

**SHAKESPEARE, SUCCESSION AND ESTATE PLANNING:
LESSONS FROM THE BARD**

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When we mean to build, we first survey the plot, then draw the model, and when we see the figure of the house, then we must rate the cost of the erection. Which if we find outweighs ability, what do we then but draw anew the model, in fewer offices, or desist to build at all? Much more, in this great work, which is almost to pluck a kingdom down, and set another up—should we survey the plot of situation and the model, consent upon a sure foundation, question surveyors, *know our own estate . . . fortify in paper and in figures, using names of men instead of men*, like one that draws the model of a house beyond his power to build it.

-- WILLIAM SHAKESPEARE, SECOND PART OF HENRY IV, act 1, sc. 3

I. INTRODUCTION

When the pandemic started in 2020, as a survival strategy, I began reading books about plague. Our epidemic was mild by comparison to Albert Camus's walled Algerian city in *The Plague*.¹ Quarantine was easier for us than for Geraldine Brooks' characters in *Year of Wonders*, a story of sacrifice about a village pastor who persuades his congregation to quarantine and confine the plague to their village in 1666 - condemning most of them to death but saving many lives in the surrounding countryside.² Our contagion was more survivable than the alien *Andromeda Strain* by Michael Crichton.³ Turns out, a pandemic is bearable with pizza delivery, Netflix, and Amazon. Then, after thousands of pages of death and doom, I discovered Maggie O'Farrell's novel *Hamnet*, a story about William Shakespeare, his wife, Anne Hathaway, and the loss of their only son, Hamnet, during a time of plague.⁴

The story is imaginative and highly fictionalized, necessarily, because very little is known about William Shakespeare, the man, and even less about his family.⁵ Despite having written about 40 plays, more than 150 sonnets, and two epic poems,⁶ he left no journals, memoirs, letters, or anything remotely autobiographical. Instead, most of what we know about his personal life comes from *legal* records including

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¹ See ALBERT CAMUS, THE PLAGUE (Stuart Gilbert trans., 1960).

² See GERALDINE BROOKS, YEAR OF WONDERS: A NOVEL OF THE PLAGUE (2002).

³ See MICHAEL CRICHTON, THE ANDROMEDA STRAIN (1969).

⁴ See MAGGIE O'FARRELL, HAMNET (2020).

⁵ See generally *id.* (discussing the history behind the plot of the novel). No other author was ever so examined and catalogued as Shakespeare. See *id.* Scholars know he used 29,066 different words, 15,785 question marks and how many times he referred to the sea, lawyers, or any subject (for example: there are 401 references to ears in his plays). BILL BRYSON, SHAKESPEARE: THE WORLD AS STAGE 8, 18-21 (2007) [hereinafter BRYSON, THE WORLD AS STAGE]. See also generally BILL BRYSON, SHAKESPEARE: THE ILLUSTRATED AND UPDATED EDITION (2009) (the second edition of Bryson's book).

⁶ Some 884,647 words total. BRYSON, THE WORLD AS STAGE, supra note 5, at 18.

records of births, deaths, marriage bonds, land transactions, documents of peerage and title, litigation and court records, writs of attachment, records of taxes paid, licenses and payments from the crown for performance, profits from the sale of published works, and notably, his estate planning documents, including his Last Will and Testament and the registry of its probate, astounding because it was probated in 1616.⁷ As we will see, the reason so much of this material exists is because Elizabethan England was not a Renaissance Fair; it was a totalitarian police state that employed a staggering bureaucracy for enforcement and was funded by crushing taxes.

II. ACT I

A. Scene 1, Life and Business

After more than 400 years of research since his death in 1616, about 100 legal documents illuminate Shakespeare's family business.⁸ From these, we know he owned interests in at least two successful theaters and was a partner in two theatrical production companies supported by royal patronage of two monarchs. He received royalties for production of his plays and revenue for publication of his poems. He maintained residences in London and in Stratford-upon-Avon, the village where he was born, and acquired additional income producing properties in both places.

We know this because Elizabethan and Jacobean England were characterized by meticulous record keeping. This was due in part, to civil unrest lingering years after Elizabeth's father, Henry the VIII, rejected Catholicism, then died leaving England in the hands of a male child and two mere females, and resulting in a series of crises related to the succession of *his* family business – ruling England. There were multiple plots and attempts at revolution (in business terms, hostile takeovers) that led to suspicion, intrigue, and resulting in a government that monitored its citizens as closely as the technology of the day allowed.⁹ The course of history had been changed in divorce court.¹⁰ Quite understandably, it was a litigious age.

As an example, one of only six samples we have of Shakespeare's signature is on a deposition from a lawsuit for breach of contract for marriage in which he was merely a witness.¹¹ This and many other

⁷ See *infra* notes 135-37 and accompanying materials.

⁸ See BRYSON, *THE WORLD AS STAGE*, *supra* note 5, at 10.

⁹ See *id.* at 27, citing FRANK KERMODE, *SHAKESPEARE'S LANGUAGE* 302 (2000) and FRANK KERMODE, *THE AGE OF SHAKESPEARE* 12-13 (2003). "While Elizabeth survived, the issue of her succession remained a national preoccupation throughout her reign . . . Shakespeare's plays would be built around questions of royal succession – though speculating about Elizabeth's successor was very much against the law." BRYSON, *THE WORLD AS STAGE*, *supra* note 5, at 42.

¹⁰ See generally 7 *CATHOLIC ENCYCLOPEDIA* 223 (Herbertmann et al. eds., 1910) (detailing Henry VIII's marital affairs and the implications they had on England). Henry VIII wanted his marriage to Catherine of Aragon annulled. See *id.* When Pope Clement VII refused his request, he eventually declared the Church of England as the established church of the realm and himself *Head* of that Church by virtue of the Act of Supremacy of 1534. See *id.* at 224. He then convened a conclave of his cardinals, seized the assets of the Catholic Church in England and Wales, granted himself a divorce from Catherine and married Anne Boleyn. See *id.* For this, Pope Paul III excommunicated him in 1538. See *id.* When his daughter with Catherine, Queen Mary I, came to power, she tried to restore the Church of England's allegiance to the Pope by repealing the Act of Supremacy in 1555. See *id.* at 767. When her half-sister, Elizabeth I, came to power in 1558, she passed a second Act of Supremacy restoring the original but with a new oath declaring the Queen to be Supreme *Governor* of the Church. See DOCUMENTS ILLUSTRATIVE OF ENGLISH CHURCH HISTORY 449 (Henry Gee & William John Hardy eds., 1896) (citing Elizabeth's Supremacy Act, Restoring Ancient Jurisdiction, A.D. 1559. 1 Elizabeth, Cap. 1 [Hanover Historical Texts Project]).

¹¹ See Charles William Wallace, *Shakespeare and His London Associates as Revealed in Recently Discovered Documents*, 10 J. STUDS. UNIV. NEB. 261, 283 (1910). The UK National Archive registry describes the deposition in *Belott v. Mountjoy*: "Deposition taken at Westminster of William Shakespeare of Stratford upon Avon, gentleman, age 48 years . . . in 1604 he was

Shakespeare related documents were found by an odd professor from the University of Nebraska, Charles Wallace and his wife, Hulda. They began their research in London in 1906 and spent most of the next ten years there poring over dusty handwritten archives. They found several lawsuits in which Shakespeare was a party or witness including the marriage contract dispute of his former landlord in *Belott v. Mountjoy*. In his deposition, Shakespeare testified that he knew there was a contract, but he didn't remember much else. However, the transcript tells us where he was living in 1604, provides his address in 1612, and is signed!¹²

B. Scene 2, The Ubiquity of Taxes

There was almost no aspect of ordinary life in Shakespeare's time that didn't involve payment of a governmental fee, application and government approval, purchase of a bond, a tax, a fine, a tithe, or a penalty; we have a rich source of government records. Every village had guildhalls and government officials assigned to inspect, catalog, weigh, and measure virtually everything, from a required uniform size for loaves of bread to the quality of ale, and to report and collect fees. Citizens were fined if they failed to attend church or attended the "wrong" church,¹³ or they could buy dispensation to eat forbidden

lodging in Christopher Mountjoy's house [in Silver Street], and . . . knew the arrangements agreed for the marriage of Mary Mountjoy and Stephen Belott. Shakespeare testified he knew the parties, but after 8 years, did not recall any details. Signed May 11, 1612, at National Archives, Kew." *Interrogatories and depositions in Belott v Mountjoy, on behalf of Stephen Belott* . . . , NAT'L ARCHIVE, <https://discovery.nationalarchives.gov.uk/details/r/C9040404> (last visited June 26, 2024) [<https://perma.cc/5VAC-L5V7>] (transcribed by C. W. Wallace, in *Shakespeare and his London Associates, as Revealed in Recently Discovered Documents*, 10 J. STUDS. UNIV. NEB. 261-360).

¹² See Wallace, *supra* note 11, at 283. This, one of only six known signatures of Shakespeare, was one of many significant finds by Charles and Hulda Wallace. See *Charles William Wallace*, PRABOOK, <https://prabook.com/web/charles.wallace/2501096> (last visited June 27, 2024) [<https://perma.cc/V9VT-S3T6>]. Charles wrote several books on Shakespeare, but he was "quite eccentric" and eventually the university cut off his funding. See *id.* They returned to the States, where Charles, with no expertise or prior experience, decided to try wildcatting. See *id.* Using the last of their savings, they bought land assumed to be worthless near Wichita Falls in Archer County, Texas and hit oil. See *id.* Wallace died in 1932, immensely wealthy – but not from his books on Shakespeare. See *id.* There is still a renowned Shakespeare research center at the University of Nebraska which owns a First Folio. *Shakespeare at the University Libraries*, ARCHIVES & SPECIAL COLLECTIONS, UNIV. NEB.-LINCOLN <https://libarchives.unl.edu/project/shakespeare-at-the-university-libraries/> (last visited June 27, 2024) [<https://perma.cc/Q5BP-DXAJ>].

¹³ See BRYSON, *THE WORLD AS STAGE*, *supra* note 5, at 43. In 1580, about 50,000 Catholics chose not to attend Church of England services and paid a relatively small fine under the Act of Uniformity passed 28 April 1559. (1 Eliz. c. 2). But in 1581, the fine for failure to attend Church of England services was raised from 12 pence to 20 pounds per month (or imprisonment) under the Act to Retaine the Queen's Majesty's Subjects in their Due Obedience, the Religion Act of 1580 (23 Eliz. c. 1). See BRYSON, *THE WORLD AS STAGE*, *supra* note 4. It became high treason to persuade an English subject to withdraw allegiance to the Queen or Church of England in favor of the Church of Rome and imposed fines or imprisonment on those attending Catholic Mass. See SUSAN DORAN, *ELIZABETH I AND RELIGION 1558–1603*, at 37 (2002); 4 *THE STATUTES AT LARGE, OF ENGLAND AND OF GREAT BRITAIN: FROM MAGNA CARTA TO THE UNION OF THE KINGDOMS OF GREAT BRITAIN AND IRELAND*. 374–77 (John Raithby ed., 1814). See also Lucy Underwood, *Persuading the Queen's Majesty's Subjects from their Allegiance: Treason, Reconciliation and Confessional Identity in Elizabethan England*, 89 HIST. RSCH. 244, 246 (2016). Remarkably, 200 of Elizabeth's subjects were devout and wealthy enough to pay to attend mass generating some 45,000 pounds just as she was raising money to fund Francis Drake's next voyage. See Hans P. Kraus, *The Famous Voyage: The Circumnavigation of the World 1577-1580*, LIBR. CONG., <https://www.loc.gov/collections/sir-francis-drake/articles-and-essays/drake-biography/the-famous-voyage/> (last visited June 27, 2024) [<https://perma.cc/LD29-K94P>]. Drake, knighted in 1580 for circumnavigating the globe, nearly doubled the Queen's annual income when he delivered her half-share. See *id.* He spent a few months in Parliament and as Mayor of Plymouth, purchased an Abbey (previously seized by the crown) as a home befitting his new status, refitted his ships, and set out again on her majesty's business as a commissioned privateer. See *Sir Francis Drake – Explorer, Privateer, Mayor*, BRITANNICA, <https://www.britannica.com/biography/Francis-Drake/Mayor-of-Plymouth> (last updated June 21, 2024) [<https://perma.cc/Q32K-A2B>]. The Queen's share of the bounty from his voyages: as much as fifty percent. See Kraus, *supra*. But to the Spanish, he was just a pirate funded by Elizabeth. See *id.*

foods during Lent.¹⁴ Citizens needed a license to serve certain foods, even in their own homes, or to wear certain types of clothing and fabrics. Essentially these functioned as taxes or duties that encouraged domestic production and discouraged imported luxuries.¹⁵ Government oversight and control was an enormous enterprise built to enhance surveillance and generate wealth for the Crown and ruling class.¹⁶ Because the Head of State and the Head of the Church were the same, paid permission extended to civil and religious matters. A couple wishing to wed quickly was required to buy a marriage bond to cover potential liability arising from waiver of the number of public announcements (made in church) before a license could be issued.¹⁷ Fees or taxes were imposed to obtain permission for every type of transaction or transfer of wealth.

¹⁴ See BRYSON, *THE WORLD AS STAGE*, *supra* note 5, at 46. After Henry VIII broke from Rome, some rules were relaxed. *See id.* Eating meat on Friday was no longer a hanging offense but church authorities still sold exemptions to Lenten rules. *See id.* at 32. This marriage of church and state was, in part, why some fled to the new world. Early American history reflects fear and a deep understanding of the dangerous effects of the church and state being the same, and of government dictating religious values and lifestyle choices or exacting financial penalties to enforce the religious beliefs of those in control. *See* Hana M. Ryman & J. Mark Alcorn, *Establishment Clause (Separation of Church and State)*, FREE SPEECH CTR. MIDDLE TENN. UNIV., <https://firstamendment.mtsu.edu/article/establishment-clause-separation-of-church-and-state/> (last updated Feb. 18, 2024) [<https://perma.cc/T7AG-YPTS>]. A hard-learned lesson, still in play in our current century, where people in power still work to return to that kind of control and to eliminate intellectual discourse contrary to their own beliefs. Elizabethan and Jamesian citizens accepted banning educational or recreational materials and criminalizing medical, sociological, and religious practices that departed from the values of the church/state in power. *See* BRYSON, *THE WORLD AS STAGE*, *supra* note 4, at 32. In this author's opinion, 21st century citizens should not.

¹⁵ *See* BRYSON, *THE WORLD AS STAGE*, *supra* note 5, at 30-32. "Sumptuary" laws dictated what people could wear based on their annual income including whether they were allowed satin or velvet and in what colors. *See id.* Food was also regulated with restrictions placed on how many courses could be served (up to nine for a Cardinal but only two, plus soup, for anyone who earned less than £40 per year). *See id.*

¹⁶ *See* DAVID HARRIS SACKS, *COUNTERVAILING OF BENEFITS: MONOPOLY, LIBERTY, AND BENEVOLENCE IN ELIZABETHAN ENGLAND*, in *TUDOR POLITICAL CULTURE*, 272-73 (Dale Hoak ed., 1995). Elizabeth defined the role of Parliament by instructing the Commons to "meddle with noe matters of state but such as should be propounded unto them, and to occupy themselves in other matters concerning the commen wealth." Rosemary Sgroi, *Monopolies in Elizabethan Parliaments*, HIST. PARLIAMENT, <https://www.historyofparliamentonline.org/periods/tudors/monopolies-elizabethan-parliaments> (last visited June 27, 2024) [<https://perma.cc/QT2X-R9KE>]; T.E. HARTLEY, *PROCEEDINGS IN THE PARLIAMENTS OF ELIZABETH I: VOLUME I 1558-1581*, at 199 (1981). "Commonwealth" referred to the state and the common good of the people, justifying social and economic legislation and royal policy such as granting licenses to enforce penal statutes; address poverty, unemployment, vagrancy; trade in prohibited commodities, or patents to protect new inventions and industries. *See id.* Hundreds of patents were issued for manufacture and trade in cloth, leather, and iron; agrarian land use (especially grain and timber); and enforcement of morally acceptable behavior. *See id.* The patent system, intended to foster economic investment, growth, and create employment for the poor, included monopolies to generate extra-parliamentary revenue for the Queen and rewards to her courtiers for new projects. *See Homepage*, HIST. PARLIAMENT, <https://www.historyofparliamentonline.org/> (last visited June 27, 2024) [<https://perma.cc/JF9Y-J5CJ>]; SACKS, *supra*.

¹⁷ BRYSON, *THE WORLD AS STAGE*, *supra* note 5, at 56-57. Weddings were religious services, never civil, and always directed by clergy. *See generally id.* at 55-56 (describing the religious aspect of weddings). The first step was to "Cry the Banns," announcing a couple's intention to wed. *See id.* Elizabethan law required intent be declared to the full congregation on three consecutive Sundays or Holy days. *See id.* Citizens were required to attend church, making it an effective way to provide notice to an entire community and time for any pre-contracts to be revealed. *See id.* A marriage not announced in advance was covert and unlawful, but a couple in a hurry could buy a Marriage Bond as security that confirmed to a Bishop that issuing a Marriage License was legitimate. *See id.* A Marriage Bond required a sworn oath by "two sufficient witnesses" (only men - often the groom and bride's father). *See id.* Once issued, the couple was required to make only one announcement. *See id.*

These taxes supported the Church, Court, and Crown – government – as one. This was the “family business” Henry left to his son Edward VI,¹⁸ then to his daughters, Mary, then Elizabeth, and eventually to James VI of Scotland (Elizabeth’s first cousin twice removed) who became James I of England.¹⁹ With each transfer of power and wealth came tension and drama. Succession was an obsession of the age. (In some respects, every age.) Looking at the world Shakespeare inhabited gives us a different perspective from which to examine our own systems of planning and wealth transfer.

But legal documents don’t tell us anything about who William and Anne really were, how they felt about each other, or their values in life. It is the same today: clients struggle to find ways to incorporate their values, goals, and priorities into their estate planning documents but often end up with perfectly drawn documents that are “bloodless” -- words that transfer assets but don’t create or define a legacy. This is not a new problem. Dispositive documents of many historic figures are widely accessible but usually tell us very little about the lives, personality, or passions of the testator. Today, pages are carefully word processed to address every legal contingency and create neat and binding entities, but they do not evolve with the family they benefit, nor do they convey much, if anything, about its members or their values.

When probate inventories are available, they may reveal more.²⁰ For example, the will of Henry VIII, essentially a deathbed will, is grounded in part on earlier drafts, and is a significant constitutional document confirming the line of succession to the crown. It names *sixteen* Executors, who documented his possessions.²¹ His inventory, available in the British Library and National Archives, took 18 months to

¹⁸ See MIKE ASHLEY, THE MAMMOTH BOOK OF BRITISH KINGS AND QUEENS 626, 631 (Carroll & Graf ed., 1998). Edward was nine when Henry VIII died. *See id.* at 636-37. He lived only six years longer and never reigned without a regent. *See id.* at 636. On his deathbed, to avoid Henry’s oldest daughter, Mary, a Catholic, coming to power, Edward named Lady Jane Grey as his heir. *See id.* at 638. She was queen for nine days before she was deposed by Mary and executed. *See id.*

¹⁹ *See id.* at 639, 641, 646.

