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# The Strange Case of Dr. Jekyll's Will: A Tale of Testamentary Capacity

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## THE STRANGE CASE OF DR. JEKYLL'S WILL: A TALE OF TESTAMENTARY CAPACITY

Stephen R. Alton\*

### ABSTRACT

*Robert Louis Stevenson's classic novella, The Strange Case of Dr. Jekyll and Mr. Hyde, published in 1886, is the well-known tale of a respected scientist (Dr. Henry Jekyll) who transforms himself into an evil-doer (Mr. Edward Hyde). While the work raises issues of tort and criminal liability, this article analyzes the legal issues presented by one particular and crucial plot device that Stevenson employs—the last will of Dr. Jekyll. This will so obsesses Jekyll's friend and solicitor, Gabriel John Utterson (through whose eyes the story unfolds), that he is impelled to seek the truth behind his friend's relationship to Hyde. At the end of Utterson's search, the solicitor learns about Jekyll's dangerous scientific experiment. This discovery leads to the respected doctor's moral downfall and his physical death.*

*This article is presented as an imagined dialogue between the article's author and Utterson, Jekyll's lawyer, concerning the issues surrounding Jekyll's mental capacity to make the will that left the doctor's estate to Hyde. Jekyll's will is an excellent case study for the application of various legal rules and doctrines regarding a testator's mental capacity to make a valid will. These rules include those relating to the general soundness of the testator's state of mind, the issues of undue influence and duress, and the doctrine of insane delusion. Stevenson's novella is a wonderful vehicle for examining important legal problems that remain as relevant in America today as they were in England during Queen Victoria's reign.*

### INTRODUCTION

Robert Louis Stevenson's classic novella, *The Strange Case of Dr. Jekyll and Mr. Hyde*, published in 1886, is difficult to categorize. Vladimir Nabokov paradoxically called the tale "lame" as a mystery story, because modern mysteries are "the very negation of style," while Stevenson's work is "a phenomenon of style."<sup>1</sup> In his *Lectures on Literature*, Nabokov rejects the idea that Stevenson's work is either a mystery

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1. VLADIMIR NABOKOV, LECTURES ON LITERATURE 179-80 (Fredson Bowers ed., 1980).

or detective story, on the one hand, or a parable or allegory, on the other hand.<sup>2</sup> The work is a good “bogey story,”<sup>3</sup> which “lies nearer to poetry than to ordinary prose fiction.”<sup>4</sup>

The author Leonard Wolf, in his introduction to *The Essential Doctor Jekyll and Mr. Hyde*, agrees that “category making . . . does not work well” with this Stevenson story because “it is a great work of fiction,” which is “a living text.”<sup>5</sup> However, Wolf views the novella as an allegory.<sup>6</sup> Wolf observes,

[W]hat we see is not necessarily what we get. What we see is the story of a man who has found a way to separate his good from his evil self. What we get is a complex moral and psychological allegory capable of moving readers in any number of ways.<sup>7</sup>

Nabokov wryly summarizes *Jekyll and Hyde*'s now-familiar plot as follows:

Dr. Jekyll is a fat, benevolent physician, not without human frailties, who at times by means of a potion projects himself into, or concentrates or precipitates, an evil person of brutal and animal nature taking the name of Hyde, in which character he leads a patchy criminal life of sorts. For a time he is able to revert to his Jekyll personality—there is a down-to-Hyde drug and a back-to-Jekyll drug—but gradually his better nature weakens and finally the back-to-Jekyll potion fails, and he poisons himself when on the verge of exposure.<sup>8</sup>

The present article does not deal with the many literary merits of Stevenson's novella, nor does it deal with the legal issues of tort or criminal liability that Hyde's violent and murderous actions precipitate. Instead, my purpose here is to examine one particular and crucial plot device that Stevenson uses—the will of Dr. Henry Jekyll. This will so obsesses Jekyll's friend and solicitor, Gabriel John Utterson (through whose eyes the story unfolds), that he is impelled to seek the truth behind his friend's relationship to Hyde. In the course of Utterson's search, the solicitor ultimately learns the truth about Jekyll's dangerous scientific experiment, which leads to the respected doctor's moral downfall and his physical death.

Despite Nabokov's skepticism, Utterson is a detective of sorts as he searches for the mysterious Edward Hyde's hold on the lawyer's friend and client Dr. Jekyll. Utterson is tenacious but rather inept as a detective, for he learns the truth about Dr. Jekyll and Mr. Hyde only after Jekyll's death and only through the medium of two

2. *Id.*

3. *Id.* at 180 (quoting Robert Lois Stevenson).

4. *Id.* (quoting Stephen Gwynn).

5. LEONARD WOLF, *THE ESSENTIAL DR. JEKYLL AND MR. HYDE* 3 (1995) [hereinafter *ESSENTIAL*].

6. *Id.*

7. *Id.*

8. NABOKOV, *supra* note 1, at 179.

posthumous letters addressed to him, one from their mutual friend, Dr. Hastie Lanyon, and the other from Henry Jekyll himself.<sup>9</sup> In this regard, Utterson is less like his fictional contemporary, the legendary detective Sherlock Holmes, and more like the Scotland Yard professionals around whom Holmes runs circles. Like Holmes, Utterson follows various clues to the mystery of Jekyll and Hyde. Unlike Holmes, Utterson's magnifying glass, in retrospect, was entirely opaque.

My thesis in this article is that Jekyll's will, when viewed from the naïve narrator's standpoint (that is, before Jekyll's secret transformations into Hyde are revealed at the end of the story), is a wonderful vehicle for examining various legal rules and doctrines that might mitigate the soundness of the testator's state of mind and, thus, his or her capacity to make a valid will. These legal problems, which remain as relevant in America today as they were in England during Queen Victoria's reign, include the general soundness of the state of mind of the testator, the doctrine of insane delusion, and the rules regarding undue influence and duress. Jekyll's will is a holograph, which, conveniently, obviated the need for any witnesses to its execution and also eliminated the necessity of Utterson's "assistance" in its preparation: Jekyll himself drafted the will.<sup>10</sup> Jekyll's will also contains a provision that appears to constitute something resembling a power of attorney from Jekyll to Hyde (Utterson refers to it as a "deed of gift") in case of Jekyll's disappearance.<sup>11</sup> Finally, in what turns out to be Jekyll's final will and testament, Utterson is amazed, at the story's end, to find that his friend has replaced Hyde's name in the will with that of Utterson himself, raising the issue of bequests to attorneys.<sup>12</sup> Along the way, this article discusses the matter of who—if anyone—might have standing to challenge the validity of the initial will, which Utterson found so odious. That Stevenson would employ such a central device as Jekyll's will as a driver of his plot—and use the will in such a way that the very real legal issues it raises at times blur the line between fact and fiction—should not be surprising, given the fact that Stevenson himself was a lawyer, having studied law in Scotland and England and having been admitted to the Edinburgh bar in 1875.<sup>13</sup> Perhaps Utterson is a stand-in for Stevenson in the story.

For most of the nineteenth-century, "the British novel was preoccupied with law."<sup>14</sup> The rise of legal professionalism in Britain at this time helps to explain this preoccupation with the law and the literary representations of lawyers.<sup>15</sup> In an article entitled *Gothic Law*, Professor Leslie J. Moran agrees that law is "a regular theme in Gothic literature."<sup>16</sup> Moran describes Gothic literature as that in which "[t]he unreason and the irrational are banished [by the scientific only to] return to haunt and

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9. ESSENTIAL, *supra* note 5, at 103.

10. *Id.* at 43-44.

11. *Id.* at 44, 102.

12. *Id.* at 102.

13. ESSENTIAL, *supra* note 5, at 12-14.

14. Nicola Lacey, *The Way We Lived Then: The Legal Profession and the 19th-Century Novel*, 33 SYDNEY L. REV. 599, 600 (2011).

15. *Id.* at 602.

16. Leslie J. Moran, *Gothic Law*, 10 GRIFFITH L. REV. 75 (2001).

disturb.”<sup>17</sup> In *Dr. Jekyll and Mr. Hyde*, the irrational transformation is conjured by scientific experimentation where the irrational returns not merely to haunt, but to murder, which “is the Gothic act *par excellence*.”<sup>18</sup> Moran cites *Jekyll and Hyde* as an example of Gothic story in which a lawyer appears as the narrator; the lawyer’s narration personifies “law as order” and “guarantees the possibility of the truth of the narrative.”<sup>19</sup> Of course, as the reader of Stevenson’s novella learns in the end, Utterson is a naïve narrator, and what he has believed throughout the story’s action turns out to have been inaccurate and untrue. The last two epistolary chapters of the book solve the mystery without the mediation of Utterson or any other narrator.<sup>20</sup> As soon as Utterson discovers Jekyll’s final will naming Utterson as his beneficiary, Utterson disappears as the focus of the narration, and Jekyll is dead.<sup>21</sup>

Professor Katherine Kearney Maynard asserts that *Jekyll and Hyde*’s Victorian professionals follow a “code of silence regarding each other’s lapses and peccadillos.”<sup>22</sup> These men maintain this code of silence in the novella “by communicating crucial information in mysterious wills, in enigmatic letters, or in the series of elaborately sealed narratives that Lanyon and Jekyll entrust to Utterson at the end of the text.”<sup>23</sup> According to Professor Stephen Arata, *Jekyll and Hyde* is “obsessively concerned with writing of various kinds: wills, letters, chemical formulae, bank drafts, ‘full statements,’ and the like.”<sup>24</sup> Indeed, Utterson first learned of Hyde’s existence through Jekyll’s holographic will, of which Utterson “never approved.”<sup>25</sup> The entire plot of the story unfolds because of Utterson’s anxiety about, and aversion to, this will.<sup>26</sup> Why Jekyll would make a will leaving his entire estate to Hyde is beyond Utterson’s comprehension, and the lawyer jumps to the conclusion that Hyde must be blackmailing Jekyll.<sup>27</sup> However, Jekyll’s will hinders rather than furthers Utterson’s solution of the case because the latter’s “epistemological orientation is radically insufficient” to comprehend “the case’s ‘true’ strangeness” from his “legalistic point of view.”<sup>28</sup>

In an article entitled *The Will as Personal Narrative*, Professor Karen Sneddon opines that a will “should be conceptualized and written as a personal narrative.”<sup>29</sup> But, Jekyll’s will is very cryptic and, from the viewpoint of both Utterson and the

17. *Id.* at 80.

