

Fall 2019

## Dr. Jekyll & Mr. Holmes: A Tale of Two Testaments

Stephen R. Alton

*Texas A&M University School of Law*

Follow this and additional works at: <https://scholarcommons.sc.edu/sclr>



Part of the [Entertainment, Arts, and Sports Law Commons](#), [Estates and Trusts Commons](#), and the [Property Law and Real Estate Commons](#)

---

### Recommended Citation

Stephen R. Alton, Dr. Jekyll & Mr. Holmes: A Tale of Two Testaments, 71 S. C. L. REV. 45 (2019).

This Article is brought to you by the Law Reviews and Journals at Scholar Commons. It has been accepted for inclusion in South Carolina Law Review by an authorized editor of Scholar Commons. For more information, please contact [digres@mailbox.sc.edu](mailto:digres@mailbox.sc.edu).

**DR. JEKYLL & MR. HOLMES:  
A TALE OF TWO TESTAMENTS**

Stephen R. Alton\*

*Author's Note: This Article takes the form of an epistolary exchange across the centuries, comparing and contrasting two noted wills in Victorian literature. To preserve verisimilitude, the author lets these letters and emails speak for themselves, without any formal introduction, just as would have occurred in Victorian epistolary fiction. It is the author's hope that the relevant testaments and the legal issues they present will make themselves clear as these exchanges proceed. Any reader desiring a more formal introduction to this Article is directed to the first email (below) written by the author to Mr. Utterson and Mr. Holmes; this email has the subject line "Your Correspondence of 1905—An Introduction." This introductory email occurs in the text immediately preceding, accompanying, and following notes 62–68, *infra*.*

---

\* Professor of Law, Texas A&M University School of Law; A.B., Harvard University; J.D., University of Texas; Ed.M., Harvard University; LL.M., Columbia University.

Fulworth, Sussex

21 September 1905<sup>1</sup>

My Dear Utterson,

I have been remiss these past number of years, for I have not been a good correspondent nor even a middling one. As you are aware, my consulting practice in London kept me fully occupied for two decades, and the demands of that practice have made me, I fear, a poor correspondent.

Be that as it may, you may have heard that I have lately retired to the Sussex Downs, where I occupy much of my time keeping bees, making systematic observations of the local fauna and flora, and luxuriating in my rusticity.<sup>2</sup> These rather less taxing and more pleasant occupations now permit me the luxury of reestablishing connections with friends and acquaintances of years past.

One such friend is you, my dear Utterson. I have never forgotten the expeditious and efficient way that you handled my affairs, lo those many years ago, when I embarked on what I felt certain would be a fatal appointment on the continent with the late Professor Moriarity.<sup>3</sup> You were able to draw up my will on what was quite short

---

1. See ARTHUR CONAN DOYLE, *The Adventure of the Second Stain*, in THE COMPLETE SHERLOCK HOLMES 650 (Doubleday & Co., n.d. 1930) [hereinafter COMPLETE]; ARTHUR CONAN DOYLE, *The Adventure of the Lion's Mane*, in COMPLETE, *supra*, at 1083. In *The Adventure of the Second Stain*, Watson states that Holmes "has definitely retired from London and betaken himself to study and bee-farming on the Sussex Downs," noting that "notoriety has become hateful to him." DOYLE, *The Adventure of the Second Stain*, in COMPLETE, *supra*, at 650. In *The Adventure of the Lion's Mane*, Holmes (who atypically narrates the story himself) refers to "my withdrawal to my little Sussex home, when I had given myself up entirely to the soothing life of Nature for which I had so often yearned during the long years spent amid the gloom of London." DOYLE, *The Adventure of the Lion's Mane*, in COMPLETE, *supra*, at 1083. He goes on to say that his "villa is situated upon the southern slope of the downs, commanding a great view of the channel," and he indicates that his home is located near the village of Fulworth. *Id.* But, in the preface to the short-story collection *His Last Bow*, Watson says that Holmes "has, for many years, lived in a small farm upon the downs five miles from Eastbourne." ARTHUR CONAN DOYLE, *His Last Bow*, in COMPLETE, *supra*, at 869, 869.

2. DOYLE, *The Adventure of the Second Stain*, in COMPLETE, *supra* note 1, at 650; DOYLE, *The Adventure of the Lion's Mane*, in COMPLETE, *supra* note 1, at 1083. Holmes's retirement to the Sussex Downs most likely took place either at the end of 1903 or sometime in 1904. See generally 2 ARTHUR CONAN DOYLE, THE ANNOTATED SHERLOCK HOLMES 769–75 (William S. Baring-Gould ed., 1967).

3. See ARTHUR CONAN DOYLE, *The Final Problem*, in COMPLETE, *supra* note 1, at 469, 480. In *The Final Problem*, in what presumably was Holmes's final note to Watson, the detective said, "I made every disposition of my property before leaving England and handed it to my brother Mycroft." Some solicitor most likely drafted Holmes's final will: why not Gabriel John Utterson, of *Dr. Jekyll and Mr. Hyde* fame? See also Stephen R. Alton, *The Game is Afoot!: The*

notice of merely two or three days, if memory serves. Once again, I find myself in need of your services, sir, although this time there is no comparable need for haste, I pray.

As you may know, my older brother, Mycroft Holmes, has recently passed from this life. It was, of course, through Mycroft's and your mutual membership in the Diogenes Club that I first made your acquaintance.<sup>4</sup> Mycroft's death leaves me without a beneficiary of my estate, for, as you might perchance remember, the will which you prepared for me left my entire estate to my brother. With Mycroft gone, I am entirely without kith or kin in this world. And, the sands in my hourglass seem to drain faster with each passing year. Indeed, as this year turns to its autumn, I am reminded that I am now in the autumn of my own years, and winter approaches.

Therefore, I wish to inquire whether you would do me the great service of drafting a new will for me. I am loath to trouble you, as I hear that you have abated your practice as a solicitor in the twenty years since the unfortunate affair of your friend and client, Dr. Henry Jekyll.<sup>5</sup> I suppose I could engage the services of some local solicitor, but the years have not diminished the great confidence I have reposed in you, sir.

Please reply at your earliest convenience regarding whether you are willing to undertake this matter on my behalf. I assure you that I would be most grateful for your assistance.

I am, my dear sir,

---

*Significance of Donative Transfers in the Sherlock Holmes Canon*, 46 REAL PROP., TR. & EST. L.J. 125, 142 (2011) (noting that Holmes made his own will before visiting the continent in fear that he would meet his death at the hands of Professor Moriarty).

4. See ARTHUR CONAN DOYLE, *The Greek Interpreter*, in COMPLETE, *supra* note 1, at 435, 435–37. At the beginning of *The Greek Interpreter*, Watson discusses both Holmes's older brother, Mycroft, who is seven years Sherlock's senior, as well as Mycroft's club, the Diogenes Club. Holmes says that the club "contains the most unsociable and unclubable [sic] men in town." *Id.* at 436. Admittedly, it is a quite a leap to infer that Utterson, who appeared so sociable and "clubbable" in *Dr. Jekyll and Mr. Hyde*, would be a member of a club such as the Diogenes, but that connection might serve to explain how Utterson and Holmes knew each other.

5. See generally ROBERT LOUIS STEVENSON, *THE STRANGE CASE OF DR. JEKYLL AND MR. HYDE* (London, Longman, 1886) (original text of the novel); ROBERT LOUIS STEVENSON, *THE ESSENTIAL DR. JEKYLL AND MR. HYDE: THE DEFINITIVE, ANNOTATED EDITION OF ROBERT LOUIS STEVENSON'S CLASSIC NOVEL* (Leonard Wolf ed. & ann., Plume 1995) (1886) [hereinafter ESSENTIAL] (comprising the complete text of Stevenson's novel). My citations to this novel throughout this present essay are to the text of the story reproduced in Wolf's annotated version. I have written elsewhere about the general issues of testamentary capacity raised in *The Strange Case of Dr. Jekyll and Mr. Hyde*. See generally Stephen R. Alton, *The Strange Case of Dr. Jekyll's Will: A Tale of Testamentary Capacity*, 52 TULSA L. REV. 263 (2017).

Your most humble and obedient servant,  
Sherlock Holmes

Gaunt Street, London<sup>6</sup>

1 October 1905

My Dear Holmes,

It is supremely gratifying that you have written to me regarding your will. You are correct, sir, when you state that I have reduced my practice after having been made the primary beneficiary of the estate of my unfortunate friend, Dr. Jekyll.<sup>7</sup> His legacy has permitted me to choose when, where, and how I employ my services;<sup>8</sup> given the toll which the years (to say nothing of poor Jekyll's strange travails) have taken on my health and my spirit, this is a most fortunate luxury indeed. However, I do still undertake certain legal matters which I find to be of interest. I assure you that no professional undertaking would be more congenial to me than to draft your new will. It would be my honor to do so, both because of my great regard for you and because of the great affection which I bore for your late brother, Mycroft Holmes.

