



# Trusts

John Power

Arthur, wearing a thick, brick-red cardigan partially buttoned over a green corduroy shirt, picked at the last bits of sandwich and potato salad on his plate. Ron, Arthur's son, sat across the table from him, in tortoise-shell glasses and a robin's-egg-blue, v-neck sweater over a dress shirt. Arthur used his fork to push the last remaining cubes of potato through the mayonnaise on his plate, as if he were playing shuffleboard or curling. Arthur was trying to think of a way to bring up his own death in casual conversation.

The house was old and dark and dusty, with heavy curtains that kept out the light from what was a nice, early-spring day. Dust particles danced in the beams of light that did slip through the breaks in the curtains and fell upon the worn, wooden floor. The house was not crisp, which was Ron's main complaint. A thick afghan lay folded across the top of the couch, and a fleece blanket atop the lay-z-boy. All the pillows seemed overstuffed. The carpet, though faded and worn, also seemed to have a too-thick pile, and the ceilings seemed too low. There were too many plants stacked in front of the fireplace, and scattered in odd outposts around the house. The color palate—browns, dark oranges, olive greens, and mustard yellows—was out of date.

"Are you done?" Ron asked. He had finished his own sandwich and potato salad a few minutes before, and was now watching Arthur push his remaining food and avoid joining the clean plate club.

"I suppose so. No, sit down a second," Arthur added when Ron rose to carry the plates to the sink. "Sit for a second."

"Ok."

"What's new with...your girlfriend?"

"Stephanie. She's fine. She's applying for summer associate jobs right now. I'm trying to convince her to stay here, but she wants to go home. We'll see what happens if it becomes long distance," Ron said, shrugging to indicate he wasn't optimistic if it became long distance.

"Oh." Arthur turned his attention back to his plate. "How are your classes going?"

"They're good," Ron answered. "I'm teaching two classes of PR, but one is a small section with a writing component, so three classes. The small section is about twenty-five kids, so it's not that small, but my other class has close to sixty."

"Public relations?"

“No. PR is Professional Responsibility. It covers conflicts of interest, like if an attorney represented you in a prior matter, can he then represent someone suing you? And confidentiality. So, if your client admits that he robbed someone, can you then call the police and turn him in? Candor to the court. The difference between innocent and not guilty. Things like that.”

“The difference between innocent and not guilty?”

“Innocent means innocent. You didn’t do what you’re accused of doing. Not guilty means the government can’t prove it. You may have done the crime, but you can tell the court you’re not guilty without lying to the court, because you’re not saying you’re innocent, you’re just saying you don’t think the state can prove it.”

“Only you lawyers can say you’re not lying when you’re guilty, but you tell the court you’re not guilty.”

“Not guilty doesn’t mean innocent,” Ron said.

“Do you do anything with wills?” Arthur asked.

“Not really, but we touch on wills in remonstrating with your client.”

“What’s that?”

“It’s your duty as a lawyer, well, not really a duty, a duty is something else. Certainly, it’s your option as a lawyer, but it’s the idea that you should tell your client to do the right thing.”

“Lawyers telling their clients to do the right thing? That’ll be the day,” Arthur said, and he chuckled to himself before putting down his fork. With his fork on the plate, he occupied his fingers by fidgeting with the buttons on his cardigan.

“There’s actually a big theory behind that,” Ron said, “and it’s hotly debated. It’s the Complex Machine Theory. The idea is that the law is this big complex machine, made by lawyers and judges and legislatures, and the average person can’t begin to understand how to use it. The average person knows the result he wants, and he’d get there on his own if he could, but he doesn’t know how to use the system, so he has to hire a lawyer. One side says lawyers are like mechanics. Your mechanic is there to fix your car when it breaks down because you don’t know how to fix it. The lawyer’s job is just to use the system for what the client wants, and it’s not the lawyer’s job to decide if that’s right or wrong. That’s why we see lawyers doing so many bad things. It’s not that the lawyer thinks he’s doing good, but it’s that the lawyer is doing what the client wants, and the client wants something bad, and the client is the one who decides what gets done.”

