

EXAMINER'S ANALYSIS OF QUESTION NO. 10

Estates in Michigan are statutorily governed by the Estates and Protected Individuals Code (EPIC), MCL 700.1101 et al.

Validity of Will - Valid Holographic Will

All valid wills require that the testator be at least 18 years of age or older and have "sufficient mental capacity" to may make a will. MCL 700.2501(1). Those initial requirements are satisfied here since at the time Mary Sue made the writing, she was 45 years old and in good physical and mental health.

Generally, a will is only valid in Michigan if it is (1) in writing, (2) 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 (3) 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. MCL 700.2501(1). However, a will that does not comply with the above requirements may be deemed valid as a holographic will if the document is dated, signed by the testator, and the material portions of the document are in the testator's handwriting. MCL 700.2502(2). Mary Sue's non-witnessed writing constitutes a valid holographic will because it was dated, signed by her, and in her own handwriting. As such, Mary Sue's entire estate will be distributed in accordance with her will.

Gold Coins (Stamp Collection) - Ademption Issue

The devise of the stamp collection raises an issue of ademption: that is, whether there is specifically bequeathed property in the will that is no longer a part of the estate at the testator's death. In Michigan, there is a presumption of non-ademption, MCL 700.2606(1)(f), which is a change from the prior rule in Michigan where ademption would operate to cause the gift to fail entirely. *Hankey v French*, 281 Mich 454 (1937); *Kirsher v Todd*, 195 Mich 297 (1917). Generally, if one of the enumerated statutory provisions does not expressly compensate the beneficiary for the value or replacement of specifically bequeathed property, the devisee is entitled to the value of the property unless the facts and circumstances show that the ademption was intended by the testator or within the testator's manifested plan of distribution. MCL 700.2606(1)(f). Notably, a beneficiary potentially has a right to any property procured by the testator as a replacement for the specifically devised property. MCL

700.2606(1) (e) .

Here, Mary Sue bequeathed her stamp collection, however, she sold the stamp collection to rid herself of the memories of her ex-husband prior to her death, and so the stamp collection cannot be given to her sister Amy per the terms of the will. The presumption of non-ademption, however, operates in favor of Amy because the facts and evidence demonstrate that the ademption was not intended—the stamp collection was merely replaced with the gold coins. Amy should be entitled to the gold coins as the replacement for the devised stamp collection.

Volkswagen - Anti-Lapse Statute

The devise of the Volkswagen raises the issue of whether the gift lapses and becomes part of the residuary estate. The general rule in Michigan provides that if a beneficiary predeceases the testator, then the gift lapses; a will cannot distribute property to a deceased person. See MCL 700.2104; MCL 700.2604(1). However, this general rule is modified by the Anti-Lapse Statute, MCL 700.2603(1), which provides that if the predeceasing beneficiary is a grandparent or descendant of a grandparent or a stepchild of the testator, and the descendants are alive after 120 hours of the testator's death, then the gift will pass to the descendants of the beneficiary.

Here, because Roger predeceased Mary Sue, his gift would normally lapse. Under Michigan's Anti-Lapse statute, however, the result is different. Because Roger, as Mary Sue's brother, is a descendant of Mary Sue's grandparents, the Anti-Lapse Statute operates to save the gift that would have been dispensed to Roger. This gift will instead pass to Roger's descendant, his daughter Amber. Thus, Amber will be entitled to the 2017 Volkswagen Jetta.

Stock - Additional Shares Included

The devise of the shares of stock raises the issue of how much of the stock should go to Beth. Beth will be entitled to receive all 1,000 shares of ABC Company stock. Stock is a security under EPIC. MCL 700.1107(c). MCL 700.2605(1) provides the following with respect to devises of securities.

If a testator executes a will that devises securities and the testator then owns securities that meet the description in the will, the devise includes additional securities owned by the testator at death to the extent the additional securities are acquired by the testator

after the will was executed as a result of the testator's ownership of the described securities and are securities of any of the following types:

(a) Securities of the same organization acquired by reason of action initiated by the organization or any successor, related, or acquiring organization, excluding any acquired by exercise of purchase options.

(b) Securities of another organization acquired as a result of a merger, consolidation, reorganization, or other distribution by the organization or any successor, related, or acquiring organization.

(c) Securities of the same organization acquired as a result of a plan of reinvestment.

The facts provided that Mary Sue's will devised the stock to her friend Beth and that Mary Sue owned the stock described in the will at the time. The facts also indicate that the shares of stock acquired by Mary Sue after the will was executed was a result of her shares purchased from reinvesting the dividends (in line with MCL 700.2605(c)) and additional shares resulting from stock splits initiated by the company (in line with MCL 700.2605(a)). As a result, Beth's devise will include all 1,000 shares of ABC Company stock.

Residual of Estate - Revocation in Part Due to Divorce

Although Mary Sue's will left the remainder of her estate to Frank if he survived her (which he did), he will not receive anything under her will. 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" MCL 700.2806 clarifies that "disposition or appointment of property" includes, but is not limited to, a transfer of an item of property or another benefit to a beneficiary designated in a governing instrument. Further, MCL 700.1104 provides that a "governing instrument" includes a will.

Thus, under MCL 700.2807, Mary Sue and Frank's divorce revoked all revocable provisions of the will that left property or another benefit to Frank, as the former spouse. The divorce, therefore, revoked the provisions of Mary Sue's will that left the remaining of her estate to Frank. Therefore, Mary Sue's will shall be read

as if Frank disclaimed the revoked provision or predeceased Mary Sue.

As a result, Mary Sue's son Trevor will receive \$5,000 in cash and the Humane Society will receive the residue.