18. *Id.* at 76.

19. *Id.* at 77.

20. E.D. Cohen, *Hyding the Subject?: The Antinomies of Masculinity in “The Strange Case of Dr. Jekyll and Mr. Hyde,”* 37 NOVEL: A FORUM ON FICTION 181, 186 (2003).

21. *Id.* at 187.

22. Katherine Kearney Maynard, *The Perils and Pleasures of Professionalism in Stevenson’s Strange Case of Dr. Jekyll and Mr. Hyde and Doyle’s A Study in Scarlet and Other Fictions*, 5 THE EUROPEAN LEGACY 365, 371 (2000).

23. *Id.* at 372.

24. Stephen D. Arata, *The Sedulous Ape: Atavism, Professionalism, and Stevenson’s “Jekyll and Hyde,”* 37 CRITICISM 233, 251 (1995).

25. *Id.*

26. Cohen, *supra* note 20, at 187.

27. *Id.* at 187-88.

28. *Id.* at 188.

29. Karen J. Sneddon, *The Will as Personal Narrative*, 20 ELDER L.J. 355, 360 (2012).

reader, is a rather misleading narrative of his relationship with Hyde. In fact, this cryptic will, with its elliptical and ambiguous narrative (Jekyll's "friend and benefactor Edward Hyde"), remains misleading until the end of the novella, when all is made clear.<sup>30</sup> Certainly, Stevenson has given the reader hints or clues to Hyde's identity along the way, as Hyde often "bursts out and exposes" Jekyll.<sup>31</sup> The will is the most important place—the most important hint or clue to the reader—where Hyde does this.<sup>32</sup> Utterson first learns of Hyde's existence when he reads the man's name in Jekyll's will—a will so repugnant to Utterson that he has refused to draft or sanction it in any way.<sup>33</sup>

As a personal narrative, Jekyll's will is so important in its ambiguity that Professor Carol Margaret Davison concludes Utterson in fact murdered Jekyll, or at the very least forced Jekyll into suicide.<sup>34</sup> Davison posits that Utterson discovered Jekyll's secret long before it is revealed to the reader in the last two chapters of the novella; she argues that Utterson's motive for hounding Jekyll to his death was to become the legatee of the latter's entire estate, which Utterson (as Jekyll's only remaining friend) must have suspected Jekyll would leave to him.<sup>35</sup> This is an unusual and unique interpretation of the story, and one that turns Utterson from hero to villain: in Davison's words, this lawyer is a "liar" and this erstwhile friend is a "fiend."<sup>36</sup> However, I read the story in the conventional way, with Utterson as friend, quasi-detective, and naïve narrator who comes upon the truth of Jekyll's alter ego, Hyde, only upon Hyde-Jekyll's death.

Utterson, the solicitor, certainly seems obsessed by Jekyll's holographic will. "Beyond the payment of a few small sums to the members of the doctor's household," the doctor's will left "all his possessions" to his "friend and benefactor Edward Hyde."<sup>37</sup> The third-person narrator of the story states that "[t]his document had long been the lawyer's eyesore."<sup>38</sup> In the course of a conversation between Utterson and his friend Jekyll, the lawyer raises the subject of the will, saying that he "never approved of it."<sup>39</sup> Jekyll responds "a trifle sharply" that he knows this, because "[y]ou have told me so."<sup>40</sup> At this meeting, Jekyll also tells Utterson, "you are unfortunate in such a client. I never saw a man so distressed as you were by my

30. See ESSENTIAL, *supra* note 5, at 44.

31. Ronald R. Thomas, *In the Company of Strangers: Absent Voices in Stevenson's Dr. Jekyll and Mr. Hyde and Beckett's Company*, 32 MFS MODERN FICTION STUDIES 157, 163 (1986).

32. *Id.*

33. *Id.* at 162.

34. Carol Margaret Davison, *A Battle of Wills: Solving the Strange Case of Dr. Jekyll and Mr. Hyde*, in TROUBLED LEGACIES: NARRATIVE AND INHERITANCE 137, 157 (Allan Hepburn ed., 2007).

35. *Id.*

36. *Id.*

37. ESSENTIAL, *supra* note 5, at 44.

38. *Id.*

39. *Id.* at 56.

40. *Id.*

will.”<sup>41</sup> The night after the funeral of Utterson’s and Jekyll’s mutual friend, Dr. Hastie Lanyon, Utterson—alone in his study—thinks again of Jekyll’s “mad will.”<sup>42</sup> Finally, in Jekyll’s “full statement of the case” (chapter ten of the novella), Jekyll’s statement to Utterson refers to “that will to which you so much objected.”<sup>43</sup> When Utterson and Jekyll’s butler, Poole, have found Mr. Hyde dead at the end of the tale (although they do not yet know that this discovery also means the death of Dr. Jekyll himself), they find a new holographic will among Jekyll’s papers; Utterson, “with indescribable amazement,” reads his own name in place of Hyde’s as the beneficiary in Jekyll’s new will.<sup>44</sup>

My article—in the form of a dialogue with G. J. Utterson, Esquire—begins with a discussion of the general soundness of Dr. Jekyll’s mind at the time he made his will in favor of Mr. Hyde. This article continues with a brief dialogue about the doctrine of insane delusion and whether Dr. Jekyll was under such a delusion when he made his will. Following this dialogue, Mr. Utterson and I examine whether Dr. Jekyll was under undue influence or duress when he made his will. We then discuss the so-called Slayer Rule, by which a beneficiary who kills the testator might be deprived of his or her share of the slain testator’s estate, as the story contains numerous references to Utterson’s (and others’) suspicions that Hyde might murder—or might already have murdered—Jekyll at the tale’s climax. After touching on the matter of who might have standing to contest Jekyll’s will, I finish by asking, somewhat impertinently, whether the solicitor believes that Dr. Jekyll’s final will, which named him as the beneficiary, was invalid for some of these same reasons.

In 2011, I published an article on the significance of donative transfers in the Sherlock Holmes canon.<sup>45</sup> That article was constructed much like one of Sir Arthur Conan Doyle’s stories, in that it was a dialogue recorded by Dr. John Watson that ostensibly took place between Holmes and Watson analyzing donative transfer issues in their adventures. In the present article, I use a similar device to tell my own story of the solicitor and the doctor’s will. This article—save for this introduction—is presented as an imagined dialogue between myself and Jekyll’s friend, Gabriel John Utterson, Esquire, the solicitor through whose eyes Stevenson’s narrator tells the celebrated story.<sup>46</sup> If Mr. Utterson and I had ever engaged in an extended conversation analyzing the legal issues raised by Henry Jekyll’s two wills (the first in favor of Hyde and the second in favor of Utterson himself), that conversation might have proceeded in the following way.

41. *Id.*

42. *ESSENTIAL*, *supra* note 5, at 82.

43. *Id.* at 123.

44. *Id.* at 102.

45. Stephen R. Alton, *The Game is Afoot!: The Significance of Donative Transfers in the Sherlock Holmes Canon*, 46 *REAL PROP., TR. AND EST. L.J.* 125 (2011).

46. Imagined dialogues have been used in the “story-telling” tradition of legal scholarship for at least three decades. *See, e.g.*, DERRICK BELL, *AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE* (1987); RICHARD DELGADO, *JUSTICE AT WAR: CIVIL LIBERTIES AND CIVIL RIGHTS DURING TIMES OF CRISIS* (2003); and RICHARD DELGADO, *THE RODRIGO CHRONICLES: CONVERSATIONS ABOUT AMERICA AND RACE* (1995).



## GENERAL MENTAL CAPACITY (SOUNDNESS OF MIND): OUR DIALOGUE BEGINS

As I was at work late one night in my office, I heard a faint knock at my office door. The tap had been so hesitant that I wasn't certain I in fact had heard anything. Perhaps I had nodded off and been dreaming? Continuing to work, I again was interrupted, this time by a slightly louder, more definite knock upon my door.

"Who's there?" I called out.

"It is I, Gabriel John Utterson," responded a voice with an oh-so-proper English accent. "Might I please have a few words with you, Mr. Alton? I should like to speak with you about the sad matter of my friend, the late Dr. Henry Jekyll."

