

Syllabus
Trusts & Estates – Spring 2013

(subject to change)

“Put not your trust in money, but put your money in trust”

Oliver Wendell Holmes Sr.

Spring 2013
Tues. & Thur. 2:30 to 3:45
Lesar Law Building, Room 204
Law #531-3 § 001 & 002

Assoc. Prof. Drennan
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Required Books:

Book #1: Andersen & Bloom, Fundamentals of Trusts & Estates (4th ed. 2012)
Book #2: West’s Illinois Probate Acts and Related Laws

Exam/Grades: The grade for the course will be based on the final exam. Grading will be anonymous. The exam will be a mix of multiple choice and essay questions. The exam will be closed book.

Note on S/U Grading: The grades for students who have elected to take this course with S/U grading will be converted by the Registrar according to the following scale: 2.1 or greater = Satisfactory; below 2.1 = Unsatisfactory. Only students who receive a Satisfactory grade will earn academic credit for the course.

Attendance Policy: You may miss 6 classes.

Recording Policy: Classes will be taped and will be made available according to standard law school procedures.

Writing Assignment: We will have one writing assignment during the semester. Satisfactory completion of the writing assignment is required to take the final exam and complete the course.

Course Description: The course deals with problems arising in the administration of estates, including who inherits property when a decedent leaves no will; the formal requisites of wills; will substitutes; the nature, creation and termination of trusts; charitable trusts, and fiduciary administration.

Emergency Procedures: *Southern Illinois University Carbondale is committed to providing a safe and healthy environment for study and work. Because some health and safety circumstances are beyond our control, we ask that you become familiar with the SIUC Emergency Response Plan and Building Emergency Response Team (BERT) program. Emergency response information is available on posters in buildings on campus, available on BERT’s website at www.bert.siu.edu, Department of Safety’s website www.dps.siu.edu (disaster*

drop down) and in Emergency Response Guideline pamphlet. Know how to respond to each type of emergency.

Instructor will provide guidance and direction to students in the classroom in the event of an emergency affecting your location. **It is important that you follow these instructions and stay with your instructor during an evacuation or sheltering emergency.** The Building Emergency Response Team will provide assistance to your instructor in evacuating the building or sheltering within the facility.

Reading Assignments:

Except as otherwise indicated, all references below are to the Casebook and the Illinois Statutes.

Reading for the 1st Class (Tuesday, Jan. 15, 2013): Overview of Inter-Generational Wealth Transfer, p. 6 bottom -19 middle (skip p. 19 middle to 28 middle)

Reading for the 2nd Class (Thursday, Jan. 17, 2013): Duties Lawyers Owe Clients (and Others), p. 28 middle – p.35; Intestacy-Overview p. 37-42 middle; skip 42 middle to 46 bottom; read 46 bottom to 52; Illinois Civil Union law, 750 ILCS 75/1 et seq.(attached to this Syllabus); 755 ILCS 5/2-1 (rules of descent and distribution).

Reading for the 3rd Class (Tuesday, Jan. 22, 2013): Descendants, p. 53-72 middle (merely skim the UPC statutes at pages 57-58 and 64-68); 755 ILCS 5/2-2 (children born out of wedlock) & 5/2-4 (adopted children); article titled *Statutory Parenthood for Same-Sex Partners*, 99 Ill. B.J. 636 (Dec. 2011) (attached to this Syllabus).

Reading for the 4th Class (Thursday, Jan. 24, 2013): Descendants and Collaterals; Wills; p. 72 bottom to 96 bottom; *Ellis v. Flanagan*, 97 N.E. 696 (Ill. 1912); *Clarkson v. Kirtright*, 126 N.E. 541 (Ill. 1920) (both cases attached to this Syllabus); 755 ILCS 5/4-1 (capacity of testator) & 5/4-3 (signing and attestation).

750 ILCS 75/1. Illinois Religious Freedom Protection and Civil Union Act

➔ **75/1. Short title.** This Act may be cited as the Illinois Religious Freedom Protection and Civil Union Act.

