

BURIED WITH PROPERTY

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ABSTRACT

If you were going to be buried with one prized possession, what would it be? Your diamond engagement ring? What if you were wealthy—would it be your favorite Ferrari, the priceless Picasso, or the ruby slippers? These days, caskets are mass-produced with memory drawers and secret compartments—perfect for a special keepsake.

Fundamental legal tenets conflict when a testator directs that property be buried with them. On the one hand, the law of decedents' estates generally seeks to carry out the testator's intent and supports testamentary freedom. The Restatement proclaims that "American law does not grant courts any general authority to question the wisdom, fairness, or reasonableness of the donor's decisions about how to allocate his or her property."¹ On the other hand, an established restriction on testamentary freedom is that a testator's directions may not violate public policy. Burying property may encourage grave robbing or cause excessive economic waste. This Article explores this largely ignored topic and proposes a method of analysis.

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INTRODUCTION

Any last requests? Would you want to be buried wearing your diamond engagement ring? Or in your favorite Ferrari, holding the priceless Picasso, and wearing the ruby slippers?²

2. See *Man Indicted for Stealing Dorothy’s Ruby Slippers from Wizard of Oz*, GUARDIAN (May 17, 2023, 4:46 PM), <https://www.theguardian.com/us-news/2023/may/17/ruby-slippers-wizard-of-oz-stolen> (reporting that in 2023, following a theft, federal prosecutors estimated the market value of one pair of the slippers worn by Judy Garland in the 1939 musical *The Wizard of Oz* was \$3.5 million).

The last request query is a popular TV and movie trope, asked before the firing squad shoots, the hangman pulls the lever, or the executioner swings the ax.³ While it may seem cliché, it is appropriate for an estate planning attorney helping a client plan for the big finish to ask, “Any last requests?”⁴ After all, a last will and testament “speaks at death.”⁵

Archeologists report we’ve been burying people with possessions for over 10,000 years.⁶ In modern times, people have asked to be buried in their car, astride their motorcycle, with diamonds and jewels, wearing priceless clothing, and clutching valuable collectibles.⁷ Nevertheless, the law and scholarly commentary on this type of last request is sparse.

In the only reported case, a court concluded the testator’s direction to be buried with her diamonds and jewels would encourage grave robbing, and therefore the direction was invalid because it violated public policy.⁸ Other authorities suggest the burial of property may be contrary to public

3. See *Last Request*, TV TROPES, <https://tvtropes.org/pmwiki/pmwiki.php/Main/LastRequest> (last visited Feb. 20, 2024) (observing that the “opportunity may be offered to you . . . out of personal kindness or cultural tradition” and listing three *James Bond* films each with a “last request” scene).

4. See Tanya D. Marsh, *You Can’t Always Get What You Want: Inconsistent State Statutes Frustrate Decedent Control Over Funeral Planning*, 55 REAL PROP. TR. & EST. L.J. 147, 147 (2020) (stating that planning for the funeral and related matters is “often a neglected aspect of estate planning”).

5. *Bullis v. Downes*, 612 N.W.2d 435, 439 (Mich. Ct. App. 2000); Karen J. Sneddon, *Dead Men (and Women) Should Tell Tales: Narrative, Intent, and the Construction of Wills*, 46 ACTEC L.J. 239, 272 (2021).

6. See *Introduction to Burial Archeology*, SPOILHEAP, <http://www.spoilheap.co.uk/burial.htm> (last visited Feb. 22, 2024) (discussing both the Upper Paleolithic period, from 10,000 to 40,000 years ago, and the Mesolithic period, which was 8,000 to 10,000 years ago); SARAH MURRAY, MAKING AN EXIT: FROM THE MAGNIFICENT TO THE MACABRE—HOW WE DIGNIFY THE DEAD 126 (2011) (reporting that a “bison leg with the flesh still attached . . . in the tomb of a Neanderthal man who lived roughly seventy thousand years ago” was likely included as a sign of respect).

7. See *infra* Section II.B.

8. *In re Meksras’ Estate*, 63 Pa. D. & C.2d 371, 373 (Ct. Com. Pl. 1974); Lior Jacob Strahilevitz, *The Right to Destroy*, 114 YALE L.J. 781, 800–01 (2005) (stating that *Meksras* was the only reported case on this topic). Westlaw searches using “Meksras” and “Sandra Ilene West” as the search terms in the “cases” database, at the time of this Article’s submission, found no recent reported cases involving a testator making this type of last request. See <https://next.westlaw.com/Search/Home.html?> (select “All States” and “All Federal” from jurisdiction; then enter (“Meksras” “Sandra Ilene West”) into search bar; and then press enter). As discussed below, there have been several reported cases involving a testator’s direction to *destroy* property at death. See *infra* Section IV.A.

policy and therefore void because of the economic waste.⁹ This is the first law review article focused primarily on the enforceability of a last request to be buried with a prized possession. It will consider different ways to communicate these directions, including in a last will, in a document incorporated in a last will, in a trust, and in other ways, and this Article will propose a method of analysis for deciding if such a last request is valid or void.

Part I of this Article describes the related and strangely complex law of a testator making even routine directions for the disposition of their remains and directions for their funeral and related matters. Part II explores the possible motives for being buried with a prized possession, and it discusses requests decedents have made. Part III describes how these directions may be structured and expressed (whether in a last will or otherwise) and the steps that may be taken to discourage grave robbing.

Part IV surveys the authorities considering whether similar directions are void under the public policy doctrine because of economic waste. Based on existing authorities, this Article proposes a method of analysis for deciding whether a particular last request of this sort violates public policy. In conclusion, this Article observes that views on final dispositions and funerals are undergoing revolutionary changes, anticipates the next revolution, and considers its likely impact on this type of last request.

I. THE DEAD MUST RELY ON THE LIVING TO CARRY OUT THEIR BURIAL INSTRUCTIONS

An old joke:

A funeral director was asked, “What happens . . . if the deceased has left instructions for a very simple funeral, but the survivors insist on something more elaborate?” The funeral director

9. See, e.g., Abigail J. Sykas, Note, *Waste Not, Want Not: Can the Public Policy Doctrine Prohibit the Destruction of Property by Testamentary Direction?*, 25 VT. L. REV. 911, 933, (2001); Kaity Y. Emerson & Kevin Bennardo, *Unleashing Pets from Dead-Hand Control*, 22 NEV. L.J. 349 (2021) (considering directions to destroy property at death).

answered, “Well, at a time like that, who are you going to listen to?”¹⁰

The funeral director’s response was consistent with a reported case,¹¹ and the law generally supports this result.¹²

There are no published judicial opinions addressing whether even a clearly reasonable direction in a last will to bury property¹³ with the decedent: (i) creates a binding legal obligation; (ii) creates a discretionary right or a power that a living person may follow with impunity; or (iii) provides no protection to the living person who chooses to follow a direction which reduces the amount otherwise passing to another beneficiary. As a result, it is appropriate to consider the legal effect of other directions at death.

The dead traditionally speak through a last will, and a last will grants great powers to a decedent to direct the disposition of their *property*. “[T]he United States grants broad rights to people to control their *property* after death, [whereas] virtually every other country in the world limits these rights in a number of important ways.”¹⁴ In the United States, there are some restrictions that require minimum amounts pass to a surviving spouse or a dependent child.¹⁵ Otherwise, a decedent is free

10. Tanya K. Hernandez, *The Property of Death*, 60 U. PITT. L. REV. 971, 971 (1999) (quoting JESSICA MITFORD, *THE AMERICAN WAY OF DEATH* 181–82 (1963)).

11. See *Holland v. Metalious*, 198 A.2d 654, 655–56 (N.H. 1964) (rejecting the clause in the decedent’s last will that “I direct that no funeral services be held for me” and concluding that “the wishes of her surviving spouse and children [to arrange for a funeral ceremony] should take precedence”).

12. *Id.* at 655.

13. This might include a direction to bury with a wedding band worth an insubstantial amount or wearing a particular suit worth an insubstantial amount. This presumes that all creditors will be paid even if the property is buried.

14. RAY D. MADOFF, *IMMORTALITY AND THE LAW: THE RISING POWER OF THE AMERICAN DEAD* 6 (2010) (emphasis added). “[M]ost countries limit the ability of people to direct their property after death by imposing systems of forced succession, which require that a large [percentage] of their property (commonly up to 80%) be given to family members in designated shares.” *Id.* at 6–7.

15. Regardless of the terms of the testator’s last will and other estate planning documents, the testator’s surviving spouse typically is entitled to an elective share. ROGER W. ANDERSEN & IRA MARK BLOOM, *FUNDAMENTALS OF TRUSTS AND ESTATES* 323 (6th ed. 2022) (“[S]hares of one-third or one-half are common.”). Also, surviving spouses and dependent children often are entitled to a statutory support amount, for example, based on nine-month support, and surviving spouses may be entitled to a statutory homestead allowance and specific items of “exempt” property such as clothing, books, appliances, and other household items. *Id.* at 42–44. The surviving spouse’s elective share right (and the

to disinherit their relations and dispose of their remaining property as they wish, provided the disposition is not illegal or contrary to public policy.¹⁶

In contrast to the decedent's broad powers to transfer property to the living or for charitable causes, as explained in this Part, a testator's directions regarding funeral, burial, memorial, prayers, and related matters generally are non-binding, and the executor and beneficiaries may or may not follow them, at their discretion.¹⁷ This difference flows naturally from the timing of the burial process on the one hand, and the probate process for transferring property on the other.

In regard to the timing of burials, in the United States, most decedents are buried within one week, or maybe within two weeks if close relatives must travel from out of town, or there are other extenuating circumstances.¹⁸ Members of some religious faiths oppose embalming and bury their dead within twenty-four hours.¹⁹

In regard to distributing property under the probate system, it can take over a year (and sometimes much longer).²⁰ The probate process for transferring property does not really begin until the court appoints an

statutory allowances) may be unenforceable according to the terms of a valid prenuptial agreement. See ROBERT H. SITKOFF & JESSIE DUKEMINIER, *WILLS, TRUSTS, AND ESTATES* 544–45 (10th ed. 2017).

16. Historically, there was another restriction. So-called “mortmain statutes” limited the percentage of the decedent's estate that could be left to charity (for example, 50%), or limited gifts made to charity within a specific period of time before death (to restrict death-bed transfers). ANDERSEN & BLOOM, *supra* note 15, at 368; see, e.g., *In re Estate of Rothko*, 372 N.E.2d 291 (N.Y. 1977) (demonstrating a family's objection to excessive charitable gifts); Jeffrey G. Sherman, *Can Religious Influence Ever Be “Undue” Influence?*, 73 BROOK. L. REV. 579, 606 (2008) (using New York law as an example of a mortmain statute with a 50% limit). These statutes have been repealed. See ANDERSEN & BLOOM, *supra* note 15, at 368.

17. See *infra* notes 40–42 and accompanying text.

18. *How Long Can You Delay a Funeral?*, BEYOND THE DASH BLOG (May 12, 2021), <https://beyondthedash.com/blog/funeral-planning/how-long-can-you-delay-a-funeral/6112>.

19. See *Muslim Funeral Traditions*, EVERPLANS, <https://www.everplans.com/articles/muslim-funeral-traditions> (last visited Feb. 22, 2024); Lisa Alcalay Klug, *Jewish Funeral Customs: Saying Goodbye to a Loved One*, JEWISH FED'N OF GREATER METROWEST N.J., <https://www.jfedgmw.org/jewish-funeral-customs-saying-goodbye-to-a-loved-one/> (last visited Feb. 22, 2024); see also BEYOND THE DASH BLOG, *supra* note 18 (“[A]fter [twenty-four] hours the body will need some level of embalming.”).

20. See SITKOFF & DUKEMINIER, *supra* note 15, at 48 (“[A] study of probate matters in Alameda County, California, in 2008 and early 2009 . . . found that testate estates took an average of 16 months to close. . . .” (citing David Horton, *In Partial Defense of Probate: Evidence from Alameda County, California*, 103 GEO. L.J. 605, 648–52 (2015))).

executor.²¹ Before the court will appoint an executor, an applicant must file the death certificate and a petition for letters testamentary to act as executor with the court.²² The petition typically must include various items of information, including the names and addresses of all the beneficiaries of the last will and all the persons who would take in intestacy if there is no valid will.²³ Depending on the jurisdiction, it may take weeks, or even a month or more, for the court to issue letters testamentary allowing the person appointed as executor to begin to deal with the decedent's property and otherwise act on behalf of the estate.²⁴ As a result, when funeral, disposition, and memorial decisions need to be made, there typically will be no executor. A related consequence is that the decedent's financial resources may not be available to pay funeral, burial, and memorial costs at that time.²⁵

Thus, the law of last wills and the probate system provide the dead with great powers to control the disposition of their *property*, but as explained in this Part, the living generally have discretion when it comes to burial, funeral, and memorial matters.

A. *Disturbingly Complex Law When the Testator Requests Even a Routine Disposition*

"We're all going to die!"²⁶ Death is inevitable and universal. Lawmakers have had the timeline of human history to make clear rules for this most ubiquitous of all transactions involving every person, once and only once. In the United States, approximately 3.4 million people,

21. See Dale C. Doerhoff, *Intestate Heirs Entitled to Actual Notice of Probate and Other Recent Developments*, 52 J. MO. BAR 133, 133–34 (1996).

22. See *id.*

23. See *id.* at 133.

24. See e.g., Albert J. Emanuelli, *The Surrogate's Corner*, 25 WESTCHESTER BAR J. 29, 49 (1998) (discussing a case in which the petitioner filed an application for letters testamentary on December 13, 1995, and the court issued letters testamentary on January 29, 1996).

25. See *infra* Section I.C (discussing payment of disposition and funeral expenses). As a practical matter, funeral homes often accept an assignment of the death benefit under a life insurance policy from the beneficiary of the policy. *How to Use Life Insurance to Pay for Funeral Expenses*, FUNERALCITY (Jan. 9, 2024), <https://www.funeralcity.com/blog/how-to-use-life-insurance-to-pay-for-funeral-expenses/>.

26. Eddy R. Smith, *We're All Going to Die*, 32 ME. BAR J. 13, 13 (2017). The oldest living person lived 122 years. *Meet the World's Longest Lived*, UNIV. S. CAL.: SUPERAGERS, <https://gero.usc.edu/cga/superagers/the-worlds-longest-lived/> (last visited Jan. 29, 2024).

which is about 1% of the total population, die each year.²⁷ Yet the law regarding the disposition of human remains can be wickedly complex even when the decedent left typical directions.

If anything is yours, it must be your body.²⁸ But the law often does not allow you to control the disposition of your own body, during life or at death. A few examples—you can sell your blood, but you cannot sell your spare kidney;²⁹ if the doctor amputates an arm or leg, the former appendage may not belong to you;³⁰ and you cannot validly direct that your body will be sold for parts after your death, but you can make anatomical gifts.³¹

At the heart of the matter is the legal system's inability to conclude that your body is property, and that you own that property.³² This traces back to at least the English case of *Williams v. Williams*,³³ in which the decedent stated, in a document incorporated by reference in his last will that upon his death, his friend Eliza should arrange for his body to be cremated.³⁴ In defiance of his wishes, and without consulting Eliza, his

27. *Deaths and Mortality*, CTRS. FOR DISEASE CONTROL & PREVENTION (Nov. 6, 2023), cdc.gov/nchs/fastats/deaths.htm. The total United States population is approximately 341 million people. *U.S. Population 1950–2024*, MACROTRENDS, macrorends.net/countries/USA/united-states/population (last visited Jan. 29, 2024). Worldwide, “about 55.3 million [people die] per year—151,600 a day, 6,316 an hour, 105 a minute, and nearly 2 per second.” Garry Rodgers, *Eight Effective Ways to Dispose of a Body*, HUFFPOST, https://www.huffpost.com/entry/eight-effective-ways-to-d_b_9505752 (Mar. 20, 2017).

