

## Using an Interesting Conversation to Teach Testamentary Capacity

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Stephen R. Alton, [The Strange Case of Dr. Jekyll's Will: A Tale of Testamentary Capacity](#), 52 *Tulsa L. Rev.* 263 (2017).

*The Strange Case of Dr. Jekyll and Mr. Hyde* is a popular novella that was published by Robert Louis Stevenson in 1886. In the novella, Gabriel Utterson, a lawyer, investigates strange events involving Dr. Henry Jekyll and Edward Hyde. Dr. Jekyll is a respected man and Mr. Hyde is suspected of killing several people. Mr. Utterson becomes upset when Dr. Jekyll produces a holographic will that leaves the bulk of his estate to Mr. Hyde. He believes that Dr. Jekyll's actions are a result of blackmail on the part of Mr. Hyde. After Dr. Jekyll commits suicide, Mr. Utterson finds a letter in which Dr. Jekyll confesses that he used a potion to transform himself into Mr. Hyde. Because he is unable to prevent himself from turning into Mr. Hyde Dr. Jekyll kills himself. In his entertaining and well-written article, [Professor Alton](#) presents an imagined conversation that he has with Mr. Utterson.

Their imagined conversation focuses on Dr. Jekyll's testamentary capacity at the time he wrote the will leaving his property to Mr. Hyde. The article starts with a discussion of Dr. Jekyll's general mental capacity. Professor Alton asserts that, on several occasions, Mr. Utterson indicated that he thought that Dr. Jekyll was of unsound mind. Professor Alton explains the standard courts apply to determine testamentary capacity. Because he teaches in Texas Professor Alton relies on Texas law. Under Texas law, the soundness of mind requirement is satisfied if the testator can understand (1) the activity in which he or she is engaging; (2) the nature and extent of his or her property; (3) the intended beneficiaries; (4) his or her dependents; and (5) the manner of distribution that he or she is making. The testator must also be able to form a reasonable judgment with regards to the four enumerated factors. Both Professor Alton and Mr. Utterson agree that the first four elements of the test were satisfied. Nonetheless, Mr. Utterson states that he believes that Dr. Jekyll "was so deranged in his mind that he could not form a reasonable judgment as to the other elements." Therefore, Mr. Utterson thinks that Dr. Jekyll lacked the testamentary capacity to make a valid will. However, Professor Alton is not willing to concede that point because the capacity necessary for a person to make a will is so low compared to what is required for a person to execute a contract.

The hypothetical conversation continues when Mr. Utterson insinuates that Dr. Jekyll was suffering from an insane delusion at the time he wrote his will. In response, Professor Alton discusses several different definitions of insane delusion. Then, he opines that a mistaken belief is not the same thing as an insane delusion. When pressed by Professor Alton, Mr. Utterson is unable to identify the insane delusion under which Dr. Jekyll might have been suffering. Professor Alton notes that because Dr. Jekyll was actually transforming into Mr. Hyde it was reasonable for him to leave his property to Mr. Hyde. Consequently, the will was not a product of an insane delusion. Following the brief discussion of unsoundness of mind based on an insane delusion, Professor Alton turns the conversation towards undue influence and duress.

Professor Alton mentions the Restatement and Texas definitions of undue influence and duress. Undue influence exists when someone exercises influence over a testator that causes the testator to make a will that he or she would otherwise not have made. Duress is a form of undue influence that involves the threat or performance of a wrongful act against the testator to force the testator to make a certain distribution. Mr. Utterson claims that Dr. Jekyll told him that Mr. Hyde dictated the terms of the will, but he is reluctant to categorize that as undue influence. Professor Alton counters that he does not believe that Mr. Utterson would be able to meet his burden of proving that the will was a product of undue influence. His doubt stems from the fact that Dr. Jekyll and Mr. Hyde were the same person, and a person cannot exercise undue influence over one's own self. Mr. Utterson maintains that the will was a product of

duress because Mr. Hyde used Dr. Jekyll's dark secret to extort him. After Mr. Utterson gives examples to support his assertion, Professor Alton applies the legal test for duress to those facts. Based on that application, Professor Alton concludes that Mr. Utterson has made a good case for duress. Nevertheless, because Dr. Jekyll and Mr. Hyde were the same person the will would not be invalidated because of duress.

As the conversation winds down, Professor Alton asks that they examine the slayer rule. The slayer rule is in place to prevent a person from profiting from intentionally bringing about the death of the intestate decedent or the testator. Hence, a person is barred from inheriting from a person whom he or she intentionally kills. Professor Alton discusses the six times that Mr. Hyde was suspected of murdering Dr. Jekyll. He deduces that Mr. Hyde could not have received any of Dr. Jekyll's property if it had been proven that he caused Dr. Jekyll's death. This part of the conversation is interesting. Dr. Jekyll and Mr. Hyde were the same person, so when Dr. Jekyll killed himself, one could conclude that Mr. Hyde killed Dr. Jekyll. As a result, the slayer rule would prevent Mr. Hyde from inheriting from Dr. Jekyll. Nevertheless, death prevents Mr. Hyde from inheriting from Dr. Jekyll. This legal issue is moot because, prior to his death, Dr. Jekyll changed his will and left Mr. Utterson as his sole beneficiary. That modification leads to an exploration of the issues of standing and presumption of undue influence.

Professor Alton uses an innovative approach to discuss material that some students may find uninteresting. His article reads like a short story, so it will keep the students engaged. Therefore, the article is a great learning tool for students enrolled in Estates and Trusts classes. It affords professors the opportunity to expose students to the different rules and doctrines that may impact a person's testamentary capacity. In the article, Professor Alton points out the strengths and weaknesses of arguments based upon the relevant legal doctrines. Assigning this article to students will enable them to participate in an interesting and important conversation.

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