²⁰ See *Prerogative Court of Canterbury and Other Probate Jurisdictions: Inventories compiled before 1661*, NAT’L ARCHIVES, <https://discovery.nationalarchives.gov.uk/details/r/C12113> (last visited June 27, 2024) [<https://perma.cc/A3NA-35JY>]. Inventories compiled before 1661 are in the records of the Prerogative Court of Canterbury, published in 17 volumes, in London, dated 1704-1735. *Id.* Entries in the probate and administration act books may also include valuations of a testator’s or intestate’s personal estate, from the inventories compiled at the time and noted in the right-hand margins of those act books. *Id.* Three courts exercised probate jurisdiction during the 16th and 17th centuries. *Id.* In 1522, Warham, as Archbishop of Canterbury, made an agreement with Cardinal Wolsey, as Papal Legate, whereby personal estates of persons having goods in more than one diocese or ecclesiastical peculiar were put under joint jurisdiction of the archbishop’s prerogative and a court specially established by Wolsey in London. *Id.* That ceased with the fall of Wolsey in 1529. *Id.* In 1535, ecclesiastical courts came under Henry VIII’s supremacy. *Id.* Thomas Cromwell, appointed Vicegerent of the Church of England, and William Petre, Cromwell’s Commissary, were authorized to prove wills, grant letters of administration, and hear testamentary cases in estates valued at more than £200. *Id.* The vicegerent court closed in 1540, and a separate Court of Probate was established for the business of ecclesiastical courts’ probate jurisdiction. *Id.* Extant records are in unbroken series with the Prerogative Court of Canterbury and exhibited after court restoration in 1660. *Id.* Executors and administrators were required by act of Parliament (21 Henry 8, c. 5) to present to a court granting probate, two copies of an inventory of the testator’s or intestate’s personal estate. *Id.* at 7. One copy was returned to the executor or administrator and the other preserved by the court. *Id.*

²¹ See SUZANNAH LIPSCOMB, THE KING IS DEAD: THE LAST WILL AND TESTAMENT OF HENRY VIII 51-53 (2016). Henry VIII “signed” his last will and testament on December 30, 1546, authorizing changes William Paget made on his behalf four days earlier. *See id.* at 322. It’s unlikely he signed for himself. *See id.* The King had not signed anything with his own hand since September 1545 when, to save him from the tedium of inscribing his name on countless state documents, three designated royal clerks were given authority to impress a stamp facsimile of his signature and delicately ink in the indentation. *See id.* at 327. Sir Anthony Denny, John Gates, and William Clerk (appropriate name) were then regularly pardoned for “all treasons of counterfeiting of the King’s sign” then reauthorized for the months to come. *See id.* Henry died a month later, on January 28, 1547. *Id.* The final will amended some previous titles and grants and confirmed a council of advisors for his son’s minority. *See Henry VII’s Will*, BRITISH HIST. ONLINE at 321, <https://www.british-history.ac.uk/letters-papers-hen8/vol21/no2/pp313-348>

complete. It details tens of thousands of items from castles to a marmoset (believed to have been a Christmas present from his first wife, Catherine of Aragon). Regarding Henry, we learn far more about him from his inventory than from his will.²² Unfortunately, Shakespeare's inventory was lost, presumably in London's Great Fire, and his will contains few clues to his personal life. But examining what we do know about the disposition, business, and planning for the Shakespeare family, some of it seems oddly timeless and familiar.

C. Scene 3, Family

The Shakespeares were an unusual couple. When they were married, William was 18 and Anne was 26 – eight years older. She was expecting their first child when they married, a daughter, Susanna. We know that because they paid a substantial fee, £40, for a marriage bond to waive the waiting period. Then Susanna was born only 6 months later, in 1583. In 1585 they had twins, a girl and a boy, Judith and Hamnet, their only son.²³ As already noted, Hamnet died in 1596 at age 11, presumably of the plague.²⁴

Also, unusual was the fact that Anne came from a family higher in social status – Shakespeare married up. That seems to have been a family tradition. His grandfather, Richard Shakespeare, was a tenant farmer who married the Landlord's daughter.²⁵ And his father, John Shakespeare, was a leather worker and glove maker who married Mary Arden, daughter of a second son of local gentry.²⁶ John was apparently entrepreneurial

(last visited June 27, 2024) [<https://perma.cc/P9KZ-32WR>]. He added descendants of his sister, Mary Tudor, to the line of succession in the event his own children did not survive or, if his daughters, married without the “written and sealed” consent of the Privy Council. See LIPSCOMB, *supra*, at 321-22. He provided compensation for sixteen executors (six received substantially more than the remaining ten) and gave them discretion to appoint legacies to his servants and increase marriage payments for his daughters if they marry any “outward potentate.” See *id.* at 322.

²² See THE INVENTORY OF HENRY VIII: ESSAYS AND ILLUSTRATIONS (David Starkey et al. ed. 2002) and THE INVENTORY OF HENRY VIII: TEXTILES AND DRESS (David Starkey et al. ed. 2012). Revealing personal data, the detailed inventory included his codpieces, symbols of virility and masculinity, ornate and exaggeratedly large (some big enough to use as pockets, for jewels, or even small weapons) and his suits of armor. See THE INVENTORY OF HENRY VIII: THE TRANSCRIPT (David Starkey & Philip Ward ed. 1998). In 1514, 23-year-old Henry was 6-foot-1 with a 32-inch waist and 39-inch chest. *Id.* Twenty-five years later, Henry had a suit of armor made with a 51-inch waist and 54.5-inch chest. *Id.* The inventory details a bowling alley 200 feet long built in Hampton Court Palace (three times longer than the standard today) *Id.* His estate held a wide variety of musical instruments (most of which he played himself) including 20 recorders, 19 viols, two clavichords and four sets of bagpipes, one of which was made of purple velvet with ivory pipework. See *id.* at 266. He owned twelve pair of black silk hose, an ebony chessboard, and seven tennis rackets. *Id.* at 396-97. He had a large collection of animals including ferrets, falcons, hawks and other birds, dozens of dogs with more than 60 dog leashes some highly decorated, and one marmoset. See *id.*

²³ BRYSON, THE WORLD AS STAGE, *supra* note 5, at 57-58.

²⁴ See Heller McAplin, *The Real 'Hamnet' Died Centuries Ago, But This Novel Is Timeless*, NPR (July 21, 2020, 7:00 PM), <https://www.npr.org/2020/07/21/893184307/the-real-hamnet-died-centuries-ago-but-this-novel-is-timeless> [<https://perma.cc/8ca3-mpma>]. Presumably, because from surviving records we know there was plague in 1596 and we know that is when he died, but we can't know if plague was his cause of death. See *id.*

²⁵ See CHARLES ISAAC ELTON, WILLIAM SHAKESPEARE: HIS FAMILY AND FRIENDS 112-13 (A. Hamilton Thompson ed., 1904).

²⁶ See *id.* at 116, 120, 349. Primogeniture was the nearly universal default. See discussion *infra* text accompanying notes 60-63. A second son carried much less status but there was the possibility that due to an unexpected death the “spare heir” would be called into service – even greater possibility in times of plague. Marrying a second son could result in an unexpected elevation in social status. Mary's father was Robert Arden, a second son, but the Arden name came with significant social capital since his family lineage could be traced back to the Domesday Book, the great record of properties compiled for William the Conqueror in 1086. See STEPHEN GREENBLATT, WILL IN THE WORLD – HOW SHAKESPEARE BECAME SHAKESPEARE 58 (2005). Robert's will is dated November 24, 1556 and he died only a few weeks later on December 9, leaving his two daughters his household goods “moveable and unmoveable.” *Id.* at 119. He left Mary an estate in Wilmcote,

and modestly successful in local politics. He was the appointed “Ale-Taster” for the borough in 1557, eventually becoming district Constable,²⁷ but was later accused of serious financial indiscretions, including unlawful wool trading and usury.²⁸ He was fined more than once for failing to attend required church services.²⁹ Eventually he stopped holding public office and was widely assumed to be near bankruptcy. But he maintained a reasonably comfortable life for William and his siblings³⁰ during their childhood.

III. ACT II

A. Scene 1, His Work is Life

As an adult, Shakespeare wrote and produced plays, owned interests in at least two theaters, published, acted in his own plays and those written by others, and was commissioned by both Elizabeth I and James I to produce and perform at Court. One of very first decrees of King James, a few days into office, was to grant Shakespeare’s company a royal patent to perform at court - creating The King’s Men.³¹ In the following 13 years, they performed for King James 187 times – more than all the other licensed acting troupes combined.³²

Shakespeare was busy and clearly successful in his own time. There are references to his work in the royal archives and by other authors of his day. Litigation brought by another theater owner suggests jealousy among his competitors. There is at least one case of someone else publishing his work without his consent.³³

“the crop upon the ground, sown and tilled as it is” including a house and farm on four acres with rights to pasture on about fifty acres of the common fields and livestock -- horses, sheep, pigs, “bees and poultry.” *Id.* at 119, 121. His widow, not Mary’s mother, was entitled to a common law life estate in their primary home, but he left a cash bequest to her to be reduced by half if she did not allow his daughters to share that home as well. *Id.* at 119-20. Unfortunately, John Shakespeare, encountered financial difficulty and eventually sold his wife’s property off, piece by piece to sustain his own growing family. *Id.* at 61.

²⁷ See ELTON, *supra* note 24, at 78-79. An Ale-Taster ensured that bakers and brewers furnished wholesome goods at or under the statutory price. See *id.* The Constable’s duty was to keep the peace and included posting local citizens to a night-watch, arresting “night walkers” or vagabonds, putting beggars in the stocks, preventing such “unlawful games as bowling, dicing, tabling, carding, or tennis, except at Christmas” or by those who held land that generated £100 or more a year. See *id.* at 79. Those landholders and their guests had license to engage in such games at any time. See *id.*

²⁸ See BRYSON, *THE WORLD AS STAGE*, *supra* note 5, at 27.

²⁹ See JESSIE CHILDS, *GOD’S TRAITORS: TERROR AND FAITH IN ELIZABETHAN ENGLAND* 46 (2015) (discussing Shakespeare’s father, John, not attending services and citing “fear of prosecution for debt” as the reason).

³⁰ See *William Shakespeare’s Family*, SHAKESPEARE BIRTHPLACE TR., <https://www.shakespeare.org.uk/explore-shakespeare/shakespedia/william-shakespeare/william-shakespeares-family/> (last visited June 29, 2024) [https://perma.cc/HLZ2-H4BP]. According to the records of the Shakespeare Birthplace Trust, John and Mary Shakespeare had eight children. *Id.* Of the four girls, only one, Joan, survived to the age of majority; she is also the only child to have outlived William. See *id.* Of the four boys, William, Gilbert, Richard, and Edmund, all survived to become adults, but the only one who ever married was William. See *id.* Sadly, all three of his brothers predeceased him. *Id.*

³¹ See JAMES SHAPIRO, *THE YEAR OF LEAR: SHAKESPEARE IN 1606*, at 21 (2015).

³² See BRYSON, *THE WORLD AS STAGE*, *supra* note 5, at 134.

³³ See, e.g., JAMES SHAPIRO, *A YEAR IN THE LIFE OF WILLIAM SHAKESPEARE: 1599*, at 188 (2005). *The Passionate Pilgrim* (title cleverly adopted from Romeo and Juliet when the lovers first meet) was an anthology of 20 poems, attributed to W. Shakespeare on the title page. See *id.* Published by William Jaggard in 1599, only five of the poems are confirmed as Shakespeare’s: two sonnets later published in a 1609 collection entitled *Shakespeare’s Sonnets* and three poems from the play *Love’s Labours Lost*. See *id.* at 189-90. Five of the poems were later published attributed to other authors! But the volume sold, so Jaggard published a later edition and added poems known to be by Thomas Heywood, including some he himself had previously published as Heywood’s. See *id.* at 194. The book also contains poems by Richard Barnfield, Bartholomew Griffin,

Famous in his own time, scholars, authors, poets, and playwrights referred to his work or quoted him often, despite “media” being limited to pamphlets, folios, or attendance at a live performance. He was the object of literary criticism even early in his career.³⁴ We quote him today because his work endured.

Clearly, he was an amazingly successful literary rockstar.³⁵ His family business, comprised of theatrical production, publication and acting, was thriving *but it was not a business his wife and daughters could continue*. A baker’s widow might bake bread. A woman could tend a family’s garden or even some livestock, but Shakespeare’s widow and his daughters would never be allowed to carry on his theatrical businesses in an era when boys still played the women’s roles on the stage.³⁶ No wonder then that so many of his plays include issues arising from succession.

B. Scene 2, Plague³⁷

Plague in the late 1590s left many widows and orphans in a country racked by poverty made worse by an economic recession caused by politics, the uncertainty of succession because Elizabeth I was past the age

Christopher Marlowe and Sir Walter Raleigh. *See id.* at 196. Frustrating as it may have been to see his work published without his consent, including poems not his, and without compensation, there wasn’t much Shakespeare could do about it. *See id.* at 197. In Elizabethan England, publishers, not authors, held copyrights. *See id.* at 189. Jaggard published *The Passionate Pilgrim* early in his career. *See id.* He was clearly driven by economics. *See id.* at 190. Law dictated he could charge no more than a penny for every two sheets of text, and he knew Shakespeare’s name would sell his book when others might not. *See id.* at 189. So, the volume began with four of the five poems that were truly Shakespeare’s. *See id.* at 190. A buyer flipping through the first pages would recognize the quality. *See id.* Jaggard padded the book by printing text on only one side of the paper and with liberal margins to increase its lawful price. *See id.* at 189. For good measure, he sold the book at William Leake’s bookshop instead of his own. *See id.* at 190. Leake owned rights to *Venus and Adonis*, which really was Shakespeare’s work and was in its fifth edition, so the books were displayed side by side – a marketing ploy that worked. *See id.* The first edition sold out quickly, then a second edition before the year’s end. *See id.* Jaggard later atoned for his sins by participating in production of the First Folio in 1623. *See id.* at 189.

³⁴ *See* BRYSON, *THE WORLD AS STAGE*, *supra* note 5, at 83-85 (describing a pamphlet entitled *Greene’s Groat’s-Worth of Wit, Bought with a Million of Repentance* published in 1592). Greene, a university graduate from a humble background, described as a “wastrel and a cad” referred to Shakespeare as “an upstart crow, beautified with our feathers, that with his Tiger’s heart wrapped in a Player’s hide . . . is in his own conceit the only Shake-scene in a country.” *Id.* Greene’s publisher, Henry Chettle, later offered an apology of “radiant humility and abjection.” *Id.* But then, as now, it seemed bad publicity was better than no publicity. *See id.* Greene also criticized Christopher Marlowe accusing him of atheism – a serious charge in that time. *See id.*

³⁵ GREENBLATT, *supra* note 26, at 11-12. (“A young man from a small provincial town – a man without independent wealth, without powerful family connections, and without a university education – moves to London in the late 1580s and, in a remarkably short time, becomes the greatest playwright not of his age alone but of all time. His works appeal to the learned and the unlettered, to urban sophisticates and provincial first-time theatergoers. He makes audiences laugh and cry; he turns politics into poetry; he recklessly mingles vulgar clowning and philosophical subtlety. He grasps with equal penetration the intimate lives of kings and beggars; he seems at one moment to have studied law, at another theology, at another ancient history, while at the same time he mimes the accents of country bumpkins and takes delight in old wives’ tales. . . . Not only did Shakespeare write and act for a cutthroat commercial entertainment industry; he also wrote scripts that were intensely alert to the social and political realities of their times. He could scarcely have done otherwise: to stay afloat, the theater company in which he was a shareholder had to draw some 1,500 to 2,000 paying customers a day into the round wooden walls of the playhouse, and competition from rival companies was fierce.”).

³⁶ *See* BRYSON, *THE WORLD AS STAGE*, *supra* note 5, at 78.

³⁷ Shakespeare’s plays provide us with insight into many aspects of life in his age, and interesting perspectives on succession. But there are no plots built upon or even descriptions of plague. He doesn’t shrink from horror -- victims of rape and domestic violence, war, and ambition stagger on stage to die. Throats are slit, eyes are gouged, bodies are hanged and beheaded but there are no depictions of plague. Even a mention is rare. This shouldn’t surprise us. It is bad for business to remind an audience, already packed tightly together in a theater, of the risks and effect of contagious disease: businesses shuttered, movement restricted, families imprisoned at home to survive, or not, with what is on hand. Traumatizing then, as now.

of childbirth, and by spiraling labor shortages caused by repeated surges of plague across the country.³⁸ The four decades under Elizabeth are often referred to as a “Golden Age” but it is doubtful the population then would have seen it that way. In addition to continued tension regarding the ultimate succession of Elizabeth’s crown, skirmishes and rebellions in Scotland, and Catholics who persisted in claims that Elizabeth should never have been put on the throne in the first place, the frequent epidemics and plague had a terrible impact on society.

When plague swept through a district, there weren’t enough farmers to work the fields, leading to food and other shortages, leading to rampant inflation. By 1597, the average wage was less than a third (in real terms) of what it had been a century before.³⁹ People weakened by poverty, malnutrition, and stress were susceptible to more frequent surges of illness and more likely to die, leading to further shortages of labor.⁴⁰ Despite a woman on the throne and these shortages of labor, in most cases, women were still excluded from the economic life of the country. Shakespeare’s surviving family, a wife and two daughters, could not run his thriving business in theater arts and would undoubtedly face economic hardship should he die suddenly.

So, it seems more than a coincidence that in May of 1597, nine months after losing his only son, Shakespeare bought his first real estate asset, an estate in his hometown, Stratford-on-Avon. Described as the “second largest dwelling in the town,” the new Shakespeare home was brick, had ten fireplaces, large gardens, and grounds including a secondary cottage, two barns, and an orchard.⁴¹ Following that, he bought another cottage and plot of land directly across the road (perhaps to house servants or an estate manager). He had never owned a home before, but this was much more than a starter home. This estate could provide stability, sustain more than just his immediate family, and generate income and food.⁴² He also invested the money and time to apply for and obtain a coat of arms for his father, which would eventually pass back to him as the eldest son. Once secured, the men in his family had those privileges reserved only to “gentlemen.”⁴³

C. Scene 3, Family Business and Succession

Next, Shakespeare entered a partnership that took a 31 year ground lease and built a new theater, the Globe,⁴⁴ constructed of materials “salvaged” from a prior venture which lease had expired.⁴⁵ He made a

³⁸ A nasty cycle that, unfortunately, seems familiar to us since our modern plague began in 2020.

³⁹ See BRYSON, *THE WORLD AS STAGE*, *supra* note 5, at 117-18.

⁴⁰ See generally Alan D. Dyer, *The Influence of Bubonic Plague in England 1500-1667*, 22 MED. HIST. 308-26 (1978) (describing the influence of the bubonic plague in England).

⁴¹ BRYSON, *THE WORLD AS STAGE*, *supra* note 5, at 89.

⁴² See *id.* Until this purchase, Anne and his children lived with his parents, his siblings, and their children. *Anne Hathaway*, SHAKESPEARE BIRTHPLACE TR., <https://www.shakespeare.org.uk/explore-shakespeare/shakespedia/william-shakespeare/william-shakespeares-family/anne-hathaway/> (last visited June 30, 2024) [<https://perma.cc/BFN9-BR6C>]. Then, as now, plague and quarantine made less crowded living spaces desirable. See BRYSON, *THE WORLD AS STAGE*, *supra* note 4, at 36. In addition to being able to raise their own food and generate income, this home provided his family with a place to live that allowed social distancing -- a true luxury in that time and in ours. See *id.* at 89.

⁴³ See *id.*

⁴⁴ See generally CATHARINE ARNOLD, *GLOBE: LIFE IN SHAKESPEARE’S LONDON 171-78* (2015) (describing the long process that Shakespeare went through with the Burbage brothers to erect the Globe theatre).

⁴⁵ *Id.* at 171-72. The old theater was dismantled on its previous site and spirited away between Christmas and the New Year in 1598 to the fury of Giles Alleyn who owned the land. See *id.* at 172. Alleyn planned to take advantage of the death of James Burbage in 1597, assuming his sons, Richard and Cuthbert Burbage, would not be able to raise funds to dispute the rights to the

second investment with some Globe partners in a more modern and smaller but luxurious theater, in a better neighborhood, Blackfriars, that became very profitable.⁴⁶ These new ventures were structured to provide income from the performances, even if he wasn't performing in them. He also bought 107 acres of tenanted farmland north of his Stratford property for £320. In July of 1605, for £440, he purchased a 50% interest in production tithes of crops in three neighboring villages structured as a lease annuity that would pay him £60 per annum for his life, and then for some years to his heirs.⁴⁷ Eventually he acquired a London property, the Blackfriars Gatehouse, in 1613, apparently only as an investment, continuing to rent rooms for himself when he was in London. He named three of his colleagues to hold a deed in trust on that house.⁴⁸ Gradually, he shifted his resources to long term real estate investments held in entities that would continue to pay income even if he were no longer there to write, produce, and act. *Shakespeare reallocated his assets to better sustain his family of females.*⁴⁹

Perhaps this was mere coincidence. It is possible Shakespeare didn't really think about things in terms of the succession of his family business. We don't really know what he thought about. Based on his writing, we can't be certain if he considered his own legacy or preservation of his family business. The plots of his plays are taken from history or legend and contain no suggestion that they are autobiographical. But from them, we do know he thought a great deal about succession – even if not his own. Plot lines related to the transition of wealth and power are present in half of his plays. To put that in perspective, of the thirty-nine⁵⁰ plays that we have, nineteen include some issue of succession or transfer of power. And in many of

materials or to move them. *See id.* at 254. By default, the theater would remain in his possession when the lease was cancelled. *See id.* at 171. But they proved surprisingly resourceful. *See id.* at 173. A lawsuit ensued. *Id.* The named defendants, including the Burbage brothers and other members of the venture (most of the Lord Chamberlain's Men) had sunk a considerable amount of money into the project. *Id.* at 173; BRYSON, *THE WORLD AS STAGE*, *supra* note 5, at 92. They eventually prevailed but were not free from the nuisance of pending litigation until 1602. ARNOLD, *supra*, at 173.

