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Mutual Wills

Many couples approach me with a very real problem. What happens if they die unexpectedly and their surviving spouse becomes lonely? He or she then gets swept off their feet by another (usually much younger) partner and the family assets are then inherited by the much younger spouse and the couple's children are disinherited.

This is a real issue for those of us who don't go on SKI ("spend the kids' inheritance") holidays!

It can also be a particular issue for people in second relationships where the couple both have children from a previous relationship.

One solution can be to make "mutual wills".

Mutual wills are like a cross between a will and a contract. A mutual will could provide, for example, that Fred and Mary will leave each other everything, but on the death of the last to die, each of their respective children get an equal share of the remaining estate. But both Fred and Mary's wills are *conditional* on each other doing this – if one of them later changes their mind when they are swept off their feet by that younger lover they cannot change their will without the earlier beneficiaries being entitled to sue them.

Mutual wills are a binding contract and the courts have found that the contract can be enforced on the survivor by the deceased's beneficiaries. The remedy for breach of the contract is an action for damages by the person who would have benefited from the original arrangement.

While there is some additional cost at the time of making the Will there is the comfort that the first to die can protect their assets to some degree for their children.