

What Does It Mean To Be Fair?

Two estate-planning attorneys give their views on the need for clients to treat their descendants equally

Clients planning their estates may have children with diverse talents and needs. That may lead some to consider treating their children differently in terms of making gifts and deciding the amount each child should inherit. Glenn Kurlander and Marvin E. Blum, who have each advised ultra-high-net worth clients for over 40 years, give their views on this complicated issue.

Children Don't Have to Be Treated Equally



By **Glenn Kurlander**, head of Family Governance & Wealth Education at Morgan Stanley Wealth Management

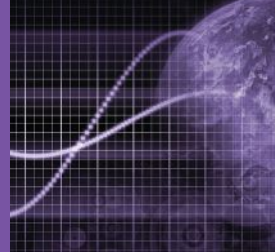
One of the more challenging questions ultra-wealthy parents face is what it means to treat children fairly. I've been doing this work for over 40 years, and I've never heard a parent say, "My goal is to treat my children unfairly." And were I to practice for another 40 years (God forbid), I'd never expect to hear that from a parent. Parents always say their goal is to be fair to their children. However, that statement doesn't get us very far, because it leaves unaddressed the central question: What does it mean to be fair? Does fair treatment require that we do our best to treat children as similarly as possible (recognizing that true equality may not even be possible, given differences of timing and the like)?

Or does fair treatment mean that, even if we love our children equally, or perhaps because we do love them equally, we must treat them differently sometimes, reflecting what's most often an undeniable, even if sometimes uncomfortable, sometimes beautiful, reality: Our children are different people, with different strengths and weaknesses; different opportunities and challenges; different goals, needs and wishes. While every family is different, of course, it's often stunning just how different children from the same parents may be: sharing largely the same genetic material, having been raised under largely the same circumstances, with generally the same parenting philosophies, children can often be so unlike one another as to seem completely unrelated. And of course, in the case of families that are formed through multiple marriages, where some children may share only one common biological parent, or no common parent at all, or families formed by a combination of biological parentage and adoption, the differences can be even more stark.

I can't offer a single answer that will apply satisfactorily to every family or even every case within a single family. However, over the course of my practice, and in addressing these issues within my own family, I've identified some general principles that I believe our clients with families should at least consider. I'll use my own family as an example in this discussion; although our family wealth doesn't approach that of our clients, the issues I've had to address are qualitatively the same. And I have my children's permission to write candidly about us.

My Family

I have four children, all of whom are extraordinarily different from one another. One is an exceedingly gifted student; he has a BS summa cum laude from Princeton, an M.Phil from Cambridge and a joint



MD/PhD degree from Yale. Two of my children are very strong students; they attended outstanding universities where they excelled as undergraduates. One of those two has a Master's degree from Columbia University; the other is pursuing a Master's degree from the University of Pennsylvania. My fourth child has very significant learning disabilities. He dislikes school, and it's really hard for him. He attended a 2-year junior college, where he struggled but ultimately performed fairly well. Fortunately, all four have found careers they love: One is a pediatric neurologist, one is a social worker, one is a college administrator and one is an automobile salesman.

I'm just as proud of my son, who has learning disabilities and is selling cars, as I am of my son, who's a pediatric neurologist. I love them both intensely. They both worked hard in school, but while everything came easy to my son, the doctor, everything was a struggle for my son, the car salesman. The effort he had to expend simply to pass his courses was immense. I'm so proud of what he's been able to accomplish, given all his challenges. But I knew that treating him the same as his three siblings with respect to education would be a terrible mistake. Giving him the type of education the other three received would not only have been wasteful, but also and more important, because he hated school so very much, would have been torturous for him. It certainly wouldn't have been a loving, empathetic decision. I estimate that the tuition cost for one of his sisters, whose education was the most expensive, exceeded the amount I spent on his tuition by a factor of at least 50.