Certainly, I knew the name Gabriel John Utterson well. Utterson was the attorney and friend of Dr. Henry Jekyll, of Jekyll & Hyde fame. It was Utterson, the solicitor, who first investigated the identity of Edward Hyde, fearful of Hyde's hold on Utterson's friend, Jekyll. There were a number of things I would love to ask Utterson; indeed, as a teacher of Wills & Estates, I have long been interested in the legal issues surrounding Jekyll's mental capacity to make a will. In Robert Louis Stevenson's account of this story, it is Utterson's revulsion at Jekyll's will that impels the solicitor to seek out the loathsome Hyde. Perhaps this would be my chance to discuss that famous will with Utterson.

"Please do come in," I responded, and Utterson entered my cluttered office. He was a man of about my height, perhaps a bit stockier. His dress was rather formal, wearing striped pants, a morning coat (even though it was late at night), a heavily starched white shirtfront, and a black silk cravat. He carried a top hat in his hands. I reached out my hand to shake his; he deftly moved his top hat so as to free his right hand to meet mine. "Please take a seat, Mr. Utterson."

"Thank you, Mr. Alton. I have wanted to meet you, sir. I understand that you have taken an interest in the strange and sad case of my late friend, Dr. Henry Jekyll."

"Indeed I have, Mr. Utterson. You have come at a most opportune time, sir, as I have recently been teaching, in my Wills class, the legal issues involving a testator's mental capacity to make a will. It has always seemed to me that the holographic will of your late friend, Dr. Henry Jekyll, presents an excellent case study of many of these legal issues. Your fortunate—I might say serendipitous—appearance in my office tonight will, if I may be so bold, present me with an opportunity to discuss these issues with you. I understand the constraints of the attorney-client privilege, but, after all, it has been many, many years since the death of Dr. Jekyll, and he confessed the entire story both to you and Dr. Hastie Lanyon, who was not an attorney. So, perhaps, there will be no problem if we explore these matters, Mr. Utterson?"

"I would welcome the opportunity, Mr. Alton," the solicitor assured me. "What would you like to ask me about the sad business of my late, lamented friend?"

"Please allow me to begin by noting the many times throughout the course of your experiences that you or others—including Dr. Jekyll himself—made reference to the doctor's state of mind; you and the others believed he exhibited signs of mental illness that might have affected his testamentary capacity. The first such instance, that I recall, occurred early in your story, when you came home to your 'bachelor's house in sombre spirits' and, after a dinner eaten 'without relish,' you removed the envelope

containing the doctor's will from your safe and studied its contents.<sup>47</sup> Dr. Jekyll had made this will himself, as you 'had refused to lend the least assistance in the making of it,' given your disgust with its contents, for it left all of the doctor's possessions to 'his "friend and benefactor, Edward Hyde."' <sup>48</sup> The dispositive provisions 'offended' you 'both as a lawyer and as a lover of the sane and customary sides of life.'<sup>49</sup> You thought 'it was madness.'<sup>50</sup> Am I correct, so far? Surely, you will tell me if I err?"

Utterson nodded his assent, and I proceeded. "Thus, you initially referred to Dr. Jekyll's will, first, as being offensive to you because, implicitly, it was something that was neither 'sane' nor 'customary' and, second, as being the product of 'madness.'" <sup>51</sup>

"As you know, Mr. Alton," interjected Utterson, "this will had always greatly troubled me." Now, it was my turn to nod my assent before continuing.

"You decided, after returning the 'obnoxious paper' to your safe, to speak with your mutual friend, Dr. Hastie Lanyon, so you proceeded to Cavendish Square, where Dr. Lanyon resided.<sup>52</sup> Dr. Lanyon told you that Dr. Jekyll had become "too fanciful" and had "begun to go wrong, wrong in mind."<sup>53</sup> Once again, here is a reference to Dr. Jekyll's state of mind—presumably the same state of mind the doctor was laboring under when he made the will to which you so objected. You see, Mr. Utterson, I want to establish Dr. Jekyll's state of mind at, or at least near, the time he made his holographic will benefiting Mr. Hyde. I am attempting to do so by recounting the numerous references to his apparent madness or insanity that you and others make throughout the story. Dr. Lanyon has now made another such reference.

"The next set of references to Dr. Jekyll's general state of mind occurred after you dined with a much-improved Dr. Jekyll, who had seen the 'evil influence [of Mr. Hyde] . . . withdrawn' of late.<sup>54</sup> Thus, you were surprised when, three times within the next week, the doctor's 'door was shut against' you.<sup>55</sup> His butler, Poole, told you that the doctor "was confined to the house" and "saw no one."<sup>56</sup> Once again, you decided to visit Dr. Lanyon to inquire what he might know of this sudden change in Dr. Jekyll's behavior.<sup>57</sup> You were surprised at the change for the worse in Dr. Lanyon's appearance; he told you that he had had "a shock" from which he would "never recover."<sup>58</sup> When you immediately tried to broach the purpose of your visit, stating that Dr. Jekyll also was "ill," Dr. Lanyon stopped you, saying, "I am quite done with that person; and I beg that you will spare me any allusion to one whom I

47. ESSENTIAL, *supra* note 5, at 43.

48. *Id.* at 44.

49. *Id.*

50. *Id.*

51. *Id.*

52. ESSENTIAL, *supra* note 5, at 44.

53. *Id.* at 45.

54. *Id.* at 79.

55. *Id.* at 80.

56. *Id.*

57. *Id.*

58. ESSENTIAL, *supra* note 5, at 80.

regard as dead.”<sup>59</sup> He told you that someday you might learn the truth—“the right and wrong of this”—but you should leave his home “if you cannot keep clear of this accursed topic.”<sup>60</sup>

“You left Dr. Lanyon’s house, as he had asked you to do, and returned home, where you wrote a letter to Dr. Jekyll, receiving a prompt reply from him.<sup>61</sup> His reply was ‘sometimes darkly mysterious in drift;’ in it, he referred to himself as both “the chief of sinners” and “the chief of sufferers.”<sup>62</sup> You thought his ‘peace of mind and the whole tenor of his life were wrecked,’ and so great a change ‘pointed to madness.’<sup>63</sup> Three weeks later, Dr. Lanyon died.<sup>64</sup> You had received an envelope from him that might solve the entire mystery of Dr. Jekyll’s actions, but you decided to defer reading the contents of the envelope because the enclosed envelope was marked that it was “not to be opened till the death or disappearance of Dr. Henry Jekyll.”<sup>65</sup> Your ‘professional honour and faith to . . . [your] dead friend were stringent obligations.’<sup>66</sup> But, the linking of Dr. Jekyll’s name with death or disappearance reminded you of ‘the mad will.’<sup>67</sup> Speaking with Poole, you learned that the doctor ‘now more than ever confined himself to his cabinet,’ and that ‘he was out of spirits.’<sup>68</sup> I infer that, once again, you believed Dr. Jekyll to be seriously disturbed in his mind, yes?”

“You are correct, sir,” replied Utterson. “Pray, proceed.”

I did as Utterson asked. “Later in your remarkable experience, you and your cousin, Mr. Richard Enfield, chanced upon Dr. Jekyll at his window, ‘taking the air with an infinite sadness of mien, like some disconsolate prisoner.’<sup>69</sup> The doctor admitted that he was “very low.”<sup>70</sup> As the doctor would neither come out to walk with you and Mr. Enfield nor invite you into his cabinet, you agreed to stay and talk with him through his window.<sup>71</sup> Suddenly, Dr. Jekyll’s ‘smile was struck out of his face and succeeded by an expression of such abject terror and despair, as froze’ your ‘very blood;’ instantly and without explanation, Jekyll shut the window and disappeared from view.<sup>72</sup> You and your cousin were horrified over what you had seen.<sup>73</sup> Once again, I infer that you thought the doctor was suffering from a debilitating mental

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59. *Id.* at 81.

60. *Id.*

61. *Id.*

62. *Id.*

63. ESSENTIAL, *supra* note 5, at 81.

64. *Id.* at 82.

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.* at 82-83.

69. ESSENTIAL, *supra* note 5, at 86.

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.* at 86-87.

illness of some sort—perhaps depression, as he had just told you that he was “very low.”<sup>74</sup>

“Now we come to the final incident before you learned the whole, awful truth about the matter,” I averred. “On Dr. Jekyll’s last night alive, you and Poole stood outside his cabinet door, and the doctor once again turned you away.<sup>75</sup> Both you and Poole were quite worried: Poole believed that his master had been murdered—“master’s made away with”<sup>76</sup>—and you believed that the doctor was sick—“seized with one of those maladies that both torture and deform the sufferer.”<sup>77</sup> You arrived at your conclusion based on your reading of a letter shared with you by Poole, which was from Dr. Jekyll to a pharmacy, imploring the pharmacist, “For God’s sake . . . find me [i.e., Jekyll] some of the old [drug].”<sup>78</sup> Once again, you thought that Dr. Jekyll’s “eagerness to find this drug” indicated a grave illness that might have deformed his mind as well as his body.<sup>79</sup> You and Poole decided to break down the laboratory door to find out what in fact had happened, and you discovered Mr. Hyde, dressed in Dr. Jekyll’s clothing.<sup>80</sup> You also discovered the remnants of the drug—the antidote—that your friend used to turn himself back into Dr. Jekyll from Mr. Hyde.<sup>81</sup> Finally, you found what proved to be Dr. Jekyll’s final will—another holograph—but this time, your name appeared as the primary beneficiary, much to your ‘indescribable amazement.’<sup>82</sup> I shall refer to this will as the ‘Utterson Will’ in order to distinguish it from the earlier will the doctor made in favor of Mr. Hyde.