28. MADOFF, *supra* note 14, at 12 (“Nothing is more quintessentially ‘ours’ than our bodies. We may have nothing [else], but we all have a body in which we live.”).

29. David A. Mapow, Note, *Do People Have Ownership Over Their Body Parts and If So, Can the State Control Their Ultimate Disposition in the Interest of Public Health and Safety?*, 16 RUTGERS J.L. & RELIGION 114, 118 (2014) (“[B]lood is a commodity and therefore, people do have a recognized property interest. . . . [T]he person who ‘makes’ the blood can sell it, [but] other organs and tissues cannot be sold.”).

30. *Id.* at 114 (“Several scholarly articles . . . advocat[e] for the position that a person maintains an ownership interest in their body parts [But] some debate exists.”); *id.* at 136 (pointing out that the government has an interest in disposing of medical waste and making the parts and tissue available for medical research).

31. See MADOFF, *supra* note 14, at 28–32.

32. See Hernandez, *supra* note 10.

33. *Williams v. Williams* [1882] 20 Ch 659 (Eng.), as cited in MADOFF, *supra* note 14, at 17.

34. *Id.* The technology surrounding cremation was different in 1882 than it is today. In *Williams*, the decedent’s last will directed that his body should be burned under a pile of wood, and his friend Eliza should store the remains in a Wedgwood vase. *Id.*; see also MADOFF, *supra* note 14, at 17.

family buried him.³⁵ Eliza petitioned the court to set things rights.³⁶ The court rejected the decedent's directions and Eliza's petition, and instead the court adopted the doctrine *corpus nullius in bonis*—the “body belongs to no one.”³⁷ The court stated, “there can be no property in [a] dead body[.]” and “a [person] cannot by [last] will dispose of [their] dead body. If there be no property in a dead body it is impossible that by will or any other instrument the body can be disposed of.”³⁸

The United States largely adopted this approach from the English common law.³⁹ Language in some U.S. cases provides some support for a testator's general common law right to direct one method of disposition, namely burial, and to specify the state in which they will be buried,⁴⁰ but even this limited “right” to direct “is more of a hope than a promise.”⁴¹ “[A] testator's directions for the disposal of his remains [is] merely a request without probative effect.”⁴² One commentator asserts that the ability to make anatomical gifts at death, or to donate one's body to science, both as permitted under specific statutes, “conflicts with the common law perception that bodies [are] not property.”⁴³

35. *Williams*, [1882] 20 Ch at 661.

36. *Id.*

37. *Id.* at 659; MADOFF, *supra* note 14, at 16–17.

38. *Williams*, [1882] 20 Ch at 662–63, 665.

39. MADOFF, *supra* note 14, at 16.

40. See Marsh, *supra* note 4, at 158–59 (citing *Wood v. E.R. Butterworth & Sons*, 118 P. 212, 214 (Wash. 1911)) (following the decedent's direction in his last will to be buried in South Dakota, although his surviving wife wanted to bury him in Seattle); see also *In re Estate of Whalen*, 827 N.W. 2d 184, 193–94 (Iowa 2013) (indicating that Iowa's common law would follow the decedent's direction, in her last will, to be buried in Montana, but the court held that the decedent should be buried in Iowa under the Iowa statute granting control to her husband); Timothy J. Farmer, Note, *Don't Die in Iowa: Restoring Iowans' Right to Direct Final Disposition of Their Bodily Remains*, 100 IOWA L. REV. 1813, 1823–34 (2015) (discussing *In re Estate of Whalen* in detail).

41. MADOFF, *supra* note 14, at 18; see also Marsh, *supra* note 4, at 158 (“While the idea that every person shall be decently disposed of is described as a ‘right,’ the idea that a person may dictate the method of [the] disposition [of their corpse] is most often described in non-binding terms.”); B.C. Ricketts, Annotation, *Validity and Effect of Testamentary Direction as to Disposition of Testator's Body*, 7 A.L.R.3d 747, 748, § 1(a) (1966) (“Although in the United States, courts have almost always recognized the right of a person to make a testamentary disposition of [their] dead body, the right appears to have been ‘more honoured in the breach than in the observation.’”).

42. Ricketts, *supra* note 41, § 1(b); see also 25A C.J.S. Dead Bodies § 17 (2023) (“[L]egal compulsion may not attach to the wishes or directions of a decedent as to [their] interment . . .”).

43. Mapow, *supra* note 29, at 119.

As a rationale for this “nobody owns a body” approach, scholars point out that this common law approach avoids some potentially undesirable results. For example, it prevents body parts and entire cadavers from being sold to the highest bidder in the free-market economy.⁴⁴ Scholars also argue that selling parts for transplant may be inappropriate, although other scholars argue that the current system is not perfect.⁴⁵ Furthermore, the “nobody owns a body” approach can block disturbing testamentary desires such as a testator’s dream that their cadaver will be stuffed and placed on display in a glass case. Nevertheless, that is exactly what was done with the corpse of famous nineteenth-century English philosopher Jeremy Bentham.⁴⁶

On the other hand, the “nobody owns a body” approach can create problems. For example, historically, when medical students and others were grave robbing, body-snatching,⁴⁷ and dissecting numerous cadavers which loved ones had carefully buried, there was no one with legal standing to complain in the absence of special laws.⁴⁸ More relevant today, it prevents a testator from controlling the method, place, and details of disposition of the corpse⁴⁹ and prevents them from having the peace of mind that might flow from believing they can control their farewell (or last hurrah).⁵⁰

Some memorable examples highlight a testator’s inability to control these matters. The author of the best-selling novel *Peyton Place* wished to be buried with no funeral, but a court rejected her wishes and approved a ceremony.⁵¹ When he died in 1955, Albert Einstein wished to be cremated, but a pathologist removed part of his brain during an autopsy

44. *Id.*

45. See, e.g., *id.* at 136–37; William Boulier, *Sperm, Spleens, and Other Valuables: The Need to Recognize Property Rights in Human Body Parts*, 23 HOFSTRA L. REV. 693, 696 (1995) (recommending that “courts recognize that there can be a true property interest in the human body, particularly one’s own”); Steve P. Calandrillo, *Cash for Kidneys? Utilizing Incentives to End America’s Organ Shortage*, 13 GEO. MASON L. REV. 69, 69–70 (2004).

46. MADOFF, *supra* note 14, at 14; see also SITKOFF & DUKEMINIER, *supra* note 15, at 515.

47. MADOFF, *supra* note 14, at 24–26 (reporting that this practice also was known as “resurrectionism” and was most prevalent from approximately 1785 to 1885).

48. *Id.* at 26 (“Because the dead [body] belonged to nobody, no one had the legal authority to complain when a body was stolen.”).

49. See *id.* at 18 (emphasizing that the decedent has no more than a “hope”).

50. See Strahilevitz, *supra* note 8, at 802 (discussing the “utility” that a person enjoys from believing they will be buried with an item of property).

51. See *Holland v. Metalious*, 198 A.2d 654, 656 (N.H. 1964), discussed in MADOFF, *supra* note 14, at 15–16.

and kept it.⁵² Eventually, the pathologist sliced Einstein's brain into more than 200 pieces and distributed them to scientists throughout the world.⁵³ In 2018, an author wrote a book titled *Finding Einstein's Brain*.⁵⁴

B. How the Living Control Disposition of the Dead

As a result of refusing to apply the usual rules of property ownership, lawmakers have created a special “quasi-property” system to govern the disposition of a corpse.⁵⁵ In general, the dead cannot control the disposition,⁵⁶ and a designated agent or statutory proxy (usually the surviving spouse, and if none, the next of kin) has only limited authority—they are only authorized to make a socially acceptable disposition, which traditionally has included only some form of burial, cremation, or donation to science.⁵⁷ This does provide some protections. Criminal charges were brought against a man who disposed of his sister's corpse by shoving it into their home furnace.⁵⁸ Also, a group was found to have violated a criminal statute because they left a corpse on a mountain top to be picked apart by carrion birds.⁵⁹ In addition, a federal statute prohibits the purchase of body parts, which effectively forbids the sale of body parts.⁶⁰

52. See MADOFF, *supra* note 14, at 15.

53. Brandon Specktor, *Where Is Einstein's Brain?*, LIVE SCI. (Nov. 2, 2022), <https://www.livescience.com/where-is-albert-einstein-brain>.

54. FREDERICK E. LEPORE, *FINDING EINSTEIN'S BRAIN* (2018).

55. See Michelle Bourianoff Bray, *Personalizing Personality: Toward a Property Right in Human Bodies*, 69 TEX. L. REV. 209, 225 (1992) (“American courts have traditionally recognized a ‘quasi-property’ right in a corpse, enforcing a family's right of possession but preventing commercial exploitation of the corpse.”); Ricketts, *supra* note 41, § 1(b), at 749.

56. See MADOFF, *supra* note 14, at 18.

57. See Susan E. Looper-Friedman, “Keep Your Laws off My Body”: *Abortion Regulation and the Takings Clause*, 29 NEW ENG. L. REV. 253, 276 (1995) (discussing the quasi-property “right to claim [a] corpse for purposes of burial or cremation”).

58. *State v. Bradbury*, 9 A.2d 657, 659 (Me. 1939), discussed in MADOFF, *supra* note 14, at 20–21.

59. Khushbu Solanki, *Buried, Cremated, Defleshed by Buzzards? Religiously Motivated Excratory Funeral Practices Are Not Abuse of Corpse*, 18 RUTGERS J.L. & RELIGION 350, 351–52, 358 (2017) (responding to *Serpentfoot v. Newy*, 2013 GA S. Ct. Briefs LEXIS 450 (2013) in which “the Supreme Court of Georgia . . . found excarnation a ‘morally and legally reprehensible’ violation of Georgia's criminal Abuse of Corpse statute,” and observing that this practice is mandated in the religion of Zoroastrianism).

60. National Organ Transplant Act, 42 U.S.C. § 274e (2016).

The range of socially acceptable methods of disposition may be expanding, which may make the ability to choose more important. Historically, in the United States, burial was the dominant disposition method.⁶¹ In 1960, the U.S. cremation rate was only 3.56%.⁶² In 1963, Jessica Mitford published her best-selling expose, *The American Way of Death*, asserting that the U.S. funeral process was conducted largely for the benefit of the funeral home industry at great cost to consumers.⁶³ Some commentators credit the book, updated in 1998, along with other factors, for gradually changing perceptions and practices.⁶⁴ In hindsight, one might say there has been a revolution.⁶⁵ As recently as 2005, over 61% of decedents still were buried, and only 32% were cremated, with the other 7% likely donated to science.⁶⁶

Today, traditional burial no longer dominates. Cremation overtook burial as the favored method of disposition around 2015.⁶⁷ In 2022, an industry group reported that cremation was the preferred method 59.3% of the time, followed by burial at 35.7%.⁶⁸ The National Funeral Directors Association projects that by 2040, almost 80% will be cremated, in some manner, and less than 17% will be buried, in some manner.⁶⁹ There are now a variety of ways to be cremated and an assortment of ways to be buried. In addition to traditional cremation and traditional burial, depending on state law, available options can include aquamation

61. See Marsh, *supra* note 4, at 158 (observing that English ecclesiastical law required providing a “decent burial” and “the definition of a ‘decent burial’ . . . simply required ‘burial [with]in the consecrated ground of a churchyard’”). “By the 1970s, cremation rates were [still] just around 5 percent.” Wayne Read, *Chronicling the Substantial Rise in Cremation Rates Across the United States*, ORD. GOLDEN RULE (Aug. 4, 2022), https://www.ogr.org/index.php?option=com_dailyplanetblog&view=entry&category=blog&id=294.

62. Read, *supra* note 61.

63. JESSICA MITFORD, *THE AMERICAN WAY OF DEATH* 180–83 (1963).

64. Tanya D. Marsh, *The Death Care Revolution*, 8 WAKE FOREST J.L. & POL’Y 1, 2 (2018).

65. *Id.* at 1–2 (calling the book a “historically significant critique”); see also Ann M. Murphy, *Please Don’t Bury Me Down in that Cold Cold Ground: The Need for Uniform Laws on the Disposition of Human Remains*, 15 ELDER L.J. 381, 388–89 (2007).

66. See NAT’L FUNERAL DIRS. ASS’N, 2022 NFDA CREMATION & BURIAL REP. 7 (2022).

67. See *id.* (explaining that “[i]n 2015, the national cremation rate surpassed the casketed-burial rate for the first time in U.S. history,” with the cremation rate climbing to 47.9% and the burial rate declining to 45.2%).

68. *Id.* at 9.

69. *Id.* at 7.

(sometimes called “resomation”),⁷⁰ freezing (sometimes called “promession”),⁷¹ composting,⁷² cryogenic freezing,⁷³ shooting ashes into space,⁷⁴ using ashes in reef restoration,⁷⁵ mummification and plastination (including being displayed in exhibits),⁷⁶ and various types of “green burial.”⁷⁷

State law typically specifies who among the living can make the disposition directions, and one commentator asserts this “reflects the [funeral home] industry’s need for certainty.”⁷⁸ Professor Tanya D. Marsh has surveyed the laws of all fifty states and found that “[f]orty-two states and the District of Columbia . . . provide that the decedent has the right to *express a personal preference*,”⁷⁹ and only six states indicate in some way that the decedent has a “statutory right to determine the disposition of their own remains.”⁸⁰ Another leading scholar has observed that if a decedent has any “rights,” they are restricted to only “reasonable” choices or are subject to other similar severe restrictions.⁸¹ As a practical matter, a “right” for the dead is unenforceable if no living person will take action to enforce it.⁸² According to the survey, twenty states allow a decedent to purchase a prepaid funeral plan which is another method for a decedent

70. See Stephanie Pappas, *After Death: 8 Burial Alternatives that Are Going Mainstream*, LIVE SCI. (Sept. 9, 2011), <http://www.livescience.com/15980-death-8-burial-alternatives.html> (describing “a process that uses heat, pressure, and chemicals to liquefy a body . . . leaving behind sterile remains that can be poured into the [municipal] wastewater system”).

71. *Id.*

72. Addy Bink, *Here’s Where Human Composting Is Legal, and the States Still Considering It*, HILL (May 6, 2023, 1:00 PM), <https://thehill.com/homenews/3988482> (listing California, Colorado, New York, Oregon, Vermont, and Washington as legalizing composting of a human corpse).

73. MADOFF, *supra* note 14, at 48–54.

74. See Pappas, *supra* note 70.

75. *Id.*

76. *Id.*

77. See generally *id.*; Rodgers, *supra* note 27 (discussing many methods of disposition).

78. Marsh, *supra* note 4, at 159.

79. *Id.* (emphasis added).

80. *Id.* at 160 (listing Arizona, Florida, Kansas, New York, Oklahoma, and South Dakota).

