EXAMINERS' ANALYSIS OF QUESTION NO. 14

Original Will: Although the original will was validly executed, Betty will not receive Danville under its terms. MCL 700.2807(1) provides that a divorce "revokes all of the following that are revocable: (i) A disposition or appointment of property made by a divorced individual to his or her former spouse in a governing instrument". A will is a "governing instrument" for the purposes of this statute. MCL 700.1104. MCL 700.2806(a) defines a "disposition or appointment of property" as "a transfer of an item of property or another benefit to a beneficiary designated in a governing instrument."

Under MCL 700.2807, Dan and Betty's divorce revoked all revocable provisions of the will that transferred property or another benefit to Betty, the former spouse. The divorce therefore revoked the provisions of Dan's will that left Danville to Betty.

Will Amendment: Betty bears the burden of proof to admit the purported will amendment into probate. She must show that Dan had testamentary capacity as described in MCL 700.2501 and that the will meets the required formalities given in MCL 700.2502.

MCL 700.2501 states that an individual has sufficient mental capacity to make a will if that person has the ability to understand (1) that he is providing for the disposition of his property after his death, (2) the nature and extent of his property, (3) the general nature and effect of signing the will, and if that person (4) knows the natural objects of his bounty. The facts do not suggest that Dan, even though he was ill, lacked sufficient mental capacity to understand he was making a will, the nature and extent of his property, the natural objects of his bounty, or the act of signing the will. Betty may be able to meet her burden of proof to show that Dan had the required testamentary capacity under MCL 700.2501.

The document purports to amend Dan's will. To be considered part of a valid will, a will amendment is also subject to the formality requirements of MCL 700.2502. See *Palmer* v Arnett, 352 Mich 22, 25 (1958). Subsection 1 of MCL

700.2502 specifically provides in part that except as provided by subsection (2), a will is valid only if it is (a) in writing; (b) signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction; and (c) signed by at least two individuals, each of whom signed within a reasonable time after he or she witnessed either the signing of the will or the testator's acknowledgment of that signature or acknowledgment of the will. In the instant case, the purported will amendment is in writing, and Dan signed and dated the document, but there were no witnesses. Therefore, that will amendment was not incorporated into Dan's original, valid will under subsection 1.

Subsection 2 of MCL 700.2502, provides that a will that does not comply with subsection 1 is valid as a holographic will, whether or not witnessed, "if it is dated, and if the testator's signature and the document's material portions are in the testator's handwriting." Although Dan signed the will amendment and although it is dated, no portion of the document is "in the testator's handwriting." Consequently, that purported will amendment does not meet the definition of a valid holographic will, and therefore it is not incorporated into Dan's original, valid will under subsection 2.

Betty might argue that the document constitutes a will under MCL 700.2503. MCL 700.2503 provides that even if a document fails to comply with MCL 700.2502, "the document or writing is treated as if it had been executed in compliance with that section if the proponent of the document or writing establishes by clear and convincing evidence that the decedent intended the document or writing to constitute . . . the decedent's will" or an amendment of the decedent's will. A court can treat the "Will Amendment" as if it was executed in compliance with MCL 700.2502 if Betty can show, by clear and convincing evidence, that Dan intended the document to be his will or an alteration of his will. She may succeed, given that Betty clearly labeled the document as a will amendment and Dan did sign and date it. Clear and convincing evidence, however, is a high standard for Betty to meet.