OBJECTIVES

After completing this chapter, you will be able to:

List the choices available in planning a funeral.

Describe the financing strategies used to pay for funerals.

Explain the state and federal laws that regulate the funeral industry.

Explain the potential for fraud when planning a funeral.

INTRODUCTION

Twenty-first-century Americans use the term funeral for an event during which a person who has recently died is honored. The word funeral is derived from the ancient Sanskrit term meaning smoke," which refers to the custom of cremation.1 Cremation is defined as the incineration of a corpse until only ashes are left.2

Funeral rites vary widely based on culture, custom, and religion. However, a meaningful funeral brings together a community of mourners to remember the deceased, create opportunities to
express grief and offer emotional support, allow moments of reflection on the
meaning of life and death, and provide mourners with a sense of closure.9

Funeral arrangements are a deeply personal choice. The discussion of
funeral planning can be one of life's more uncomfortable and emotion-laden
discussions that everyone faces eventually, either for themselves or for others.
Planning a funeral may be an unpleasant chore, but someone must do it. In fact,
Americans arrange more than 2 million funerals for family and friends each
year.4 Those funerals are planned in the nation's approximately 22,500 funeral
homes and 100,000 public, private, military, municipal, and religious cemeteries.

CLIENT CHOICES

Clients essentially have two choices when contemplating funeral planning.
The first choice is for an individual to preplan her funeral arrangements. This
choice frees family and friends from the responsibility of making decisions about
burial or cremation following the sorrow-filled experience of losing a loved one.
Such funeral arrangements also may be prepaid by the planner. The second
choice is for an individual to die without plans for burial, cremation, or funeral
arrangements. This choice leaves the entire matter to family or friends who may
or may not know or may not comply with the deceased's wishes.

An attorney can be of assistance to clients who want to preplan their funeral
arrangements. An attorney can begin by reviewing the basic decisions that a
client must make when planning a funeral. A client may be confused by what is
and is not legally permitted. The client may choose whether to have a simple
disposition or a more elaborate funeral. For example, some clients may not know
that a funeral home's services are not legally required or that a casket can be
purchased from an online retailer and sent to a funeral home. Exhibit 12
provides a list of basic decisions that a person needs to make to initiate funeral
planning.

Clients may choose to use the services of a funeral home only for a direct
cremation. A direct cremation includes picking up a body from the place of
death, transporting it to a crematory, providing a container for cremation,
obtaining all necessary authorizations, carrying out the cremation, and
returning the remains to the family. The cremation option was chosen in 26
percent of all deaths in 2000. Cremations totaled 600,000 in 2000.6

The decision to be buried involves more choices. A single or double gravesite
may be purchased. U.S. cemeteries usually offer an option of a traditional
monument being placed at a grave, or they may offer the option of a grave
marker being placed flush with the ground at a gravesite. If an individual already
owns a gravesite, the cemetery will charge a fee for opening the gravesite when it
is needed. Cemeteries also may allow mausoleums on their property by choice or

\* direct cremation
The service of a funeral
home in picking up a body
from the place of death,
transporting it to a
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out the cremation, and
returning the remains to
the family.
need. For example, in Louisiana, above-ground mausoleums are used due to the low water table of the land. There are public, private, religious, and military cemeteries.

Clients may want to add more details to their funeral plans. For example, some clients may want certain music to be played, flowers displayed, and food served. Clients often ask their attorneys to incorporate their wishes into their last will and testament or have them included in a letter of instruction written to accompany their will. An individual who preplans her funeral is considered (in the parlance of the funeral industry) to be making a pre-need decision.

### Pre-Need Decision

1. Does the client want burial or cremation? If the decision is a burial, will the burial be in a cemetery plot or a mausoleum crypt?
2. If the decision is cremation, what is the decision regarding the disposition of the ashes?
3. Should the ashes be stored in a columbarium niche, be buried, or be scattered? If scattered, where is the location legally permissible?
4. An alternative to consider: Does the client want to donate organs, tissues, or her entire body to a medical school?

### Anatomical Gifting

Individuals seeking an altruistic option to burial or cremation may opt for anatomical gifting. Anatomical gifting is the donation of a person’s designated body parts or her entire body to aid medical science. An anatomical gift may reach a patient in need or be utilized for medical research and education. Part of the donation process may provide assistance with processing necessary documents, providing a no-cost cremation, and returning the cremated remains to the next of kin so chooses.

