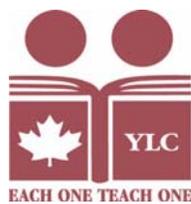
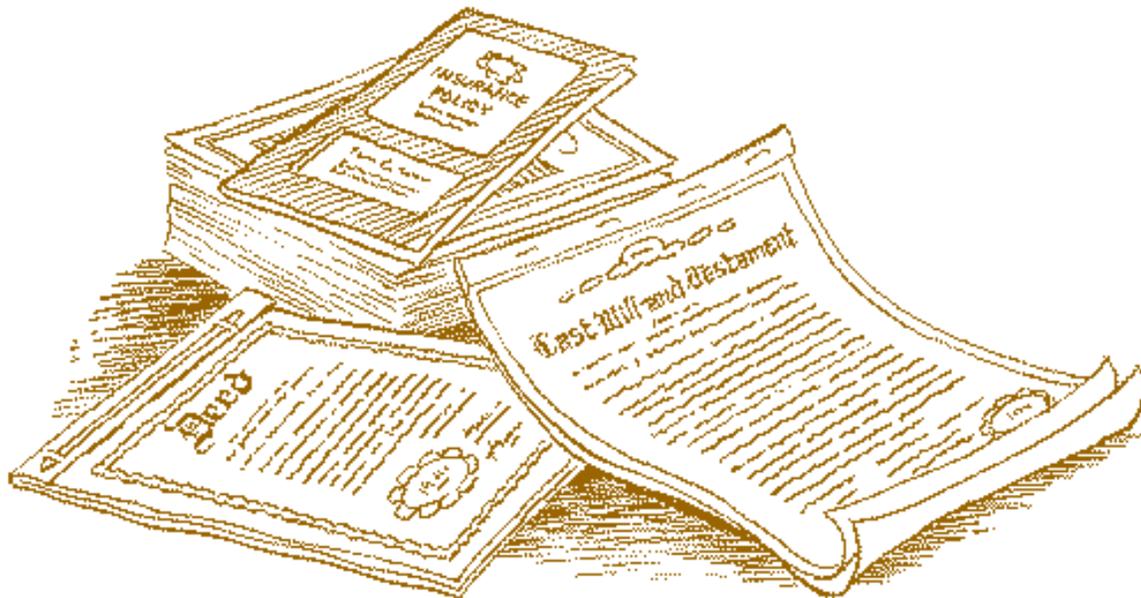
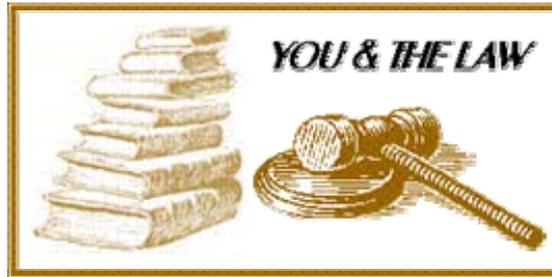


WILLS

STUDENT MANUAL



**YAMASKA
LITERACY
Council**



Also published by the Yamaska Literacy Council, as part of the **You and the Law** series:

<u>Wills</u>	<u>Health Law</u>	<u>Employment Law & Labour Standards</u>
Tutor Manual	Tutor Manual Student Manual	Tutor Manual Student Manual

Published by:

Yamaska Literacy Council
239, rue Principale
Cowansville, QC J2K 1J4

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Produced in:

Quebec, 2006

ISBN 0-9782115-1-0

Acknowledgements:

“**You and the Law**” series was published by the Yamaska Literacy Council as part of an IFPCA funded project. Document produit dans le cadre des Initiatives fédérales-provinciales conjointes en matière d’alphabétisation (IFPCA).



You and the Law: Wills

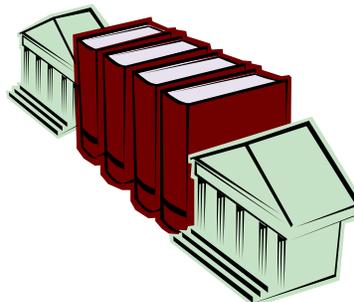
Student Manual

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<u>Vocabulary</u>		
Attest	ă-test	To declare to be true or genuine.
Capable	kay-pă-běl	Able, of sound mind.
Codicil	kod-i-sil	An addition to a will that changes, explains, takes away or adds something.
Contest	kŏn-test	Challenge the will in court.
Formalities	for-mal-i-teez	Rules that must be followed.
Heir	air	A person who receives property under a will.
Holograph	hoh-lŏ-graf hol-ŏ-graf	A type of will that you write in your own handwriting.
Inherit	in-her-it	To receive property under a will.
Intestate	in-tes-tayt	A person who dies without leaving a will.
Liquidator	lik-wi-day-tor	The person responsible for carrying out your final wishes.
Notary	noh-tă-ree	A person who has studied the law on wills.
Probate	proh-bayt	A legal procedure that makes sure the will has been written following all the rules of that type of will.
Testator	tes-tay-tŏr	A person who makes a will.
Will	wil	A legal document stating who will inherit your property after you die.