As you know, your brother and I never spoke at the Diogenes Club, as it was against the rules, and three infractions would result in a member's expulsion.<sup>9</sup> However, your brother and I occasionally

6. See *ESSENTIAL*, *supra* note 5, at 49, where Utterson introduces himself to Mr. Hyde, on their first meeting, as "Mr. Utterson of Gaunt Street."

7. See *id.* at 102, where Utterson finds what proves to be Jekyll's last will, which names Utterson (Jekyll's friend and solicitor) as the primary beneficiary of Jekyll's estate. Professor Carol Margaret Davison concluded (interestingly but somewhat implausibly) that Utterson murdered Jekyll, or at least drove the doctor to suicide, in order to become the primary legatee of Jekyll's estate. 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).

8. See *ESSENTIAL*, *supra* note 5, at 66, where Utterson places a value of a "quarter of a million [pounds] sterling" on the size of Hyde's legacy under Jekyll's initial will in Hyde's favor.

9. See *DOYLE*, *supra* note 4, at 436. While describing the Diogenes Club to Watson, Holmes states:

No member is permitted to take the least notice of any other one. Save in the Stranger's Room, no talking is, under any circumstances, allowed, and three offenses, if brought to the notice of the committee, render the talker liable to expulsion. My brother was one of the founders, and I have myself found it a very soothing atmosphere.

*Id.*

supped together beyond the pleasant confines of the club, and I very much enjoyed his company. I was in awe of his great intellect and his keen insight, as I am of your own vast skills. (If only I had consulted you or your brother about the strange case of my late friend Jekyll, it is conceivable that his sad tale might have ended differently.) While I had not seen your brother these past several years, I was dismayed to learn of his death. I pray that his passing may not leave too great a void in your life, although I fear that, doubtless, it must do so.

Therefore, should you choose to avail yourself of my services in this matter, please so advise, and be so kind as to include your instructions for the disposition of your estate. I will await your reply.

With the utmost esteem and highest regard,

I am, sir, at your service, and I remain,

Very truly yours,

Gabriel John Utterson

Fulworth, Sussex

9 October 1905

My Dear Utterson,

I am in receipt of yours of 1 October, and I assure you that your reply was most gratifying to me and that I do indeed wish to avail myself of your services in this matter. Below herein, I have delineated my desired bequests, to wit:

First, my gold snuffbox with an amethyst at centre, which I received from the King of Bohemia, and my diamond ring, which I received from the Dutch royal family, both of these items I wish to leave to my dearest friend, Dr. John H. Watson, M.D.<sup>10</sup>

Second, I wish to leave all my English Railway bonds to my most patient former landlady, Mrs. Hudson, who is now retired and living in Land's End with her niece. The income from these bonds should ameliorate the financial circumstances of my aged friend's remaining years.

Third, all the rest and residue of my property, of whatever kind or character, be it real, personal, or mixed, I wish to leave to the City

10. See ARTHUR CONAN DOYLE, *A Case of Identity*, in COMPLETE, *supra* note 1, at 190, 191. Holmes told Watson that he received both of these items from the indicated royalty.

and Suburban Bank, in trust, to establish a home with appropriate tutelage for the benefit of promising orphan boys born in the City of London and its immediate environs.<sup>11</sup>

Please permit me to explain this third bequest, that of my residuary estate for the benefit of London's promising orphan boys. As you may know, in prior years, I from time to time employed the services of a varying group of street urchins, orphans all, which I somewhat whimsically dubbed the "Baker Street Irregulars."<sup>12</sup> Unfailingly, these ragamuffins were useful to me, although I often despaired of their homeless, unwashed, and untutored state. I firmly believe that if these boys could be properly housed, fed, clothed, and instructed, they would be able to rise above their unfortunate circumstances and become useful members of society. Hence, this bequest which, no doubt, you will cast in appropriate language and form, my dear Utterson.

My recollection, sir—if I may take the liberty of bringing up a matter rather in the distant past—is that you yourself have been a benefactor of London's poor since receiving your considerable legacy from the most unfortunate Dr. Jekyll.<sup>13</sup> If I may be so bold, what I once said of another man would apply most forcefully to your late friend and client: "When one tries to rise above Nature, one is liable to fall below it."<sup>14</sup> Although you and certain others had no dearth of scruples over Jekyll's bequest to you, his attorney—a legacy which raised the unfortunate issue of undue influence—you have most nobly used Jekyll's fortune primarily to enrich the lives of others rather than to enrich your own.

However, I shall cease and desist from any further discussion here of such ancient history, which no doubt may be painful to you. Please believe me, sir, that

I remain your most devoted and grateful friend and servant,

Holmes

11. See ARTHUR CONAN DOYLE, *The Red-Headed League*, in COMPLETE, *supra* note 1, at 176, 185. A branch of the Suburban Bank was at the center of the drama in this story. *Id.*

12. See ARTHUR CONAN DOYLE, *The Baker Street Irregulars*, in COMPLETE, *supra* note 1, at 122, 126.

13. See ESSENTIAL, *supra* note 5, regarding the size of Jekyll's legacy to Hyde. Presumably, Jekyll's identical, ultimate legacy to Utterson would have been of the same value.

14. DOYLE, *The Adventure of the Creeping Man*, in COMPLETE, *supra* note 1, at 1070, 1082.

Gaunt Street, London

21 October 1905

My Dear Holmes,

I have received yours of 9 October, and I acknowledge your final wishes as to the disposition of your estate. I shall cast these in the proper form as soon as I am able to dispose of a small but pressing matter for another client.

I also freely acknowledge your reference to poor Jekyll's bequest to me. Far from feeling pain or embarrassment, for, as you may know, I absolutely knew nothing of this disposition and was greatly surprised by it, I am most pleased to have been, as you have said, by such means able to help many worthy persons.<sup>15</sup>

From your own ancient history, I seem to recall a case in which an unfortunate young solicitor was cleared of the charge of murdering a builder from Norwood.<sup>16</sup> The motive for the putative murder was a will which left the builder's estate to the young solicitor—a will which was drafted at the builder's insistence by the solicitor himself.<sup>17</sup> Am I amiss in this recollection?

I would be most pleased to hear your recollections of this fascinating adventure, Holmes, particularly those relating to the legal aspects of the case, should you care to share them with me, as I do not have Watson's report at hand.

In the interim, sir, I am

Your humble and obedient servant and your devoted friend,

Utterson

---

---

Fulworth, Sussex

31 October 1905

My Dear Utterson,

---

15. See ESSENTIAL, *supra* note 5, at 102, where, upon discovering Jekyll's final will in favor of himself, rather than Hyde, Utterson read his own name "with indescribable amazement."

16. ARTHUR CONAN DOYLE, *The Adventure of the Norwood Builder*, in COMPLETE, *supra* note 1, at 496, 509–10.

17. *Id.* at 501.



I am in receipt of yours of 21 October, and I am most gratified to know that you will cast my wishes in their final form. I await any further inquiries in this regard. Alternatively, I await your final draft of the instrument, which I shall be able to execute locally with the aid of your detailed instructions and the with the aid of some local acquaintances who shall serve as my subscribing witnesses.

I appreciate your interest in the case which Watson entitled, “The Adventure of the Norwood Builder.”<sup>18</sup> Your memory does not fail you, for the broad outline of the adventure is as you have stated. To be brief, but without omitting essential details, the case presented a most challenging and unusual situation. I had recently returned from my wanderings on the Continent, following my final appointment with the late Professor Moriarity.<sup>19</sup> One day, I commented to Watson that from my point of view, “London has become a singularly uninteresting city since the death of the late lamented Professor Moriarity.”<sup>20</sup> As if upon a cue, the solicitor John Hector McFarlane, “a wild-eyed and frantic young man, pale, disheveled, and palpitating, burst into the room.”<sup>21</sup> Before his arrest a few minutes later—in my very own rooms—by Inspector Lestrade of Scotland Yard for the alleged murder of one Jonas Oldacre, the unhappy McFarlane had begun to relate the story of his dealings with the treacherous Oldacre of Lower Norwood; these dealings sadly and almost inevitably culminated in McFarlane’s arrest by Lestrade.<sup>22</sup>

Please allow me to paint McFarlane’s story as it unfolded, Utterson. According to McFarlane, he “knew nothing of Mr. Jonas Oldacre,” other than having heard the name from his parents who, many years ago, “were acquainted with him.”<sup>23</sup> Oldacre appeared, unannounced and without any prior introduction, at the young solicitor’s office the day before McFarlane’s narrative and arrest; he (Oldacre) engaged McFarlane to draw a will for Oldacre which, to the solicitor’s astonishment, named McFarlane himself (the will’s drafter) as the builder’s sole beneficiary.<sup>24</sup> Oldacre had made a rough draft of his will on the train en route to McFarlane’s office, and he

---

18. See *id.* at 496–510. See also Alton, *supra* note 3, at 144–48, in which I have set out much of the relevant portions of McFarlane’s story relating to Oldacre.

