



## **Murder, Fraud, and Tortious Interference: The Interplay Between Probate Court Jurisdiction and Superior Court Jurisdiction in Rhode Island**

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### INTRODUCTION

Your only living son, aged thirty, dies suddenly from what is determined by the Medical Examiner to be a heroin overdose. You are blindsided, as you never knew your son to dabble in drugs. You muddle through funeral arrangements and grieve with your family and friends. After a couple of weeks, you consult your attorney to begin the process of probating your son's assets, as you believe that he has died intestate. A few days after you file a Petition for Administration in the probate court, to your great surprise, a woman whom you have never met claims to be your son's live-in fiancée and files a document with the probate court purporting to be your son's "Last Will and Testament." This one-paged document leaves all of your son's assets to the "fiancée." It is dated a mere five days before your son's date of death, and you believe that your son's signature is forged. After a bit of digging, you determine that the two witnesses to the "Will" are the "fiancée's" cousin and former boyfriend. What is more, your son has recently inherited extremely valuable United States savings bonds from his aunt. Your inheritance is in jeopardy.

What is Mom's legal recourse? Is she constrained to pursue her will challenge and claims

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against the fiancée in probate court? Likely, many estate law practitioners will instinctively reply “yes” to the foregoing question. Realistically, however, the answer is more nuanced.

The Rhode Island Superior Court’s appellate jurisdiction over probate court matters pursuant to R.I. Gen. Laws section 8-2-17 is clear and universally acknowledged by Rhode Island courts and estate law practitioners alike.<sup>1</sup> But what about the equitable provision of section 8-2-17, which states that the superior court has general probate jurisdiction “when such jurisdiction is properly involved in suits in equity”?<sup>2</sup> And what about actions against in personam defendants that seek damages distinct from the property being supervised or managed by the probate court? Can Mom, in the above hypothetical, “pass go” and directly pursue claims against the fiancée in superior court? Or must she litigate in probate court and await an appeal of the probate court’s order before she has access to superior court? And, by the way, why would she want to bypass probate court at all?

Part I of this Article discusses the material differences between litigating claims in probate versus superior court, as well as the advantages of filing suit in the first instance in superior court. Part II provides background regarding probate court jurisdiction. Part III addresses the interplay between Rhode Island Probate and Superior Court jurisdiction, including (a) statutory causes of action relating to or affecting will contests, which indisputably can be brought in the first instance in superior court; (b) the superior court’s exercise of equity jurisdiction; and (c) the superior court’s exercise of supplemental jurisdiction. Last, Part IV applies our jurisdictional analysis to Mom’s potential claims.

#### I. LITIGATING IN PROBATE COURT VERSUS SUPERIOR COURT

For cases involving complicated facts or complex issues of law, litigating in probate courts may prove to be inefficient. There are thirty-nine probate courts in Rhode Island—one for each municipality.<sup>3</sup> Many of these courts meet only once per month, while others meet twice.<sup>4</sup> Probate judges sit part-time and often maintain other law practices. The net result is that motion practice in the probate court can tend to be more drawn out than it is in superior court.

The Rhode Island Rules of Civil Procedure are generally self-executing in superior court, meaning that the parties may avail themselves of discovery devices without court assistance or

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1. See, e.g., *Duff v. Leighton*, 97 A.2d 110 (R.I. 1953); *In re Raposa’s Estate*, 82 A.2d 836 (R.I. 1951).

2. R.I. GEN. LAWS § 8-2-17 (2012).

3. See *Probate Courts*, NAT’L CTR. FOR ST. CTS., [http://www.ncsc.org/Topics/Special-Jurisdiction/Probate-Courts/State-Links.aspx#Rhode Island](http://www.ncsc.org/Topics/Special-Jurisdiction/Probate-Courts/State-Links.aspx#Rhode%20Island) (last visited Feb. 23, 2015).

4. See *Rhode Island Probate Courts*, PROVIDENCERI.COM, [http:// www.providenceri.com/efile/620](http://www.providenceri.com/efile/620) (last visited Feb. 23, 2015).

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intervention.<sup>5</sup> On the other hand, in the probate courts parties must petition, pursuant to R.I. Gen. Laws sections 8-9-17 and 9-18-12, for the use of discovery devices to obtain information from the opposing party.<sup>6</sup> A probate court may then exercise its discretion and “limit the scope of discovery to what is relevant to the contested issue before it and may shorten or enlarge deadlines for compliance as circumstances warrant.”<sup>7</sup> While parties may generally appeal probate court decisions and orders, discovery orders, which lack the requisite finality, are not appealable.<sup>8</sup> Consequently, if a party requires additional discovery than was granted, she must await a final determination by the probate court and then, if she is aggrieved, appeal to the superior court where she may obtain additional discovery.<sup>9</sup>

With respect to hearings, probate courts may choose whether to apply the Rhode Island Rules of Civil Procedure, and the parties can decide jointly whether to apply the Rhode Island Rules of Evidence, with the result that hearings may take on a flexible, informal tone.<sup>10</sup> Decisions are always rendered by a probate court judge, never a jury.<sup>11</sup> And parties advancing in age do not have the benefit of Rhode Island General Laws section 9-2-18, which provides for acceleration of civil actions in cases where a “plaintiff or defendant has attained the age of sixty-five (65) years.”<sup>12</sup>

Any person aggrieved by a final decision of a probate court may, pursuant to R.I. Gen. Laws section 33-23-1, file an appeal to the superior court which reviews, de novo, the decision of the probate court.<sup>13</sup> Indeed, “[t]he findings of fact and/or decisions of the probate court may be given as much weight and deference as the superior court deems appropriate, however, the superior court shall not be bound by any such findings or decisions.”<sup>14</sup> Litigators are often mindful of the

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5. See generally R.I. R. CIV. P. 26 (outlining discovery practice).

6. R.I. GEN. LAWS §§ 8-9-17, 9-18-12 (2012).

7. R.I. GEN. LAWS § 33-22-19.2(c) (2011).

8. See *Burford v. Estate of Skelly*, 699 A.2d 854, 856 (R.I. 1997).

9. See *id.*

10. See R.I. GEN. LAWS § 33-22-19.2.

11. See ALICE BRIDGET GIBNEY, *KNOW YOUR COURTS: RHODE ISLAND SUPERIOR COURT* (2012), available at <http://www.courts.ri.gov/Courts/SuperiorCourt/PDF/SuperiorKnowYourCourts.pdf>.

