

Question #3 – Selected Answer

i. According to the evidence provided, under Texas law Jane had testamentary capacity to execute her 2005 will. The legal test for lack of testamentary capacity involves a test to see if the testator understands enough to fully appreciate the gravity of executing a will. It analyzes if the testator is cognizant during the drafting of the will, if the testator understands how much property he or she has, if the testator can give reason for designating beneficiaries, and was fully aware of her actions during the wills' execution.

Sue's evidence that Jane lacked testamentary capacity is not as strong as the evidence showing Jane was capable of executing a will. The fact that Marvin handled Jane's personal health needs and financial affairs does not carry with it a presumption that Jane could not handle her own affairs. The testimony of the nurse, the receptionist, and Sue's daughter also do not carry much weight in regards to medical accuracy. Moreover, Sue's daughter is an interested party, as her mother stands to gain a great deal if the will is denied probate.

While the medical records do show Jane suffered from periodic seizures and periods of confusion afterwards, the evidence as a whole does not lead to lack of testamentary capacity. Texas courts recognize that a testator like Jane can have extended periods of lucidity in which they are completely capable of executing a will. The testimony of Jane's witnesses and Jane's physician support the theory that Jane was completely capable of executing a will when regularly taking her medications, and that she executed this will with testamentary capacity. Sue's first argument in her will contest will not succeed.

ii. To prove under influence, Sue must show that Marvin had the ability to influence the thoughts and actions of Jane, that Marvin did in fact exercise this influence over Jane and that Marvin's influence led Jane to execute the current will. It is understandable, to some point, that Sue would allege this, as she was disinherited from Jane's will, but the facts of the case do not support a claim of undue influence. Marvin handled Jane's personal health needs and financial affairs, but that does not mean he used this responsibility to influence what Jane should do with her finances. Marvin himself testified that he neither suggested the contents of the will nor the beneficiaries and he helped Jane contract with an attorney to write the will, rather than write it himself. Jane appeared to be completely lucid and understanding of her actions at the will's execution, and it is understandable how Jane could feel that way, given Sue's lifelong disrespect and mistreatment of her mother.

Distribution: Jane's estate should be distributed as the will states – all of it to Marvin. It is legal under Texas law to disinherit a child, which is what Jane did – yet another reminder of how we should all be nice to our parents, even if it is difficult at times.

END OF EXAM

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1. Marvin should take Jane's estate per her will, as Sue is unable to prove Jane lacked testamentary capacity or was unduly influenced.

In Texas, testamentary capacity requires

- (i) knowing the extent and value of one's property and assets;
- (ii) the ability to have testamentary intent; and
- (iii) knowing that one is signing a will.

The testator must have capacity (at the time) the will is executed. Texas courts have found that merely having periods of incapacity or incompetence is not enough to declare one is incapacitated for testamentary purposes, since the testator may have executed the will during a period of lucidity and possessed all of the elements of testamentary capacity.

In this case, Jane most likely had testamentary capacity at the time the will was executed. She knew that she had a lot of money (Witness statement that she was going to "die rich") and she clearly wanted Marvin to have it after her death (another statement that she was glad her brother "would get it all"). Further, witnesses and the notary public testified that Jane knew she was signing her will, thus satisfying all of the elements of testamentary capacity.

Sue's evidence regarding Jane's periods of emotional confusion and seizures as irrelevant. As stated earlier, because one is prone to confusion and seizures does not mean that she could not execute a will with proper capacity in a period of complete lucidity. Here, Jane's physician testified that seizures and confusion were only a result of not taking her medication, and that if she was medicated, she would be lucid enough to execute a will. None of the witnesses or the notary public made any indication that she was confused or seizing. Thus, Jane had testamentary capacity at the time the will was executed.

2. A claim of undue influence requires clear and convincing evidence that a person exerted enough influence and pressure on testator so that the final will was a reflection of the pressuring person's intent rather than the testator's, and the disposition would not have been made absent the pressure and influence. It is not enough that the testator made an unexpected or unnatural disposition, that a person was present while a will was being drafted, or that there was more opportunity to exert influence.

In this case, Jane's will was not a result of undue influence. There is not enough evidence to show that Marvin exerted any kind of pressure on her – he merely recommended her an attorney and did not make any suggestions to her regarding her beneficiaries or shares of her estate.

While Marvin may have wished to receive a part of her estate, especially since he was taking care of her for eight years at no cost to Jane, it cannot be proved by clear and convincing evidence that she would not have made the same disposition without Marvin's assistance. In fact, she may have made the same provisions without his presence – after all, Marvin took care of Jane after her divorce and lobotomy, whereas Sue shunned her mother and treated her with disrespect. Jane expressly mentioned Sue's mistreatment and disrespect of her in the will.

Yes, Marvin spent a lot of time with Jane and certainly had the opportunity to influence Jane, but mere opportunity is not enough. Yes, there was an unnatural/unfair disposition in favor of her brother, but the circumstances above give good reason for cutting Sue out. Thus, Jane's will is likely not the result of undue influence from Marvin.

Since Jane's will is valid (testamentary intent and no undue influence) Marvin takes the whole of Jane's estate and Sue takes nothing.

2 END OF EXAM

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Jane's estate should be distributed according to the terms of her will and the Judge should rule against Sue's will contest on both grounds.

Based on the evidence presented, Sue has failed to show that Jane lacked the testamentary capacity to make the will in 2005. Testamentary capacity requires that at the time the will is made that the testator had testamentary intent (Jane knew she was making a will), knew the nature of the property she was disposing of (testimony of witnesses to the will that she knew she had a sizeable estate), and knew the objects of her bounty (clear indication of intent to favor her brother and disinherit her daughter). While Sue has provided some evidence that Jane seemed to be easily confused, a jury could reasonably find based on the evidence supplied by Marvin that Jane made the will at a lucid interval, which based on evidence from her doctor was not uncommon. The fact that Jane had seizures and did not recognize her granddaughter in 2008 have no bearing on her capacity at the time the will was made in 2005.

Jane has also failed to meet the burden of proving undue influence. Undue influence requires the existence and exercise of influence by a party over the testator to such an extent that the influencing party substitutes his or her will for the testator's will and that the will or devise would not have been made without such influence. Jane may have been in a frail mental or emotional state and seems to have been dependant on her brother, but these facts alone do not prove the exercise of undue influence. Jane's periods of confusion are also not conclusive of undue influence. Testimony from Jane's physician and an independent witness to her will (who apparently was already acquainted with Jane) confirmed that Jane could be clear headed when she took her medication. The fact that Jane favored Marvin over her daughter, Sue, and granddaughter, Reba, also fails to provide conclusive evidence of undue influence. Jane may have distributed her property in an unnatural way, but her decision seems to be very logically related to Jane's relationship with her daughter. Sue's shunning and disrespect of Jane did not go unnoticed and Jane adequately addressed the reasons for not devising any property to Sue based on the real/factual circumstance of that relationship.

Sue has failed to meet her burden of proof as to both claims, so Marvin takes all, and the will should be admitted to probate.

END OF EXAM