

EXAMINERS' ANALYSIS OF QUESTION 8

1. Estates in Michigan are statutorily governed by the Estates and Protected Individuals Code ("EPIC"), MCL 700.1101 et al. Pursuant to EPIC, the December 12, 2012 document that Benjamin prepared constituted a valid will. All valid wills require that the testator be at least 18 years old and have "sufficient mental capacity." MCL 700.2501(1). The facts state that at the time the document was prepared, Benjamin was 55 years of age. Nothing in the facts suggest that his mental capacity was impaired. Therefore, those preliminary requirements are met.

In addition, generally a will must 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). Although Benjamin's document does not constitute a valid will under the above provisions because it was witnessed by only one person instead of the required two, it does qualify as a valid holographic will under EPIC. A holographic will requires no witnesses and is considered valid "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). Here, except for the one witness signature, the document is completely in Benjamin's own handwriting, including his signature, and is dated. Accordingly, Fred's challenge to the validity of the will would fail and Freda would be entitled to all of Benjamin's assets under the will as directed.

2. Even assuming that Benjamin had no valid will, Freda would still be entitled to all of his assets by the intestate succession rules of EPIC. Pursuant to MCL 700.2101(1), "[a]ny part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs as prescribed in this act, except as modified by the decedent's will." Since Benjamin has no surviving spouse, EPIC provides in pertinent part that:

[T]he entire intestate estate . . . passes in the following order to the following individuals who survive the decedent:

- (a) the decedent's descendants by representation.
- (b) If there is no surviving descendant, the decedent's parents equally if both survive or to the surviving parent.
- (c) If there is no surviving descendant or parent, the descendants of the decedent's parents or of either of them by representation. [MCL 700.2103 (a), (b), (c).]

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). EPIC states that "[a]n adopted individual is the child of his or her adoptive parent or parents and not of his or her natural parents. . . ." MCL 700.2114(2).

Thus, as the only surviving descendant of Benjamin, Freda is entitled to his entire estate. The adoptive nature of the parent and child relationship between Benjamin and Freda is of no consequence. Only if Benjamin was not survived by a descendant or a parent would his estate pass to Fred in its entirety under intestate succession laws.