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Stillman BANK

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Why probate remains important

One of the recurring themes in our discussions of trust services is how trusts may be used to avoid probate. However, a recent case from England reported in *Mail Online* shows just how important probate remains in properly winding up an individual's financial affairs.

Background

Tessa Amstell was a British film star in the 1930s. She met jazz musician Billy Amstell while she was working on the film *Kicking the Moon Around*, and the couple married in 1938. They traveled in celebrity circles, and they did not have any children. The couple owned a bungalow that was filled with their memorabilia.

Tessa and Billy entered a nursing home together in the 1990s. They did not sell the house, which remained unoccupied, as Tessa hoped to keep the home and its contents in the family. Tessa's niece Marion, who was an attorney, handled the payment of utilities and taxes, collected the mail for the couple from the house, and supervised their finances. Billy died in 2005.

In 2009 Tessa executed a home-made will, with Marion as a witness. Tessa left the £500,000 bungalow to her nephew Martin (Marion's brother), and some £130,000 was to be distributed to 22 different animal charities.

Tessa died in 2011 at age 98. By that time Marion was 78, and she herself had moved recently. Because of the move, Marion could not immediately locate the will; it was in one of her boxes of papers. But nothing about the day-to-day property management had changed. Although Marion was supposed to be the executor of the estate, she did not initiate the probate process.

That was a big mistake.

Heir Hunters

The BBC runs a television program called *Heir Hunters*. It documents the work of companies that locate the heirs to estates for which no will has been probated. In exchange for documenting the inheritance rights, the company takes a percentage of the inheritance.

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2019 estate planning review checklist

- ☐ Check beneficiary designations on retirement plans and insurance policies.
- ☐ Create a roadmap for digital assets, including passwords for important accounts.
- ☐ Include any new family members.
- ☐ Are any minor beneficiaries no longer minors? Different provisions may be appropriate for adult children.
- ☐ Make certain heirs know the locations of key documents—the will, power of attorney, and medical power of attorney.

One of these companies learned about Tessa's bungalow. Marion received a call from them, and she told them that there was a valid will and that she was the executor. Nevertheless, the company proceeded to track down a distant cousin of Tessa's in America, who agreed to accept a percentage of any inheritance that they could recover for him. The company then filed for probate on the basis of intestacy, without mentioning the fact that Marion had told them about the lost will. Marion did not make an appearance. The probate court gave the company control of the house. The locks were changed, and all of Tessa's and Billy's cherished possessions were cleared out.

Marion and Martin found the will, but then had to endure a 12-month legal battle as the company claimed that Tessa's will was not valid. The firm pored over Tessa's medical records, cherry picking certain items, in an attempt to show that she was not of sound mind when the will was executed.

The house was put up for auction.

The not-so-happy ending.

Fortunately, Martin and Marion prevailed before the auction took place. The heir-hunting company then presented its bill for £134,000 for the expenses that it had incurred, asking to be reimbursed from Tessa's estate. The probate court refused the demand, citing the firm's misconduct in misleading the court about the existence of a will.

However, the story does not have a really happy ending. Marion and Martin have been exhausted by the ordeal. Without the possessions of Tessa and Billy, the house lost its emotional hold on them. Martin has decided to sell the house after all, so it won't be kept in the family as Tessa wished.

Takeaways

Do-it-yourself wills have become more popular, and they are better than no will at all. When Tessa's will finally was presented to the court, it had no defects. Still, the cost of having a will drafted by a professional is modest, especially when compared to the value of the property that will be disposed of by the instrument.

Naming a family member as executor of one's estate is similarly a popular choice, but this case shows the vulnerabilities of that approach. The amateur individual executor may be too busy to attend to the many tasks (see "What will your executor do?" for details), may become ill or move away, or may die. The better approach is to name a team of professionals at a corporate fiduciary such as us.

We do this work, and we do it well; we do it every day. Our fees are no larger than what an amateur executor is entitled to receive for estate settlement services.

Is your will up-to-date? Are you satisfied with your choice of executor? Should you consider new strategies, given the dramatically enlarged federal estate tax exemption? We would be pleased to review and discuss your situation in more detail as we present the case for our services in estate settlement and trusteeship.