### Cryonics

An admittedly more unusual burial alternative is cryonic suspension. Cryonic suspension is the process of taking a body that has been frozen with care and storing it in tanks filled with liquid nitrogen. The most famous person to have been placed in cryonic suspension was the sports legend Ted Williams. Williams’s cryonic suspension became public knowledge when his daughter filed a lawsuit against her siblings seeking to have her father cremated instead of adhering to
his instructions as stated in his will. The siblings contended that Mr. Williams had the requisite mental capacity when he signed a contract (after signing his will) to be cryonically preserved. The case was settled, and Williams remains in cryonic suspension.

**LAWS AFFECTING FUNERAL PLANNING**

The earliest funeral regulations developed at the turn of the twentieth century when states began to license funeral homes and funeral directors. Funeral homes are business establishments where corpses are prepared for burial or cremation and where funeral services may be held and the body viewed by mourners. Funeral directors are usually the proprietors of funeral homes. Their job is to manage funerals. Often they are able to prepare corpses for burial or cremation. The rationale used at the time for the initiation of these regulations was the prevention of communicable disease. The argument was successfully made by legislators that dead bodies were infectious and could be safely disinfected only by being properly embalmed.

All 50 states except Colorado license funeral directors, and most states regulate their state's funeral industry to some degree. For example, the most prevalent requirement in 33 states is that funeral homes must have embalming preparation rooms. Almost half of the states prohibit funeral homes from offering their services within cemeteries. A small number of states require that crematoriums operate only within cemeteries. This was originally thought to limit the emission of gasses from the crematoriums to the cemetery and surrounding neighborhood. Modern-day cemeteries have limited problems with emissions due to the more sophisticated design of crematoriums.

**Funeral Homes and Worst-Case Scenarios**

The failure of a funeral home to perform its services adequately can have an emotional effect on a deceased's family. The following cases, *Ingaglio v. Kraeer Funeral Home*, 515 So.2d 428, (1987) and *Perkins, et al. v. Johnson, et al.*, 866 So.2d 1146 (2003), are worst-case examples of what can happen when funeral homes fail to perform adequately.
Personal Preference Laws

Earlier chapters reviewed the importance of memorializing one's major life choices (e.g., drafting a will to specify beneficiaries and advance directives to detail health care decisions). In addition, an individual may want to ensure that her burial wishes are carried out by detailing burial or cremation decisions in a will or a letter of instructions. Unfortunately, there is no guarantee that such decisions, even those included in a will or letter of instruction, will be carried out. The reason is because state personal preference laws may permit an individual's next of kin to disregard such instructions and to decide whether their deceased family member will be buried or cremated. For example, in Arkansas, a person who...
wants her remains cremated must sign a specific form and have it witnessed by two other people to ensure that the cremation will be carried out. Without the signed and witnessed form, next of kin in Arkansas can override a deceased wishes. Conversely, Wyoming case law requires survivors to comply with the wishes of the deceased. Exhibit 12-2 provides a list of states with personal preference laws. The case *Birch v. Birch*, 204 N.Y.S. 735 (1924), is an older case that clearly explains personal preference law that is still followed in the majority of states.

**CASE LAW**


866 So.2d 1146 (2003)

**Facts:** The plaintiffs, relatives of Joyce Cotton, sued Howard G. Johnson and Johnson Memorial Funeral Directors, Inc., alleging breach of contract, fraud and the tort of outrage. The plaintiffs contracted the defendants regarding a pre-need contract for Joyce Cotton who had terminal cancer. The parties signed a contract allowing the relatives to pay a portion of the fee up front ($1,000) and the balance being due over the course of 12 months ($375 per month). After the contract was signed the defendant presented the plaintiffs with an Irrevocable Pre-Funeral Agreement (IPA) which stated that if their relative died before the 12 months were up then the full amount would be due prior to the funeral service. The plaintiffs neither signed the IPA nor initialed it.