19. See DOYLE, *supra* note 3, at 480; ARTHUR CONAN DOYLE, *The Adventure of the Empty House*, in COMPLETE, *supra* note 1, at 483, 485–86.

20. DOYLE, *supra* note 16, at 496.

21. *Id.*

22. See *id.* at 497–501.

23. *Id.* at 499.

24. *Id.* at 499–500.

asked the solicitor “to cast it in proper legal shape,” while Oldacre waited.<sup>25</sup> McFarlane did as Oldacre requested, with the result that, according to the young solicitor, “the will was duly finished, signed, and witnessed by my clerk.”<sup>26</sup>

Oldacre thereupon insisted that McFarlane come to the elder man’s home in Norwood that very night so that the testator could review with his beneficiary some other related documents, saying “that his mind would not be easy until the whole thing was settled.”<sup>27</sup> Strangely, Oldacre insisted that McFarlane tell no one—in particular, his parents—about the entire “affair until everything is settled.”<sup>28</sup> So, to Norwood McFarlane went, telling me that “I was not in a humour to refuse him anything he might ask.”<sup>29</sup>

When McFarlane arrived that night at Deep Dene House in the Sydenham Road in Norwood, Oldacre’s house-keeper, who was the builder’s confederate in this malignant scheme, ushered the young solicitor into the home’s sitting room, where the two men dined on a “frugal supper.”<sup>30</sup> After the supper, Oldacre took McFarlane into his bedroom, where he opened a heavy safe and “took out a mass of documents,” which the two men reviewed together.<sup>31</sup> When they had finished this task, McFarlane stated that all these papers still lay upon Oldacre’s table, the safe was open, and McFarlane could not find his walking stick.<sup>32</sup> Oldacre said to McFarlane, “[n]ever mind, my boy, I shall see a good deal of you now, I hope, and I will keep your stick until you come back to claim it.”<sup>33</sup> With that, Oldacre let McFarlane out through the bedroom French window.<sup>34</sup> The young solicitor never saw his putative benefactor again and knew nothing about the accusation lodged against him of murdering Oldacre until he “read of this horrible affair” in the morning newspaper.<sup>35</sup>

---

25. *Id.* at 499.

26. *Id.* at 500.

27. *Id.*

28. *Id.*

29. *Id.* McFarlane said that Oldacre “was my benefactor.” *Id.* Interestingly, Henry Jekyll used the same term to describe Edward Hyde in Jekyll’s first will (the one leaving the bulk of his estate to Hyde), bequeathing the estate to “his ‘friend and benefactor, Edward Hyde.’” *ESSENTIAL*, *supra* note 5, at 44.

30. DOYLE, *supra* note 16, at 500.

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

From the outset, as I told Lestrade, Oldacre's entire scheme was a just a bit too obvious, for, among other things, it was clear to me that Oldacre never intended his will to be effective, for who would "draw up so important a document in so haphazard a fashion?"<sup>36</sup> I felt certain that the will was some sort of ruse on Oldacre's part, although the Scotland Yard detective took the bait, saying the will was Oldacre's "death warrant."<sup>37</sup> Lestrade's theory, just as Oldacre intended, was that the younger man went out to Norwood on "some pretext," murdered the older man, and burned the body.<sup>38</sup>

I began my researches by interviewing McFarlane's mother at her home in Blackheath.<sup>39</sup> From her, I learned that Oldacre was an erstwhile suitor of hers and "was a pretty considerable blackguard," to say the least.<sup>40</sup> Mrs. McFarlane called him "a malignant and cunning ape," and she related a couple of incidents which seemed to confirm her assessment of his character.<sup>41</sup>

Afterwards, I visited the scene of the supposed murder, Deep Dene House, in Lower Norwood.<sup>42</sup> I quickly discovered that some of Oldacre's papers seemed to be missing, and I wondered why McFarlane would have stolen any of these papers if he would in due course inherit Oldacre's entire estate.<sup>43</sup> Much more significant, however, was my discovery that the builder was not "in such very affluent circumstances;"<sup>44</sup> moreover, Oldacre had made out a number of large checks to a Mr. Cornelius.<sup>45</sup> Oldacre's strained circumstances, coupled with the checks made out to Cornelius, proved to be my first break in the case.<sup>46</sup>

The next day brought a telegram from Lestrade: "Important fresh evidence to hand. McFarlane's guilt definitely established. Advise you abandon case."<sup>47</sup> Watson and I went to Deep Dene House, where Lestrade proceeded to show us McFarlane's bloody thumbprint in a hallway, which had been pointed out by Oldacre's housekeeper.<sup>48</sup>

---

36. *Id.* at 501.

37. *Id.*

38. *Id.*

39. *Id.* at 503.

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.* at 504.

44. *Id.*

45. *Id.* at 505.

46. *Id.*

47. *Id.*

48. *Id.* at 505–06.

Lestrade opined that this was “final,” to which opinion I acceded, but not “final” in the sense that Lestrade had intended.<sup>49</sup> As I told Watson when out of Lestrade’s earshot, I had examined the hallway the day before and knew that the print was not present at the time of my examination.<sup>50</sup> Lestrade had admitted, mere moments before, that the police had *not* examined the hallway the day before.<sup>51</sup> As I later told Lestrade, when I had solved the case, the fact that the thumbprint had been added overnight—while McFarlane was in police custody—indicated to me that Oldacre and his house-keeper had conspired to put it there, the better (they believed) to frame the young solicitor.<sup>52</sup>

You see, Utterson, how the case had come together in my mind. As I subsequently explained to Lestrade—who to his credit was magnanimous in defeat—Oldacre’s motives were two-fold: he wanted to defraud his creditors, and he wanted to revenge himself upon Mrs. McFarlane, who had spurned him all those years ago.<sup>53</sup> His first goal he accomplished by drawing down his bank account in favor of Cornelius, who was but “himself under another name.”<sup>54</sup> The second he almost accomplished by arranging to vanish, framing McFarlane for his apparent disappearance and murder by staging his bedroom to appear as if it were a murder scene.<sup>55</sup> I produced Oldacre, alive and well (or as well as such a “malignant creature” could be), literally by smoking him out of the hiding-place which he had built behind a false wall on an upper floor of the house.<sup>56</sup> When the “odious, crafty, and malignant” Oldacre emerged, he claimed that he had “done no harm” and that the entire matter was “only my practical joke.”<sup>57</sup> Lestrade, who was furious, did not see things that way, telling Oldacre that “[y]ou have done your best to get an innocent man hanged,” and “[y]ou won’t find the laugh on your side, I promise you.”<sup>58</sup> The idea of the will gave an obvious motive for the alleged murder, and Oldacre’s retention of McFarlane’s walking stick corroborated the young man’s presence at Deep Dene House on the

---

49. *Id.* at 506, 509.

50. *Id.* at 507.

51. *Id.* at 506.

52. *Id.* at 509.

53. *Id.* at 510.

54. *Id.*

55. *Id.*

56. *Id.* at 507–08.

57. *Id.* at 508.

58. *Id.*

purportedly fatal night.<sup>59</sup> It was “a masterpiece of villainy,” but Oldacre did not possess “that supreme gift of the artist, the knowledge of when to stop.”<sup>60</sup> “He wished to improve that which was already perfect,” by adding the thumbprint, “and so ruined all.”<sup>61</sup>

As I noted above at the outset of this letter, Utterson, I very much appreciate your interest in this little adventure of mine, and I thank you for your patience in reading what I have related here.

As always, I remain

Your most faithful friend and humble servant,

Holmes

---

To: sherlock.holmes@bakerstreet.net; gjutterson@utterson.com

From: salton@law.tamu.edu

Date: July 28, 2019

Re: Your Correspondence of 1905—An Introduction

Hello from across the waves and across the years, Mr. Holmes and Mr. Utterson!

I have read with interest your 1905 correspondence regarding the affair of Mr. John Hector McFarlane and regarding the second of Dr. Henry Jekyll’s two wills. Please do not ask me *how* I have been able to read this correspondence, as I am myself uncertain.