750 ILCS 75/5 Purposes; rules of construction. This Act shall be liberally construed and applied to promote its underlying purposes, which are to provide adequate procedures for the certification and registration of a civil union and provide persons entering into a civil union with the obligations, responsibilities, protections, and benefits afforded or recognized by the law of Illinois to spouses.

750 ILCS 75/10 Definitions. As used in this Act:

“Certificate” means a document that certifies that the persons named on the certificate have established a civil union in this State in compliance with this Act.

“Civil union” means a legal relationship between 2 persons, of either the same or opposite sex, established pursuant to this Act.

“Department” means the Department of Public Health.

“Officiant” means the person authorized to certify a civil union in accordance with Section 40.

“Party to a civil union” means a person who has established a civil union pursuant to this Act.

“Party to a civil union” means, and shall be included in, any definition or use of the terms “spouse”, “family”, “immediate family”, “dependent”, “next of kin”, and other terms that denote the spousal relationship, as those terms are used throughout the law.

750 ILCS 75/15 Religious freedom. Nothing in this Act shall interfere with or regulate the religious practice of any religious body. Any religious body, Indian Nation or Tribe or Native Group is free to choose whether or not to solemnize or officiate a civil union.

750 ILCS 75/20 Protections, obligations, and responsibilities. A party to a civil union is entitled to the same legal obligations, responsibilities, protections, and benefits as are afforded or recognized by the law of Illinois to spouses, whether they derive from statute, administrative rule, policy, common law, or any other source of civil or criminal law.

750 ILCS 75/25 Prohibited civil unions. The following civil unions are prohibited:

(1) a civil union entered into prior to both parties attaining 18 years of age;

- (2) a civil union entered into prior to the dissolution of a marriage or civil union or substantially similar legal relationship of one of the parties;
- (3) a civil union between an ancestor and a descendent or between siblings whether the relationship is by the half or the whole blood or by adoption;
- (4) a civil union between an aunt or uncle and a niece or nephew, whether the relationship is by the half or the whole blood or by adoption; and
- (5) a civil union between first cousins.

750 ILCS 75/30 Application, license, and certification.

- (a) The Director of Public Health shall prescribe the form for an application, license, and certificate for a civil union.
- (b) An application for a civil union shall include the following information:
 - (1) name, sex, occupation, address, social security number, date and place of birth of each party to the civil union;
 - (2) name and address of the parents or guardian of each party;
 - (3) whether the parties are related to each other and, if so, their relationship; and
 - (4) in the event either party was previously married or entered into a civil union or a substantially similar legal relationship, provide the name, date, place and the court in which the marriage or civil union or substantially similar legal relationship was dissolved or declared invalid or the date and place of death of the former spouse or of the party to the civil union or substantially similar legal relationship.
- (c) When an application has been completed and signed by both parties, applicable fees have been paid, and both parties have appeared before the county clerk, the county clerk shall issue a license and a certificate of civil union upon being furnished satisfactory proof that the civil union is not prohibited.
- (d) A license becomes effective in the county where it was issued one day after the date of issuance, and expires 60 days after it becomes effective.
- (e) The certificate must be completed and returned to the county clerk that issued the license within 10 days of the civil union.
- (f) A copy of the completed certificate from the county clerk or the return provided to the Department of Public Health by a county clerk shall be presumptive evidence of the civil union in all courts.

750 ILCS 75/35 Duties of the county clerk.

(a) Before issuing a civil union license to a person who resides and intends to continue to reside in another state, the county clerk shall satisfy himself or herself by requiring affidavits or otherwise that the person is not prohibited from entering into a civil union or substantially similar legal relationship by the laws of the jurisdiction where he or she resides.

(b) Upon receipt of the certificate, the county clerk shall notify the Department of Public Health within 45 days. The county clerk shall provide the Department of Public Health with a return on a form furnished by the Department of Public Health and shall substantially consist of the following items:

(1) a copy of the application signed and attested to by the applicants, except that in any county in which the information provided in a civil union application is entered into a computer, the county clerk may submit a computer copy of the information without the signatures and attestations of the applicants;

(2) the license number;

(3) a copy of the certificate; and

(4) the date and location of the civil union.

(c) Each month, the county clerk shall report to the Department of Public Health the total number of civil union applications, licenses, and certificates filed during the month.