Two days later Joyce Cotton fell into a coma and the plaintiffs called the defendant to cancel the contract because they could not afford the full amount of the funeral at that time. The defendant allegedly told the plaintiffs that the contract was “a done deal” and there were no refunds available. The plaintiffs then sued the defendants. The defendants responded with a summary judgment motion. The motion stated the parties had entered into a valid contract that clearly stated what would happen in the event their relative died prior to the end of the 12-month period. The motion was granted and plaintiffs appealed.

**Issue:** Whether the summary judgment motion was properly granted.

**Court’s Reasoning:** We conclude that a question of fact exists as to whether the plaintiffs assented to the terms contained in the Irrevocable funeral services agreement. The terms making the funeral services contract irrevocable do not appear in the document signed by the plaintiffs and Howard Johnson.

**Holding:** Reverses and remanded.

**Case Discussion:** This case provides a lesson on how to recover on a breach of contract claim. A plaintiff must prove the following:

1. The existence of a valid contract binding the parties in the action
2. His or her own performance under the contract
3. The defendant’s nonperformance
4. Damages

The fact that the IPA was neither signed by the plaintiffs nor included in the contract signed by the plaintiffs was the most important point in the case. Contract law usually does not look outside the four corners of a signed contract for additional contract language. To do otherwise would invite (with certain exceptions) contractual turmoil.
Law Designed to Protect Consumers

The Funeral Industry Practices Rule, commonly known as the Funeral Rule, was promulgated in 1982 and made effective in 1984. The Federal Trade Commission (FTC) administers the Funeral Rule, which requires funeral providers to provide consumers with information regarding funeral products and services and ensures that consumers pay for only the products and services they want and need.

Under the Funeral Rule, all funeral providers are required to supply an itemized statement of costs for any funeral they are contracting to provide. If the funeral provider does not know the cost of a particular service, she may provide a good faith estimate. Funeral homes are not legally required to mail their price lists but are required to provide their prices over the phone. No one is legally required to use the services of a funeral home.

### Exhibit 12-2 Personal Preference Laws

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### EXHIBIT 12-2 PERSONAL PREFERENCE LAWS (continued)

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Since the inception of the Funeral Rule in 1984, the FTC has engaged in traditional enforcement actions through investigation and litigation. In 1996, the FTC embarked on a new method of enforcement with the institution of the Funeral Rule Offenders Program (FROP). Since the inception of FROP, FTC
agents have shopped a total of 574 funeral homes to ascertain whether the funeral homes adhere to the Funeral Rule. The test shopping that is conducted by FTC and state attorney general staff involves sending individuals to funeral homes to inquire about funeral arrangements. At least 74 funeral home violators 
discovered by the FROP investigation have been offered the opportunity to pay a fine as an alternative to litigation. Under FROP, funeral homes make a voluntary payment to the U.S. Treasury or appropriate state fund for an amount less than what would likely be sought if the FTC authorized filing a lawsuit for civil penalties. In addition, the funeral homes found to be violating the Funeral Rule must participate in the compliance program of the National Funeral Directors Association (NFDA). This program includes a review of the price lists, on-site training of the staff, and follow-up testing and certification of violators following their compliance with the Funeral Rule. "Helpful Web Sites" includes a link to the state laws for funeral service providers. Refer to Exhibit 12–3 to find a portion of The Federal Rule.10

EXHIBIT 12-3  FUNERAL RULE EXCERPT

§ 453.2 Price disclosures.

Unfair or deceptive acts or practices in selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral provider to fail to furnish accurate price information disclosing the cost to the purchaser for each of the specific funeral goods and funeral services used in connection with the disposition of deceased human bodies, including at least the price of embalming, transportation of remains, use of facilities, caskets, outer burial containers, immediate burials, or direct cremations, to persons inquiring about the purchase of funerals. Any funeral provider who complies with the preventive requirements in paragraph (b) of this section is not engaged in the unfair or deceptive acts or practices defined here.

(b) Preventive requirements. To prevent these unfair or deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in § 453.4(b)(1), funeral providers must:

(1) Telephone price disclosure. Tell persons who ask by telephone about the funeral provider's offerings or prices any accurate information from the price lists described in paragraphs (b)(2) through (4) of this section and any other readily available information that reasonably answers the question.

