

1. The first issue is whether Billy Bob created a valid will. Under Texas law, a holographic (handwritten) will is valid upon a showing of testamentary intent, the writing is completely in the handwriting of the testator, and it is signed by the testator. A holographic will does not need to be dated in Texas and a holographic will does not need witnesses in Texas.

In the present case, Billy Bob has created a valid holographic will. It does not matter that it is on a cocktail napkin, because it satisfies the elements of a valid holographic will. First, it shows a testamentary intent because it states “upon my death” and then indicates a disposition of real and personal property. The language “upon my death” typically appears in a last will and is a strong indicator of a testamentary intent, especially when coupled with a plan for disposition of property which is the typical function of a will. Second, the facts state that the will is entirely in Billy Bob’s handwriting and the language does not refer to any other writing either written or printed. Third, it is signed by the testator, Billy Bob. Finally, it does not matter that it is not dated or witnessed because these are not requirements of a holographic will under Texas law. Therefore, the contents of the cocktail napkin is a valid holographic will under Texas law, and the court should so rule.

2. The second issue is how the court should rule on the ultimate issue of Billy Bob’s estate. There appears to be a conflict in the language of the will because the first sentence says, “until she dies” and the second sentence omits this language.

Under Texas law, a life estate is created when property is conveyed to a person where their interest exits only for their lifetime. A life estate is typically created by such language as “for life” or “until death.” On the other hand, a fee simple absolute is a stronger interest in which the owner is given full ownership rights and is typically created by making a conveyance without any type of qualifying language.

In this case there appears to be both types of language used because there is a disposition that says, “till she dies,” suggesting a life estate and a disposition without any qualifiers, suggesting a fee simple absolute. If a life estate was conveyed, Donna’s estate’s interest terminated on her death and if a fee simple absolute was created her interest remains in her estate.

Therefore, the issue is how to determine testamentary intent. Under Texas law, extrinsic evidence of testamentary intent is generally not allowed. When possible the court will look only to the four corners of the will and honor the language present regardless of what interested parties may believe was intended. However, when conflicting or ambiguous language is present a party may present extrinsic evidence of testamentary intent. For example, extrinsic evidence is admissible for patent defects in the language of a will-such as a wrong address or misspelled street name.

On the other hand extrinsic evidence would not be admissible to show a patent defect such as “\$50000” instead of “\$5000.”

Furthermore, Texas Courts are inclined to favor a stronger life estate in the presence of ambiguous or conflicting language and in the absence of extrinsic evidence because public policy favors the stability of a stronger interest in property and a more permanent disposition.

In the present case the will has conflicting language. However, the facts do not suggest the availability of extrinsic evidence to clarify testator’s intent. What can be seen from the language is that Billy Bob intended only to leave property to Donna, considering she is the only person mentioned in the will. Because a fee simple absolute would be a stronger, more stable interest, the Court will likely find Billy Bob intended Donna to have a Fee simple absolute.

Therefore, the interest remains in Donna’s estate beyond her death and Billy Bob’s estate should be distributed to Donna’s estate.

1. The validity of Billy Bob's will.

The court should rule that Billy Bob's holographic will was valid in that it met all the requirements under Texas law for a holographic will. In Texas, a holographic will must (1) be written entirely in the testator's handwriting (which can be proved by testimony in probate court); (2) executed and signed by a testator over 18 of a sound mind with capacity, and testamentary intent (evidence in the will of intent for document to distribute property "upon my death" provides intent) (sound mind is here proved by prima facie evidence "being of sound mind" unless evidence is presented to rebut this presumption); and (3) a date or subscription on the will is not required.

Here, the challenge by Marge to the will as to its validity does not state any specific grounds. The requirements of a holographic will are met, even though the will was written on a cocktail napkin. A holographic will requires less formal actions by the testator and since Billy Bob wrote the will in his handwriting, signed the will, and there is no evidence to rebut the presumption of capacity, evidence in the will as to testamentary intent, and sound mind, the court will and should rule the will valid as a holographic will.

2. The ultimate disposition of Billy Bob's estate.

The court should rule that Donna was the sole beneficiary and her estate will receive all the property. In Texas, the interpretation of a will is determined based on the four corners of the will, unless a latent ambiguity exists as to a term for example, the courts strive to construe the will so all clauses are given effect, and the testator's intent is the focus of the inquiry. If a will is determined to devise only a portion of the testator's property or only a portion of the testator's interest in property, the property not devised by the will passes through intestacy. An inconsistency or ambiguous statement in a will may be proved by extrinsic evidence if the ambiguity is latent. Also, a child not mentioned in a will, such as by a testator distributing all his property to someone else, in Texas, is sufficient to disinherit and the intentionality of the act is shown by the division to someone else.

Here, the sentence in Billy Bob's will that says "my wife Donna gets everything till she dies" at first glance seems to conflict with the second sentence that states "I leave to Donna all real and personal property," which seems to convey a fee simple absolute ownership and absolute ownership to Donna. The first sentence almost seems to give Donna a life estate, but does not quite use the normal language to do so. The last sentence, when taken in connection with a lay person's view that any beneficiary is only able to hold property until death, in addition to the lack of mention or a single provision for Billy Bob's only child indicates by the totality of the facts that Billy Bob intended to devise everything and all his interest to Donna upon his death.

Since Donna survived long enough that the 120 hour rule is not an issue, the facts provided should [allow ?] the court to rule that all of Billy Bob's estate should be devised to Donna's estate and Marge properly asserted the claim on behalf of the estate.

END OF EXAM

The court should rule that Billy Bob's will is valid and admit it to probate. Texas recognizes handwritten or "holographic" wills as valid, provided that they are "wholly in the testator's hand." Because it is undisputed that the will on the napkin was entirely in Billy Bob's handwriting, the will satisfies the "wholly in testator's hand" requirement for a valid holographic will. Furthermore, the will is also signed by Billy Bob. Although it is undated, there is no requirement that a will be dated in order to be considered validly executed. The words written by Billy Bob - particularly "upon my death" and "I leave to..." clearly indicate his testamentary intent (i.e., that he intended to create a will, which would operate upon his death to dispose of his property).

As to the ultimate disposition of the estate, there appears to be some ambiguity apparent on the face of the will, as the first sentence's language ("till she dies") seems to suggest a mere life estate was being devised to Donna. However, the following sentence seems to suggest a fee simple absolute.

Wanda, as an "interested party" may challenge the will (she has a stake in the interpretation of the will and the disposition of Billy Bob's estate, as Billy Bob's heir). If interpreted as a grant of a life estate to Donna, a remainder would exist in Billy Bob's heirs.

However, Wanda will not prevail on this argument, First of all, where the grantor does not clearly have intent to grant a more limited estate, courts will presume the grantor's intent was to convey fee simple absolute (this is done in the interest of promoting free alienability). It is certainly reasonable here to conclude that Billy Bob intended to devise to Donna all his property in fee simple absolute (she is, after all, as his wife, the "natural object of his bounty"). Wanda, however, is not even mentioned in the will; because the will uses both the words "everything" and "all" when referring to the property devised to donna, it does not appear to be a reasonable interpretation of the will that Billy Bob intended to create a mere present possessory estate in Donna, while hearing the will result in partial intestacy, with the remainder after the life estate passing to Wanda through intestate succession. Because the intent of the testator is controlling, and due to the language Billy Bob used (clearly indicating the will was intended to embrace his entire estate), Donna's estate will prevail.

END OF EXAM