(d) Any official issuing a license with knowledge that the parties are thus prohibited from entering into a civil union shall be guilty of a petty offense.

750 ILCS 75/40 Certification. A civil union may be certified: by a judge of a court of record; by a retired judge of a court of record, unless the retired judge was removed from office by the Judicial Inquiry Board, except that a retired judge shall not receive any compensation from the State, a county, or any unit of local government in return for the solemnization of a civil union and there shall be no effect upon any pension benefits conferred by the Judges Retirement System of Illinois; by a judge of the Court of Claims; by a county clerk in counties having 2,000,000 or more inhabitants; by a public official whose powers include solemnization of marriages; or in accordance with the prescriptions of any religious denomination, Indian Nation or Tribe or Native Group, provided that when such prescriptions require an officiant, the officiant be in good standing with his or her religious denomination, Indian Nation or Tribe or Native Group. The person performing a civil union shall complete the certificate and forward it to the county clerk within 10 days after a civil union.

750 ILCS 75/45 Dissolution; declaration of invalidity. Any person who enters into a civil union in Illinois consents to the jurisdiction of the courts of Illinois for the purpose of any action relating to a civil union even if one or both parties cease to reside in this State. A court shall

enter a judgment of dissolution of a civil union if at the time the action is commenced it meets the grounds for dissolution set forth in Section 401 of the Illinois Marriage and Dissolution of Marriage Act. The provisions of Sections 401 through 413 of the Illinois Marriage and Dissolution of Marriage Act shall apply to a dissolution of a civil union. The provisions of Sections 301 through 306 of the Illinois Marriage and Dissolution of Marriage Act shall apply to the declaration of invalidity of a civil union.

750 ILCS 75/50 Application of the Civil Practice Law. The provisions of the Civil Practice Law shall apply to all proceedings under this Act, except as otherwise provided in this Act. A proceeding for dissolution of a civil union or declaration of invalidity of a civil union shall be entitled “In re the Civil Union of ... and ...”. The initial pleading in all proceedings under this Act shall be denominated a petition. A responsive pleading shall be denominated a response. All other pleadings under this Act shall be denominated as provided in the Civil Practice Law.

750 ILCS 75/55 Venue. The proceedings shall be had in the county where the petitioner or respondent resides or where the parties' certificate of civil union was issued, except as otherwise provided herein, but process may be directed to any county in the State. Objection to venue is barred if not made within such time as the respondent's response is due. In no event shall venue be deemed jurisdictional.

750 ILCS 75/60 Reciprocity. A marriage between persons of the same sex, a civil union, or a substantially similar legal relationship other than common law marriage, legally entered into in another jurisdiction, shall be recognized in Illinois as a civil union.

750 ILCS 75/90 Severability. If any part of this Act or its application to any person or circumstance is adjudged invalid, the adjudication or application shall not affect the validity of this Act as a whole or of any other part.

STATUTORY PARENTHOOD FOR SAME-SEX PARTNERS

The Illinois Parentage Act Should Be Amended to Make It Easier for Same-Sex Partners to Establish Their Parenthood Even at Birth when They Are Not Biologically Tied to the Child

Professor Jeffrey A. Parness [\[FNa1\]](#)

In my last column I explored the implications of the Illinois Religious Freedom Protection and Civil Union Act (civil union law) for designating [parenthood at birth for children born to same-sex partners](#). *Civil Unions and Parenthood at Birth*, 99 Ill B J 473 (Sept 2011). I noted that while same-sex civil union partners are to be treated similarly to opposite-sex married partners under the civil union law, identical treatment is a biological impossibility. Parenthood presumptions for married partners founded on possible genetic ties are impossible for same-sex partners.

Identical treatment for same-sex partners and unmarried opposite-sex partners is also impossible. Only opposite-sex partners can undertake statutory voluntary acknowledgments of “paternity” or “parentage,” again because under law those acknowledgments depend upon genetic ties (though, truth be told, those ties are often missing). Thus, too many children born to same-sex couples have only one legal parent at birth.