Call upon us at your earliest convenience! ☐

What will your executor do?

Winding up the financial affairs of any individual's lifetime is not a simple, linear process. Many tasks overlap or occur simultaneously.

- **Inventory the assets.** It's the rare individual who leaves a complete inventory of all of his or her financial assets and interests. Appraisals may be needed for collections, jewelry or other hard-to-value assets.
- **Manage the assets.** Investments must be monitored and income collected. Insurance must be purchased or maintained.

- **Collect debts owed to the estate.** The executor must make diligent efforts to collect all funds owed to the decedent. Tact will be needed when the debtor is a family member.
- **Pay debts.** Money owed by the decedent at death must be paid by the executor, after the legitimacy of the debt is confirmed.
- **Raise cash.** Estate management requires cash for paying expenses and taxes. That means the executor will have to decide what to sell and when to sell it to meet the estate's cash needs. This is where strong investment planning skills can pay off.
- **Pay taxes.** This year federal estate taxes are due on taxable estates larger than $11.4 million—so, not a worry for most estates. Some states have much lower thresholds for filing state inheritance or estate tax returns. A state tax return may be required for each state in which the decedent owned property. In addition, the executor will have to file the decedent's final income tax return and fiduciary income tax returns for the estate itself.
- **Make distributions.** Delivering the estate assets to beneficiaries, or to trusts for their benefit, is among the easier and more pleasant duties that the executor must discharge.
- **Accounting.** The executor's final task is to account for all money and property that has been received and disbursed. Therefore, accurate and detailed records must be kept from the beginning of the process.

Notes on the falling real costs of resources

Fifty years ago Professor Paul Ehrlich published *The Population Bomb*, warning that the world was running out of resources and predicting mass starvation. There was no way that food production could be increased fast enough to feed the ever-growing pool of humanity, he argued. The best-selling book sold over 2 million copies and sparked lively policy debates.

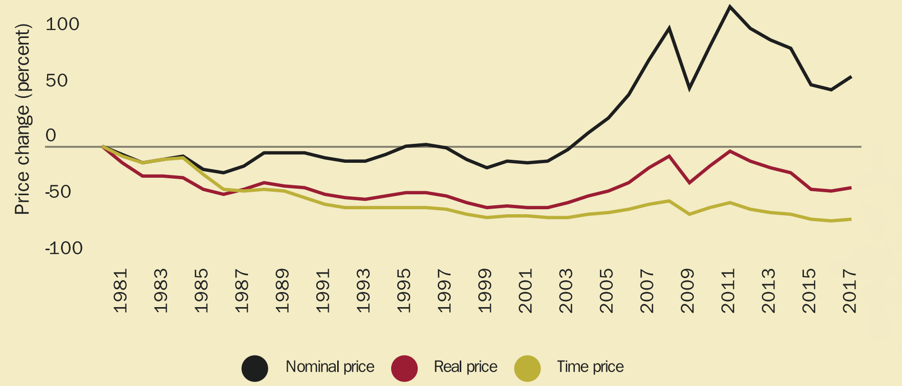
The strongest pushback came from Professor Julian Simon. He believed that far from being a burden, humans and human ingenuity were the ultimate resource. He theorized that as any resource becomes scarce, its price rises, which leads to lower consumption of that resource and then innovation in search of new ways to acquire it.

The theories were put to the test in a bet between the two men that became famous. Simon issued the challenge. Ehrlich would choose a basket of raw materials that he was confident would go up in price, and would choose a time period for the wager. He picked ten years to monitor the prices of copper, chromium, nickel, tin, and tungsten. The bet was $1,000, and the payoff would be the difference in the inflation-adjusted price of the basket of goods. Note that Ehrlich, therefore, could lose at most $1,000, while Simon's loss could theoretically be infinite, as there was no ceiling on the prices.

In the event, Simon won the bet. The price of the five metals went down by 57% in ten years, and Ehrlich sent Simon a check for $576.07.

New study

Inspired by this story, Gale L. Pooley and Marian L. Tupy have done a new study on a larger pool of resources tracked over a longer period of time [*The Simon Abundance Index*, published by The Cato Institute]. They hoped to assess whether Simon's victory was a fluke. It was not.