Please allow me to introduce myself. I am a professor of law at Texas A&M University School of Law in Fort Worth, Texas—a city that was on the edge of the American frontier in your day. Among the courses that I teach at my law school is “Wills and Estates.”

As Mr. Utterson may recall, one night in my office a few years ago, he and I engaged in what, to me, was a most memorable discussion about testamentary capacity and related wills issues surrounding the two wills made by his friend, Dr. Jekyll.<sup>62</sup> Our discussion focused on the first will made by Dr. Jekyll, which was the will bequeathing the bulk of the doctor’s estate to Mr. Edward

---

59. *Id.* at 510.

60. *See id.* at 509–10.

61. *Id.* at 510.

62. Alton, *supra* note 5 *passim*.

Hyde.<sup>63</sup> This was the will that so disgusted and upset Mr. Utterson that he would not rest until he discovered who this Mr. Hyde might be and what was his hold on Dr. Jekyll.<sup>64</sup> However, we also discussed the matter of what proved to be Dr. Jekyll's second and final will—the will that left the bulk of the doctor's estate to Mr. Utterson himself—and I questioned whether some of the same challenges to Dr. Jekyll's first will might not also be made against this second will in favor of Mr. Utterson.<sup>65</sup>

Mr. Holmes might—or might not—recall that I discovered and edited an incomplete manuscript written by his friend and chronicler, Dr. Watson, detailing a discussion between the two men about their cases in which donative transfers and other wills and trust issues provided the impetus for their adventures.<sup>66</sup> In the manuscript, Mr. Holmes and Dr. Watson devoted some time to an analysis of the events in *The Adventure of the Norwood Builder*.<sup>67</sup> Notably, these events provided within themselves wills-related clues leading to the solution of the mystery.<sup>68</sup>

In eavesdropping on your 1905 correspondence, it occurs to me that I might take this opportunity to compare and contrast Dr. Jekyll's second and final will (the one bequeathing his estate to Utterson) with the Oldacre will (in favor of McFarlane) in *The Adventure of the Norwood Builder*. I will refer to Dr. Jekyll's second and final will (the one in favor of Utterson) as the "Utterson Will," in order to distinguish it from Dr. Jekyll's first will (i.e., the one in favor of Mr. Hyde), which I will refer to as the "Hyde Will." I will refer to the will made by Oldacre in favor of McFarlane as the "Oldacre Will." To my knowledge, no other scholar has undertaken a comparison between the Utterson Will and the Oldacre Will, and this exercise might prove instructive and illustrative of several common issues, problems, and rules relating to the execution and the legal effectiveness of wills. Taken together, these two wills raise, or at least arguably raise, the following legal issues and problems: the testator's testamentary

---

63. *Id.*

64. *See id.* at 264; *ESSENTIAL*, *supra* note 5, at 47.

65. *Alton*, *supra* note 5, at 285–86.

66. *See Alton*, *supra* note 3, at 141. My discovery and editing of the partial manuscript was a fiction, of course. *See id.* at 125–26. There was no partial manuscript; instead, I wrote this article myself, with the newly discovered "manuscript" simply being my little conceit. *Id.*

67. *See id.* at 144–48. I reiterate that I did the analysis myself and merely put the words into Holmes's and Watson's mouths; however, in the body of the present article, I would like to maintain the fiction that it was Watson who recorded their conversation and that the analysis was theirs alone.

68. *Id.*

intent in making the will (the Oldacre Will) and the testator's mental capacity to make the will (the Utterson Will); the possibility of a beneficiary's undue influence over the testator (both wills) and the matter of a bequest to the testator's attorney (both wills, but including, in the case of the Oldacre Will, a bequest to the attorney who *drafted* the will); the due execution of testator's will by the requisite number of witnesses (the Oldacre Will); and the so-called Slayer Rule preventing a will beneficiary who intentionally kills the testator from taking under the will (arguably, both wills, but most obviously the Oldacre Will). These issues and problems continue to vex and perplex us today as they did in your day; thus, they remain as relevant in my century as in yours. In a series of emails to you that will follow this one, I will discuss these issues in the order I have just indicated, drawing upon relevant legal sources from my time, with which I am most familiar. I also will send you a final email with some concluding thoughts. Gentlemen, I hope that you will find my discussion and analysis interesting and, perhaps, even enlightening, and I look forward to communicating my thoughts on these matters to you.

I send you both my kindest regards,

Stephen Alton

---

To: [sherlock.holmes@bakerstreet.net](mailto:sherlock.holmes@bakerstreet.net); [gjutterson@utterson.com](mailto:gjutterson@utterson.com)

From: [salton@law.tamu.edu](mailto:salton@law.tamu.edu)

Date: July 31, 2019

Re: Testamentary Intent and Mental Capacity

As promised, gentlemen, I am sending you the first in a series of emails comparing and contrasting certain legal issues relating to the Utterson Will and the Oldacre Will. This email will discuss the issues of the testator's testamentary intent in making the will and his mental capacity to make the will.

In the case of the Utterson Will, I do not believe that there is an issue of Dr. Jekyll's testamentary intent. Mr. Utterson, your story seems to make it clear that Dr. Jekyll indeed intended to make a will that left virtually his entire estate to you upon his death. However, in the case of the Oldacre Will, the mystery's solution shows that Jonas Oldacre had no intention to make a will, other than to frame Mr. McFarlane for Oldacre's apparent murder. To be valid, the testator

must *intend* to make a will; that is, the testator must intend the instant instrument to make a disposition of his or her property upon the testator's death.<sup>69</sup> In *Shiels v. Shiels*, a Texas case which is relevant to the Oldacre Will, the plaintiff challenged the testator's will on the basis that he, the testator, lacked testamentary intent because he made the will as a requirement of his initiation into the Scottish Rite.<sup>70</sup> Said the court,

Testamentary intent on the part of the maker is essential to constitute an instrument a will, regardless of its correctness in form. And the issue of such intention is not limited to the language of the instrument alone. The facts and circumstances surrounding its execution may be looked to in determining whether the maker intended it to be a testamentary disposition of his property or merely to be used for some other purpose . . . . If it is executed under compulsion, undue influence, as part of a ceremonial, *for the purpose of a deception, or for the purpose of perpetrating a jest, it is not a will.*<sup>71</sup>

Given this rule, it is clear that the Oldacre Will was void for lack of testamentary intent. Oldacre had no intention of leaving his estate to John Hector McFarlane; the sole purpose of the Oldacre Will was to frame the unfortunate young solicitor. As Inspector Lestrade said to Oldacre at the story's denouement, "You have done your best to get an innocent man hanged."<sup>72</sup> To this, Oldacre responded, "I am sure, sir, it was only my practical joke."<sup>73</sup> Here are two references to the purpose of the putative will: that its intention was either to frame McFarlane ("a deception") or make a practical joke ("perpetrating a jest"). Under the *Shiels* rule, noted above, neither purpose suffices to show testamentary intent, for the testator did not intend by this very instrument to make a testamentary disposition of his property.<sup>74</sup> Instead, Oldacre (the testator) intended this instrument only either to

---

69. See, e.g., *Shiels v. Shiels*, 109 S.W.2d 1112, 1113 (Tex. Civ. App. 1937).

70. *Id.* at 1112–13.

71. *Id.* at 1113, 1115 (emphasis added).

72. DOYLE, *supra* note 16, at 508.

73. *Id.* Oldacre continued: "I assure you, sir, that I simply concealed myself in order to see the effect of my disappearance, and I am sure that you would not be so unjust as to imagine that I would have allowed any harm to befall poor young Mr. McFarlane." *Id.* at 510. "Oh! a joke, was it? You won't find the laugh on your side, I promise you," rejoined Lestrade. *Id.* at 508.

74. See *Shiels*, 109 S.W.2d at 1113, 1115.



be a joke (if his self-serving excuse was to be believed) or to be the basis of a frame-up against McFarlane, the document's putative beneficiary.<sup>75</sup>

Furthermore, as Mr. Holmes told Mr. Utterson in his letter of October 31, 1905, the fact that Oldacre made a rough draft of his will on a train on his way to London to see McFarlane seemed extraordinary.<sup>76</sup> Mr. Holmes, you told Inspector Lestrade at the outset of your investigation,

It is curious—is it not?—that a man should draw up so important a document in so haphazard a fashion. It suggests that he did not think it was going to be of much practical importance. *If a man drew up a will which he did not intend ever to be effective, he might do it so.*<sup>77</sup>

As you said to the inspector, Mr. Holmes, the entire matter “strikes me, my good Lestrade, as being just a trifle too obvious.”<sup>78</sup> Thus, we see that you immediately suspected that this will was never intended to be effective to pass title to Oldacre's property at his death.

