

## **MORALS FROM THE COURTHOUSE**

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

Materials by Gerry W. Beyer  
Governor Preston E. Smith Regents Professor of Law  
Texas Tech University School of Law

Presented by Elisa Dillard Rainey  
Rainey & Rainey, Attorneys at Law, L.P.  
Waco, Texas

## **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

Find the full text of this and thousands of other resources from leading experts in over 30 legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

## 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"