The U.S. Supreme Court recognized in [Michael H. v Gerald D.](#), 491 US 110 (1989), that states may extend parentage at birth to “unitary family” members who lack genetic ties. The Illinois General Assembly and Illinois Supreme Court have done likewise to some extent (e.g., by way of the Parentage Act which allows “heterologous artificial insemination,” where the sperm is not from the husband, and [In re Parentage of M.J.](#), 203 Ill 2d 526, 787 NE2d 144 (2003), which recognized a claim for support against an unmarried man who had no biological tie to the child in question).

With that background, I concluded that “Illinois legislators should consider new parentage laws” for same-sex parents so that “parent-child relationships can develop early on with little fear of later disruptions.” Here, I recommend a few new Illinois parentage statutes for same-sex couples in and outside of civil unions.

New statutory Parentage Act presumptions and acknowledgments

Same-sex female couples in civil unions. In civil union settings, same-sex female couples -- but not male couples -- may have children born of sex by a partner. For such children, where the biological father's parenthood interests expire or are ended before birth (see [Lehr v Robertson](#),

[463 US 248 \(1983\)](#)), a new statute should expressly presume parenthood at birth in the mother's civil-union partner, insuring that her status is similar to that of a married mother's husband.

This presumption of parenthood was contemplated in the civil union law, notwithstanding the fact that only a husband could be the natural parent. The parentage act should be amended to include a presumption of parentage in a lesbian partner that is not based on biological ties.

These new parentage presumptions should be rebuttable, certainly by the presumed parent, and perhaps by the natural parent.

Same-sex male couples in civil unions. The law should make it easier for a man in a civil union who produces a biological child through sexual intercourse to become a parent, assuming the mother's parental rights have ended. Parties should be able to execute a voluntary acknowledgment of parentage despite the lack of genetic ties. "Parentage" and "paternity" acknowledgment forms already exist, but only to enable fathers to establish the father-and-child relationship for unwed opposite-sex couples.

Same-sex partners not in civil unions. Same-sex partners, both male and female, in "unitary" families should also be allowed to acknowledge children born of sex into their families, despite the lack of biological ties between child and acknowledging parent. Biological ties are unnecessary to establish parentage at birth, as the *Lehr* court implicitly recognized (when it reviewed a New York statute granting adoption notice rights to men who simply had held children out as their own) and as the *Michael H.* court expressly recognized (when it said the federal constitution does not guarantee a biological father the chance to child rear when a mother and her husband choose to rear a child born into the marriage).

Civil unions created after a child is born. Acknowledgments certainly should be available for a same-sex female partner who enters into a civil union with the natural mother some time after the birth, as long as the couple was together prior to birth and each partner consented at conception, pregnancy, or birth, assuming the biological father has no paternity interests. The same logic applies to male civil union partners in this scenario, and to same-sex couples who are not in civil unions. Parentage acknowledgment laws for children born to opposite-sex unmarried couples are reviewed in Jeffrey A. Parness and Zachary Townsend, *For Those Not John Edwards: More and Better Paternity Acknowledgments at Birth*, 40 U of Balt L Rev 53 (Fall 2010).

Artificial reproduction. As noted in my last column, same-sex partners to a civil union can already employ the Gestational Surrogacy Act, [750 ILCS 47/20](#), to bring children into their unitary families. *Michael H.* allows states to authorize this. As for children born via artificial insemination to a woman in a unitary family relationship with another woman, the other woman should be able to acknowledge with her mate their dual parentage, assuming the biological father has no legal interest.

Good public policy

Making Illinois statutes on parentage presumptions and acknowledgments available to same-sex partners promotes the governmental interest in having two parents for each child. Natural

parents' rights are honored, children's best interests are respected, intended families are welcomed, and state welfare rolls are reduced.

Eliminating the prerequisite that parent and child be genetically tied before parentage can be established at birth in the situations described above -- and thus eliminating the need for formal adoptions in those cases -- promotes the goals of the civil union law and the long-recognized federal constitutional equality principles for wed and unwed couples.

Fulfilling the promise of the civil union law

The civil union law gives same-sex couples “the same legal obligations, responsibilities, protections, and benefits as are afforded ... to spouses.” [750 ILCS 75/20](#). However, without new legislation, the policies underlying this equality directive might not be fully achieved. As I noted in my last column, families headed by same-sex partners, in or outside of civil unions, deserve “more clarity.” New Illinois statutes on parentage presumptions and acknowledgments are the best way to do that.