(2) Casket price list. Give a printed or typewritten price list to people who inquire in person about the offerings or prices of caskets or alternative containers. The funeral provider must offer the list upon beginning discussion of, but in any event before showing caskets. The list must contain at least the retail prices of all caskets and alternative containers offered which do not require special ordering; enough information to identify each, and the effective date for the price list. In lieu of a written list, other forms, such as notebooks, brochures, or charts may be used if they contain the same information as.

(continues)
FUNERAL RULE EXCERPT (continued)

...would the printed or typewritten list, and display it in a clear and conspicuous manner. Provided, however, that funeral providers do not have to make a casket price list available if the funeral providers place on the general price list, specified in paragraph (b)(4) of this section, the information required by this paragraph.

(ii) Place on the list, however produced, the name of the funeral provider’s place of business and a caption describing the list as a “casket price list.”

(3) Outer burial container price list. (i) Give a printed or typewritten price list to persons who inquire in person about outer burial container offerings or prices. The funeral provider must offer the list upon beginning discussion of, but in any event before showing the containers. The list must contain at least the retail prices of all outer burial containers offered which do not require special ordering, enough information to identify each container, and the effective date for the prices listed. In lieu of a written list, the funeral provider may use other formats, such as notebooks, brochures, or charts, if they contain the same information as the printed or typewritten list, and display it in a clear and conspicuous manner. Provided, however, that funeral providers do not have to make an outer burial container price list available if the funeral providers place on the general price list, specified in paragraph (b)(4) of this section, the information required by this paragraph.

(ii) Place on the list, however produced, the name of the funeral provider’s place of business and a caption describing the list as an “outer burial container price list.”

(4) General price list. (i)(A) Give a printed or typewritten price list for retention to persons who inquire in person about the funeral goods, funeral services or prices of funeral goods or services offered by the funeral provider. The funeral provider must give the list upon beginning discussion of any of the following:

(1) The prices of funeral goods or funeral services:
(2) The overall type of funeral service or disposition; or
(3) Specific funeral goods or funeral services offered by the funeral provider.

FUNERAL COSTS

Funerals are among the highest-priced purchases that consumers make. In 2007, the typical U.S. funeral cost $6,000. An in-ground burial can add $2,400 to the costs of a funeral. Additional niceties such as flowers, newspaper obituary notices, stationery, and special transportation can add an additional $1,000. Obviously, the high cost warrants careful scrutiny. A general price list should include an itemized list including the cost of the following:

1. Direct cremation/immediate burial
2. Basic services
3. Transfer of remains to funeral home
4. Forwarding/receiving of remains to/from another facility
5. Embalming and preparation (restoration or cosmetology)
6. Use of facilities/staff for viewing or a ceremony
7. Use of equipment/staff for graveside service
8. Use of hearse/limousine
9. Prices of caskets (individual/range)
10. Prices of outer burial container (liners/vaults)

Burial costs vary with the cemetery and the choices that a person makes. Perpetual care is a term used to describe the prepaid continuing maintenance of a burial plot, monument, or mausoleum.

Once the total cost of the choices (e.g., cremation or burial, type of funeral service, flowers, and music) are tallied, the question of how to finance the funeral is the next consideration.

Payment Strategies

A person can arrange for her funeral to be paid in one of three ways:
1. Prepaying prior to a person’s death
2. Paying after a person’s death out of the person’s estate
3. Ignoring the issue

Paying for one’s funeral ahead of time is considered to be paying pre-need, pre-funding one’s choices.

In addition to paying pre-need for a funeral or allowing an estate to cover the funeral costs, an individual has quite a few funding options to consider with regard to the costs of a funeral. These options include but are not limited to the following:

- Pre-need insurance
- Life insurance
- Annuities
- A bank or a funeral trust
- A payable-on-death bank account
- A state prepaid funeral trust fund

Pre-need insurance purports to eliminate complicated claims procedures of a regular life insurance policy. It is supposed to ensure that when money is needed to pay for a funeral, the money will be available. Pre-need insurance is also called burial or funeral insurance. Some insurance companies require the policy owner to purchase a burial policy in one lump sum. Other companies let the owner pay the premiums over a certain period of time (e.g., three or five years). The only pre-need insurance policies an insured with serious health problems may be able to find are those that limit coverage the first year, then increase coverage the next year. Life insurance or an annuity are other options...
for funding funeral costs to ensure that beneficiaries will be able to afford the cost of the insured’s funeral when needed. A trustee of a bank or funeral trust can invest in a certificate of deposit. Some states now offer state-sponsored prepaid funeral trust funds.

