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Capacity standards in California trust litigation: Why the distinction matters

In California trust litigation, determining whether a settlor's mental ability meets the lower testamentary standard or the higher contractual one often decides who controls an estate — and the outcome of the entire case.

By Holly Gilani

In trust and estate litigation, few issues are as central or as contested as the question of capacity. Whether a settlor or testator possessed the requisite mental ability at the time of signing a will, amending a trust, or executing a power of attorney can determine control of millions of dollars in assets and reshape family legacies. Yet, the standard of capacity applied in California is not uniform. Courts distinguish between testamentary capacity and contractual capacity, two doctrines with significantly different thresholds. For practitioners, fiduciaries, and families alike, understanding this distinction is essential.

Testamentary capacity under Probate Code § 6100.5

Whereas contractual capacity imposes a high bar, testamentary capacity sets the lowest legal threshold. Under California Probate Code § 6100.5, a person lacks testamentary capacity if, at the time of execution, they cannot:

1. Understand the nature of the testamentary act, that is recognize that they are making a will or trust disposition of their property.
2. Understand and recollect the nature and situation of their property, including the general character and extent of what they own.
3. Remember and understand their relationships to their living descendants, spouse, parents, and any other

individuals whose interests are affected by the will.

All three requirements must be satisfied for testamentary capacity to exist. Failure of any one element is sufficient to establish incapacity. In *Estate of Halbower* (2019) 42 Cal.App.5th 1101, 1108-1109, the Court of Appeal confirmed that absence of even one statutory element, under § 6100.5, defeats capacity, underscoring the strict but minimal threshold.

The 'minimal' character of the standard is reinforced by *Doolittle*

v. Exchange Bank (2015) 241 Cal. App.4th 529, 545-546, where the court described testamentary capacity as 'exceptionally low,' held that challengers bear a heavy burden to prove incapacity (Prob. Code §§ 810(a), 811(b)), and stressed that even individuals with cognitive deficits may still have capacity if they satisfy § 6100.5's statutory elements. This is a deliberately low standard. The law presumes capacity absent clear evidence to the contrary, reflecting California's strong policy favoring individual autonomy in dis-

posing of property. Fluctuating acuity, cognitive impairment, or advanced age often do not suffice to defeat testamentary capacity so long as the statutory elements are met.

California courts consistently emphasize this principle. More recent cases confirm the durability of this low threshold. In *Eyford v. Nord* (2021) 62 Cal.App.5th 112, the First District Court of Appeal rejected a challenge to a trust instrument despite evidence that the settlor experienced delusional thinking. The court emphasized that there



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was no substantial evidence linking the delusion to the testamentary act itself, reaffirming that Probate Code § 6100.5 sets a deliberately minimal bar.

Finally, *Andersen v. Hunt* (2011) 196 Cal.App.4th 722 clarified that the applicable capacity standard turns on the nature of the act. A straightforward trust amendment, analogous to a will or codicil, requires only testamentary capacity, not the heightened contractual standard. The case illustrates that it is not the label on the document that controls but the type of decision the individual is making.

Practical implications. Because of this minimal threshold, testamentary capacity is frequently upheld even in the presence of advanced age or cognitive decline. The standard typically applies to wills, codicils, and straightforward trust amendments. In those contexts, California law prioritizes honoring testamentary intent over scrutinizing transactional sophistication. By contrast more complex transactions that restructure assets or create ongoing obligations are evaluated under the higher contractual capacity test.

Contractual capacity: A higher threshold

Whereas testamentary capacity is minimal, contractual capacity imposes a higher standard. Civil Code § 39 provides that those contracts made by “a person of unsound mind, but not entirely without understanding,” are subject to rescission. In trust and estate contexts, courts also apply Probate Code §§ 810-812, where transactions — though occurring in an estate setting — carry contractual features (e.g., reallocating assets, imposing ongoing financial obligations, granting broad powers of management). In those circumstances, the heightened contractual standard governs, even if the instrument appears testamen-

tary in form. These sections establish a functional test requiring individuals to communicate a decision and understand their rights, responsibilities, risks, benefits and consequences.

