

Wills Exam  
Fall 2009  
Prof. DeMeo  
Question 1

Issue Outline

1. Is the bar napkin a valid Holographic Will? What is a Holographic will?
  - a. Elements of valid Holographic will.
    - i. Testamentary Intent
      1. Did he think this was his will, or merely musings and scribbling of possibilities or future action?
    - ii. Entirely in his own handwriting.
    - iii. Are there dispositive provisions?
    - iv. Is his signature on the document?
      1. What is required for signature to be valid?
  - b. A will won't fail for want of an executor.
2. Is Daisy entitled to any of Donald's separate property?
  - a. If the napkin is a valid will, she will get no separate property. If it is not valid, then she'll get a one-third share.
  - b. Daisy will get all of the joint bank account.
3. Is Luey a pretermitted heir?
  - a. Was he born after execution of the will. The facts say the will was done in 1985, even though not dated. Luey is 15, so he must have been born in 1993, after the napkin document was created. He will get an intestate share of the estate. The estate share of all others will be subject to Luey's intestate share. However, if the napkin is not a will, Luey will take from separate property only because Daisy will get all of the community property.
4. Is there community property to which Daisy is entitled?
  - a. Since the residuals and royalties came from contracts signed after marriage they are community property. You will combine all community property and divide it in half. Daisy will be entitled to all of it if the napkin is not a valid will. If the napkin is a valid will then Daisy can claim one-half as the will says, subject to Luey's claim of an intestate share as a pretermitted heir.
5. Incorporation by Reference
  - a. Requirements
  - b. Can it be proved that the list was in existence at the time the napkin was executed?

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Question 2

Issue Outline

1. Testamentary Capacity
  - a. Elements
  - b. Insane Delusion
    - i. What evidence?
    - ii. Did it affect a disposition in the will?
  - c. What effect on the will or codicil?
2. Undue Influence
  - a. Factors and Proof
  - b. What is the underlying concept?
    - i. Did Hans really try to coerce Darth?
    - ii. Did Hans try to substitute his will for that of Darth?
3. Duress?
  - a. No.
4. Fraud?
  - a. In the inducement
    - i. What facts show fraudulent inducement
5. Attorney Ethics and Professional Responsibility
  - a. Did the attorney fulfill her duty to ask all the right questions?
  - b. If Leah and Luke do not get everything will they have a claim against the lawyer?
  - c. What theories
    - i. Tortious Interference?
    - ii. Third party contract theory?
  - d. Discipline?