

PROPERTY PRACTICE QUESTIONS

ANSWER 13B

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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 vested remainder in fee simple subject to total divestment by an executory interest/limitation held by Carol's children**
 - Vested remainder
 - Ben is born, ascertainable, and there are no conditions precedent to his taking other than the natural expiration of the term of years. It is a remainder as Ben will take without divesting Amanda and

there is no gap where possession is back in the Glenda or her successors in interest.

- 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. Thus, Ben’s vested remainder interest is subject to total divestment.

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**