

Early Bar Prep

Session Two

Common Mistakes

- Answers that are too conclusory. Use the facts.
- Lack of clear rule statements in question two.
- Missing the life estate issue
- Not using all the facts to bolster your argument re life estate v. fee simple

Skills done well

- Most did a good job on the first question – listing the elements and addressing each element.
- Great answers used headings that made an argument.

Sample Answer

- (1) The court should rule that Billy Bob's will is valid. Under the Texas Estates Code, a valid holographic will must be written entirely in the testator's handwriting, be signed by the testator and must indicate testamentary intent. Because Billy Bob handwrote the entire will and signed the will, the first and second elements are satisfied. Finally, Billy Bob clearly indicated testamentary intent by using the words "Upon my death," and then indicating a disposition of real and personal property. It does not matter that the will is not dated or witnessed or that it is written on a cocktail napkin; holographic wills do have the same requirements as a formal will. Because the contents of the cocktail napkin satisfy all of the necessary elements of a holographic will, Billy Bob's will is valid.
- (2) Billy Bob's estate should pass to Donna's estate in fee simple. The issue is whether Billy Bob's will gave Donna a life estate only or whether he gave all of his real and personal property to her in fee simple. To create a life estate, a testator typically uses the words, "To X for life," but the wording need not be exactly the same. An outright granting of property without any qualifying language transfers property in fee simple. In this case, there appears to be both types of language used. Billy Bob states that "Donna gets everything till she dies" which would seem to create a life estate. However, Billy Bob also wrote "I leave to Donna all real and personal property" without a qualifier. This non-qualified language transfers property outright. There is a presumption in Texas that a testator intends to completely dispose of his entire estate rather than having any portion pass by intestacy. Because Billy Bob is a layman, it is unlikely that he understood the potential legal implication of the phrase "till she dies." He also did not name any additional beneficiaries, which indicates that he did not intend his property to go to anyone else. Because it is presumed that the testator wants to completely dispose of the estate, the court should place greater weight on the second sentence, which devises all of Billy Bob's property without qualifiers to Donna. Billy Bob's estate should transfer to Donna's estate. Wanda takes nothing.

Point one

(1) The court should rule that Billy Bob's will is valid. [Conclusion]

In Texas, a holographic will must be written entirely in the testator's handwriting, signed by the testator and indicate testamentary intent.

[Rule]

Billy Bob handwrote the entire will and signed the will, so the first and second elements are satisfied. [Analysis of elements one and two]

Finally, Billy Bob clearly indicated testamentary intent by using the words "Upon my death," and then indicating a disposition of real and personal property. [Analysis of element three]

It does not matter that the will is not dated or witnessed or that it is written on a cocktail napkin; holographic wills do have the same requirements as a formal will. [Additional analysis]

Because the contents of the cocktail napkin satisfy all of the necessary elements of a holographic will, Billy Bob's will is valid. [Conclusion]

Point Two

(2) Billy Bob's estate should pass to Donna's estate in fee simple.

[Conclusion]

The issue is whether Billy Bob's will gave Donna a life estate only or whether he gave all of his real and personal property to her in fee simple. [Issue statement]

To create a life estate, a testator typically uses the words, "To X for life," but the wording need not be exactly the same. An outright granting of property without any qualifying language transfers property in fee simple. [Rule]

In this case, there appears to be both types of language used. Billy Bob states that "Donna gets everything till she dies" which would seem to create a life estate. However, Billy Bob also wrote "I leave to Donna all real and personal property" without a qualifier. This non-qualified language transfers property outright. [Analysis]

Point Two cont.

There is a presumption in Texas that a testator intends to completely dispose of his entire estate rather than having any portion pass by intestacy. [Rule]

Because Billy Bob is a layman, it is unlikely that he understood the potential legal implication of “till she dies.” [Analysis] He also did not name any additional beneficiaries, which indicates that he did not intend his property to go to anyone else. [Analysis]

Because it is presumed that the testator wants to completely dispose of the estate, the court should place greater weight on the second sentence, which devises all of Billy Bob’s property without qualifiers to Donna. [Analysis]

Billy Bob’s estate should transfer to Donna’s estate. Wanda takes nothing. [Conclusion]

Bar Examiner Rules and Same Answers

- See handouts

Today's Assignment

- We'll have 35 minutes to allow you to do these extra things
- Today, we're being deliberative in our writing. After each sentence, mark it (C), (I), (R), or (A).