

1) Mary's will may be admitted to probate.

A will has to be signed by the testator, who is 18 years or older, witnessed by two attesting witnesses who signed in the testator's presence and who are 14 years or older, and with intent to pass gifts at the Testator's death. a self-proving affidavit if signed by Testator and witnesses, proves that the will was properly executed and properly witnessed. If a witness signs the self-proving affidavit, but not the will itself, then the signature on the self-proving affidavit will work for the witness signing the will, but cannot then also work as a self-proving affidavit. If no witnesses are alive at the time of the will probate, and a self-proving affidavit does not exist properly. The court just needs two people to prove up one of the witness's signature.

Here, Mary signed her will, had testamentary intent, and had two witnesses sign a self-proving affidavit. Since neither witness signed the will, the two signatures are used to prove the execution of a proper will, and not to make a properly executed self-proving affidavit. Mary's friend Terri is the only one who can testify to Mary's signature, but Cheryl's banker and lawyer can testify to Cheryl's. This should be enough to prove Mary's will was properly executed and that it may be probated.

2) Mary's estate should go entirely to the SPCA. When a properly executed will is probated, the courts do as the will indicated. Here, Mary wanted to leave her estate to her dog and if the dog predeceased her, then to the SPCA. The court may not have given Noodles the entire estate, but would have given Noodles an honorary trust for his life. Since Noodles did predecease Mary, that part of the will is irrelevant and the estate would go to the SPCA.

Mary also specifically stated that she wanted nothing to go to her sister Karen. The courts will likely uphold her wishes and not give Karen anything in her will contest.

Mary's intent was to give her estate to her dog or to the SPCA. Since the dog has predeceased Mary, the SPCA should get everything as Mary intended and indicated in her will.

END OF EXAM

1. Mary's will can be admitted to probate.

Texas has generous rules governing the admission of will to probate. To be a duly executed valid will, a will must be written, signed by the testator, and signed by two attesting witnesses over the age of fourteen in the testator's presence. If the will is accompanied by a self-proving affidavit containing all the recitals to prove up a will in court, it can be admitted without a hearing to prove it up. Moreover, if the attestory witnesses sign the self-proving affidavit, but not the will, their signatures on the affidavit will operate as if they were signatures on the will. In this situation, however, the will is no longer self-proving and must be proven up in court. Generally, the testimony of one attestory witness is sufficient to prove that the testator signed the will, and it was otherwise duly executed.

Where neither attestory witness is available, the will can still be proven and admitted to court by the testimony of two credible persons as to the signature of at least one of the attestory witnesses. A witness is also needed to testify as to the testator's signature.

Here, Angela and Cheryl both witnessed Mary sign a written will. They are presumably over fourteen, and they both signed in her presence. However, both Angela and Cheryl are dead, and since they signed the affidavit but not the will, the will can still be admitted, but it now needs to be proven up in court. Terri is available to testify as to Mary's signature and two credible persons, Cheryl's banker and lawyer can testify as to Cheryl's signature. So, the will can be probated after being proven up in court by these individual's testimony.

2. Mary's estate should be probated and distributed to the SPCA per the 2006 will.

Texas recognizes testamentary gifts to pets. Here, Noodles predeceased Mary, so the entire estate passes to SPCA as residuary beneficiary.

1. Yes, Mary's will can be admitted into probate.

In TX, to properly execute a will, the testator must be 18 years of age, sign the will, and signed by two attesting witnesses in the testator's conscious presence. Here, we can assume M was 18 (and had testamentary capacity). Also, Mary signed the will (she did not have to sign in the witnesses presence, nor did the witnesses need to sign in each other's presence). However, neither A nor C signed the will. In TX, if the witnesses have signed a self-proving affidavit, but not the will, the signatures on the self-proving affidavit can be used as signatures on the will (but, the will is no longer self-proved). Here, both A & C signed the self-proving affidavit, so their signatures can be used on the will and as a result, the will was duly executed.

Our next issue arises b/c both A & C died and there is no longer a valid self-proving affidavit. In TX, the will can be admitted to probate and the will contents proved if 1 of the attesting witnesses testifies. However, both A and C have died. That's not fatal though, b/c in TX, a will's contents can also be proved if two people can testify as to the authenticity of at least one of the will's signors (either Mary, or Angela, or Cheryl). Only one person can testify as to Mary's signature, and no one can testify as to Angela's signature; but both Cheryl's banker and her lawyer can testify as to Cheryl's signature on the self-proving affidavit. As a result, Mary's will was both validly executed and admitted into probate.

2. Mary's estate should go ALL to the SPCA. In TX, a testator can devise property to his pets. However the amount is usually restricted and typically an honorary trust is formed w/payments made for the support of the dog. So, Mary's devise to Noodles is valid. Also, in TX, a negative devise (one which expresses negates an interest in a specific person) is valid and given full effect. So, Mary's mention of leaving nothing to Karen b/c of her ill treatment is given full effect and Karen will receive nothing.

Also, there could be a RAP problem w/the devise to Noodles. However, in TX a devise that violates RAP is usually cured by the cy pres doctrine and the devise is carried out "as far as possible." So, if anything, the court would restrict it to 21 years.

Since Noodles predeceased Mary, Mary's entire estate (\$2,000,000 value) goes to the SPCA.