

Sample Skills Exam Question and Answer

Answer the following question. You will be graded on your ability to identify which facts are relevant and state them concisely and accurately; identify the threshold or main legal issue and any secondary issue(s); identify the relevant legal authority and apply it to the facts and draw persuasive logical conclusions. Do not rely on any other authority or your knowledge of the law; only use what is given in the question. Your answer should be in the form of a memorandum to the attorney including the following: Facts/Issue(s), Discussion/Analysis, and Conclusion. Pay attention to clarity, composition, conciseness, and organization.

MEMORANDUM

TO: Paul Paralegal

FROM: Andrew Attorney

DATE:

RE: Client Linda Hill - Inheritance

Linda Hill would like us to review two documents she brought in today and to give our opinion on what she may expect to inherit from her uncle's estate. Linda related the following:

Kenneth Blue, Linda's uncle, and his wife, Elaine, met late in life. They had no children. Elaine was an only child, and her parents died soon after her marriage to Kenneth. Kenneth has six nieces and nephews. Linda, Larry and Lance Hill are the children of Kenneth's sister Jean. The other nieces and nephews are the children of Kenneth's sister Ella. They are Brian Cross, Liz Green, and Donna Cross.

Elaine died in 2009. After Elaine's death, to alleviate his loneliness, Kenneth spent more time with the six nieces and nephews. He had his attorney Sarah Swift draw up a will, in which he left his estate in equal shares to the six nieces and nephews. Kenneth signed the will on October 1, 2010. His signature was witnessed by Swift and her assistant. The will named Donna Cross as executor of the estate. He told the six about the contents of the will and said they should notify Ms. Swift when he dies. He said she would handle everything then.

Kenneth was diagnosed with a terminal illness in January 2012. Fearing that the day might come when he would not be able to manage his own financial affairs and wanting to be free of financial worries while fighting his illness, Kenneth asked the court to appoint Sarah Swift conservator of his estate. This would give her the authority to manage his assets and to pay his bills, beginning with the court's appointment on June 2, 2012, and ending on his death or when Kenneth successfully petitioned the court to terminate the conservatorship. Pursuant to the laws governing conservators, on July 10, 2012, Sarah Swift filed an inventory of Kenneth's assets with the court, which listed miscellaneous personal property, two bank accounts with balances totaling \$4,500, and 30 shares of Baker Holiday Class A stock. After Swift used the \$4,500 in Kenneth's accounts to pay some of his medical bills, she sold one (1) share of the Baker Holiday stock on July 30, 2012; the sale price was \$120,000.

Kenneth fought his illness bravely but died at home on July 7, 2013. A few days after the funeral, Linda and her cousins met with Swift at Swift's office. Swift told the nieces and

nephews at their meeting that Kenneth had 29 shares of Baker Holiday stock and \$102,500 cash in the bank when he died. Swift reviewed the will Kenneth had signed in 2010, and said she would draft the documents necessary for probate proceedings. Swift hired a company specializing in estate sales to dispose of Kenneth's personal property. A company representative showed up in Swift's office on July 20, 2013, and handed her a paper found in a drawer of Kenneth's desk. The note, in Kenneth's handwriting, said:

"When I die, my niece Linda Hill gets all my Baker Holiday stock. Everything else goes to my nephew Brian Cross. Donna Cross should be the executor of my estate. (signed) Kenneth Blue, January 1, 2012."

Linda brought copies of both the 2010 will and the handwritten note with her today and left them with us. Please review them and the applicable statutes and prepare a memorandum setting out the relevant law and your conclusions on what Linda's share of her uncle's estate will be, if anything.

Selected Statutes

2-2301 Definitions.

- (a) Conservator means a person who is appointed by a court to manage the estate of a protected person.
- (b) Devise (noun) means a disposition under the provisions of a will of real or personal property; devise (verb) means to dispose of real or personal property by will.
- (c) Devisee means the person designated in a will to receive a devise.
- (d) Estate means the property of the decedent or the protected person whose affairs are subject to the provisions of this Chapter 2.
- (e) Executor means the person appointed by the court to administer the estate of a deceased person.
- (f) Protected person is a minor or other person for whom a conservator has been appointed.
- (g) Testator means the maker of a will.

2-2327 Execution. Except as provided for holographic wills, every will is required to be in writing, signed by the testator, and signed by at least two individuals who witnessed the signing of the will.

2-2328 Holographic will. An instrument which purports to dispose of a person's property upon his or her death but does not comply with section 2-2327 is valid as a holographic will, whether or not witnessed, if the signature, the material provisions, and an indication of the date of signing are in the handwriting of the testator.

2-2332 Revocation by writing or by act. A will is revoked by a subsequent writing which qualifies as a will under either Section 2-2327 or 2-2328 so long as it expressly revokes a prior will or wills or which has terms inconsistent with a prior will or wills.

