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(1) The court should grant Donald's claim to the \$50,000. The issue is whether a handwritten codicil can modify or rescind a prior valid will and whether Texas honors oral wills. In Texas, a will can be modified or rescinded by another instrument that is executed with the same formalities as required of a will. Thus, the will could be modified by another will or by another codicil so long as executed with the same formalities as generally required to make a will. Texas recognizes holographic codicils and they can revoke, in part or in full, a validly executed prior will (even if the prior will was not a holographic will). To be properly executed, a holographic codicil (codicil being an amendment), must be entirely in the testator's handwriting, must be signed by the testator, must express an intent to dispose of property (that is, must show that the testator intended that document to be his will). A holographic codicil doesn't need to be dated (so the fact that here, Keven didn't date the codicil, is irrelevant). Further a holographic codicil doesn't have to be witnessed, such that it doesn't matter that no witnesses attested or signed the will. To probate the codicil however, there will need to be two witnesses who can attest that it is Keven's handwriting on the codicil.

Here, Keven "hand wrote" the 2007 codicil - there is no indication from the facts that it is not in his handwriting. Second, Kevin signed it. Even though he only signed his first name, that is enough under Texas law. In fact, Texas has found even an "x" to be enough for a signature so long as there are no intent issues. Thus, that Kevin didn't sign his last name won't affect the validity of the codicil. Third, a valid codicil can be on the back of a will and can be on a separate document as well. Texas doesn't require that it be in a separate document so that Kevin wrote on the back of his prior will, will not affect the validity of the codicil. Also, the language that Keven used - "I hereby change my will" is strong language indicating his intent that the document he was writing would be controlling and would modify his earlier will. Thus, there is no issue that he didn't intend for this to take effect at his death (such as if he had written a request to someone else to modify his will at a later time). Here, it is clear he meant for this handwritten codicil to modify the will itself. Finally, that he only identified the beneficiary by their first name "Donald" will not destroy Donald's interest because there is specific language identifying which Donald - it is Kevin's next door neighbor and if there is a dispute, the court will allow extrinsic evidence to prove that the only next door neighbor with the name Donald is this Donald that is seeking the distribution.

The other main issue here is the effect of Kevin's oral declaration that he wanted to revoke his bequest to Donald. Texas has abolished oral wills and they are not recognized under any circumstance. Thus, it does not matter whether Kevin did in fact intend to revoke his codicil, or whether there were witnesses to his oral statement. In Texas, there cannot be an oral will (and as mentioned above, amendments to wills have to be done with the same formalities as the original wills) so his oral statement is invalid. Further, that Sheila and the two hospital staff members wrote, signed, and notarized affidavits indicating what Keven had said is also irrelevant. In Texas, in order for that document to have been controlling, the two staff members would have had to sign in Kevin's presence and would have had to write the will at his direction because he was unable to do so (along with all the other requirements of a will). Based on the facts, the affidavits were signed and written following Kevin's death, and that alone will make them unenforceable under the Texas probate code. Finally, if Keven had wanted to destroy the codicil and/or will - he could have destroyed them by physical act as well (tearing them up) but just saying he wanted to revoke something isn't enough to revoke that prior will/codicil in Texas.

(2) \$50,000 of Kevin's estate should pass to Donald. The rest of the state - \$25,000 plus the personal belongings - should pass to Sheila under the prior will. The issue is the distribution of assets when you have a valid codicil that modifies an earlier will but doesn't provide for an entire distribution of the estate. In Texas, a codicil will only be read to modify the parts of the prior will that it expressly

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revokes or is in conflict with. The rest of the prior will - here, the 2004 will - remains valid to the extent it isn't inconsistent with the later codicil. Thus, because as stated above, the 2007 codicil is valid, the \$50,000 will pass to Donald pursuant to its terms. The remainder of the estate will pass to Sheila pursuant to the prior 2004 will, which according to the facts, left "all of his modest estate to his daughter, Sheila". In essence, the will and codicil are read together as much as possible (meaning give the prior will effect to the extent it isn't revoked).

**END OF EXAM**

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1. The court should rule that Donald is entitled to the \$50,000.

The first issue is whether Kevin's writing on the last page of his will is a valid holographic codicil to his duly executed will. Under Texas law, a holographic codicil must be wholly in the testator's handwriting, signed by the testator, and written with testamentary intent. It need not be dated or witnessed. It can be written anywhere, including on the will itself, as long as it stands alone as an independent writing. The signature need only be a mark intended by the testator as his signature. Here, Kevin's holographic codicil is valid. It is wholly in his handwriting. It evidences testamentary intent by the use of the phrase "I hereby change my will." Reference to the will indicates it was intended to take effect at death. The formal tone indicates that he intended the document to be legally operative at his death. It is signed by Kevin. His first name alone is sufficient, as that is a mark intended by Kevin to act as his signature. It does not matter that the codicil was written on the back of a page of the will. It need not be a separate document. Therefore, the codicil is valid. To prove the codicil, Donald will need to introduce the testimony of two witnesses who can testify that the codicil is wholly in Kevin's handwriting.

The second issue is whether Kevin's oral statements revoked the holographic codicil. Under Texas law, wills and codicils may not be revoked orally. Therefore, Kevin's attempt to revoke the holographic codicil is ineffective. It makes no difference that it was done in the presence of witnesses, such as Sheila and the hospital staff. Their affidavits will not be admissible in the proceedings to contradict the terms of the will. Absent suspicious circumstances, it is conclusively presumed that Kevin intended the plain meaning of the words used in the will and the codicil to control, and understood the disposition he was making.

Therefore, Donald will take the \$50,000 general legacy bequeathed to him in the valid holographic codicil.

2. Kevin will take \$50,000, and Sheila will take \$25,000.

The issue is whether the holographic codicil revoked the earlier will. Under Texas law, absent words of express revocation in the later testamentary instrument, two testamentary instruments are to be read together to the greater extent possible. In the event of a contradiction, the later instrument controls. If the two are wholly contradictory, the later is presumed to impliedly revoke the former. In this case, it could be argued that Kevin intended to entirely revoke the earlier will because he intended to disinherit her because of her drug use. However, there is no express language of revocation. Indeed, Kevin says he hereby "changes" his will, rather than revoking it, suggesting a modification. Furthermore, the two can be read together. The original will had provided that everything would go to Sheila. The codicil provided that \$50,000 would go to Donald instead of Sheila. Reading the two together, Donald gets a general legacy of \$50,000, and Sheila is the residuary beneficiary. Thus, Sheila would take the \$25,000 remaining after the \$50,000 was distributed to Donald.

Moreover, even if the court found that the codicil revoked the earlier will, the result would be the same. The codicil would result in partial intestacy because it does not make a complete disposition of his estate and does not name a residuary beneficiary. In that case, the residuary estate (\$25,000) would pass by intestacy. Because Kevin is not survived by his spouse, the residuary estate would go to his descendants per capita with representation. Here, Sheila, his daughter, is his only descendant. Therefore, she would take the \$25,000 through partial intestacy.