[\[FNa1\]](#). *Jeffrey A. Parness is a professor emeritus at Northern Illinois University College of Law, where he has taught since 1982. Thanks to Zach Townsend for his help.*

253 Ill. 397, 97 N.E. 696 (1912)
Supreme Court of Illinois.

ELLIS
v.
FLANNIGAN et al.

Appeal from Circuit Court, Franklin County; William H. Green, Judge.

Proceedings for the probate of the will of Sarah A. Hudson, deceased, on the petition of R. H. Flannigan and others. From an order overruling the objections of Amy Ellis, she appeals.
Affirmed.

COOKE, J.

The circuit court of Franklin county, on appeal from the judgment of the county court, entered an order admitting to probate the last will and testament of Sarah A. Hudson, deceased, and directing that letters testamentary issue to appellees. From that judgment appellant has prosecuted this appeal.

The only question presented for our consideration is whether the will in question was properly attested in the presence of the testatrix. Mrs. Hudson executed her will *398 a few days before her death. At that time she was suffering from dropsy of the heart, and for some time prior to the execution of the will it was impossible for her to lie down. As a result she was kept in a sitting position in an armchair, which she occupied both day and night. While she had sufficient strength to move her feet and arms, and her body to some extent, it appears from the evidence that she was not able to move the position of the chair which she occupied. The will was witnessed by Carl Burkhart, cashier of a bank at Benton, and William B. Martin, an insurance and real estate agent. At the time of the execution and attestation of the will, no one was present except Mrs. Hudson, Burkhart, and Martin. Burkhart and Martin, having been summoned for the purpose of witnessing the will, found Mrs. Hudson seated in her chair, facing a little north of east, and about opposite the south side of a 4-foot window, which was in the center of the east side of the room. The room was 14 feet north and south by 16 feet east and west. In about the center of the room, which would be behind and to the left of Mrs. Hudson as she was sitting at the window, was a round table 5 1/2 feet in diameter. Both of these witnesses testified that, after they had entered the room and conversed awhile with Mrs. Hudson, she produced the will and executed it by placing it on a magazine which she held on her knee. She then handed it to one of them, and they turned to the table, where they attached their signatures to the instrument. They both testify that while attesting the will they sat at the easterly or southeasterly part of the table, and that Mrs. Hudson sat in her chair, with her left side toward them. While neither could remember whether she actually observed them while they were in the act of signing as witnesses, they both testify that she could have done so by merely turning her head to the left and looking over her shoulder, and that they were so close to her that she could have reached out her *399 left hand and placed it on that part of the table where the will was attested, and that during that

time Mrs. Hudson frequently turned her head in the direction of the witnesses as they sat at the table.

It is clearly shown from the testimony of these two witnesses that every requirement of the proper attestation of a will was complied with. The only evidence offered to contradict them was the testimony of Molly Cunningham, a sister of appellant. She and appellant both resided with Mrs. Hudson, **697 AND SHE WAS FAMILIAR WITH THE ARRANGEMENT of the room at the time the will was attested. It was she who had admitted Burkhart and Martin when they called to attest the will. She testified as to the position of Mrs. Hudson's chair in the room, and as to the position of the table upon which the will was attested, and from her testimony it would appear that the table was almost, if not quite, directly behind the chair in which Mrs. Hudson was sitting. From the testimony of all the witnesses it is apparent that Mrs. Hudson could not, by turning her head and body, see any object which was directly behind her, as the back of the chair extended as high, if not higher, than the top of her head. To support the testimony of this witness a photograph of the room was offered and admitted in evidence. She testified that this photograph was taken about four weeks after the death of Mrs. Hudson. It shows the table, and the chair in which Mrs. Hudson sat, arranged, as the witness testified, in the relative positions which they occupied on the day the will was attested. Witness further testified that her sister, the appellant, assisted her in arranging the furniture in the position which she claimed each piece occupied on the day of the execution of the will. Appellant was the adopted daughter of Mrs. Hudson, and, should the probate of the will be denied, would inherit all of her property. The photograph taken under these circumstances was not competent, and should not have been admitted.

