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(1) The note found on Sam's nightstand can qualify as a valid holographic will; however it is not a self-proved will and it must be proven in court. At issue is whether Texas recognizes the validity of a holographic will.

In Texas, the Texas Estates Code governs the creation of a will. Most wills must contain very formal requirements to be considered valid. Thus most wills must be in writing, signed by the testator, and have two attesting witnesses who sign in the presence of the testator. However, Texas is one of the few states that recognizes holographic wills. A holographic will is defined as a will written in the handwriting of the testator. To be considered valid, there are three general requirements: (i) there must be clear testamentary intent, (ii) the will must be wholly in the testator's handwriting, and (iii) the will must be signed by the testator. If all of these requirements are satisfied the will may be probated just like a typical validly executed will. However, the one issue with holographic wills is usually they are not self-proving. A self-proved will contains a self-proving affidavit signed by two witnesses who attests to the validity of the will, the signatures on it, and that the testator was of sound mind at the time he executed the will. A holographic will typically will not have this type of formal document attached to it and thus will have to be proven in court in order to effectively admit the will to probate.

Here, although Sam's will does not meet the formalized requirements of a will as proscribed by the Texas Estates Code it will likely qualify as a validly executed holographic will. The first aspect to look for is testamentary intent. Testamentary intent shows a present intent to dispose of property upon the testator's death. Based on the language used, it is clear that Sam had this intent. He says on the first side of the note "I leave my estate to my brother John" and on the back it says this is his last will. Thus, it is clear that Sam wanted this note to be his will and thus there is testamentary intent. The facts further stipulate that Sam's note was handwritten and in his handwriting. Thus, this likely meets the "wholly in the testator's handwriting" requirement since there is no indication that anything was typed or not in Sam's handwriting. Further, the facts further indicate that Sam signed his will on both sides. Thus, all the requirements of a valid holographic will are satisfied. The will is also dated by Sam but this is not a requirement of a duly executed will or a holographic will in Texas.

Unfortunately despite Sam's intent to self prove it by indicating that he was of sound mind and was 18 years old, his will is not self-proved. A self-proved will must contain a self proving affidavit in which the witnesses will sign that assures that the will was duly executed and all requirements were satisfied. There is no indication of any sort that an affidavit was found within these contents to make Sam's will self-proving. Thus, Sam's will cannot be considered a self-proved will and must be proven in court to submit it to probate.

In conclusion, Sam's will is a validly executed holographic will but it is not self-proved.

(2) John must prove Sam's will by finding the testimony of two witnesses who will attest that Sam's handwriting is his own handwriting and his signature is valid. At issue is how to properly prove a holographic will so it can be submitted to probate.

In Texas, a will that is not self-proved and does not contain a self-proving affidavit must be proved to be valid in court before the will can be submitted to probate. If the will is a duly executed will, the best way to prove the will is testimony of one attesting witness. However, if the will is a holographic will the most efficient way to prove the validity of the will is to call two witnesses who can testify about the validity of testator's handwriting and signature. This is to ensure that the will was in fact written by the testator and signed by him. If two witnesses cannot

be found, the courts will typically allow the will to be proved by only one witness so long as there are no contests about the credibility of the witness's testimony regarding the signature.

Here, so long as John can prove that Sam's will is a duly executed holographic will, he will need to prove the validity of the will to submit it probate. To do so, John cannot rely on an attesting witness since Sam's will is not a formally executed will. Thus John must call witnesses to testify as to the validity of Sam's handwriting and signature. The facts indicate that John is aware of Sam's signature and has confirmed that this note was written and signed by Sam. However Sam's daughters Amanda and Beth cannot attest that the note was written in Sam's handwriting. To move forward, John will likely need to find someone else who was familiar with Sam's handwriting in order to submit the will to probate. This person will likely need to be familiar with Sam's handwriting and validate John's testimony. If the court is unable to find another witness who can attest to this, if there are no contests to whether or not this note was in fact written in Sam's handwriting, the court may allow the proceeding to move forward with only John's testimony. However if there are contests or anyone who may argue that John's testimony isn't trustworthy since he is an interested party, the court may not allow the proceeding to move forward without an additional witness. This is in the sole discretion of the court.

In conclusion, Sam's holographic will can be proved by testimony of two witnesses as the validity of his handwriting. If only John is available, this may be sufficient to allow Sam's will to be submitted to probate.

END OF EXAM

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1. Sam's holographic will is not self-proved.

Holographic wills are valid in Texas. To be holographic, the will must be completely in the testator's handwriting and signed by the testator. The testator must also have testamentary capacity, be 18 or older, and be of sound mind. There does not need to be witnesses to the holographic will. Sam's will constitutes a holographic will. It was entirely in Sam's handwriting, was signed by Sam, it had testamentary intent because it said he was leaving his entire estate to his brother John, and Sam was over 18. Thus, Sam executed a valid holographic will.

A self-proved will means that there need not be any witness testimony to probate the will. For a self-proved holographic will, the testator must attach an affidavit stating that it is his will, he is over 18, and of sound mind, and be dated. Sam attempted to do this by writing on the back of the piece of paper saying that it is his last will, that he was over 18, and of sound mind, signed, and dated. However, this was in his handwriting and does not constitute a proper affidavit to be a self-proved holographic will. The affidavit must be notarized. This was not notarized, so it is not sufficient to probate the holographic will without testimony.

2. John must offer the testimony of two witnesses familiar with Sam's handwriting to probate the will.

In order for a holographic will that is not self-proved to be probated, there must be testimony of two people familiar with the testator's handwriting. Here, John is familiar with Sam's handwriting and signature and recognizes it as Sam's. Amanda and Beth however are not familiar with his handwriting because they have not seen or corresponded with Sam in many years. John can properly testify to Sam's handwriting and signature, but he must find one other person to do the same. Notably, John is also an interested party under the holographic will, so the court may require him to find two disinterested witnesses who can testify to Sam's handwriting. If he cannot find enough witnesses to probate the holographic will, Sam will have died intestate and his estate will pass to Amanda and Beth equally because they are his children.

END OF EXAM
