

Question 3 – February 2020 – Selected Answer 1

A. David must offer the will to Probate and must also have witnesses to testify as to the handwriting of the will.

Under the Texas Probate Code, Texas recognizes the use of a holographic will as a valid will. A holographic will is a will that is wholly in the Testator's handwriting and must be signed by the Testator. The testator must include words of testamentary intent, and must have capacity to execute a valid will. Testamentary intent is indicated by any language that implies that the property of the Testator would pass upon the death of the Testator. To revoke a will, the Testator can do so by physical act, or by publication of a subsequent will or codicil. There is not partial revocation by physical act in Texas.

Here, Luke's will was written on the back of a envelope. This is not a consideration when determining the validity of a will. It can be written on anything. The letter has testamentary intent, because he uses the words, I leave, and that he revokes all prior wills. This language shows an intent to create a distribution of the estate upon his death. The letter is wholly in Luke's handwriting and is signed by Luke at the bottom of the page. Texas does not impose any requirements as to where on the page that the signature is found. It does not matter that the will was written in blue ink. There is not an indication of Luke's lack of capacity, and no one has challenged the will based on those grounds. Additionally, although Martha stated that Luke was leaving the ranch to both children, there is no indication of any contracts binding Luke to do so. To enforce a contract to will, there must be a contract that specifically requires the person to create such a will, and the will must specifically indicate the contract. Also, Luke effectively revoked all prior wills by stating so in the new will and by publication of the new will. Therefore, any prior wills are invalid.

To submit this will to Probate, David must have two uninterested witnesses testify as to the handwriting of Luke and that the letter is written in his handwriting. If there is only one witness available, the Court will accept that testimony as well. David must bring the letter to Court and submit the letter as well.

B. The Estate should be distributed in the following way; checking account to Chris, condominium to David, Luke's 1/2 interest in the Ranch to Alice, and the retirement plan split between Chris and David.

Under Texas law, a will should be distributed according to the intent of the Testator. The Court will distribute the property to the beneficiaries named in the will

in accordance with what the Testator owned at the time of death. The Testator may only give an interest in property that they have at the time of death.

1.) Checking Account

Here, Chris will get the checking account in accordance with the will's provisions. There is no indication of any survivorship terms on this account, or any other information regarding any other interest in the checking account, so Chris will be entitled to the entire amount.

2.) Condominium

Here, David will receive the condominium, because it is specifically devised to him in the will. There is no evidence of any competing interest in the condominium. So, the gift will pass as the will designates.

3.) Ranch.

Here, the Ranch will pass to Alice under the will.

Under Texas law, the Ranch is considered to be community property, because the Ranch was owned by Martha and Luke during the marriage. Martha willed her portion of the community estate to Luke. Therefore, at the time of Luke's death, he owned the entirety of the Ranch. Since Luke owned the entire ranch, then he was entitled to devise the entire ranch to whomever he pleased. Here, he chose to devise the Ranch to Alice.

Chris may be entitled to a reimbursement of the capital improvements of the land, because he relied on the future gift in building the home. However, he has no other interest in the land.

Thus, Alice owns the entire Ranch.

4.) Chris and David will share the retirement plan equally.

Under Texas law, there are some types of property that are not subject to the Probate Code, known as Non Probate Assets. These Non Probate assets pass by virtue of contract law. A common Non Probate Asset is a life insurance policy or a retirement plan. A Retirement Plan indicates the beneficiaries to whom the proceeds will pass upon the death of the policy holder.

Here, the Retirement Plan is a Non Probate asset and will pass according to the terms of the agreement. The Retirement Plan indicated Martha as a the beneficiary of the plan. However, Martha did not survive Luke and predeceased him. Thus, the gift has lapsed. Texas has an Anti-Lapse statute that will prevent a gift from failing, if the recipient of the gift is the Descendant of the Testator's Parents. Here, the gift was to Martha, and she is not a descendant of Luke's parents, so the Anti Lapse will not apply. Since the gift has failed, the retirement plan will fall into the residuary estate. Since Luke has not indicated who will receive the residuary estate, this will pass according to the laws of intestacy. Texas awards the estate based on the per capita by representation mechanism and will thus give the split the gift between the beneficiaries at the first generational levels in which there are living takers. Here, the children of Luke, David and Chris are the descendants of Luke and will receive the proceeds of the retirement policy equally.

Thus, David and Chris will split the Retirement Account proceeds equally.

Question 3 – February 2020 – Selected Answer 2

A. David must prove that handwriting belongs to Luke to admit the will to the probate.

Holographic will is a will completely in testator's handwriting, signed by the testator and expressing testamentary intent. Holographic will does not need to be attested by witnesses. Texas does not apply strict compliance to the holographic will, instead applying the substantial compliance. Holographic will may be proved up by people that are familiar with the testator's handwriting. Valid holographic will can invalidate prior formal or any other will. The contestant of the will has a burden of proof that will is invalid.

Here, the writing on the envelope is in handwriting, signed and expresses a testamentary intent as it says that Luke revokes all his prior wills and states how he wants his property to be distributed. For David to probate the will, he must prove that the handwriting belongs to Luke and he can do so by the evidence of witnesses who are familiar with Luke's handwriting.

Testator may revoke or amend his will anytime prior to his death. If a will was not found after the testator's death there is a rebuttable presumption that testator revoked the will by physical act. The presumption can be rebutted by clear and convincing evidence. Agreement to execute or not to revoke a will must be in separate writing which complies with the requirements of the contract law.

Here, Martha said that Luke will leave his estate to Chris and David equally, however, Luke made a different disposition. There is no evidence of written agreement by Luke to dispose his property a certain way. Further, even if Luke had prior wills, they were not found after Luke's death. Accordingly, there is a presumption that Luke's revoked prior wills by physical act. Martha's words alone are not enough to rebut the presumption by clear and convincing evidence. Accordingly, the property must be distributed according to the only will found after Luke's death unless a someone successfully contest the validity of the will.

B. Luke's checking account will go to Chris, condo in Dallas will go to David, ranch will go to Alice, retirement account will be divided equally between David and Chris.

Luke's property must be distributed according to his will. If beneficiary of the will predeceases the testator, devise lapses and goes to the residuary estate unless the beneficiary is protected by the anti-lapse statute. Anti-lapse statute protects descendants of the testator's parents.

Luke's checking account will go to Chris, condo in Dallas will go to David and ranch will go to Alice. Since Alice is a minor, probate court will have to appoint a guardian for Alice's estate because it is significant - ranch is worth \$1,500,000. Since Chris built a home on the ranch he will be entitled to the reimbursement by Alice. If Alice does not have a sufficient funds to reimburse Chris, Chris may file a petition for partition in kind or partition by sale.

Here, Luke devised his retirement plan to Martha. Martha died before Luke and she is not protected by the statute because she is not a descendant of Luke's parents. Thus, the devise lapses and goes to the residuary. Since will here did not fully dispose of all Luke's property, the retirement account will be distributed according to the default intestacy rules. Texas applies per capita with representation, according to which descendant in the first generation with the members who are alive share the devise. Here, Chris and David each will receive 1/2 of the retirement account. Alice will receive nothing because her father David is still alive.