

## Will Case Study

In 1995, Andrew Phillips, widower, executed a valid will, attested by two (2) competent witnesses, which read in part “I leave my Apple stock to my brother, Elijah, and the rest, residue and remainder of my estate to my two adult sons, Brian and Christopher, per stirpes.” Andrew kept his original will in his bottom desk drawer at his home of 20 years and his lawyer kept an identical signed, original of the will at his office.

Andrew’s son Brian was a reformed alcoholic. Andrew had often threatened, in the presence of various family members, including Christopher, to disinherit Brian if he ever started drinking again.

In 2002, Andrew, walking with his son, Christopher, saw an obviously drunken person leaving a local bar. Andrew, who by now had poor eyesight, said “that looks like Brian.” Christopher, seeing an opportunity to improve his position, believing (but not being positive) that the person was not Brian, said “it sure looks like Brian alright.”

The next day, Andrew questioned Brian about his attendance at the bar. Brian adamantly denied being in the bar, and called Andrew “a blind, paranoid old fogie.” Later that same day, Andrew visited his lawyer and executed a new will, which was properly signed and witnessed, that read in part “I revoke all prior wills. I leave my Apple stock to my brother, Elijah, and the rest, residue and remainder of my estate to my son, Christopher. I leave nothing to my son, Brian.” Five days later Andrew tore up his original 1995 will, but left the pieces in his desk drawer.

In 2005, Andrew met a much younger woman, Diane, who had mistakenly believed Andrew to be an eccentric millionaire because he looked like the actor from the Dos Equis beer commercials. Diane believed that Andrew was living modestly due to his eccentric manner. In October of 2005, after dating Andrew for six weeks, Diane convinced Andrew to create a new will. However, since Andrew had been diagnosed with dementia in January 2004, Andrew’s lawyer declined to create a new will for him. So Diane found a new lawyer for Andrew, personally drove Andrew to the lawyer’s office and sat beside him as he signed the will. The 2005 will read in part “I revoke all prior wills. I leave my Apple stock to my brother, Elijah, and the rest, residue and remainder of my estate to Diane. I leave nothing to my sons, Brian and Christopher.” After Andrew signed the 2005 will, the lawyer who drafted the will signed as the first witness and then Diane signed as the second witness. The following weekend, Diane drove Andrew to Las Vegas where they were secretly married at a drive-through chapel.

In 2007, Andrew suffered brain damage in an automobile accident and became mentally incompetent. Christopher was appointed Andrew’s conservator. Christopher sold his father’s Apple stock and reinvested the proceeds in a comparable security. In 2009, Andrew died. Brian offered the 1995 will, Christopher offered the 2002 will, and Diane offered the 2005 will for probate. How should Andrew’s estate be distributed?