

Disputing a will using fraudulent calumny



Having previously discussed challenging a will under the ground of undue influence, in this article I explore the subtly different ground of fraudulent calumny.

Influence from families to testators is often extremely subtle and in many cases is ‘drip fed’ over an extended period of time. Unfortunately, it is not uncommon for testators to fully believe the false information passed to them through no fault of their own. In these cases the ground of fraudulent calumny might provide a foundation on which to challenge the validity of a Will.

Fraudulent calumny can be defined as a false representation, to a testator, about the character of their existing or potential beneficiary for the purpose of inducing them to revoke a bequest made in the favour of that beneficiary or entirely exclude the beneficiary so they are ‘culminated’ from any benefit in the testator’s will.

This ground was analysed in the case of *Re Edwards [2007] EWHC 119 Ch* where it was stated:

“The basic idea is that if A poisons the testator’s mind against B, who would otherwise be a natural beneficiary of the testator’s bounty, by casting dishonest aspersions on his character, then the will is liable to be set aside.”

In the same case, the following legal principals were summarised as crucial in establishing fraudulent calumny:

- The person making the false representations must be making them knowing them to be false or without regard to whether they might be false;
- If the person believes they are telling the truth about the person (even if what they are saying is untrue), the will cannot be challenged on this ground alone; and
- The question is not whether the court considers the nature, arrangement or distribution of the estate to



be fair but whether the testator acted as a free agent in making the will.

Most recent successful cases of fraudulent calumny have included individuals poisoning their parent's mind by leading them to believe their siblings had wronged the parent (by stealing from them, for example).

The burden of proof lies with the individual challenging the Will. Dishonesty and causation must be proven in order to invalidate a Will on this ground. In cases where demonstrating dishonesty and causation is impractical or difficult, there may be other grounds that can be pursued to challenge the validity of a Will.

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