

## **MORALS FROM THE COURTHOUSE**

### **A study of recent Texas cases impacting the wills, probate and trust practice**

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## **Tortious Interference w/ Inheritance**

**Kinsel v. Lindsey – Page 5**  
**Texas Supreme Court**

### **Background**

- Jury found tortious interference with inheritance rights
- Appealed on grounds that no such cause of action
- The appellate court agreed and reversed

### **Decision**

- Supreme Court affirmed
- Supreme Court has not previously recognized tort
- Some lower courts have recognized
- Plaintiffs had adequate remedy: constructive trust
- Court would not consider here

**Moral:** Need to wait for another case to reach Supreme Court

## Adoption by Estoppel

Dampier v. Williams – Page 1

Houston [1st Dist.] Court of Appeals

### Background

- Intestate died
- Claimed adopted by estoppel
- Alleged acts of estoppel occurred after adult
- Father-son relationship over thirty years
- Oral promise to adopt

### Decision

- No adoption of adult by estoppel
- No legal impediment to formal adoption
- Could have executed will

### Moral:

- An adult may not be adopted by estoppel

## Wills – Testamentary Capacity

Estate of Koontz – Page 1

San Antonio Court of Appeals

### Background

- Ben. of prior will challenged capacity when new will signed
- Evidence that
  - believed wife of 50 years having affair
  - attempted to lease property no longer owned
  - suffered bipolar disorder
  - attempted suicide

### Decision

- TC granted executor of new will a no-evidence MSJ
- Appellate court reversed
- Enough evidence to raise fact question regarding capacity

**Moral:** SJ that testator had testamentary capacity improper when “more than a scintilla of evidence” otherwise

## Wills – Jury Verdict Upheld

Texas Capital Bank v. Asche – Page 2  
Dallas Court of Appeals

### Background

- TC determined
  - testator lacked capacity to sign EP documents
  - undue influence
- Conflicting evidence about capacity

### Decision

- May not substitute judgment for jury
- Evidence legally and factually sufficient to support finding that lacked capacity
- Did not address undue influence issue

**Moral:** Once jury determines testator's capacity to execute will, difficult to overturn unless against great weight of evidence

## Trusts – Parties

Texas Capital Bank v. Asche – Page 8  
Dallas Court of Appeals

### Background

- TC determined settlor lacked capacity to create trust
- Contestant failed to join trustee as party

### Decision

- Reversed
- Suits against trust must be brought against trustee
- Fact that same entity was party as executor insufficient
- Executor and trustee are separate and distinct capacities

**Moral:** Trust not legal entity that can sue or be sued. In any action involving trust, trustee in representative capacity must be made party

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## Title search: Morals From the Courthouse: A Study of Recent Texas Cases Impacting the Wills, Probate, and Trust Practice

First appeared as part of the conference materials for the  
19<sup>th</sup> Annual Estate Planning, Guardianship and Elder Law Conference session  
"Morals From the Courthouse: A Study of Recent Texas Cases Impacting the Wills, Probate,  
and Trust Practice"