⁴⁶ *See* ARNOLD, *supra* note 44, at 231-33, 236.

⁴⁷ BRYSON, *THE WORLD AS STAGE*, *supra* note 5, at 95. The purchase of a lease/annuity, sometimes referred to as a "pension", to pay £60 per annum through his lifetime and then for some years to his heirs makes it clear he was wealth planning for the future. And an investment of this type reflected the exceptionally large income that Shakespeare was now earning. *See* GREENBLATT, *supra* note 26, at 364.

⁴⁸ *See id.* at 151. Blackfriars Gatehouse was a well-known Catholic safehouse near Blackfriars Theater (a damaged reputation may have made it more affordable). *See id.* As trustees for this transaction, Shakespeare named William Johnson, owner of London's infamous Mermaid Tavern, a meeting place for the gunpowder plot conspirators to serve with Thomas Pope and John Heminges. *See* SHAPIRO, *supra* note 30, at 117; *see also* BRYSON, *THE WORLD AS STAGE*, *supra* note 4, at 151.

⁴⁹ *See* SHAPIRO, *supra* note 31, at 8.

⁵⁰ *See Shakespeare's Lost Plays*, NO SWEAT SHAKESPEARE, <https://nosweatshakespeare.com/plays/types/lost/> (last visited June 30, 2024) [<https://perma.cc/629X-TMF4>]. Two plays are known to have existed but are lost to history – maybe more. *See id.* Some scholars say only 38; even this isn't certain. *See id.* A play published anonymously in 1596 titled *The Raigne of King Edward the Third*, commonly shortened to *Edward III*, is attributed to Shakespeare and another as a collaboration. *See* SHAKESPEARE'S EDWARD III: AN EARLY PLAY RESTORED TO THE CANNON 3 (Eric Sams ed., 1996) [hereinafter CANNON]. It is not in the First Folio, but its publication survived as an original Quarto. *See id.* at 150. The co-author remains a mystery despite much speculation. The publisher was Cuthbert Burbage, one of Shakespeare's partners in the theaters. *See id.* at 148. It contains material derogatory to Scotland and is assumed to have been left out of the First Folio in deference to King James who granted the Royal Patent to the Kings Men. *See id.* at 150. Possible collaborators are Thomas Kyd, Christopher Marlowe, Michael Drayton, Thomas Nashe or George Peele. *See* WILLIAM SHAKESPEARE, KING EDWARD THE THIRD 58 (Richard Proudfoot & Nicola Bennett eds., 2017) [hereinafter KING EDWARD III]. Some historians think Shakespeare collaborated with Christopher Marlowe on the Henry VI plays. *See id.* at 55. There are also a few plays from Shakespeare's day which have remained completely unattributed but upon which some scholars think he collaborated. *See* CANNON, *supra*, at 1-2.

these plays, Shakespeare looks at inheritance as a lens into human morality, a lens that magnifies questions about the meaning of inheritance and the obligations of an heir.⁵¹

In fact, succession was a predominant and overriding theme during the two decades that Shakespeare wrote, produced, and acted in the English theater. Politics, religion, government, business, and art were irrevocably intertwined. Transfer of assets and power were critical concerns that made being a writer tricky. People were interested in and focused on succession, but it was a capital offense to speculate about the death of a monarch or succession of the crown and all the players of the age, including Shakespeare, were dependent upon the patronage of that crown.⁵² It is a testament to his genius that he was able to write about succession in a time so politically fraught, producing successful works that were widely embraced, merely by changing the time and geography. And lucky for us that he was so good at it. Some authors of his day were severely punished up to and including being put to death for the treason of imagining the death or overthrow of the sovereign.⁵³ Remarkably, despite having staged Richard II only days before the failed coup of Robert Devereaux, Earl of Essex, and despite an investigation of the Lord Chamberlain's Men

⁵¹ See Katherine Uhler, *Inheritance in Shakespeare: Whether Comedic, Tragic, or Historical, Shakespeare's Plays Return to the Idea of Wills and Inheritance*, SHAKESPEARE BIRTHPLACE TR. (July 21, 2016), <https://www.shakespeare.org.uk/explore-shakespeare/blogs/inheritance-shakespeare/> [<https://perma.cc/DST2-XK6G>].

⁵² See J. D. TANNER, TUDOR CONSTITUTIONAL DOCUMENTS 413 (1922). The Treasons Act 1571 (13 Eliz. c.1), issued by Parliament during the reign of Elizabeth I, restored provisions of the Treasons Act 1534, passed during the reign of her father, Henry VIII, then repealed by the Treason Act 1547, during the reign of her half-brother, Edward VI. See David P. Gontar, "Stand Up for Bastards": Natural Issue in the 1571 Act of Parliament, 13 Eliz., c.1, NEW ENG. REV. (Mar. 2016), <https://www.newenglishreview.org/articles/stand-up-for-bastards-natural-issue-in-the-1571-act-of-parliament-13-eliz-c-1/> [<https://perma.cc/8HDR-93F8>]. It was high treason to intend bodily harm to the Queen, levy war against her, or incite others to levy war against her, say that she ought not to enjoy the Crown, publish in writing that she was a heretic, tyrant or usurper, claim a right to the Crown, or usurp it during the Queen's life, assert that someone else has right of succession to the throne, or say that laws of Parliament do not govern the succession to the throne. See TANNER, *supra*, at 375, 379. That remained the law for nearly 300 years, until the Statute Law Revision Act of 28 July 1863. See *Statute Law Revision Act 1863*, VLEXJUSTIS, <https://vlex.co.uk/vid/statute-law-revision-act-808347361> (last visited June 30, 2024) [perma.cc/8HDR-93F8]. And under the Succession to the Crown Act of 1707, it was treason to say that Parliament did not control succession until 1967. Estate planners note that the wording of section V. of the Treasons Act of 1571, describing the legal line of succession, abandons the term "heirs of the body" in favor of the phrase "natural issue" to refer to the monarch's heir to the throne. See Gontar, *supra*. "That any one particular person, whosoever it be, is or ought to be the right heir and successor to the Queen's Majesty that now is (whom God long preserve) except the same be the natural issue of her Majesty's body." See *id.* Scholars suggest this was meant to include any illegitimate child, or "natural issue," born to Queen Elizabeth I, as legal successor to the monarchy. See *id.* As recently as 2016, debate continues but most agree the change was meant to prevent a crisis of succession. See *id.*

⁵³ See SHAPIRO, *supra* note 31, at 3. John Hayward -- civil servant, lawyer, historian and author -- complained to the Prince of Wales in 1612, "men might safely write of others in manner of a tale; but in manner of a history, safely they could not: because, albeit they should write of men long since dead, and whose posterity is clean worn out; yet some alive, finding themselves foul in vices they see observed, reprov'd, and condemn'd in others, their guiltiness maketh them apt to conceive, that, whatsoever the words are, the finger pointeth only at them." JOHN HAYWARD, LIVES OF THE III NORMANS, KINGS OF ENGLAND: WILLIAM THE FIRST, WILLIAM THE SECOND, HENRIE THE FIRST 2-3 (Rare Books Club 2013) (1613). Hayward had cause to complain. See *id.* In 1599, after interrogation in the Star Chamber, he was sent to the Tower by Elizabeth I for writing sympathetically about Richard II's abdication in *The First Part of the Life and Reign of King Henry I*. See BRYSON, THE WORLD AS STAGE, *supra* note 4, at 95-96. This error in judgment was compounded by having dedicated the work to the Earl of Essex, Robert Devereaux, who later staged a coup to overthrow Elizabeth. See *id.* It failed. See *id.* at 95. Devereaux was arrested, Elizabeth signed his death warrant on Shrove Tuesday, 1601, and he and six supporters were executed the next day. See *id.* Hayward remained in prison until Elizabeth died in 1603. *Id.* at 129-31. Shakespeare alone, of the playwrights of his day, avoided major confrontation with power. Innocent, Thomas Kyd was broken on the rack, Ben Jonson was imprisoned for his role in the *Isle of Dogs*, and many believe Christopher Marlowe was assassinated by government agents. See *id.* at 69; see also ARNOLD, *supra* note 44, at 166.

regarding that production (or perhaps because of it), they were summoned to play before the queen at Whitehall on the very day she signed Essex's death warrant.⁵⁴

All eleven history plays address succession and the transfer of power and wealth⁵⁵ and many of the tragedies. *Antony and Cleopatra*, *Julius Caesar*, and *Coriolanus* are obvious examples. In *Hamlet* and *Macbeth* power is seized through violence and assassination. In *The Tempest*, in a coup, the usurper seizes power and the deposed admits his own poor governance was his undoing -- he put a deputy in place and chose poorly. (In family business terms, poor judgment facilitated a hostile takeover.) In *Measure for Measure*, a Duke passes power to an agent, doesn't like how the power is wielded, so works against him -- demonstrating the importance of care in choosing a successor. (Today, if an executor or trustee takes over the business and runs it improperly, a lawsuit rather than a coup is likely to result but might still be very costly.) There is a coup in *As You Like It*. The plot in *Cymbeline* is driven by the demands of a father who has lost his sons, and so his only daughter must marry the right person to produce an acceptable successor. Then, there is the most obvious of all the tragic stories of succession, *King Lear*, a powerful monarch with no obvious successor (no son), who makes an inter vivos transfer of control to his daughters that goes horribly wrong.

D. Scene 4, When Heirs Aren't Apparent (or Worthy)

In the beginning of the play, Lear is aging. We suspect he knows his mind is going. Certainly, his family and friends talk about him as if they know but with no open acknowledgment of this and no attempt to address it. *Mistake*. Retaining the name "and all the additions to a king," he divides his kingdom.⁵⁶ His two older daughters and their husbands get their inheritance now but are expected to care for him and his men. He assumes they will cheerfully allow him to continue to enjoy the assets for his personal use even after he has given them full control. *Mistake*. And the size of the share that each daughter will receive depends not on her ability, intelligence, or resourcefulness to carry on the business of the kingdom, but on the flattery, declarations of love, and sycophancy each offers him. *Big mistake!*

⁵⁴ See BRYSON, *THE WORLD AS STAGE*, *supra* note 5, at 96. This moment is depicted in a modern play, *Elizabeth Rex*. See generally TIMOTHY FINDLEY, *ELIZABETH REX* (2000) in which Elizabeth has summoned the Lord Chamberlain's Men to perform (as diversion or warning) as she waits for the execution at dawn of Essex, to whom she was close. To avoid riots in reaction to the execution, curfew is imposed, so the players must remain in the castle overnight. The queen visits them and speaks to a young man who plays the women's parts. She reveals how she struggles with her emotions, having to conceal her passions, behave as a man, and remain unmarried so she can govern. The actor, says he must act like a woman to succeed on the stage and conceal his passions since, being gay, his love is forbidden. He is dying of syphilis but mourns a soldier he loved who infected him; he wants his sorrow acknowledged. Elizabeth refuses to mourn Essex to avoid appearing weak. They share a challenge of gender: monarch and actor each struggling against their true nature to adopt the opposite gender's traits to succeed. Poignantly, Elizabeth says to the actor, "if you will teach me how to be a woman, I will teach you how to be a man." An actor playing Shakespeare lingers in the shadows, making notes as they speak using lines from his plays.

⁵⁵ See SHAPIRO, *supra* note 31, at 18. See generally KING EDWARD III, *supra* note 49. The ten history plays in the first folio are King John; Richard II; Henry IV Part 1 and Part 2; Henry V; Henry VI Part 1, Part 2 and Part 3; Richard III; and Henry VIII. The eleventh history play is the collaboration, Edward III.

⁵⁶ WILLIAM SHAKESPEARE, *KING LEAR* act 1, sc. 1, l. 152. ("Come not between the dragon and his wrath. I lov'd her most and thought to set my rest on her kind nursery . . . Cornwall and Albany, with my two daughters' dowers digest this third; let pride, which she calls plainness, marry her. I do invest you jointly in my power, preeminence . . . Ourself, by monthly course, with reservation of an hundred knights, by you to be sustain'd, shall our abode make with you by due turns. We still retain the name, and all additions to a king. The sway, revenue, execution of the rest, Beloved sons, be yours, which to confirm, this coronet part betwixt you.").

Lear's older daughters are married to the Dukes of Cornwall and Albany.⁵⁷ His third and youngest daughter, Cordelia, is engaged – her share will be her dowry. Lear says he is ready to relinquish the income and responsibilities of office but not his title. He divides his kingdom assuming his daughters and the powerful men they married (or will marry) will maintain him in his lifestyle as a King. To decide who will rule the best parts of the kingdom, he calls the family together and explains that the division will be based on how much they love him (a red flag for competency). The married daughters, Regan and Goneril, each profess love in flattering, flowery, even ridiculous terms. But Cordelia says only that she loves him as much as she should. She points out that her sisters have husbands and cannot be speaking truthfully if they say *all* their loyalty and affection goes to their father.⁵⁸ This infuriates Lear. He cuts Cordelia out completely and divides her share between her sisters splitting the kingdom into two, not three, shares. (Any experienced planner can verify that a 50/50 split of a business, with no mechanism for breaking a tie, is also a mistake.) With no dowry, Cordelia's suitor disappears. (Happily, the powerful King of France is impressed by her virtue and marries her anyway despite her sudden impoverishment.)

Lear said he intended to divide his time between his two older daughters, and duly arrives with his retinue to stay with the first. She takes him in but decides he is too expensive and reduces his lifestyle dramatically. They quarrel, he curses her and goes to find the second daughter who also spurns him. The sudden access to significant power and sibling rivalry leads to corruption and creates a power vacuum that destabilizes the country. Lear finds himself homeless and destitute, in a metaphorical and literal storm. Cordelia, the French King, and his army will come to the rescue but have not arrived.

There is a second plotline in the play delivering the same lessons. Lear's friend and advisor, the Earl of Gloucester, has two sons. One is his legitimate heir and the other is a bastard (by birth and by temperament) who plots to undermine his legitimate brother. He persuades Lear's daughters that his father and brother have sided with Lear and the French. This is the only tragedy in which Shakespeare uses a "mirror plot" so nearly identical to the main plot. The duplicated and unexpected treachery of sons and daughters dramatically emphasizes the main theme of thankless children.⁵⁹ Rivalry between Gloucester's sons arises from the fact that only one is legitimate. It is tempting to draw a parallel between a son born out of wedlock and a daughter. Neither is supposed to inherit, but Shakespeare sends us another direction. Lear considers whether evil arises from nature or nurture, an ancient question with strong arguments on either side.

The same concerns arise in family business successions today. Ultimately, Lear, Gloucester, and all parents must accept that they provide both -- responsible for the genetic material, the environment, and education of their children. Whether it is by nature, nurture, or both, children get their values, business acumen, and character from their parents. Spoiler alert: in *King Lear*, this does not end well. Predictable in a Shakespearean tragedy, nearly everyone dies. But consider how by taking further lessons from Shakespeare, and with better business planning, Lear, or anyone, might pass a family business down more effectively.

⁵⁷ See SHAPIRO, *supra* note 31, at 302-03. *Lear* was written and produced under James I for whom unification of the kingdoms of Scotland and England was a primary goal. *See id.* at 10. James gave his sons, Henry and Charles, the titles of Duke of Cornwall and Duke of Albany, the same titles Shakespeare chooses for the husbands of Lear's daughters. *See id.* at 302-03. ("While it may have pleased King James to hear a Scot take command (for that was Albany's original kingdom and James himself held the title), the widowed and childless Albany offers little prospect for renewal of the kingdom.").

⁵⁸ See KING LEAR, *supra* note 55, act 1, sc. 1, ls. 106-115. ("You have begot me, bred me, loved me. I return those duties back as are right fit - obey you, love you and most honor you. Why have my sisters husbands if they say they love you all? Happily, when I shall wed that lord whose hand must take my plight shall carry half my love with him, half my care and duty. Sure, I shall never marry like my sisters, to love my father all.").

⁵⁹ *See id.* act 1, sc. 4, ls. 302-303. ("How sharper than a serpent's tooth it is to have a thankless child.").

E. Scene 5, An Exit is Inevitable

A primary truth to accept from the start is that exit comes for every business owner. Shakespeare constantly reminds us that we are mortal. Planned or unplanned, by death, disability, sale, or dissolution, eventually every founder of every business will exit. And for many founders, the business they have created and that sustains them is very much like another child. We don't wait for children to need one before we give them an education. Neither should a business owner wait until he needs one to create an exit strategy. Even if an owner assumes from the beginning that a business will be sold rather than handed down to family, an exit plan is critical. In deciding to invest in private equity, a standard step is to examine the exit strategy. Buyers don't want a business so owner-dependent it will likely fail if the founder is no longer there to keep it healthy.

When an owner intends to rely on the business to support a comfortable retirement, an objective analysis must include whether the owner has other resources. If 80% or 90% of a family's wealth is tied up in a single enterprise and the owner becomes disabled, is forced out sooner than expected, or dies, the business may die too. Key employees may present a similar risk. Lear's kingdom might not have disintegrated as quickly if Gloucester, the longtime trusted advisor, had not been undone at the same time. But successful founders are often alpha personalities who cannot accept that other key relationships are also important to successful transition. Good planning requires examining all the important relationships -- employees, vendors, customers, family -- and then creating redundancies to avoid the chaos created by the loss of any key person. The sudden loss of a major customer or supplier may be as devastating as the loss of the founder.

Often in Shakespeare, and in life, succession creates unnecessary and toxic drama in a family. Assumptions that all the children will want or be suited to run the family business are dangerous. For an alpha founder, it may be difficult to separate the components of a business but doing so provides clarity. It is easy (and not binding) to ask family members what they want but few seem willing to do so. And some, like Lear, don't like the answers. But realistically, desire does not equal ability and lack of planning often leads to litigation. Some planners suggest an analogy to break the business into components to consider what to transfer. Will you relinquish control (the rancher)? Do your children want capital (the pastures)? Who will have the income (the cattle)?⁶⁰ For some families this analogy will be useful.

In every case, for a successful transition, clients must clear the emotional hurdles associated with their business. They should make a cash flow analysis and get valuations to know exactly what they have. An owner may want to give the business to children but may need to sell instead to provide retirement income. Plans should consider what makes the most sense for the founder, the family, and the business (Lear apparently gives no thought to the fate of his subjects) but remain flexible because control of timing can be lost at any point. To accomplish this, good corporate governance that formalizes decision making is critical. Early in the life of a business, the owner will set the vision and values and make decisions that reflect those, but every business needs a Board of Directors and trusted advisors. This should be a real board -- not sycophants, puppets or people not qualified to give solid advice. The sooner in the lifespan of the business a Board is put in place, the better, as it allows the company's vision and values to be recorded, progress toward goals to be measured, and creates consistent processes for accountability and decision making.

⁶⁰ The list of novels, films, musicals, operas, and other art forms that borrow from Shakespeare numbers in the thousands and continues to grow. *King Lear* lends itself to farm and ranch scenarios. Examples: The novel, *A Thousand Acres*, by Jane Smiley, winner of the Pulitzer Prize for Literature in 1992, is the story of a wealthy farmer in Iowa who passes his farm to his three daughters. When the youngest objects, she is cut off, setting events in motion that reveal dark family secrets of justice, pride, and love. See JANE SMILEY, *A THOUSAND ACRES* (1991). *King of Texas* is a film set in the days of the Republic of Texas, in which a wealthy cattle baron (played by noted Shakespearean actor, Patrick Stewart) divides his ranch among three daughters. See *KING OF TEXAS* (TNT Original Productions 2002).

Business planners should advise an owner to consider all these steps early in the process: (1) Choose one or more people to succeed the founder and groom them; (2) Plan carefully to empower the owner to choose the timing; (3) Prepare for possible unplanned succession; (4) Evaluate the most optimal terms for owner exit for the family and for the business. Redundancies can be expensive but provide strength and allow a business to address unplanned challenges. Only when goals are clearly established, and enough information gathered, should tax efficiency become a priority. It is rarely a smooth transition if taxes are the starting point.

Now, consider these steps in the light of Lear's mistakes. *First mistake:* as the play begins, Lear and his daughters acknowledge that he is old and feeble, isn't himself, and isn't being rational. But greed overcomes any concern that he is not competent to make decisions. Neither a business owner nor a monarch should wait until he is no longer able to run his business before beginning the process of planning a transition. A poorly planned and hasty transition to children unprepared to assume responsibility is almost guaranteed to fail. Of course, a King doesn't hire an interim manager or send his children to monarch school when they are adults. But a modern business owner can consider various options to plan a smooth transition, years or even decades before he or she can no longer function effectively to run the business.