81. MADOFF, *supra* note 14, at 18.

82. *Id.* (observing that all these statutes “provide no protection where [the] people [who were willing to carry out the decedent’s wishes] are missing” because, for example, they have predeceased).

to express their wishes.⁸³ This seems to confirm the general statement of one scholar who observed, “people . . . have no enforceable rights to control their bodies after death.”⁸⁴

While a decedent cannot control disposition, a decedent generally can authorize a person to make the decisions. “Forty-eight states and the District of Columbia have statutes that acknowledge that a decedent may appoint a designated agent in certain circumstances.”⁸⁵ Nevertheless, the designated agent could decline the appointment (unless that person otherwise has a binding obligation to dispose of the remains under state law, such as a surviving spouse), and even if the designated agent acts, they can exercise discretion.⁸⁶ If the decedent fails to appoint an agent, “[t]he vast majority of states have a statute that determines who shall take custody and control of [the] remains . . . and make decisions regarding their disposition . . . referred to . . . as the ‘right of sepulture.’”⁸⁷ In general, this statutory proxy will be the surviving spouse, and if there is none, then it will be the next of kin.⁸⁸

One more circumstance to consider is if the decedent entered into a pre-need funeral contract with a funeral home and prepaid.⁸⁹ One scholar argues that in this situation, the decedent’s directions *should* be legally binding.⁹⁰ In these situations, the residuary beneficiary might have a financial incentive to follow the prepaid contract simply to avoid forfeiting what was paid. Nevertheless, the residuary beneficiary could weigh the future net costs of following the testator’s intent under the prepaid plan, against the cost of following a method of disposition which the residuary beneficiary would prefer—if the former was cheaper than the latter, the residuary beneficiary might follow the decedent’s prepaid plan. On the other hand, if the cost of the beneficiary’s preferred method will be lower than the *future* expected costs from following the prepaid

83. See Marsh, *supra* note 4, at 161; Victoria J. Haneman, *Prepaid Death*, 59 HARV. J. ON LEGIS. 329, 351–52 (2022) (providing a detailed analysis of pre-need funeral plans).

84. MADOFF, *supra* note 14, at 6.

85. Marsh, *supra* note 4, at 164–65.

86. See *id.* at 158, 163–65.

87. *Id.* at 163–64.

88. 25A C.J.S. *Dead Bodies* § 12 (2023) (“Generally, the right of burial belongs to the surviving spouse of the deceased In the absence of a spouse, the next of kin bear both the burden and the right.”).

89. See Haneman, *supra* note 83, at 376–77 (providing a detailed analysis of prepaid funeral plans).

90. *Id.*

plan, the beneficiary's economic incentive would be to disregard the prepaid plan.

C. Paying Funeral and Other Disposition Costs

Along with making the arrangements for the disposition of the body comes the need to pay the funeral home and other service and product providers. The executor generally is obligated to pay,⁹¹ but only if the amount is reasonable, the arrangements are not extravagant in light of the decedent's "station in life,"⁹² and the estate's assets are sufficient.⁹³ As discussed earlier,⁹⁴ the executor normally will not have been appointed when these costs must be incurred. Thus, as a practical matter, the executor's obligation to pay will be an obligation to reimburse.

The law obligates the executor, in part, because otherwise the obligations could fall to the government as part of its duty to protect the public health.⁹⁵ Indeed, the government still buries or cremates the indigent population.⁹⁶ "In 2020, around 34,000 people were left to local governments to bury [or cremate or donate to science]."⁹⁷ Approximately 3.4 million people die each year in the United States,⁹⁸ so local

91. See e.g., Rachel M. Kane & Theodore Wyman, *Liability of Estate for Funeral Expenses Generally*, in 33 STAND. PENN. PRACTICE 2d § 157.182 ("[I]n the absence of special circumstances, the decedent's estate is primarily liable for the payment of funeral expenses."). But see H. H. Henry, Annotation, *Liability for Funeral Expenses of Married Women*, 82 A.L.R.2d 873, § 2, at 876 (1962) ("In many jurisdictions . . . the husband is liable for the expenses of burying the wife.").

92. See e.g., 7 N. J. PRAC. WILLS AND ADMINISTRATION § 1272, Westlaw (rev. 3d ed.) ("The estate . . . is chargeable only with the expense of a funeral suitable to the station in life of the deceased and reasonably in the amount when account is taken of the means of the estate.").

93. *Id.*

94. See *supra* notes 20–25 and accompanying text.

95. Mary Ann Barton, *Undertakers of Last Resort: Indigent Burials on the Rise, Denting County Budgets*, NAT'L ASS'N. OF CNTYS., (Dec. 10, 2018), <https://www.naco.org/articles/undertakers-last-resort-indigent-burials-rise-denting-county-budgets> (discussing each county's obligation to bury the "poor, homeless, or unclaimed").

96. *Id.* (reporting that Sullivan County in Tennessee declared it would donate bodies to science or cremate instead of providing a "casket burial"); see Michael A. Morris, Note, *Going Beyond the Grave: A Defense of a Right to a Funeral*, 15 WASH. U. JURIS. REV. 335, 336–37 (2023) (discussing Hart Island as the "potter's field" for New York City's "marginalized" and referring to a funeral as "one last hurrah").

97. Morris, *supra* note 96, at 336.

98. See *supra* note 27 and accompanying text.

governments are burying, or cremating or donating, about 1% of the dead population.⁹⁹

State law generally identifies funeral, burial, and other disposition costs as “claims” against the decedent’s estate with a super-priority before all other creditors.¹⁰⁰ For insolvent decedents, this allows the estate to pay burial expenses even if there are insufficient funds to pay other creditor claims. The claim for funeral, burial, and related expenses is available only for “reasonable” expenses.¹⁰¹ If an estate is insolvent, unpaid creditors have an incentive to challenge the amount spent for disposal as unreasonable.

Even if all creditors are fully paid, the residuary beneficiary (and other beneficiaries) may challenge the amount of funeral, disposition, and memorial costs as excessive.¹⁰² Thus, there can be substantial financial risk for a survivor attempting to follow a decedent’s directions.¹⁰³ A determination of what amount is “reasonable must of necessity vary with the differing circumstances of [the] particular decedent.”¹⁰⁴ If an executor has doubts about the reasonableness of the funeral and disposition costs, one authority suggests commencing a judicial proceeding to challenge the payor and force a court to decide whether to second-guess the payor.¹⁰⁵

Thus, the law fails to provide much assurance to testators that even routine corpse disposition directions and funeral instructions will be honored.¹⁰⁶ Without support from the living, even typical directions may be ignored. A testator’s direction to be buried with a prized possession,

99. *Id.*; see also Morris, *supra* note 96, at 336.

100. MADOFF, *supra* note 14, at 20. *But see* UNIF. PROB. CODE § 3-805 (1969) (providing first priority to claims for estate administration expenses).

101. 17A WEST’S MCKINNEY’S FORMS, *ESTATES AND SURROGATE PRACTICE* § 14.69, Westlaw (updated 2023).

102. See e.g., *In re Baeuchle’s Will*, 82 N.Y.S.2d 371, 378 (Sur. Ct. 1948).

103. As an indication of the uncertainty in this area, one authority states, “[s]ome cases hold that reasonableness is a question of fact or a mixed question of law and fact, while others point out that where the facts are undisputed, a question of law is involved.” A. W. Gans, Annotation, *Amount of Funeral Expenses Allowable Against Decedents’ Estates*, 4 A.L.R.2d 995, 998 § 2 (1949).

104. 17A WEST’S MCKINNEY’S FORMS, *ESTATES AND SURROGATE PRACTICE* § 14.69, Westlaw (updated 2023).

105. *Id.* (acknowledging that if there is no doubt as to reasonableness, the executor should promptly reimburse).

106. JESSE DUKEMINIER ET AL., *WILLS, TRUSTS, AND ESTATES* 464 (8th ed. 2009) (“[A] person now has something more than a hope, but far less than an assurance, that his wishes will be carried out at death if the family objects.”).

which does not violate public policy, likely should be treated similarly to a direction regarding disposition of the corpse and instructions on how to conduct the funeral. In light of the uncertainty, as discussed below, a testator likely should create a financial incentive for the living rather than relying solely on a strongly-worded direction.¹⁰⁷

II. THE DESIRE TO “TAKE IT WITH YOU” AND ITS MODERN EXPRESSIONS

Human existence is dependent on obtaining and using personal property. In a society based on the private ownership of property, it’s no surprise that a person can develop an attachment to a specific item of property. We have multiple words and phrases for such an item—keepsake, memento, talisman, token, good-luck charm, and mascot. We even have a phrase for buried personal property—“grave goods.”¹⁰⁸

Like a quote or a melody, tangible items can evoke a sense of time and place, bringing back fond memories of special occasions or people. These cherished or “endowed” items may have value to one person far in excess of the market value to others.¹⁰⁹ “Most people possess certain objects they feel are almost part of themselves.”¹¹⁰ Different people assigning different values to goods is essential to keep our economy functioning. In a market economy, under the principle of voluntary exchange, one party (the buyer) will value the item more than the other party (the seller).¹¹¹

A. *Motives for Taking Prized Possessions into the Casket*

Many ancient Egyptians “took it with them” into the grave.¹¹² The Egyptians’ practice of burying the dead with objects ranging from

107. See *infra* Section III.B.

108. Mary McMahon, *What Are Grave Goods?*, CULTURALWORLD.ORG, <https://www.culturalworld.org/what-are-grave-goods.html> (Mar. 6, 2024).

109. See Deborah S. Gordon, *Mor[t]ality and Identity: Wills, Narratives, and Cherished Possessions*, 28 YALE J.L. & HUMANS. 265, 276–77 (2016) (“[The item] takes on a meaning that is unrelated to the item’s material worth or market value.”).

110. Margaret Jane Radin, *Property and Personhood*, 34 STAN. L. REV. 957, 959 (1982).

111. See Brooke Tomasetti, *What is Voluntary Exchange?*, CARBON COLLECTIVE, <https://www.carboncollective.co/sustainable-investing/voluntary-exchange> (Apr. 21, 2024) (discussing the economic principle of voluntary exchange and famous eighteenth-century economist Adam Smith, and stating, “[f]or a trade to occur, everyone in the transaction needs to be willing to participate”).

112. McMahon, *supra* note 108.

priceless jewels to common food and drink was motivated, at least in part, by their beliefs about the afterlife¹¹³—a religious inspiration. Also, in ancient Greece, it was customary to place a coin in the decedent's mouth to pay the ferryman for the trip across the River Styx.¹¹⁴

Today, modern motives to take property to the grave likely spring from feelings of nostalgia, attachment, loyalty, sentimentality, or personification of the object. The modern expression of the desire to “take it with you” likely centers around those objects for which we have those feelings.

One legal commentator observed that the living derive substantial “utility” from the belief that a particularly prized possession will be buried with them.¹¹⁵ Despite being known as the “Queen of Mean,” New York City real estate baroness Leona Helmsley arguably demonstrated loyalty and sentimentality in her last will in directing that she be buried “wearing [her] gold wedding band (which is never to be removed from [her] finger).”¹¹⁶ Helmsley also directed that her pet dog (after the dog's death) be buried “next to” her.¹¹⁷ Although the gold wedding band likely will fall from her hand at some point in the decomposition process, presumably Helmsley was expressing loyalty and love for her predeceased husband (and her faithful four-legged companion).

The law recognizes the special feelings people have for particular items of property in various contexts. In a breach of contract action, a

113. *Id.* (“[I]t was believed that people needed to be buried with everything they might need in the afterlife.”); Joshua J. Mark, *Grave Goods in Ancient Egypt*, WORLD HIST. ENCYCLOPEDIA (Apr. 21, 2017), <http://www.worldhistory.org/article/1049/grave-goods-in-ancient-egypt> (“In order to enjoy . . . paradise . . . one would need the same items one had during one's life.”).

114. MADOFF, *supra* note 14, at 4.

115. Strahilevitz, *supra* note 8, at 802 (“[P]eople seem to get a lot of utility, during life, from the thought that they will be buried wearing a wedding ring or that a particular sentimental item will be deposited in their casket.”).

116. *Last Will and Testament of Leona Helmsley*, UNITED SETTLEMENT, https://uniset.ca/misc/helmsley_will.html (last visited Feb. 23, 2024); Ed Pilkington, *Farewell to the Woman They Called the Queen of Mean: Leona Helmsley Dies at 87*, GUARDIAN (Aug. 20, 2007), <https://www.theguardian.com/business/2007/aug/21/usnews>.

117. See *Last Will and Testament of Leona Helmsley*, *supra* note 116. Reportedly, the dog was cremated, and the urn holding the ashes may have been added to the Helmsley mausoleum. See Howard Dale, *Helmsley Mausoleum, Sleepy Hollow Cemetery*, PHOTOGRAPHY, IMAGES & CAMERAS (Nov. 16, 2017), <http://www.aheadworld.org/2017/11/16/Helmsley-mausoleum-sleepy-hollow-cemetery> (reporting that the surviving Helmsley family members have a key to the mausoleum, and that when asked if the urn with the dog's ashes was in the Helmsley mausoleum, a member of the cemetery board stated, “[i]n all honesty . . . we don't know”).

judge or jury may increase the damages based on a party's fondness for the item involved.¹¹⁸ Also, a court may treat an item of property as "unique" because of a party's fondness for it, which can allow the court to award specific performance as a remedy for a breach of contract.¹¹⁹

In addition, a lifetime gift generally is legally complete upon delivery,¹²⁰ but the gift of an engagement ring generally is treated differently because of the special meaning people traditionally place upon it. Because the fiancé and fiancée are deemed to attach special significance to the ring, the ring typically will be treated as a conditional gift, and if the relationship ends without marriage, the recipient must return the ring to the donor.¹²¹ In contrast, the recipient generally may keep other gifts received before the breakup.¹²²

Also, for decades, property law scholars have asserted that items of property can become closely associated with a person's personality, history, values, identity, or to summarize, "personhood."¹²³ They argue this may impact the amount the government must pay to a dispossessed property owner in an eminent domain proceeding,¹²⁴ the imposition of rent controls,¹²⁵ and the inalienability of certain goods or services because they are part of "personhood" and are not merely fungible.¹²⁶

118. See *Windeler v. Scheen Jewelers*, 88 Cal. Rptr. 39, 44–45 (Ct. App. 1970) (awarding extra damages when the jeweler lost certain gem stones during a resetting because the jewels had special historical significance for the family).

119. See Margaret F. Brinig, "Money Can't Buy Me Love": A Contrast Between Damages in Family Law and Contract, 27 J. CORP. L. 567, 577 n.58 (2002).

120. ANDERSEN & BLOOM, *supra* note 15, at 220 ("[T]he donor must deliver the property with the intention to make a gift, and the donee must accept it.").

121. See, e.g., *Cooper v. Smith*, 800 N.E.2d 372, 377 (Ohio Ct. App. 2003).

122. See, e.g., *id.* at 378. But see *Albinger v. Harris*, 48 P.3d 711, 720 (Mont. 2002) (allowing the recipient to keep the engagement ring because concluding otherwise may result in a "disparate impact on women," where women frequently pay various expenses in anticipation of the wedding before the engagement is cancelled).

123. See, e.g., Gordon, *supra* note 109, at 271 n.41 (citing Radin, *supra* note 110).

124. See Mary L. Clark, *Reconstructing the World Trade Center: An Argument for the Applicability of Personhood Theory to Commercial Property Ownership and Use*, 109 DICK. L. REV. 815, 816 (2005).

125. Richard Thompson Ford, Review Essay, *Facts and Values in Pragmatism and Personhood*, 48 STAN. L. REV. 217, 217 (1995) ("[U]sing rent control as an example of personhood in practice . . .").

126. M. Scott Boone, Symposium Review, *Virtual Property and Personhood*, 24 SANTA CLARA COMPUT. & HIGH TECH. L.J. 715, 730 (2007) ("Something that is market inalienable can be given away, but not sold. [Professor] Radin applied [this] theory . . . to sexual services, adoption markets, and surrogacy services.").