“Thus, as I count them, there were at least seven occasions when you said or believed that your friend, Dr. Henry Jekyll, was of unsound mind *before* you discovered the truth about him at the very end of your tale. You learned the truth about your friend’s amazing transformation by reading the narrative of Dr. Lanyon and the confession of Dr. Jekyll himself, both of which your friend referred to in his final note to you, the note that you and Poole found on Dr. Jekyll’s table in his cabinet after you found Mr. Hyde’s body and the Utterson Will.<sup>83</sup>

“In Dr. Lanyon’s account, he reproduces the contents of the letter from Dr. Jekyll imploring Lanyon’s help in securing the antidote from Jekyll’s own laboratory and returning it to him when Mr. Hyde should call upon Dr. Lanyon.<sup>84</sup> The letter begs Dr. Lanyon to follow Dr. Jekyll’s instructions precisely, lest the former’s con-

74. ESSENTIAL, *supra* note 5, at 86.

75. *Id.* at 91-92.

76. *Id.* at 92.

77. *Id.* at 94.

78. *Id.* at 93.

79. ESSENTIAL, *supra* note 5, at 94 & n.17.

80. *Id.* at 98-100.

81. *Id.* at 101. Poole tells Utterson that “this is the same drug that I was always bringing him.” *Id.* Of course, at this point in the story, neither Poole nor Utterson have learned of Dr. Jekyll’s transformations into Mr. Hyde.

82. ESSENTIAL, *supra* note 5, at 102.

83. *See id.* at 102-03.

84. *Id.* at 105-07.

science be charged with the latter's "death" or the "shipwreck" of the latter's "reason."<sup>85</sup> Immediately upon reading Dr. Jekyll's letter, Dr. Lanyon was certain of Dr. Jekyll's insanity.<sup>86</sup> After carrying out the instructions in the letter, Dr. Lanyon was even more certain of Dr. Jekyll's mental instability: he said that he was 'convinced' he was 'dealing with a case of cerebral disease.'<sup>87</sup>

"Now," I continued, "might I please examine with you the standard for whether a testator was of sound mind when he or she made the will?"

"I would be interested in your assessment of the matter, Mr. Alton."

"And I yours, Mr. Utterson. Well, then, let us proceed, sir. Our Restatement (Third) of the Law of Property sets out a standard or test for the mental capacity a testator must meet in order to be considered of 'sound mind' to make a valid will. The test requires that the testator

must be capable of knowing and understanding in a general way the nature and extent of his or her property, the natural objects of his or her bounty, and the disposition that he or she is making of that property, and must also be capable of relating these elements to one another and forming an orderly desire regarding the disposition of the property.<sup>88</sup>

"The issues and rules that we're discussing are universal principles of Anglo-American jurisprudence. However, because the Wills class that I teach focuses on the law of my home state, Texas, I'll use Texas law for my own convenience. The test for soundness of mind that Texas uses is similar to that of the Restatement. Our statutes require that a person be 'of sound mind' in order to make a valid will.<sup>89</sup> The test most widely cited for being 'of sound mind' comes from a Texas case that is roughly contemporaneous with your tale, *Prather v. McClelland*.<sup>90</sup> The test is stated in this case as follows:

[H]e [the testator] must have been capable of understanding the nature of the business he was engaged in, the nature and extent of his property, the persons to whom he meant to devise and bequeath it, the persons dependent upon his bounty, and the mode of distribution among them; . . . he must have had memory sufficient to collect in his mind the elements of the business to be transacted, and to hold them long enough to perceive, at least, their obvious relations to each other, and be able to form a reasonable judgment as to them.<sup>91</sup>

Shall we apply the Texas test?"

85. ESSENTIAL, *supra* note 5, at 106.

86. *Id.* at 107. Lanyon writes, "Upon the reading of this letter, I made sure my colleague was insane." *Id.*

87. *Id.* at 108. Hyde drinks the antidote that Lanyon found for him and provided to him, whereupon Hyde becomes, to Lanyon's horror and incredulity, Jekyll again. *Id.* at 110-12. Lanyon "cannot bring" himself "to set on paper" the things that Jekyll told him in the hour after his transformation. ESSENTIAL, *supra* note 5, at 112.

88. RESTATEMENT (THIRD) OF PROP.: WILLS & DONATIVE TRANSFERS § 8.1(b) (Am. Law Inst. 2003) [hereinafter RESTATEMENT].

89. TEX. EST. CODE ANN. § 251.001 (West 2014) [hereinafter ESTATE CODE].

90. *Prather v. McClelland*, 13 S.W. 543 (Tex. 1890).

91. *Id.* at 546. The Restatement's rule does not expressly state the first element of the Texas rule—that testator know that he or she is making a will—but certainly this is an implicit prerequisite in the Restatement rule.

“Permit me, sir,” replied Utterson, “to make the first attempt at the test’s application. As you have demonstrated, Mr. Alton, before I knew the awful truth about how my dear friend, Henry Jekyll, became the hideous Edward Hyde, I was most concerned that my friend was not of sound mind, especially at the time he made his initial holographic will in favor of Mr. Hyde. Thus, Dr. Jekyll’s will would have been invalid due to his unsound state of mind. The first element—that Dr. Jekyll was ‘capable of understanding the nature of the business he was engaged in’<sup>92</sup>—most likely was satisfied. After all, Dr. Jekyll himself made the will: he wrote its provisions and he signed it.<sup>93</sup> The terms were clear enough, albeit they were most distasteful to me: In the event of my friend’s death or his ‘unexplained absence for any period exceeding three calendar months,’ Mr. Hyde was to ‘step into the said Henry Jekyll’s shoes without delay.’<sup>94</sup> Clearly, Henry Jekyll knew that he was making a will (and a deed of gift).<sup>95</sup>

“The second element of your *Prather* test is that the testator must have been capable of understanding ‘the nature and extent of his property.’<sup>96</sup> Once again, I must admit that I had no reason to believe that my friend did *not* know the nature or extent of his property. Nothing in his story gives any indication that such was the case. Thus, I aver that the second element of the test likely was satisfied.”

“I agree, Mr. Utterson,” I responded, “that the first two elements of the *Prather* test were satisfied. I also believe, if you will permit me, that the third element of the test was met. The testator must have been capable of understanding ‘the persons to whom he meant to devise and bequeath’ his property.<sup>97</sup> Certainly, he knew he was leaving his estate to Edward Hyde, however distasteful that might have been to you and to his other friends. It seems that there can be no doubt of this. Surely, sir, you must accede to this conclusion, however reluctantly.”

“Mr. Alton, I cannot deny your conclusion about this element. Furthermore, I must admit that the fourth element of the *Prather* test most likely was met in regard to this will: Dr. Jekyll would have needed to be capable of understanding ‘the persons dependent upon his bounty, and the mode of distribution among them.’<sup>98</sup> As Henry Jekyll was a bachelor, without any closely related living family member, there were, in fact, no persons who were dependent upon his bounty. In effect, this element becomes a nullity under the facts of our story.”

“Indeed, Mr. Utterson,” I asked, “do you not agree, given what you later learned about the relationship of Mr. Hyde to Dr. Jekyll, that one could say it was perfectly rational for Dr. Jekyll to conclude that Mr. Hyde—under these admittedly bizarre

92. *Prather*, 13 S.W. at 546.

93. See ESSENTIAL, *supra* note 5. Interestingly, nowhere in the novel does Stevenson indicate that Jekyll in fact signed the will. However, Utterson never remarks that the will is invalid due to the absence of testator’s signature. Given the fact that Utterson loathed the will and, presumably, would have been delighted to find that it was invalid due to such a simple technicality, it can safely be assumed that Jekyll *did* sign the will. Moreover, Stevenson’s training as a lawyer would make the lack of testator’s signature on the will virtually unthinkable.

94. *Id.* at 44.

95. *Id.* In fact, Utterson refers to the will in the alternative as a “deed of gift” in the event of Jekyll’s absence. *Id.*

96. *Prather*, 13 S.W. at 546.

97. *Id.*

98. *Id.*

circumstances—was indeed a natural object of Dr. Jekyll's bounty? Dr. Jekyll wanted to be certain that, should he disappear into Mr. Hyde and perhaps be declared legally dead, his estate would be conferred on the latter so that the material needs of Dr. Jekyll (in the person of Mr. Hyde) would be provided for." The English lawyer nodded to indicate his assent, and he continued his explication of the *Prather* test.

