

Case of Dana and Jan Putnam - Dana Putnam Information

Important General Instructions: Please “get into” your character and react as realistically as you can. If someone says something that your character would respond to cooperatively, be cooperative. If something makes you angry, express that the way you think your character would. Please do not exaggerate conflict or be too cooperative. Provide information naturally and at appropriate times rather than blurting it out all at once in the interview with your lawyer or other stages of the process.

I encourage you to continue parts of the simulation outside of class periods. For example, lawyers and clients or counterpart lawyers may want to confer – in role – outside of class. If you do have such consultations, please do it in role as you will get a lot more from the exercise.

If you are asked for facts that are not provided, do not make up facts that might be legally significant. Before the initial interview, each party’s lawyer knows only that the case involves a possible will contest. So a major part of the interview will be to elicit important information from the clients. The lawyers will also want to learn their clients’ goals and identify additional information needed to proceed. The lawyers will submit a request for additional information. The clients do not submit this request.

Please do not share this information with other students until the simulation is over. All students should use your real names to avoid confusion.

Common Knowledge for Both Parties (but not their lawyers)

Dana, 45, and Jan, 49, are unmarried siblings who live in the same city and have a dispute about the estate of their mother, Lisa Putnam. Lisa, 75, died of cancer a few months ago, after a series of illnesses during the last few years of her life. Dana is a musician who has a modest and fluctuating income, with very little in savings. Jan is an accountant who has done reasonably well at work with a decent and stable income and a growing investment portfolio.

Lisa and her husband, Fred (who died eight years ago), put both kids through college. Like most parents, they wanted their kids to be happy, successful, and financially secure. Fred had managed an upscale retail store and was always more practical than Lisa, who was a piano teacher. Fred was especially happy when Jan got into accounting, because that he thought that would provide a stable career. By contrast, Fred worried a lot about Dana's future and whether s/he would be able to have a decent life. Although Lisa had also worried about Dana, she was happy that Dana found a fulfilling musical career, perhaps because she and Dana both had artistic temperaments. Lisa would have been sad if Dana had a career that killed his / her spirit. Lisa was happy that Jan was doing well and she loved him/her, but she was never as close to Jan as Dana.

Lisa was diagnosed with cancer about a year ago and Dana spent much more time taking care of Lisa after that than Jan did. Dana was closer to Lisa than Jan was and Dana had more free time. Jan was constantly busy at work. Dana had less work than Jan and when Dana performed, it was often in the evening. Dana normally took Lisa to various appointments including the doctor and hairdresser. Several months after Lisa's diagnosis, Dana took her to the lawyer who drafted her will. The will was drafted and executed several months before Lisa died.

Lisa's will provided that, after her death, Dana could live in Lisa's house as long as Dana lives. If Dana occupies the house, s/he would pay the mortgage and all related expenses. If Dana would not occupy the house or occupies and then vacates it, Jan would have the option to buy Dana's interest in the house. If neither would occupy it at that point, the house would be sold and the net proceeds would be split in half.

Until Lisa died, Jan had no idea what the will provided and Jan feels that it is very unfair. There is no guarantee that Dana would ever vacate the house, in which case Jan would never receive any value from it. In addition, the mortgage is only about \$30,000 on a home worth \$250,000. The monthly expenses (including mortgage, taxes, and insurance) are about \$700, which is much less than the \$1200 rental value of the house. Thus, during the time that Dana might live in the house, s/he would be getting a bargain and Jan would get no value from his / her interest in the house.

Dana understands that this provision is more favorable to him / her than to Jan but believes that Lisa purposely made this arrangement because Dana has greater

financial need. Whereas Jan has owned a home for many years, Dana has never owned a home and has always rented – sometimes sharing with roommates. Dana has fond memories of growing up in the house and would love to live there again, especially under these favorable conditions.

Over the years, Lisa and Fred gave Dana a series of loans totaling \$15,000, which had not been repaid. Lisa's will forgave these loans. Considering the provisions about the house, Jan considers this provision to be adding insult to injury.

Lisa's estate includes other assets, including various mutual funds, interests in privately-held local businesses, and personal belongings including some valuable jewelry. The will provides that these assets would be divided equally between Dana and Jan. Although the mutual funds can be easily valued, the business interests and jewelry would require expert appraisals. At this point, no one has a good handle on the value of these properties, which might be as low as \$100,000 or as much as \$1 million.

Before Lisa died, Dana and Jan had been friendly, though not close. After Jan learned about the provisions of the will, the siblings have been very cool towards each other and haven't communicated very much.

Confidential Information for Dana

This whole episode following your mother's death has been very upsetting. You were very close with her and you spent a lot of time caring for her during her final illnesses. So you are not only grieving her death, you are now in a very unpleasant conflict with Jan, which makes you feel angry and sad.

This conflict has brought issues to the surface that you prefer to avoid. You and Jan have always gotten along well enough, though you haven't been close with each other. You resented that you took more responsibility for caring for your mother than Jan because you feel that Jan had the time to help. You and Jan have different ideas about what's fair. You think it is significant that you were "there" much more for your mother and you have greater financial needs than Jan does. Jan thinks that fairness should be a matter of simple mathematical equality. This fits his / her business-like temperament, which misses so much of what is important in your view. It is hard to get Jan to "get it," which makes you feel crazy when you are dealing with him / her.

Fortunately, your financial situation has improved in the past five years. You have some regular gigs and are increasingly asked to perform and record as a backup guitarist. Your income still fluctuates, but you have been averaging about \$30,000 a year for the past few years. So if you moved into mom's house, you would be open to paying some rent to Jan for his / her share of the house.

You have been seeing someone for the past year named Casey (who is the same sex as you) and you are getting serious about each other. You and Casey have been talking about living together and it would be perfect if you could live in your mom's house. Casey is a bartender who makes decent money and could help with the expenses. Even if you don't end up living with Casey, you could get a roommate and get some additional income. As for the rest of the property, you want to get your fair share, but you don't feel attached to most of it, except for a few items around the house of sentimental value.

As you reflect on the situation, if you can get over being mad at Jan, you actually feel sorry for him / her. Jan seems so alone. Jan was much closer to your dad than your mom and your dad has been gone for ten years. Whereas you have always had a good love life, it seems that Jan has had never had good luck in that department. You wish that Jan was happier but it seems that there is nothing that you can do to help. Of course, if s/he acts like a selfish jerk in the negotiations, you will have no sympathy and do whatever you need to do to protect yourself.

In negotiating with Jan, you don't feel that you need to get everything exactly as in your mother's will, but it is important that your needs are met, the results feel fair, and that your mother is honored – so that you and Jan are not just acquiring her property. You got your lawyer's name from a friend who was represented by the lawyer in a divorce. You never met the lawyer before.