2-2345 Change in securities. If the testator makes a specific devise of certain securities, the specific devisee is entitled only to as much of the devised securities as is a part of the estate at the time of the testator's death.

2-2346 Specific devises; preservation of specific devises in certain case of sale by conservator or guardian.

- (a) If a testator makes a specific devise of certain property, the specific devisee is entitled to as much of the specific devise as is a part of the estate at the time of the testator's death.
- (b) If specifically devised property is sold by a conservator or guardian, the specific devisee has the right to a devise equal to the net sale price, less that part of the net sale price expended by the conservator or guardian for the benefit of the protected person.

2-2350 Conversion of assets by a conservator or guardian. A specific devisee may recover from a conservator or guardian damages of triple the amount of any of the net sale price of specifically devised property which said conservator or guardian converts for personal gain or expends for purposes other than for the benefit of the protected person during the protected person's lifetime.

SAMPLE ANSWER

MEMORANDUM

TO: Andrew Attorney
FROM: Paul Paralegal
DATE:
RE: Linda Hill's Inheritance

Kenneth Blue ("Blue"), uncle of our client Linda Hill, died July 7, 2013. Ms. Hill wants our opinion on what she will inherit from him.

FACTS

In October 2010, Blue made a will leaving his estate in equal shares to six nieces and nephews, one of whom is our client Linda. The will was drafted by attorney Sarah Swift, signed, and properly witnessed. The will named niece Donna Cross executor. Blue's wife had predeceased him.

Blue was diagnosed with a terminal illness in January 2012. For assistance in managing his financial affairs, Blue petitioned the court to have attorney Swift appointed as his conservator. Following the court appointment in June 2012, Swift filed an inventory of Blue's assets, as required by law. The assets were miscellaneous personal property, bank accounts with balances totaling \$4,500, and 30 shares of Baker Holiday Class A stock. As conservator, Swift sold one share of the Baker Holiday stock on July 30, 2012.

Blue died July 7, 2013. At a meeting with the nieces and nephews held soon after Blue's funeral, Swift reviewed the 2010 will and informed them Blue had died with \$102,500 in the bank and 29 shares of Baker Holiday stock. Swift said she would draft papers to open probate.

On July 20, 2013, a representative of the company hired to dispose of Blue's personal property delivered to Swift a paper found in a drawer of Blue's desk. The note, in Blue's handwriting, appeared to be a will leaving all Baker Holiday stock to niece Linda Hill, and everything else to nephew Brian Cross, and naming Donna Cross executor. It was signed and dated January 1, 2012.

ISSUES

1. Does Kenneth's writing dated 1/1/2012 qualify as a valid holographic will?
2. Does the 1/1/12 will revoke the prior will?
3. Who inherits the Baker Holiday stock and the funds in the bank account?

DISCUSSION/ANALYSIS

Blue's 2010 will was signed by the maker and witnessed by two individuals, as required by Section 2-2327. A writing that does not meet the requirements of Section 2-2327 for execution of a will, but that directs disposition of the maker's property, and is signed by the maker with an indication of the date of signing, all in the maker's handwriting, will qualify as a

holographic will under Section 2-2328. The discovered document was dated January 1, 2012, stated how Blue wanted his estate distributed, and named an executor, all in Blue's handwriting, and was signed by Blue. The January 1, 2012, writing is a valid holographic will.

Section 2-2332 states that a will is revoked "by a subsequent writing which qualifies as a will under either Section 2-2327 or 2-2328 so long as it expressly revokes a prior will or wills or which has terms inconsistent with a prior will or wills." The 2010 will left Blue's property equally to six nieces and nephews. The holographic will written in 2012 leaves property to only two people: the Baker Holiday stock to our client Linda Hill and the residue to Brian Cross. Because the holographic will written by Blue in 2012 has terms inconsistent with the 2010 will, the holographic will revokes the 2010 will.

The holographic will left Linda all of Blue's Baker Holiday stock. Accordingly, she will inherit the remaining twenty-nine shares under Section 2-2346(a). At issue is the one share sold by Swift while she was Blue's conservator. Section 2-2346(b) directs that the devisee (Linda) is entitled to the net sale price of specific property left to a devisee, less that part of the net sale price expended for the benefit of the will's maker, if it was sold by a conservator. When Swift was appointed conservator, Blue had \$4,500 in the bank. After those funds were expended on Blue's care, Swift sold the share for \$120,000. When Blue died, he had \$102,500 in the bank. This bank balance was the remaining net sale proceeds of the share sold by a conservator, and, pursuant to Section 2-2346(b), should go to Linda.

CONCLUSION

The 2012 writing is a valid holographic will, which effectively revoked the 2010 will. Under the terms of the 2012 holographic will, Linda inherits the remaining 29 shares of Baker Holiday stock and the \$102,500, because it is the balance of the net sale proceeds of the share of Baker Holiday stock sold by Swift as conservator.