12. R.I. GEN. LAWS § 9-2-18 (2012).

13. R.I. GEN. LAWS § 33-23-1 (Supp. 2014).

14. *Id.*

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length of time it will take to obtain a final disposition of their clients' claims. Adding a probate court proceeding to the mix when the action may ultimately bounce from the superior court to the supreme (and back again) serves to prolong the case, much to the frustration of the claimants. It goes without saying that in cases where time is of the essence it is beneficial for a claimant to immediately avail herself of the jurisdiction of the superior court.

## II. A BIT OF BACKGROUND: THE PROBATE EXCEPTION

Rhode Island probate courts derive their jurisdiction from Rhode Island General Laws section 8-9-9, which states in pertinent part:

Every probate court shall have jurisdiction in the town or city in which it is established of the probate of wills; the granting of administration, the appointment of custodians, of administrators, of guardians of persons and estates, or of persons only or of estates only, and of conservators; the accepting and allowing of bonds, inventories, and accounts of executors, administrators, and guardians; the granting of leave to sell at public or private sale, or to mortgage property, as hereinafter provided; of the making of partition of the real estate of deceased persons; of the adoption of persons eighteen (18) years of age or older; of change of names of persons; of the removal or filling of a vacancy of a trustee of any trust established under a will, or the termination of such trust; of setting off and allowing real estate and personal property to widows and surviving husbands; and of all other matters now within the jurisdiction of probate courts. The court shall have power to accept the resignation of, or to remove, any custodian, executor, administrator, or guardian, or any other person appointed by the court, and also power to do and transact all matters and things incidental to the jurisdiction and powers vested in probate courts by law. Every probate court shall have the power to follow the course of equity insofar as necessary to fulfill the mandates of title 33 of the General Laws, specifically: the replacement, removal, or filling of any vacancy of any trustee under a trust established under a will; or tax minimization or estate planning under § 33-15-37.1.<sup>15</sup>

Rhode Island courts have held that probate courts are special courts of limited jurisdiction and can “exercis[e] . . . jurisdiction only in a manner and to the extent conferred by statute.”<sup>16</sup> Indeed, section 8-9-9 indicates that the jurisdiction of the probate courts “is oriented [only] toward the supervision and management of a probate estate and the expeditious settling of the estate.”<sup>17</sup>

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15. R.I. GEN. LAWS § 8-9-9 (2012).

16. Carr v. Prader, 725 A.2d 291, 293 (R.I. 1999) (quoting Harrop v. Tillinghast, 195 A. 226, 228 (R.I. 1937)); accord Thompson v. Clarke, 127 A. 569, 570 (R.I. 1925).

17. DAVID T. RIEDEL, WILLS, TRUSTS AND GIFTS § 544 (Butterworth Legal Publishers 1991).

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Nonetheless, as a practical matter, both the Rhode Island Superior Court and the Rhode Island Federal District Court are cautious about “entertaining disputes over property still subject to the jurisdiction of the Probate Court.”<sup>18</sup> Indeed, these Rhode Island courts are loath to adjudicate cases “even tangentially concerning the administration of a probate estate.”<sup>19</sup>

The circumspect approach taken by these Rhode Island courts in examining claims relating to the handling of wills and/or estates may be an outgrowth of the oft-cited “probate exception” of the federal common law.<sup>20</sup> The probate exception was devised to “promote legal certainty and judicial economy by providing a single forum of litigation, and to tap the expertise of probate judges by conferring exclusive jurisdiction on the probate court.”<sup>21</sup> The United States Supreme Court has defined the root of the exception to mean that “a federal court has no jurisdiction to probate a will or administer an estate,” hence the “exception” to federal court jurisdiction.<sup>22</sup>

Unfortunately, the doctrine has been met with various interpretations and, at times, contrasting applications. Specifically, while some courts have opted for a broader interpretation of the doctrine, holding that it precludes non-probate courts from adjudicating even ancillary probate matters, others have limited the doctrine strictly to the administration of wills and management of estates.<sup>23</sup> Judge Richard A. Posner once described the probate exception as “one of the most mysterious and esoteric branches of the law of federal jurisdiction.”<sup>24</sup> After centuries of uncertainty, the United States Supreme Court in *Marshall v. Marshall* attempted to define the

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18. *Estate of Donatelli v. Berkshire Place, Ltd.*, No. PC-2011-3423, 2014 WL 185329, at \*2 (R.I. Super. Ct. Jan. 7, 2014) (“The probate court has exclusive original jurisdiction in matters relating to the probating of wills.” (quoting *Dugdale v. Chase*, 157 A. 430, 431 (R.I. 1931)) (internal quotation marks omitted) (citing *Donato v. BankBoston, N.A.*, 110 F. Supp. 2d. 42, 45 (D.R.I. 2000))).

19. *Burt v. R.I. Hosp. Trust Nat’l Bank*, No. C.A. PC/02-2243, 2006 WL 2089254, at \*5 (R.I. Super. Ct. July 26, 2006).

20. The probate exception likely originated in 1789 with the passage of the Judiciary Act, which conferred on federal courts, in diversity cases, concurrent jurisdiction over “all suits of a civil nature at common law or in equity.” Judiciary Act of 1789, ch. 20, § 11, 1 Stat. 73, 78.

21. *Burt*, 2006 WL 2089254, at \*6 (quoting *Lepard v. NBD Bank*, 384 F.3d 232, 237 (6th Cir. 2004)) (internal quotation marks omitted).

22. *Markham v. Allen*, 326 U.S. 490, 494 (1946).

23. *Compare Rienhardt v. Kelly*, 164 F.3d 1296, 1301 (10th Cir. 1999) (holding that claims of undue influence exerted upon decedents which affected the ultimate disposition of a probate estate were deemed “enforceable in a state court of general jurisdiction”), *with Mangieri v. Mangieri*, 226 F.3d 1, 3 (1st Cir. 2000) (affirming a district court’s decision to dismiss a breach of fiduciary duty claim against the executor for lack of subject matter jurisdiction because the claim “would improperly interfere with a probate proceeding”).

24. *Dragan v. Miller*, 679 F.2d 712, 713 (7th Cir. 1982) (Posner, J.).