B. Actual Burials—Not Even at Death Did They Part

What do people actually take, or at least want to take, into the casket? Leonard Bernstein took a good book.¹²⁷ The value of buried items has ranged from the trivial to the substantial.¹²⁸ The diversity displayed is a sign of the wonderful freedom of expression we enjoy in the United States. Often the perceived value to the decedent seems much greater than the market value. As discussed below, the higher the fair market value, the more likely the direction to bury will violate public policy because of the economic waste.¹²⁹

Sometimes the value of the item is nominal. Oscar-nominated actor Tony Curtis (the father of academy-award winning actor Jamie Lee Curtis) was buried with seven packets of Splenda sweetener.¹³⁰ Comedian George Burns died at the age of 100 and was buried with three cigars in his pocket.¹³¹ Oscar-winning movie star Humphrey Bogart took a whistle with him, perhaps because his leading lady, Lauren Bacall, advised him to “just whistle.”¹³²

President John F. Kennedy, a collector of scrimshaw, was accompanied with a wonderful collectible—a whale tooth carved with the presidential seal.¹³³ “Nearly everything is collected by someone,”¹³⁴ and a collectible may be a very popular choice for burial. Favorite collectibles include stamps, coins, comic books, baseball and other trading cards, sports and movie memorabilia, autographs, wristwatches, pocket watches, and many other items.¹³⁵ Some examples involve property with substantial retail value.¹³⁶ In the only reported case on this topic, Eva

127. *Grave Goods: Famous People Who Were Buried with Unusual Keepsakes*, FUNERAL GUIDE (Feb. 16, 2017) [hereinafter *Grave Goods*], <https://www.funeralguide.co.uk/blog/famous-graves-goods-celebrities> (naming *Alice in Wonderland* as the book).

128. *Id.*

129. *See infra* Section IV.B.1.

130. *Grave Goods*, *supra* note 127 (reporting he also was buried with a Stetson hat, an iPhone, and his Navy medals).

131. *Id.*

132. *Id.*; *see also* Dennis McLellan, *Lauren Bacall, Who Taught Humphrey Bogart How to Whistle, Dies at Eighty-Nine*, L.A. TIMES (Aug. 12, 2014), latimes.com/local/obituaries/la-me-lauren-bacall-20140812-story.html (referring to the 1944 movie *To Have and Have Not*).

133. *Grave Goods*, *supra* note 127.

134. Thomas Eyssell & Daniel Yezbick, *Dad Was a Collector . . . A Guide for Overwhelmed Heirs*, 88 CSA J. 55, 57 (2022).

135. *Id.*

136. *Id.*

Meksras directed in her last will for her executor to insert her “diamonds and other jewelry” into her casket.¹³⁷ Given legal commentators’ observations of laws protecting corpses, graves, and their effects, people likely are routinely buried with expensive rings without any controversy.¹³⁸

In perhaps the most famous instance of burial with valuable property, Hollywood heiress Sandra Ilene West was buried in one of her Ferraris.¹³⁹ Others have been buried in their car or astride their motorcycle.¹⁴⁰ In these situations, routine advice is that the fluids should be drained from the car to “reduce environmental issues.”¹⁴¹ Historically, the Vikings and other seafaring peoples buried some of their dead in boats.¹⁴²

Entertainer Sammy Davis Jr. was buried with \$70,000 worth of jewels,¹⁴³ and singer Whitney Houston was buried with jewels worth \$500,000 to \$750,000 and wearing an expensive designer gown and glittering golden slippers.¹⁴⁴ Movie star Bella Lugosi was buried wearing

137. *In re Meksras’ Estate*, 63 Pa. D. & C.2d 371, 371 (Ct. Com. Pl. 1974); Strahilevitz, *supra* note 8, at 800–01 (reporting in 2005 that *Meksras’ Estate* was the only reported case).

138. See, e.g., Strahilevitz, *supra* note 8, at 802; PERCIVAL JACKSON, *THE LAW OF CADAVERS* 127, 183 (2d ed. 1950).

139. See Madalyn Mendoza, *A Beverly Hills Socialite Was Entombed in Her Ferrari in San Antonio 44 Years Ago*, MY SAN ANTONIO (May 26, 2021, 5:44 PM), <https://www.mysanantonio.com/news/local/article/sandra-west-ferrari-burial-san-antonio-16205455.php>; *Court Approves Ferrari as Coffin*, THE TIMES (SAN MATEO, CALIF.), Apr. 12, 1977, at 16 (reporting that although a new Ferrari would sell for \$20,000, the public administrator’s office estimated the burial car’s value at only \$1,000 due to an accident three years earlier).

140. See Jim Motavalli, *You Can Take It with You, if the Grave Is Deep Enough*, N.Y. TIMES (Feb. 24, 2022), <https://www.nytimes.com/2022/02/24/business/car-burials-funerals.html>; Benjamin Hunting, *Loving Your Car to Death: Can You Be Buried in Your Favorite Vehicle?*, MOTOR TREND (Aug. 14, 2022), <https://www.motortrend.com/features/car-funeral-burial-coffin-replacement/>; Shona Hendley, *Four Unique Stories of People Who Were Buried with Their Vehicles*, CARSALES (Nov. 6, 2022), <https://www.carsales.com.au/editorial/details/four-unique-stories-of-people-who-were-buried-with-their-vehicles-138223/>.

141. Motavalli, *supra* note 140.

142. See George Dvorsky, *Why Did Vikings Bury Two People in Boats on Top of Each Other, 100 Years Apart?*, GIZMODO (Nov. 22, 2019), <https://www.gizmodo.com/why-did-vikings-bury-two-people-in-boats-on-top-of-each-1840005029>.

143. Kate Meyers Emery, *Bones Don’t Lie: More Famous Dead*, BONES DON’T LIE (Dec. 20, 2012), <https://bonesdontlie.wordpress.com/2012/12/20/more-famous-dead/>.

144. Ted Casablanca & Alyssa Toomey, *Who’s Protecting Whitney Houston and Her Jewels?!*, ENEWS (Feb. 28, 2012, 8:47 AM), <https://www.eonline.com/news/297254/Lucy>

his Dracula attire from the classic horror movies; another one of his Dracula capes alone had a pre-auction estimate value of \$1.5 million to \$2 million in 2011 but failed to sell at the auction.¹⁴⁵ One commentator has argued that certain human organs are very valuable, especially to those people needing a transplant.¹⁴⁶ As a result, the commentator asserts that all the people who are buried without donating their viable organs are buried with extremely valuable property.¹⁴⁷

There probably are countless other instances. Industry experts indicate the practice is common.¹⁴⁸ Many families may try to keep publicity to a minimum, perhaps to avoid grave robbing attempts, but more likely they maintain secrecy to avoid sharp criticism on social media¹⁴⁹ and elsewhere.¹⁵⁰

Buckland, *Whitney Houston's Body to Be Encased in Concrete to Stop Grave-Robbers Stealing \$750,000 Worth of Diamonds She was Buried In*, DAILYMAIL, <https://www.dailymail.co.uk/tvshowbiz/article-2137296> (Apr. 30, 2012, 10:54 AM); *Armed Guards Placed Near Whitney Houston's Burial Site: Report*, PAGESIX (Feb. 24, 2012, 6:34 PM), <https://pagesix.com/2012/02/24/armed-guards-placed-near-whitney-houstons-burial-site-report/>.

145. *Grave Goods*, *supra* note 127 (discussing Lugosi's burial); Rebecca Ford, *'Dracula' Star's Iconic Cape Added to Auction*, HOLLYWOOD REP. (Oct. 27, 2011, 1:20 PM), <https://www.hollywoodreporter.com/news/general-news/dracula-stars-iconic-cape-added-254267/> ("The auction pre-sale estimate is \$1,500,000–\$2,000,000."); *Bela Lugosi's Dracula Cape Fails to Sell at Auction*, BELA LUGOSI BLOG (Dec. 19, 2011), <https://beladraculalugosi.wordpress.com/2011/12/19>.

146. See Strahilevitz, *supra* note 8, at 804.

147. See *id.* at 806–07.

148. See, e.g., Marshall Jacobs, *Funerals: Can Things Be Placed in a Casket?*, GARDENS OF BOCA RATON CEMETERY & FUNERAL HOME (May 20, 2017), <https://www.thegardens.com/can-things-placed-casket/>; *Top Ten Items to Place in a Casket*, FIORITTO FUNERAL SERV. (Sept. 5, 2019), <https://fiorittofuneralservice.net/top-ten-items-to-place-in-a-casket/> (stating "[i]t might seem unthinkable to bury [a corpse] . . . with an item of value . . . but many people do," and the items can include "[m]oney, jewelry, and family heirlooms"); Cristy-Lee Macqueen, *You Can Take It with You! The Unique Items People Are Buried with*, ABC NEWS (June 14, 2019, 5:30 PM), <https://www.abc.net.au/news/2019-06-15/the-unique-items-people-are-buried-with/11176586>. One legal commentator agrees. Strahilevitz, *supra* note 8, at 800–01 ("[Under] prevalent social norms . . . people are often buried wearing their wedding rings, expensive clothing, and other items of considerable value."). Another legal commentator disagrees. Gordon, *supra* note 109, at 302 ("[B]urying . . . worldly goods . . . [is] not really [a] popular option[] in modern society.").

149. See Hunting, *supra* note 140.

150. See, e.g., *Court Approves Ferrari as Coffin*, *supra* note 139 (reporting that in the famous Ferrari case, in court, family members opposed the decedent's burial in the car arguing that it would humiliate the family); John H. Langbein, *Burn the Rembrandt? Trust Law's Limit on the Settlor's Power to Direct Investments*, 90 B.U. L. REV. 375, 378 (2010).

III. Directions After Death that Don't Invite the Tomb Raiders

A. *Multiple Ways to Let Survivors Know Before It's Too Late*

Traditionally, decedents use a last will to speak to the living.¹⁵¹ A last will can cover many matters at death, including proclaiming to whom property goes (and whether it passes outright or will be “tied up in trust” and distributed over many years), who should administer the estate assets, and who should become the guardian of minor children. It also can address generally, or in great detail, how to dispose of the corpse, what funeral arrangements should be made, the desire for a tombstone or other tangible (or electronic) memorial,¹⁵² and perhaps desires regarding an event such as a wake or celebration of life.

On the one hand, it may seem that a last will would be the best way to communicate a direction to bury with property as authorities emphasize that the language of a last will is entitled to great respect.¹⁵³ For example, the *Restatement* provides that American law “does not grant courts any general authority to question the wisdom, fairness, or reasonableness of a donor’s decisions about how to allocate his or her property.”¹⁵⁴ Sometimes, this respect for a last will is associated with the formalities required to create a valid last will, such as needing two

(discussing the potential resentment among family members and others resulting from eccentric behavior).

151. The use of a document executed with certain formalities to transfer property at death dates back at least to the English Statutes of Wills in 1540. 1 PAGE ON THE LAW OF WILLS, § 2.14, at 64-65 (2d ed. 2003). “The power to dispose of [property] by last will and testament has always been recognized in [] the United States.” *Id.* § 2.18, at 67.

152. Some people plan for a continuing electronic presence on social media or otherwise. See Stephanie Mlot, *How to Prepare Your Digital Life for Your Death*, PC MAG (June 27, 2023), <https://www.pcmag.com/how-to/how-to-prepare-your-digital-life-accounts-for-your-death> (discussing memorializing your Facebook profile and preserving your online presence on Instagram and X (formerly Twitter) and other platforms).

153. See, e.g., RESTATEMENT (THIRD) OF PROP.: WILLS AND DONATIVE TRANSFERS § 10.1 cmt. c (AM. L. INST. 2003).

154. *Id.*; PAGE, *supra* note 151, §3.11, at 104 (“[T]he testator may dispose of his property by will as he pleases.”); *id.* at 107 (“The fact that the disposition of the testator’s property made by the will is capricious, unjust, spiteful, eccentric, revengeful or injudicious does not of itself render the will invalid.”); see also *In re Estate of Whalen*, 827 N.W.2d 184, 195 (Iowa 2013) (Cady, J., dissenting) (“For centuries the last expression of bodily autonomy has been received with solemnity and honored by our laws to the fullest practical extent when declared with the formality of the last will and testament.”).

competent witnesses signing in the presence of the testator¹⁵⁵ or that the testator wrote the material provisions of the last will by hand.¹⁵⁶

On the other hand, the only reported case on this topic highlights a pitfall with using a last will.¹⁵⁷ In *Meksras' Estate*, the decedent's last will directed burial in a particular cemetery with her "diamonds and other jewelry."¹⁵⁸ The executor (her accountant) failed to insert the diamonds and jewelry into the casket before it was sealed.¹⁵⁹ After the casket was sealed and buried, a court was asked whether the family should dig up the body and insert the diamonds and jewelry.¹⁶⁰ The court refused to order exhumation, and it declared the decedent's direction to bury this property unenforceable on grounds that it violated public policy.¹⁶¹ The court emphasized that a last will is a *public* document,¹⁶² and the terms of a last will could be read by anyone researching the probate court records, including those who might consider robbing a grave.¹⁶³ The court stated:

Notice to the world that a grave site possesses treasure is almost certain to tempt some people and incite others to overt action in attempting to procure the same. From the beginning of recorded civilization, man[kind] has always honored [their] dead. The inviolability of our cemeteries is a matter of public concern. If a practice developed in our State to foster the burying of valuables with a deceased, our cemeteries like the tombs of the Pharaohs will be ravaged and violated. The loved ones of the deceased will experience the horror of the desecration, looting and destruction of burial grounds, heaping indignities on the memory of the dead.¹⁶⁴

155. See ANDERSEN & BLOOM, *supra* note 15, at 136-39.

156. See *id.* at 150-51 (discussing holographic wills recognized in many states).

157. See *In re Meksras' Estate*, 63 Pa. D. & C.2d 371, 372 (Ct. Com. Pl. 1974).

158. *Id.* at 371.

159. *Id.* at 372.

160. *Id.*

161. *Id.* at 373.

162. See *id.* (referring to a last will admitted to probate as "public domain").

163. *Id.*

164. *Id.*

The court focused on whether the testator's direction would *encourage* grave robbing generally; it did not address the probability that grave robbers would succeed if they tried to rob this particular grave.¹⁶⁵

In addition, as discussed earlier, a funeral and burial likely will occur quickly;¹⁶⁶ in contrast, a last will may not even be found, much less admitted to probate, before the corpse is disposed of by burial or otherwise.¹⁶⁷

If a testator still wishes to include the complete direction in their last will, the drafter might describe the property in general language with no suggestion of substantial value. For example, instead of writing, "I direct that I be buried in the XYZ Cemetery in my candy-apple-red vintage 1969 Chevrolet Camaro S.S. worth approximately \$100,000,"¹⁶⁸ the drafter might write, "I direct that I be buried in my old red car."¹⁶⁹

One way to link the direction to bury property with the last will and avoid including a reference to burying property in the last will (which is a public document) would be to use the doctrine of incorporation by reference.¹⁷⁰ For example, the last will could state:

I direct that the disposition of my body and all the related funeral and other arrangements shall be carried out according to the directions in a letter dated the same day that I have signed this will; the letter will be addressed to my sister, and it will be left on the top shelf of my bookcase in the main bedroom of my home.

The letter described would include the direction to bury the specific prized possession with the testator.

One potential problem with using the last will exclusively, or using incorporation by reference in the last will, is that the executor may be obligated to file an inventory document listing the estate's assets (and their respective values) with the probate court, which, depending on

165. *See id.*

166. *See supra* text accompanying notes 18–19.

167. *See supra* text accompanying note 20.

168. *1969 Chevrolet Camaro SS*, CARGURUS, <https://archive.org/details/1969-chevrolet-camaro-listing> (listing a car of that make and model with 6,712 miles for \$99,999).