"The test's final element," said he, "is the sticking point, Mr. Alton. Dr. Jekyll must have had memory sufficient to collect in his mind the elements of the business to be transacted [i.e., the other four elements of the test], and to hold them long enough [in his mind] to perceive, at least, their obvious relations to each other, and be able to form a reasonable judgment as to them."<sup>99</sup>

It is the final element that I believe fails in this situation. Given his tenuous mental state, especially at the time of each transformation into Mr. Hyde, Henry Jekyll may neither have been able to perceive the other elements' 'relations to each other' nor 'to form a *reasonable* judgment as to' those other elements.<sup>100</sup> Based on what appeared to be true at the time, I believed that Henry Jekyll was so deranged in his mind that he could *not* form a reasonable judgment as to the other elements. Indeed, when I learned the truth of his transformations into Mr. Hyde, this truly amazing fact did not alter my belief as to the absolute unreasonableness of his judgment at the time he made this will."

"I see your point, Mr. Utterson," I replied. "But, I must remind you that 'less capacity is required to enable a testator to make a will than for the same person to make a contract.'<sup>101</sup> The test is to be applied as of the day on which the will was executed.<sup>102</sup> While this question would be one of fact,<sup>103</sup> I am simply not prepared to say that, as I read the story, Dr. Jekyll was unable to form a reasonable judgment as to the other elements of the test on the day he made his holographic will in favor of Mr. Hyde. I say this most respectfully, Mr. Utterson."

"I appreciate your opinion, Mr. Alton," Utterson replied, "but I am not able to concur for the reasons I have already indicated. Indeed, Dr. Jekyll's 'full statement of the case' convinces me that he was mad or at the very least laboring under an insane delusion.<sup>104</sup> Certainly, sir, this would have been a question of fact for a jury to decide, based on the evidence adduced."

#### OUR CONVERSATION CONTINUES: INSANE DELUSION

After this exchange, Utterson and I fell into an awkward silence for perhaps a minute or two, after which time the lawyer resumed our dialogue.

99. *Id.*

100. *Id.*

101. *Prather*, 13 S.W. at 546.

102. *Id.* See also, WILLIAM M. MCGOVERN, SHELDON F. KURTZ & DAVID M. ENGLISH, WILLS, TRUSTS AND ESTATES INCLUDING TAXATION AND FUTURE INTERESTS 317 (4th ed. 2010) [hereinafter McGovern]; *Lee v. Lee*, 424 S.W.2d 609, 611 (Tex. 1968).

103. See, MCGOVERN, *supra* note 102, at 319.

104. See ESSENTIAL, *supra* note 5, at 115-36.

“Mr. Alton,” said the solicitor, “there is another reason why I believe Dr. Jekyll was not of sound mind as of the date on which he executed the holographic will in favor of Mr. Hyde. At the time, I believed that Henry Jekyll was suffering from what my friend, Dr. John Watson, has referred to as an ‘*idée fixe*.’<sup>105</sup> In other words, he may have been suffering from an insane delusion.”

“I know the testamentary disability to which you refer, Mr. Utterson,” I rejoined. “The *Prather* court also discussed this alternative theory of unsoundness of mind, defining the term as ‘the belief of a state of supposed facts which no rational person would believe.’<sup>106</sup> Another iteration is ‘the belief of a state of supposed facts that do not exist, and which no rational person would believe.’<sup>107</sup> It has been said that ‘a person who is entirely capable of attending to his business affairs may nevertheless have his mind so warped and deranged by some false and unfounded belief that he is incapable of formulating a rational plan of testamentary disposition.’<sup>108</sup> Another Texas court explained the rule as follows:

When the testator’s false belief amounts, in law, to an insane delusion and the terms of his will are influenced thereby, testamentary capacity is lacking even though he might know the nature and extent of his property, the effect of his will, and the natural objects of his bounty, and be able to handle complex business matters.<sup>109</sup>

That said, a testator’s ‘mistaken belief is not an “insane delusion” if there was some rational basis for it.’<sup>110</sup>

“Our Restatement,” I continued, “defines an insane delusion as follows: ‘a belief that is so against the evidence and reason that it must be the product of derangement.’<sup>111</sup> However, a ‘belief resulting from a process of reasoning from existing facts is not an insane delusion, even though the reasoning is imperfect or the conclusion illogical.’”<sup>112</sup>

“Mr. Alton,” said Utterson, “I believe that my friend Henry Jekyll was laboring under an insane delusion when he made his will conferring his estate upon Edward Hyde. Certainly, at the time he first delivered the hateful will to my care, I thought that Dr. Jekyll must have become mad to do such a thing, for the reasons you have already noted.”

“Well, sir,” I replied, “I am not convinced of this. What might have been his insane delusion? At the time of the delivery of his will to you, you had no specific idea as to what delusion, if any, might have produced the will. Establishing an insane delusion requires proof of the specific, supposed facts that do not exist and that no rational person would believe. If I may be permitted to say this, Mr. Utterson, mere

105. ARTHUR CONAN DOYLE, *The Adventure of the Six Napoleons*, in THE COMPLETE SHERLOCK HOLMES 582, 584 (Doubleday & Company n.d.) (1930). In a non-testamentary context, Watson referred to a form of “*monomania*. . . which may be trifling in character, and accompanied by complete sanity in every other way.” *Id.*

106. *Prather*, 13 S.W. at 546.

107. *Knight v. Edwards*, 153 Tex. 170, 175, 264 S.W.2d 692, 695 (1954).

108. *Lindley v. Lindley*, 384 S.W.2d 676, 679 (Tex. 1964).

109. *Id.*

110. MCGOVERN, *supra* note 102, at 316.

111. RESTATEMENT, *supra* note 88, at § 8.1 cmt. s.

112. *Id.*



general speculation on your part that Dr. Jekyll was hampered by an insane delusion at the time he made his will would have been insufficient evidence on which to strike down the will. Certainly, you must concede this point.”

“Reluctantly, I do sir,” rejoined the lawyer.

I continued. “If, at that very time when Dr. Jekyll delivered his will to you, you had learned that he believed he could become Edward Hyde and therefore wanted to leave his entire estate to his alter ego, you might well have said that this was an insane delusion, for how could any rational person believe such a thing? That certainly would be specific evidence of an insane delusion on his part that produced his testamentary disposition, even though, as I said before, the doctor most likely was not generally of unsound mind. However, as you later learned, Dr. Jekyll, on a regular basis, *was* becoming Mr. Hyde at this time. Thus, the will was *not* a product of supposed facts that do not exist. Instead, as you subsequently learned, the will was a product of a fact (the Jekyll-to-Hyde transformation) which, as astounding as it seemed, was indeed occurring in the real world of your story. Q.E.D., there was no insane delusion. Again, I believe that you must concur in this ultimate conclusion.”

The solicitor simply shrugged, and our dialogue moved on to the matters of undue influence and duress.

#### A COLLOQUY ON UNDUE INFLUENCE AND DURESS

“By any chance, sir, have you a bottle of port or brandy of which we might partake?” Utterson inquired.

“Unfortunately, Mr. Utterson, I don’t keep such things in my office. However, I would be delighted to give you a bottle of water.”

“I do not understand, Mr. Alton. Does your water come in bottles? I thought that in your country in your day and age you would have running water—running through pipes into your buildings.”

“We do, sir, but I have no running water in my office. However, I always have on hand here a small supply of water, which is contained in plastic bottles.”

“I do not understand, Mr. Alton. Plastic? Is that some sort of glass product?”

“No, sir, it is a substance that is often used as a substitute for glass; among other uses, it holds liquids,” I answered. “Let us, please, return to our discussion of Dr. Jekyll’s will and his mental state. Let us explore the matters of undue influence and duress, which you raised at several different times in the story.”

“First, we must define both undue influence and duress, which are closely related legal concepts. Our Restatement provides that a donative transfer such as a will ‘is invalid to the extent that it was procured by undue influence, duress, or fraud.’<sup>113</sup> The Restatement goes on to define both undue influence and duress. ‘Undue influence’ occurs where ‘the wrongdoer exerted such influence over the donor that it overcame the donor’s free will and caused the donor to make a donative transfer that the donor would not otherwise have made.’<sup>114</sup> ‘Duress’ occurs where ‘the wrongdoer

113. RESTATEMENT, *supra* note 88, at § 8.3(a).

114. *Id.* at § 8.3(b).

threatened to perform or did perform a wrongful act that coerced the donor into making a donative transfer that the donor would not otherwise have made.<sup>115</sup> The Restatement states that an act ‘is wrongful if it is criminal or one that the wrongdoer had no right to do.’<sup>116</sup> And, while ‘an act or threat to do an act that the wrongdoer had a right to do does not constitute duress, such a threat or act can constitute undue influence, for example, a threat to abandon an ill testator.’<sup>117</sup>

“Now,” I continued, “let’s first examine undue influence. Our leading Texas case on this point is *Long v. Long*.<sup>118</sup> In this case, our supreme court stated that

[i]t is not possible to frame a definition of undue influence which embraces all forms and phases of the term. Every case is different from every other case, and must depend largely on its own facts and circumstances. Generally speaking, undue influence is such influence or dominion as exercised at the time, under the facts and circumstances of the case, which destroys the free agency of the testator, and substitutes in the place thereof the will of another . . . Also, undue influence has been defined as ‘that which compels the testator to do that which is against his will from fear, the desire of peace, or some feeling which he is unable to resist.’<sup>119</sup>

Undue influence is not the same thing as general mental incapacity or unsoundness of mind:

Undue influence and mental incapacity are two distinct grounds for avoiding a will. Undue influence in its essential elements has no real relation to mental incapacity. Mental incapacity implies the lack of intelligent mental power, while undue influence implies within itself the existence of a mind of sufficient mental capacity to make a will, if not hindered by the dominant or overriding influence of another in such a way as to make the instrument speak the will of the person exercising undue influence, and not that of the testator.<sup>120</sup>

I ask you, Mr. Utterson, what sort of undue influence did you believe Mr. Hyde exerted to subvert the will of Dr. Jekyll, producing the doctor’s initial will—the one to which you so objected?”