Section 1:

Wills in General

- 1.1 What is a will?
- 1.2 Who can make a will?
- 1.3 How do I make a will?



Section 1: Wills in General

Will

A legal document stating who will inherit your property after you die.

? 1.1 What is a will?

Inherit

To receive property under a will.

A **will** is a legal document in which you state who will **inherit** your property after you die and how much they will **inherit**. You can also name the person who will be responsible for looking after your minor children.



The person making the **will** is called the **testator**. The person who receives property under the **will** is called the **heir**.

Testator

Person who makes a will.

Heir

Person who receives property under a will.

? 1.2 Who can make a will?

Capable

Able, of sound mind.

Any **capable** person over the age of eighteen can make a **will**.

You can even make a **will** if you are under eighteen years old, but only to distribute property of little value, for example, your CDs, cassettes, bicycle, photos, toys, etc.

? 1.3 How do I make a will?

Formalities

Rules that must be followed.

You must write your will by following certain **formalities** (rules or conditions) for your will to be valid. The **formalities** you must follow depend on the type of will you chose to make.

Quebec accepts three types of wills:

- a **holograph** will
- a will made **before witnesses**, and
- a **notarial** will

Holograph

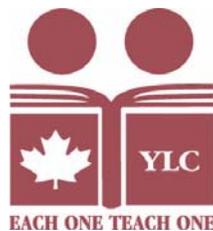
A type of will that you write in your own handwriting.

NOTES

Section 2:

Types of Wills

- 2.1 What is a holograph will?
- 2.2 How do I make a holograph will?
- 2.3 What is a will made before witnesses?
- 2.4 How do I make a will before witnesses?
- 2.5 What is a notarial will?
- 2.6 How do I make a notarial will?
- 2.7 Is one type of will better than the others?



Section 2: Types of Wills

? 2.1 What is a holograph will?

A **holograph** will is the simplest type of will. It is sometimes called a “homemade” will. It does not cost a lot to make – the only cost is the paper on which you write it. This is a good kind of will to have if you do not own a lot of property.



2.2 How do I make a holograph will?

You **must**:

-  write the will all in your own handwriting. You cannot write a *holograph* will on a typewriter or a computer,
-  sign the will yourself.



You **do not** have to:

-  date the will (although it is a good idea to do so);
-  say where the will was written or signed;
-  have the will witnessed.

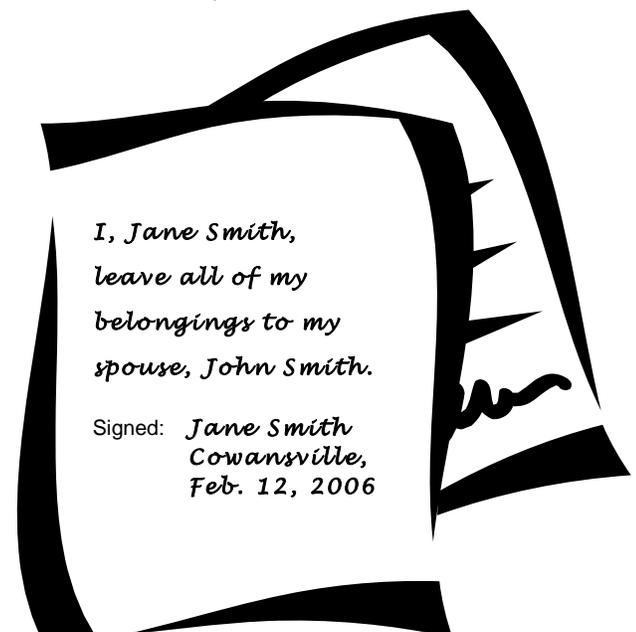
You can **have**:

-  a lawyer or a **notary** register this type of will in the *Registre des dispositions testamentaires et des mandats du Québec* (Quebec Register of Wills and Mandates).

Notary

A person who has studied the law on wills.

Here is an example of a **holograph** will:



? 2.3 What is a will made before witnesses?



A will made before witnesses requires two witnesses above the age of eighteen to be present when the will is signed.