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contours of the probate exception and, in doing so, endorsed a narrower application of the doctrine.<sup>25</sup>

In *Marshall*, a widow, who was apparently disinherited by the decedent, filed an action against the decedent's son, alleging that he tortiously interfered with a gift she expected from the decedent.<sup>26</sup> In determining whether the district court had jurisdiction to hear the widow's claim, the Court noted that many federal courts had abstained from adjudicating matters that extend "well beyond probate of a will or administration of a decedent's estate," including an executor's breach of fiduciary duty.<sup>27</sup> The Court read *Markham v. Allen* to mean only that "when one court is exercising *in rem* jurisdiction over a *res*, a second court will not assume *in rem* jurisdiction over the same *res*."<sup>28</sup> Thus, the Court continued, while the probate exception prevents federal courts from disposing of property in the custody of a state probate court, "it does not bar federal courts from adjudicating matters outside those confines and otherwise within federal jurisdiction."<sup>29</sup>

The move away from a more expansive application of the probate exception doctrine, as espoused in *Marshall*, has echoed softly through the Rhode Island court system in the time since. For instance, while recognizing that the probate exception is a federal doctrine affecting federal courts, the Rhode Island Superior Court in *Burt v. Rhode Island Hospital Trust* drew a comparison to Rhode Island General Laws section 8-9-9, prescribing the jurisdictional scope of Rhode Island probate courts.<sup>30</sup> In *Burt*, the plaintiffs filed suit against the co-executors of the decedent's estate in superior court while estate proceedings in probate court were ongoing.<sup>31</sup> The plaintiffs alleged that the co-executors breached their fiduciary duties by: (1) failing to obtain an independent appraisal of the company in which the estate was the largest shareholder, instead allowing the estate's shares to be sold at a price far below their value; and (2) failing to bring an action against the other shareholders or to take any action to seek relief for the substantial dilution in the value of the stock.<sup>32</sup>

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25. 547 U.S. 293, 304 (2006).

26. *Id.* at 300–01.

27. *Id.* at 311.

28. *Id.* (citing *Markham v. Allen*, 326 U.S. 490, 492, 496 (1946)).

29. *Id.* at 311–12.

30. No. C.A. PC/02-2243, 2006 WL 2089254, at \*6, 9 (R.I. Super. Ct. July 26, 2006).

31. *Id.* at \*3.

32. *Id.*

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The *Burt* court found that the plaintiffs' claim "[did] not involve the administration of an estate, the probate of a will, or any other *purely probate matter*."<sup>33</sup> Significantly, the court found that a claim for breach of fiduciary duty is a "well-established cause of action within the jurisdiction of the Rhode Island Superior Court" and was properly brought.<sup>34</sup> Also significant for the court was the fact that the plaintiffs were seeking an "in personam" judgment against the executors, such that the damages sought were distinct from the res being administered by the probate court.<sup>35</sup>

The United States District Court for the District of Rhode Island next considered the probate exception in the wake of the *Marshall* decision. In *Henry v. Sheffield*, the plaintiffs asserted claims against the executors/beneficiaries of the decedent's estate for, *inter alia*, breach of fiduciary duty in administering the estate, tortious interference with an inheritance, and fraud.<sup>36</sup> The court found that the claims asserted by the plaintiffs sought "in personam judgments against individual Defendants, and not the probate or annulment of a will."<sup>37</sup> Nor did the claims "involve the administration of an estate, the probate of a will, or any other purely probate matter" or "seek to reach a *res* in the custody of a state court."<sup>38</sup> Accordingly, the probate exception did not apply, and the court was free to adjudicate the plaintiffs' claims.

And in *Estate of Donatelli v. Berkshire Place Associates*, the Rhode Island Superior Court once again considered the United States Supreme Court's decision on the probate exception.<sup>39</sup> There, the decedent had ownership interests in two closely related businesses.<sup>40</sup> The estate filed suit in superior court, seeking access to various books and records held by the businesses.<sup>41</sup> The defendants moved for summary judgment, claiming that the estate violated the by-laws and partnership agreement by failing to offer to sell its interests back to the businesses or their

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33. *Id.* at \*7 (emphasis added) (quoting *Marshall*, 547 U.S. at 304) (internal quotation marks omitted).

34. *Id.* Interestingly, for Mom's purposes, there was a footnote in the court's decision that analogized the plaintiffs' claims to the claim of fraud brought in *Champlin v. Slocum*, 103 A. 706 (R.I. 1918), which the Rhode Island Supreme Court held would not be appropriate for resolution by the probate court. *Burt*, 2006 WL 2089254, at \*7 n.9. The *Champlin* case is discussed in more detail *infra*.

35. *Burt*, 2006 WL 2089254, at \*6.

36. 856 F. Supp. 2d 345, 349 (D.R.I. 2012).

37. *Id.* at 351.

38. *Id.* (quoting *Marshall*, 547 U.S. at 312) (internal quotation marks omitted).

39. No. PC-2011-3423, 2014 WL 185329, at \*2 (R.I. Super. Ct. Jan. 7, 2014).

40. *Id.* at \*1.

41. *Id.* at \*2.

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shareholders.<sup>42</sup> The court reiterated the old principle that it must “tread cautiously when entertaining disputes over property still subject to the jurisdiction of the Probate Court.”<sup>43</sup> Nonetheless, it cited to *Marshall* and denied the defendants’ motion for summary judgment, reaffirming that “cases with factual circumstances that are more tenuously connected with the direct probate of a will or administration of an estate . . . will not be barred by the probate exception.”<sup>44</sup>

The takeaway is that, in the wake of *Marshall*, the Rhode Island Superior and Federal District courts will identify whether a lawsuit concerns a purely probate matter or a matter that is more tenuously related to probating a will or administering an estate when examining whether the exercise of jurisdiction is proper.

### III. SUPERIOR COURT VERSUS PROBATE COURT JURISDICTION

In contrast with probate courts, the Rhode Island Superior Court is a court of general jurisdiction.<sup>45</sup> However, while this jurisdiction is considerable, it is not plenary. The Rhode Island Superior Court will exercise the utmost care to avoid adjudicating claims that directly implicate property subject to the jurisdiction of the probate courts. The inquiry is two-fold. The court must first determine whether the exercise of jurisdiction affects, concerns, or interferes with a probate res or proceeding.<sup>46</sup> If not, the court may entertain the action.<sup>47</sup> If so, the court must then determine whether it may exercise jurisdiction pursuant to statute.<sup>48</sup>

#### A. *In Personam Actions*

To the extent a plaintiff brings a claim in superior court that does not affect property in the custody of the probate court and instead seeks an in personam judgment against an individual defendant, the court will likely find that jurisdiction is proper.<sup>49</sup> In *Three Keys Ltd. v. SR Util.*

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42. *Id.*

43. *Id.* (citing *Dugdale v. Chase*, 157 A. 430, 431 (1931); *Donato v. BankBoston, N.A.*, 110 F. Supp. 2d 42, 45 (D.R.I. 2000)).