Equal Opportunity

This example from my family's life illustrates the first principle that has guided me and is one that most parents should consider: Sometimes, we do have to treat our children differently, taking into account their unique circumstances. But there's a related point that emerges not only clearly from this example but also is an essential one in guiding our behavior in other contexts. As parents, we usually can't achieve equality of outcomes. In many circumstances, I believe the most we can do as parents is attempt to achieve equality of opportunity for our children, taking into account their individual differences. And that's what I sought to do with my children: Give

them each an education appropriate to their innate abilities, their interests and aptitudes, which would give them the best chance to grow intellectually so that they could lead satisfying, meaningful and independent adult lives.

I'm often asked whether I've ever felt compelled to equalize the disparity in educational costs by making a gift to my son of the significant difference in tuition I spent in educating him relative to his siblings. While I've thought about it, I've rejected that strategy because I believe I achieved the fundamental equality I was seeking, and making a gift to him actually would introduce significant inequality by giving him a substantial amount of cash that the other children didn't receive because the "disparity" didn't go to them. It went to the educational institutions they attended.

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Be Candid

When parents decide to treat their children unequally, I think it's generally important to be candid about the disparate treatment. Altering Benjamin Franklin's aphorism just a bit, two people can keep a secret if one of them is dead, which means, in the case of families, that if we treat one child differently from the others, it's almost certain the others will learn about the different treatment. And that knowledge, left unaddressed, can create a host of problems. First, once children realize that parents attempted to keep the disparate treatment a secret, they might reasonably conclude that parents did so because they themselves felt there was something wrong or shameful about their decision. If not, why would they have kept it secret? And especially when parents believe that the decision to treat a child differently may give rise to resentment or jealousy, I think it's important to

address it quickly. Such feelings tend not to age well in families and often will fester and become toxic. Thus, I think it's important that children hear directly from their parents and are informed about the rationale behind the disparate treatment. If nature abhors a vacuum, human nature *really* abhors a vacuum. A fundamental human need is to understand; if we aren't given a rationale for something, we'll be left with a vacuum to fill, and we'll create our own narrative. Often, the narrative that children who feel disadvantaged create is that my parents loved my sibling more than me, thought more highly of them or trusted them more. In many, maybe most, cases, that won't be true. So it's very important that children hear directly from parents about their reasoning for the disparate treatment. That doesn't mean, of course, that children will accept their parents' rationale or agree with it, but at least they've heard it from parents and aren't entirely free to create their own narrative.

Equal Treatment

In other contexts, however, I thought it important to treat my children equally. Those were circumstances that, unlike the education example, were less about providing, in effect, an opportunity tailored to their unique qualities, and instead were essentially a pure gift. The best example I can think of is the wedding present. When our first child was about to get married, my then-wife and I decided that, notwithstanding what was once and still may be a tradition in many families, where the parents of the bride assume all or the lion's share of the costs of a wedding, we would treat all our children equally, no matter their gender, because it seemed to us unfair to give the girls more than the boys, simply because the girls lacked a Y chromosome. So we decided on an amount we were comfortable giving as a wedding present and would give that amount to each child as a gift. It would then be up to the child to decide how they wished to use it, for example, to pay for some of the wedding (as one daughter and one son did, supplementing our gift with the gift from the other parents or, in one case, adding funds of their own to the parental contributions to fund what to me felt like an especially lavish wedding, but realistically was nothing out of the ordinary these days). One used it, together with the other parental contribution, to pay

for the entirety of the wedding, with some left over for a partial down payment on a house. I'm hoping that the fourth, if and when the day comes, will be the most frugal of all and will get married in my house, with a menu of smoked brisket provided courtesy of his dad's immense smoker. I won't charge him a fee for the wedding venue, but to make things equal, I'd probably deduct the cost of the meat from his gift.

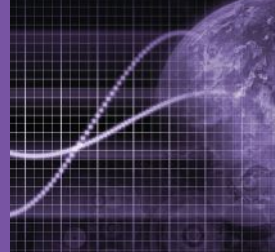
Going Unequal Can Be A High Risk Endeavor



By **Marvin E. Blum**, managing partner at The Blum Firm, P.C.