Second mistake: Lear hands off all control and all the assets immediately assuming his daughters will spend whatever is needed so he may continue the standard of living he enjoyed when he was in charge. But with no specific agreement in place, the first time a daughter finds it inconvenient, she reduces her father's resources, then again, until he is penniless and homeless. Lear assumed that despite having transferred all his assets to his daughters, he could continue to use those resources as he had before. The outcome might have been better had the transition been made gradually, the recipients properly prepared to accept new responsibilities, and contractual agreements made as to what Lear would retain.

Third, and perhaps the worst mistake: Despite his "family business" requiring experience, diplomacy, discipline, wisdom, and strength, Lear hands his kingdom to his daughters based solely on their willingness to say what he wants to hear. In any business, large or small, leaders should avoid sycophants. All parties, founder and next generation, should find capable advisors, learn to listen, and to accept constructive criticism. Neither an ancient kingdom nor a modern business is benefitted by "yes" men. Neither should skimp on the development of expertise or the skills required for the next generation to succeed.

The best transitions are planned well in advance, when a founder is still strong and capable, can make a thoughtful, strategic long-term plan, and ensure it is communicated and agreed to by all in advance. Those who will receive responsibility for any part of the business should possess the necessary skills and character traits and/or be trained to meet the challenges assigned to them. Parents need a realistic view of children's capabilities and their ability to work together. Ideally, they will first work in the business under the supervision of the founder. Family dynamics matter and planners must acknowledge the deep cultural biases that shouldn't but often remain in modern society.

The most common of these is primogeniture⁶¹ which evolved to prevent the subdivision of estates. The earliest example is the Old Testament story of Isaac's sons Esau, born first, and Jacob, who was born

⁶¹ Primogeniture is when the firstborn inherits a parent's entire estate instead of a shared inheritance between all children. Agnatic primogeniture is inheritance of the whole by the first-born son; matrilineal primogeniture is all to the first-born daughter. Still common in Europe, especially as to inherited titles of nobility, for centuries, nearly all monarchies passed by agnatic primogeniture. First to adopt absolute primogeniture (prize goes to the first born – male or female) was Sweden in 1980, followed by The Netherlands in 1983, Norway in 1990, Belgium in 1991, Denmark in 2009, and Luxembourg in 2011. Also, in 2011, the 16 Commonwealth realms (sovereign states which had Elizabeth II as head of state) announced the Perth agreement which came into effect by legislation on March 26, 2015 – nearly 98 years after women first voted in a UK General Election on December 14, 1918.

second. Esau was entitled to the "birthright" but sold his right to Jacob for food.⁶² Although examples are found from ancient Egypt to modern day Japan, our version of primogeniture had its origins in Medieval Europe to keep the estates of feudal lords large and as united as possible to maintain social stability, wealth, and power for the ruling family as in monarchies today. In its simplest form, the system was devised to keep a family business together and in the family.

Americans associate it with nobility and title. It is true, in many cultures with a title comes wealth. Perhaps the most famous example is the British Crown Estate, a perpetuity, and an independently managed business that belonged to Elizabeth II for the duration of her reign and has now passed to Charles III. Estimated at ~\$14 billion, Elizabeth also had significant personal wealth estimated at more than \$3 billion.⁶³ (Before her death, she paid annual income and capital gains taxes of about \$500 million.) Each British sovereign since 1740 (George III) has entered into the same agreement to formally surrender hereditary revenues, including the crown estate, to the United Kingdom government, and receive a sovereign grant to fund official duties as monarch. Charles did so on September 10, 2022, just two days after the death of his mother, Elizabeth II. Income taxes are paid but estate taxes are not required on personal assets passed to the next sovereign so most personal wealth follows the Crown Estate. Anything left to anyone else is subject to estate tax – a powerful incentive to continue the tradition and keep as much of the wealth consolidated in the "family business" as possible. (Traditionally, the British monarch also provides some care for the various relations -- aunts, uncles, and cousins who might otherwise have been left something independently. This has received a great deal of media attention in the last few years.)

All the American Colonies followed English primogeniture laws as a default provision, but most of those were repealed at the time of the American Revolution. Now, some states have a constitutional or statutory prohibition *against* primogeniture as a default for intestate succession on the books. Of course, an individual can leave assets to anyone they choose by testamentary or inter vivos transfer. Although true primogeniture (either agnatic or matrilinear) is rarely encountered in American documents today, various forms of "winner takes all" and gender bias are still prevalent. It is common to see a patriarch leave funds outright to sons and in trust for daughters, allow some descendants to serve as a sole or co-trustee but exclude others, or leave control to a child unfit to run the business but deemed worthy simply because he is oldest. And it is true that equal division between descendants is increasingly favored in the United States but in some families, that may not be best for the business or the family.⁶⁴ In Shakespeare's day, however, leaving assets to anyone other than the oldest male was nearly unthinkable. Even when there was no male heir, women rarely received assets without the governance or supervision of a male relative. Not just in politics, but religious views in his day supported this custom.

There are no big themes of religion in Shakespeare's plays, no direct references to the Bible or the Holy Ghost, but he uses biblical stories and allusions liberally. That is predictable given the politics of the time;

⁶² See *Genesis* 25:25-34 (King James).

⁶³ See Thomas Colson, *Inside the British Monarchy's £13 billion property empire*, BUS. INSIDER (updated May 21, 2018, 6:41 AM), <https://www.businessinsider.com/how-much-of-the-uk-does-the-queen-own-2017-6> [<https://perma.cc/DXT7-GLFN>]. It is difficult to appraise a property like Balmoral, but the offshore energy portfolio alone was estimated at \$1.4 billion. *Id.*

⁶⁴ Winston Churchill and Franklin Roosevelt met at Placentia Bay in August 1941. Roosevelt told Churchill he didn't understand British aristocracy's use of primogeniture; he planned to divide his estate equally between his five children. Churchill explained that equal distribution was nicknamed the *Spanish Curse* by British upper classes: "We give everything to the eldest and the others strive to duplicate it and found empires. While the oldest, having it all, marries for beauty. Which accounts, Mr. President, for my good looks." ANDREW ROBERTS, *MASTERS AND COMMANDERS: THE MILITARY GENIUSES WHO LED THE WEST TO VICTORY IN WWII* 53 (2009).

many of the worst implications arising from the succession of power in his day revolved around the tension between Catholic and Protestant monarchs. Being politically savvy, he makes his points by adapting stories already familiar to his audience. In *Macbeth*, he draws an obvious parallel to the original sin of Adam and Eve in the murder committed by Macbeth and his wife.⁶⁵ Direct and indirect references to the ultimate sibling rivalry, the struggle between Adam and Eve's sons, Cain, and Abel, appear twenty-five times in his plays,⁶⁶ as when Lear's daughters and Gloucester's sons are pitted against one another. Cain, jealous when God prefers Abel's gift, murders his brother to eliminate the competition. The parallel is unmistakable. Lear bestows his kingdom on the daughters who flatter him most and express the deepest appreciation for his gifts. Lear (and sometimes our clients) stand in the roles of both Adam, the father whose children fight among themselves, and God, withholding approval to cause the rift in the first place.

From the parable of the prodigal son⁶⁷ to *Cat on a Hot Tin Roof*,⁶⁸ literature follows life. The "natural successor" or the most beloved child may also be the most troubled and unaddressed sibling rivalry can be the ruin of a plan. Any experienced planning attorney can provide anecdotes of similar disfunction and sibling rivalry undermining generations of accomplishment to destroy a family business. Clearly, a successful strategy to transfer a business to more than one child must include an honest assessment of each child's abilities – to run the business and to get along with others. A good planner (and counselor in the true sense of that word) should help clients find a way for each child to bring something to the table, or a plan for those who work in the business to be compensated in a way that is also fair to those who do not. Shakespeare was a genius of the heart, portraying and resolving the effects of ambition, intrigue, love, jealousy, and rejection. As advisors, we can only approach such problems with practicality, accepting that those emotions exist, that kids often equate money to love, and working to address the consequences of those feelings.

Lear did get it right in one respect: if you are going to distribute unevenly, do it during life, *inter vivos*. This provides time to resolve disputes and controversy while the grantor is still around. A well-planned lifetime transfer may avoid claims that the testator was incompetent or mistaken. It may also avoid the last message of the testator being interpreted as hurtful. But any document (or family meeting) that disposes of property in a way that disfavors one or more members of a class or generation, risks a legacy of harsh words,

⁶⁵ *Genesis* 2:15 – 3:19 (King James). The story of the fall of Adam and Eve, a single page in *Genesis*, became a major event in the drama of human existence, convenient for those who use the story to claim inherit flaws in females and opening the floodgates to a wave of misogyny in the major faiths swirling for millennia to keep women under control and out of power. This continues in some ways today. As an aside, King James was notorious for his misogyny. One assumes this distaste accounts at least in part for the attitude toward women that pervades his version of the Bible that is still in use today.

⁶⁶ See, e.g., WILLIAM SHAKESPEARE, *THE FIRST PART OF KING HENRY THE SIXTH* act 1, sc. 3, l. 50. "Nay, stand thou back, I will not budge a foot: This be Damascus, be thou cursed Cain, to slay thy brother Abel, if thou wilt."

⁶⁷ *Luke* 15:11-32 (King James). A father with two sons agrees when the younger asks for his inheritance in advance but he is *prodigal* - wasteful and extravagant. He squanders his money and comes home destitute to beg his father to take him as a servant. To his surprise, he is not scorned by his father but is forgiven and his return celebrated. Envious, the older son refuses to participate but is admonished by his father: "you are ever with me, and all that I have is yours, but thy younger brother was lost and now he is found." *Id.*

⁶⁸ Michael Billington, *Cat on a Hot Tin Roof: Tennessee Williams's southern discomfort*, *GUARDIAN* (Sept. 30, 2012), <https://www.theguardian.com/stage/2012/sep/30/cat-on-a-hot-tin-roof> [<https://perma.cc/L5NE-C489>]. Tennessee Williams' *Cat on a Hot Tin Roof* opened in 1955 and won his 2nd Pulitzer Prize. *Id.* It is said to be his favorite work. A larger than life, wealthy, and patriarchal owner of a Mississippi plantation is dying. One son, respectable, compliant, and married with children, pushes for control. The other, a former high school hero struggles with life after football and alcohol. He is grieving, self-destructive, questions his sexuality, and is married to Maggie (the Cat) who comes from poverty. Maggie wants her husband to claim a place in the business. She is angry when he refuses to compete with his brother. Adapted to film in 1958 and again in 1984, Williams did not like either screenplay, reportedly, because the family conflict was toned down. But the subject matter is popular. The 1958 version with Burl Ives, Elizabeth Taylor, and Paul Newman received six Academy Award nominations.

and perpetuating rivalry. Ideally, a modern business planner will help an owner build family harmony in advance – at the dinner table and in the operation of the business. This work to develop the talents of heirs and acceptance of their various roles in the enterprise is a necessary part of a successful business plan. Instead, if possible, a successful interfamily business transition should give children power gradually and keep one or more trusted advisors positioned to supervise and guide them as they learn the business. This may be a carefully chosen Board of Directors, a Trustee, or Trust Protector. (For the aging King Lear, a Board of Regents or Privy Council.) Such advisors can be guided or bound by the terms of written documents. *Thoughtfully prepared.* Again, Lear should not have waited until he was unable to continue before beginning his transition. In the play, he questions himself and his competency to make decisions is called into question even while he is making them.

Shakespeare also reminds us that language matters. Simply telling kids who want candy or a spot in the family business “not yet” instead of “no” may avoid a legacy of resentment. Documents should detail any continued benefits a founder will receive during the transition. Lear should have better defined the extent to which his daughters would continue to support him with the wealth they received for benefit of both the short-term and long-term success of his enterprise. An added benefit in the modern world is that allowing time for transition allows time for tax strategy and for advisors and the children receiving the assets to be taught to think strategically and be educated in the business.

F. Scene 6, Understand the Parent/Understand the Children

Shakespeare used language to illuminate emotions and character. We can be better advisors by listening to learn about our clients’ values and motivations and to help them share those with descendants and smooth the transitions between generations. A successful business requires constant evolution and innovation. The person a founder is when beginning a business is rarely the same person who transitions the business to the next generation. Growth requires questioning the status quo and hard work to achieve positive change. Choosing successors who told him what he wanted to hear and did not keep their promises was Lear’s downfall. He did not see clearly who his daughters and their husbands really were.

That is the essence of *King Lear*. It is a play about blindness, a theme that runs throughout the play – literally and figuratively. One of Shakespeare’s “darkest” plays, the ending is far more tragic than it was in the original source material, the legend of an ancient King Leir.⁶⁹ Perhaps this was deliberate to make the troubles of Shakespeare’s England seem more bearable.⁷⁰

⁶⁹ See GEOFFREY OF MONMOUTH, HISTORY OF THE KINGS OF BRITAIN (Lewis Thrope trans., Penguin Books 1966) (1136). The original Leir, an ancient king from the dynasty of Brutus of Britain, came to the throne after his father died attempting to fly with artificial wings. Longest reign of the Geoffrey kings, Leir ruled 60 years in the 8th century BC, near the time of the founding of Rome. *Id.* at Vol. II, 81. He founded Leicester (in ancient Welsh “City of Leir”). *Id.* Shakespeare often reworked older plays. The Queen’s Men had performed a comedy called *The True Chronicle of King Leir and his Three Daughters, Gonorill, Ragan, and Cordella*. King Leir also appears in a collection of English Tudor poems by various authors retelling the lives and tragic ends of historical figures. WILLIAM BALDWIN & GEORGE FERRERS, A MIRROR FOR MAGISTRATES (Joseph Haselwood ed., 2d ed 1559). As the title suggests, the poems reflect previous rulers’ lives so those in power may learn from past errors. *Id.* Shakespeare took liberties in his history plays to make better stories, but little is known about Leir. *Id.* Paraphrasing J. R. R. Tolkien, “some things that should not have been forgotten were lost. History became legend. Legend became myth.” LORD OF THE RINGS: THE FELLOWSHIP OF THE RING (New Line Cinema 2001).

⁷⁰ A TREATISE OF EQUIVOCATION (David Jardine ed., 1851). For Shakespeare, 1606 was a good year but fraught for his country: beginning with the narrowly averted Gunpowder Plot on November 5, 1605, an attempt to blow up parliament in session, which would have killed most of England’s leaders at one stroke. *Id.* at Preface. Foiled at the last moment when powder kegs were found in a chamber directly below the House of Lords, some historians believe James’ government discovered it sooner but waited to advance an agenda of the state and to better suppress Catholics alleged to have planted the explosives. (Some suggest the only thing that galvanizes more than a tragedy is a near tragedy barely averted.) England was

In the early moments of the play, professing love for the King, Goneril says she loves him more than “eyesight, space, or liberty.” Cordelia points out how wrong that is, but her sisters and her father do not see the logic in her statement. With disturbing violence, Lear’s friend and trusted adviser, Gloucester, is deliberately blinded by his evil son and Lear’s daughter Regan. Both fathers are blind to the flaws in their children and all the characters are blind to each other’s motivations and to the emptiness of power and privilege. Lear wants to live comfortably in old age but cannot see how absolute power, wielded for so long, has warped his relationship with his daughters. He is blind to their faults. Shakespeare speaks of vision and its importance in human interaction as Lear beseeches his blind friend, Gloucester, “. . . are you there with me? No eyes in your head . . . yet you see how this world goes.” Gloucester replies, “I see it feelingly.”⁷¹ Despite blindness, he understands how the world works. Losing his power gives Lear insight into what he has missed. Recognizing his shortsightedness, he admits “mine eyes are not the best.”⁷² But the ability to see the world as it really has come too late. Lear’s final words reference sight: “look there, look there,” a literal command that others see his lost daughter, Cordelia, and a symbolic plea that they see themselves, and the world’s true nature, accurately.⁷³

Most planners have had clients who could not or would not see their family members as they are. Even those able to see the flaws in their children are often unable to see the role that the family dynamic they created has played in who their children became. Even with literature as a teaching tool, it is hard for an attorney, counselor, or advisor to tell a client they are blind to a problem – more so if the client created the problem.

IV. ACT III

A. Scene 1, The Last of Will and his Testament

Turning back to Shakespeare himself, revisions made to his will near the end of his life suggest he may have been disappointed by his own family. Early in 1616, he began to finalize his document with the help of Francis Collins of Warwick, a prominent attorney who had drafted some of his real estate documents years

racked with anxiety over anti-Catholic legislation, government’s search for recusants, and paranoia arising from *equivocation*. Because most people genuinely believed if they lied, they would be damned, an oath was an accepted means to determine loyalty. But a movement for equivocation arose from a Jesuit manuscript suggesting God would forgive a penitent liar. *Id.* If asked to swear an oath to follow an abhorrent doctrine, the affiant could metaphorically cross fingers behind their back and lie to protect their faith and save their soul. Encouragement, by men of faith, to deceive for a greater good meant no one was certain who could be trusted. Equivocation (much like today’s “fake news”), contributed to a pervasive state of heightened anxiety throughout the country. Widely discussed by those in power and in prosecution of religious non-conformity, the discovery of an actual manuscript of 61 pages, titled A TREATISE AGAINST LYING AND FRAUDULENT EQUIVOCATION shocked the inner circles of power. *Id.* at iv. Found during the investigation of the Gunpowder Plot by Sir Edward Coke, it was a how-to guide setting out four distinct ways to equivocate. Perhaps most shocking: it was found in the library of one of London’s four Inns of Court -- a professional association for the further education and training of barristers and judges. *Id.* at vi. This chapter in English history and reflections on its long-term impact on the psyche of the population appears in many sources. Perhaps one of the most dramatic was John Milton’s obsession. SHAPIRO, *supra* note 30. Born in 1608, three years after the plot, he wrote a series of poems on the gunpowder plot when he was young. Decades later, he included an exploration of the evil of gunpowder in *Paradise Lost*, describing gunpowder as an invention of Satan meant to be used as a weapon to challenge God’s power. Easy to compare our anxiety over a pandemic, insurrection, and government enforcement of religious values not shared by all people to the fraught politics of London in the year of Lear – 1606. SHAPIRO, *supra* note 30, at 120, 133, 156-157.

⁷¹ WILLIAM SHAKESPEARE, KING LEAR, act 4, sc. 6, l. 160-64.

⁷² WILLIAM SHAKESPEARE, KING LEAR, act 5, sc. 3, l. 337. “Mine eyes are not o’ th’ best. I’ll tell you straight.”

⁷³ WILLIAM SHAKESPEARE, KING LEAR, act 5, sc. 3, l. 369-375. “And my poor fool is hanged. No, no, no life? Why should a dog, a horse, a rat, have life, And thou no breath at all? Thou 'lt come no more, Never, never, never, never . . . [Do you see this? Look on her, look, her lips, Look there, look there!] *He dies.*”

earlier,⁷⁴ and likely was also a close friend. Although this, as with so many other aspects of his life, is just an assumption. The Will does not match Collins' usual handwriting, suggesting it was prepared by a clerk. The original month of the first draft, January, has been stricken through. March is written in and there are other interlineations and changes, indicating that after the document was prepared in January, Shakespeare and/or Collins made changes before it was signed on March 25th of 1616.

We can speculate about reasons for the changes and delay. His younger daughter, the surviving twin, Judith, married on February 10th that year, between the dates of the first and final drafts. She was 31 years old, well past the usual age. The groom was a vintner, Thomas Quiney, charged with unlawful fornication. He was found guilty the day after the will was signed,⁷⁵ ordered to pay fines and perform public penance – a significant embarrassment to any family. The complainant in the criminal action, Margaret Wheeler, died giving birth,⁷⁶ as did the child – a truly “Shakespearean” tragic end to the scandal. It would be a natural assumption that after announcing their engagement, the “crying of the banns” was what caused Miss Wheeler to come forward, to press her case. Corrections in the will include crossing out the new son-in-law to leave Judith's specific bequest to her alone and to add restrictions on her marriage portion. (Probate procedures have changed in the intervening years. Making changes by having someone unknown make interlineations would cause probate issues today.)

Shakespeare died less than a month later, on his 52nd birthday, April 23, 1616.⁷⁷ He describes himself in the document as being in “perfect” health; however, the document suggests he may have been unwell. The three signatures are shaky, and each is spelled differently.⁷⁸ He apparently could not recall the names of

⁷⁴ See *William Shakespeare's last will and testament: original copy including three signatures*, SHAKESPEARE DOCUMENTED, <https://shakespearedocumented.folger.edu/resource/document/william-shakespeares-last-will-and-testament-original-copy-including-three> (last visited July 1, 2024) [<http://perma.cc/8FYF-QMCB>] [hereinafter *William Shakespeare's Last Will and Testament*]. Francis Collins drafted the deeds of bargain and sale for the purchase of the Blackfriars Gatehouse dated March 10, 1613. See *id.* That mortgage was eventually paid off and the property put in a trust with dispositive terms. Thus, it did not pass by probate of this will. See *Shakespeare Purchases the Blackfriars Gatehouse: Mortgage, Signed by Shakespeare*, SHAKESPEARE DOCUMENTED, <https://shakespearedocumented.folger.edu/resource/document/shakespeare-purchases-blackfriars-gatehouse-mortgage-signed-shakespeare> (last visited July 1, 2024) [<https://perma.cc/B5KL-JZGP>].

