common disaster
- Trial court and appeals court: common disaster

Decision

- Not common disaster
- “die at very nearly the same time, with no way of determining the order of their deaths.”

Moral: Murder-suicide not common disaster if death orders can be determined.

Election Wills

Estate of Cole – Page 2
Ft. Worth Court of Appeals

Background

- Q whether H's will put W to election
- Trial court: W put to election

Decision

- Reversed
- Will disposed of only H's property
- "including my one-half interest in the community property"
- Did not clearly and unequivocally put W to election

Moral: Married testator should consider including an election provision in will expressly stating whether will is or is not intended to trigger election by surviving spouse.

No Contest Clause

Estate of Cole – Page 2
Ft. Worth Court of Appeals

Background

- H's will – no contest clause
- If W contested "characterization of my property as my separate property" would forfeit all gifts
- W asserts community property interest property
- Trial court: did not trigger

Decision

- Affirmed
- Asserting right to own property

Moral: Beneficiary's action must first fall within scope of no contest clause before good faith and just cause is relevant as defense to forfeiture.

No Contest Clause

Ard v. Hudson – Page 2
Ft. Worth Court of Appeals

Background

- No contest clause
- B sued executors and trustees for breach of duty
- Trial court: triggered forfeiture

Decision

- Reversed
- “beneficiary has an inherent right to challenge the actions of a fiduciary and does not trigger a forfeiture clause by doing so”
- Challenged conduct of fiduciaries, not will

Moral: In terrorem clauses enforceable if attempt to change dispositive plan. Not effective to protect executors and other fiduciaries from claims of breach of fiduciary duty.

Will Contest

In re Estate of Parrimore – Page 3
Houston Court of Appeals [14th Dist]

Background

- H and W prepared H’s will with computer program
- Omitted two children
- Before signing will, H suffered stroke
- Will signing party at home
- W signed for H, three witnesses attested
- Continued therapy, drove, back to work
- Died year later
- Children argue
 - lacked testamentary intent
 - lacked testamentary capacity
 - undue influence by W
- Trial court admitted will to probate

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