*400 From a consideration of all the evidence, it appears that the will was properly attested in the presence of Mrs. Hudson. It was not necessary that the testatrix should actually have seen the witnesses sign; but to have been attested in her presence the will must have been signed at a place within the scope of her vision, and where, considering her position and the state of her health at the time, she might have seen the signing had she so desired. [Witt v. Gardiner, 158 Ill. 176, 41 N. E. 781, 49 Am. St. Rep. 150](#); [Drury v. Connell, 177 Ill. 43, 52 N. E. 368](#); [Calkins v. Calkins, 216 Ill. 458, 75 N. E. 182, 1 L. R. A. \(N. S.\) 393, 108 Am. St. Rep. 233](#).

As all the necessary conditions existed, the judgment of the circuit court admitting the will to probate was proper, and is affirmed.

Judgment affirmed.

291 Ill. 609, 126 N.E. 541 (1920)
Supreme Court of Illinois.

CLARKSON
v.
KIRTRIGHT et al.

DUNN, C. J.

Orlena Gladas Clarkson, by her next friend, filed a bill in the circuit court of Pike county to contest the will of her grandmother, Martha Ann Clarkson, upon on the grounds that it was not signed by the testatrix and attested in her presence, that she was of unsound mind, and was unduly influenced. The defendants were her nephews and nieces. Issues of fact were made up and the cause was tried. The issue as to the testatrix's signature was withdrawn from the jury and that as to undue influence was found in favor of the defendants, but upon the other issues the jury found that the testatrix was not of sound mind, that the instrument was not attested in her presence, and that it was not her will. The defendants have appealed from the decree, which set aside the instrument and its probate.

Martha Ann Clarkson was at the time of the execution of the will a widow about 70 years of age. She had no children living, but appellee, Orlena Gladas Clarkson, was her granddaughter, the daughter of a deceased son, and her only heir. Mrs. Clarkson had received a part of her property from her deceased husband, and by her will she gave this property to her granddaughter. She had received other property from a deceased brother, John Walls, and this property she gave to her nephews and nieces, the appellants, who were also nephews and nieces of John Walls. This distribution was in accordance with her previously expressed purpose to return the property to the channel from which it came. She died on Sunday morning, October 7, 1917. On the previous Tuesday she had suffered an attack of tubercular pneumonia. Her attending physician, Dr. R. J. McConnell, called twice on Friday, once in the morning and again at night, when he found her worse and advised her that if she had any business to attend to she *611 had better do it. She then expressed a desire to make a will, and, there being no lawyer available, a justice of the peace, Mr. Haines, was called from his bed. When he came Mrs. Clarkson gave him the necessary instructions, and he went into an adjoining room, called the 'sitting room,' to prepare the will, coming back several times for information. Having completed the will he brought it in, with Mrs. Clarkson's name attached to it. Haines read the will, and it was repeated to Mrs. Clarkson, who was very deaf, by Bessie Hunter, a girl 17 years old, who had been waiting upon Mrs. Clarkson**542 during her sickness and could make herself understood by Mrs. Clarkson better than Haines. Mrs. Clarkson made her mark in the presence of Haines, the doctor, Bessie Hunter, and her mother, Mrs. Alice Hunter. The will was then taken into the sitting room and placed upon a small table where it was signed by the witnesses, R. J. McConnell, Mrs. Alice Hunter, and Bessie Hunter. It was Mrs. Clarkson's suggestion that they should be the witnesses.