⁷⁵ See BRYSON, *THE WORLD AS STAGE*, *supra* note 5, at 152-53.

⁷⁶ See Mark A. Senn, *Shakespeare and the Land Law in His Life and Works*, 48 REAL PROP. TR. & EST. L.J. 111, 152 (2013).

⁷⁷ See *William Shakespeare Born*, HISTORY, <https://www.history.com/this-day-in-history/william-shakespeare-born#> (last updated Apr. 22, 2024) [<https://perma.cc/N4MX-2EYJ>]. We aren't certain this was his birthday. We know it was three days before the record of his christening and it was customary to christen children at the earliest opportunity within the confines of the church rules. See *id.* A father might bring a child even before the mother was able to get up because infant mortality was high, and children not baptized died with their “sins” unforgiven and were not admitted to heaven. See Liam Kennedy, *Afterlives: Testimonies of Irish Catholic Mothers on Infant Death and the Fate of the Unbaptized*, 46 J. FAM. HIST. 236, 241 (2021). From that we surmise Shakespeare was born on the 23rd. See *William Shakespeare Born*, *supra*. We are certain that he died on the 23rd. See *id.*

⁷⁸ See *William Shakespeare's Last Will and Testament*, *supra* note 74. It is worth noting that of the six known signatures of Shakespeare, no two are spelled alike. As noted, the three signatures found on each of the three pages of his will are each spelled differently. See *id.* This would be a red flag in our century but spelling in Shakespeare's time was “casual” at best. Spelling your own name the same way every time was not required, nor even, apparently, considered. See David Kathman, *The Spelling and Pronunciation of Shakespeare's Name*, SHAKESPEARE AUTHORSHIP, <https://shakespeareauthorship.com/name1.html> (last visited July 1, 2024) [<https://perma.cc/5WF4-KPQZ>].

his brother-in-law⁷⁹ and one nephew. He refers to his granddaughter, Elizabeth, as a niece. These errors may have been caused by the scrivener's carelessness or may suggest that he was ill. His contemporaries remarked on his sudden death in published tributes, noting that they had seen him very recently and did not know he was ill.⁸⁰ We cannot know whether he was healthy at the signing on March 25th or whether his death less than a month later was caused by illness, accident, stress, or excess.⁸¹ Certainly, "plagues" and epidemics continued to sweep through England for the next 50 years, only subsiding somewhat in 1666 after London's Great Fire incinerated huge swaths of slum housing and the rats and fleas that lived in them.

Shakespeare's will, written on three pages of parchment, each a different size and each bearing a signature, is in the British National Archives. (Photos and a transcription appear at the end of these materials.) The will is witnessed by five people. Why he needed or wanted five is another mystery, but they were uncertain times. The usual number then was two, as it is today.⁸² Perhaps it was a wise precaution intended to be certain that at least one witness was alive and available to prove the will. Or perhaps, having just acquired and then disinherited a son-in-law in two months' time, he was worried about a will contest. We assume he did not know he would be gone in less than a month. The will is a truly passionless document. Just as so many of the dispositive documents we draft today are dry and emotionless, it gives us little information about his relationships other than that he included his daughters, some members of his family and friends. Somehow, given the unusual circumstances and because it was Shakespeare, it seems reasonable to expect more.

Under the law protecting widows that was in place at the time, Anne was entitled to one-third of his estate,⁸³ comprised of £350 in cash, four houses and their contents, and a substantial amount of real estate.⁸⁴ He made specific cash bequests to his only living sibling, his sister, Joan Hart, and her children and left her a life estate in one of his homes.⁸⁵ He also left Joan his clothing, probably a significant gift under the circumstances. Joan had sons, and Shakespeare did not. At least one son-in-law had recently disappointed him. A gentleman

⁷⁹ See BRYSON, *THE WORLD AS STAGE*, *supra* note 5, at 183. Historians note that the brother-in-law, Joan's husband, died shortly after the will was signed, so perhaps he was not named because he was not well. *See id.* at 184.

⁸⁰ *See* THE OXFORD HANDBOOK OF SHAKESPEARE 12 (Arthur F. Kinney ed., 2012).

⁸¹ *See generally* Howard Market, *Why Shakespeare's Own Finale Remains a Closed Book*, PBS NEWS HOUR (Apr. 23, 2019, 5:00 PM EST), [https://www.pbs.org/newshour/health/why-shakespeares-own-finale-remains-a-closed-book#:~:text=More%20likely%20than%20other%20explanations,myocardial%20infarction%20\(heart%20attack\)\[https://perma.cc/46KD-MNE8\]](https://www.pbs.org/newshour/health/why-shakespeares-own-finale-remains-a-closed-book#:~:text=More%20likely%20than%20other%20explanations,myocardial%20infarction%20(heart%20attack)[https://perma.cc/46KD-MNE8]) (providing information on the abrupt ending to Shakespeare's life). Although later sources, in some cases many years later, have suggested, among other things, that he had been out drinking, caught a fever, or had been ill since 1613. *See id.* There is no contemporaneous support or real evidence for any of these theories. *See id.*

⁸² BRYSON, *THE WORLD AS STAGE*, *supra* note 5, at 183. A self-proving affidavit -- we take for granted today -- was not in use. UNIF. PROB. CODE § 2-504 cmt. (UNIF. L. COMM'N 2019).

⁸³ *See* BRYSON, *THE WORLD AS STAGE*, *supra* note 5, at 185.

⁸⁴ *See id.* At least so far as we know, as previously noted, the inventory was lost. *See* Alexandra Hewitt, *Shakespeare's Lost Interiors: Inventories*, SHAKESPEARE BIRTHPLACE TR. (Apr. 22, 2021), <https://www.shakespeare.org.uk/explore-shakespeare/blogs/shakespeares-lost-interiors-inventories/> [https://perma.cc/GN4J-6BKM].

⁸⁵ *See* BRYSON, *THE WORLD AS STAGE*, *supra* note 5, at 183. This was important to Joan. Her husband, William Hart, died in the days between Shakespeare signing his will and his death. *See id.* at 184. She lost her husband and brother in less than 30 days. *See id.* She and her husband were already living in the home her brother left her, and she remained there until her death. *Joan Shakespeare*, OXFORD REFERENCE, <https://www.oxfordreference.com/display/10.1093/oi/authority.20110803100458902> (last visited July 1, 2024) [https://perma.cc/9SW2-4VNH].

who had spent a great deal of time at court would have worn rich imported fabrics with valuable embellishments. Wearing some types of clothing required a certain social status and/or to pay for the privilege of doing so. Fine clothing bequeathed to someone who could not lawfully wear it meant it might be sold for a pittance -- wasted. The wording of the request, that the clothing be "paid or delivered to her within one year of my decease," suggests he thought someone might want to buy it, perhaps a former colleague in the theater.

He made additional cash bequests to a godson, some friends, three business associates (partners in the theaters), and to purchase memorial rings, then a common practice. There is no mention of the theater interests themselves. They may have been sold in 1613 when he substantially retired or, more likely, transferred by virtue of the terms of the ventures -- outside of probate. Again, we would know more if we had his inventory.

Most of the rest of his estate passed in an elaborate fee tail,⁸⁶ to the oldest, his daughter Susanna, and her future male heirs -- of which there were none. Susanna only had one daughter, Lady Elizabeth Hall Bernard, who married twice but died without children. Judith had three sons, but Shakespeare had already died when her children were born. Her first, Shakespeare Quiney, lived only six months. Two more, Richard and Thomas, died a month apart in 1639 at ages 19 and 21 of unknown causes.⁸⁷ Had they lived, they would have had rights to the entailment.

We can assume from the surviving legal documents and the fact that Shakespeare named her as a co-executor that Susanna was literate. His granddaughter, Elizabeth, married two men of property, acquired a title, left a complicated estate of her own with significant assets, and was well-educated.⁸⁸ But based on Judith having executed various documents with only a mark, it is assumed that she could not read or write. Because Shakespeare made Susanna and her husband his executors instead of Anne, and because we have no record of Anne having ever signed anything, we may assume that Anne, too, was illiterate.⁸⁹ We have no way to know whether she ever traveled to see her husband's work performed but can be reasonably certain that she never read anything he wrote.

⁸⁶ See BRYSON, *THE WORLD AS STAGE*, *supra* note 5, at 186. A *fee tail* or *entail* is a trust form to restrict the sale or inheritance of real property, preventing it from being sold, devised, or otherwise alienated by the tenant-in-possession. *Entail*, BLACK'S LAW DICTIONARY (5th ed. 1979); *Fee Tail*, BLACK'S LAW DICTIONARY (5th ed. 1979). Instead, it passes automatically by operation of law to the person determined by the instrument. *See id.* The term *fee tail* is from Medieval Latin, *feodum talliatum*, which means "cut (short) fee" as opposed to "fee simple" where no restriction exists, and the possessor has absolute title in the property, which could be further bequeathed or otherwise disposed of; although, still subject to the allodial title of the monarch.

⁸⁷ Although, plague is a reasonable assumption. *See* ELTON, *supra* note 25, at 259.

⁸⁸ *See id.* at 266-71.

⁸⁹ *See* David Cressy, *Levels of Illiteracy in England 1530-1730*, 20 HIST. J. 1, 9 (1977). Historic literacy rates are hard to assess. *See id.* at 1-2. In 1538, English parishes were ordered to keep registers of baptisms, deaths, and weddings but assuming the records would be used to enforce new taxes, not all complied. *See A History of Parish Registers*, PARISH REGISTERS, <https://parishregister.co.uk/about/history/> (last visited July 1, 2024) [<https://perma.cc/X5KA-WHTQ>] (demonstrating that tax avoidance drove decisions then too). Records in Stratford begin in 1558, so they include Shakespeare's baptism in 1564 but not Anne's, who was eight years older. *See Parish register entry recording William Shakespeare's baptism*, SHAKESPEARE DOCUMENTED (last updated May 22, 2020), <https://shakespearedocumented.folger.edu/resource/document/parish-register-entry-recording-william-shakespeares-baptism> [<https://perma.cc/83UE-BYER>]. Literacy rates are calculated, roughly, by how many signed with their full name versus those who simply made a mark, but it is also true that some who could read did not learn to write. *See* Cressy, *supra*.

After the death of Judith's sons, Susanna and her daughter and son-in-law offered a settlement for the inheritance. Judith refused and litigation ensued lasting thirteen years, until 1652, three years after Susanna died in 1649. Judith died in 1662 at age 77 having outlived her father by 45 years. We would know much more about Shakespeare had any of his many biographers bothered to find and interview her. Apparently, no one did. Lady Elizabeth Hall Bernard, his granddaughter and the last of his direct line, died in 1670.⁹⁰

Much has been made of the specific bequest of his "second-best" bed and furnishings (linens) Shakespeare made to his wife, Anne. Admittedly, it is an odd gift, at least from the perspective of the 21st century.⁹¹ There are dozens of theories – some rather fanciful. One theory is that the second-best bed was the marital bed because the best bed in a gentleman's home was reserved for important visitors of a high social status suggesting the bequest was a sentimental gesture reflecting a close and loving relationship.⁹² Beds and bedding were valuable objects, frequently mentioned in testaments then and virtually always left to either a wife or eldest son. Further, weighing against sentimentality is that the bed is the only mention of Anne in the entire document. Anne would receive a one third share as his widow; so, it could just as easily be a bequest to avoid the appearance of having forgotten her entirely, such as many planners today recommend when a client chooses to exclude someone. Or it may have been a token to make it clear she would receive only her share under the law, plus this one additional object, and no more.

It was customary in the 17th century for testators to include tender, even flowery sentiments about wives and family members. No such statements appear in Shakespeare's will. That may have been influenced by the personal style of the attorney. Just as today, individual attorneys had preferences as to form and style. It could also mean that Shakespeare, despite the statement that he was healthy, was too ill to make flowery declarations or elaborate on anything that was not absolutely necessary to the document. We cannot know.

Perhaps this was simply a smaller bed, and Shakespeare gave his married daughter the larger "best" bed leaving the smaller bed to Anne, presuming she would sleep alone for the rest of her life. Anne was 8 years older than her husband so would have been 60 when he made the will. Assuming she would never remarry wasn't necessarily sentimental.

Some scholars believe Shakespeare was superstitious. Despite his claim to be in perfect health, they theorize he thought he would die in his "best" bed; and so, made certain it did not go to Anne. There is no real evidence to support this odd theory, either, but many of his plays do reference ghosts and spirits -- often crucial to the story. Hamlet's father appears as a ghost to demand he be avenged. *Richard III*'s victims appear before battle and warn him he will "despair and die" and then appear to his enemy to say that he will

⁹⁰ See ELTON, *supra* note 25, at 269.

⁹¹ CHARLES DICKENS, *A CHRISTMAS CAROL* 75 (1843). Bedclothes (linens) included heavy drapes hung around the bed to keep out the cold. See *Bed Hangings*, VICTORIA & ALBERT MUSEUM, <https://collections.vam.ac.uk/item/O78746/bed-hangings-pett-abigail/#:~:text=Such%20sets%20of%20hangings%2C%20when,wooden%20bed%20frames%20they%20decorated> (last visited July 2, 2024) [<https://perma.cc/K963-VW5P>]. Still a bequest of value more than 200 years later, in 1843, when Charles Dickens published *A Christmas Carol* with a scene where Scrooge's servants take them before the undertaker arrives. See DICKENS, *supra* at 75-76. Fine fabrics were a luxury, rare, valuable, and obtained only by paying additional duties/taxes.

⁹² See WILLIAM SHAKESPEARE, *MUCH ADO ABOUT NOTHING* act 3, sc. 4, l. 39-76; see also WILLIAM SHAKESPEARE, *TAMING OF THE SHREW* Ind. sc. 2, l. 38. Supporters of this theory point to his feisty female characters – Beatrice in *Much Ado About Nothing* and the *Taming of the Shrew*, perhaps modeled after Anne or his daughters but just as likely modeled after Elizabeth I. See Conley Greer, *To Be a Woman: Shakespeare's Patriarchal Viewpoint*, 5 CORINTHIAN 135, 136 (2003). Nothing in the Will provides any real clues to Anne's personality or their relationship. See *William Shakespeare's Last Will and Testament*, *supra* note 74.

“live and flourish.”⁹³ Ghosts are found in *Macbeth*, *Romeo and Juliet*, *Henry VI*, and in *Julius Caesar*.⁹⁴ His plays are riddled with portends, warnings and omens.⁹⁵ But we can’t know from these whether Shakespeare believed in omens and ghosts or just found them to be a convenient literary device. Perhaps the most interesting support for the theory that Shakespeare was superstitious is his epitaph. Buried in the chancel of the Holy Trinity Church, he lies under a stone slab that does not bear his name but is carved with a curse:

GOOD FRIEND FOR JESUS SAKE FORBEAR
TO DIG THE DUST ENCLOSED HERE.
BLEST BE THE MAN THAT SPARES THESE STONES
AND CURSED BE HE THAT MOVES MY BONES.

Like so much else about him, we do not know if he composed this epitaph.⁹⁶ If he did, it may suggest a superstitious nature or could have been his way of foreclosing investigation into Shakespeare the man. Perhaps he wanted to be remembered only for his work and not for his private life. Or not. He moved in talented literary circles -- an executor or friend may have composed the epitaph. Perhaps there was controversy as to whether he should rest in Stratford or London. Although Shakespeare purchased a family vault inside the church by a tithe deed costing £440, that did not necessarily guarantee permanent tenancy. There are records of a Saxon monastery on the site in 713, the limestone building was begun in 1210, and the chancel where he lies was added in the late 1400s. Thus, graves had been laid there for nearly a millennium.⁹⁷ Space was at a premium.⁹⁸ Perhaps the epitaph was intended to prevent future eviction. Contemporary planners often advise clients to include burial instructions in a separate document. Perhaps Shakespeare explained the epitaph but set it out in a separate document now lost to us (as noted, the inventory

⁹³ WILLIAM SHAKESPEARE, *RICHARD III* act 5, sc. 3, l. 138.

⁹⁴ See *Concordance of Shakespeare's complete works*, GEORGE MASON U., www.opensourceshakespeare.org/concordance (last visited July 2, 2024) [<https://perma.cc/9PJP-5CBX>]. This an open-source concordance of Shakespeare's works, including the plays, sonnets, collaborative works, and poetry anthologies, allowing anyone to search for any word. See *id.* “Ghost” or “ghosts” appear 71 times in 21 of his works. *Id.* “Spirit” or “spirits” appear 387 times in 42 of his works. *Id.*

⁹⁵ See, e.g., WILLIAM SHAKESPEARE, *KING LEAR* act 1, sc. 2, l. 109-21 (“These late eclipses in the sun and moon portend no good to us, though the wisdom of nature can reason it thus, yet nature finds itself scourg'd by the sequent effects. Love cools, friendship falls off, brothers divide. In cities, mutinies; in countries, discord; in palaces, treason; and the bond crack'd 'twixt son and father. This villain of mine comes under the prediction; there's son against father: the King falls from bias of nature; there's father against child. We have seen the best of our time. Machinations, hollowness, treachery, and all ruinous disorders follow us disquietly to our graves.”).

⁹⁶ Whether he composed this epitaph has never been established or disproved. See Alfred Corn, *Shakespeare's Epitaph*, 64 HUDSON REV. 295, 295 (2011).

⁹⁷ See *Holy Trinity Church, Stratford: Shakespeare's Family Church*, NO SWEAT SHAKESPEARE, <https://nosweatshakespeare.com/stratford-upon-avon/holy-trinity-church/> (last visited July 2, 2024) [<https://perma.cc/T3HN-8MJF>].

⁹⁸ See John McManus, *The World is Running Out of Burial Space*, BBC (Mar. 13, 2015), <https://www.bbc.com/news/uk-31837964> [<https://perma.cc/ABS9-DCX3>]. In churches across Europe, space is limited, so burial is allowed for enough time to honor the deceased “sufficiently” and then they are relocated. See *id.* Most famous of these is the Venetian cemetery on the Island of San Michele where obscure dead are allowed ten years, then shipped to other cemeteries on the mainland. See *A Guide to San Michele Island*, INSIGHT VACATIONS (Oct. 9, 2017), <https://www.insightvacations.com/blog/guide-san-michele-island/#:~:text=Back%20on%20San%20Michele%2C%20the,feature%20photos%20of%20the%20deceased.> [<https://perma.cc/5GRZ-TBW4>]. Only the truly famous (Igor Stravinsky and Ezra Pound) remain on the island. See *id.*

and later probate papers are lost). Nevertheless, when the church underwent a significant restoration in 2008, great care and extra expense was taken to avoid disturbing Shakespeare's grave.⁹⁹

The bequest of the bed to Anne is a late addition to the document, made in a different ink, wedged between more generously spaced lines, and with text that overlaps letters in the lines above and below -- clearly a last-minute change. Despite these theories and more, the world will likely never know why Anne got only the "second best" bed of her husband.

Shakespeare included a charitable bequest to the poor of Stratford, a specific bequest of a ceremonial sword to a friend, and a silver and gilt bowl to Judith. It is tempting to speculate he chose this valuable object, a bowl that is a symbol of domesticity, plenty, and generosity for his youngest daughter to ease the pain arising from her recent and already troubled marriage. Shakespeare clearly understood the impact of symbolism; but again, this is merely speculation. Clients often attach special meaning to objects and ask to include them as a specific bequest. Such bequests frequently are the reason for codicils, and testators frequently change their minds. So much so, that today, many planners have adopted the format of referencing a handwritten list to be prepared separately. These are not enforceable but have the advantage of leaving the testator entirely free to make as many changes and as often as they want. This was not a custom of Shakespeare's time, but then, as now, personal objects were also handed off informally, from a sickbed or when a parent succumbed to age and moved in with children or grandchildren. "Downsizing" is not new. That he chose not to part with these objects until he was gone may suggest he was not anticipating his imminent death when he made the will.

As was done for the inventory of Henry VIII discussed above, Shakespeare's executors would have prepared a detailed inventory listing all his individual property, books, art, and furniture for tax purposes and because the crown technically had to "approve" a testator's gifts. Similar to how our probate courts function today, such an approval came through a complicated bureaucracy in London.¹⁰⁰ We know it was filed, but alas, is presumed lost forever, with so many other documents consumed by London's Great Fire in 1666.¹⁰¹ Losing

⁹⁹ See Pauline Montagna, *The Mystery of the Stratford Monument* (2017), <https://www.paulinemontagna.com.au/the-mystery-of-the-stratford-monument/> [https://perma.cc/X5LX-HPZ6].