“I was not certain, Mr. Alton,” returned the solicitor. “The will set me upon my quest to ‘set eyes on’ this Mr. Hyde so that I might see my ‘friend’s strange preference or bondage (call it what you please) and even for the startling clause of the will.’<sup>121</sup> In fact, Dr. Jekyll admitted to me that it was Mr. Hyde “‘who dictated the terms’” of the doctor’s will,<sup>122</sup> at least as to its acting as a deed of gift in the event of the doctor’s

115. *Id.* at § 8.3(c).

116. *Id.* at § 8.3 cmt. i.

117. *See id.*

118. *Long v. Long*, 133 Tex. 96, 125 S.W.2d 1034 (1939).

119. *Id.* at 1035 (citation omitted). The court said that “the influence is not undue unless the free agency of the testator has been destroyed, and a will produced that such testator did not desire to make.” *Id.* at 1035-36.

120. *Id.* at 1036.

121. *ESSENTIAL*, *supra* note 5, at 47.

122. *Id.* at 73.

unexplained absence for any period exceeding three calendar months.<sup>123</sup> Thus, I suspected undue influence but could not precisely state what the scope of that influence might have been.”

“Well, counselor,” I replied, “as another court has stated: ‘It cannot be said that every influence exerted by one person on the will of another is undue, for the influence is not undue unless the free agency of the testator was destroyed and a testament produced that expresses the will of the one exerting the influence.’<sup>124</sup> The burden of proving undue influence would be on the party contesting the will’s validity.<sup>125</sup> What the contestant must prove, in order to establish undue influence, has been stated as follows:

- (1) the existence and exertion of an influence; (2) the effective operation of such influence so as to subvert or overpower the mind of the testator at the time of the execution of the testament [i.e., that the influence was *undue*]; and (3) the execution of a testament which the maker thereof would not have executed but for such influence [i.e., actual causation].<sup>126</sup>

Thus, the burden of proving all three elements of undue influence would have lain with the contestant of Dr. Jekyll’s will, who would have had to establish all three elements. As you’ve said, Mr. Utterson, Dr. Jekyll admitted to you that Mr. Hyde dictated at least some of the terms of the will (the deed of gift in the event of the doctor’s prolonged absence).<sup>127</sup> Likely, this would be enough to establish the existence and exertion of an influence. But, not ‘every influence exerted by one person over the mind of another is *undue*.’<sup>128</sup> How would you be able to prove that Mr. Hyde’s influence over Dr. Jekyll was undue—that it subverted or overpowered Dr. Jekyll’s mind? That would be more difficult to show, as would the third element—that Dr. Jekyll executed a will that he would not have executed but for the undue influence. Once again, Mr. Utterson, I fail to see that the influence apparently exerted by Hyde was in fact undue. And, of course, given what you later discovered about Dr. Jekyll’s and Mr. Hyde’s unitary identity, it seems extremely unlikely that undue influence could have been established, for how could one exercise undue influence over one’s own self? Surely, the wrongdoer must be some person other than the testator himself or herself.”

“Well, Mr. Alton,” said Utterson, “let us now turn to the question of duress, for which, I believe, there is far more evidence than mere undue influence. Before I learned the shocking truth about Dr. Jekyll becoming Mr. Hyde, I believed that Mr. Hyde might have been blackmailing the doctor, lording some awful, dark secret over my friend. I thought that this secret provided the powerful hold that Mr. Hyde had over Dr. Jekyll and that this secret—or, rather, the threatened disclosure of this secret—formed the basis for the duress that produced the will in favor of Mr. Hyde.”

123. *Id.* at 44.

124. *Rothermel v. Duncan*, 369 S.W.2d 917 (Tex. 1963) at 922.

125. *Id.* (citation omitted); *See also*, RESTATEMENT, *supra* note 88, at § 8.3 cmt. b.

126. *Rothermel*, 369 S.W.2d at 922.

127. *ESSENTIAL*, *supra* note 5, at 73.

128. *Long*, 125 S.W.2d at 1035. (emphasis added).

“Mr. Utterson, might I please ask you to recount the times during the story at which you stated your belief in this power Mr. Hyde held over Dr. Jekyll?” I asked.

“Gladly sir, for I remember each of them very well,” replied Utterson. “The first instance occurred at the story’s outset. I was discussing Dr. Jekyll’s new friend Mr. Hyde with my cousin, Mr. Enfield.<sup>129</sup> In fact, it was my cousin Enfield who first broached the matter of blackmail, saying that the relationship was “[b]lack mail, I suppose; an honest man paying through the nose for some of the capers of his youth.”<sup>130</sup> When I began my search for Mr. Hyde, I mentioned to Dr. Lanyon that what I thought ““was madness”” I began to fear was, instead, ““disgrace.””<sup>131</sup> The more I considered the situation, the more concerned I was that Mr. Hyde was ‘a figure to whom power was given’ and that Jekyll ‘must rise and do its [i.e., Hyde’s] bidding.’<sup>132</sup>

“A short while later, I met the terrible Mr. Hyde, and immediately after that meeting I remarked rhetorically, “O my poor old Harry Jekyll, if ever I read Satan’s signature upon a face, it is on that of your new friend.””<sup>133</sup> After discussing Mr. Hyde with Dr. Jekyll’s servant, Poole, I thought,

Poor Harry Jekyll . . . my mind misgives me he is in deep waters! He was wild when he was young; a long while ago to be sure; but in the law of God, there is no statute of limitations. Ay, it must be that; the ghost of some old sin, the cancer of some concealed disgrace; punishment coming, *pede clando*.<sup>134</sup>

“Later, still, after dining with poor Harry Jekyll, I tarried to speak with my friend after the other dinner guests had left his rooms, and our discussion turned to that holographic will he made in favor of Hyde.<sup>135</sup> Dr. Jekyll remarked that I was ““so distressed”” by his will, and I admitted that, as he knew, ““I never approved of it.””<sup>136</sup> When I told my friend that I had been making inquiries about Mr. Hyde and did not like what I had heard, Dr. Jekyll said,

I am painfully situated, Utterson; my position is a very strange—a very strange one. It is one of those affairs that cannot be mended by talking . . . [B]ut indeed it isn’t what you fancy; it is not as bad as that . . . [However,] this is a private matter, and I beg of you to let it sleep.<sup>137</sup>

“I was now even more convinced,” continued Utterson, “that Mr. Hyde had learned one or more of Dr. Jekyll’s early secrets, that the reprobate was blackmailing my friend, and that the former had threatened to reveal the latter’s secrets unless the doctor made the holographic will leaving his entire estate to Mr. Hyde. Later, after I

129. See generally, ESSENTIAL, *supra* note 5, at 31-41.

130. *Id.* at 39.

131. *Id.* at 44.

132. *Id.* at 46.

133. *Id.* at 51.

134. ESSENTIAL, *supra* note 5, at 52-53.

135. See generally, *id.* at 55-58.

136. *Id.* at 56.

137. *Id.* at 57.

met my friend—and Dr. Jekyll's erstwhile friend—Dr. Lanyon and heard his 'remarkable incident,' Henry Jekyll wrote to me, saying "[i]f I am the chief of sinners, I am the chief of sufferers also."<sup>138</sup> I thought this 'pointed to madness,' but given Dr. Lanyon's story, I thought there might also be 'some deeper ground' for poor Harry's sad situation.<sup>139</sup> That is, I still believed that blackmail was at the root of Mr. Hyde's hold over Dr. Jekyll.<sup>140</sup> Thus, there were at least five separate instances at which I thought Hyde's blackmail lay behind his accursed hold on my friend and client."

When my visitor had finished his disquisition, I said, "Mr. Utterson, please allow me to apply the test for duress to the facts you have just now adduced. As you will recall, our Restatement provides that '[a] donative transfer is procured by duress if the wrongdoer threatened to perform or did perform a wrongful act that coerced the donor into making a donative transfer that the donor would not otherwise have made.'<sup>141</sup> The Restatement goes on to say that an act 'is wrongful if it is criminal or one that the wrongdoer had no right to do.'<sup>142</sup> Based on what you knew at the time—that is, before you learned the truth about Dr. Jekyll and Mr. Hyde—let us assume, for the sake of argument, that your reasonable inference was correct. That is, let us assume that Mr. Hyde was blackmailing poor Henry Jekyll and that Dr. Jekyll's will in favor of Mr. Hyde was the product of this blackmail, this threat to reveal secrets that Edward Hyde possessed. Certainly, this would be a 'threat[] to perform . . . a wrongful act [i.e., blackmail] that coerced the donor [i.e., Dr. Jekyll] into making a donative transfer that the donor would not otherwise have made [i.e., the will in favor of Mr. Hyde].'<sup>143</sup> Blackmail would meet the Restatement's definition of a wrongful act because 'it is criminal or one that the wrongdoer [i.e., Mr. Hyde] had no right to do.'<sup>144</sup> Thus, I would likely conclude, as you did, sir, that the holographic will leaving Dr. Jekyll's entire estate to Mr. Hyde was indeed a product of duress. Of course, as you later discovered to your utter astonishment (if you will pardon the unfortunate pun), Dr. Jekyll and Mr. Hyde were one and the same person; therefore, no duress was present at all, despite the way the situation had earlier appeared to you."