Like Glenn Kurlander, I regularly confront the "fair vs. equal" dilemma with my clients. There are many reasons parents may leave assets unequally. One child may be struggling financially while others are well-off. Should a child who provided care to an elderly parent receive something extra? What if one child has kids and the other doesn't? How about setting aside extra funds for a child with a disability? Do you leave more to a fiscally responsible child and less to a spendthrift, especially if parents bailed out the irresponsible child over the years? Should the family business be passed down to the child who works there and something else given to the other kids? Should you leave the family home entirely to one child? The list of reasons to favor one child over the others goes on and on.

Over my 47 years as an estate-planning lawyer, I've dealt with every one of these cases. When the parents opted for unequal inheritances, some families managed to remain harmonious, but more often it led to sibling warfare. When it worked, there was open communication while the parents were alive, explaining the reasons and seeking buy in. In those cases, an independent, objective facilitator can play a valuable role in navigating the conversation. Without that process, someone almost always ends up with hurt feelings. The child who receives less interprets the



inheritance as a proxy for love. No matter how well-off they are, they may still feel less loved. On the flip side, the child who receives more may suffer feelings of awkwardness and guilt. Carried to extremes, unequal inheritances can lead to permanent family feuds, legal battles and even acts of revenge. I've witnessed every one of these ugly outcomes.¹

When seeking advice on this topic, I even turned to the Oracle of Omaha, Warren Buffett, and his vice chairman, Charlie Munger (now deceased), when I was selected to ask them questions at three Berkshire-Hathaway annual meetings. They expressed different views, but both recognized the risks of dividing assets unequally. Per Buffett, it might work if you explain it thoughtfully:

There may be circumstances where one child has much more of an interest in one type of asset or another. Make sure your definition of equality ... is understood by the children so they don't think you gave a farm or a house or something of that sort that resulted in inequality when you thought it was equality.²

Munger, known for his directness and brevity, warned that trouble is likely inevitable: "If you're going to treat them unequally, that is poison."³

As estate planners guiding clients through this quagmire, we should make them aware that going unequal is a high risk endeavor. My typical advice is to consider making unequal distributions or expenditures while the parents are alive, without keeping score. However, when it comes to the will, leave the estate in equal shares. A will is a permanent document, and having a forever reminder of unequal treatment can continue to sting.

One additional point is the idea of including grandkids in the plan for some amount, maybe funded by life insurance going to the grandkids per capita. I often ask, "Do you love your grandchildren equally?" If so, if one child has two kids and another child has four kids, give each of the six grandkids the same amount, whatever amount that is (\$10,000, \$100,000, \$1 million, whatever). The estate can go equally to your children, but some amount could be carved off to go per capita to your grandchildren. That may not be viewed as equal from a per stripes

viewpoint, but it's arguably fair. It certainly helps the grandchildren feel they were loved equally.

There's no perfect solution, but we have an important seat at the table. The final decision is always the client's, but let's help them engage in a thoughtful process, evaluate the pros and cons and offer them experience, wisdom and objectivity. ■

Endnotes

1. See Anna Stern, "Barney's Heir Files Revenge Suit After Being Disinherited" (Aug. 13, 2025), www.wealthmanagement.com/estate-planning/barneys-heir-files-revenge-suit-after-being-disinherited.
2. 2013 Berkshire-Hathaway Annual Meeting.
3. *Ibid.*

SPOTLIGHT



Scratching the Surface

Untitled by Jackson Pollock, sold for \$6,604 at Swann Auction Galleries Modern & Post-War Art auction on Dec. 18, 2025 in New York City. Known for his drip technique, Pollock also created 11 engravings (like the one above) from 1944-1945 in a workshop moved from Paris to New York during WW II. He never exhibited these engravings during his lifetime.