¹⁰⁰ See *History of Probate Law*, SAN ANTONIO B. (Jul./Aug. 2020), <https://issuu.com/sanantoniobar/docs/sal-julaug20-digital/s/10782762> [https://perma.cc/5FSW-WXPT]. A taker of assets bequeathed without restrictions had absolute title *except* as subject to the allodial title of the monarch, who alone could authorize ownership that was free and not subject to any lord or superior. See *Allodial*, BLACK'S LAW DICTIONARY (5th ed. 1979), which explains "allodial" as "owned without obligation of vassalage or fealty; the opposite of feudal." Recording and certification of the inventory by the court effectively granted that authorization. See SAN ANTONIO B., *supra*.

¹⁰¹ See generally David Garrioch, *1666 and London's Fire History: A Re-evaluation*, 59 THE HIST. J. 319 (2016) (describing the damage the Great Fire of London caused); STEPHEN PORTER, *THE GREAT FIRE OF LONDON* (1998); NEIL HANSON, *THE GREAT FIRE OF LONDON IN THAT APOCALYPTIC YEAR, 1666* (2001). Ignited in a bakery just after midnight, September 2, 1666, the fire raged for five days gutting the medieval city inside the old Roman walls. See Regina Jeffers, *The Great London Fire and Its Aftermath*, EVERY WOMAN DREAMS... (May 30, 2013), <https://reginajeffers.blog/2013/05/30/great-fire-of-london/> [https://perma.cc/6ZSJ-5WEE]. A usual firefighting technique, to create a firebreak by demolition, was delayed by an indecisive Lord Mayor. See *id.* The fire spread across the city, destroying St. Paul's Cathedral then leapt the River Fleet to threaten Charles II's court at Whitehall. See *id.* That inspired better, more coordinated firefighting efforts, but too late to be effective. See *id.* London then had ~400,000 inhabitants with ~80,000 living inside the 400-year-old Roman walls. See *id.* This was an inner city of haphazard wooden structures augmented by combustible materials: tar paper, pitch, hemp, rosin, and flax. See Garrioch, *supra*, at 329. It was unplanned and unregulated, a makeshift urban sprawl with narrow streets. See Jeffers, *supra*. It was extremely crowded, traffic-clogged, polluted, and unhealthy, especially after a devastating outbreak of bubonic plague in 1665. See PORTER, *supra*, at 2-3. The high Roman walls impeded escape except at eight narrow gates. See

the record of books he owned, whether he left blank parchment or incomplete manuscripts to suggest he was continuing to write, what type and style of clothing he wore, or knowing how his home was furnished to reveal his tastes and lifestyle is one of the many tragedies of that Great Fire.

Perhaps the most interesting lesson from Shakespeare's will is how it was amended over less than 90 days to reflect the great drama unfurling in his personal life. Estate plans should never be "once and done." Not in 1616. Not today. Families and businesses evolve. Change happens and plans must be modified to accommodate those changes. Fortunately, Shakespeare began making changes to the nature of his estate, reallocating his assets to accommodate the loss of his only male heir, 20 years before his death. It is a spectacular example of long-term business transition planning. All transitions are difficult. Family, in-laws, or employees may not like the terms and tension is inevitable but can be alleviated by open communication and full disclosure. "Silos" inhibit business even, perhaps especially, in family businesses. Family business plans may be impacted by external changes. Our clients may find their business impacted by disasters such as fire, flood, plague, or by new regulations or new technology. Again, business and succession plans must adapt. Worth repeating: "once and done" is not enough. And the sooner a business owner starts, the better.

B. Scene 2, Language and Legacy

One of many things gained by studying Shakespeare 450 years later, and a significant part of his legacy, is a deeper understanding of the power of language. His life spanned a time when the English language was first gaining acceptance for use in anything serious. Latin was the language of official documents and of education.¹⁰² Shakespeare clearly had a hand in turning the tide. It is reasonable to assume the presence of Shakespeare in his court was an influence when King James undertook his own great passion project, the production of an "authorized" English Bible. Now known as the King James Version, it was completed under his patronage and direction over seven years (1604 – 1611) and is still used today.¹⁰³ Those years were some of Shakespeare's most productive.

Jeffers, *supra*. In the first days of the fire, few citizens fled; instead, moving what they could carry to a safer area - some moved belongings and themselves several times. *See id.* The need to get outside the walls wasn't understood for days; then there was panic in the narrow streets and gates as terrified refugees tried to flee. *See id.* Flames at the riverfront set fire to water wheels, eliminating piped water for firefighting. *See id.* St. Paul's Cathedral, with thick stone walls and a natural firebreak in its wide empty plaza, was thought safe. *See id.* But it was crammed full of rescued goods including the tightly packed stocks of printers and booksellers, and was undergoing restoration by Christopher Wren, so was covered in wooden scaffolding that caught fire. *See id.* Within half an hour, the lead roof was melting, books and papers stored inside were burning, and the cathedral was a ruin. *See id.* The fire was finally extinguished when winds dropped, and the Royal garrison used gunpowder to create firebreaks. *See id.* But the fire had destroyed 13,200 homes, 86 parish churches, 44 Company Halls, the Royal Exchange, the Custom House, St. Paul's Cathedral, the city prisons, the General Letter Office, and three western city gates. *See id.* Cultural responses included poetry and sermons (the "social media" of the 17th century) and continued for centuries. *See, e.g.,* W. HARRISON AINSWORTH, OLD ST. PAUL'S (George Newnes 1903) (originally published serially in 1841); OLD ST. PAUL'S (Clarendon Films 1914) (a film adaptation of the 1841 book); ANN TURNBULL, FORGED IN THE FIRE (2006); THE GREAT FIRE (Ecosse Films 2014); ROBERT J. SHERMAN, BUMBLESCRATCH (2016) (musical performed at the 350th anniversary commemorations). History becomes Art.

¹⁰² *See, e.g.,* Robyn Greenwood, *The Birth and Burial Records of William Shakespeare*, SHAKESPEARE BIRTHPLACE TR. (Apr. 11, 2012), [https://www.shakespeare.org.uk/explore-shakespeare/blogs/birth-and-burial-records-william-shakespeare/#:~:text=This%20entry%20is%20recorded%20in,25th%20of%20April%201616](https://www.shakespeare.org.uk/explore-shakespeare/blogs/birth-and-burial-records-william-shakespeare/#:~:text=This%20entry%20is%20recorded%20in,25th%20of%20April%201616.). [https://perma.cc/5BTE-23AT]. A dramatic example of the rise of English during Shakespeare's life, is that the entry of his baptism is recorded in Latin, but the entry of his death is in English: "William Shakespeare . . . gentleman". *See* Greenwood, *supra*. Ironically, when Sir Thomas Smith, noted scholar, parliamentarian, and diplomat, produced the first textbook on the English language, he wrote it in Latin. *See* SIR THOMAS SMITH, DE RECTA & EMENDATA LINGVÆ ANGLICÆ SCRIPTIÖNE, DIALOGUS [Correct and Improved English Writing, a Dialogue] (1568).

¹⁰³ *See* DAVID DANIELL, THE BIBLE IN ENGLISH: ITS HISTORY AND INFLUENCE 431 (2003). In January 1604, King James convened the Hampton Court Conference to propose a new version of the Bible in English. *See id.* His was not the first. Parts

Our modern plague should make us more appreciative of the miraculous gift that Shakespeare is to humanity. In 1564, England's population had declined significantly, due to a series of "plagues" we now know to be typhus, measles, anthrax, smallpox, bubonic plague or black death (*Yersinia pestis*), leprosy, cholera, and a plethora of fevers and "sweating sicknesses" - virulent influenzas or coronaviruses.¹⁰⁴ For the lower classes, home was often a room or two, small (cheaper to heat) and crowded. Poor homes did not have ceilings so fleas from rats infesting the roof thatch fell directly onto the occupants. When a family member fell ill, many more were likely to become infected.¹⁰⁵ During this century, "normal" infant mortality rate in England was seventeen percent¹⁰⁶ but in 1564, the year of Shakespeare's birth, the rate was much higher.¹⁰⁷ Shakespeare surviving his first year was against the odds. What a tragic loss if he had not.

Shakespeare stretched the English language, more than any other author, to clearly express his ideas. He provides the first recorded use of more than 2,000 words and boldly incorporated new words from the very

of the Bible had been translated into Old and Middle English between c.735 and c.1435. *See id.* at 439. William Tyndale produced a translation, in Early Modern English, c. 1522-1536, considered to be the first to work directly from the Hebrew and Greek texts (although he also relied heavily on the Latin Vulgate). *See id.* at 430. Considered heretical, the Tyndale Bible was published by Miles Coverdale in 1535. *See id.* at 439. But then, both Henry VIII (1535) and his daughter, Elizabeth I (1568) commissioned "officially sanctioned" English Bibles (based largely on Tyndale's work). *See id.* at 432. King James provided specific instructions to the translators to ensure the new version would reflect the episcopal structure of the Church of England. *See id.* at 437. There were 6 panels, 47 men in all, who translated the New Testament from the Greek and the Old Testament from Hebrew and Aramaic. *See id.* at 436. When completed in 1611, it was printed by Royal Patent. *See id.* at 429. Today, his version is in the public domain in most of the world. *See id.* at 431. However, in the United Kingdom, the right to print, publish and distribute the King James Bible is still a royal prerogative. *See id.* at 429. The Crown licenses publishers to reproduce it under letters patent, held by the King's Printer, in England, Wales and Northern Ireland. *See About Us*, LEGISLATION.GOV.UK, <https://www.legislation.gov.uk/aboutus> (last visited July 2, 2024) [<https://perma.cc/8R96-V5Z5>]. Letters patent for publication in Scotland are held by the Scottish Bible Board. *See King James Bible*, NEW WORLD ENCYC. (last visited July 2, 2024), https://www.newworldencyclopedia.org/entry/King_James_Bible [<https://perma.cc/L58M-47NV>].

¹⁰⁴ *See generally Infectious Diseases in History: a guide to causes and effects*, URBAN RIM, <https://urbanrim.org.uk/diseases.htm> (last visited July 2, 2024) [<https://perma.cc/465E-AJUY>] (explaining the history of these virulent influenza and other viruses in England and the social, physical, and economic impact they caused). Non-bacterial pathogens, first "found" in plants in the 1890s, were proved in the 1930s after invention of the electron microscope but viruses existed in the first living cells arising from primordial ooze. *See* Phillippe Roingeard, *Viral detection by electron microscopy: past, present and future*, NAT'L LIBR. MED. (Jan. 9, 2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7161876/> [<https://perma.cc/CQ7J-NS6P>]. Now science can study them and learn how they spread. *Id.* In the 1500s, plague was a terrifying mystery, usually seen as punishment from God. *See* Dyer, *supra* note 39, at 320.

¹⁰⁵ *See* Dyer, *supra* note 40, at 309.

¹⁰⁶ *See* Max Roser, *Mortality in the Past: Every Second Child Died*, OUR WORLD IN DATA (Apr. 11, 2023), <https://ourworldindata.org/child-mortality-in-the-past> [<https://perma.cc/QWW6-EKKL>].

¹⁰⁷ *See* Anne Roberts, *The Plague in England*, HIST. TODAY (Apr. 1980), <https://www.historytoday.com/archive/feature/plague-england> [<https://perma.cc/4UA6-9FPG>]. Major epidemics were recorded in 1563, 1593, 1625 and 1665. *Id.* The first in 1563, caused the greatest proportional mortality. *Id.* Up to 18,000 people, nearly a third of London's population, died. *Id.* By mid-August, the deathrate was over 1,000 per week. *Id.* Elizabeth I, then aged 30, left London for Windsor with her court and ordered gallows built, to execute anyone arriving there from London that might bring plague with them. *Id.* Disease spread to the rest of the country the next year; the fleas having survived a mild winter. *Id.* Stratford-upon-Avon lost nearly a third of its population in 1564. *Id.* Mercifully, the plague missed John and Mary Shakespeare and their baby, christened William on April 26, 1564. *Id.* As a result of this epidemic "the English finally lost their French possession, Le Havre, being held as a hostage for Calais. Plague broke out in the occupying garrison, so the town was surrendered in June, and Calais was lost forever." *Id.*

beginning of his catalog of works. Among those are assassination, antipathy, critical, frugal,¹⁰⁸ dwindle, extract, hereditary, horrid, indistinguishable, leapfrog, lonely, unmask, unveil, vast, well-read, zany, and countless others -- including, apparently, the word countless.¹⁰⁹ In his plays, Shakespeare doesn't just describe events but uses language to illuminate emotions, perhaps even the souls of his characters. Obviously, we do not put emotions in transactional or dispositive documents -- nor should we. But we can be better attorneys by working to see, hear, and understand our clients' values and motivations, and to help them find ways to share those with their descendants. We should choose our language carefully, remembering that when we draft, we are expressing the desires of our clients, and that at each stage of a transition of assets to family, the client is also conveying a legacy.

History may be written by the victors,¹¹⁰ but history may be re-written by clever manipulation of legacy. In Shakespeare's *Antony and Cleopatra*, both Octavius and Cleopatra know that legacy is not only tied to how they lived, but how they die. Cleopatra calls for her robes in her final moments to orchestrate an image defining her legacy. Octavius inters Antony and Cleopatra together memorializing them as celebrated lovers, to enhance his own reputation, and downplay their rivalry for power. "She shall be buried by her Antony. No grave on earth shall clip in it a pair so famous."¹¹¹

Elizabeth saw no need to memorialize herself with an expensive tomb. Aware that she was the end of her line, she was interred in Westminster Abbey, not with her divisive father Henry VIII, but with her grandfather, Henry VII -- the first and last of the Tudors resting side by side. But James wanted that spot badly, so in 1606, three years into his reign, still insecure about his ability to unify Britain and build a Stuart legacy, he exhumed Elizabeth, and reburied her on top of her Catholic half-sister, Mary. As a reminder that Protestant Elizabeth had prevailed over Catholic Mary, he erected a monument -- a white marble sculpture of Elizabeth reclining.¹¹² Then James exhumed his mother, Mary Queen of Scots, brought her to Westminster and put her opposite her nemesis, Elizabeth, with an even more elaborate monument. A Latin

¹⁰⁸ See BRYSON, *THE WORLD AS STAGE*, *supra* note 5, at 140. "Frugal" is a word often found in older estate planning documents and some more recent ones. *See id.*

¹⁰⁹ *See id.* at 113, 115.

¹¹⁰ See Matthew Phelan, *The History of "History is Written by the Victors"*, SLATE (Nov. 26, 2019), <https://slate.com/culture/2019/11/history-is-written-by-the-victors-quote-origin.html> [<https://perma.cc/Z4U3-PG5A>]. Often attributed to Winston Churchill, this sentiment appears in the Nuremberg trial record of Hermann Goring. *Id.* "Der Sieger wird immer der Richter und der Besiegte stets der Angeklagte sein," or "The victor will always be the judge and the vanquished the accused." *Id.* Churchill's version appears in a speech in the House of Commons on Jan. 23, 1948: "For my part, I consider that it will be found much better by all parties to leave the past to history, especially as I propose to write that history myself." *Id.* There are other versions. *Id.* In France in 1842 "[L]'histoire est juste peut-être, mais qu'on ne l'oublie pas, elle a été écrite par les vainqueurs" or "[T]he history is right perhaps, but let us not forget, it was written by the victors" and Italy in 1852 "*La storia di questi avvenimenti fu scritta dai vincitori*" or "The history of these events was written by the winners." *Id.* In English, in an 1844 description of the defeat of Robespierre (Jacobin hero of the French Revolution), "Vanquished—his history written by the victors—Robespierre left a memory accursed." *Id.* From Scotland: "It is the victor who writes the history and counts the dead." *Id.* And on August 20, 1891, Missouri Sen. George Graham Vest, former Confederate Congressman still advocating for the rights of states to secede: "In all revolutions the vanquished are the ones who are guilty of treason, even by the historians, for history is written by victors and framed according to the prejudices and bias existing on their side." *Id.*

¹¹¹ See WILLIAM SHAKESPEARE, *ANTONY AND CLEOPATRA* act 5, sc. 2, l. 430-31; *see also* SHAPIRO, *supra* note 31, at 266. Some commentators see *Antony and Cleopatra* as a tragedy of nostalgia expressing a longing for the Elizabethan past. *See id.*

¹¹² See SHAPIRO, *supra* note 31, at 266-67. Coincidence or not - 1606 was the year of *Lear*. *See id.* at 8 & 11. Historians think Elizabeth would have preferred portrayal as a warrior queen but that was not the story James wanted to tell. *See id.* at 10-11.

inscription proclaims they rest together “in hope of one resurrection,”¹¹³ creating a permanent reminder of the rivalry between the Catholic and Protestant Tudor Queens and promoting his own legacy as a peacemaker. Finally, on his death in 1625, James took Elizabeth’s original place, identifying himself as the first of a new branch from Henry VII. With a complicated manipulation of graves and memorials, James rewrote the narrative to cement his own legacy.¹¹⁴

Our clients, vastly wealthy or of modest means, entrust their legacies to us. If that includes a family business, and we can find a way to pass along the experiences of the founder, the (unvarnished) stories and hard-won wisdom, we can improve the odds that the business will survive or thrive. A founder sharing history *and* experience is also sharing risks already taken, problems already solved, mistakes already made, and hard work already invested with the next generation -- enhancing the value of the bequest. It is human nature to hide mistakes and missteps from the next generation, but a wise business planner knows that including the history and stories of a family business as part of the legacy for the next generation, gives recipients a richer heritage, and allows them to avoid repeating past mistakes as they move forward to write the next chapter.

“Let’s choose executors and talk of wills,” King Richard II commands.¹¹⁵ It seems appropriate to end these musings by looking at Shakespeare’s view of legacy and life. On legacy, he reminds us in *All’s Well That Ends Well*, “No legacy is so rich as honesty.”¹¹⁶ Predictably, Shakespeare chose the theater as his metaphor for life. In *As You Like It* he tells us, “All the world’s a stage, and all the men and women merely players; they have their exits and their entrances; and one man in his time plays many parts, his acts being seven ages.”¹¹⁷ But he also leaves for us a legacy as a great teacher. “When I am forgotten, as I shall be, and asleep in dull cold marble, where no mention of me be heard, say, I taught thee.”¹¹⁸

V. EPILOGUE – A TECHNICAL LOOK AT SHAKESPEARE’S WILL

Shakespeare’s three-page Will was prepared in January of 1616 by his attorney, Francis Collins.¹¹⁹ Revisions were made, presumably to address the marriage on February 10 of his second daughter, Judith, to Thomas Quiney, and it was signed on March 25th. He died on April 23rd (believed to be his birthday). Executors named were Shakespeare’s daughter Susanna and her husband, Dr. John Hall. The will was probated by delivery to the Prerogative Court of Canterbury, in London, on June 22, 1616, where it was copied into a parchment register. The date at the beginning and oath by the co-executor, his son-in-law John Hall, at the end are in Latin. The rest is in English. The modernized transcription below shows items stricken from the original and reproduces interlineated text, written in different ink and apparently added after the pages were created in January but before they were signed in March, in *italics*. Photographs of

¹¹³ See *id.* at 268 (“It is hard to decide which of these two queens would have resented this more.”).

¹¹⁴ See *id.* at 267-68.

¹¹⁵ WILLIAM SHAKESPEARE, *RICHARD II* act 3 sc. 2, l. 153. On succession: “Let’s talk of graves, of worms, and epitaphs, make dust our paper and with rainy eyes, write sorrow on the bosom of the earth. Let’s choose executors and talk of wills: And yet not so, for what can we bequeath save our deposed bodies to the ground? . . . [N]othing can we call our own but death, and that small model of the barren earth which serves as paste and cover to our bones.” *Id.* at l. 153-59.

¹¹⁶ WILLIAM SHAKESPEARE, *ALL’S WELL THAT ENDS WELL* act 3, sc. 5, l. 12-13.

¹¹⁷ WILLIAM SHAKESPEARE, *AS YOU LIKE IT* act 2, sc. 7, l. 146-150.

¹¹⁸ WILLIAM SHAKESPEARE, *HENRY VIII* act 3, sc. 2, l. 513-515.

¹¹⁹ *William Shakespeare’s Last Will and Testament*, *supra* note 74.

the actual pages are difficult to read but are available for further study, with the probate register, from the British National Archives and at the Folger Library Website.¹²⁰

The Will

~~January~~ March 25, in the 14th year of the reign of James now king of England and the 49th year of Scotland, 1616 – Registering Testament of William Shakespeare.

