

# PROPERTY PRACTICE QUESTIONS

## ANSWER 13A

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**Caveat:** The outline of the answer below provides guidance regarding the main issues which you should address in your answer. The answer is *not* designed to be a model answer.

### **Validity of Glenda's Will**

- Texas recognizes holographic wills, i.e., handwritten wills
- Texas does not require that a holographic will be attested by witnesses; the testator's signature is sufficient
  - Therefore, Glenda's will is valid and was properly admitted to probate

### **Amanda's interest**

- **Amanda has a term of years**
  - Words "for 10 years"

### **Ben's interest**

- **Ben has a fee simple subject to total divestment by an executory limitation of Carol's children**
  - Fee simple
    - Words "to Ben and his heirs"
  - Subject to total divestment by an executory limitation

- The grant gives the interest to Ben, but the occurrence of the condition subsequent, i.e., Ben dying unmarried, takes it away and gives it to other transferees – Carol’s children

### Carol’s interest

- **Carol has nothing**
  - The grant only mentions her children

### Carol’s Children

- Before the RAP analysis Carol’s children have an **executory interest**
  - *In favor of a transferee (not the grantor)*
    - After the occurrence of the condition, i.e., Ben dying unmarried, the interest does not revert to the estate of the mother (the grantor), but goes to the third party – Carol’s children
  - *Not a remainder*
    - Remainder cannot divest or shorten a prior estate, the prior estate must end naturally
      - Ben’s fee simple interest should last forever. However, if Ben dies unmarried, Carol’s children will prematurely divest Ben’s estate
      - Thus Carol’s children’s estate cannot be a remainder

### RAP Analysis for Carol’s Children

- RAP analysis is necessary every time we have a *contingent remainder, vested remainder subject to open*, or an *executory interest*
- Carol’s children have an executory interest, so we need to do RAP analysis

- Carol is currently alive and for RAP purposes is capable of having children regardless of age and/or physical impediments.
- We will know if any of Carol's children attained the age of 21 within 21 years and 9 months from Carol's or Amanda's death
- Because the interest will vest if at all within 21 years and 9 months from the lives in being, **RAP is not violated**
- Because RAP is not violated, there is no need to reclassify the interests in the grant and **Carol's children still have an executory interest**