

Case of Dana and Jan Putnam
Jan 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.

This simulation involves a character who is homosexual, which may be an issue in this case. If you have any concerns about this aspect of the simulation, please talk with the instructor.

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 Jan

This whole episode following your mother's death has been very upsetting. Although it sounds corny, your mom always loved Dana more than you. Even so, you are shocked – sort of – that she poured salt in your wound by making a stupid, one-sided will in favor of Dana.

You were always much closer with your dad and his death was a real loss for you. After he died, you tried to be a good child to your mother, but you and she didn't have good "chemistry" and it became awkward for both of you to visit her. Dana had the time to take her to the doctor, hairdresser, grocery store etc. and she seemed to prefer to be with Dana than you.

As Lisa got older and sicker, it seemed as if nothing you could do would please her. She always seemed grumpy when you visited – and she would complain when you didn't visit what she considered often enough. Although you loved her, her death was actually a relief.

This conflict has brought issues to the surface that you and Dana preferred to avoid. You have always gotten along well enough, though you haven't been close with each other. You accept the fact that Dana is homosexual, though you are turned off by that culture and it is one more thing that creates some distance between you.

You resented that Dana never got a real job that so that s/he could support him / herself – and repeatedly relied on your parents for money for basic support. You wouldn't mind your mother forgiving these loans if there was a fair division of the house. You don't know much about the other assets in the estate, though you have a hunch that they could be substantial.

Most of your life is work – you have never had much of a love life and you don't have a lot of friends or hobbies. Although you do a good job as an accountant, it has become routine and boring. For some time, you have wanted to develop some businesses, but have never been able to accumulate enough capital to make a go of it. You have carefully saved and invested your income, but you haven't earned enough to get a big enough stake to do something really interesting in business. You earn about \$60,000 a year and have about \$100,000 in savings. You own a \$225,000 house with about \$50,000 in equity. You were hoping that you could split the equity in your mother's house with Dana and use your share to do some serious investing.

As you reflect on the situation, you realize that you feel jealous of Dana. Although Dana's career is somewhat irresponsible for a middle-aged person, s/he seems to enjoy life more than you do – and now is being rewarded in your mother's will. Even so, Dana is the only close family you have left and you would like to have a good relationship if possible. 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 Dana, you don't feel that you need to get exactly half of the assets (which you think would have been the right thing), but it is important that the results feel fairer and your needs are met.

You have a good professional relationship with your lawyer, and you have referred matters to each other, though your lawyer has never represented you before.