In the name of God, Amen. I, William Shakespeare of Stratford upon Avon in the county of Warwick, gentleman, in perfect health and memory, God be praised, do make and ordain this my last will and testament in manner and form following, that is to say, first I commend my soul into the hands of God my creator, hoping and assuredly believing through the only merits of Jesus Christ my Savior to be made partaker of life everlasting, and my body to the earth whereof it is made.

Item - I give and bequeath unto my ~~son-in-law~~ and Daughter, Judith, one hundred and fifty pounds of lawful English money to be paid unto her in manner and form following, that is to say, one hundred pounds *in discharge of her marriage portion*¹²¹ within one year after my decease, with consideration after the rate of two shillings in the pound, for so long time as the same shall be unpaid unto her after my decease, and the fifty pounds residue thereof upon her surrendering of, or giving of, such sufficient security as the overseers of this, my will, shall like of to surrender or grant all her estate and right that shall descend or come unto her after my decease or *that she* now hath of in or to one Copyhold tenure¹²² with the appurtenances lying and being in Stratford upon Avon aforesaid in the said county of Warwick, being parcel or holder of the manor of Rowington¹²³ unto my daughter Susanna Hall and her heirs forever.

¹²⁰ See *id.*; *William Shakespeare's last will and testament: registered copy*, <https://shakespearedocumented.folger.edu/resource/document/william-shakespeares-last-will-and-testament-registered-copy> (last visited July 2, 2024) [<https://perma.cc/T829-UE82>] [hereinafter *Shakespeare's Will: Registered Copy*]; *William Shakespeare's last will and testament: Entry for probate*, <https://shakespearedocumented.folger.edu/resource/document/william-shakespeares-last-will-and-testament-entry-probate> (last visited July 2, 2024) [<https://perma.cc/85DJ-4MT2>] [hereinafter *Shakespeare Register for Probate*]. These documents are reproduced in their entireties in the Appendix, *infra*. Apart from his colleagues who compiled and published the First Folio, the world may owe no greater debt for the protection of Shakespeare than it does to self-made millionaire and the eventual Chairman of Standard Oil, Henry Clay Folger and his wife, Emily. See Merle Severy, *Shakespeare Lives at the Folger*, NAT'L GEOGRAPHIC, Feb. 1987, at 244, 250-51. Henry quietly collected Shakespeareana for four decades. See *id.* at 251. His first rare book cost \$107.50; he paid in installments. See *id.* at 250. Eventually, he became a major collector, cabling agents to offer cash quietly and early to win what he wanted, while keeping a low profile and shy demeanor. See *id.* Once at golf, his boss questioned his business sense, "What's this about you paying \$100,000 for a book?" *Id.* at 250. Folger dissembled, "You know how the press exaggerates. Buy something for \$10,000 and it becomes \$100,000." *Id.* at 249-250. John D. Rockefeller expressed relief: "no Standard Oil President should ever pay \$100,000 for a book." *Id.* at 251. In 1930, two weeks after laying the cornerstone for his library in Washington D.C., Henry died. See *id.* at 251. But the Folger Library stands, near the Library of Congress, a monumental gift to the American people and the repository of more Shakespeare material than anywhere else in the world. See *id.*

¹²¹ See *Marriage Portion*, BLACK'S LAW DICTIONARY (5th ed. 1979) (defining "Marriage Portion" as a dowry, money or other property given to or settled to a woman on her marriage). This bequest to his daughter Judith consists of £100 to satisfy her dowry and an additional £50 if she disclaims her interest in a cottage Shakespeare had purchased and which went to Susanna.

¹²² Copyhold tenure (in the "custom of the manor"), a term common from the Middle Ages, where the "title deed" given to the tenant was a copy of an entry in the manor court roll and usually the only visible title. See *Copyhold Tenure*, BLACK'S LAW DICTIONARY (5th ed. 1979).

¹²³ See *Rowington-A Brief History*, ROWINGTON, <https://web.archive.org/web/20120629053255/http://www.rowington.org/Rowington/history.html> (last visited July 2, 2024) [<https://perma.cc/RP67-4D58>]. Rowington, a village that grew around the Norman era Church of St. Laurence in Warwickshire

Item - I give and bequeath unto my said daughter, Judith, one hundred and fifty pounds more if she or any issue of her body living at the end of three years next ensuing the day of the date of this my will, during which time my executors to pay her consideration from my decease according to the rate aforesaid. And if she die within the said term without issue of her body then my will is and I do give and bequeath one hundred pounds thereof to my niece, Elizabeth Hall,¹²⁴ and fifty pounds to be set forth by my executors during the life of my sister, Joan Hart, and the use and profit thereof coming shall be paid to my said sister, Joan, and after her decease the said 50 pounds shall remain amongst the children of my said sister equally to be divided amongst them. But if my said daughter Judith be living at the end of the said three years, or any issue of her body, then my will is, and so I devise and bequeath the said hundred and fifty pounds to be set out by my executors and overseers for the best benefit of her and her issue, and the stock not to be paid unto her so long as she shall be married and covert baron¹²⁵ ~~by my executors and overseers~~ but my will is that she shall have the consideration yearly paid unto her during her life and after her decease the said stock and consideration to be paid to her children if she have any and if not to her executors or assigns, she living the said term after my decease, provided that if such husband as she shall, at the end of the said three years be married unto or attain after, do sufficiently assure unto her and the issue of her body, lands answerable to the portion by this my will given unto her, and to be adjudged so by my executors and overseers then my will is that the said £150 shall be paid to such husband as shall make such assurance to his own use.

Item - I give and bequeath unto my said sister Joan 20 pounds and all my wearing apparel to be paid and delivered within one year after my decease. And I do will and devise unto her the house with the appurtenances in Stratford wherein she dwelleth for her natural life under the yearly rent of 12 pence.

Item - I give and bequeath unto her three sons, William Hart, _____ [name omitted] Hart, and Michael Hart, five pounds a piece to be paid within one year after my decease unto her. ~~to be set out for her within one year after my decease by my executors with the advice and direction of my overseers for her best profit until her marriage and then the same with the increase thereof to be paid unto her.~~

Item - I give and bequeath unto ~~her~~ the said Elizabeth Hall all my plate *except my broad silver and gilt bowl* that I now have at the date of this my will.

Item - I give and bequeath unto the poor of Stratford aforesaid ten pounds; to Mr. Thomas Combe, my sword; to Thomas Russell, Esquire, five pounds; and to Francis Collins of the borough of Warwick in the county of Warwick, gentleman, thirteen pounds, six shillings, and eight pence, to be paid within one year after my decease.

County, is 14 miles from Stratford-on-Avon. *See id.* Rowington Hall, main house of the Manor, was owned by Catherine Parr, sixth wife of Henry VIII, and later given to the Earl of Dudley by Elizabeth. *See id.* Many relatives of Shakespeare lived in the area. *See id.* The Folger library has a Survey of the Manors from 1604 listing William Shakespeare as owner of a cottage now known as Shakespeare Hall that is still occupied as a private home today. *See id.*

¹²⁴ Elizabeth Hall was his granddaughter, not his niece.

¹²⁵ Covert-baron means the status of being married, usually applied to a woman; it derives from the French meaning “covered by the lord or husband.” *See Covert-baron*, BLACK’S LAW DICTIONARY (5th ed. 1979). Essentially, Judith would receive £150 on which her husband would have no claim unless he settled lands on her to the same value.

Item - I give and bequeath to ~~Mr. Richard Hamlett Sadler,~~¹²⁶ ~~Tyler, the Elder~~ 26 shillings 8 pence to buy him a ring; to *William Reynolds, gentleman*, 26 shillings 8 pence to buy him a ring; to my godson, William Walker 20 shillings in gold; to Anthony Nash, gentleman, 26 shillings 8 pence; to Mr. John Nash, 26 shillings 8 pence; and to my fellows, *John Heminges, Richard Burbage, and Henry Condell* 26 shillings 8 pence, a piece to buy them rings.¹²⁷

Item - I give, will, bequeath, and devise unto my daughter Susanna Hall, *for better enabling of her to perform this, my will, and towards the performance thereof*: All that capital messuage¹²⁸ or tenement¹²⁹ with the appurtenances in *Stratford*¹³⁰ aforesaid called the New Place, wherein I now dwell, and two messuages or tenements with the appurtenances situate, lying and being in Henley Street within the borough of Stratford aforesaid. And all my barns, stables, orchards, gardens, lands, tenements, and hereditaments¹³¹

¹²⁶ Hamnet Sadler was his longtime friend and neighbor and had been Godfather to the twins, including his son, Hamnet, who was named for him. See Victoria Joynes, *Shakespeare's Friends: Burbage, Combe and Sadler*, SHAKESPEARE BIRTHPLACE TR. (Aug. 1, 2016), <https://www.shakespeare.org.uk/explore-shakespeare/blogs/shakespeares-friends-burbage-combe-and-sadler/> [https://perma.cc/3JUY-KEJ7]. Twin Judith was named for Hamnet's wife, Judith Sadler. See *id.*

¹²⁷ John Heminges, Richard Burbage, and Henry Condell were his business partners, actors and empresarios who co-owned the Globe and Blackfriar Theaters. See Paul Edmonson, *'My fellows': John Heminges and Henry Condell*, SHAKESPEARE BIRTHPLACE TR. (July 30, 2016), <https://www.shakespeare.org.uk/explore-shakespeare/blogs/my-fellows-john-heminges-and-henry-condell/> [https://perma.cc/B8SK-W75V]. Burbage died 3 years later, his estate hotly contested, creating a well-documented glimpse into the business of theaters in London. See Herbert Berry, *The Miltons and the Blackfriars Playhouse*, 89 MODERN PHILOLOGY 510, 510-11 (1992). His brother Cuthbert Burbage was still embroiled in disputes related to the share of Blackfriar Theater when he died in 1637. See *id.* Heminges and Condell survived to co-edit the First Folio published in 1623 – preserving so much of Shakespeare's work. See ARNOLD, *supra* note 44, at 248.

¹²⁸ Capital Messuage is the main house of an estate with adjacent buildings and curtilage where the owner normally resides. See *Messuage*, BLACK'S LAW DICTIONARY (5th ed. 1979). Its use strongly implies there were other houses included in the given estate. See *id.* Curtilage is the area immediately surrounding a residence that harbors the intimate activity associated with the sanctity of a man's home and the privacies of life. *United States v. Dunn*, 480 U.S. 292, 301 (1987).

¹²⁹ Tenement then meant everything that may be held, of a permanent nature, substantial and sensible or unsubstantial. See *Tenement*, BLACK'S LAW DICTIONARY (5th ed. 1979). A frank tenement or freehold may include a permanent property, lands, rents or may refer to a room or separate residence within a house. See *id.* At common law, it usually included lands, rents, and inheritances held in freehold. See *id.*

¹³⁰ Meaning Stratford-upon-Avon, a market town and civil parish 90 miles northwest of London at the south end of the Arden District (named for Shakespeare's mother's family). See *Shakespeare's Mother*, 1902 ENCYCLOPEDIA, <https://www.1902encyclopedia.com/S/SHA/william-shakespeare-20.html> (last visited July 2, 2024) [https://perma.cc/QGE7-DCNH]. Inhabited since the neolithic era, Briton, then Anglo-Saxon, was small until 1196 when Lord John of Coutances developed a town and Richard I granted a charter for a market. See *Place: Stratford upon Avon, Warwickshire, England*, GENEALOGY, https://www.werelate.org/wiki/Place:Stratford_upon_Avon%2C_Warwickshire%2C_England (last visited July 2, 2024) [https://perma.cc/S5VV-6HYM]. Name is from Latin (stratum = street), Old English (ford = shallow river crossing), and Celtic (avon = river). *History of Stratford Upon Avon*, ESCAPE LIVE (May 15, 2023), <https://www.escapealive.co.uk/history-of-stratford-upon-avon/#:~:text=Although%20originally%20occupied%20by%20Britons,Celtic%20word%20for%20'river'> [https://perma.cc/QG8T-UF7K]. The ford used even before the Roman road and timber bridge, was still used in 1235. See *Clopton Bridge - Stratford-upon-Avon, Warwickshire*, WAYMARKING, https://www.waymarking.com/waymarks/WMZJPC_Clopton_Bridge_Stratford_upon_Avon_Warwickshire (last visited July 2, 2024) [https://perma.cc/YNT9-JEBU]. Hugh Clopton built a 14-arch masonry bridge in 1484, which is there today. See *id.* It was repaired in 1642, when an arch was deliberately destroyed to stop the advancing army of Oliver Cromwell. See *id.* Shakespeare was born into a place steeped in history. See *id.*

¹³¹ Hereditaments are properties capable of being inherited, corporeal (land or building) or incorporeal (right of way or rents), real, personal, or mixed, including not only land and everything thereon but also heirlooms and furniture, which by custom may descend to the heir together with the land. See *Hereditaments*, BLACK'S LAW DICTIONARY (5th ed. 1979).

whatsoever, situated, lying, and being, or to be had, received, perceived, or taken within the towns and hamlets, villages, fields, and grounds of Stratford upon Avon, Old Stratford, Bishopton, and Wolsombe,¹³² or in any of them in the said county of Warwick. And also all that messuage or tenement with the appurtenances wherein one John Robinson dwelleth, situated, lying and being in the Blackfriars in London near the Wardrobe, and all other my lands, tenements and hereditaments whatsoever.

To have and to hold all & singular the said premises with their appurtenances unto the said Susanna Hall for and during the term of her natural life and after her decease to the first son of her body lawfully issuing, and to the heirs male of the body of the said first son lawfully issuing and for default of such issue to the second son of her body lawfully issuing and to the heirs male of the body of the said second son lawfully issuing and for default of such heirs to the third son of the body of the said Susanna lawfully issuing and of the heirs male of the body of the said third son lawfully issuing. And for default of such issue the same so to be and remain to the fourth ~~son~~, fifth, sixth, and seventh sons of her body lawfully issuing, one after another, and to the heirs male of the bodies of the said fourth, fifth, sixth, and seventh sons lawfully issuing in such manner as it is before limited to be and remain to the first, second and third sons of her body and to their heirs male.¹³³ And for default of such issue the said premises to be and remain to my said Niece Hall and the heirs male of her body lawfully issuing for default of such issue to my daughter Judith and the heirs males of her body lawfully issuing. And default of such issue to the rightful heirs of me, the said William Shakespeare forever.

Item - *I give unto my wife my second best bed with the furniture.*

Item - *I give and bequeath to my said daughter Judith my broad silver gilt bowl.* All the rest of my goods, chattel, leases, plate, jewels, and household stuff whatsoever, after my debts and legacies paid and my funeral expenses discharged, I give, devise, and bequeath to my son in law, John Hall, gentleman, and my daughter Susanna, his wife, whom I ordain and make executors of this my last will and testament. And I do entreat and appoint the said Thomas Russell, Esquire, and Francis Collins, gentleman, to be overseers hereof. And do revoke all former wills and publish this to be my last will and testament. In witness whereof I have hereunto put my hand the day and year first above written.

By me **William Shakespeare** (signed)

Witness to the publishing hereof

Francis Collins

Julius Shawe

John Robinson

Hamnet Sadler

Robert Whattcott

¹³² Bishopton is a civil parish in Stratford-on-Avon District, Warwickshire County, Midlands, England. *See Bishopton, Stratford-on-Avon*, GETOUTSIDE, <https://getoutside.ordnancesurvey.co.uk/local/bishopton-stratford-on-avon> (last visited Feb. 13, 2024) [<https://perma.cc/4ZWW-686Y>]. Wolsombe may have been a local parish or may refer to a village in Devon on the coast. If not lost, the inventory might have solved these mysteries.

¹³³ This language suggests Shakespeare still hoped for grandsons, but Susanna and John had only a daughter, Elizabeth (1607-1670) who married twice, Thomas Nash in 1626 (died 1647), then Sir John Bernard, landowner, and member of Parliament, in 1649 (he was widowed with 8 children) but had no children. Nash tried to appoint the Shakespeare's estate to a cousin; Elizabeth sued to ban the entail. Elizabeth's will made bequests to Hathaway cousins. *See ELTON, supra* note 25, at 265-74.

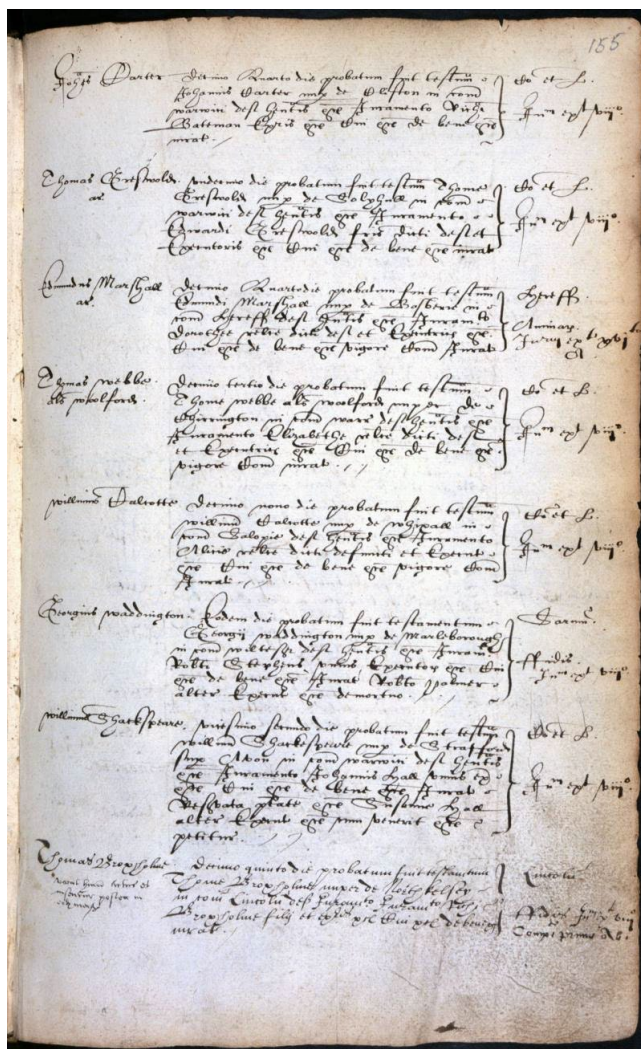
Approved in the presence of Magistrate William Byrd, Commissary of Laws, the 22nd day of June in the year of our lord 1616, a sworn oath by the said John Hall, one executor and reserved power for Susanna Hall, another executor, when it arrives inventory is displayed.

