

## Estate Planning Makes Business Sense for Non-Traditional Families

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McKen Carrington & Christopher Ogolla, *Fame, Family Feuds, Lack of Estate Planning, and Ethical Misconduct in the Administration of the Billion-Dollar Legacy of Bob Marley*, 4 **Est. Plan. & Community Prop. L. J.** 53 (2012), available at [bepress](https://www.bepress.com/estplan/vol4/iss1/art53).

*Fame, Family Feuds, Lack of Estate Planning, and Ethical Misconduct in the Administration of the Billion-Dollar Legacy of Bob Marley* reads like a fact pattern for a law school final examination. In the article, Professors McKen Carrington and Christopher Ogolla discuss the controversy surrounding the estate of Robert Nesta “Bob” Marley. Famed reggae icon and Rastafarian Marley died intestate in 1981 with an estate valued at approximately 30 million dollars at the time of his death. Although Carrington and Ogolla focus on Jamaican law, the issues they highlight extend far beyond Jamaica and provide a backdrop for discussing several issues important in the administration of a decedent’s estate. With respect to the administration of Marley’s estate, those issues included adopted children, out of wedlock children, intellectual property rights, fiduciary obligations of a trustee, ethical obligations of an attorney, and choice of law issues. Further, there were allegations of forgery and fraud. Carrington and Ogolla merely scratch the surface with each of these topics. I would love to see them expand on several of the topics they highlight. Real life stories make great topics for writing and teaching in the area of decedents’ estates.

One of the first issues addressed in the paper is who should be included in Marley’s family. The article provides a brief section on the Marley family structure. Although Marley was survived by a spouse, Rita and the three children born to their marital union, he was also survived by two children of Rita that he had adopted and six other children that he had fathered with other women while he was married to Rita. I would have liked for the authors to have included a little more detail about the Marley family.

Although this article relegates to one sentence that Rita was the custodial mother and caretaker of all the children, one unanswered question is why did she take on that role? Why did Marley father so many children outside of his marriage? Were all of the children really Marley’s? Where were their mothers? Who is a decedent’s child under Jamaican law? Is a genetic connection all that is necessary to inherit from one’s father in Jamaica? Is a genetic connection necessary in order to inherit from one’s purported father in Jamaica? In most jurisdictions in the United States, biological connection is generally not enough for a child to inherit from or through his father. A parent-child relationship or other acknowledgment is often required.<sup>1</sup>

The authors suggest that the Jamaican intestacy system failed Marley’s heirs. They mention Marley’s mother, Cedella Marley Booker, and indicate that she and Marley were extremely close, yet under the law she received nothing. Marley’s surviving spouse Rita was entitled to 10 percent of his estate outright and a life interest in 45 percent of his estate. The children were entitled to 45 percent outright and the remainder of the life interest. The authors suggest that the couple built the 30 million dollar empire together and we are to infer that Rita should be entitled to more. In fact, the authors mention Texas law as an example of where a surviving spouse would be entitled to more. Perhaps a little more detail about community property states and separate property states is warranted. Why is the life interest not beneficial to Rita? We often create spousal trusts for lifetime use as an estate tax savings

mechanism. Did the Jamaican system really fail Marley's heirs?

The authors suggest that Marley was unlike most individuals who die intestate. Although he was a shrewd business person, his failure to devise an estate plan was for religious reasons. Some background on the Rastafarian religion may be helpful to the reader. Given the non-traditional nature of Marley's family, an estate plan would have been a business plan. The authors could draft a practice-ready piece that highlights the importance of an estate plan especially for non-traditional families.

The second half of the article focuses on the many companies that Marley created and the ethical conduct of his spouse and business attorney. The authors state that the Model Rules of Professional Conduct do not adequately address the problems faced by estate planning attorneys. Indeed estate planning attorneys are often faced with potential conflicts of interest as they determine who exactly they represent. Carrington and Ogolla also remind us that there is a fine line between asset protection and fraud. But, the authors suggest that Marley's estate problems arose because Marley did not have an estate plan. It appears from the article that some of the fraudulent transfers or misappropriations that Rita Marley made (with the assistance of David Steinburg took place prior to Marley's death. Thus, an estate plan may not have prevented the fraudulent acts. Further, lawsuits filed by co-songwriters and band members probably would have still occurred even if Marley had a will. Even when a decedent dies with a will, determining the property that the decedent owns at the time of death may be controversial. Although everyone should have an estate plan, such plan will not prevent litigation.

*Family Feuds* reminds us that estate planning is essential for everyone and that being a lawyer is a noble profession.

1. Camille M. Davidson, [Mother's Baby, Father's Maybe! Intestate Succession: When Should A Child Born Out of Wedlock Have a Right to Inherit From or Through His or Her Biological Father](#), 22 Colum. J. Gender & Law 531 (2011).

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