Perhaps a little hypothetical situation might best serve to illustrate the invalidity of the Oldacre Will due to a lack of testamentary intent. This is the very type of exercise that you might engage in, Mr. Holmes, or that I might engage in with my students during one of our class sessions. Let us suppose, for present purposes, that after the mystery's solution, as the perpetrator was being led away by Lestrade's constables to the waiting four-wheeler, Oldacre tripped, fell, and hit his head against a rock, causing the malefactor's instantaneous death. Would McFarlane take Oldacre's estate under the will? Certainly not, because the will was made either for the purpose of a joke or a frame-up—depending on who is telling the truth—but decidedly *not* for the purpose of transferring Oldacre's estate to McFarlane upon Oldacre's death.<sup>79</sup>

Turning from testamentary intent to the issue of the mental capacity to make a will, the rule set forth in our Restatement of Property is that, in order for a will to be valid, the testator must have the mental capacity to make a will: that is, the testator:

[M]ust 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

---

75. See DOYLE, *supra* note 16, at 508.

76. See *supra* text accompanying notes 36–37.

77. DOYLE, *supra* note 16, at 501 (emphasis added).

78. *Id.*

79. See *Shiels*, 109 S.W.2d at 1115.

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>80</sup>

Under this test, there does not seem to be any question that Oldacre—had he possessed the requisite testamentary *intent*—would also have had the requisite testamentary mental *capacity* to make his will. After all, there is no indication that he did not know his property, the natural object of his bounty (he was a bachelor and apparently without any close relatives), or the disposition of property that he was making, nor did it appear that he was incapable of relating these elements to one another to form an orderly desire regarding the disposition of his property. Therefore, if Oldacre had truly possessed the testamentary *intent* to make a will in this situation, then he certainly would have had the testamentary *capacity* to do so.

However, whether Dr. Jekyll had the mental capacity to make either the Hyde Will or the Utterson Will is a subject of some controversy, as I have already discussed elsewhere with Mr. Utterson.<sup>81</sup> Although Mr. Utterson expressed doubt in our previous conversation, I concluded that, given what both Mr. Utterson and the reader learned at the end of Dr. Jekyll's story—Dr. Jekyll and Mr. Hyde were in fact the same person—the doctor did possess the mental capacity to make both the Hyde Will and the Utterson Will.<sup>82</sup> Mr. Utterson thought that by the simple act of leaving his estate to Mr. Hyde, Dr. Jekyll had committed an insane action that evinced the doctor's lack of mental capacity, for why would he make such a will?<sup>83</sup> I concluded that Dr. Jekyll knew the nature and extent of his property, the natural object of his bounty (either himself in the Hyde Will, or his friend and attorney in the Utterson Will), and the disposition he was making of his property, and he was capable of relating these elements to one another to form an orderly desire regarding the disposition of his property.<sup>84</sup> But, Mr. Utterson

---

80. RESTATEMENT (THIRD) OF PROP.: WILLS AND DONATIVE TRANSFERS § 8.1(a)–(b) (AM. LAW INST. 2003).

81. See generally Alton, *supra* note 5, at 269–75 (explaining to Mr. Utterson the state of mind necessary to make a valid will).

82. See *id.* at 275, 286–87.

83. See *id.* at 274–75.

84. *Id.* I asked Mr. Utterson whether he agreed:

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 circumstances—was indeed a natural object of Dr. Jekyll's bounty? Dr. Jekyll wanted to be certain that, should he disappear into Mr.

concluded that Dr. Jekyll did not meet the final element of the Restatement's test for mental capacity—that is, the doctor was not capable of relating the other three elements so as to form an orderly desire regarding the disposition of his property, given what Mr. Utterson thought was Dr. Jekyll's general derangement of mind.<sup>85</sup>

Mr. Utterson and I also differed as to whether Dr. Jekyll's Hyde Will, at least, was the product of the doctor's insane delusion.<sup>86</sup> The Restatement defines an insane delusion as “a belief that is so against the evidence and reason that it must be the product of derangement;” 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 is illogical.”<sup>87</sup> I was able to convince you, Mr. Utterson, albeit reluctantly, that because Dr. Jekyll was indeed regularly becoming Mr. Hyde, the insane delusion test was not satisfied: the Hyde Will was *not* the product of a derangement but rather was the product of reasoning from existing facts in Dr. Jekyll's story, although admittedly these facts were “astounding.”<sup>88</sup> Given these facts, Mr. Utterson, and the fact of Dr. Jekyll's death at the end of your narration, his final will—the Utterson Will—was also *not* a product of an insane delusion, for these very same reasons.

Therefore, Mr. Holmes and Mr. Utterson, I draw the following conclusions on the issues of testamentary intent and mental capacity (including insane delusion). First, while Jonas Oldacre had the mental capacity to make his will in favor of Mr. McFarlane, this will was void because Oldacre lacked testamentary intent. Second, Dr. Jekyll had both the testamentary intent and the mental capacity to make both the Hyde Will and the Utterson Will, and neither of these two wills was the product of an insane delusion, however mad Dr. Jekyll's actions in making these wills might have appeared both to Mr. Utterson and to the reader before the ultimate revelation of the doctor's dark secret regarding his transformation into Mr. Hyde.

Best regards,

---

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.

*Id.*

85. See *id.* at 275.

86. See Alton, *supra* note 5, at 275–77.

87. RESTATEMENT (THIRD) OF PROP.: WILLS AND DONATIVE TRANSFERS § 8.1 cmt. s (AM. LAW INST. 2003); see also Alton, *supra* note 5, at 276–77 (explaining to Mr. Utterson how to distinguish between what is and what is not an insane delusion).

88. Alton, *supra* note 5, at 277.

Stephen

---

To: sherlock.holmes@bakerstreet.net; gjutterson@utterson.com

From: salton@law.tamu.edu

Date: August 3, 2019

Re: Bequests to Attorneys

This email addresses the issue of testamentary gifts to attorneys, whether or not the attorney drafted the will which leaves him or her a bequest. Testamentary gifts to attorneys raise a delicate issue, gentlemen, and I trust that you will excuse my frankness on this point. The Utterson Will and the Oldacre Will both raise the issue of a testamentary gift to the testator's attorney, although the Oldacre Will (assuming, for the sake of this argument, that it was intended to be a genuine will) raises the more specific issue of a testamentary gift made to the attorney who drafted the will.

Please let me begin by discussing a relevant background rule. Our Restatement of Property sets out the general rule that a "donative transfer is invalid to the extent that it was procured by undue influence . . . ." <sup>89</sup> The Restatement explains that undue influence occurs "if 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>90</sup> Because direct evidence of undue influence is rarely available, circumstantial evidence is sufficient to raise an inference of undue influence under certain circumstances. <sup>91</sup> Among these circumstances is the existence of "a confidential relationship" between the donor and the alleged wrongdoer, and one of the examples given of such a relationship is the fiduciary relationship of an attorney to his or her client. <sup>92</sup> However, the existence of the confidential relationship is not, by itself, enough to raise the inference of undue influence; instead, there "must also be suspicious circumstances surrounding the preparation, execution, or formulation of the donative transfer." <sup>93</sup>

---

89. RESTATEMENT (THIRD) OF PROP.: WILLS AND DONATIVE TRANSFERS § 8.3(a) (AM. LAW INST. 2003).

90. *Id.* § 8.3(b).

91. *Id.* § 8.3 cmt. e.

92. *Id.* § 8.3 cmts. f–g.

93. *Id.* § 8.3 cmt. h.

This is only the beginning of our inquiry, as there are some more specific rules involving gifts to attorneys, especially a gift to the attorney who drafted the instrument bestowing the gift. Let me begin by discussing the Oldacre Will, which was drafted by its beneficiary, the young solicitor Hector McFarlane.<sup>94</sup> Mr. Holmes, you and Dr. Watson previously discussed this will,<sup>95</sup> but I should like to review this matter in greater depth here because the Oldacre Will squarely presents the problem of a bequest to the drafting attorney. The Restatement (Third) of the Law Governing Lawyers, section 127(1) provides that:

A lawyer may not prepare any instrument effecting any gift from a client to the lawyer, including a testamentary gift, unless the lawyer is a relative or other natural object of the client's generosity and the gift is not significantly disproportionate to those given other donees similarly related to the donor.<sup>96</sup>

The rationale for this rule is that:

A client's valuable gift to a lawyer invites suspicion that the lawyer overreached or used undue influence . . . . Testamentary gifts are a subject of particular concern, both because the client is often of advanced age at the time the will is written and because it will often be difficult to establish the client's true intentions after the client's death.<sup>97</sup>

Applied to McFarlane's situation with respect to the Oldacre Will, the Restatement rule would bar McFarlane (an attorney) from drafting Oldacre's will, which left Oldacre's entire estate to McFarlane, unless the solicitor-beneficiary were a relative of Oldacre (he was not) or were the natural object of Oldacre's "generosity."<sup>98</sup> While Oldacre explained that he had known McFarlane's parents many years before and had heard that their son was "a very deserving young man," it is extremely difficult to see how McFarlane, whom Oldacre had never met, could have been a natural object of Oldacre's generosity based solely on an erstwhile acquaintance with

---

94. DOYLE, *supra* note 16, at 499–500.

95. See Alton, *supra* note 3, at 144–48.

96. RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 127(1) (AM. LAW INST. 2000).

97. *Id.* § 127 cmt. b.

