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Of mice and heirs

By Michael M. Ratoza

The Second Circuit Court of Appeals in New York extinguished the rights of John Steinbeck's son, Thomas Steinbeck, and granddaughter, Blake Smyle, to Steinbeck's literary heritage.

Ownership and Bequest of John Steinbeck's Literary Heritage

John Steinbeck, famed author of 'Of Mice and Men,' published his treasured work pursuant to a 1938 publishing agreement with the predecessor to publisher Pearson's Penguin Group. The copyrights to his well-known stories were registered and timely renewed over the years by the Nobel Prize winner. When Steinbeck died in 1968, his will gave his copyright interests to his surviving third wife, Elaine. The will also gave his two sons from his second marriage a modest financial bequest.

In 1994, Elaine and Penguin re-negotiated the 1938 publishing agreement and entered into a new agreement providing additional financial benefits, mostly to Elaine. When Elaine died in 2003, her will made various gifts to her children and grandchildren from a previous marriage, but excluded any gift to John Steinbeck's sons from his second marriage, or their heirs.

Termination of Original Publishing Agreement

Following Elaine's death, the surviving son and grandchild from Steinbeck's second marriage sought to terminate the 1938 publishing agreement between Steinbeck and Penguin pursuant to the termination provisions of the current Copyright Law. They were successful in the New York federal district court, which held that the Penguin publishing rights under the 1938 publishing agreement could be terminated. The Second Circuit reversed. In doing so, the Second Circuit acknowledged that the Copyright Act contains very powerful rules allowing certain heirs to terminate earlier copyright transfers. However, these rules are very technical and are not applicable to all earlier transfers in all instances. The termination rules did not prevent Elaine and Penguin from entering into a new publishing agreement in place of Steinbeck's original 1938 agreement. Once the new publishing agreement was entered into, there was no longer a 1938 publishing agreement in existence that could be terminated. Further, the Copyright Act does not permit termination of the new 1994 publishing agreement because the right to terminate certain post-1978 grants is limited.

What Does This Mean To You?

In the final analysis, the method by which Steinbeck's will transferred his literary interests limited the ability of the heirs from his second marriage to terminate the original 1938 publishing agreement and claim a share of the publishing royalties. Equally important, the technical copyright rules dealing with ownership transfers and termination rights may create a conflict with bequests contained in a will. As such, any estate that contains copyrighted work, including for example, rights to computer code, graphical design, textual material, music and sound material, product designs, photographs, architectural work and other work protectable by copyright, should be carefully planned to take into account the Copyright Act's transfer and



termination rules. Also important, heirs who seek an interest in an ancestor's copyrighted work must be guided cautiously in challenging earlier transfers.