Wills and the right to devise property by a will were not an inherent right of the citizen at common law. They were derived from legislation. This changed in 1968 with the Constitution adopted then. The Constitution grants Floridians the right “… to acquire, possess and protect property” and a right of privacy in private life that limits the former plenary legislative authority. 1 A will takes effect on death of the testator. Any person who is 18 years of age or more and of sound mind or is an emancipated minor can make a will. 2 The validity of a will is determined by the law at the time of death. 3 Testamentary capacity is determined on the date of execution of the will. 4 A will has no effect until it has been probated. 5 A valid devise of real property must be accomplished in accordance with the law where the property is located. 6 A will may not dispose of all of the property of the testator, but will be construed to do so unless a contrary intent appears in the will, 7 but a will cannot dispose of homestead, family allowance, exempt property, and the elective share of a spouse. 8 A will is valid even though it only appoints a personal representative. If no personal representative is nominated in the will, the court will appoint one. 9 Except for the provisions for a spouse, family allowance, exempt property, pretermitted spouse or children, family allowance and homestead, a testator has the right to devise property to any person or persons and is not required to leave property to his next of kin. 10 A will may refer to a written list made by the testator disposing of tangible personal property not specifically disposed of in the will, other than property used in trade or business. The list is a valid disposition of the property described in it. The separate writing must be signed by the testator and describe the items and devisees with reasonable certainty. The writing may be prepared before or after execution of the will and may be changed by the testator after its preparation. The list does not have to be witnessed. The will may also refer to any other existing writing identified in the will and incorporate the writing as a part of the will by reference. If there is more than one list, the later list controls. 11 A devise to a trustee of a written trust in existence at the time of making the will or created concurrently with the making of the will is valid if the trust is identified in the will. The devise is not invalid because:

(1) the trust is amendable or irrevocable, or both;

(2) the trust has been amended or revoked in part after execution of the will;

(3) the only res of the trust is the possible expectancy of receiving a devise under a will or other death benefits and even though the testator or another person has reserved any or all rights of ownership in the death benefits, including the right to change the beneficiary; or

(4) of any provision of § 689.075 Florida Statutes.

A revocation of the trust by written instrument before the testator's death invalidates the devise. 12 A provision in a will purporting to penalize any interested person for contesting the will or instituting other proceedings concerning the estate is unenforceable. 13
Unless a will provides otherwise, all devises are per stirpes, rather than per capita. Per stirpes means that all persons related in the same degree to the testator take equal shares. If one or more of them predecease the testator and the devises do not lapse, the descendants of the predeceased persons take their ancestors’ share. This is distinguished from a per capita distribution in which each surviving person, regardless of the degree of relationship to the testator, takes an equal share. Adopted persons and persons born out of wedlock are included in class gift terminology and terms of relationship in accordance with the rules determining relationships for intestate succession unless a contrary intent appears in the will. Testamentary capacity is discussed in § 3:9. Invalidity of a will caused by fraud, mistake, duress or undue influence is discussed in § 10:2.

A will that violates public policy is invalid. A testator may make his will effective on some future event. If the will clearly so provides, the will is contingent and will not be effective unless the contingency occurs.

Footnotes
1. Fla. Const., Art. I, §§ 2, 23; In re Sharp’s Estate, 133 Fla. 802, 183 So. 470 (1938); § 732.501 F.S.A.
5. Murphy v. Murphy, 125 Fla. 855, 170 So. 856 (1936); cf. Schaefer v. Voyle, 88 Fla. 170, 102 So. 7 (1924).
7. In re Gregory’s Estate, 70 So. 2d 465 (Fla. 1954); § 732.6005 F.S.A.
9. § 731.201(40) F.S.A.; Leffler v. Leffler, 151 Fla. 455, 10 So. 2d 799 (1942); In re Estate of Corbin, 645 So. 2d 39 (Fla. 1st DCA 1994). See § 5:5 for priority of appointment of personal representatives.
11. § 732.515 F.S.A.; Forsythe v. Spielberger, 86 So. 2d 427 (Fla. 1956); cf. In re Gregory’s Estate, 70 So. 2d 903 (Fla. 1954). A direction to buy a car from estate assets is not a gift of tangible personal property under Baldwin v. Estate of Winters, 944 So. 2d 437 (Fla. 4th DCA 2006).
13. § 732.517 F.S.A.
14. § 732.611 F.S.A.
16. § 732.608 F.S.A.
17. Perkins v. O’Donald, 77 Fla. 710, 77 Fla. 727, 82 So. 401 (1919); Rewis v. Rewis, 79 Fla. 126, 84 So. 93 (1920); Martin v. Munroe & Chambliss Nat. Bank of Ocala, 125 Fla. 65, 169 So. 582 (1936).
18. § 732.512(2) F.S.A.