98. *Id.* § 127(2)(a).

McFarlane's parents and some vague talk about the younger man being "very deserving."<sup>99</sup> In fact, Mr. Holmes, you yourself referred to the Oldacre Will as "the curious will, so suddenly made, and to so unexpected an heir."<sup>100</sup> Therefore, on ethical grounds, McFarlane should have declined Oldacre's request to draft the older man's will because he was most likely not a natural object of Oldacre's generosity.

What the young solicitor should have done was advise his would-be client (Oldacre) to seek independent advice and find another solicitor to draft his will—that is, if Oldacre really wanted to leave his estate to McFarlane.<sup>101</sup> Had McFarlane done this, it likely would have been permissible for him to accept Oldacre's bequest because it would have been contained in a will that an independent attorney had drafted.<sup>102</sup> Why? Because the Restatement of the Law Governing Lawyers, section 127(2), permits an attorney who does *not* draft the will to accept a bequest contained in the will if, among other things, "the client, before making the gift, has received independent advice or has been encouraged, and given a reasonable opportunity, to seek such advice."<sup>103</sup> McFarlane could easily have satisfied this rule by giving Oldacre the advice to seek independent counsel and to have that other attorney draft Oldacre's will. However, because McFarlane did not advise Oldacre to seek independent advice, the young solicitor fell within the general rule's prohibition of accepting a gift in a will that he drafted.<sup>104</sup>

Interestingly, in my home state of Texas, we have a statute that specifically invalidates any bequest in a will made to "an attorney who prepares or supervises the preparation of the will."<sup>105</sup> Applied to this situation, the statute would not only prohibit McFarlane from

---

99. See Alton, *supra* note 3, at 145–46; see also DOYLE, *supra* note 16, at 500.

100. DOYLE, *supra* note 16, at 502.

101. See RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 127(2)(c) (AM. LAW INST. 2000).

102. *Id.*

103. *Id.* Incidentally, the other two exceptions in section 127(2) are where the attorney-donee "is a relative or other natural object of the client's generosity," or "where the gift to the lawyer is insubstantial." *Id.* Oldacre's bequest to McFarlane did not appear to be "insubstantial," even though Holmes later discovered that the testator was in "straightened circumstances." See *supra* text accompanying notes 45–46. It stretches credulity to think that McFarlane was a natural object of the testator's generosity. See *supra* text accompanying note 98.

104. See RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 127(1) (AM. LAW INST. 2000).

105. TEX. EST. CODE ANN. § 254.003(a) (West 2014).

*drafting* the Oldacre Will, with its bequest to McFarlane, but it would also render the testamentary gift to McFarlane entirely void.<sup>106</sup>

Both of Dr. Jekyll's two wills were holographs, made without the participation of Mr. Utterson or anyone else.<sup>107</sup> Elsewhere, Mr. Utterson and I have discussed whether Dr. Jekyll's first will, the Hyde Will, might have been the product of undue influence by Mr. Hyde over Dr. Jekyll, but we concluded that this will was not the product of undue influence, in light of what we later learned of the unitary identity of Dr. Jekyll and Mr. Hyde.<sup>108</sup> However, given the existence of a confidential relationship (attorney-client) between Mr. Utterson and Dr. Jekyll, the fact that Dr. Jekyll's second will (the Utterson Will) left the bulk of the doctor's estate to you, Mr. Utterson, is problematic. The Restatement of Property's rule about undue influence where there is a confidential relationship such as attorney-client, as we have seen, requires both that there be such a relationship and that there be "suspicious circumstances surrounding the preparation, execution, or formulation of the donative transfer."<sup>109</sup> No such circumstances surround the Utterson Will (Dr. Jekyll's second and final will), for you apparently knew nothing of the existence of this second holographic will until you found it upon Dr. Jekyll's death.<sup>110</sup> Of course, if you *had* drafted the Utterson Will, sir, the suspicious circumstances contemplated by the Restatement rule would have arisen, and the inference of undue influence likely would have been drawn; indeed, this would have made your situation directly analogous to that of Hector McFarlane and Jonas Oldacre.

Yet, this is not the end of our inquiry on the drafting of the Utterson Will, for the Restatement's rule regarding a non-drafting lawyer's acceptance of a gift from a client would likely prohibit Mr. Utterson's acceptance of Dr. Jekyll's bequest in the Utterson Will.<sup>111</sup> Even though you did not *draft* the Utterson Will, sir, the rule states that a lawyer (*any* lawyer, and not merely the drafting lawyer) "may not accept a gift from a client, including a testamentary gift," unless one of three exceptions apply.<sup>112</sup> The first exception is where "the

106. See Alton, *supra* note 3, at 147 & n.103.

107. See Alton, *supra* note 5, at 267–68, 286.

108. See *id.* at 277–79.

109. RESTATEMENT (THIRD) OF PROP.: WILLS AND DONATIVE TRANSFERS § 8.3 cmt. h. (AM. LAW INST. 2003).

110. See Alton, *supra* note 5, at 286; ESSENTIAL, *supra* note 5, at 102.

111. See RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 127(2) (AM. LAW INST. 2000).

112. *Id.*

lawyer is a relative” (not applicable to the relationship between Mr. Utterson and Dr. Jekyll) “or other natural object of the client’s generosity.”<sup>113</sup> Because Dr. Jekyll never married and apparently had no close relatives (for his story does not indicate any relatives), it is arguable that you, Mr. Utterson, might be a natural object of his generosity, given the long-time friendship between the two of you, in which case you would be able to accept the bequest of the bulk of Dr. Jekyll’s estate in the Utterson Will.<sup>114</sup> The second exception to the general rule does not apply to the Utterson Will, rather it applies only where the value of the gift is “insubstantial;”<sup>115</sup> the value you placed on Dr. Jekyll’s estate was a quarter-million pounds sterling, which was a sizable sum in the late 19th century.<sup>116</sup> The third exception to the rule is where “the client, before making the gift, has received independent advice, or has been encouraged, and given reasonable opportunity, to seek such advice.”<sup>117</sup> But, this exception could not apply in your situation, for you did not know of the existence of Dr. Jekyll’s Utterson Will before you found it at the time of the doctor’s death, and therefore you would not have had the opportunity to advise Dr. Jekyll to seek independent advice before making the bequest to you.<sup>118</sup> Therefore, unless you were deemed to be a natural object of the doctor’s generosity, you, too, would be prohibited from accepting the bequest in the Utterson Will.

Thus, we see that the law prohibited McFarlane from accepting the bequest under the Oldacre Will because he drafted the will. And, you, Mr. Utterson, likely were prohibited from accepting the bequest under the Utterson Will because there is no indication that Dr. Jekyll received independent advice before making the Utterson Will. Only if you, Mr. Utterson, or if the solicitor McFarlane were held to be a natural object of your respective testator’s generosity would you or he be able to accept these bequests. This is most unlikely to apply in the case of McFarlane’s relationship to Oldacre (a man whom he had never met), but it is somewhat more likely to apply in the case of your long-standing friendship with Dr. Jekyll.

More to come.

---

113. *Id.* § 127(2)(a).

114. *See* Alton, *supra* note 5, at 274.

115. RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 127(2)(b) (AM. LAW INST. 2000).

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

117. RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 127(2)(c) (AM. LAW INST. 2000).

118. *See* Alton, *supra* note 5, at 286 & n.179; ESSENTIAL, *supra* note 5, at 102.



Kindest regards,  
Stephen

To: sherlock.holmes@bakerstreet.net; gjutterson@utterson.com

From: salton@law.tamu.edu

Date: August 8, 2019

Re: Due Execution of Testator's Will

In this email, Mr. Holmes and Mr. Utterson, I turn to the issue of the due execution of the testator's will. Perhaps I should say that the subject of this email is the invalidity of a testator's will if it is *not* duly executed. While the Utterson Will does not appear to present any due execution problem, this problem is acute and most likely dispositive in the case of the Oldacre Will.