? 2.4 How do I make a will before witnesses?

You **must**:

-  sign the will yourself;
-  **attest** before the witnesses that the document is your will and that you signed it;
-  have two witnesses sign the will in front of you.

Attest

To declare to be true or genuine.

You **can**:

-  write this type of will by hand, on a typewriter or a computer;
-  have someone else write the will for you, such as a lawyer or a friend.



You can **have**:

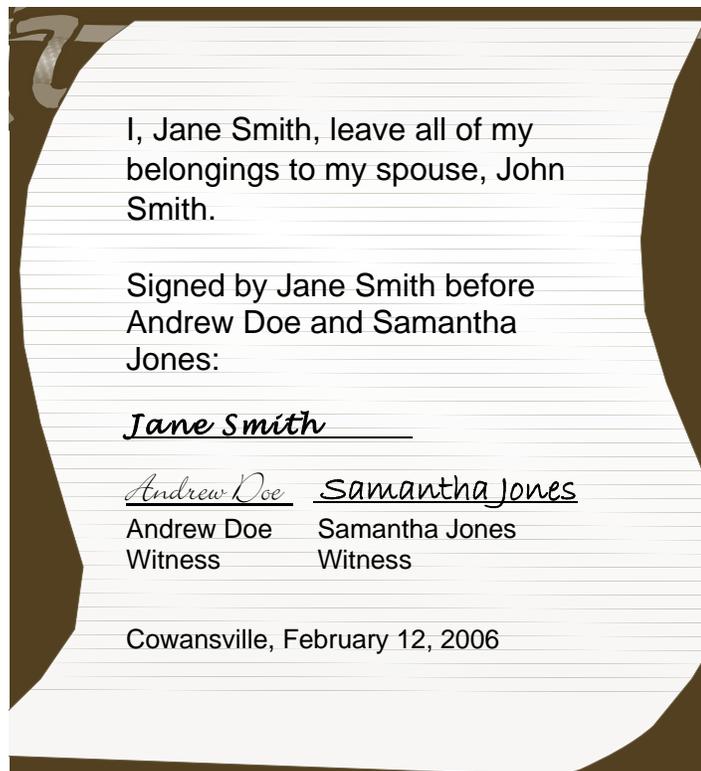
-  a lawyer or a **notary** register this type of will in the *Registre des dispositions testamentaires et des mandats du Québec* (Quebec Register of Wills and Mandates).



A person who will inherit under your will cannot be a witness to the will.



Here is an example of a will made before witnesses:



? 2.5 What is a notarial will?

A **notary** writes a notarial will. The **notary** is responsible for making sure that all the **formalities** have been satisfied. A notarial will is more difficult to **contest**, but it costs more to write.



Contest
Challenge the will in court.

? 2.6 How do I make a notarial will?

The **notary must**:

-  write a notarial will in French or in English;
-  write the date and place where the will was written;
-  read the will out loud to the **testator**;
-  have you (the **testator**) and the witnesses sign the will after it has been read aloud.

The notary keeps the original copy of the will, so the **heirs** do not have to go looking for it. The notary also registers the will in the *Registre des dispositions testamentaires et des mandats du Québec* (Quebec Register of Wills and Mandates).

2.7 Is one type of will better than the others?

A notarial will is more expensive than a **holograph** will or a will made before witnesses. However, it does not need to be **probated**, which can cost a lot.

Probate

A legal procedure that makes sure the will has been written following all the rules of that type of will.

A notarial will is also more difficult to **contest** in court.

The notary has already made sure that the **testator** was **capable** and not under any pressure.

Each person decides which type of will they prefer.

NOTES

Section 3:

Your Last Wishes

- 3.1 Who will carry out my last wishes?
- 3.2 What does a liquidator do?
- 3.3 What is probate?
- 3.4 When does a will have to be probated?
- 3.5 How is a will probated?
- 3.6 Can someone contest a will?
- 3.7 Where do I register my will?
- 3.8 How will my heirs know about my will?
- 3.9 Can I change my will?
- 3.10 What happens if I do not have a will?



Section 3: Your Last Wishes

? 3.1 Who will carry out my last wishes?

The **liquidator** is the person responsible for carrying out the final wishes expressed in your will (this person used to be called the **executor**).

Liquidator
The person responsible for carrying out your final wishes.

You can name someone to be the **liquidator** in your will. It is a good idea to name more than one person in case your first choice cannot, or does not, want to be the **liquidator**.



? 3.2 What does a liquidator do?