44. *Id.* (ellipsis in original) (quoting *Burt v. R.I. Hosp. Trust Nat’l Bank*, No. C.A. PC/02-2243, 2006 WL 2089254, at \*7 (R.I. Super. Ct. July 26, 2006)) (internal quotation marks omitted).

45. *See Carr v. Railton*, 18 A.2d 646, 651 (R.I. 1941).

46. *See Burt*, 2006 WL 2089254, at \*7.

47. *See id.*

48. *See id.*

49. *See, e.g., id.*

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*Holding Co.*, the United States Court of Appeals for the Third Circuit clarified the distinction between an in personam action and one in rem, the adjudication of which would run afoul of the probate exception:

[W]e note the distinction between an *in personam* action seeking a judgment that a party has the right to a distributive share of an estate, but stopping short of determining a party's interest in specific estate property, and an *in rem* action . . . which seeks a determination of a party's interest in specific property in the custody of the probate court. The distinction mirrors the traditional understanding of a judgment *in personam*, which is "of such character that by means of it the plaintiff can, as a means of attaining the principal object of the action, subject the general assets of defendant, as distinguished from some specific property interest, to the payment of his claim."<sup>50</sup>

The distinction turns on whether the party is asking the court to determine his or her interest in specific estate property. If so, the action is in rem. And while the superior court may award money damages against in personam defendants for tortious actions, the probate exception prohibits it from imposing a constructive trust over estate assets or using the assets to compensate plaintiffs for their damages.<sup>51</sup>

What kinds of actions qualify as in personam actions that may be filed in the first instance in superior court? *Henry* and *Burt* establish that, generally, claims alleging tortious interference with an inheritance and claims for breaches of fiduciary duty seek in personam judgments without interfering with a probate court res.<sup>52</sup> How about claims of undue influence? This could be a closer call. Courts outside Rhode Island do classify undue influence claims as in

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50. 540 F.3d 220, 230 (3d Cir. 2008) (emphasis added) (quoting Walter W. Cook, *The Powers of Courts of Equity*, 15 COLUM. L. REV. 37, 38 (1915)). See also *Henry v. Sheffield*, 749 F. Supp. 2d 3, 9 n.4 (D.R.I. 2010) ("[W]here there is an interface of *in rem* and *in personam* jurisdiction, a court may properly exercise broad *in personam* power over the parties to the *in rem* action." (quoting *United States v. One Lear Jet Aircraft*, Serial No. 35A-280, Registration No. YN-BVO, 836 F.2d 1571, 1576 (11th Cir. 1988)) (internal quotation marks omitted)); *Bouchard v. Bouchard*, 382 A.2d 810, 814 (R.I. 1978) (explaining that in rem jurisdiction is jurisdiction over the thing, while in personam jurisdiction is jurisdiction over the person).

51. See, e.g., *Three Keys*, 540 F.3d at 229 n.10 ("[W]hile claims that seek to invoke a federal court's *in personam* jurisdiction generally do not violate the probate exception, that does not permit a court to grant as relief the possession of specific property that is within the jurisdiction of a probate court."); *Wisecarver v. Moore*, 489 F.3d 747, 751 (6th Cir. 2007) (barring the court from granting relief in the form of an order divesting the primary beneficiaries of an estate of all property retained by them even though the claims were in personam); *Rothberg v. Marger*, No. 11-5497, 2013 WL 1314699, at \*8 (D.N.J. Mar. 28, 2013).

52. *Henry v. Sheffield*, 856 F. Supp. 2d 345, 351 (D.R.I. 2012); *Burt*, 2006 WL 2089254, at \*7 ("[T]he damages remedy sought is entirely distinct from the probate res, and the plaintiffs' suit is, therefore, cognizable in the Superior Court.").

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personam.<sup>53</sup> However, often claims that a testator was unduly influenced invalidate a will being probated by a probate court and affect the ultimate disposition of the decedent's assets that remain within the jurisdiction of the probate court.<sup>54</sup> In the case of charitable bequests, where a gift is made from a donor to his or her spiritual advisor, "all gifts or benefactions from the subject of such an influence to the possessor of it, have been frequently avoided on grounds of public policy, and without any suspicion that fraud or imposition of any kind ha[s] been practiced."<sup>55</sup> To the extent that claims of undue influence seek to invalidate a will being probated by a probate court, the superior court's exercise of jurisdiction may be improper.

## B. *The Superior Court's Statutory Exercise of Jurisdiction*

### 1. *Construction of Wills and Declaratory Judgments*

In Rhode Island, like the majority of states, probate courts do not have general jurisdiction to construe wills. Indeed, they may only construe wills "when construction is necessarily involved in establishing the will or in some step of the administration proceeding."<sup>56</sup> Rhode Island probate courts' power to construe wills derives from statute. Rhode Island General Laws section 33-13-8 provides:

Whenever any question arises as to the identity of a legatee, or the construction or the payment and satisfaction of any legacy, the probate court, upon petition setting out such questions, after notice by citation to all known parties and any additional notice the court may direct, and after hearing thereon, may determine the same and enter its order accordingly.<sup>57</sup>

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53. See, e.g., *Wisecarver*, 489 F.3d at 747 (holding that claims for breach of fiduciary duty, breach of confidential relationship, undue influence, and fraud that alleged that individuals wrongfully received assets from decedent during his lifetime by misusing power of attorney did not fall within probate exception as they sought in personam jurisdiction over individuals and did not seek to probate or annul decedent's will or interfere with res in state probate proceedings); *Johnson v. Tomlinson*, 160 N.W.2d 49, 54 (N.D. 1968) ("We find that the sole purpose and object of the action is to cancel and set aside a family settlement agreement due to alleged fraud and undue influence. It is an action in personam, transitory in nature.").

54. See, e.g., *Lawton v. Higgins*, No. PP: 05-2341, 2008 WL 2598135 (R.I. Super. Ct. June 13, 2008) (undue influence renders will invalid); *Paiva v. Paiva*, Nos. PC 05-3039, PC 05-5007, PP 06-0311, 2008 WL 2227775 (R.I. Super. Ct. Apr. 10, 2008) (same).

55. *Nelson v. Dodge*, 68 A.2d 51, 57 (R.I. 1949) (quoting *Corrigan v. Pironi*, 23 A. 355, 355 (N.J. 1891)) (internal quotation marks omitted).

56. RIEDEL, *supra* note 17, § 182. See also *Carr v. Railton*, 18 A.2d 646, 650 (R.I. 1941) ("Probate Courts [are empowered] to construe wills so far as may be necessary to advise executors and administrators with the will annexed with respect to the payment of legacies.").