“The client is paying the bills, and the lawyer is out for the almighty buck.”

“No, that’s not it,” Ron said. Ron had learned long ago that the best way to deal with his Dad’s comments was just to say “no” and move on. “People have a right to the legal system, and that shouldn’t be denied just because they don’t know how to use the system. The other side, though, says it is the lawyer’s job to tell his clients when they’re doing something wrong. That’s where

remonstrating comes in. The other side says the lawyer has to remonstrate with his client, and tell the client not to do what the client wants to do. If the client wants to do something really bad, then the lawyer is allowed to withdraw from representing that client. There are all kinds of rules dealing with that.”

“So, what do you do with wills?” Arthur asked, bringing the conversation back to his mortal interest. His fingers were still buttoning and unbuttoning a middle button on his cardigan, making Ron wonder if that was some sort of anti-arthritis exercise his Dad’s doctor had recommended.

“That’s one of the hypotheticals I use. I ask the students, so, what if a client wants to take his grandson out of his will because he’s gay? Pretty much every hand raises and says that’s wrong, and that you should tell your client not to disinherit his grandson. Some even say they’d go beyond remonstrating, and turn down the client. It’s funny, though, you change the hypothetical a little bit, and you get very different answers. A Holocaust survivor who’s been active in Jewish causes wants to cut out her grandson for marrying a German, and a lot more people would deal with that client. What if a Catholic wants to leave all his money to a Catholic charity, which has the effect of cutting out his kid, but that’s not his goal? What are you supposed to tell your client? That’s basically PR. You come up with hypotheticals that show the kinds of ethical situations an attorney can get in, and you ask your students to think through them.”

“You don’t actually write wills?” Arthur asked.

“No, we don’t actually write wills. Even DET doesn’t do that. Decedents, Estates, and Trusts. That’s the wills class. DET discusses the issues with wills. Drafting a will is supposed to be easy, which is sometimes the problem. It varies state by state, but I remember from my DET class that there are states that allow ‘holographic wills,’ handwritten wills, and there was one case where I think a farmer was out in his field working on his tractor, and the tractor crushed him against a tree. Somehow he got a piece of bark from the tree and scratched out a will on it, and that was a valid will.”

Arthur nodded his head, as he had with Ron’s other asides, but really only heard the part about drafting a will being easy. Some of the ice in his glass had melted, and Arthur reached for and drank the mouthful of cold water that had collected at the bottom.

“Do you want more Coke?” Ron offered, again half-rising from his chair to go into the kitchen.

“No. Sit.” After a pause, Arthur added, “I’d like you to draft my will.”

Ron at that second was also drinking the melt-water in his glass, and he took a moment to chew and grind up an ice cube that had followed the water into his mouth.

“I don’t know how to draft a will. I don’t even teach wills.”

“You’re a lawyer, aren’t you?”

“Yeah, but I don’t do wills.”

"You said a guy who got killed by a tractor did it."

"Yeah," Ron said, "but someone sued and it got into a casebook. If you're in a casebook, something went wrong."

"You're a lawyer, right? You should be able to write a will for me. A lawyer is a lawyer is a lawyer."

"That's not quite true, Dad. I thought you had a will?"

"We had one with your Mother. It said she leaves everything to me and I leave everything to her, and if we both go then it goes to you and Norm. That cost seven-hundred bucks. You were the one who said it was a rip-off, and that the state would have done the same thing anyway."

"That's probably true," Ron said. "Every state is a little different, or at least can be a little different, but I'm pretty sure the default rule would be to give half to me and half to Norm." Ron thought for a moment. "Besides, the will you have should still be valid. I'd have to look at it, but from what you just said, nothing should change just because Mom passed. The estate should still go fifty-fifty to Norm and me. You probably don't even need a new will."

"I don't want to leave it fifty-fifty to you and Norm. You're the lawyer. You had the job with the firm. You showed us your office."