The **liquidator** must:

-  identify the people who can **inherit**;
-  make a list of your property;
-  collect money you are owed;
-  pay your debts; and
-  distribute your property to your **heirs**.



You should pay the **liquidator** something if the liquidator is not an **heir**.

3.3 What is probate?

Probate is a legal procedure that makes sure the will was written according to all the rules for making that kind of will. **Probate** does not check what is written in a will (the content), only how it was written (the form).

A will is **probated** to make sure that:

-  you wrote the will;
-  you have died; and
-  the will was written according to the proper **formalities**.

3.4 When does a will have to be probated?

A holograph will and a will made before witnesses must be **probated**. A notarial will does not have to be probated.

3.5 How is a will probated?

There are two ways to probate a will: *probate in court* and *probate by a notary*.

1. Probate in court

You must ask the Superior Court in the judicial district (area covered by the court) where the deceased person lived to probate the will. It can take 3-4 weeks after the application is filed to have the will probated.



2. Probate by a notary

You can ask a notary to probate the will. It costs about \$100 to probate a will, plus the lawyer's or notary's fees.



3.6 Can someone contest a will?

You can **contest** the will if you believe the **testator** was not of sound mind, or was under pressure when he or she wrote the will.

You cannot **contest** the will just because you are not happy with your share of the property.

You must contact a lawyer (not a notary) if you want to **contest** the will.

3.7 Where do I register my will?

You can have your will registered in the Quebec Register of Wills and Mandates (Registre des dispositions testamentaires et des mandats du Québec) that is kept by:

- the *Chambre des notaires du Québec* (Quebec Chamber of Notaries), or
- the *Barreau du Québec* (Quebec Bar Association).

You can also have a lawyer or a notary register your will (whether you have a holograph will, a will before witnesses, or a notarial will) in the ***Registre des dispositions testamentaires et des mandats du Québec*** (Quebec Register of Wills and Mandates).

3.8 How will my heirs know about my will?

If you have a **holograph** will or a will before witnesses, make sure you keep it in a safe place, like a safety deposit box, or with a lawyer. Before your death, make sure you tell someone you trust where to find your will.

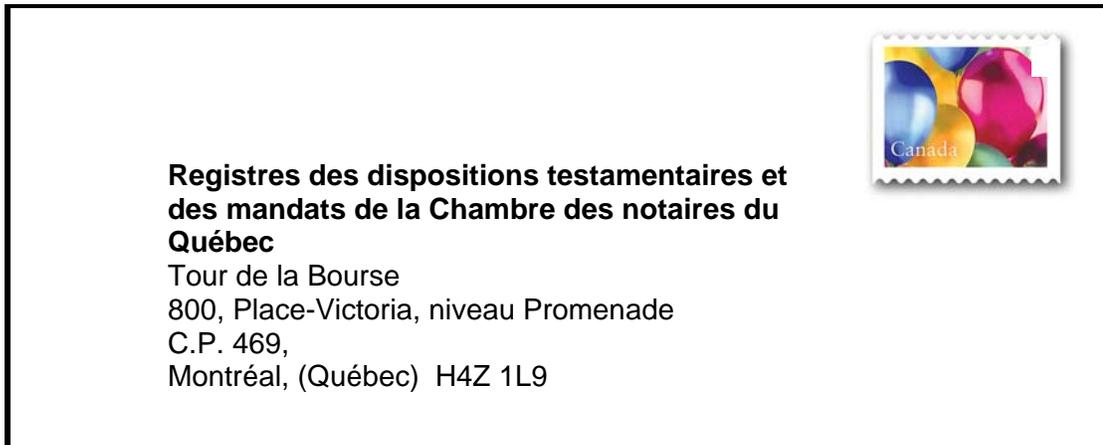
After your death, your relatives can search this register to find out if you have registered a will. They can do this by:

1. contacting a notary, who will do the search for them, or
2. searching the register themselves. To do so, they must send
 - a. the original Act of Death plus a copy
 - b. payment by Visa or Mastercard, a money order or certified cheque for \$46.02 (at the time of printing), made out to the *Chambre des notaires du Québec*, and



- c. the completed application form (available by e-mail at registres@cdnq.org, or by calling 1-800-340-4496 or 1-514-879-2906)

to the following address:



Your relatives will receive a search certificate that tells them whether a will is registered in your name. It will also tell them the name, address and phone number of the lawyer or notary who has the original will.

? 3.9 Can I change my will?

Yes, you can change your will at any time and as many times as you want. There will be a notary fee to change a notarial will.



It is a good idea to reread your will on a regular basis, or when there is a big change in your life such as:

-  a new child or grandchild;
-  a death in the family;
-  a divorce; or
-  a second marriage.

