

EXAMINERS' ANALYSIS OF QUESTION NO. 5

1. Estates in Michigan are statutorily governed by the estates and protected individuals code ("EPIC"), MCL 700.1101 et seq. The journal entry that Bridget made would not qualify as a valid will under any provision of EPIC. All valid wills require that the testator be at least 18 years old and have "sufficient mental capacity." According to the facts, Bridget met these preliminary requirements. Additionally, a will must generally be (a) in writing, (b) signed by the testator, and (c) signed by at least two persons who witnessed either the signing of the will by the testator or the testator's acknowledgment of the signature or of the will. MCL 700.2502(1)(a)(b)(c). Because Bridget's journal entry was signed neither by her nor by witnesses, it does not qualify as a valid will under the above provisions.

Nevertheless, a writing that does not satisfy all of the above requirements, may qualify as a valid holographic will under EPIC even if not witnessed "if it is dated, and if the testator's signature and the document's material portions are in the testator's handwriting." MCL 700.2502(2). In the instant case, Bridget's journal entry again fails even as a valid holographic will because although it can be argued that it contained a preprinted date and the entry itself was entirely in her handwriting, she did not sign it.

Finally, even if the provisions of MCL 700.2502 are not satisfied, as is the case with Bridget's journal entry, a writing is treated as if it is compliant with those provisions if Abe, as the proponent of the writing, can establish "by clear and convincing evidence" that Bridget intended the journal entry to be her will. MCL 700.2503(a). It is highly unlikely that Abe will be successful. The writing is not labeled a will, and Bridget expressed some ambiguity in her entry. The writing reads as if Bridget is contemplating the possibility of devising all of her possessions to Abe when she states, "I think I'd like to leave . . ." Also, her surmising comment about Abe's gratefulness "if" she did such a thing also suggests at most a possible intent to make a devise to him in the future. This does not constitute clear and convincing evidence that Bridget intended that journal entry to be an actual will. Thus Abe would not receive anything, including any insurance proceeds, pursuant to the journal entry.

2. Brandon and Stephanie would receive the life insurance proceeds because they are individually named beneficiaries under the policy and the proceeds are not considered part of Bridget's estate to be disposed of by will or that can be distributed through intestate succession.

Additionally, since Bridget had no valid will, she died intestate and her 1 million dollar estate would be distributed pursuant to the EPIC rules of intestate succession which set forth the order of disposition of an estate that is "not effectively disposed of by will." MCL 700.2101(1). Because Bridget had no surviving spouse, her entire estate would be distributed to her descendants by representation. MCL 700.2103(a). Under EPIC, an individual's descendant is defined as "all of his or her descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in this act." MCL 700.1103(k). As Brandon and Stephanie are Bridget's only two descendants, they would be entitled to an equal share (\$500,000 each) of Bridget's estate. MCL 700.2106(1).

Bridget's brother Carl would receive nothing from her estate under the intestacy provisions of EPIC. He would be entitled to the estate only if Bridget had no surviving descendant or parent. MCL 700.2103(c).