A minority of states have passed legislation designed to protect pre-need purchasers. For example, New Jersey’s Pre-Need Act requires checks written to purchase burial insurance be made payable only to the insurance company, not to a funeral home. In addition, New Jersey’s act stipulates that any money paid to a funeral home pre-need belongs to the consumer and must be made available to the consumer upon request. New Jersey’s Prepaid Funeral Trust Fund requires that 100 percent of the principal and interest (minus a 1 percent trustee fee) must accrue for the benefit of the beneficiary and that the money must be deposited in a FDIC-insured bank account. Trust fund monies also are revocable or 100 percent refundable with interest on demand.

Similarly, the state of Illinois requires each funeral home that participates in the Illinois Funeral Directors Association Pre-Need Trust be individually licensed to accept trust funds by the Office of the State Comptroller under the Illinois Funeral or Burial Funds Act, that each member firm be bonded, and that each funeral home annually report to and be audited by the state’s comptroller.

Guiding Clients Who Prepay Funeral Costs

Elder law attorneys can advise clients who decide to prepay funeral costs. For example, clients may ask attorneys to review contracts and make sure funds are secured. Attorneys can advise their clients to keep papers in a safe place that is accessible by family. Clients may want to consider an irrevocable prepayment plan when eligibility for Medicaid benefits is a concern. Such prepayment is permitted and does not influence Medicaid’s determination of eligibility. Clients should be advised that not all states require funeral homes to make full refunds when clients want to cancel pre-need or prepaid funeral plans.

Veterans Burial Benefits

The U.S. Department of Veterans Affairs (VA) provides a small stipend to assist with the financial costs of a veteran’s funeral. All veterans are eligible to receive a free burial flag and may be eligible to be buried at no cost in a national veteran’s cemetery. Burial at well-known Arlington National Cemetery is limited to those men and women who meet certain criteria. The following Web site provides that criteria: <http://www.arlingtoncemetery.org>. 
Funeral Planning Societies

Farmers in the northwest United States formed burial co-ops in the early 1900s as a way to cut costs through cooperative buying power. These co-ops were an offshoot of the popular farm grange organizations. The concept of burial co-ops spread to other parts of the United States, and the national organization the Funeral Consumers Alliance was started in 1963. The goal of the Funeral Consumers Alliance is to protect a consumer's right to choose a meaningful, dignified, affordable funeral.13

Fraud Prevention

Over $20 billion was invested in pre-need funeral and cemetery plans at the start of the twenty-first century, but no federal regulation had been designed to monitor how safely those dollars were invested. Pre-need and prepaid funeral plans are actively solicited to the elderly all over the country via marketing plans sold over the phone, through the mail, and through door-to-door solicitation. It has been estimated that over 50 percent of all funerals will be prepaid and pre-arranged by 2010.14 According to the American Cemetery Association, at least 90 percent of all cemetery plots are sold on a pre-need basis.

Although pre-need and prepaid funeral plans are not regulated by federal law, most states do regulate pre-paid funeral plans. However, state oversight varies widely, and in different states different agencies regulate the funeral industry. A number of states do not address pre-need burial contracts. In fact, only 10 states have consumer protection laws dealing with consumers recovering funds from pre-need burial contractors.

The following case highlights the difficulties the members of one family encountered in financing the funeral for their husband and father.

CASE LAW

Wilson v. Houston Funeral Home


Plaintiffs were the wife, daughter, and sister of the deceased, Melvin Wilson. They sought damages from the Houston Funeral Home, and its director Willie Houston for breach of contract and fraud in connection with the burial service of Mr. Wilson. Two days after Mr. Wilson's death the plaintiffs entered into a contract with Houston for professional services typically associated with funeral proceedings. At that time Mrs. Wilson informed Houston that she had a check for $5,000 from a mortgage loan she had taken out plus the proceeds of an insurance policy to pay the funeral expenses. Houston assured her that the insurance proceeds would cover the cost of the funeral and there wasn't a need for her to cash the $5,000 check.