Percentage change in nominal, real, and time-price of a basket of commodities, 1980-2017

Source: The Simon Abundance Index, published by The Cato Institute, found at https://object.cato.org/sites/cato.org/files/pubs/pdf/pa-857-update.pdf.

Fifty items were tracked for the period from 1980 to 2017. Metals, such as were the object of the original bet, made up just 20% of the new basket. The rest was 48% food, beverages, and grains; 14% raw materials; 12% energy; and 6% precious metals. Data came from the World Bank and the IMF, which has tracked these prices since 1980.

In nominal terms, 41 of those commodities rose in price during the period, and nine fell. However, total inflation during the period of the study was 156%. After applying the inflation adjustments, only five items went up in cost. Two were static, and the remaining 43 went down in price. On average, the basket of commodities fell in price by 36.7%

Hourly labor

However, the authors believed that a better measure of the availability of any resource is how much labor must be traded to acquire it. The price of labor rises faster than inflation as human productivity increases. The better measure of value, therefore, would be how much one may acquire by trading a given amount of labor.

To determine the world hourly wage, the authors divided the average annual per capita income, which rose from $6,431 to $10,495 during the period of the study, by the average number of hours worked per year, which fell from 2,168 to 1,964. That gave an increase of more than 80% in the value of one hour or work over those 37 years.

When the prices of the commodities were measured in terms of the hours needed to acquire them, the cost fell by 64.7%. See the graph above for details.

The Simon Abundance Index

The next step in the authors' analysis is to demonstrate a correlation between increasing population and increasing abundance of resources. They created a Simon Abundance Framework to describe the relationship between population and resources, and the Simon Abundance Index (SAI) as a metric of resource availability. The base year, 1980, is 100. Today the SAI stands at 479.6. "Put differently, the Earth was 4.796 times as plentiful last year as it was when Ehrlich and Simon commenced their famous wager," the authors conclude. During that period, the population only rose by 69.3%.

Although the authors forecast continuing declines in the price of resources, they warn that there must be ups and downs in prices. The occasional spike in prices is a prerequisite first to conservation, and then to innovation, which are the long-term price drivers. ☐

Women are superior investors

According to serious academic research, women make better investors than men. This empirical observation was made in 2001 by two finance professors, Brad M. Barber and Terrance Odean, in their article, "Boys Will Be Boys: Gender, Overconfidence, and Common Stock Investments."

The professors were granted access to the trading records of a large discount brokerage firm. Over a six-year period, they discovered that:

- Men trade 45% more than women do.
- Excessive trading leads to excessive costs, which are not offset by higher returns. Trading reduced net return for the men by 2.65 percentage points, and their lesser trading volume reduced women's net returns by only 1.72 percentage points.
- Single men trade 67% more than single women do, reducing their returns by 1.44 percentage points more than the returns of the ladies.

What accounted for the relatively poorer showing of the men? Overconfidence is the most likely culprit, the professors theorized. Overconfidence leads to both excessive trading volume and poor stock selection. A second fact may be fear of regret, which causes investors to hold on to their losers longer than they should.

New study

Now a new study at Barclay's in England of the trading records of 2,800 investors over 36 months has been done, and it has essentially similar conclusions, 17 years on. For example:

- Women traded an average of nine times per year, while the men traded 13 times—put another way, men traded 44% more than women did, on average.
- Men tended to choose speculative, lower-priced shares, which the researchers dubbed "lottery style" investing. Women avoided such stocks, focusing instead on companies with strong track records.
- Men were more likely to keep their losers and sell their winners—that old fear of regret that comes when a loss is finalized.
- Researchers concluded that men seem to invest for the thrill of investing, while women seem to invest for the long term to meet financial goals.

Bottom line, the women's portfolios outperformed the men's. The benchmark was the FTSE 100, the British equivalent of our S&P 500-stock index. The men beat the benchmark by a scant 0.14 percentage points, and the women beat it by 1.94 percentage points. Thus, the women outperformed the men by 1.8 percentage points.

That may not sound like much, but over a period of years the compounding effect of an extra 1.8% return really adds up. ☐