APPENDIX

THE DIGITAL COPIES OF THESE PAGES THAT FOLLOW WERE ACQUIRED DIRECTLY FROM THE UNITED KINGDOM NATIONAL ARCHIVES, NOT FROM THE FOLGER WEBSITE. BECAUSE THEY WERE PREPARED MORE CAREFULLY, THEY ARE SLIGHTLY EASIER TO READ. PERMISSION FOR THEIR USE WAS GRANTED FOR EDUCATION OR RESEARCH ONLY.¹³⁴

THE PROBATE REGISTRY AND THE WILL

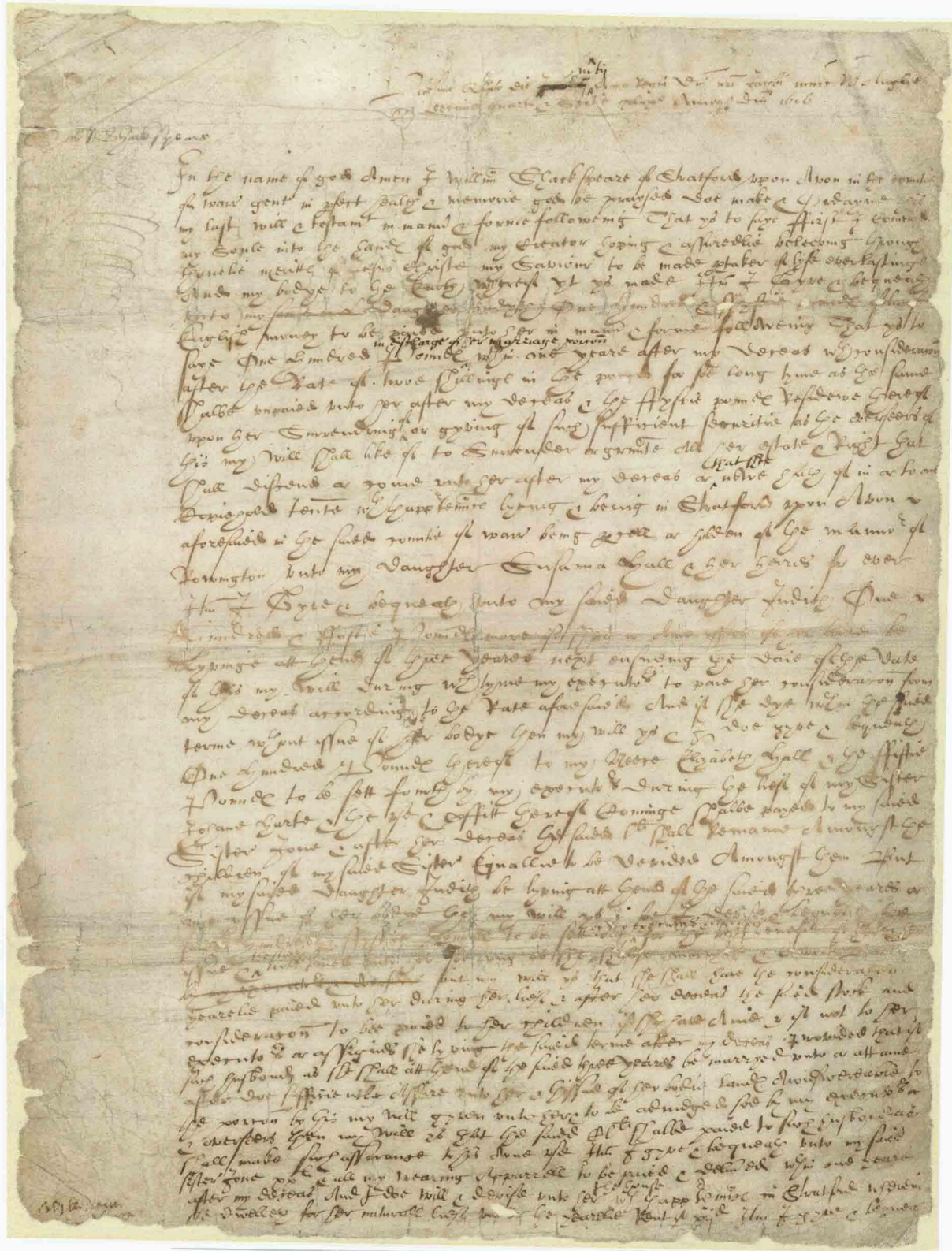
After Shakespeare's death, his executors, Susanna and her husband, Dr. John Hall, delivered his will to the Prerogative Court of Canterbury, in London, for probate and to be copied into a parchment register. Photo is the entry in the register recording the date of probate, June 22, 1616.¹³⁵ (Second entry from the bottom.)



¹³⁴ Folger links to all documents are also available.

¹³⁵ *Shakespeare Register for Probate*, *supra* note 120.

Three following photos are the pages of Shakespeare's executed and witnessed last will and testament.¹³⁶



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¹³⁶ Shakespeare's Last Will and Testament, *supra* note 74.

[illegible]

The registered will as it was probated - meaning copied by hand into the record books - is also available.¹³⁷ The handwriting is a little easier to read; although, once sanitized, removing the corrections, additions, and variations of handwriting and ink color, we learn even less by studying this version.

ADDITIONAL RESOURCES **Selected Bibliography for additional reading**

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“He let him outlive the day to see his greatness and to teach others how they should prepare.”
HENRY V, act 4, sc. 1. (Henry V)

A Brief History of the Development of Insurance and Annuities

In the modern world, insurance of all types, is critical for our economic health. Providing security against the unavoidable vagaries of life, it eases the pain of the only two absolute certainties – death and taxes. It is not new. The process of contribution, to distribute the impact of calamity among many to lessen its destructive effect, has been with us for 3,000 years.

It Began at Sea

The earliest examples arise from Rhodian Sea law between 1000–900 B.C. when maritime loans were structured as loans on a contingency. The well understood principles of jettison, contribution, and average applied when a loss occurred during a maritime venture for which neither the owner of the property lost, nor any other partaker in the venture, could be held responsible. Rhodian law held that if goods must be thrown overboard to lighten the ship, what is sacrificed for a common benefit should be made good by common contribution. By entering the venture, participants agreed to insure to a certain extent the ship on which they sailed and the goods of all co-venturers. Then each was insured to the same extent by the owners of the ship and the other goods on board. Later incorporated by the Romans into the Justinian Code, in A. D. 533, Rhodian Sea Law also appears in American admiralty decisions – the first in 1795.¹ These provisions of Rhodian Law, now nearly 28 centuries old, became a ruling principle in American admiralty law, still influences the construction of marine contracts today, and is the fundamental principle of contribution underlying all forms of insurance.

The earliest known casualty insurance contract is from Italy in 1347. An English translation appears below. It appears in a treatise on commerce based on original documents found in the archives of Pisa. Its language suggests the practice of insurance was already universal among maritime nations. Through Italian merchants and navigators, the practice of insurance was carried to England, the Low Countries and North Germany – probably first to the great city of Bruges, in the Netherlands. There are records of insurance policies dating from the year 1359, in Italian, contracting for insurance between Genoa, Venice, or Naples and Bruges. These commercial transactions, from 1444-1459, are called an *assurance obligation*. Beginning in 1469 they became *letters of assurance* and from 1468-1470, *assurance policy* or simply, *policy*, came into use. From the Netherlands, the practice of insurance spread to the Free City of Hamburg, then one of the most important members of the Hanseatic League.

The earliest existing insurance contract in England, known as the *Broke Sea Insurance Policy*, appears is dated September 20, 1547. Interestingly, a large portion of this contract is written in Italian. The earliest known English fire policy is dated 1686, and is in printed form, suggesting that by this date the practice of fire insurance had already become common, probably in part, due to the terrible consequences of the Great Fire of London in 1666.²

From Rhodian to Roman

A thousand years later, contribution to protect against the economic cost of eventual death first appears in ancient Roman burial clubs around 100 A.D. Detailed information found in 1816 on a tablet from the ruins of an ancient temple excavated in Minya, Egypt contained the rules and required dues of a burial society (Collegium) in 133 A.D. during the reign of Hadrian. (Collegium Cultorum Dianae et Antinoi at

¹ Thompson, Jacobson et al vs. the Ship Catharina, 1 Pet.Adm. 104, Fed.Cas. No. 13,949 (1795).

² Povey, Charles, A Treatise of Early Fire Insurance Companies, London (1893).

Lanuvium.)³ With social and economic functions, for a member's stated contribution, the society provided a decent and ceremonial burial of the dead, and in some cases, financial assistance to heirs. A proper Roman funeral required processions, alms for the poor, a public eulogy, feast, and in some cases a tournament or monument, so the societies were formed to cover these costs and assist survivors. Hadrian, Aurelian, Julius and Augustus Ceasar all regulated and participated in burial collegia.⁴

By the Numbers

A century later, the first known Roman Life Table for calculation of annuities appears dated 220 A.D. The Honorable Justice J. P. Bradley, of the US Supreme Court, who was an actuary in his early career authored a paper on this Roman Life Table. The table is attributed to Ulpian, who was a lawyer, prefecture, chief adviser to the Roman Emperor Severus Alexander, and eminent commentator on the Justinian Code.⁵ Ulpian wrote over 50 books and treatises on Roman legal topics including administrative law, criminal procedures, testamentary trusts. He created the first known measure of life value annuities graduated with reference to age and is responsible for a third of the material found in the Justinian Digests. The Ulpian Life Table relies on the observed course of human decrement with increased age.⁶ Nearly 1600 years later, his Table was still cited for valuation of life annuities. Found in an Act of the Tuscan government as late as 1814, it was considered "the most accurate and useful in existence" until the end of the 17th century.⁷

Rise and Fall of the Guilds

A millennium after the Roman Collegia, 1280–1380, the Guilds of the Middle Ages arose and operated much like Roman burial societies - providing for a decent burial, and support in sickness or poverty of their members. English guild ordinances are easier to research. Many of them are preserved in British archives and reprinted by the Early English Text Society. But guilds were among the most ancient social institutions, also appearing across Europe and even in China, and providing the applied doctrines of mutual aid. Unfortunately, English guilds in this form, as well as monasteries, secret fraternities, and ecclesiastical hospitals were abolished by Henry VIII in 1545, and their funds and possessions were confiscated by the state.⁸

³ The Documentary History of Insurance, 1000 B.C.–1875 A.D. Newark, NJ: Prudential Press. 1915. pp. 6-7. Retrieved June 15, 2021.

⁴ Fouse, L. G. *Policy Contracts in Life Insurance*, The Annals of the American Academy of Political and Social Science, 26 (2): 29–48 (September 1905). Retrieved 8 April 2021.

⁵ Exact date of Ulpian's birth is unknown but after issuing legal opinions curtailing the privileges of the Praetorian Guard, he was assassinated by the Guard in the presence of the emperor himself in 223 A.D. Chisholm, Hugh, ed. (1911). *Ulpian* Encyclopedia Britannica, Vol. 27 (11th ed.); Robert Lee Cleve, *Severus Alexander and the Severan Women* PhD diss. Los Angeles: University of California Los Angeles (1982): 222.

⁶ Frier, Bruce *Roman Life Expectancy: Ulpian's Evidence*, Harvard Studies in Classical Philology, 86: 213–251 (1982).

⁷ L. Owen Pike, *Journal of the Institute of Actuaries*, Vol. I, pp. 23 et seq. London (1873). Turner, Sharon, *The History of the Anglo-Saxons*, Vol. II, ch. 10 and special reference to burial ceremonies ch. 14, Philadelphia (1841).

⁸ Brentano, Lujo, *The History and Development of Guilds*, London (1870); *Original Ordinances of More than One Hundred Early English Guilds*, Early English Text Society (1870, reprinted in 1892); Thrupp, John, *Anglo-Saxon Home*, pp. 160 et seq. (London, 1862).

And During Shakespeare's Time...

Development of early Friendly Societies in England from 1560-1793 gave rise to modern life insurance. After the destruction of the guilds by Henry VIII, small mutual-aid societies became popular for the purpose of providing for the decent burial of departed members. The first known Friendly Society was the Incorporation of Carters in 1560, which had probably been a guild that reconstituted itself into a Friendly Society after losing some of its privileges. The earliest known life insurance policy was made in the Royal Exchange, London on June 18, 1583. Richard Martin insured William Gybbons, paying thirteen merchants £30 for £400 if the insured dies within one year.⁹ Modern life insurance arose around 1671. according to *Observations on Life Annuities* by John De Witt, Grand Pensionary of Holland, as translated by Robert Gibbons Barnwell, US Consul in Amsterdam and published in New York in 1856.¹⁰ De Witt emphasized strict conformity to the law of mortality in the calculations of premiums for insurance, required consideration of the principles of compound interest, the theories of life contingencies, and the establishment of 'widows' funds. In addition to life insurance, ransom insurance was well established in the America for the protection of ship captains trading on the Barbary coast and other areas frequented by pirates and privateers.

As discussed in the main paper, under Elizabeth I, record keeping, and compliance was a major source of employment. Every village had guilds to regulate every trade and officials assigned to inspect, catalog, weigh, and measure virtually everything (from a uniform size for a loaf of bread to the quality of ale), and to report infractions and collect fees. It was an enormous enterprise that generated vast wealth. But the power of the guilds to provide for their members had been undermined by Henry VIII, and government supervision began to arise. The first Act of Parliament for the regulation of insurance through a Court of Assurances¹¹, was passed in the year 1601, or the 43d Elizabeth, which is also the year in which the English Poor Law was passed. Archives include parliamentary debates on the bill establishing a Court of Assurances, introduced by Sir Francis Bacon, (likely the drafter), and on second reading, committed to Sir Walter Raleigh.¹² Eventually, becoming quasi-governmental by an Act passed in 1757, creating a system of sickness insurance for laborers employed in the unloading of vessels and required the compulsory deduction of two shillings in the pound (sterling) out of wages earned - considered sufficient provision for the widows and orphans of deceased laborers and burial of the dead.

Modern Life Insurance

The first modern life insurance company was the Amicable Society for a Perpetual Assurance, founded in London in 1706. Starting with 2000 members, each made an annual payment per share on one to three shares – considering the age of the members being twelve to fifty-five. At year end, an amicable contribution was divided among wives and children of deceased members, proportionate to the number of

⁹ Walford, Cornelius, *History of Life Assurance (PDF)* p. 6-7, (22 Dec 1884). Retrieved 8 April 2021.

¹⁰ De Witt, John, Grand Pensionary of Holland, *Observations on Life Annuities*, trans. by Robert Gibbons Barnwell, U S Consul in Amsterdam, Amsterdam and New York (1856).

¹¹ See *Postlethwayt's Universal Dictionary of Trade and Commerce*, London (1751).

¹² *A Lett Regarding the Early Practice of Insurance*, originally published Post Magazine and Insurance Monitor, London, July 25, 1908, reprinted in *Insurance Science and Economics*, p. 151, New York (1911).

shares heirs owned.¹³ The first regulative Act passed by Parliament in 1793, known as the Rose Act, was for the protection and encouragement of Friendly Societies in the United Kingdom and specifically recognized the role of managing risk in a healthy economy: Wherever there is a contingency, the cheapest way of providing against it is to unite with others, so each man may subject himself to a small deprivation in order that no man be subjected to great loss.¹⁴

Lloyd's

No history of insurance is complete without discussing Lloyd's. Named for a Coffee House kept by Mr. Edward Lloyd, in Tower Street, London, where underwriters met to transact their business. By 1774, Lloyd's, had become an association of marine underwriters, and left the Coffee House for premises in the Royal Exchange. Since 1986, Lloyd's has occupied a stunning example of cutting-edge architecture at One Lime Street in London. Now nearly 350 years old, some term life insurance is written, but most of the business underwritten at Lloyd's is general insurance and reinsurance. Unlike most of its competitors, it is not an insurance company. It is a corporate body governed by the Lloyd's Act of 1871 and subsequent Acts of Parliament that operates as a partially mutualized marketplace. Multiple financial backers, grouped in syndicates, come together to pool and spread risk. These underwriters, or members, are both corporations and private individuals, and are traditionally referred to as *Names*. The term *underwriter* originated from the practice of each individual, on assuming a portion of the risk, placing his name at the bottom of the contract. Always HIS until 1973 when Lloyd's got its first female Name in 1973.¹⁵

The Science of Life Insurance

Roman or modern, the science of life insurance rests upon fundamental principles of the law of mortality and compound interest. Ulpian's famous table of 220 A.D. merely approximates the rate of mortality. The fact that the chances of death might vary according to age and condition with every year of life was not clearly recognized until the end of the 17th century. Caspar Neumann (1658 – 1715) was a professor and ordained clergyman with a talent for statistics and a special scientific interest in mortality rates. Born to the city tax collector of Breslau (a city in Poland, Bohemia, Hungary, Austria, Prussia, Germany or Poland again depending on when you are reading the map), Neumann was interested in mortality from both a scientific and theological standpoint. (He was also gifted in mathematics and musical composition having composed some 30 hymns, some of which still appear in hymnals today.) Observations of Breslau's mortality rates resulted in a treatise analyzing statistics related on the age on death compiled from materials he collected in his study.¹⁶

¹³ Anzovin, Steven, *Famous First Facts*, item # 2422, p. 121, H. W. Wilson Company, (2000) ISBN 0-8242-0958-3.

¹⁴ Reports of the Royal Commission on Friendly Societies, London (1870-1874); *An Appeal to the Public on the General Utility of Benefit Societies, Instituted by and for the Relief of Their Respective Members*, London (1792); Finlason, John, *Tables Showing the Amount of Contributions for Providing Relief in Sickness and Old Age, for Payments at Death, and Endowments for Children*, London (1833); Count de Salis, Jerome, *A Proposal for Improving the System of Friendly Societies, or, of Poor Assurance Offices*, London (1814); Hardwick, Charles, *The History, Present Position, and Social Importance of Friendly Societies*, London (1859).

¹⁵ [Liliana Archibald - Lloyd's \(lloyds.com\)](https://lloyds.com/).

¹⁶ A discussion of current impact of Caspar Neumann's *Reflections on life and death among those born and died in Breslau*, <https://mlstory.org/pdf/introduction.pdf>. Retrieved 29 September 2024.

Then, in 1693, Sir Edmund Halley (yes, the astronomer for whom the comet is named), published an article on life annuities, digesting Neumann's data, greatly expanding the analysis of age-at-death. Halley's work, now seen as a major event in the history of demography, is the foundation of modern actuarial science. His *Estimate of the Degrees of the Mortality of Mankind* was submitted to the Royal Society and published in its Philosophical Transactions.¹⁷ It contains graphics of the law of mortality illustrated by the number, out of a thousand born, that survive to specified ages, first determined by Halley for the year 1693. Halley's Table of Mortality was specifically constructed for the purpose of providing a scientific basis for the correct ascertainment of the cost and the principles of premium calculation in the assurance of lives. His paper allowed the sale of life annuities at an appropriate price based on the age of the purchaser.

A few years later, Queen Anne granted a charter to the Amicable Society on the 24th of January, 1705 "incorporating them and their successors... with power to purchase land, sue and be sued, and to have a common seal." Believed to be the first life insurance society established upon Halley's principles of mortality and finance, it prospered for more than 150 years, until it was absorbed in 1866 by Norwich Union Life Assurance. The London Equitable Society (est.1762) then claimed the title of oldest existing life insurance company until the year 2000. A mutual insurer, it pioneered age-based premiums based on mortality rates, building a framework for actuarial development on scientific practice. The first pure life company, as distinguished from annuitants and tontines, it never employed agents and so issued relatively small amounts of insurance during most of its long corporate life but provided invaluable mortality experience data. Closed to new business in 2000, some parts were sold, and the remainder became a subsidiary of Utmost Life and Pensions in January 2020.

Early American insurance followed similar paths, often arising in coffee shops near major ports, but more common in the US, was ownership established on the Tontine principle of survivors. In an early example, 203 shares were subscribed for at 200 per share, each depending on a life selected by the subscriber who detailing the age, parentage, and sex of the nominee and during whose existence was entitled to receive a share of the net income of the establishment. On the death of the nominee, the interest of the subscriber ceased, and his share was merged in those remaining. Shares were assignable and held as personal estate, being vested in trustees to hold until the nominees were reduced to seven, when the holders of the shares became entitled to a conveyance in fee in equal proportions. Early life insurance efforts in America also included projects for annuities to provide for aging clergy and their widows, generally established as ecclesiastical annuity societies.¹⁸

¹⁷ [An Estimate of the Degrees of the Mortality of Mankind, Drawn from Curious Tables of the Births and Funerals at the City of Breslaw; With an Attempt to Ascertain the Price of Annuities upon Lives. By Mr. E. Halley, R.S.S. : Halley, E. : Free Download, Borrow, and Streaming : Internet Archive](#) Retrieved 30 September 2024.

¹⁸ First in the United States was the Presbyterian Ministers' Fund, established in the city of Philadelphia in 1716. https://hsp.org/sites/default/files/legacy_files/migrated/findingaid3101presbyministers.pdf. Retrieved September 29, 2024.

ENGLISH TRANSLATION OF THE EARLIEST KNOWN
CONTRACT OF INSURANCE*

In the name of God, Amen. I, Georgius Lecavellum, citizen of Genoa, acknowledge to you, Bartholomeus Bassus, son of Bartholomeus, that I have received and accepted from you in Genoa, one hundred and seven pounds (of silver) as a free and friendly loan. I renounce every advantage in law of requiring proof of having acquired, accepted or counted said money. These one hundred and seven pounds, in Genoa, or its equivalent in money, I agree and promise in solemn covenant to return and restore to you or your acknowledged messenger by myself or my representative.

Being well preserved and sound in mind, that if your ship, called the Santa Clara, which is now being prepared in the port of Genoa, God willing, to go and sail presently to Majorca, shall have gone and sailed, having been navigated by direct route from the port of Genoa to Majorca, shall have arrived at that place safe and sound before the expiration of the next six months coming, then in that case the present instrument is null and void as if it had not been made. I personally assume all the risk and responsibility for said amount of money until said boat shall have arrived at Majorca, being navigated by direct route as above. And also if said boat shall be safe and sound in some other place, before said six months, the present instrument is likewise null and void as if it had not been made. And likewise if said boat shall have changed its course said instrument is null and void and as if it had not been made.

In said manner and under said conditions I promise to make said settlement, otherwise I promise to you to pay and incur the penalty of double the stipulated amount of said money together with restitution of damages and expenses which may arise on that account or be sustained in litigation, the aforesaid remaining secure under the pledge and security of my property, goods and possessions.

Made in Genoa, in a room in the house of Carlus and Bonifacus brothers of Ususmares, in the year from the birth of our Lord 1347, following the custom in Genoa, on the 23d. day October about eventide.

Witnesses Nicolaus of Tacius, draper, and Johannes of Rachus son of Bonanatus a citizen of Genoa.