



WILLS

Matter

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ARE YOU LEAVING SOMEONE SPECIAL OUT?

When drafting a Will it is important to understand how your intentions may be carried out if your circumstances change. Consider the following scenario:

Albert is thinking about having a Will prepared. Albert wants to ensure that both his niece and nephew are taken care of and receive equal gifts. Albert knows that his nephew likes boating, so Albert decides to give his boat to his nephew when he passes. Albert knows his niece much prefers shopping, so he will leave her \$20,000 instead.

Albert makes his Will and knows that they will each be more than happy to receive these gifts.

Albert then decides to sell the boat and buy a brand new car. What happens now? Upon Albert's death, his nephew would receive neither the boat (which is gone), nor the car, nor any money in its stead. Albert receives nothing.

The boat was a "specific gift" because it was a distinguishable piece of property, separate from the general residue of the testator's estate. Specific gifts 'adeem' when the testator disposes of the gift before death. Because Albert sold the boat before he died, the gift of the boat fails.

Compare this with a general gift, like the \$20,000 given to Albert's niece. As long as the estate has enough money the niece would receive the \$20,000. On the other hand, if the \$20,000 was to come out a specific fund or investment, it would risk ademption.

There are at least two other ways that Albert could have achieved his wishes:

- 1) Leave his nephew \$20,000 out of the general estate so that his nephew could buy a boat; or
- 2) Give the boat to his nephew and \$20,000 to his niece, now, before Albert died.

While the concept of ademption may seem simple, caution should be taken in estate planning. To avoid ademption it is important to draft your Will with great care. If you are concerned about your existing Will, seek the assistance of an experienced Wills and Estates lawyer to ensure you do not leave someone out.

Contact Fulton & Company's Wills & Estates Team

if you have any questions regarding wills or estate matters.

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