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STATIONER'S WILLS—A RECIPE FOR ESTATE LITIGATION

A “Stationer’s Will” is the term of art for the self-made wills sold at stationery stores, and, lately, on TV and radio. In our respectful opinion, they are for the penny-wise pound-foolish. A large proportion of estate litigation involves stationer’s wills.

Attached [here](#) is a copy of the worst one I have dealt with. Fortunately, after going through the expensive process of “Proof in Solemn Form” we were able to get the Executor appointed, and the estate assets delivered in what we believe was the manner desired by the testator.

The major problems associated with stationer’s wills are illustrated here:

1. **Execution:** To probate a Will, you have to prove that it was witnessed by two witnesses present both at the same time as the testator signed. Check this one: does anyone say that? Another problem is locating the witnesses to do an Affidavit attesting that the will was properly signed. These witnesses were tracked down at considerable expense—to find that both had predeceased the testator. We had to prove the testator’s handwriting by other means. Many testators sign wills, and then later get friends to “witness”—maybe we were fortunate the witnesses were not around, because they might have invalidated the will had they advised they were not present all at the same time.
2. **Appointment of Executor:** Who is the executor of this will? Does the testator anywhere say, “I appoint Jim to be my executor”? Again, we were fortunate that the will contained no hint of anyone else having the testator’s confidence, so the phrase “my good friend Jim Trustee and Executor” was accepted in this case—but it was close!
3. **Gifts of Assets:** We recommend against gifting specific assets, instead of gifting the residue in proportionate shares. Sometimes it is done, but a lawyer will try to provide for situations where the assets no longer exist. All the “if’s” can make for an expensive will, as opposed to the standard fee for a simple will. In this Will, we have the testatrix gifting “money in the Bank of Toronto Church and Wellesley”. Fortunately, it was not a long leap to assume that was the TD Bank at that location, but

the “Bank of Commerce Jarvis and Wellesley St number 32468” no longer existed at the date of death. We traced it to another branch.

4. **Failure of Gifts:** What does “I have an account at the Bank of Commerce...” mean? One could easily argue that the account is not dealt with under the will, and that there is therefore an intestacy for that “gift”.
5. **Alterations:** “Jim is to receive balance of money” at the top was clearly written after the sentence underneath it. The question is, whether it was written before or after the testator signed the will. If after, it is meaningless. We engaged a handwriting expert to prove that the ink was probably from the same pen as one that wrote the balance of the will, and in the absence of someone contesting it, the court accepted that it was more likely than not that this was written contemporaneously.
6. **Derisive Gifts:** The gift to the sister of one dollar was surely to make a statement. It was fortunate that the sister had predeceased, because if she had lived, she would have had to receive a copy of the will, and would surely have contested it.
7. **Competence:** There is a presumption in favour of the testator’s competence where the will is witnessed by a lawyer. Look at the shaky writing here, and the general confusion of mind shown by some of the wording. If contested, there could have been a serious issue of competence here.

Even for the simplest of estates, the use of stationer’s wills is really an exercise in “pay now or pay later”, because the testator’s estate will easily pay more to probate this kind of will, than the erstwhile saving in legal expense. We urge anyone contemplating a will to hire a lawyer to draft and attend on its execution.

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