"That was a few years ago. I'm teaching now, and I'm just an associate professor with two classes and a writing section."

"That was your choice. You told me what your billable hour was. You can go back to the firm. Norm is never going to make that much money, and he's got Daniel and Emily to take care of, especially Emily."

"Right, I know Emily, obviously, needs extra care—"

"I don't have much, Ron. I don't want you arguing over this."

"I'm not arguing, Dad. My point is just that I'm not making what I was. And the billable hour went to the firm—I wasn't seeing that. I've still got school loans, too, but I'm not arguing."

"You're a lawyer. You'll be ok. I've never heard of a broke lawyer before. And you can have anything in the house, any of the mementoes. Savings, the house, the car, anything you sell, Norm gets the money. But you can have anything else you want. My lamp. The clock. The dog by the fireplace. Photos. Any of the things that have value to you, you can have. Sell the rest, and Norm gets the money. That's what I want. Can you write a will like that?"

"Why don't you go back to the lawyer who drafted your first will?"

"So he can take another seven-hundred bucks from me? For what? You're a lawyer. You can do it. It's probably closer to a thousand now with inflation. You lawyers are always charging more and more."

"Ok," Ron finally said. He didn't like arguing, which was part of why he left the firm, and he could see Arthur's mind was made up. "Do you have a copy of your will? That'll give me someplace to start. I've never done this before, so I'll need to do some research. Give me some time."

“Good,” Arthur said. “I’ll get you the will.” Arthur slid back his chair, rose from the table, and slowly walked on an arthritic knee through the overstuffed, brown and orange living room, and upstairs to the bedroom where he kept the will.

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“Have you taken DET?” Ron asked after putting his wallet, keys, and cell phone in a ceramic bowl on top of the low, walnut bookcase under his tv. Everything had a place, and Ron’s apartment was crisp. Stephanie was lying across the couch, a textbook propped on her knees, with various highlighters on her stomach. The caps were off the highlighters, which usually left her shirts with a Seurat-like painting of florescent yellow, orange, blue, and pink dots after a long day of studying.

“DET?”

“Decedents, Estates, and Trusts. Wills.”

“We call that Dead People. I’m taking that next year.”

“Do you know anyone taking it now? What about your mentor? She gives you outlines, right? Could you get a Dead People outline?” By now Ron had gone into the alcove kitchenette for a glass of water, returned to the living room, and took the spot on the couch at Stephanie’s feet. She extended her legs, eliminating the backstop her knees had provided for the textbook, rested her crossed-calves on Ron’s lap, and dangled grey and pink argyle-socked feet in the spot between his thigh and the couch’s arm.

“I can ask Marcella. What do you want a Dead People outline for?”

“I saw my Dad this morning.”

“How is he?”

“He’s fine. The house still smells like an old sock.”

“I didn’t say ‘old sock,’” and Stephanie nudged Ron in the side with her feet. “I said it was musty. That’s very different.”

“You should’ve said ‘old sock’—truth is an absolute defense. He needs to buy new furniture. I didn’t even try to sit on the couch.”

“I could hardly get out of that.”

“Other than that, he’s fine. He asked me to write his will. That’s how he ended our nice father-son lunch.”

“Have you ever written a will before?”

“No, that’s why I want the outline.”

“I’ll ask Marcella. There’s probably a *Nutshell* or an *E&E* on it. I’m sorry, that’s awful of me,” and Stephanie made a point of closing her text and looking Ron in the eyes, though she kept a finger in the book to mark the page. “He’s fine, right? You said he’s fine. He wants a will, but he doesn’t need a will, right?”

“Yeah, sorry, he’s fine, Steph.”

“Good. I’d feel terrible if he was sick and my first reaction was ‘here are some hornbooks.’” She slapped a flag on her page in the text as a more permanent bookmark, and began capping her highlighters and placing them on the coffee table. She was wearing a dark green shirt that complimented her red hair, but, more importantly, didn’t show any dots from her highlighters. “That’s weird though, right, your Dad asking you to write his will? Are you ok? I mean, that’s some Oedipal shit.”