57. R.I. GEN. LAWS § 33-13-8 (2011).

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This section was originally enacted with the Court and Practice Act of July 17, 1905.<sup>58</sup> Prior to that, “probate courts had no jurisdiction to pass upon questions relating to the identity of a legatee, or the construction or the payment or satisfaction of any legacy.”<sup>59</sup>

The Rhode Island General Assembly simultaneously enacted Rhode Island General Laws section 8-9-12, providing that “[p]robate courts may determine all questions as to the payments of legacies by executors and administrators with the will annexed and may allow such payments in the accounts of executors and administrators.”<sup>60</sup> In practice, a beneficiary, legatee, or heir at law will file a petition for instructions in the probate court, requesting that the court construe a legacy in a will.

However, Rhode Island has also adopted the Uniform Declaratory Judgment Act, Rhode Island General Laws sections 9-30-1 et seq., giving the superior court jurisdiction “power to declare rights, status, and other legal relations between parties.”<sup>61</sup> Rhode Island Gen. Laws section 9-30-2 provides:

Any person interested under a deed, will, written contract or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status or other legal relations thereunder.<sup>62</sup>

Given the probate court’s limited jurisdiction to interpret wills, “the Uniform Declaratory Judgment Act is generally the proper vehicle for what is normally referred to as a will construction suit.”<sup>63</sup>

Reading sections 33-13-8, 8-9-12, and 9-30-1 in tandem might give one pause. It is not immediately obvious where one ends and the next begins.<sup>64</sup> And any overlap between them would obviously complicate the determination of proper jurisdiction. Nonetheless, the Rhode

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58. Court and Practice Act of 1905, § 980.

59. *Thompson v. Clarke*, 127 A. 569, 570 (R.I. 1925).

60. R.I. GEN. LAWS § 8-9-12 (2012).

61. R.I. GEN. LAWS § 9-30-1 (2012).

62. R.I. GEN. LAWS § 9-30-2 (2012).

63. RIEDEL, *supra* note 17, § 182 (citing *Redmond v. R.I. Hosp. Trust Nat’l Bank*, 386 A.2d 1090 (R.I. 1978); *Gray v. Leeman*, 182 A.2d 119 (R.I. 1962)).

64. *See id.* (stating, “there is obviously some overlap” between §§ 33-13-8 and 9-30-1).

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Island Supreme Court, interpreting the statutes, found no inconsistency among them.<sup>65</sup> It explained that the probate court's power to determine payment of legacies is "strictly limited . . . [and] exercisable only as to a legacy in a will then before the court in the course of the administration of the estate of the testator, and the question or questions to be determined must have arisen in the course of such administration."<sup>66</sup> As such, the jurisdiction granted to probate courts "differs radically from the general jurisdiction" of the superior court,<sup>67</sup> which one interested in a will "may invoke at any time by filing, in the superior court, a bill in equity for the construction of such will."<sup>68</sup>

Another facet of will construction concerns testamentary trusts, or trusts that are created by will. Rhode Island probate courts do not have the ability to consider trust questions, or to interpret a trust under a will.<sup>69</sup> On the other hand, the superior court has the power, under the Uniform Declaratory Judgments Act, to declare parties' rights under a trust, ascertain any class of beneficiaries, direct the trustees to do or to abstain from doing a particular act in their fiduciary capacity, or to determine any question arising in the administration of the trust including construction of the same.<sup>70</sup>

As may be evident from the language of the Declaratory Judgments Act, the Rhode Island Superior Court may also entertain claims impacting a probate estate outside the context of a simple will construction. For example, in *Tyre v. Swain*, the decedent died while scuba diving off the coast of Tortola in the British Virgin Islands.<sup>71</sup> Her husband, Swain, returned to the United States, claiming that he did not know how his wife died and that he was not diving with her

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65. See *Carr v. Railton*, 18 A.2d 646, 651 (R.I. 1941).

66. *Id.* at 650–51.

67. RIEDEL, *supra* note 17, § 182 ("At the time *Carr* was decided, the Supreme Court, rather than the Superior Court had jurisdiction over will construction suits. The current statute gives original jurisdiction to the Superior Court.").

68. *Carr*, 18 A.2d at 651.

69. See RIEDEL, *supra* note 17, § 542 ("As the only trial court in Rhode Island of general jurisdiction having equity powers, the Superior Court has the sole initial jurisdiction over the construction of trust instruments, the appointment of trustees, the filling of vacancies in the office of trustee, the settlement of debts due and claims by a trust, borrowing money and pledging assets by a trustee, the execution of leases, and similar questions pertaining to trusts.").

70. Uniform Declaratory Judgments Act, R.I. GEN. LAWS §§ 9-30-1 to -16 (2012).

71. 946 A.2d 1189, 1192 (R.I. 2008).

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when she drowned.<sup>72</sup> The decedent's parents filed suit in superior court against Swain during the pendency of probate proceedings, alleging that he was a slayer under Rhode Island General Laws section 33-1.1-3, he caused the decedent's wrongful death under Rhode Island General Laws section 10-7-1, and violated Rhode Island General Laws section 9-1-2, imposing civil liability for a criminal act.<sup>73</sup> If the defendant was indeed found to be a slayer, it would preclude him from taking under the decedent's estate.<sup>74</sup> As such, the court's decision would have a direct effect on the probate court proceedings.<sup>75</sup>

Swain argued that the superior court lacked subject matter jurisdiction, claiming that the probate court had exclusive jurisdiction to determine whether a person is a slayer.<sup>76</sup> The Rhode Island Supreme Court disagreed.<sup>77</sup> Rhode Island law vests probate courts with jurisdiction over the probate of wills.<sup>78</sup> However, the superior court, not the probate court, had jurisdiction "to make declarations with respect to probate matters," including whether the defendant was a slayer; it was then up to the probate court to determine what effect that declaration had on the distribution of the decedent's assets.<sup>79</sup>

One might interpret *Swain* to mean that the superior court can usurp the powers of the probate court to oversee the administration of an estate and distributions to the named beneficiaries thereunder. In reality, however, *Swain* is an illustration of how the superior and probate courts can collaborate to ensure a judicious outcome. That case necessitated a lengthy civil trial, during which a jury was asked to determine whether the defendant was a slayer, taking into account all of the evidence adduced. Such a trial would have arguably been inexpedient in the probate court, given the probate court's limited judicial resources.<sup>80</sup> The superior court's declaration

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72. *Id.*

73. *Id.*

74. *Id.* at 1197. R.I. GEN. LAWS § 33-1.1-3 (2011) defines a slayer as "any person who willfully and unlawfully takes or procures to be taken the life of another." R.I. GEN. LAWS § 33-1.1-3 provides that a slayer "shall be deemed to have predeceased the decedent as to property which would have passed from the estate of the decedent to the slayer under the statutes of descent and distribution, or by statutory right as surviving spouse."

