

Joshua Rubenstein Featured in *Legal Week* Discussion on the Importance of Capacity in Succession Planning

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Trusts and Estates national head Joshua Rubenstein discusses the importance of anticipating capacity challenges when handling clients' trusts and estates affairs. He provides as examples the infamous family disputes that arose after the deaths of four well-known wealthy individuals: Henry Ford II, the grandson of the automobile maker and founder of Ford Motor Company; J Seward Johnson, heir to the Johnson & Johnson fortune; J. Howard Marshall II, billionaire oil tycoon who at the age of 89 married 26-year-old Anna Nicole Smith; and HL Hunt, the wealthiest man in the world at the time of his death in 1974.

Joshua further notes that part of the challenge in developing estate plans is finding the right people to trust. He adds that in most US states, "the standard of capacity to make a gift is much higher than the standard of capacity to do a will." In closing, he notes that seemingly cruel and unfair decisions do not necessarily mean an individual lacks capacity. He illustrates his point with the example of Leona Helmsley, who left her \$7 billion estate to her dogs. After a long, contentious probate contest, the court concluded that she was perfectly competent. "People are allowed to be foolish, they're allowed to be mean," Joshua notes. "Even though you need to be sensitive to people doing aberrational things, you can't use substituted judgment for them." ("Trust Lawyers Debate the Importance of Capacity in Succession Planning," April 21, 2015)

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