169. This presumes that "my old red car" would be a clear description without ambiguity.

170. *See generally* ANDERSEN & BLOOM, *supra* note 15, at 172–74; *Simon v. Grayson*, 102 P.2d 1081 (Cal. 1940) (demonstrating this approach with a letter addressed to the executors left in a safety deposit box; the letter directed the executors to transfer cash to an individual).

applicable state law, itself may be a public document.¹⁷¹ In that situation, the description of the item and its fair market value would be available to the general public, including potential grave robbers. In some states, the inventory is not a public document, and instead the executor merely must prepare it and make it available to any interested party on request.¹⁷² Even if the inventory is not a public document, a disgruntled beneficiary might disclose the burial of valuable property on social media or otherwise,¹⁷³ which could be held to encourage grave robbing and cause the decedent's direction to be void as contrary to public policy.

Options completely avoiding disclosure in a last will or inventory might include the use of a trust, gift, bailment, or contract. A revocable trust is an extremely flexible device¹⁷⁴ that can function as a will substitute by specifying how the grantor's property should be distributed at death.¹⁷⁵ A grantor could contribute a prized possession to a revocable trust (by an assignment) and still enjoy the property during lifetime if they are serving as the trustee.¹⁷⁶ Upon the grantor's death, the trust could direct the successor trustee to insert the prized possession into the casket.

An alternative would be a lifetime transfer of the prized possession to a likely survivor, subject to a requirement that the transferee place the item into the transferor's casket at death. This might be characterized (or structured) as a conditional gift or bailment, or as a contract.¹⁷⁷ A testator may find one of these methods particularly attractive when they have multiple copies or versions of the prized possession (such as a coin, stamp, comic book, or wristwatch) and would have no difficulty transferring one to the likely living survivor (for future burial) and retaining one for enjoyment until death.

Regardless of the method or structure used, a direction to bury may be challenged on the grounds that it causes economic waste contrary to public policy and therefore would be void. Part IV below discusses this.

171. See Strahilevitz, *supra* note 8, at 801 n.73 (emphasizing that state laws differ).

172. See, e.g., UNIF. PROB. CODE § 3-706 (UNIF. L. COMM'N 1969) (amended 2019).

173. See Hunting, *supra* note 140.

174. See ANDERSEN & BLOOM, *supra* note 15, at 229.

175. *Id.* at 229–30.

176. *Id.* at 229. The grantor can serve as trustee of a revocable trust until they become disabled (or die). *Id.*

177. If the arrangement is structured as a contract, the consideration supporting the transfer could be the recipient's agreement to insert the property into the casket.

B. Creating an Effective Incentive for the Living to Put It in the Casket

As discussed in detail in Part I of this Article, a testator's direction to bury a prized possession likely will not create a binding legal obligation.¹⁷⁸ Nevertheless, a famous unreported case demonstrates how the dead can strongly influence the living.

In the “famous Ferrari” case, flamboyant Hollywood heiress Sandra Ilene West, who is often pictured sitting (or sliding down) the hood of a Ferrari,¹⁷⁹ induced her brother-in-law¹⁸⁰ to follow the directions in her last will to bury her in one of her Ferrari automobiles,¹⁸¹ in a lace nightgown, “with the seat slanted comfortably.”¹⁸² West's total estate in 1977 was approximately \$5 million (approximately \$25 million in 2023 dollars).¹⁸³ West's last will created a strong financial incentive—if she was buried in the Ferrari as directed, her brother-in-law would receive a \$2 million bequest (approximately \$10 million in 2023 dollars); if not, her brother-in-law would receive only \$10,000 (approximately \$50,000 in 2023 dollars).¹⁸⁴ Presumably in anticipation of a lawsuit from the alternative takers (who would receive the excess if the bonus to the brother-in-law was unlawful), the brother-in-law filed a petition with the

178. See *supra* Section I.A; see also DUKEMINIER, SITKOFF & LINDGREN, *supra* note 15, at 464 (“[T]he power of the courts to enforce a decedent's testamentary directions] has been exercised in such a way that a person now has something more than a hope, but far less than an assurance, that his wishes will be carried out at death if the family objects.”); Frances H. Foster, *Individualized Justice in Disputes Over Dead Bodies*, 61 VAND. L. REV. 1351, 1352–54 (2008).

179. See, e.g., Timothy Fanning, *Bury Me in My Ferrari: How a California Socialite Was Laid to Rest*, SAN ANTONIO EXPRESS NEWS (Mar. 22, 2023, 6:29 PM), expressnews.com/news/article/sandra-west-ferrari-sa-17852340.php; Mendoza, *supra* note 139.

180. West's pre-deceased husband was a wealthy Texas oil tycoon and the son “of one of the first families of Texas.” Fanning, *supra* note 179. Her husband's brother, Sol West, survived Sandra Ilene West. *Id.* Sol and Sandra Ilene West had dated before she married Sol's brother Ike. *Id.*

181. *Sandra Ilene West*, MADLE, www.madle.org/ewest.htm (last visited Jan. 19, 2024) (reporting that it was a light-blue 1964 Ferrari 250GT).

182. Motavalli, *supra* note 140.

183. Fanning, *supra* note 179 (“[S]he died in 1977 [with a] \$5 million fortune.”); see also *Value of \$1 from 1977 to 2023*, CPI INFLATION CALCULATOR, <https://www.in2013dollars.com/us/inflation/1977?amount=1#> (last visited Jan. 19, 2024) (reporting that \$1 in 1977 would have the purchasing power of approximately \$5.06 in 2023).

184. Motavalli, *supra* note 140; Jim Dossey, *Can I Be Buried in My Car? Yes, You Can!*, DOSSEY & JONES (Dec. 11, 2013), <https://www.dossey.com/blog/2013/december/can-i-be-buried-in-my-car-yes-you-can/>.

local court to determine if it was legal to follow the instructions in West's last will and pocket the contingent payment.¹⁸⁵ Although the opinion was unreported, news accounts stated the court concluded there was nothing illegal about burying West in the Ferrari as directed.¹⁸⁶

One step that may have helped the court decide was that, promptly after death, West's corpse was placed in a slot at a mausoleum (and was not buried).¹⁸⁷ As a result, the court did not have to order her corpse be exhumed to carry out her wishes. Also, the court allowed testimony from West's housekeeper that West was fascinated with ancient Egyptian culture, saying, "Sandra loved Egyptology and had a thing for cars."¹⁸⁸

West was buried in her Ferrari in a grave that was nine feet deep, nineteen feet long, and ten feet wide.¹⁸⁹ The cost of transporting the car from Hollywood, burying it, and encasing it in cement, and other costs for the funeral all totaled about \$17,000 (approximately \$85,000 in 2023 dollars).¹⁹⁰ In regards to the Ferrari's fair market value, another one of Sandra's Ferraris, a "1974 246 GTS . . . was sold in 2016 at [a] RM Sotheby's Phoenix sale for \$396,000,"¹⁹¹ although the Ferrari she buried had been in an accident.¹⁹²

C. *Tomb Raiding Today and Convincing Tomb Raiders to Look Elsewhere*

The U.S. medical profession likely played a big role in creating the fear of grave robbing expressed in the *Meksras' Estate* case.¹⁹³ From approximately 1775 to 1875, grave robbing was a booming business for

185. JESSE DUKEMINIER ET AL., WILLS, TRUSTS, AND ESTATES 360 n.16 (7th ed. 2005).

186. *Court Approves Ferrari as Coffin*, *supra* note 139, at 16 (reporting that Los Angeles Superior Court Commissioner Franklin Dana said that although the burial request was "unusual," it was not "illegal," and that "I know of no law either here or in Texas forbidding this type of burial"); *see also* DUKEMINIER ET AL., *supra* note 185 ("Upon the brother-in-law's petition, the court ordered her buried, in the manner directed by her will, beside her husband in a cemetery in San Antonio, Texas." (citation omitted)).

187. Sandra Ilene West died in California, and she eventually was buried in San Antonio, Texas, next to her husband. *Court Approves Ferrari as Coffin*, *supra* note 139, at 16.

188. Fanning, *supra* note 179.

189. *Id.*

190. *Court Approves Ferrari as Coffin*, *supra* note 139, at 16.

191. Motavalli, *supra* note 140.

192. *Court Approves Ferrari as Coffin*, *supra* note 139, at 16.

193. *See In re Meksras' Estate*, 63 Pa. D. & C.2d 371, 373 (Ct. Com. Pl. 1974).

physicians and medical schools seeking cadavers for dissection.¹⁹⁴ This was “deeply disturbing to the public . . . [and sparked] riots affect[ing] nearly every institution of medical learning. At Columbia University, one riot went on for two days and seven people were killed.”¹⁹⁵ Reportedly, a medical school’s success hinged on the number of cadavers the school could make available for educational purposes.¹⁹⁶ “Harvard Medical School moved from Cambridge to Boston in 1810 in order to have increased access to cadavers[; they] were ‘utterly unattainable at Cambridge.’”¹⁹⁷

In addition, at various times, the U.S. criminal justice system refused to bury, and instead directed dissection (or other mutilation) of the corpse as an additional punishment for despicable crimes, such as murder.¹⁹⁸ “[T]he bodies of executed criminals would be given to medical schools for dissection.”¹⁹⁹ Dissection then was considered a sign of great disrespect and debasement for a decedent and their family.²⁰⁰ “The rule still exists in the statutes of many states, including Massachusetts . . . [that] the court will order the body of a [first-degree murderer to] be dissected.”²⁰¹

Today in the United States, grave robbing for medical research purposes seems non-existent. Approximately 20,000 people in the United States every year donate their cadavers voluntarily (and many enthusiastically), for medical research to medical schools and other institutions.²⁰² Indeed, medical schools routinely decline attempted

194. MADOFF, *supra* note 14, at 26; Aaron D. Tward & Hugh A. Patterson, *From Grave Robbing to Gifting: Cadaver Supply in the United States*, MSJAMA (Mar. 6, 2002), <https://jamanetwork.com/journals/jama/fullarticle/1845037> (“[P]ressing demand for cadavers most likely began in 1745.”).

195. MADOFF, *supra* note 14, at 26; Tward & Patterson, *supra* note 194 (discussing the New York Doctors’ Riot of 1788).

196. MADOFF, *supra* note 14, at 22.

197. *Id.* (quoting MICHAEL SAPPOL, *A TRAFFIC OF DEAD BODIES: ANATOMY AND EMBODIED SOCIAL IDENTITY IN NINETEENTH-CENTURY AMERICA* 60 (2004)).

198. *Id.* at 23–24 (referring to “super capital punishment”); Tward & Patterson, *supra* note 194.

199. MADOFF, *supra* note 14, at 23–24.

200. *See id.* at 19.

201. *Id.* at 24.

202. A.W. Ohlheiser, *What Happens When You Donate Your Body to Science*, MIT TECH. REV. (Oct. 12, 2022), <https://www.technologyreview.com/2022/10/12/1060924/>.

cadaver donations if the decedent's body-mass-index ("BMI") exceeds a certain number.²⁰³

Also, apparently the nature of grave robbing has changed. While grave robbing for Native American artifacts and at certain historic and archeological sites is still a problem, reporters generally observe that "grave robbers" today are actually stealing the columns, benches, and statues at the cemetery and selling them as lawn furniture at yard sales.²⁰⁴ Perhaps these evil-doers should be called "cemetery thieves" instead.

The conclusion in the *Meksras' Estate* case appears to be based upon a supposed national panic that hordes of would-be grave robbers will carefully examine the probate court records for potential targets and will then grab a shovel, drive a backhoe, or operate an earthmover with impunity.²⁰⁵ The court decided *Meksras' Estate* almost fifty years ago, and perhaps the level of public fear has diminished.²⁰⁶ Nevertheless, it still would seem prudent for a testator to take steps to address a possible objection that a testamentary direction will encourage grave robbing. As mentioned earlier, the last will or other document could describe the decedent's particular prized possession generally, without any indication of significant value.²⁰⁷ Also, the document could describe the practical steps discussed in the following paragraphs that should make grave robbing more difficult and less profitable.

As a practical step, in the last will or other document, the decedent could direct that the value of the prized possession shall be diminished intentionally before it is placed in the casket. In the case of a car or other

203. See, e.g., *Body Bequest, FAQ*, WAYNE STATE UNIV., <https://bodybequest.med.wayne.edu/faq> (last visited Jan. 22, 2024) (rejecting bodies when "[h]eight [and] weight [are] not proportionate (18–30 BMI)").

204. See Edith Stanley, *Today's Grave Robbers Do Lively Business*, L.A. TIMES (Nov. 21, 1996, 12:00 AM), <https://www.latimes.com/archives/la-xpm-1996-11-21-mn-1413-story.html>; Sam Tetrault, *A Quick History of Grave Robbing in the US*, CAKE, <https://www.joincake.com/blog/grave-robber-us> (June 2, 2022) ("[G]rave robbing was common until the 20th century . . . these robbers have largely gone away."); *Grave Robbing: A Federal Offense*, FUNERAL DIRECT (Dec. 18, 2022), <https://www.funeraldirect.co/grave-robbing-a-federal-offense> ("[G]rave robbery still occurs on a smaller scale in modern times."); Beth Warden, *Modern-Day Grave Robbing: The Motives & the Pain*, DAKOTA NEWS NOW (June 5, 2023, 5:34 PM), <https://www.dakotanewsnw.com/2023/06/05/modern-day-grave-robbing-motives-pain> (reporting on thefts of Native American artifacts and at other historic archeological sites).

205. See *In re Meksras' Estate*, 63 Pa. D. & C.2d 371, 373 (Ct. Com. Pl. 1974).

206. *Id.* at 371.

207. See *supra* notes 170–71 and accompanying text.

vehicle, the testator could direct that the catalytic converter, the engine, the hood ornament (in the case of a classic car) and any other valuable parts (except the chassis or shell and the seats) will be removed before burial and sold as spare parts or scrap metal. The value of different items may be diminished in different, and sometimes surprising, ways. For example, the value of a vintage comic book would be diminished more by tearing out a single internal page than by scribbling on the front cover with an ink pen.²⁰⁸

In addition, historically, engineers and innovators developed grave robbing deterrents, including a casket with a spring-loaded gun and a grave site including strategically placed land mines.²⁰⁹ Eventually, burial vaults became popular.²¹⁰ Manufacturers make burial vaults from concrete, reinforced concrete, steel, or plastic.²¹¹ As an example of the strategic use of burial vaults to thwart grave robbers, in 1990, a family of a decedent reportedly buried with valuable jewels had the grave dug very deep, surrounded his coffin with a burial vault, and placed another burial vault on top in anticipation that someday the higher vault would be used by another family member.²¹² Perhaps as another sign of the decline of grave robbing, reports now emphasize that the burial vault's

208. See MATT NELSON, *THE OFFICIAL CGC GUIDE TO GRADING COMICS* 183, 243 (2022). Experts assign “grades” ranging from 0.5 (the worst) to 10.0 (the best) based on the physical condition of a comic book. *Standard Grading Scale*, CGC COMICS, <https://www.cgccomics.com/grading/grading-scale/> (last visited Feb. 5, 2024). The fair market value of a comic book depends on its grade. See ROBERT M. OVERSTREET, *THE OVERSTREET COMIC BOOK PRICE GUIDE* 655 (53d ed. 2023). A comic book with scribbling or other writing, even on the cover, could still obtain a grade of 9.4. See NELSON, *supra*, at 243. In contrast, if a page is missing, the comic book often is given a “universal grade” of 0.5. *Id.* at 183. In regards to the impact of grades on value, for example: the price guide value of a copy of *Incredible Hulk* #1 at 9.2 is \$400,000; the price guide value for the exact same comic book, *Incredible Hulk* #1, but with a grade of 2.0 would be only \$7,100. OVERSTREET, *supra*, at 655.

209. See Todd Harra, *Resurrectionists and the Advent of the Burial Vault*, CRIMEREADS (Aug. 3, 2022), <https://crimereads.com/resurrectionists-and-the-advent-of-the-burial-vault/>.