75. *See Tyre*, 946 A.2d at 1197.

76. *Id.*

77. *Id.* at 1198.

78. *See* R.I. GEN. LAWS § 8-9-9 (2012).

79. *Tyre*, 946 A.2d at 1197–98.

80. *See id.* at 1198.

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then provided guidance to the probate court in its oversight and management of the decedent's estate.

## 2. *Civil Liability for Crimes Against a Person's Estate*

Another statute that provides a direct path to the superior court, notwithstanding the pendency of estate administration, is Rhode Island General Laws section 9-1-2, actions seeking damages for crimes committed against a decedent's estate.<sup>81</sup> Recall that in *Swain* the decedent's parents brought a claim against Swain in superior court for violation of Rhode Island General Laws section 9-1-2.<sup>82</sup> Section 9-1-2 states:

Whenever any person shall suffer any injury to his or her person, reputation, or estate by reason of the commission of any crime or offense, he or she may recover his or her damages for the injury in a civil action against the offender, and it shall not be any defense to such action that no criminal complaint for the crime or offense has been made; and whenever any person shall be guilty of larceny, he or she shall be liable to the owner of the money or articles taken for twice the value thereof, unless the money or articles are restored, and for the value thereof in case of restoration.<sup>83</sup>

It is clear that the General Assembly has given persons an avenue of recovery in superior court against the perpetrator of a crime against one's estate. This action could be classified as both statutory and in personam. The analysis remains the same: the superior court may award money damages against in personam defendants, but may not use assets of the decedent's estate—currently under the jurisdiction of the probate court—to make plaintiffs whole.<sup>84</sup>

## C. *The Exercise of Equity Jurisdiction*

As we have seen, Rhode Island probate courts may exercise jurisdiction only to the extent conferred by statute.<sup>85</sup> What do the General Laws say about equity jurisdiction? Consider Rhode Island General Laws section 8-9-9. It states, in pertinent part:

Every probate court shall have the power to follow the course of equity insofar as necessary to fulfill the mandates of title 33 of the General Laws, specifically: the replacement, removal, or

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81. R.I. GEN. LAWS § 9-1-2 (2012).

82. *Tyre*, 946 A.2d at 1192.

83. R.I. GEN. LAWS § 9-1-2.

84. *See Three Keys Ltd. v. SR Util. Holding Co.*, 540 F.3d 220, 230 (3d Cir. 2008).

85. *See Burt v. R.I. Hosp. Trust*, No. C.A. PC/02-2243, 2006 WL 2089254, at \*5 (R.I. Super. Ct. July 26, 2006) (“[P]robate courts in Rhode Island are courts of limited jurisdiction and can ‘exercis[e] jurisdiction only in a manner and to the extent conferred by statute’” (alteration in original) (quoting *Carr v. Prader*, 715 A.2d 291, 293 (R.I. 1999))).

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filling of any vacancy of any trustee under a trust established under a will; or tax minimization or estate planning under § 33-15-37.1.<sup>86</sup>

Thus, the General Assembly has carved out very narrow circumstances under which Rhode Island probate courts may entertain claims of an equitable nature.

On the other hand, Rhode Island General Laws section 8-2-13 provides that the superior court has:

[E]xclusive original jurisdiction of suits and proceedings of an equitable character and of statutory proceedings following the course of equity; provided, however, that every probate court shall have the power, concurrent with the superior court, to replace, remove, or fill any vacancy of any trustee under a trust established under a will, or to effect tax minimization or estate planning under § 33-15-37.1.<sup>87</sup>

And the concurrent jurisdiction statute, Rhode Island General Laws section 8-2-17, provides that the superior court enjoys general probate jurisdiction “when such jurisdiction is properly involved in suits in equity.”<sup>88</sup>

The superior court’s exercise of equity jurisdiction over probate matters may manifest itself either in the form of equitable remedies imposed to assist with probate court proceedings or adjudication of equitable claims independent of probate court proceedings.<sup>89</sup> However, the Rhode Island Supreme Court has cautioned that equitable jurisdiction will “not be exercised where it has already attached in proceedings in the probate court.”<sup>90</sup> How do courts make this distinction?

In *McSoley v. McSoley*, a will was denied probate, from which the appellants appealed.<sup>91</sup> During the time that the appeal was making its way through the Rhode Island Superior and Supreme Courts, the appointed administratrix was expending funds of the estate in defending against the

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86. R.I. GEN. LAWS § 8-9-9 (2012).

87. R.I. GEN. LAWS § 8-2-13 (2012).

88. R.I. GEN. LAWS § 8-2-17 (2012).

89. *See* *McSoley v. McSoley*, 84 A.2d 798, 800 (R.I. 1951).

90. *Id.* *See also* *Probate Court of City of Providence v. Higgins*, 191 A. 260, 262 (R.I. 1937) (finding that, in actions of debt on bond of surety for guardian, superior court had jurisdiction in law to determine evidence and settle account by chancery bond under equitable principles, even though guardian had not filed final account, since court was not exercising general probate jurisdiction).

91. 84 A.2d at 799.

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will that the appellants sought to probate.<sup>92</sup> The appellants moved to enjoin the administratrix from expending these funds.<sup>93</sup> The court found that whether the administratrix was properly vested with authority was a question of law properly decided by the probate court.<sup>94</sup> However, given the possibility of irreparable loss for the appellants, the court found there was a reason for intervention of equity to hold matters in status quo until the authority of the administratrix was determined at law on appeal of the probate court's order.<sup>95</sup> In other words, the court isolated the portion of the case at law from that which required the intervention of equity.<sup>96</sup> The takeaway is that Rhode Island courts will perform a probate exception-esque test, even with the exercise of its inherent equitable powers, in order to avoid improper invasion into affairs belonging to the probate courts.

The superior court may also exercise equitable jurisdiction over claims of an equitable nature filed in the first instance in superior court.<sup>97</sup> Once equity recognizes a case, it will afford complete relief, including remedies at law, to the parties before it.<sup>98</sup> Indeed, “[c]ourts of equity have broad power and will not act so as to do an injustice or permit unconscionable acts within its jurisdiction.”<sup>99</sup> What constitutes an equitable cause of action? Perhaps most famously, fraud. Indeed, fraud is “one of the principal grounds of equitable jurisdiction.”<sup>100</sup>

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92. *Id.*

93. *Id.*

94. *Id.* at 800.