“I’m fine. After Mom—I mean, sure, it’s weird, but we’re not here forever. What’s shitty is drafting a will your Dad’s cutting you out of.”

“He’s what?” Stephanie said furrowing her brow and tilting her head. She was a good couple of years younger than Ron, and only had lines on her face when she grimaced or smiled.

“Not really. Sort of. He wants to give everything to Norm. All the money, at least, and proceeds from the sale of the house and stuff. I can have any thing I want, but Norm gets all the money because he can’t keep a job or support his kids.”

“I can’t believe Arthur would do that,” and Stephanie shifted to sit upright on the couch. “I mean, obviously, it’s not about the money, but he’d cut you out? When does Norm visit him?”

“Yep. I mean, it’s not about the money. Norm’s on the slow boat to nowhere, and Emily does need extra help. Maybe I should form a trust for Dan so Norm won’t waste it. Dad said I can have the dog by the fireplace.”

“You like that dog!”

“I do. Some money would be nice. I’m still paying back college loans I deferred in law school, and I’ve got law school loans on top of that. I’m not cleaning up as a professor either. You’ll probably make more this summer than I make in a year.”

“That’s not true.”

“It’s close. I wish I’d saved more when I had it.”

“If you’re writing the will, leave everything to yourself,” Stephanie said with a smile, and she nudged his side again with her foot.

“I thought of that already,” Ron deadpanned back. “Kidding. Although, if I set up a trust for Dan and Emily, I could get paid as the trustee. Kidding.”

“Kidding, but you seem to have thought this out.”

“Steph, you know I’m kidding.”

“I do, yes,” and she nudged his side again.

“Good. What have you been up to?”

“Reading.” She motioned to the text on the coffee table. “Publicly Held, Evidence, and Family Law. And I think I decided on Atlanta this summer.”

“Atlanta?”

“Everyone’s back there. I can live at home and save a few extra grand. You just said you wished you’d saved more. I can pay off loans. It makes more sense. What?”

“Nothing. Atlanta’s far. I thought you were looking at DC, or splitting the summer?”

“We talked about this.”

“I know.”

“Now you’re mad.”

“I’m not mad, Steph.”

“It’s just for the summer.”

“Yeah, but then they’ll give you an offer for next year.” Stephanie grimaced at him, and the lines returned to her face. “I know we talked about this. But there’s a difference between talking and having it happen. I’m fine, Steph, but just let me process it for a bit.” Ron realized they’d be breaking up, and he figured sooner was better than later.

“Ok. You can process. I still need to go to the gym. What do you want to do for dinner when I get back?”

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The law library was an ugly space, open and modern like a cavern. Constructed in the 1970s to replace the previous law building, it was built on a series of levels and with an orange color scheme—you half-expected shag carpeting and swingers with thick mustaches leaving their keys in a bowl at the front desk. The stacks were sleek aluminum, holding august and ancient reporters only opened by 1Ls who weren’t yet permitted to use Westlaw or Lexis. The furniture was heavy oak with gothic detailing, recycled from the old law building. Paintings of prior deans hung from the walls. A few students were reading at the tables on the main floor, with laptops, texts, and highlighters spread out in front of them. A few others were in the periodical nook reading newspapers.

Ron stood at the front desk while an undergrad on work-study fumbled with the computer system, but eventually he checked out a copy of the *Nutshell* on wills, and the *Examples & Explanations* on trusts and estates.

“Ron, good to see you!” Dean Partla said excitedly as she approached Ron. Tall, in her 50’s, and with bushy black hair that she never seemed to comb and instead allowed to form a protective bubble-helmet around her head, she always greeted everyone exuberantly, no matter what message she had to give them. She felt, as the dean, it was her duty to always be the welcoming and positive face of the law school. “Doing some research for an article?” she asked pointing at the books.

“No. I was talking to a friend the other day about wills, and realized how much I’d forgotten since I was a 3L.”