(continues)
Wilson v. Houston Funeral Home (continued)

On the day preceding the funeral Mrs. Wilson received a call from Houston asking if she still had the $5,000 check she had sent. Then again on the day of the funeral she received a call from an employee of the funeral home asking if she had the check, she still did. On the day of the funeral, the funeral home's limousine driver picked up the family and instead of taking them to the services the driver took them to the bank where Houston was waiting. Houston then demanded payment in full from the $5,000 check. After about an hour, the family gave Houston the check. The family returned to the funeral home and the deceased had all ready been put in the hearse and Houston refused to allow the family to see the deceased. On the way to the burial site the limousine driver drove at a high rate of speed reaching 90 miles per hour while weaving in and out of traffic. The Wilsons sued the funeral home and its director for breach of contract, breach of covenant of good faith, fraud and breach of fiduciary duty. The lower court dismissed their claims.

Issue: Whether the lower court erred in dismissing the breach of contract, breach of the covenant of good faith, fraud and breach of fiduciary claims.

Court's Reasoning: Houston contends he complied with the written contract which specifically provided that Houston would transport the body and the family to Riverside for burial service. We disagree with such a narrow view of the contract between a mortuary and the bereaved family of the deceased. A contract for burial services involves more than just driving the family to the cemetery to watch a box being dropped in a hole. Rather, as our Supreme Court has observed, the mortuary defendants undertook to provide appropriate and dignified services of the type that bereaved family members normally anticipate. Those services are not limited to the conduct of the funeral rites, but extend through arranging the commitment of the remains through burial. Contrary to Houston's claim, the funeral home did not act reasonably in detaining Mr. Wilson's body until its bill had been paid. Courts in other jurisdictions have described holding a body hostage for payment of a debt as morally reprehensible. As to the conduct of the limousine driver, clearly such unprofessional conduct would be a breach of the covenant to provide an appropriate and dignified burial.

Plaintiffs seek to hold Houston liable on a theory of breach of fiduciary duty by an agent. We have found no case in California or any other jurisdiction holding a mortuary owes a fiduciary duty to the family of the deceased. Nevertheless, the mortuary, as the family's agent for the fulfillment of its statutory obligation, owes the family a fiduciary duty in connection with the preparation and expeditious disposal of the deceased's remains. We need not decide this issue here, however, because of the funeral home's breach of its duty to provide the family with an appropriate and dignified burial service.

Holding: Reversed and remanded to the trial court.

Case Discussion: This case helped explain that buying the services of a funeral home involves more than handling the body of the deceased. Rather, the court recognized that family members are purchasing from the funeral home the assurance that a loved one's funeral and burial will be handled with consolation, consideration, and dignity and will provide peace of mind after a loss.

DISINTERMENT

disinterment

The removal of a body from a grave or tomb.

The following case involves the question of when disinterment is appropriate and who has the right to request disinterment. Disinterment is defined as the removal of a body from a grave or tomb.
LEGAL ASPECTS OF FUNERAL PLANNING

Americans arrange more than 2 million funerals for family and friends each year. Twenty-first-century Americans use the term *funeral* for the event in which a person who has recently died is honored. Cremation is defined as the incineration of a corpse until only ashes are left. An individual may want to pre-plan her funeral arrangements. This choice frees family or friends from the responsibility of making decisions about burial or cremation immediately following the sorrow-filled experience of losing a loved one. An individual may die without having planned any burial, cremation, or funeral arrangements. In this case, family or friends may or may not know or may not comply with the deceased’s wishes. Funeral arrangements also may be prepaid by the planner. An individual has quite a few funding options to consider with regard to the costs of a funeral. The Funeral Industry Practices Rule, commonly known as the Funeral Rule, requires funeral providers to supply consumers with information regarding funeral products, services, and costs. The purpose of the Funeral Rule is to ensure that consumers pay for only the products and services they want and need. Prepaid and pre-need

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**CASE LAW**

In the Matter of Jon A. Briggs, as Executor of Harvey D. Briggs v. Briggs

601 N.Y.S.2d 833 (1993)

**Facts:**
Petitioner, Jon A. Briggs, was the executor of Harvey D. Briggs’ estate. Petitioner sought the disinterment of the deceased from Fairview Cemetery and re-interment in the family plot in Coleskill Cemetery. The plot at Coleskill was where the deceased wished to be buried. He had a plot there along side his first wife and his wishes to be buried there with his first wife were made clear in his last will and testament. However, nine months after the death of his first wife the deceased remarried and 13 months thereafter he died. The second wife buried the deceased at Fairview Cemetery without notification to his relatives or his executor.