95. *Id.*

96. *Id.*

97. *See Scoppio v. Cannella*, 120 A. 867, 868 (R.I. 1923).

98. *See id.*

99. *Van Slyke v. Bullock*, No. 96-2223, 1996 WL 937009, at \*5 (R.I. Super. Ct. Nov. 16, 1996).

100. *Bosworth v. Bosworth*, 167 A. 151, 152 (R.I. 1933). *Accord* *Gee v. Bullock*, No. C.A. NO. 96-2223, 1996 WL 937009, at \*2 (R.I. Super. Ct. Nov. 16, 1996) (citations omitted) (“Allegations of misrepresentation are one of the principal grounds for obtaining equitable jurisdiction in Superior Court.” (citing *Bosworth*, 167 A. 151)). Undue influence is a species of fraud and, thus, falls within the same category. *See Paiva v. Paiva*, Nos. PC 05-3039, PC 05-5007, PP 06-0311, 2008 WL 2227775, at \*22–23 (R.I. Super. Ct. Apr. 10, 2008) (holding that undue influence is a constructive fraud). Indeed, “[u]ndue influence long has been recognized in equity as a defense to or a means of challenging the validity of a will, deed, or contract. In such cases, equity provides an action for restitution or rescission to cure the dominant party’s wrongful ‘substitution of [his or her will] for the free will and choice [of the subservient party].’” *Lavoie v. N.E. Knitting, Inc.*, 918 A.2d 225, 228–29 (R.I. 2007) (citations omitted) (alterations in original) (quoting *Filippi v. Filippi*, 818 A.2d 608, 630 (R.I. 2003)).

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On the other hand, Rhode Island probate courts are incapable of adjudicating claims alleging fraud, as they are not general courts of equity and can only follow the course of equity insofar as it is allowed by statute.<sup>101</sup> Indeed, the Rhode Island Supreme Court has held, as early as the nineteenth century, that “the court of probate, which has no equity jurisdiction, is not adapted to the investigation and determination of questions of fraud.”<sup>102</sup> In *Champlin v. Slocum*, a successor guardian, on behalf of his ward, brought an action against the ward’s former guardian to recover money for services rendered by the ward to the former guardian while he was employed by the former guardian as a farm hand.<sup>103</sup> The former guardian proffered a release signed by the ward as a defense to the action, which the successor guardian alleged was procured by fraud.<sup>104</sup> The case was tried before a jury, after which the superior court directed a verdict for the former guardian, holding that the suit was “one which involved relations of guardian and ward” and must “be adjudicated in the probate court . . . and that the [s]uperior [c]ourt had no jurisdiction.”<sup>105</sup>

On appeal, the Rhode Island Supreme Court disagreed for a two reasons.<sup>106</sup> First, the probate court undoubtedly had jurisdiction over the settlement of accounts of guardians and the power to direct and supervise the management of the estate.<sup>107</sup> Ordinarily, the ward must wait until the accounts are settled before bringing an action against his guardian.<sup>108</sup> However, this general rule “does not include all matters of litigation which may arise between the guardian and the ward but is confined” to questions concerning “property rights pertaining to the guardianship.”<sup>109</sup> The court found that the value of services provided by the ward to his former guardian was not the kind of property that the guardian was bound to inventory and account to

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101. See *Champlin v. Slocum*, 103 A. 706, 707 (R.I. 1918) (involving a release between a guardian and ward that allegedly was procured by fraud); *Fletcher v. Estate of Skelly*, No. C.A. NO. 97-0139, 1997 WL 839922, at \*3 (R.I. Super. Ct. May 28, 1997) (“The Probate Court is not a court of equity.”).

102. *Champlin*, 103 A. at 708 (citing *O’Connor v. O’Connor*, 37 A. 634 (R.I. 1897)). See also *Burt v. R.I. Hosp. Trust*, No. C.A. PC/02-2243, 2006 WL 2089254, at \*7 n.9 (R.I. Super. Ct. July 26, 2006) (finding that claims of breaches of fiduciary duty, like fraud, are not appropriate for resolution by the probate court).

103. 103 A. at 706–07.

104. *Id.* at 707.

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

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the probate court.<sup>110</sup> Secondly, the court found that “the court of probate, which has no equity jurisdiction, is not adapted to the investigation and determination of question of fraud. The rule is well settled that the jurisdiction of law and equity on the question of fraud of this character is concurrent.”<sup>111</sup>

#### D. *Supplemental Jurisdiction*

What if a plaintiff brought a variety of claims, some of which fall within the jurisdiction of the superior court and others of which do not? Rhode Island General Laws section 8-2-14 provides:

If an action is brought in the superior court which is within the jurisdiction conferred by this section, the superior court shall have jurisdiction over all other actions arising out of the same transaction or occurrence, provided the other actions are joined with the action within the jurisdiction conferred by this section or are subsequently made a part thereof under applicable procedural rules.<sup>112</sup>

The Equity Jurisdiction statute provides:

If an action is brought in the superior court which represents an attempt in good faith to invoke the jurisdiction conferred by this section, the superior court shall have jurisdiction of all other actions arising out of the same transaction or occurrence, provided the other actions are joined with the action so brought or are subsequently made a part thereof under applicable procedural rules, and the court may retain jurisdiction over the other actions even though the initial action fails for want of equity jurisdiction.<sup>113</sup>

Although the statute does not make explicit reference to “supplemental jurisdiction,” it authorizes a court to extend jurisdiction over claims not falling within the original equity jurisdiction of the court. “Thus, § 8-2-13 is analogous to 28 U.S.C. § 1367, which authorizes federal district courts, in certain situations, to extend supplemental jurisdiction over claims not otherwise cognizable in federal court.”<sup>114</sup>

For example, in *Donato v. BankBoston*, the plaintiff filed suit in the Rhode Island Superior Court against the co-executors/co-trustees of decedent’s estate and trust, alleging breach of fiduciary

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110. *Id.* at 708.

111. *Id.*

112. R.I. GEN. LAWS § 8-2-14 (2012).

113. R.I. GEN. LAWS § 8-2-13 (2012).

114. *Chavers v. Fleet Bank (RI)*, N.A., 844 A.2d 666, 678 n.11 (R.I. 2004).