"I always like an inter-disciplinary approach. You know, I once read an article about how the Internet is hurting research. Before, it was so hard to find what you were looking for that you had to read a lot of irrelevant material, but that gave you a broader view. Now, it's so easy to pinpoint exactly what you want that you don't see the big picture."

Ron nodded, shrugged his shoulders to indicate that was a valid hypothesis, and grunted a "yeah" in agreement.

"I'm glad I ran into you. I've been meaning to set up a meeting. Do you have a few minutes now?"

"Sure," Ron answered, and he followed Dean Partla out of the library, upstairs to the faculty offices, and around the corner and past the registrar's office. They mainly discussed the weather until they were in the dean's office, Dean Partla seated behind her desk, and Ron in a wooden chair with his hornbooks in his lap.

"I'm sorry, Ron, but I don't have good news for you. I've been meaning to tell you this. Nobody's retiring. I'm sure you knew that. Everyone lost a good chunk of their retirement with the market. Even those who didn't are a bit gun shy about retiring too soon. Blake actually told me he put everything in real estate, and obviously that's not what it was. He told me that in confidence, by the way, so please don't repeat that. What I'm getting at, is that we'd like to keep you, Ron, but we don't have a position anymore. We haven't had the turnover we expected."

Ron felt as if he'd just had a nail hammered through his foot, and all air, energy, and life-force was running out and pooling on the floor around him, like blood in a police photograph of a grisly crime scene. He'd never been fired from anything before, not even a meaningless summer job in high school. The shame and embarrassment of being fired quickly receded, however, when he thought about his loans, his lack of savings, and his prospects, in this market, of finding another job. Being broke worried him more than the shame or embarrassment.

"What...ah...now? What do I do?"

"Not right now," Dean Partla said, with a "don't be ridiculous" chuckle in her tone of voice. "In fact, Professor Robbins is going on sabbatical next semester. I know it's short notice for you to find something for next year, but I've been able to get you another semester here. Civ Pro I. Just one class and one semester, with the corresponding salary for that course load, of course."

"I can't live on that."

"Let's not be too dramatic, Ron. You can take the class or you can leave it, but you're not doing me any favors one way or the other. Second, you know other young professors keep a practice on the side. That's why you only have classes on Tuesday and Thursday."

"I couldn't find anyplace that would let me do that."

“Well, others have. And you knew that going into it. And even with the extra time, it’s not like you’ve been setting any land-speed publishing records.”

“I’ve published.”

“One article in two years, and not in a particularly prestigious journal.”

“I’ve been writing.”

“We’ve all been writing, Ron. I’m sorry, but you don’t have that luxury. Especially when you’re only teaching on Tuesdays and Thursdays. You should see the resumes I’m getting. Very accomplished.”

“I thought you said it was because no one’s retiring.”

“It’s both. We still need fresh blood. You can’t come here and coast, Ron. That doesn’t help the university. It doesn’t help me, it doesn’t help the students, and it doesn’t help you.”

Ron felt like the hole in his foot was suddenly plugged, and the emptiness from what had run out upon hearing he was fired suddenly filled up with academic indignation. “Are you kidding me, Alyssa? This is about publishing? Robbins hasn’t published an original idea in years. Blake just gets published because thirty years ago he wrote three good articles, and now the idiots running law reviews think they have to publish whatever crap he sends them. Christ, his articles all cite his own articles, regardless of whether or not they’re on point, just to make it look like his articles get cited a lot. You know I’m a good professor, and you know my kids learn what they’re supposed to learn. Publishing? Sure, I don’t publish a ton, but my articles actually have an original idea in them. This is just about publishing, and you know that’s bullshit, and you know that’s not teaching. You know I’m a good professor. Don’t get caught up in the publishing bullshit.”