This higher threshold contrasts sharply with the minimal requirements of Probate Code § 6100.5. It demands more than recognizing that one is signing a legal document and comprehension of the three elements set forth above and required under the testamentary test for capacity. The person must also comprehend the nature, purpose, and effect of the act, appreciate its financial and legal consequences, and possess the ability to manage or safeguard their affairs in relation to that transaction.

California courts have underscored this distinction:

- In *Andersen v. Hunt* (2011) 196 Cal.App.4th 722, the Court of Appeal clarified that simple trust amendments—akin to wills or codicils—are judged under the minimal testamentary standard, but those that significantly restructure assets or impose continuing obligations require contractual capacity.

- In *Keading v. Keading* (2021) 60 Cal.App.5th 1115, the appellate court reaffirmed that, where trust instruments alter financial relationships and estate plans in complex ways, Probate Code §§ 810-812 properly apply to ensure the settlor understood the associated risks, benefits, and consequences.

Practical implications. Contractual capacity comes into play when executing a trust amendment that reallocates assets, entering into a settlement agreement, or granting a durable power of attorney with broad transactional powers. It is not enough to recognize one is signing a legal document; the individual must appreciate the nature, effect, financial ramifications, and ongoing obligations of the transaction. For that

reason, contractual capacity demands evidence of greater comprehension and is judged under a stricter benchmark.

Conclusion: Choosing the correct standard

California law makes clear that capacity analysis turns not on the label of the document, but on the nature of the act. In *Andersen v. Hunt* (2011) 196 Cal.App.4th 722, the court confirmed that testamentary amendments to a trust require only the minimal standard of Probate Code § 6100.5, while transactions that create or alter enforceable obligations invoke the higher contractual standard of Civil Code § 39.

In *Lintz v. Lintz* (2014) 222 Cal. App.4th 1346, the court held that significant trust amendments with financial ramifications demanded contractual capacity. Although subsequent decisions have limited its reach, *Lintz* remains instructive as an example of California courts elevating the contractual capacity standard where trust amendments carry substantial financial consequences. In *Eyford v. Nord* (2021) 62 Cal.App.5th 112, the court upheld testamentary instruments despite allegations of delusion, reinforcing the deliberately low testamentary threshold.

For litigators, fiduciaries and families, the difference is often outcome-determinative. Under testamentary capacity, cognitive impairment may not invalidate a will or trust amendment; under contractual capacity, the same evidence could establish incapacity. The litigation battleground is often not whether a party suffered cognitive decline, but which standard governs the instrument.

Practical considerations drive this distinction. Courts rely heavily on medical records and expert testimony, though conclusions often vary depending on how the capacity issue is framed. Independent Medical Examinations (IMEs) become pivotal,

with their scope shaped by whether the dispute is testamentary or contractual. For prominent individuals, courts must also balance evidentiary needs with privacy, often through protective orders and in-camera review of sensitive records. As the Court of Appeal emphasized in *Estate of Goetz* (1967) 253 Cal.App.2d 107, 115-116, capacity is presumed, and incapacity must be shown to have existed at the very moment of execution. Critically, the legal test focuses on capacity at the exact moment of execution, not before, and not after.

Taken together, *Andersen*, *Lintz*, and *Eyford* highlight the guiding principle: testamentary capacity protects personal autonomy and intent by applying a deliberately low bar, requiring only an understanding of the act, one's property, and natural heirs. Contractual capacity, by contrast, demands comprehension of the transaction's consequences and the ability to manage financial affairs.

The lesson is clear. Capacity litigation begins with framing: identifying whether the decision is testamentary or contractual. That choice sets the evidentiary path, dictates the statutory test, and often determines the outcome of the case.

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