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duty, breach of trust, and legal malpractice.<sup>115</sup> Several years later, the plaintiff amended his complaint to add new claims, one of which alleged a violation of the Employee Retirement Income Security Act (“ERISA”), 29 U.S.C. § 1001 et seq.<sup>116</sup> The defendants then removed the case to the United States District Court for the District of Rhode Island.<sup>117</sup> At the close of the plaintiff’s evidence, the court considered its jurisdiction over the claims and found that the claims against the co-executors “were in essence claims regarding the handling of a will and/or an estate, and as such were subject to the exclusive jurisdiction of the Probate Court” and that those claims could not originally have been brought in Rhode Island Superior Court.<sup>118</sup> However, the court found that the *breach of trust* claims were properly brought in superior court and, citing to section 8-2-13, found that the claims against the co-executors which arose out of the same transaction and occurrence were properly brought in superior court.<sup>119</sup> Furthermore, although the plaintiff brought claims entirely distinct from the breach of trust claims, the court opted to exercise its discretion in the interest of judicial economy to retain jurisdiction.<sup>120</sup>

#### IV. THE ANALYSIS OF JURISDICTION IN PRACTICE: MOM’S CLAIM

What does all of this mean in practice? Attorneys should first attempt to identify the nature of the client’s claim when undertaking a jurisdictional analysis. Does the client have a cause of action which is ordinarily recognized in superior court, such as breach of fiduciary duty or tortious interference with an inheritance? Is the claim directed at an individual, such that it is in personam? If not, does the cause of action interfere with a purely probate proceeding? Is the remedy sought or claim itself one that sounds in equity, such as fraud? If the client has multiple claims, are they so interrelated that the superior court can exercise supplemental jurisdiction over the ones more properly asserted in probate court? These inquiries are critical to the question of whether an action can be brought directly in superior court.

Remember Mom in our hypothetical above. Must she await a determination by the probate court that the alleged “will” is invalid or fraudulent? Can the probate court even issue such a determination? Let’s evaluate her potential claims using the analysis above.

- The Restatement (Second) of Torts defines tortious interference with an inheritance as: “[o]ne who by fraud, duress or other tortious means intentionally prevents another from

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115. 110 F. Supp. 2d 42, 44 (D.R.I. 2000).

116. *Id.*

117. *Id.*

118. *Id.* at 45 (citing *Dugdale v. Chase*, 157 A. 430, 430–31 (R.I. 1931)).

119. *Id.* at 46.

120. *Id.*

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receiving from a third person an inheritance or gift that he would otherwise have received is subject to liability to the other for loss of the inheritance or gift.”<sup>121</sup> The United States District Court for the District of Rhode Island in *Henry* predicted that, in the absence of an adequate statutory remedy, one may pursue this claim in Rhode Island.<sup>122</sup> As we have seen, a claim for tortious interference with an inheritance is not subject to the probate exception.<sup>123</sup> Furthermore, as Mom’s claim of tortious interference would seek an in personam judgment, rather than one implicating the rem of her son’s estate, the superior court has proper jurisdiction.

- What if Mom suspects that her son’s fiancée has murdered her son? She may, like the plaintiffs in *Tyre v. Swain*, bring an action directly in superior court under the Uniform Declaratory Judgment Act, seeking a declaration that the fiancée is a slayer.<sup>124</sup> Rhode Island General Laws section 33-1.1-1(3) defines a slayer as, “any person who willfully and unlawfully takes or procures to be taken the life of another.”<sup>125</sup> If the fiancée is declared a slayer, she will be prohibited from taking under the alleged will.<sup>126</sup> The superior court’s decision will then assist the probate court to determine distribution of the son’s will.
- The superior court may also, under the Uniform Declaratory Judgment Act, construe the will in its entirety and determine its validity. Recall that a probate court’s ability to construe a will is limited to determinations of specific legacies in a will, and the question must have arisen during the course of the will’s administration.<sup>127</sup>
- Mom may also bring a claim under Rhode Island General Laws § 9-1-2, civil liability for

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121. RESTATEMENT (SECOND) OF TORTS § 774B (1979).

122. 856 F. Supp. 2d 345, 350 (D.R.I. 2012) (citing *Umsted v. Umsted*, 446 F.3d 17 (1st Cir. 2006)). In practice, a plaintiff must first exhaust her probate court remedies before pursuing a claim for tortious interference. *See Umsted*, 446 F.3d at 21. While this *may* take the shape of a will challenge in probate court, it may also consist of bringing an action in the name of the estate, pursuant to R.I. Gen. Laws section 33-18-17, to recover property that belongs to the estate, if the executor or administrator fails to do so. *See id.*

123. *See id.* at 351 (citing *Marshall v. Marshall*, 547 U.S. 293, 311–12 (2006)).

124. 946 A.2d 1189, 1198 (R.I. 2008). A plaintiff may bring a suit to declare a person a slayer even in the absence of a criminal conviction. *See id.*

125. R.I. GEN. LAWS § 33-1.1-1(3) (2011).

126. R.I. GEN. LAWS § 33-1.1-2 (2011).

127. *See Henry*, 856 F. Supp. 2d at 351.

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crimes against one's estate.<sup>128</sup> This is a statutory cause of action that gives claimants direct access to superior court, as in the *Swain* case.<sup>129</sup> It also seeks an in personam judgment.

- Does Mom have a claim of fraud against the fiancée? “In Rhode Island, common law fraud has four elements: (1) a false or misleading statement of material fact that was (2) known by the defendant to be false and (3) made with intent to deceive, (4) upon which the plaintiff relies to its detriment.”<sup>130</sup> Putting aside the question of whether Mom can satisfy these elements, claims of fraud sound in equity and may be brought in the first instance in superior court.<sup>131</sup>

## V. CONCLUSION

When confronted with a jurisdictional challenge, courts are cautious not to overstep their authority or usurp proceedings more properly belonging to another court. The same holds true in the context of claims that may affect, however remotely or tangentially, probate court proceedings.<sup>132</sup> Nevertheless, attorneys must not assume that, simply because a will is being probated or an estate administered, those involved in the proceeding are immune from claims asserted in superior court. Rather, one must look to the nature of the claim to determine the appropriate forum.

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128. R.I. GEN. LAWS § 9-1-2 (2012).

129. *Tyre*, 946 A.2d at 1191 .

130. *Van Slyke v. Bullock*, No. 96-2223, 1996 WL 937009, at \*5 (R.I. Super. Ct. Nov. 16, 1996).

131. *See id.*

132. *See, e.g., Estate of Donatelli v. Berkshire Place, Ltd.*, No. PC-2011-3423, 2014 WL 185329, at \*2 (R.I. Super. Ct. Jan. 7, 2014); *see also Dugdale v. Chase*, 157 A. 430, 431 (R.I. 1931).