Let me begin by briefly discussing and then dismissing the issue of the due execution of the Utterson Will. Both of Dr. Jekyll's wills (i.e., the Hyde Will and the Utterson Will) were holographic.<sup>119</sup> Thus, neither of these testamentary instruments required any witnesses to the testator's execution of the will.<sup>120</sup> However, all wills, even holographs, require the testator's signature in order to make them valid.<sup>121</sup> As I have previously discussed with Mr. Utterson, it is interesting that nowhere in Dr. Jekyll's story does Stevenson indicate that the testator signed either the Hyde Will or the Utterson Will.<sup>122</sup> However, in the case of the Hyde Will, I concluded that:

119. See *ESSENTIAL*, *supra* note 5, at 43–44, 102. The story expressly states that the Hyde Will was a holograph. *Id.* at 43–44. While the story never expressly states that the Utterson Will was a holograph, it is most reasonable to assume that it, too, is holographic. Immediately after the death of Jekyll-Hyde, the reader learns that Utterson found the will in an envelope bearing “in the doctor's hand, the name of Mr. Utterson.” *Id.* at 102. The contents of this envelope included, among other things, “a will, drawn in the same eccentric terms as . . . [the Hyde Will], . . . but in the place of Edward Hyde, the lawyer, with indescribable amazement, read the name of Gabriel John Utterson.” *Id.* Presumably, the Utterson Will was written entirely in Dr. Jekyll's own hand, as the Hyde Will had been.

120. See, e.g., TEX. EST. CODE ANN. § 251.052 (West 2014) (“A will written wholly in testator's handwriting is not required to be attested by subscribing witnesses.”); WILLIAM M. MCGOVERN ET AL., *WILLS, TRUSTS AND ESTATES INCLUDING TAXATION AND FUTURE INTERESTS* 212–13 (4th ed. 2010).

121. See, e.g., TEX. EST. CODE ANN. § 251.051 (West Supp. 2018); MCGOVERN ET AL., *supra* note 120, at 202.

122. See Alton, *supra* note 5, at 274 n.93.

Given the fact that Utterson loathed the [Hyde] will and, presumably, would have been delighted to find that it was invalid due to such a simple technicality [i.e., the lack of testator's signature], 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.<sup>123</sup>

And because the Utterson Will "was drawn in the same eccentric terms" as the Hyde Will, we may assume that it, too, was duly executed—signed—by its testator, Dr. Jekyll.<sup>124</sup>

Let us turn to the execution of the Oldacre Will. It was, Mr. Holmes, all "wrong" (the word you used to describe the progress of your initial investigation of the McFarlane case).<sup>125</sup> In my previous analysis of the relevant discussion between you and Dr. Watson, I wrote at some length about the problematic execution of the Oldacre Will.<sup>126</sup> McFarlane told you, Mr. Holmes, that he finished the Oldacre Will, as the testator requested, and then it was signed by the testator and witnessed by McFarlane's clerk.<sup>127</sup> McFarlane does not refer to any second subscribing witness to the will, but the English Wills Act, which governed at the time of the will's execution, required *two* subscribing witnesses in order to validate the will.<sup>128</sup> Therefore, if McFarlane's clerk served as the only subscribing witness, the Oldacre Will would have been invalid for lack of a second witness.<sup>129</sup> On the other hand, if McFarlane himself were the second subscribing witness, I asserted that he would have been "an 'interested' witness—that is, one who receives a benefit under the will that he is witnessing."<sup>130</sup> But, by this time, the English Wills Act would have "purged" or invalidated the interested witness's (i.e., McFarlane's) bequest under the Oldacre Will.<sup>131</sup> So, either the will was invalid for lack of a second subscribing witness, or the second witness was McFarlane himself—who would not be able to take the

---

123. *Id.*

124. See ESSENTIAL, *supra* note 5, at 102.

125. DOYLE, *supra* note 16, at 503.

126. See Alton, *supra* note 3, at 145.

127. DOYLE, *supra* note 16, at 500.

128. Wills Act 1837, 7 Will. 4 & 1 Vict., c. 26, § 9 (Eng.).

129. See Alton, *supra* note 3, at 145 n.90.

130. *Id.*

131. See Wills Act 1837, 7 Will. 4 & 1 Vict., c. 26, § 15 (Eng.). For the Texas purging statute, which invalidates a testamentary bequest to a subscribing witness, see TEX. EST. CODE ANN. § 254.002(a) (West 2018).

Oldacre bequest because of the purging provision of the English Wills Act.

I previously speculated that McFarlane simply might have been ignorant and negligent in the matter of the execution of the Oldacre Will, or he might have been exceedingly clever.<sup>132</sup> It seems difficult to believe that, as a solicitor drafting and overseeing the execution of a will, McFarlane could be ignorant of the English Wills Act's requirement of two subscribing witnesses to validate the will or of the Act's purging provision for interested witnesses.<sup>133</sup> I suggested that, conceivably, McFarlane was quite clever: he might have been chary of Oldacre's motive for making such a will and "wanted to provide himself with a defense should events unfold as they in fact did."<sup>134</sup> This seems unlikely, however, for "it would have required an extraordinary amount of farsighted, quick thinking on McFarlane's part had he intentionally made the will invalid"—farsightedness worthy of Mr. Holmes himself.<sup>135</sup> This leaves us with only two plausible explanations: either McFarlane negligently failed to supply a second subscribing witness to validate the Oldacre Will, or the young solicitor acted as the second subscribing witness, thus invalidating Oldacre's bequest to him.<sup>136</sup> One commentator, however, has speculated that Dr. Watson may simply have "failed to record that McFarlane stated to Holmes that there had been another witness [to the Oldacre Will] besides McFarlane's clerk;" thus, the will might have been valid after all.<sup>137</sup> However, I am not convinced

---

132. Alton, *supra* note 3, at 145 n.90.

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*; Arthur Conan Doyle, *The Adventure of the Norwood Builder: A Lawyerly Annotated Edition*, 2015 GREEN BAG ALM. 116, 137 n.56 (2015) [hereinafter GREEN BAG], reprinted in Arthur Conan Doyle, *The Adventure of the Norwood Builder: A Lawyerly Annotated Edition*, 5 J. LAW 235, 255 n.56 (2015).

137. GREEN BAG, *supra* note 136. Said Guy Marriott, the Sherlock Holmes Society's president, "some commentators have taken the view that Dr. Watson failed to record that McFarlane stated to Holmes that there had been another witness besides McFarlane's clerk—Graham's [i.e., McFarlane's senior partner's] clerk, for example—and that Oldacre's will was indeed validly executed." *Id.*

Incidentally, writing in the same issue of the *Greenbag* and within the same footnote (note 56), Ira Brad Matetsky said that in at least one other case ("The Five Orange Pips"), "Watson had previously displayed ignorance of the requirement that a valid will under British law requires two independent witnesses," and Matetsky asks "whether this increases the likelihood that Watson here simply mis-recalled [sic] or misreported what he regarded as a minor detail of the will execution rather than a potentially dispositive one." *Id.* In "The Five Orange Pips," Holmes's client, John Openshaw, mentioned the matter of the execution of his uncle's will, to

that Dr. Watson failed to record McFarlane's statement about a second subscribing witness to the Oldacre Will, and I must conclude that the will was invalid due to McFarlane's ignorance of the English Wills Act's requirement of two witnesses or due to his ignorance of the purging provisions of the Act.

Incidentally, the question arises: If Oldacre were so eager to have his will drafted immediately, why did he not simply use a holograph, as Dr. Jekyll did twice? No subscribing witnesses would have been necessary to validate the will. Of course, we know the answer to this question: not only was he likely to have been ignorant of the relevant law, but—more importantly—Jonas Oldacre made his will solely to frame John Hector McFarlane for Oldacre's putative murder. The legatee's murder of the testator will be the subject of my next email to you, Gentlemen.