210. Jill Darby, *When Did Burial Vaults First Start Being Used?*, TRIGARD (Apr. 6, 2021, 9:00 AM), <https://www.trigard.com/blog/when-did-burial-vaults-first-start-being-used/#:~:text=Based%20on%20the%20definition%20that,part%20of%20the%2018th%20century.>

211. *Burial Vaults: What They Are and Why You Need One*, LAKESIDE FUNERAL HOME [hereinafter *Burial Vaults*], <https://www.lakesidefuneralhomega.com/burial-vaults-what-they-are-and-why-you-need-one> (last visited Jan. 22, 2024).

212. See Michael Connelly, *Robbers Open Grave in Vain Search for Jewelry*, L.A. TIMES (Nov. 14, 1990, 12:00 AM), <https://www.latimes.com/archives/la-xpm-1990-11-14-me-4189-story.html>.

major advantage is to keep the ground around the casket from settling, which will facilitate lawn maintenance and landscaping around the cemetery, rather than emphasizing the ability of a burial vault to thwart tomb raiders.²¹³

Also, a casket (or the vault with the casket inside) could be buried and encased in cement. In the famous Ferrari case, immediately after burying heiress Sandra Ilene West in her Ferrari, in a wooden crate, in the ground nine-feet deep, the workers brought in a cement truck and encased the entire car and crate.²¹⁴ The family of Whitney Houston considered a similar approach to protect Whitney, her jewels, and her designer clothes.²¹⁵ One industry expert has stated that encasing the entire coffin might make grave robbing “virtually impossible,” because of the time and equipment necessary.²¹⁶

IV. A VALID EXERCISE OF FREEDOM OR EXCESSIVE ECONOMIC WASTE?

In contrast to other legal issues, this is one that is difficult to delay or avoid. In the United States, a corpse customarily is buried within one week, maybe two if family or friends are coming from out of town.²¹⁷ Sometimes the burial needs to be within twenty-four hours of death for religious reasons.²¹⁸ Second-guessing may be seen as futile, inappropriate, or disrespectful because it would involve digging-up the decedent. As a result, the living generally need to decide promptly if the property is going into the casket or not.²¹⁹

A. *When Is Destroying Property at Death Excessive Economic Waste?*

With an absence of direct authority on when a direction to bury property will be void because of the economic waste, it is appropriate to

213. *Burial Vaults*, *supra* note 211.

214. Fanning, *supra* note 179 (“Crews covered [the Ferrari] with cement to discourage potential looters.”).

215. Buckland, *supra* note 144.

216. *Id.* (quoting a “burial expert at Hollywood Forever,” a funeral home, cemetery, and cultural events center).

217. *See supra* note 18 and accompanying text.

218. *See supra* note 19 and accompanying text.

219. As noted earlier in connection with the famous Ferrari case, the decision may be postponed if the corpse can be temporarily stored in a mausoleum or elsewhere. *See supra* note 187 and accompanying text; *see also* DUKEMINIER ET AL., *supra* note 106, at 464 n.11 (reporting that legendary singer James Brown “lay refrigerated in a secret location while his children, disputed wife, and executors fought over his final resting place”).

consider a related situation—namely, a decedent’s direction to *destroy* property at death. Burying property can be different from destroying it. A cemetery might be abandoned and repurposed, and in that case, it would be expected that the family would deal with the casket and its contents.²²⁰ Or a testator might authorize the removal of the item, particularly if the burial is viewed as temporary. Temporary burial is becoming an increasingly popular option.²²¹ Nevertheless, at least for some period of time, the prized possession likely will remain exclusively with other property²²²—the corpse—which effectively prevents any living person from enjoying it during that time.

During life, a property owner generally is entitled to destroy their property as long as the destruction does not violate environmental or other laws.²²³ For example, Michelangelo, Jasper Johns, Georgia O’Keeffe, Claude Monet, and other famous artists have destroyed their works of art during life.²²⁴ The right to destroy is consistent with the right to exclude.²²⁵

Directions to destroy property *at death* are scrutinized more carefully because the restraint of self-interest is removed.²²⁶ The testator/destroyer will not suffer the financial consequences²²⁷ and will not incur the “interpersonal costs that living persons pay for eccentric behavior, that is resentments . . . among family members and other

220. Sarah Stone, *What Happens If a Cemetery Goes Under?*, TODAY I FOUND OUT (Apr. 14, 2015), <https://www.todayifoundout.com/index.php/2015/04/happens-cemeteries-go/> (“[T]he current owner of the cemetery . . . may seek permission from their local municipality to sell or repurpose the land for commercial or home use.”).

221. See *infra* notes 337–55 and accompanying text.

222. In general, the law does not allow a testator to leave one item of property to another item of property. See Stephanie Casteel, *Estate Planning for Pets*, 21 PROB. & PROP. 9, 9 (2007). For example, while one can leave cash or property in trust for the benefit of a pet animal, a testator cannot bequeath cash or property directly to an animal. See *id.*

223. See Strahilevitz, *supra* note 8, at 789.

224. See Tori Campbell, *9 Famous Artists Who Destroyed Their Own Work*, ARTLAND MAG., <https://magazine.artland.com/artists-who-destroyed-their-own-work/> (last visited Jan. 22, 2024).

225. See Thomas W. Merrill, *Property and the Right to Exclude*, 77 NEB. L. REV. 730, 738–39 (1998).

226. See *In re Estate of Pace*, 400 N.Y.S.2d 488, 492 (Sur. Ct. 1977) (“There is a greater need for the protection of the community interest[] after the death of the testator . . . [a]fter his death there is no . . . restraint [of self-interest]. . .”).

227. Instead, the economic cost will shift to the decedent’s beneficiary.

affected persons.”²²⁸ In modern times, that could include scorn on social media.²²⁹

Four cases focus on directions to destroy real property at death. Two cases upheld the testator’s direction to destroy, and the other two did not. In each case upholding the direction, there was evidence regarding the testator’s motive for directing destruction.

In *National City Bank v. Case Western Reserve*,²³⁰ the last will, in relevant part, merely directed that after the removal of the contents, the executor should “raze” the decedent’s (magnificent) residence to the ground.²³¹ The remainder beneficiary potentially losing out on a valuable inheritance was an educational institution, Case Western Reserve University.²³² At trial, all the parties agreed to allow the decedent’s attorney to testify regarding the spectacular features of the residence, the fact that the “surrounding neighborhood had changed over the years from exclusively residential to one where the older houses were being converted to [commercial] uses . . . [and] that she had a great [deal of] affection for [her home],” and felt that commercial use would be a “debasement,” and “therefore, she wanted it destroyed.”²³³ The court held that her destruction direction was *not* against public policy despite the economic waste.²³⁴ Also, the court stated that the executor could sell the residence to a historical society with “definite restrictions in the deed . . . that the home and grounds . . . forever be retained . . . and never be converted to [commercial usage],”²³⁵ thereby suggesting a value-depressing use restriction rather than destruction. The court never questioned why the testator would consider a commercial use a “debasement” or why destruction would be preferable to debasement.²³⁶

In the other case approving a destruction of real property, the testator’s last will was “direct, sparse, and uncluttered, a reflection . . . of the woman herself.”²³⁷ The last will directed the executor to “demolish my house,” pay all related costs, and then offer to sell the vacant land to

228. Langbein, *supra* note 150, at 378.

229. See Hunting, *supra* note 140.

230. 369 N.E.2d 814 (Ohio Ct. Com. Pl. 1976).

231. *Id.* at 815.

232. *Id.*

233. *Id.* at 816.

234. *Id.* at 819.

235. *Id.*

236. *Id.* at 818.

237. *In re Beck*, 676 N.Y.S.2d 838, 839 (Sur. Ct. 1998).

the City of Buffalo for \$100.²³⁸ Despite the absence in the last will of any expression of motive or purpose for the destruction desire, the court discussed the history of the residence, and the testator's devotion to her home and the nearby church (which was her residuary beneficiary).²³⁹ The City of Buffalo had sought to take the home in condemnation twenty-five years earlier, and the testator (and her sister) had "stood up against the wrecker's ball to resist the city's attempt to tear down [the home]."²⁴⁰ Eventually, her home was moved to a different lot, and the related agreements documented the testator's intentions to have the building demolished after her death and to give the city a \$100 purchase option on the lot.²⁴¹ Although there was no indication that her statement of intent was legally binding, the court concluded that the "treasured" home was "hers to *dispose of* as she intended."²⁴² While acknowledging the "unorthodox and novel nature of the . . . testamentary direction,"²⁴³ the court issued "an order granting the right to demolish."²⁴⁴

In contrast, in *Estate of Pace*, the court declared a decedent's destruction direction invalid.²⁴⁵ The testator's last will directed the executor to destroy two houses (presumably next to each other) worth a combined \$50,000.²⁴⁶ The properties would pass from the decedent's estate to a trust along with \$50,000 cash from the decedent's \$235,000 estate.²⁴⁷ Under the terms of the trust, after destruction, the vacant lots would be "graded, filled, and seeded and the premises maintained in a neat and attractive condition."²⁴⁸ After paying for the maintenance of the vacant lots, each year the trust income would be distributed for the benefit of the decedent's nephew and the nephew's spouse, and upon their deaths for the benefit of their five children.²⁴⁹ The trust would continue, and the land would remain vacant, until the death of the last grandniece

238. *Id.*

239. *See id.*

240. *Id.* at 840.

241. *Id.*

242. *Id.* at 841 (emphasis added).

243. *Id.* at 839.

244. *Id.* at 841.

245. 400 N.Y.S.2d 488 (Sur. Ct. 1977).

246. *Id.* at 490 (stating that the street addresses of the two properties were 154 Owasco Street and 156 Owasco Street).

247. *Id.*

248. *Id.*

249. *Id.* at 490–91.

or grandnephew.²⁵⁰ The property then could be sold.²⁵¹ When the decedent died, the grandnieces and grandnephews ranged in age from eight to sixteen,²⁵² so the land could be vacant, and the trust could continue, for many years.

In considering whether the decedent's destruction direction violated public policy because of the economic waste, and therefor was invalid, the court focused on three types of harm.²⁵³ First, the court observed that the community's property tax receipts would decline.²⁵⁴ Second, the individual beneficiaries (the decedent's nephew and family) would suffer a \$50,000 economic loss.²⁵⁵ Third, the court found harm to the "neighborhood"²⁵⁶ because the demolition would leave an "unnatural gap in the pattern of residential development."²⁵⁷ The court also characterized the direction to destroy as "capricious," although the court failed to provide a detailed analysis; instead, the court merely stated it was "not something which the testator would have done while alive."²⁵⁸ The court also stated there would be no benefit to any person from demolishing the two houses;²⁵⁹ the court failed to explain why the addition of a "neat and attractive" greenspace would not benefit anyone in the neighborhood.²⁶⁰

In *Eyerman v. Mercantile Trust Co., N.A.*, the decedent's last will "directed the executor . . . to cause [her] home . . . to be razed and to sell the land . . . and . . . transfer the proceeds . . . to the residue of [her] estate."²⁶¹ The trial court held that the executor could lawfully follow the testator's directions.²⁶² On appeal to a three-judge panel, one judge wrote the majority opinion reversing the trial court, one judge concurred, and one judge wrote a strong dissent.²⁶³ The fair market value of the land and

250. *Id.* at 491–92.

251. *Id.*

252. *Id.*

253. *Id.* at 492–93.

254. *Id.* at 493.

255. *Id.* at 492.

256. *Id.*

257. *Id.*

258. *Id.* at 493.

259. *Id.* ("There would be no benefit to off-set these losses.").

260. *Id.* at 490.

261. 524 S.W.2d 210, 211 (Mo. Ct. App. 1975).

262. *Id.* at 212.

263. *See generally id.*

the house was \$40,000,²⁶⁴ the vacant lot would sell for \$5,000, and it would cost \$4,350 to demolish, so the beneficiaries would receive only \$650 from a \$40,000 asset.²⁶⁵ The judge writing for the court concluded that the decedent's direction violated public policy because of the economic waste and therefore was void.²⁶⁶ The court emphasized the economic loss to the beneficiaries, the loss in property tax revenues to the community, and the drop in property values for the neighbors (estimated at \$10,000 each) as a result of having a second vacant lot on the block.²⁶⁷ In addition, the court described the testator's direction to destroy as "capricious" three times,²⁶⁸ and specifically noted that no one would benefit from the "senseless destruction."²⁶⁹ The court also emphasized that no reason was suggested for this "senseless" and "eccentric condition."²⁷⁰

A few authorities consider a testamentary direction to destroy *personal* property. The *Restatement* provides that a direction to "throw [\$1,000] into the sea upon my death" violates public policy because of the economic waste and is void.²⁷¹ A fiduciary who follows such a direction would be personally liable for the beneficiary's loss.²⁷² This follows a 120-year old case²⁷³ and is consistent with *dictum* in a case discussed earlier.²⁷⁴ A testator's direction to destroy money seems wasteful, but there could be other relevant considerations in a particular case. Perhaps the currency to be buried was a keepsake—the first dollars the testator ever earned, or a cherished collectible in the form of currency. Should we refuse the decedent's last request to have a thousand dollars in their pocket if the decedent directs the survivors to save a few thousand dollars

264. *Id.* at 212–13 (noting that the homes on the block were described as "desirable residence[s] . . . of the highest class" and were architecturally exquisite and that this particular home would have cost \$200,000 to rebuild).

265. *Id.* at 213.

266. *Id.* at 211–12.

267. *Id.* at 212 (noting that there was already one vacant lot on the block).

268. *Id.* at 212–14.

269. *Id.* at 214.

270. *Id.*; *see also id.* at 213 (describing the direction as "unexplained").

271. RESTATEMENT (SECOND) OF TRUSTS § 124 cmt. g, illus. 5 (AM. L. INST. 1959).

272. *See id.*

273. *In re Scott's Will*, 93 N.W. 109 (Minn. 1903).

274. *In re Estate of Pace*, 400 N.Y.S.2d 488, 493 (Sur. Ct. 1977) ("[I]f the testator had directed the fiduciary to destroy \$50,000 in negotiable instruments, this direction would clearly be construed as a waste and of no benefit to anyone.").

by using a simple pine box rather than an elaborate wooden or steel casket?

The *Restatement* explains that the rationale for the “\$1,000 into the sea” example is that a direction is void if its purpose is “capricious.”²⁷⁵ The *Restatement* explanation does not include the word “arbitrary,” which often accompanies “capricious.”²⁷⁶ The *Restatement* drafters did not define “capricious” for this purpose, but included a description of when a purpose would *not* be “capricious”—if “it satisfies a natural desire which normal people have,” even if “no living person benefits from its performance.”²⁷⁷ The *Restatement* elaborates no further, although this language suggests many questions: What are the characteristics of “normal” people? Are these normal people wealthy? Did they specifically save to be able to acquire this prized possession? Were they sentimental? Did they cherish the item during life?

In regard to directions to destroy other items of personal property, courts have concluded that a decedent may not validly direct that a pet be “laid down” upon the owner’s death.²⁷⁸ Also, in *dictum*, a court has indicated that a direction to destroy personal letters and other correspondence is enforceable.²⁷⁹

B. Determining the Validity of a Direction to Bury Property

The public policy doctrine is the “unruly horse” of the law.²⁸⁰ An act may violate public policy if it violates a Constitution or a statute, and the judiciary can declare an action contrary to public policy.²⁸¹ The court in *Eyerman* stated:

275. RESTATEMENT (SECOND) OF TRUSTS § 124 cmt. g, illus. 5 (AM. L. INST. 1959).

276. *Id.*; see e.g., THOMSON WEST, WORDS & PHRASES 543, 570 (6th ed. 2007).