“Ron, calm down. I hired you, and I like you, but you are very close to being out of line. Right now, this isn’t even about publishing. Right now, this is about the fact that the economy is bad, and no one’s retiring, and we thought we’d have a spot for you, but we don’t. Right now, we’re very sorry, but we can get you one class next semester, and we’ll be very happy to write you a letter of recommendation, and we’ll keep our ears open if we hear anything. But if you don’t calm down, this will be because you’re not publishing, which gives us doubts about your commitment to academia and to contributing to the field.”

“Are you threatening me?” Ron asked. He was, mainly, confused by Dean Partla’s tone as she leaned forward in her chair to elevate the stakes. Her office was filled with Eames-inspired, mid-century modern furniture. All the corners were rounded, which gave the office a soft, safe feel, and Partla’s bubble of black hair and constant upbeat manner made Ron legitimately confused by her present tack. Later, when retelling the story, however, Ron would give himself a *Taxi Driver* type of tough-guy persona in asking “Are you threatening me? Are you threatening me? You must be threatening me, because I don’t see nobody else here.”

"I'm not threatening you," Partla answered, sitting back in her chair. "I'm telling you to calm down. We haven't even brought up Ms. Ruckhardt yet."

"Excuse me?"

"Ms. Stephanie Ruckhardt."

"What are you talking about?"

"Ron, please. This is a small school, and I'm not an idiot, and I don't appreciate being treated like I'm an idiot."

"I'm not treating you like an idiot."

"Good. Then you're not going to make me prove beyond a reasonable doubt that you're having a relationship with Ms. Ruckhardt before you admit it, are you? Or even by a preponderance of the evidence?"

"There's no policy against dating students. And she's 28 years old. She was working. She's not a kid right out of college."

"Just because we don't have a policy doesn't mean it's a good idea. Just because we don't have a policy doesn't mean other schools don't, or that other schools would want a professor like that—sexual harassment laws being what they are."

"I didn't harass her."

"I'm not saying you did, Ron. But you had her for two classes last year. I should say, she was in two of your classes last year, and the writing sections."

Ron glared at Partla for second before answering. "That's right."

"You gave her As in the writing classes, and A-minuses in the substantive classes."

"I don't remember, but that sounds about right," Ron answered.

"Does it sound about right that those were the highest grades Ms. Ruckhardt received last year? Significantly so, even?"

"Are you kidding me?" Ron was ready to leap across Partla's desk and commit a tort against her.

"Calm down, Ron, calm down. I think you said you had a class you need to prepare for. Think about this for a couple of days. Take the week if you want. I'm sure you gave Ms. Ruckhardt the grades you think she deserved, but you can see how there's enough smoke here that the University wouldn't be out of place were it to commence an investigation. I don't know too many schools who want to hire a professor under investigation for this sort of thing. But it doesn't have to come to that. As I said, right now, this is just about the economy, and people who were supposed to retire are not retiring, and we don't have a spot for you. I can get you one class first semester next year, and write you a letter of recommendation. It's not a lot of money, but it's better than nothing. Take some time and think about this." Partla turned her attention to the monitor on her desk, and began clicking through emails.

Seething, Ron rose silently, and walked out of Dean Partla's office. He didn't have a class to prepare for. He was only at the law school to pick up the hornbooks.

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Ron returned home and found an email from Stephanie in his inbox, along with three attached Dead People outlines. Without a job, he could go to Atlanta. But he needed a salary, and didn't want to limit his odds of finding one. He'd look anywhere, he decided, Stephanie or not. He didn't want to follow her. Ron knew he should have been updating his resume, but didn't feel like it just then.

Instead, Ron sat on his couch with the *Nutshell*, and began research that, if he followed his father's wishes, would result in his own disinheritance. Ron couldn't help thinking, however, that his father would never read what was placed in front of him, and even if he did, Arthur wouldn't understand it. Arthur would sign anything Ron told him to sign. That would involve active misrepresentation, however. But, the old will would remain valid until a new will was written. Ron could delay. He spent the rest of his day skimming the *Nutshell*, and involuntarily thinking through various hypotheticals to leave himself half, as well as the favorable tax treatment of a stepped-up basis in his father's property.