#### THE SLAYER RULE CONSIDERED

"It is getting rather late, Mr. Alton," said Utterson.

"Mr. Utterson, might I beg your kind indulgence to remain with me for a while longer so that we may continue our discussion?" I pleaded. "I very much appreciate

138. *Id.* at 81.

139. *ESSENTIAL*, *supra* note 5, at 81.

140. In the previous chapter (chapter five—"Incident of the Letter"), Utterson's law clerk, Guest, noticed "a rather singular resemblance" between the handwriting of Jekyll and Hyde. *Id.* at 76. Utterson later remarked to himself, "What! . . . Henry Jekyll forge for a murderer!" *Id.* This remark serves as additional evidence that Utterson believed Hyde had some strange hold on Jekyll—most likely, blackmail—which continued to cause Jekyll to do Hyde's bidding, including making the will in favor of Hyde. The reference to Hyde as a murderer follows Hyde's murder of one of Utterson's clients, Sir Danvers Carew, in chapter four ("The Carew Murder Case"). *See generally id.* at 61-68.

141. *RESTATEMENT*, *supra* note 88, at § 8.3(c).

142. *Id.* at § 8.3 cmt. i.

143. *Id.* at § 8.3(c).

144. *Id.* at § 8.3 cmt. i.

your patience and your kindness in examining these matters with me, and I am not certain when—if ever—such an opportunity may again arise.”

“Very well, sir, I remain at your service,” Utterson replied.

“Thank you, counselor. Might we next examine the issue of the so-called ‘slayer rule?’ That rule provides that a person who otherwise would inherit or take under a will is barred if that person intentionally brought about the death of the intestate decedent or the testator, as the case may be.<sup>145</sup> Our Restatement puts the rule this way: ‘[a] slayer is denied any right to benefit from the wrong . . . [A] slayer is a person who, without legal excuse or justification, is responsible for the felonious and intentional killing of another.’<sup>146</sup> According to the Restatement,

[t]he rationale for the slayer rule is the prevention of unjust enrichment, in accord with the maxim that a wrongdoer cannot profit from his or her wrong. Any enrichment accruing to a slayer from the wrong is unjust and is not allowed. The slayer’s motive in committing the wrong is irrelevant. Application of the slayer rule does not depend on a showing that the motive for the slaying was to obtain a financial benefit.<sup>147</sup>

“Now, Mr. Utterson, please permit me to review with you the times at which you—or others in your tale—expressed your concern that Mr. Hyde might murder, or indeed had murdered, Dr. Jekyll. As we know, Mr. Hyde did in fact commit murder (or, at least, manslaughter), for he killed your client, Sir Danvers Carew.<sup>148</sup> When you first encountered Mr. Hyde, you wondered whether he might have been thinking of the will when he told you that he was glad you two had met.<sup>149</sup> Shortly after this encounter, and after speaking with Poole, you thought to yourself that “if this Hyde suspects the existence of the will, he may grow impatient to inherit.”<sup>150</sup> After the dinner party at Dr. Jekyll’s home, when you remained behind and discussed the will with him, as well as the fact that you had met Mr. Hyde, the doctor asked you to promise him that you would help Mr. Hyde to “get his rights” in the event that Dr. Jekyll were “taken away.”<sup>151</sup> As I read this exchange, you took this as an indication that your friend, at this time, might have feared for his life at the hands of Hyde, even though you did not express that feeling at this point. Am I correct in this regard?”

Utterson nodded his head, and I continued. “Later, when you were about to search Mr. Hyde’s rooms in the immediate aftermath of the Carew murder, you thought to yourself that he was ‘a man who was heir to [a] quarter of a million sterling.’<sup>152</sup> Of course, as Dr. Jekyll had not yet died and his will, therefore, was not yet operative, Mr. Hyde was not yet his devisee—he simply was his presumptive devisee. And, in fact, you yourself ultimately proved to be your friend’s devisee.<sup>153</sup> But, your

145. MCGOVERN, *supra* note 102, at 80. *See generally id.* at 80-88.

146. RESTATEMENT, *supra* note 88, at § 8.4(a).

147. *Id.* at § 8.4 cmt. b.

148. *See generally* ESSENTIAL, *supra* note 5, at 61-68.

149. *Id.* at 50.

150. *Id.* at 53.

151. *Id.* at 57.

152. *Id.* at 66.

153. ESSENTIAL, *supra* note 5, at 102.

reference on that occasion to Mr. Hyde's status as the beneficiary of Dr. Jekyll's will must have indicated, once again, your fear that Mr. Hyde might take matters into his own hands in order to hasten his succession. After the Carew murder, you went to see your friend and, among other matters, discussed the terms of the will; you got the doctor to admit that Mr. Hyde had "dictated" at least some of its terms.<sup>154</sup> You immediately said to your friend, "I knew it . . . He meant to murder you. You have had a fine escape."<sup>155</sup> After Dr. Lanyon's funeral, you received an envelope from him, which you did not read at that time—per his handwritten instructions—and which specifically stated that the envelope was "not to be opened until the death or disappearance of Dr. Henry Jekyll."<sup>156</sup> You thought to yourself, 'here again were the idea of a disappearance and the name of Henry Jekyll bracketed' and you thought again of your friend's holographic will, which you 'had long ago restored to its author.'<sup>157</sup>

"On the last night of your friend's life," I said, "before you discovered his horrible secret, you and Poole stood outside the doctor's cabinet door, trying to determine who might be inside, what had happened inside, and what to do about it."<sup>158</sup> Poole said to you that "master's made away with,"<sup>159</sup> and "it is the belief of my heart that there was murder done."<sup>160</sup> Just before you and Poole decided to break down Dr. Jekyll's cabinet door, you told Poole that you now agreed with him: "I believe poor Harry is killed; and I believe his murderer [by which you meant Mr. Hyde] (for what purpose, God alone can tell) is still lurking in his victim's room."<sup>161</sup> Finally, after Dr. Jekyll's door was forced open and you discovered Mr. Hyde, dead, in the room, you told Poole that "Hyde is gone to his account; and it only remains for us to find the body of your master."<sup>162</sup> You found no 'trace of Henry Jekyll, dead or alive,' and Poole thought he must be buried in the cellar, although you thought it possible that he might have "fled" the house.<sup>163</sup>

"Thus," I summarized, "up to this point in the story, before you read Dr. Lanyon's narrative and Dr. Jekyll's own 'full statement,' you believed that Mr. Hyde had killed Dr. Jekyll—a belief or fear you had expressed at least six times. Assuming, as it certainly appeared to you and to Poole at your story's climax, that this act was done feloniously and intentionally, and without legal excuse or justification, then Mr. Hyde most likely would have been denied the right to benefit from his wrongdoing—he would not take under the holographic will Dr. Jekyll had made in his favor.<sup>164</sup> Mr. Hyde would not have been able to profit from his own wrongdoing.<sup>165</sup> Does this not

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154. *Id.* at 73.

155. *Id.* at 74.

156. *Id.* at 82.

157. *Id.*

158. *See generally* ESSENTIAL, *supra* note 5, at 91-94.

159. *Id.* at 92.

160. *Id.* at 94.

161. *Id.* at 96-97.

162. *Id.* at 100.

163. ESSENTIAL, *supra* note 5, at 100.

164. RESTATEMENT, *supra* note 88, at § 8.4(a).

165. *Id.* at § 8.4 cmt. b.

describe your assessment of the entire situation—both Dr. Jekyll’s fate and Mr. Hyde’s right to take under his will—in light of what you knew or believed at the time, Mr. Utterson?”

“Yes, indeed, Mr. Alton,” rejoined the solicitor, “that is a fair statement of my assessment of the situation as it stood at that time. Of course, as I subsequently learned and as all those who have read my tale now know, Mr. Hyde did not kill Dr. Jekyll; the two men were one and the same, and Dr. Jekyll—or should I say, rather, Mr. Hyde—killed himself. As it turned out, there never was any question of Mr. Hyde’s taking under Dr. Jekyll’s will, for if the one were deceased, so would be the other.”

OUR DIALOGUE CONCLUDES WITH SOME ADDITIONAL, MISCELLANEOUS  
OBSERVATIONS

“Mr. Utterson,” I remarked, “I would like to make a couple of comments about what you refer to as the ‘deed of gift’ in Dr. Jekyll’s will to Mr. Hyde.<sup>166</sup> We have already spoken about this provision of the will, which states if the doctor were to disappear or be absent without explanation for more three calendar months, Mr. Hyde would ‘step into . . . Henry Jekyll’s shoes without further delay.’<sup>167</sup> Dr. Jekyll’s final will—the one that made you the beneficiary of his estate—contained the same ‘deed of gift’ provision.<sup>168</sup> Interestingly, an early reviewer of your story pointed out that this provision would become operative only when the will did, upon Dr. Jekyll’s death.<sup>169</sup> Therefore, the reviewer stated, the doctor’s disappearance for a mere three months would neither make the will operative nor permit Dr. Jekyll’s executor to carry out the deed of gift.<sup>170</sup> However, it is possible to read this provision as Dr. Jekyll’s intention to make Mr. Hyde his attorney-in-fact in the event of the former’s disappearance or extended absence. That is, Jekyll’s will might have been intended to serve an alternative, life-time purpose as a general power of attorney in favor of his agent, Mr. Hyde. If I am correct in my interpretation of this provision of the will, then that document would have been valid both as a *will* (operative at the doctor’s death) and as a life-time *power of attorney*.”