**Issue:**
Whether there were good and substantial reasons for the court to exercise its discretion and permit disinterment of the deceased.

**Court’s Reasoning:**
The standard to use in determining whether a deceased should be disinterred is whether there are good and substantial reasons for such disinterment. A decedent’s wishes concerning his or her final resting place are of significant concern to a court in determining whether disinterment should occur. A decedent’s wishes can prevail even over those of a surviving spouse. Respondent purchased the Fairview plot after decedent’s death and with knowledge of the burial dispute. She sumptuously buried decedent without notifying decedent’s other family members. Because issues of fact have clearly been raised concerning decedent’s wishes, the lower court erred in dismissing the application with a hearing.

**Holding:**
Judgment reversed and remanded for a hearing.

**Case:**
The court in the Briggs case stated that a decedent’s wishes can prevail even over those of a surviving spouse.

**Discussion:**
This is counter to some states that do not adhere to the personal preference philosophy.

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**SUMMARY**

Americans arrange more than 2 million funerals for family and friends each year. Twenty-first-century Americans use the term *funeral* for the event in which a person who has recently died is honored. Cremation is defined as the incineration of a corpse until only ashes are left. An individual may want to pre-plan her funeral arrangements. This choice frees family or friends from the responsibility of making decisions about burial or cremation immediately following the sorrow-filled experience of losing a loved one. An individual may die without having planned any burial, cremation, or funeral arrangements. In this case, family or friends may or may not know or may not comply with the deceased’s wishes. Funeral arrangements also may be prepaid by the planner. An individual has quite a few funding options to consider with regard to the costs of a funeral. The Funeral Industry Practices Rule, commonly known as the Funeral Rule, requires funeral providers to supply consumers with information regarding funeral products, services, and costs. The purpose of the Funeral Rule is to ensure that consumers pay for only the products and services they want and need. Prepaid and pre-need
programs are actively targeted to the elderly all over the country. An alternative to burial is cryonic suspension. Burial co-ops cut costs through cooperative buying power. Personal preference laws permit a person's next of kin to disregard a deceased family member's burial or cremation instructions. Disinterment is defined as the removal of a body from a grave or tomb.

**KEY TERMS**

- anatomical gifting
- bank or funeral trust
- burial or funeral insurance
- cremation
- cryonic suspension
- direct cremation
- disinterment
- funeral
- funeral directors
- funeral homes
- funeral industry practices rule
- funeral rule
- payable-on-death bank account
- pre-funding
- pre-need decision
- pre-need insurance
- state personal preference laws

**REVIEW QUESTIONS**

1. What are the first two choices that a person must make when contemplating funeral planning?
2. What is one example of an altruistic option to burial or cremation?
3. What is one example of an unusual option to burial or cremation?
4. Depending on the state, how can personal preference laws impact an individual's personal choices in the planning of her funeral?
5. What is the purpose of the Funeral Industry Practices Rule, commonly known as the Funeral Rule?
6. According to the Funeral Rule, what information must funeral homes provide to its customers?
7. Over $20 billion was invested in pre-need funeral and cemetery plans at the start of the twenty-first century, but no federal regulation had been designed to monitor how safely those dollars were invested. What problems, if any, may occur when an individual preplans and prepurchases her funeral?
8. What benefits, if any, does the VA provide to the country's veterans?
9. What is a goal of a funeral planning society?
10. What legal standard should be reached before a court permits a disinterment?

**HELPFUL WEB SITES**

- [FUNERALPLAN.COM](http://www.funeralplan.com) This site provide links to the applicable laws for funeral service providers in the majority of the 50 states.
- [FUNERAL CONSUMERS ALLIANCE](http://www.funerals.org) This organization is a federation of nonprofit funeral information societies. It has been protecting the consumer's right to choose a meaningful, dignified, and affordable funeral since 1963.