

MENTAL CAPACITY FOR WILLS

The Law requires that someone who makes a Will must have testamentary capacity. Three basic criteria must be met at one and the same time.

- (a) the testator must understand the nature of the act of making the Will and its effect;
- (b) he must understand the nature and extent of the property of which he is disposing;
and
- (c) he must be able to appreciate and understand the claims on his estate of those persons who he is benefiting in his Will, and of those whom he is not benefiting in his Will

The above has produced many grey areas. However, what is clear is that a testator must have memory and sufficient awareness of his or her obligations to make a Will.

Were the steps laid out in the “Golden rule”; the classic judgment by Lord Templeman followed? Were the steps necessary or not in the circumstances.

There is a presumption of mental capacity unless proved otherwise.

With the ever-increasing number of elderly people in the population and increasing dementia, it is important that expert advice is sought at an early stage.

Each case should be decided on its merits. For instance, how to deal with intermittent medical impairment; confusion, lucid intervals, language and literacy, evidence and proof.

MORAL - Don't take a chance. Choose peace of mind. Use Foster Harrington Solicitors for expert advice. Contact:

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