277. RESTATEMENT (SECOND) OF TRUSTS § 124 cmt. g. (AM. L. INST. 1959).

278. See e.g., *In re Capers’ Estate*, 34 Pa. D. & C.2d 121, 141 (Ct. Com. Pl. 1964); see also *Emerson & Bennardo*, *supra* note 9, at 366–69 (citing three unreported cases reaching the same result).

279. See *Ahmanson Found. v. United States*, 674 F.2d 761, 768 (9th Cir. 1982) (concluding that for estate tax purposes, the personal letters and other correspondence would be treated as having a value on the date of death equal to the value of the ashes; presumably that could only be the result if the direction to burn was enforceable); see also *Sykas*, *supra* note 9, at 926–27 (listing situations in which an executor ignored a direction to destroy copyrighted material).

280. See Dillan McQueen, *Platforms and Police Departments: On the Risk of Contractual Liability for Social Media Surveillance of Political Activism*, 50 U. MEM. L. REV. 199, 223 (2019) (citing *Richardson v. Mellish* (1824) 130 Eng. Rep. 294, 303 (HL)).

281. *Eyerman v. Mercantile Tr. Co.*, 524 S.W.2d 210, 217 (Mo. Ct. App. 1975).

The term ‘public policy’ cannot be comprehensively defined in specific terms but the phrase ‘against public policy’ has been characterized as that which conflicts with the morals of the time and contravenes any established interest of society. [Or that which simply is] . . . “injurious to the interest of the state, apart from illegality or immorality.”²⁸²

Specifically, in regards to situations that may violate public policy because of economic waste, the court said, “A well-ordered society cannot tolerate the waste and destruction of resources when such acts directly affect *important interests* of other members of that society.”²⁸³

Relevant factors for evaluating a direction to bury property could be organized into four categories: (1) factors involving the property itself and the actual burial; (2) factors involving the decedent; (3) factors involving the alternative beneficiary; and (4) factors involving other individuals and the general public. Overlap is inevitable. For example, the nature of the property will influence the testator’s motive, the harm to the beneficiary, and the harm to the general public.

1. The Property & Burial Difficulties.

The *Restatement* indicates the nature of the property is important by singling out and effectively condemning a direction to destroy \$1,000 cash.²⁸⁴ Perhaps cash was chosen because it clearly would be useful to, and appreciated by, any beneficiary, except those who have taken a vow of poverty or expect to die before benefitting. Thus, perhaps the more liquid and otherwise useful the prized possession, the more economically wasteful the burial. A court *in dictum* stated that a direction to destroy a \$50,000 negotiable instrument would be condemned.²⁸⁵ This analysis might extend to checks, bearer bonds, and any other similar instruments easily converted to cash. It is also interesting that the *Restatement* chose \$1,000 for the example—would a lesser amount be acceptable? Should the threshold rise with inflation? And should the analysis be extended to

282. *Id.* (citing *Dille v. St. Luke’s Hosp.*, 196 S.W.2d 615, 620 (Mo. 1946)).

283. *Id.* at 217 (emphasis added).

284. RESTATEMENT (SECOND) OF TRUSTS § 124 cmt. g (AM. L. INST. 1959) (providing that the direction is invalid and a fiduciary following the direction will be personally liable to the beneficiary for the amount).

285. *In re Estate of Pace*, 400 N.Y.S.2d 488, 493 (Sur. Ct. 1977).

anything that could be sold at auction—such as a diamond engagement ring or the ruby slippers?²⁸⁶

Another factor related to the property itself would be the practicality and expense of the burial. In the famous Ferrari case, it reportedly cost \$17,000 in 1977 (approximately \$85,000 in 2023 dollars) to bury the decedent with her car; despite the high cost, the court authorized the burial.²⁸⁷ In addition to burying cars, survivors have managed to bury decedents astride their motorcycles.²⁸⁸ But what if the testator requested something bigger and more complicated? What if the testator wanted to be buried in their mobile home? Or in a replica of their living room? Or in a replica of their entire home? Presumably the more space required, and the more time, effort, and other resources needed to make the decedent's last request come true, the greater the economic waste.

A particularly important factor may be the retail value of the prized possession compared to the size of the entire estate. As discussed earlier, in deciding whether an executor may use estate assets to pay the expenses to comply with a decedent's burial, funeral, headstone, wake, and prayer instructions, the law considers whether the amount is reasonable, or extravagant, in light of the decedent's "station in life" and the total assets and liabilities of the estate.²⁸⁹

The court in the case of *Baeuchle's Will* showed remarkable respect for the wishes of a decedent who directed that almost their entire estate of \$175,000 in 1946 (in 2023, the equivalent of over \$2.7 million) be spent on their burial.²⁹⁰ Anna Baeuchle left \$100 in cash to each of her five siblings and left \$2,700 to her friends.²⁹¹ The residue of her estate went to her executor²⁹² with directions that the executor purchase a lot at Woodlawn Cemetery in the Bronx, erect a mausoleum for the testator and her predeceased spouse, and after paying all of the related expenses,

286. See *supra* note 2 and accompanying text.

287. *Court Approves Ferrari as Coffin*, *supra* note 139, at 16.

288. See *supra* note 140 and accompanying text.

289. See *supra* Section I.C.

290. *In re Baeuchle's Will*, 82 N.Y.S.2d 371, 373 (Sur. Ct. N.Y. 1948) (reporting that Anna S. Baeuchle died on Nov. 28, 1946); *The U.S. Dollar Has Lost 94% of Its Value Since 1946*, CPI INFLATION CALCULATOR, <https://www.in2013dollars.com/US/inflation/1946> (Jan. 11, 2024).

291. *In re Baeuchle's Will*, 82 N.Y.S.2d at 373.

292. The testator's last will called for the creation of a trust with her executor as the trustee, but the court concluded that the formation of a trust was unnecessary because these were all duties that could be performed by the executor without a trust. *Id.* at 375–76.

the balance would be used as a perpetual maintenance fund for the mausoleum and plot.²⁹³ Woodlawn Cemetery is “[p]erhaps the most expensive graveyard in the world.”²⁹⁴ Despite the surviving family members’ arguments that the sums were unreasonable in light of their financial situations,²⁹⁵ the court concluded “[i]t does not seem that the folly or the wisdom of her directions are the concern either of her kin or the court.”²⁹⁶

As suggested in the real estate destruction cases,²⁹⁷ the higher the retail value of the item, and the greater the proportion of the net estate it represents, the less likely a court will permit the direction. Nevertheless, the case of *Baeuchle’s Will* suggests a high level of tolerance for burial expenses generally, although that case did not involve the burial of property.²⁹⁸

2. Benefits to the Decedent—Motives & Actions.

Courts in the real property destruction cases focused heavily on the decedent’s motive.²⁹⁹ Thus, a testator might be well-advised to include a statement of motive or purpose along with the direction to bury in the last will or another document. In *National City Bank*, the court seemed very impressed with a rather conclusory, and perhaps unusual, statement of purpose.³⁰⁰ In that case, the decedent did not want her home converted to commercial use and considered commercial use a “debasement” of the property; she preferred that the home be destroyed rather than be so debased.³⁰¹ Accordingly, a decedent should include a statement about the prized possession’s special significance and a statement about the lifetime comfort provided from knowing the item would be in the coffin.

293. *Id.* at 374.

294. KATHY BENJAMIN, FUNERALS TO DIE FOR 115 (2013).

295. *In re Baeuchle’s Will*, 82 N.Y.S.2d at 376.

296. *Id.* at 377.

297. *See supra* Section IV.A.

298. *See generally In re Baeuchle’s Will*, 82 N.Y.S.2d 371.

299. *See supra* notes 233–36, 239–44, 258, and 268–70 and accompanying text.

300. *See supra* notes 231–34 and accompanying text.

301. *Nat’l City Bank v. Case W. Rsrv. Univ.*, 369 N.E.2d 814, 818–19 (Ohio Ct. Com. Pl. Lorian Cnty. 1976).

The *Restatement* provides that if the purpose for wishing to destroy property is “capricious,” it should be disregarded.³⁰² “Capricious” is a legal standard used in many settings.³⁰³ Perhaps as a result, there seem to be multiple facets of “capricious” which a court could choose to emphasize. One facet is whether the purpose or action is whimsical or humorous;³⁰⁴ this would be an unfortunate focal point in buried situations. Many people have difficulty talking about, or otherwise dealing with, death.³⁰⁵ Some people find comfort in humor.³⁰⁶ Various celebrities and others apparently have found some solace in amusing epitaphs for their headstones.³⁰⁷ Likewise, others probably find comfort if when they think about their eventual demise, they also think about a favorite possession—associating something positive with a negative may help.³⁰⁸

Another aspect of “capricious” seems more appropriate in these circumstances, namely, that an action is “capricious” if it is taken on the spur of the moment without serious contemplation, and with the expectation that the testator will change it.³⁰⁹ A testator can signal in the

302. RESTATEMENT (SECOND) OF TRUSTS § 124 cmt. g. (AM. L. INST. 1959).

303. See THOMPSON WEST, *Capricious*, in 6 WORDS AND PHRASES 202–09 (2007).

304. See R. George Wright, *Arbitrariness: Why the Most Important Idea in Administrative Law Can't Be Defined, and What This Means for the Law in General*, 44 U. RICH. L. REV. 839, 840 n.6 (2018) (“The most relevant definition of ‘capricious’ . . . is . . . ‘[f]ull of, subject to, or characterized by caprice, guided by whim or fancy rather than by judgment or settled purpose, *whimsical, humoursome*.’” (emphasis added) (quoting THE OXFORD ENGLISH DICTIONARY 869 (J. A. Simpson & E.S.C. Weiner eds., 2d ed. 1989)).

305. See Emily Kil, *Major Reasons Why People Avoid Discussing Death*, ECOBEAR (Apr. 4, 2018), <https://ecobear.co/knowledge-center/major-reasons-why-people-avoid-discussing-death/>.

306. See Jonny Thomson, *Gallows Humor: The Surprising Benefits of Dark Laughter*, BIG THINK (Mar. 28, 2023) <http://www.bigthink.com/thinking/gallows-humor-philosophy> (“There’s research to say that enjoying ‘sick’ or ‘dark’ humor might actually be good for you . . .”).

307. See, e.g., Barbara Stepko, *Puzzling and Funny Epitaphs of the Rich and Famous*, VINTAGE NEWS (Oct. 30, 2018), <https://www.thevintagenews.com/2018/10/30/puzzling-and-funny-epitaphs> (listing “I’m A Writer[,] But Then[,] Nobody’s Perfect” for Billy Wilder; “That’s All Folks” for Mel Blanc who provided the voice for cartoon character Porky Pig; “There Goes The Neighborhood” for comedian Rodney Dangerfield; “The Best Is Yet To Come” for singer Frank Sinatra; and “I Will Not Be Right Back After This Message” for TV host Merv Griffin).

308. See Catherine Moore, *What Is Negativity Bias and How Can It Be Overcome?*, POSITIVE PSYCH. (Dec. 30, 2019) <https://www.positivepsychology.com/3-steps-negativity-bias/overcome>.

309. See Wright, *supra* note 304, at 840 n.6 (referring to a “capricious” action as one made without a “settled purpose”).

last will or another document whether they have carefully contemplated a direction to bury property and whether they are likely to change their mind. A testator could execute a series of last wills or other documents over many years and include the same direction to bury in all of them. A desire of long standing should be more respected.

A factor involving the decedent's motive, which is intertwined with the nature of the property, is the decedent's relationship with the property. Is it the type of property that people often hold near and dear, such as an engagement ring, wedding band, a wristwatch previously worn by their parent or grandparent, or the first comic books they ever purchased? And did the decedent actually cherish the item during life? If the decedent wishes to be buried with a small, antique clock, did it sit on their desk or dresser for decades, or was it kept in the back of their sock drawer?

The destruction cases indicate that whether others will cherish the property like the decedent is important. For example, in *National City Bank*, the court emphasized that others likely would have no use for the property as a residence and would convert it for commercial purposes.³¹⁰ In the case of a collectible, the questions might be: Will the children wear the wristwatch? Will they display the clock or the first comic book on their desk, or will they simply sell it to the highest bidder? Will they pass on the engagement ring to the grandchildren or sell it? This factor may involve difficult questions of proof unless the survivors have clearly documented their intent in some manner.

3. Harm to the Beneficiary.

The public policy doctrine may apply if the action "directly affect[s] an] important interest[]." ³¹¹ As a preliminary matter, one might question whether the potential beneficiary of a last will has *any interest* in the testator's assets. During the testator's lifetime, a beneficiary under a will has a mere expectancy and not a vested property right or interest.³¹² Also,

310. See *Nat'l City Bank v. Case W. Rsr. Univ.*, 369 N.E.2d 814, 819 (Ohio Ct. Com. Pl. Lorian Cnty. 1976).

311. *Eyerlyman v. Mercantile Tr. Co.*, 524 S.W.2d 210, 217 (Mo. Ct. App. 1975).

312. See Katherine Guzman, *Wills Speak*, 85 BROOK. L. REV. 647, 679 n.126 (2020) (quoting John C.P. Goldberg & Robert H. Sitkoff, *Torts and Estates: Remedying Wrongful Interference with Inheritance*, 65 STAN. L. REV. 335, 396) ("The interest of a prospective beneficiary under a will or will substitute does not ripen into a cognizable legal right until

a bequest is in the nature of a gift.³¹³ Aside from a surviving spouse's right to a statutory share or a statutory allowance, or a dependent child's right to a statutory allowance,³¹⁴ the testator is free to dispose of their property as they wish.³¹⁵

Also, when considering the totality of the circumstances, it may be apparent that the beneficiary has suffered no overall harm from the situation. Perhaps the testator specifically saved an amount of cash equal to or greater than the retail value of the prized possession by foregoing a vacation or choosing a cheaper cemetery or coffin. The testator could describe the full context in the last will or other document containing the burial directions.

Nevertheless, if one concludes that the beneficiary is being deprived of a legal property interest,³¹⁶ the next question is whether the beneficiary is being deprived of an *important*³¹⁷ interest. Setting aside that the beneficiary may have done nothing to earn the bequest or otherwise have this entitlement, the harm to the beneficiary would be the retail value of the prized possession if sold at auction to the highest bidder. Depending on the circumstances, the harm also may include sentimental value. The prized possession may be an object which the beneficiary grew up with, such as a favorite family toy, home furnishing, souvenir, or other keepsake. Or perhaps the item has multi-generational value, such as a ring worn by many ancestors.

the donor's death. Until then, a prospective beneficiary has a mere 'expectancy' that is subject to defeasance at the donor's whim.").

313. See *id.* (referring to the testator as the "donor").

314. See *supra* note 14 and accompanying text.

315. See *Court Approves Ferrari as Coffin*, *supra* note 139; Matt G. Lueders & Fizer Beck-Houston, *How to Not Lose Your Mind When Your Client Is Losing His: Operating in the Gray Zone of Diminished Capacity*, 12 EST. PLAN. & CMTY. PROP. L.J. 53, 76 (2019) ("[A] person is free to leave his property to anyone in any manner he pleases as long as he possesses the mental capacity and free agency required at the time of the act."). But see *In re Capers' Estate*, 34 Pa. D. & C.2d. 121, 137–38 (Ct. Com. Pl. 1964) (concluding that a direction to destroy a companion animal is not a direction to "dispose" of the animal on the theory that there is no transfer to an individual or entity).

316. This argument would focus on the situation after the testator's death. See Frederic S. Schwartz, *Misconception of the Will as Linguistic Behavior and Misperception of the Testator's Intention: The Class Gift Doctrine*, 86 U. DET. MERCY L. REV. 443, 467 (2009) ("[A]t the testator's death, [the testator's last will leads to] the creation of property interests in the beneficiaries.").

