**26.01 STATEMENT OF THE CASE AND DEFINITION OF A WILL**

This case is a dispute over the validity of a will.

A will is a signed statement by a person at least 18 years of age and of sound mind as to what [he] [she] wants done with [his] [her] property at [his] [her] death.

The right to dispose of property by will is a fundamental right assured by law and does not depend upon the right being wisely used. A person is under no obligation to make a will that meets with the approval of a judge or jury. A will cannot be set aside simply because it may appear to you to be unreasonable or unjust.

Use Note

This instruction should be the first instruction given to the jury and should be used in all will contest cases.

# Comment

There are three basic requirements to make a valid will. First, the testator must comply with the statutory requirements. Alaska Stat. 13.11.150 (age and sound mind); Alaska Stat. 13.11.155 (execution). Second, the testator must have testamentary capacity. See Paskvan v. Mesich, 455 P.2d 229, 234-35 (Alaska 1969); In re Kraft's Estate, 374 P.2d 413, 415-16 (Alaska 1962); In re Holland's Estate, 10 Alaska § 557, 563-64 (1945). Third, the testator must not have been acting under undue influence, duress or fraud. See Matter of Estate of McCoy, 844 P.2d 1131, 1135-36 (Alaska 1993); Paskvan v. Mesich, 455 P.2d 229, 239 (Alaska 1969). However, as noted in Page on Wills, "The fact that the disposition of the testator's property made by the will is capricious, unjust, spiteful, eccentric, revengeful or unjudicious does not of itself render the will invalid." 1 Bowe-Parker, Page on Wills § 3.11 at 89-90 (Rev. ed. 1960). A testator "need not make his will so as to obtain the approval of his contemporaries or any other." Id. at § 3.11 (1985 Supp.).

See also Alaska Stat. 13.11.158 regarding oral wills by mariners at sea and soldiers in military service.