Regards,

Stephen

To: [sherlock.holmes@bakerstreet.net](mailto:sherlock.holmes@bakerstreet.net); [gjutterson@utterson.com](mailto:gjutterson@utterson.com)

From: [salton@law.tamu.edu](mailto:salton@law.tamu.edu)

Date: August 11, 2019

Re: Murder of the testator by a legatee

In this email, Mr. Holmes and Mr. Utterson, I will discuss the so-called "slayer rule," by which a beneficiary who murders the testator may be prohibited from taking the bequest to the beneficiary made in the testator's will. The facts surrounding the Oldacre Will squarely present this issue; the Utterson Will generally does not, although the Hyde Will did. We can quickly dispose of both the Hyde Will and the Utterson Will, I believe, after first stating the relevant rule and policy.<sup>138</sup>

In section 8.4(a), the Restatement of Property states the slayer rule as follows: "A slayer is denied any right to benefit from the wrong. For purposes of this section, a slayer is a person who, without

which he (i.e., Openshaw) was the witness. See DOYLE, *The Five Orange Pips*, in COMPLETE, *supra* note 1, at 217, 220. Openshaw told Holmes that his uncle asked Openshaw to witness his (i.e., the uncle's) will, and Openshaw stated that he "'signed the paper [i.e., the will] as directed, and the lawyer took it away with him.'" See *id.*

138. See Alton, *supra* note 5, at 281–84.

legal excuse or justification, is responsible for the felonious and intentional killing of another.”<sup>139</sup> The Restatement goes on to say that:

The 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>140</sup>

So, if the slayer rule were to apply, a slayer-beneficiary could not benefit from his or her wrongdoing in intentionally killing his or her testator.

When Mr. Utterson and I spoke a few years ago about the slayer rule, we determined that the rule would have applied to the Hyde Will if it could have been shown that Hyde and Jekyll were different persons and that Hyde killed Jekyll; this is what you feared would come to pass, Mr. Utterson.<sup>141</sup> However, at the end of the story, the reader learned that Hyde and Jekyll were the same person and that Jekyll—or, rather, Hyde—killed himself.<sup>142</sup> Therefore, the slayer rule did not apply in the case of the Hyde Will. But, when Dr. Jekyll (or Mr. Hyde) died, the doctor left the Utterson Will, a holograph bequeathing the bulk of his estate to you, Mr. Utterson.<sup>143</sup> If you will permit me to raise a delicate subject, there is no hint in the Dr. Jekyll and Mr. Hyde story that you intentionally brought about the death of the testator. However, Professor Carol Margaret Davison raised the novel theory that you, sir, intentionally hounded Dr. Jekyll to death in order to become the legatee of his large estate.<sup>144</sup> Reading Dr. Jekyll’s story the conventional way, I in no way ascribe any malign motives to your search for Mr. Hyde or to your other dealings with

---

139. RESTATEMENT (THIRD) OF PROP.: WILLS AND DONATIVE TRANSFERS § 8.4(a) (AM. LAW INST. 2003).

140. *Id.* § 8.4 cmt. b.

141. *See* Alton, *supra* note 5, at 281–84.

142. *Id.* at 284.

143. *See id.* at 284–85; ESSENTIAL, *supra* note 5, at 102.

144. *See* Davison, *supra* note 7, at 157; Alton, *supra* note 5, at 267.

your friend the doctor.<sup>145</sup> Thus, the slayer rule does not apply in the case of the Utterson Will.

The Oldacre Will is entirely another matter.<sup>146</sup> As Dr. Watson's reading public now knows, Mr. Holmes, you were able to prove that, despite appearances, McFarlane did not kill Oldacre.<sup>147</sup> However, for much of the story, it appeared that the Oldacre Will's beneficiary, the young solicitor McFarlane, did indeed murder the testator.<sup>148</sup> Had it been true that McFarlane had slain Oldacre, then under the Restatement's slayer rule, McFarlane would not have been able to benefit from his wrongdoing and therefore could not take under the will.<sup>149</sup> (Surely McFarlane, as a solicitor, would have been aware of this rule, and such awareness ought to have provided a clue that McFarlane did *not* murder Oldacre.) Interestingly, Mr. Guy Marriott opines that, under English law effective *at the time* of the Oldacre Will's execution, even if McFarlane had been convicted of Oldacre's murder, "it was not clear . . . whether or not he could inherit under the will," for the "Forfeiture Act, 1870, had abolished the previous common law rule that a conviction for felony led to the automatic forfeiture of all of the felon's possessions (both real and personal) to the Crown, and murder was a felony."<sup>150</sup> However, Marriott states that "for reasons of public policy, the Courts in England *subsequently* developed the rule that no person found guilty of the murder or manslaughter of the testator could benefit from the deceased's will."<sup>151</sup> Therefore, it is reasonably certain that if McFarlane had been convicted of Oldacre's murder, he (McFarlane) would not have been able to take under the Oldacre Will.

My conclusion will follow, Gentlemen

Best,

Stephen

---

145. See Alton, *supra* note 5, at 267. I said, "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"—a death for which Utterson was not responsible. *Id.*

146. Much of the analysis in the present article about the Oldacre Will as it relates to the slayer rule comes from *The Game is Afoot*. Alton, *supra* note 3, at 144–48.

147. See DOYLE, *supra* note 16, at 507–10.

148. See *id.* at 496–507.

149. See RESTATEMENT (THIRD) OF PROP.: WILLS AND DONATIVE TRANSFERS § 8.4(a) (AM. LAW INST. 2003); Alton, *supra* note 3, at 147 & n.103.

150. GREEN BAG, *supra* note 136.

151. *Id.* (emphasis added).

To: sherlock.holmes@bakerstreet.net; gjutterson@utterson.com

From: salton@law.tamu.edu

Date: August 13, 2019

Re: Conclusion

In this final email, Mr. Holmes and Mr. Utterson, I come to the end of my thoughts about the legal issues raised by the Oldacre Will and the Utterson Will. I have sent you emails about the following issues: the testator's intent to make the will (i.e., testamentary intent) and the testator's mental capacity to make the will; the possibility of a beneficiary's undue influence over the testator and the matter of a bequest to the testator's attorney, particularly to the attorney who drafted the will; the due execution of the will by the requisite number of witnesses; and the application of the so-called Slayer Rule, preventing a will beneficiary who intentionally kills the testator from taking his or her bequest under that will.

In the matter of testamentary intent and testamentary capacity, I concluded that Jonas Oldacre had no testamentary intent when he made the putative will in favor of John Hector McFarlane; thus, on this basis alone, the Oldacre will was invalid. I also concluded that Dr. Henry Jekyll did possess the requisite testamentary (mental) capacity to make the Utterson Will—his second and final will in Stevenson's story—which left the doctor's estate to you, Mr. Utterson. Therefore, the Utterson Will was not subject to a challenge based on Dr. Jekyll's mental capacity at the time he made this will.

In the succeeding email, I examined the possibility of a beneficiary-attorney's undue influence over the testator and the matter of a bequest to the testator's attorney, particularly to the attorney who drafted the will. Both the Utterson Will and the Oldacre Will left their respective testator's estate to an attorney: in the case of the Utterson Will, Mr. Utterson, you were yourself the beneficiary of the estate of your friend and long-time client, although you did not draft this will; in the case of the Oldacre Will, the drafting attorney (McFarlane) was the sole beneficiary under the will. I concluded that, given the long-term, confidential relationship between you, Mr. Utterson, and your client, Dr. Jekyll, you should have advised your client to seek independent counsel before making the Utterson Will, which left his estate to you. Admittedly, you did not know that Dr. Jekyll had made such a will; nonetheless, the relevant ethical rules likely would have prohibited you from accepting Dr. Jekyll's bequest. The situation in the matter of the Oldacre Will was even

clearer: the drafting attorney, McFarlane, could not ethically draft the will which left him Oldacre's estate, nor could he accept the bequest of Oldacre's estate in the will that he (McFarlane) had drafted.

In my next email, I analyzed the due execution of both the Utterson Will and the Oldacre Will. Because it was a holographic will, the Utterson Will was valid because it was (presumably) signed by the testator, Dr. Jekyll, and it was wholly in his handwriting. However, the Oldacre Will, which Dr. Watson seemed to indicate was executed only by one witness, was invalid because the relevant law required two subscribing witnesses to validate the will. (My home state of Texas continues to require two subscribing witnesses.)

Finally, in my last analytical email to you, Mr. Utterson and Mr. Holmes, I wrote about the Slayer Rule, which prohibits a murderous beneficiary from taking under the will of the testator whom the beneficiary has killed. I dismissed the possibility that Mr. Utterson killed Dr. Jekyll; thus, the Slayer Rule would not have applied to the Utterson Will. However, had the Oldacre Will otherwise been valid, the Slayer Rule would have applied to prevent the will's beneficiary, McFarlane, from taking Oldacre's estate under the will, if it could be proven that McFarlane had truly murdered the testator, Oldacre. Of course, the entire point of the Oldacre story was that McFarlane had *not* murdered Oldacre, but rather that Oldacre had sought to frame McFarlane by disappearing on the very night he made his will.

Gentlemen, this brings me to the end of my series of emails to you two discussing these wills issues in your respective stories. I send you both my kindest regards, and I wish you both Godspeed and good rest.

Stephen



\*