The house had one story. It faced west. The entrance was in the west end of the living room, which was 13 feet 4 inches wide north and south and 15 feet 3 inches long east and west. Directly back of it was the kitchen, which was entered through a door from the living room. South of the living room were two bedrooms, each opening into it. Mrs. Clarkson was in the east bedroom, which was 9 feet 8 1/2 inches long north and south and 7 feet 5 1/2 inches wide east and west. The bed was 6 feet 5 1/2 inches long and its head was about 6 or 8 inches from the west wall. It was 4 feet 5 1/2 inches wide and in the south part of the room. It does not appear how close to the south wall it was, but a dresser sat in the northwest corner of the room, its length running north and south, and there was space between the dresser and the bed for a chair. Mrs. Clarkson, as she made her mark on the will, was propped in bed on three pillows and her head was about 12 inches from the head of the bed—a distance of from *612 18 to 20 inches from the west wall. The west side of the door leading to the sitting room was 3 feet 5 1/2 inches from the west wall and 4 feet from the east wall. The table to which the will was taken was 6 feet west of the east wall of the sitting room, which was a continuation of the east wall of the bedroom, so that Mrs. Clarkson from her position could not see the table, for her line of sight through the door was northeast and the table was northwest of the door. Her head being nearly 2 feet west of the door and the east side of the table being 2 feet west of the same door, she could not see the attestation of the will unless she changed her position to do so.

After signing the will Mrs. Clarkson was able to get out of bed and did so with some assistance. None of the witnesses to the will know whether she saw the act of attestation or not. The witnesses testified that the table was about 6 inches west of the east window in the sitting room. There were two windows in the north side of the sitting room, and Bessie Hunter testified that on the day before the will was executed she sat in a chair in front of the east window, about at its center, facing south, and saw Mrs. Clarkson, who was sitting up in bed; saw her whole body, though she could see no space behind her body. To have been able to do this Mrs. Clarkson's entire body must have been more than 3 feet 5 inches from the west wall of the bedroom, for but 8 inches of the window was east of the west side of the door. The window was 2 feet 2 inches wide and the east side of the table was 6 inches west of it, so that Mrs. Clarkson, sitting in bed as she had sat the previous day, could not have seen the act of attestation. To have seen it she must have been still further toward the foot of the bed. There is no evidence that after signing the will she changed her position so that she could see the attestation. Alonzo Pine, a young man visiting at the house, came into sitting room from the kitchen while the witnesses were about the table signing the attestation, *613 and saw Mrs. Clarkson in the bed, leaning on her left forearm, which was on the pillows, looking through the door into the sitting room and calling to Bessie, asking if it was time to take her medicine. Pine from his position could see the witnesses and Mrs. Clarkson. He did not testify that Mrs. Clarkson did or could see the witnesses, but only that she was looking north through the door and they were north of her.

It is essential to a due attestation of a will under the statute that both the will and the witnesses shall be in the presence of the testator, so that he may, without effort or change of position, see

both and the act of attestation. [Snyder v. Steele, 287 Ill. 159, 122 N. E. 520](#); [Quirk v. Pierson, 287 Ill. 1768 122 N. E. 518](#). Under the evidence it was a question of fact whether the will was attested in the presence of the testatrix, and the burden of proof on this question rested on the defendants, the proponents of the will. The evidence justified the verdict of the jury. No objection is made to the statement of the law on this question as contained in any of the instructions to the jury.

It is argued that the court gave a number of instructions as to the meaning of the phrase 'in the presence of testator,' and thereby the jury must have been led to believe that the judge regarded this as the deciding question in the case and the proponents' evidence as insufficient. It is not claimed that the law was incorrectly stated, and there was no intimation as to the weight of the evidence.

Since the finding of the jury upon this issue required the decree which was rendered by the court, and since there is no error in the record for which this finding should be set aside, it is not necessary to consider the errors assigned as to other issues.

The decree will be affirmed.

It's good to review what books are typically required by schools before you begin your senior year. This way, you can tackle some of the tougher works over the summer. Also, if your school does not require some of the books on this list, you may want to read them anyway as preparation for college next year. 1. Shakespeare and Other Classics of Literature. Most schools in most school districts will require that you read some Shakespeare and other literature classics during your senior year in high school. FIRST TERM "REQUIRED BOOKS NOTE: If you do not have the required book you will not be allowed to sit the course. ANATOMY Title REQUIRED SUGGESTED SUGGESTED SUGGESTED SUGGESTED. By. Clinical Anatomy for Medical Students Atlas of Human Anatomy Gross Anatomy (Board Review Series) Clinically Oriented Anatomy Clement Anatomy: A Regional Atlas of the Human Body Clinical Anatomy (National Medical Series).