

# WILLS & TRUSTS PRACTICE QUESTION

## MID-TERM REVIEW SESSION

**Gerry W. Beyer**

*Governor Preston E. Smith Regents Professor of Law*



Adrian, a man suffering from OCD (obsessive compulsive disorder), became fixated on his own mortality to such an extent that he decided he needed to visit with an attorney to get his affairs in order. He hired a duly licensed Texas attorney, Perry, who spent the next four years preparing Adrian's will. To say the least, Adrian was a difficult client, constantly making changes to his will and second-guessing his decisions. Finally, on September 1, 2005, Perry presented Adrian with a will containing the following dispositive provisions:

I leave my tangible personal property to the individuals indicated in a separate document which will be found in my safe deposit box and labeled "Bequests at My Death."

I leave all my real property to my wife, Natalie.

If Natalie does not survive me, I leave all my real property to Julie and Kevin.

Two witnesses and a notary were called into Perry's conference room and the will execution ceremony took place. The only unusual occurrence was that Adrian refused to sign the will. He had just read an article that pens are one of the biggest carriers of germs and because he had not brought his own pen, he refused to touch Perry's pen to sign the will. Instead, he instructed Perry's assistant, Della, to sign the will for him which she did while he intently watched.

Over the next year, Adrian worked diligently on his "Bequests at My Death" list. He carefully handwrote the list and then placed it in a clearly marked envelope in his safe deposit box. Adrian also transferred \$100,000 from his bank account to Natalie's bank account. At the same time, he told Natalie, "This is an advancement. Happy Birthday!"

Adrian was picking up trash in the street when he was run over and killed by a garbage truck on February 20, 2007. He is survived by Natalie, Julie (Natalie's child

from a previous relationship whom Adrian had legally adopted when she was ten years old) and Kevin (Adrian's child from a previous relationship whom Natalie has not adopted). The "Bequests at My Death" document was found in Adrian's safe deposit box exactly as specified in the will.

After paying all debts, taxes, and expenses and accounting for homestead and other exempt property, Adrian's distributable probate estate consists of an apartment building in Dallas (Adrian's separate property), a cactus farm in Muleshoe (Adrian and Natalie's community property), and money consisting of \$300,000 in Adrian's separate funds and \$200,000 in community funds (with \$100,000 belonging to each of Adrian and Natalie).

Discuss all of the issues raised by these facts with respect to the proper disposition of Adrian's estate and explain clearly the reasons for your resolution of these issues. Apply current Texas law.