317. *Eyerman v. Mercantile Tr. Co.*, 524 S.W.2d 210, 217 (Mo. Ct. App. 1975).

4. Harm to Other Individuals and the General Public.

Unlike a destruction of real property, which can impact the property values of the neighboring homes,³¹⁸ it is difficult to imagine similar direct injuries to unrelated individuals from the burial of an item of tangible personal property. Are the neighbors harmed if the decedent is buried with a whimsical garden gnome?

It is more likely that the burial of certain objects would impact the general public. There is the argument about encouraging grave robbing.³¹⁹ Also, if the decedent will be buried in a valuable car otherwise subject to local personal property tax, the burial could decrease local government tax receipts. This could be similar to the tax impact in the destruction of real property cases.³²⁰

In addition, the burial of a rare collectibles might harm the public in a very different way. A great work of art, or a truly rare coin or stamp, might be admired and appreciated by many if it were in a museum. There are many specialty museums for enthusiasts of various types of collectibles.³²¹

Perhaps the cape (and the rest of the costume) worn by Bela Lugosi in the classic *Dracula* movies could have given museum-goers more pleasure, collectively, over an indefinite period of years, than the enjoyment experienced by Lugosi himself contemplating the costume combined with the enjoyment of those who viewed his open casket with Lugosi buried in full vampire regalia.³²² All sorts of sports memorabilia, and movie and celebrity memorabilia, could have a similar impact. Nevertheless, because a decedent is free to dispose of their property as they wish,³²³ instead of donating such personal property to a museum, the decedent could have left it to a family member or friend, in which case it presumably would not have been enjoyed by a large number of people. Thus, when considering whether an “important interest” has been

318. See, e.g., *supra* note 267 and accompanying text.

319. See *supra* note 165 and accompanying text.

320. See, e.g., *Eyerman*, 524 S.W.2d at 217.

321. See, e.g., *Specialty Museums in United States*, TRIPADVISOR, http://www.tripadvisor.com/Attractions-g191-Activities-c49-t161-United_States.html (last visited Feb. 7, 2024).

322. See *supra* note 145 and accompanying text; Jill Darby, *Burials of the Rich and Famous*, TRIGARD (Oct. 5, 2021), <https://www.trigard.com/blog/burials-of-the-rich-and-famous> (reporting that the most famous vampire actor was buried in a coffin).

323. See *supra* note 155 and accompanying text.

harmed under the public policy doctrine, it cannot automatically be assumed that but for the burial, the property would have been enjoyed by the museum-going public.³²⁴

5. A Few Applications

This Article began with a few examples. A final decision on whether these burial directions will violate public policy would require an analysis of all the relevant circumstances described in this Part, but some observations are possible.

i. Engagement Ring

Many factors may support authorizing a decedent's direction to be buried with their diamond engagement ring. The law of gifts generally recognizes that an engagement ring has a special meaning, symbolizing a most special relationship personal to the individual.³²⁵ Its value to the decedent may greatly exceed its retail value. Nevertheless, the argument may be weakened if the marriage ended quickly with a bitter divorce, or if the ring was a familiar family heirloom that had been passed down through many generations.

ii. Ferrari & Picasso Painting

In regard to burial in the decedent's favorite Ferrari, the unpublished case provides a template on how to structure the transaction and make the direction enforceable.³²⁶ Regarding the priceless Picasso, the executor or another could use a burial vault and additional concrete or other physical barriers to substantially reduce the risk of grave robbing. Nevertheless, the priceless Picasso raises several enforceability concerns. Masterful works of art often wind up in museums where they are enjoyed by the general public. If not, they can command tremendous prices at auction.³²⁷ In addition, depending on the arrangements, there may be a

324. Nevertheless, it could be argued that there would be a better chance the item would one day end up in a museum if it was enjoyed by a living person rather than having been buried with the decedent.

325. See *supra* notes 121–23 and accompanying text.

326. See *supra* notes 186–92 and accompanying text.

327. See Angelica Villa, *The Most Expensive Artwork by Picasso*, ARTNEWS (June 7, 2021), <https://www.artnews.com/list/art-news/artists/pablo-picasso-highest-auction-records-1234594915/femme-assise-1909/> (reporting a sale of a Picasso at \$179.4 million in

substantial risk that the painting could be damaged in connection with the burial or decomposition of the body. Furthermore, opponents likely could make a strong argument that this would involve excessive economic waste and therefore violate public policy.

iii. Ruby Slippers

Advocates could make arguments on both sides regarding the ruby slippers. The value is very high, estimated by one source at \$3.5 million.³²⁸ In addition to the potential monetary loss to the beneficiaries, the general public might enjoy seeing the ruby slippers on display. On the other hand, the decedent may be leaving substantial economic wealth to the beneficiary even without the ruby slippers. Also, the ruby slippers are an item of clothing, and many people are buried in fine clothes.³²⁹ In addition, there were at least four original pairs of ruby slippers for Judy Garland in the *Wizard of Oz* movie.³³⁰ With a pair already on display at the National Museum of American History in Washington, D.C. (the Smithsonian Institution),³³¹ the importance of the additional shoes as museum pieces is diminished.

CONCLUSION: CONSIDERING THE NEXT REVOLUTION

Changes in attitudes have revolutionized U.S. funeral and cemetery arrangements in just a few decades. Less than 4% of the United States' dead were cremated in 1960; the cremation rate overtook the burial rate around 2015, and an industry group anticipates 80% of the United States' dead will be cremated in some manner in 2040.³³² In addition to standard

2015, four more sales in excess of \$100 million, and five more sales ranging from \$63 million to \$95.2 million).

328. See *supra* note 2 and accompanying text.

329. See, e.g., *supra* note 144 and accompanying text (regarding Whitney Houston).

330. See *supra* note 2.

331. *Dorothy's Ruby Slippers*, NAT'L MUSEUM AM. HIST., <https://www.americanhistory.si.edu/press/fact-sheets/dorothys-ruby-slippers> (last visited Jan. 19, 2024). Another pair is with the Academy of Motion Picture Arts and Sciences. See *supra* note 2.

332. See *supra* notes 61–69 and accompanying text.

fiery cremation, some are choosing disposition by freezing or water and chemicals.³³³

For those who still prefer burial, many are now choosing various forms of green burial, often eschewing embalming and choosing burial shrouds or simple, biodegradable boxes over the traditional steel or heavy wooden caskets.³³⁴ Some are choosing composting.³³⁵ Others are focusing on electronically preserving their consciousness with the aid of computers.³³⁶

Perhaps the next U.S. revolution will be temporary burial, inspired by a realistic recognition of the process of human decomposition. “The reuse of graves has been going on for thousands of years across many cultures, particularly in Europe.”³³⁷ As cemeteries fill up and real estate in many areas becomes scarce and exorbitantly expensive, this practice is on the rise in Europe and elsewhere.³³⁸

The rental period for a temporary burial may be chosen to match the expected time needed for decomposition.³³⁹ The rate of decomposition varies based on up to thirteen factors including how deep the body is buried, the temperature, the humidity, the amount of oxygen, and the

333. See *supra* notes 70–73 and accompanying text; Simon Stewart, *Burial Alternatives—23 Ultimate Ways to Check Out*, LEXIKIN, <https://www.lexikin.com/funerals/burial-alternatives> (last visited Jan. 19, 2024) (listing twenty-three alternatives).

334. See *supra* note 77 and accompanying text.

335. See *supra* note 72 and accompanying text.

336. See Michael Graziano, *Why You Should Believe in the Digital Afterlife*, ATLANTIC (July 14, 2016), <https://www.theatlantic.com/science/archive/2016/07/what-a-digital-afterlife-would-be-like/491105/>.

337. JACQUELINE LEWIS, ON DEATH AND DYING ch.4.4 (Open Libr., 2022) (ebook), <https://ecampusontario.pressbooks.pub/deathanddying/chapter/4-4-grave-recycling/>.

338. Rafaela Ferraz, *Cemetery Overcrowding is Leading Europe to Recycle Burial Plots*, TALK DEATH (July 18, 2018), <https://www.talkdeath.com/cemetery-overcrowding-leading-europe-recycle-burial-plots> (“More and more European countries are being forced to adopt similar strategies [because of a] lack of burial space.”); LEWIS, *supra* note 337 (“As we grapple with issues of burial space, grave recycling is making a comeback in Europe [where] . . . there is a trend toward term limited grave[s] and] cemetery space rental in most European countries.” (citing Ann Hoffner, *Let’s Get Beyond the Idea of Perpetual Care*, GREEN BURIAL NATURALLY (Dec. 2, 2016), <https://www.greenburialnaturally.org/blog/2016/10/26/this-is-a-placeholder-first-blog-entry>)); see Chloe Hadjimatheou, *Why Greeks are Exhuming Their Parents*, BBC NEWS (Nov. 26, 2015) <https://www.bbc.com/news/magazine-34920068> (quoting a cemetery gravedigger who “averages [fifteen] exhumations a week”).

339. Ferraz, *supra* note 338.

enclosure.³⁴⁰ In New Orleans, people often are buried in body bags, in above-ground mausoleums,³⁴¹ where the temperature inside may reach 160 degrees Fahrenheit.³⁴² Reporters say, as a result, a corpse likely will turn to ash within a year.³⁴³ After a year, cemetery employees may push the body bag through a slot in the back of the mausoleum (with a “ten-foot pole”) to make way for a new body in the same space.³⁴⁴ In more moderate climates in the United States, with underground burial, decomposition is much slower, but nevertheless, normally inevitable.³⁴⁵ After ten years, often only a skeleton and teeth may remain;³⁴⁶ after eighty years, it’s normally just the teeth and bone fragments.³⁴⁷ A natural question is, at what point is that no longer “me” in the tomb? And does it need to be buried in perpetuity, taking up valuable space? And is the notion of perpetual burial a myth anyway? Cemeteries can be

340. Emily Kil, *Factors Affecting the Decomposition of a Human Body*, ECOBEAR (June 12, 2019), <https://ecobear.co/knowledge-center/factors-affecting-decomposition/>.

341. Kelly Perriello, *Why Are People Buried Above Ground in New Orleans?*, NOLA TOUR GUY, <https://www.nolatourguy.com/why-are-people-buried-above-ground-in-new-orleans/> (last visited Jan. 19, 2024) (explaining that in Louisiana, the deceased are typically buried above-ground, in part, because of the high water table).

342. *New Orleans: Cemetery*, LIFE AFTER 9TO5 (Oct. 8, 2014), <https://lifeafter9-5.com/2014/10/08/new-orleans-cemetery/>.

343. *Id.*

344. See LEWIS, *supra* note 337 (“As space is needed, skeletal remains, ashes, etc. are pushed to the back of the tomb where they fall through a gap into the space beneath.”); Matthew Duane Bartels, *Top Ten Unique Facts About Burial Practices in New Orleans*, LISTVERSE (Mar. 5, 2023), <https://listverse.com/2023/03/05/top-ten-unique-facts-about-burial-practices-in-new-orleans/>.

345. *9 Incredible Corpses That Never Decomposed*, HUFFPOST, http://huffpost.com/entry/9-incredible-corpses-that_b_8116908, (Dec. 6, 2017) (“Bogs (wetlands that accumulate peat) have the uncanny ability to preserve dead bodies.”).

346. William Prout, *What Happens If You Open a Casket After 10 Years?*, TITAN (Nov. 29, 2022), <https://titancasket.com/blogs/funeral-guides-and-more/what-happens-if-you-open-a-casket-after-10-years>; Tim Thompson & Rebecca Gowland, *The Human Body Never Truly Disappears*, CONVERSATION (Nov. 6, 2019), <https://theconversation.com/the-human-body-never-truly-disappears-finding-the-remnants-of-a-tragic-end-can-help-us-uncover-atrocities-122817>.

347. Gina Echevarria & Shira Polan, *What Happens to the Human Body After 100 Years Inside a Coffin*, BUS. INSIDER (Aug. 16, 2019), <https://www.businessinsider.in/science/what-happens-to-the-human-body-after-100-years-inside-a-coffin/articleshow/70702866.cms>.

“repurpose[d]” when they fill-up and run out of money.³⁴⁸ As one reporter observed about cemeteries, “perpetual is not the same as eternal.”³⁴⁹

Temporary burial is popular in some places.³⁵⁰ The famous Père Lachaise Cemetery in Paris, France, called the “most visited cemetery” in the world, typically rents its gravesites for ten to fifteen years, although some families rent for up to thirty years.³⁵¹ “[T]here are only 70,000 graves, [but] official estimates state that anywhere from [one] to [three] million people have been buried in the cemetery at some point in the past 200 years.”³⁵² Typical grave rental periods vary from place to place—Greece and Portugal (three to five years), the Netherlands (ten to twenty years), Switzerland and Sweden (twenty-five years), Italy (ten to thirty years), Germany (fifteen to thirty years), and France (ten to fifty years).³⁵³ At the end of the rental period, often with only teeth and bones remaining, these remnants may be gathered and cremated and returned to the family, or deposited in a bone house (“ossuary”).³⁵⁴ The grave site may then be rented for a newly deceased person.³⁵⁵

The notion of perpetual burial may become old-fashioned. In the future, many who still choose burial may decide that a rental during the decomposition of the flesh will be sufficient. For those who wish to be buried with property, it would be natural for the beneficiary to claim the

348. See Stone, *supra* note 220 (“[T]he courts may decide that the relatives had previously abandoned the particular grave or may otherwise decide to grant a sale or repurposing of the land . . . despite any objections from those who have loved ones buried in the cemetery in question.”); John Matarese, *‘Perpetual’ Cemetery Care? It’s Not Eternal*, WCPO 9 NEWS (June 1, 2016), <https://www.wcpo.com/money/consumer/dont-waste-your-money/perpetual-cemetery-care-its-not-eternal-care>.

349. Matarese, *supra* note 348 (“The International Cemetery, Cremation, and Funeral Directors Association says many cemeteries are no longer able to afford the perpetual care they promised . . .”).

350. See Stone, *supra* note 220; see also Lynley Wallis et al., *Losing the Plot: Death Is Permanent, But Your Grave Isn’t*, CONVERSATION (Nov. 5, 2014), <https://theconversation.com/losing-the-plot-death-is-permanent-but-your-grave-isnt-33459> (discussing the practice in South Australia, and noting that “[o]ver the entirety of human history, around 108 billion people have lived—and died”).

351. BENJAMIN, *supra* note 294, at 138–39. Residents include former rock star Jim Morrison and former author Oscar Wilde. *Id.* at 138.

352. *Id.* at 139. Even if only one million people have been buried there, on average, each grave has been used over fourteen times in 200 years [$1,000,000/70,000=14.28$]. The average rental period would be approximately fourteen years [$200/14.28=14$].

353. Ferraz, *supra* note 338. In Portugal, sometimes the dead have not decomposed down to the skeleton after three years, so they re-bury the remains for two more years. *Id.*

354. *Id.* (stating that this practice is referred to as “raising the bones”).

355. See BENJAMIN, *supra* note 294, at 139.

prized possession at the end of the rental period when the bones and the teeth are being cremated and returned to the family (or moved to an ossuary). And those new memory drawers and secret compartments manufacturers are now including in caskets³⁵⁶ may be perfect for protecting these items in the grave.

Physical barriers may prevent grave robbing,³⁵⁷ and a new rental paradigm could greatly reduce the economic waste associated with burying a prized possession. A new and less objectionable practice of “taking it with you” for a term of years may arise.

356. See Alex Lee, *Key Features on Which to Base Your Choice of a Casket*, TO CANVAS (Jan. 27, 2020), <https://tocanvas.net/key-features-on-which-to-base-your-choice-of-a-casket/> (mentioning memory drawers and secret compartments).

357. See *supra* notes 209–16 and accompanying text.

