

DISCUSSION FOR QUESTION 9

Did Jane execute a valid will?

Whether Jane's will is valid will be determined by UPC § 2-502(a) and (b). Those sections read:

(a) a will must be

(1) in writing;

(2) signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction; and

(3) signed by at least two individuals, each of whom signed within a reasonable time after having witnessed either the signing of the will as described in (2) or the testator's acknowledgment of that signature or acknowledgment of the will;

(b) a will that does not comply with subsection (a) is valid as a holographic will, whether or not witnessed, if the signature and material portions of the document are in the testator's handwriting.

Jane's will was in writing and signed by two witnesses. In addition, the will was signed by Friend at Jane's direction, but it was not signed "in the testator's conscious presence" as required by section 2-502(a)(2). "Signing [by another person] is sufficient if it was done in the conscious presence, i.e., within the range of the testator's senses such as hearing; the signing need not have occurred within the testator's line of sight." UPC § 2-502 (comment). Rather, Friend signed the will in another location and after ending her telephone conversation with Jane. Because the signing occurred outside of range of Jane's senses, the will does not meet the requirements of section 2-502(a). As the material portions of the will are not in Jane's handwriting, it is not a valid holographic will. Accordingly, the will is invalid, and Jane has died intestate.

Did Jane make an advancement to Dora?

According to UPC § 2-109(a): If an individual dies intestate as to all or a portion of his or her estate, property the decedent gave during the decedent's lifetime to an individual who, at the decedent's death, is an heir is treated as an advancement against the heir's intestate share only if ... the decedent declared in a contemporaneous writing or the heir acknowledged in writing that the gift is an advancement.

The letter that Jane sent to Dora with the check stated, "I know you are in desperate need of this money, so I'm giving it to you now and will deduct it from your inheritance later." This makes clear that Jane intended the gift of \$100,000 to be an advancement to Dora. However, Dora predeceased Jane. "If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the division and distribution of the decedent's intestate estate, unless the decedent's contemporaneous writing provides otherwise." UPC § 2-109(c). Therefore, the amount of the advancement will not be deducted from the intestate shares of Dora's sons, David and Harry.

Has Sal disclaimed his interest in Jane's intestate estate?

According to the Uniform Disclaimer of Property Interests Act (UDPIA), “[a] person may disclaim, in whole or in part, any interest in or power over property.” UDPIA § 2-1105(a)(formerly UPC § 2-801):

To be effective, a disclaimer must be a writing or other record, declare the disclaimer, describe the interest or power disclaimed, be signed by the person making the disclaimer, and be delivered or filed [with the decedent estate's personal representative or a court having jurisdiction to appoint a personal representative].

UDPIA § 2-1105(c); see also UDPIA § 2-1112(c)(delivery or filing). “The disclaimer takes effect ... if the interest arose under the law of intestate succession, as of the time of the intestate's death.” UDPIA § 2-1106(b)(1). “The disclaimed interest passes ... as if the disclaimant had died immediately before the time of distribution.” UDPIA § 2-1106(b)(2).

Sal's letter to Jane stating that he did not “need whatever I might inherit from you” and that he “would rather that you think of the rest of our family and not consider me in your estate planning” will serve as a disclaimer of his interest in Jane's intestate estate. The disclaimer, which was in a written note and signed by Sal, unambiguously disclaimed any right of inheritance. The disclaimer was delivered to Jane and was found with Jane's effects. The disclaimer took effect upon Jane's death and Sal's interest in the estate will pass by representation to his daughters, Thelma and Louise.

How will Jane's intestate estate be distributed?

The total value of Jane's estate is \$300,000. According to UPC § 2-101(a), “any part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs”. UPC § 2-103(1) further directs that the intestate estate “if there is no surviving spouse, passes ... to the decedent's descendants by representation.” When the decedent's estate passes by representation, UPC § 2-106(6) instructs:

The estate ... is divided into as many equal shares as there are (i) surviving descendants in the generation nearest to the decedent which contains one or more surviving descendants and (ii) deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent.

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The \$300,000 will be distributed by representation by dividing it into three equal shares representing the surviving descendants, Sam and Sal, and the predeceased descendant, Dora, as they are in the generation nearest to Jane containing one or more surviving descendants. Sam will receive \$100,000. Due to his disclaimer, Sal will be treated as if he predeceased Jane. See UDPIA § 2-1106(b)(3)(A). Thus, the remaining shares of Dora and Sal will be combined, and the total amount of \$200,000 will be divided into equal shares and distributed by representation to Dora's sons, David and Harry, and to Sal's daughters, Thelma and Louise, with each receiving \$50,000. Siblings Susie, Ben, and Jerry receive nothing.