“You may be correct in your analysis of the legal effect of the will and the power of attorney, Mr. Alton,” said Utterson, “but might I respectfully note, sir, that this makes no difference in that most negative light in which I viewed the document?”

“This brings me to two other matters that I would like to discuss with you, Mr. Utterson. The first is your standing, or legal right, to challenge the validity of Dr. Jekyll’s will. Certainly, you objected to the will that made Mr. Hyde the beneficiary, but the situation never presented itself where that will would have to be admitted to probate because, as we have seen, Dr. Jekyll made a subsequent holographic will

166. ESSENTIAL, *supra* note 5, at 44.

167. *Id.*

168. *Id.* at 102.

169. *See id.* at 44 n.4. *See also id.* at 259-60 (Appendix E, quoting an unsigned review of the novella by E.T. COOK, dated January 16, 1886, appearing in *Athenaeum*).

170. *Id.*



naming you as the beneficiary.<sup>171</sup> However, had Dr. Jekyll died with his first will still in force, I do not believe that you would have had standing to challenge the will's validity. In order to have standing to contest a will's admission to probate, a person must have a financial interest in the contest.<sup>172</sup> While our Texas Estates Code permits an 'interested person' to contest a will,<sup>173</sup> the code defines an 'interested person' as 'an heir, devisee, spouse, creditor, or any other having a property right in or claim against an estate being administered.'<sup>174</sup> Might I tactfully suggest, Mr. Utterson, that you did not fit within any of these categories and, therefore, would not have been able to make a legal challenge to the will that you found so objectionable? Indeed, as there is no indication that Dr. Jekyll had any heirs or creditors, it is unclear who might have had standing to contest this will. Perhaps the Crown might have had standing, to the extent that the will's invalidity would have resulted in the escheat of the doctor's estate."<sup>175</sup>

"I understand your point about standing, Mr. Alton, and I cannot say that I disagree with your conclusions, sir," the solicitor replied.

"Of course, Mr. Utterson, when you found Dr. Jekyll's final will among his papers—the will that bore your name as the beneficiary of his estate, the Utterson will—all of what we have said about the validity of the earlier will in favor of Mr. Hyde became moot. The Utterson will was his final testament, although, in a way, his 'full statement of the case' was his final testament to you, for it explained the mysterious relationship between the doctor and Mr. Hyde.<sup>176</sup> Dr. Jekyll concluded his 'full statement' by saying that 'this is the true hour of my death, and what is to follow concerns another than myself.'<sup>177</sup>

"Interestingly, someone with standing—whoever that might be—might raise some of the very same legal challenges to the validity of the doctor's final will (the Utterson will, the one in your favor) that we have discussed above. Although I have concluded that Dr. Jekyll was likely not of unsound mind or laboring under an insane delusion when he made his first will in favor of Mr. Hyde, if that will had indeed been invalid for either of those reasons, so might the Utterson will have been invalid for these very same reasons. Certainly, you were not intending to slay your good friend Henry Jekyll, nor were you attempting to blackmail him; thus, what we said above about the earlier Hyde will regarding Mr. Hyde's possible murder or blackmail of Dr. Jekyll would be irrelevant in the matter of the validity of your will."<sup>178</sup>

"I should say so, sir!" exclaimed Utterson.

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171. ESSENTIAL, *supra* note 5, at 102.

172. MCGOVERN, *supra* note 102, at 640.

173. ESTATE CODE, *supra* note 89, at § 55.001.

174. *Id.* at § 22.018(1).

175. See MCGOVERN, *supra* note 102, at 641.

176. See generally ESSENTIAL, *supra* note 5, at 115-36. Dr. Lanyon's "narrative" in chapter nine solved the mystery. *Id.* at 105-12.

177. *Id.* at 136. Jekyll writes his final explanation of the matter "under the influence of the last of the old powders." *Id.* He has run out of his supply of the transformative antidote, and he knows he will change into Hyde forever, which will mean his death one way or another. *Id.*

178. But see *supra*, text accompanying notes 34-36.

“However, there is one more, quite delicate point that I would like to raise with you regarding the validity of Dr. Jekyll’s final will, the Utterson will that he made in your favor. You, the beneficiary, were both his friend and his attorney.”

“But, Mr. Alton, I did not draft either of Dr. Jekyll’s holographic wills,” interjected Utterson, who obviously anticipated my point. “I did not participate in the creation of either will. Henry Jekyll did not seek my advice as to either will. Indeed, the existence of his final will—the one substituting my name for that of Edward Hyde as the beneficiary—was entirely unknown to me and came as a complete surprise.”<sup>179</sup>

“I am most aware of that, counselor,” I rejoined. “One authority has said that, in the context of undue influence, ‘[p]articularly troubling are wills that benefit the drafting lawyer.’<sup>180</sup> Texas has a statute on point. Our Estates Code, at section 254.003(a), invalidates a devise in a will if the devise is made to ‘an attorney who prepares or supervises the preparation of the will.’<sup>181</sup> Had you drafted Dr. Jekyll’s final will, the devise of his entire estate to you would have been void, and thus he would have died intestate as to the bulk of his estate—the quarter-million pounds sterling to which you alluded to earlier in the story.<sup>182</sup> But, as you say, you did not draft the Utterson will. Therefore, the strong presumption of invalidity (or even automatic invalidity) that would attach to the devise in your favor if you had in fact drafted the Utterson will is inapplicable here. However, in the unlikely event that there were a party with standing to challenge the Utterson will, it is at least conceivable that this party would attack the validity of the devise to you on the grounds of undue influence. That party’s argument would not be based on your having drafted the will; instead, it would be based on the confidential relationship that you had with Dr. Jekyll, your client in legal matters. He—or she—would claim that because you had such a long-standing, confidential relationship with Dr. Jekyll, a presumption might arise that this relationship unduly influenced the doctor to devise the bulk of his estate to you. I am sorry if I offend you; such is not my intention. But, I believe I owe you a duty of candor in our discussion.”

“You do not offend me, sir,” replied Utterson.

“Well, I suppose that I have come to the end of my thoughts about the legal issues surrounding Dr. Henry Jekyll’s two wills, Mr. Utterson. We have spoken of many things—not shoes or ships or sealing wax or cabbages or kings. Rather, we have treated the many testamentary capacity issues in your tale: soundness of mind, insane delusion, undue influence, and duress. We also dealt with the so-called Slayer Rule, the standing to contest the probate of a will, and—just now—attorneys as will beneficiaries.

“We now know that Dr. Jekyll and Mr. Hyde were one and the same person,” I continued. “We also know that the doctor’s final will—the Utterson will—disposed

179. See *ESSENTIAL*, *supra* note 5, at 102, where it is said that Utterson read his name in the final will “with indescribable amazement,” and he exclaims to Poole, “[m]y head goes round.” *Id.*

180. *MCGOVERN*, *supra* note 102, at 334.

181. *ESTATE CODE*, *supra* note 89, at § 254.003(a)(1). There are certain exceptions to this rule (*id.* at § 254.003(b)), including a blood or marital relationship between the attorney and the testator, but none of these exceptions would have applied in the story, as Utterson was not related to Jekyll.

182. *ESSENTIAL*, *supra* note 5, at 66.

of almost his entire estate to you, sir. Therefore, virtually every testamentary capacity issue that we discussed tonight—although unbeknownst to you at the time your inquiries began—proved to be moot. Nevertheless, our analysis has been a valuable exercise because the legal issues raised in your experiences are ones with which lawyers and law students have struggled for centuries and with which they continue to struggle to the present day. In my view, Jekyll likely was not of unsound mind or under an insane delusion when he made his initial will in favor of Hyde. Nor did Hyde hold your late friend under duress or undue influence. The slayer rule would not have applied here because the testator and his would-be slayer were the very same person. The only legal rules we spoke of tonight that might may not be moot involve the matters of standing to contest probate of a will and bequests to attorneys, the latter of which the Utterson will raises and which I humbly apologize for mentioning again. I must say, Mr. Utterson, you have been most generous with your time tonight, sir.”

“And you with yours, Mr. Alton,” my visitor replied. “It has been my pleasure to meet you, sir, even though our conversation has occasionally been uncomfortable to me. And, now, please permit me to bid you a good night—or, perhaps, a good morning, for I see that your candle has burned very low indeed.”

One glance at the candle on my desk demonstrated the accuracy of Utterson’s statement. More surprisingly, I didn’t remember ever having a candle on my desk!

The learned counselor rose to depart, but lingered long enough to say, “If you ever find yourself in Victorian England, Mr. Alton, please do call upon me. I should very much like to raise a glass of port with you while discussing that centuries-old bane of our profession, the Rule Against Perpetuities.”

With that, my nocturnal visitor from a distant century simply disappeared. Had it all been a dream?