You may decide you want to distribute your property differently.

You can write a completely new will. It is always a good idea to date your will (although you do not have to), so the people reading it will know it was written after all earlier wills!

You can also change part of your will, by taking something out or adding something in, and leaving the rest of the will as it was originally written. The change is called a **codicil**. You must follow the same **formalities** when you write the **codicil** as you did when you wrote your will.

Codicil

An addition to a will that changes, explains, takes away or adds something.

? 3.10 What happens if I do not have a will?

You do not have to have a will. If you die without a will, you die **intestate**. This means that the law decides who will **inherit** your property and how much they will **inherit**.

Intestate
A person who dies without leaving a will.

In Quebec, your legal **heirs** are your spouse and your children, or if you have no children, your parents. Your property will be divided according to the rules under Quebec law. For example,

- if you have a spouse and no children, the spouse inherits two-thirds and the parents receive one-third;
- if you have a spouse and children, the spouse receives one-third and the children receive two-thirds;
- if you have no spouse and children, the children receive everything;
- if you have no spouse and no children, the property is divided equally between your parents, and your brothers and sisters or your nieces and nephews;
- if you have no children, no parents, no brothers or sisters, and no nieces or nephews, the spouse inherits everything;
- if you have no spouse, no children, no parents, no brothers or sisters and no nieces or nephews, the State gets the property.



NOTES

Section 4:

Activities & Resources

- 4.1 Discussion Questions
- 4.2 Word Search
- 4.3 Resources and Contact Info



Section 4: Activities & Resources

4.1 Discussion Questions

You and your tutor will discuss what you have read about wills.



4.2 Word Search

Will you find the words?

R Z F L L H P A R G O L O H V
 E I A Z I P A T T E S T Z E D
 G I I U Q H E I R N X Z D A Y
 I K T X U E T A T S E T N I R
 S K X T I L O R T M V R N O T
 T G Q H D T L K Q D X U T E C
 E F N P A K F I D V T U S O B
 R C O N T C O S W D C T N L R
 C F T E O Y R Y M E A T I G B
 A R A Q R I M O X T E C F Y T
 P I R X B Z A E O S I F Z Y M
 A S Y U Y I L R T D S K M S Q
 B I O Y V P I V O L X W Q G W
 L D T Q Z I T C E T A B O R P
 E T Y E M G Y V Q X X P P Q Y

ATTEST

CAPABLE

CODICIL

CONTEST

EXECUTOR

FORMALITY

HEIR

HOLOGRAPH

INTESTATE

LIQUIDATOR

NOTARY

PROBATE

REGISTER

TESTATOR

WILL



4.3 Resources and Contact Info

ÉDUCALOI – a site that provides information on many legal topics in everyday language.

POB CSP Notre-Dame
11 Notre-Dame Ouest
Montréal, QC H2Y 4A7

DEPARTMENT OF JUSTICE – the Quebec government website; it provides information on various legal subjects of high interest to Quebecers.

Ministère de la Justice du Québec
Édifice Louis-Philippe-Pigeon
1200, route de l'Église, 6^e étage
Québec, QC G1V 4M1

Telephone: 418-643-5140 Toll free: 1-866-536-5140 Fax: 418-646-4449

CHAMBRE DES NOTAIRES DU QUÉBEC – information on wills and testaments, including a notary referral service, and the register of wills and mandates.

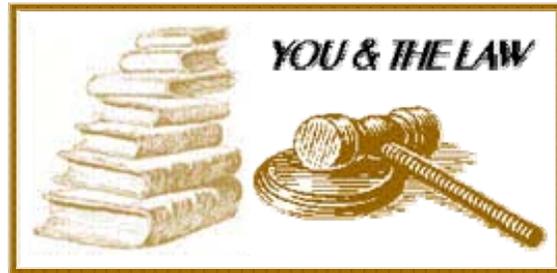
Tour de la Bourse
800, Place-Victoria, niveau Promenade
C.P. 469,
Montréal, QC H4Z 1L9

Telephone: 514-879-2906 Toll free: 1-800-340-4496

BARREAU DU QUÉBEC – register of wills and mandates; lawyer referral service.

Maison du Barreau
445, boulevard Saint-Laurent
Montréal, QC H2Y 3T8

Telephone: 514-954-3400 Toll free: 1-800-361-8495



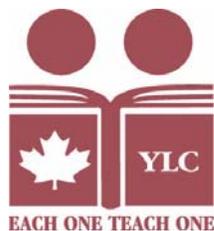
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