

Strict Compliance and Wills Act Formalities

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Peter T. Wendel, [Wills Act Compliance and the Harmless Error Approach: Flawed Narrative Equals Flawed Analysis?](#), 95 **Oregon L. Rev.** 337 (2017).

In the law of Wills, the testator's intent is of utmost importance. If there is clear and convincing evidence of a testator's intent, then a document intended to be his or her will should be probated, right? Not so fast—according to [Professor John Langbein](#), in a jurisdiction that has adopted the strict compliance approach to Wills Act formalities a document will not constitute a validly executed will if all of the statutory requirements are not met, even when evidence shows that the testator intended the document to be his or her will. Langbein penned substantial compliance and harmless error proposals as alternatives to strict compliance. In *Wills Act Compliance and the Harmless Error Approach: Flawed Narrative Equals Flawed Analysis?*, [Professor Peter T. Wendel](#) asserts that Professor Langbein has not framed the narrative correctly and therefore the analysis of the issue is flawed. He rephrases the narrative so that the debate can continue in a less simplistic manner.

Wendel asserts that Langbein incorrectly painted a picture of strict compliance as a rigid villain that invalidates wills when there is not 100 percent compliance with Wills Act formalities. In his articles, Langbein uses conclusory language and assumes that the reader already agrees with him. Then, in each article, Langbein's proposal is pitched as the solution to the injustice of the strict compliance approach. Professor Langbein first proposed a substantial compliance doctrine, and a decade later proposed a more lenient harmless error doctrine outlining when courts should probate documents that do not meet the requirements of the Wills Act. Although Langbein's harmless error proposal has been adopted as part of the Uniform Probate Code and Restatement (third) of Property, most states have not adopted such proposal.

Professor Wendel argues that when Professor Langbein framed the narrative as a choice only between strict compliance and the Langbein proposals it was flawed. In reality, courts are creating a body of substantial compliance laws that are more pragmatic than the Langbein proposals. Wendel labels these approaches as flexible strict compliance. He says the real question is whether Langbein's substantial compliance/harmless error proposals are better than the flexible strict compliance approach.

This article reminds the reader of the importance of framing a narrative. "He who phrases the issue usually wins the debate." Professor Langbein phrased the issue—strict compliance negates the testator's intent even when there is clear and convincing evidence of the testator's intent. If the rigid formalities of the Wills Act are not absolutely adhered to there is no valid will to probate. His kinder and gentler approaches to strict compliance have been lauded and well received in the academy. However, states have been slow to enact statutes adopting the proposals because of the increase in administrative costs and the increased potential for fraud or misconduct.

Wendel walks us through Langbein's substantial compliance article, as well as his later harmless error article. According to Professor Wendel, Professor Langbein used conclusory language that was harsh and rigid to describe strict compliance; therefore, his alternatives are the saving grace. He states that Langbein's argument is flawed because most states do not rigidly apply strict compliance. He rephrases the issue as whether any benefits associated with Langbein's proposals are worth the costs, especially since most states do not rigidly apply strict compliance. He does admit that more wills would be probated under the Langbein proposals, but suggests that Langbein's holistic approach may not be as great as the academy would have us believe.

Professor Wendel rephrases the narrative—flexible strict compliance vs. Langbien and leaves us with a new narrative to discuss. He says the answer to that question is far from obvious.

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