

Critical Legal Cases for Chapter 52

51.1 Ademption: Yes, the bequests to Anderson and Baker were specific bequests that were adeemed when the stock was sold. Therefore, Anderson and Baker are not entitled to the money in the bank accounts. Ademption is the doctrine by which a specific bequest becomes inoperative because of the disappearance of its subject matter from a testatrix's estate during her lifetime. A specific bequest is one comprised of specific articles of the testatrix's estate distinguished from all others of the same kind. Because ademption applies only to specific bequests, a preliminary determination must be made as to whether a bequest is specific or general. The intention of the testatrix must be ascertained at the time the will was executed and from the four corners of the will. Ramchissel clearly intended the gifts of stock at issue to be specific bequests. Thus, ademption occurred when specific shares of stock described were sold and converted to cash prior to the testatrix's death. Therefore, the cash proceeds of these stock sales do not pass to Anderson and Baker but instead pass to Boysville, Inc., pursuant to the residuary clause of Ramchissel's will. *Opperman v. Anderson*, 782 S.W.2d 8, Web 1989 Tex. App. Lexis 3175 (Court of Appeals of Texas)

52.2 Will: The first will, executed on or about June 10, 1959, should be admitted into probate. In Texas, every will must be in writing, signed by the testator, and if not wholly in the handwriting of the testator, attested by two or more witnesses. In this case, it is uncontroverted that the handwritten document is not signed by the deceased and that the typewritten document, although signed, was not executed before at least two witnesses. Appellant contends, however, that although neither instrument by itself is sufficient, both instruments taken together constitute a valid will. The court held that none of the authorities cited support such a proposition and that the clear statutory requirements are satisfied only with respect to the first document. *In re Estate of Jansa*, 670 S.W.2d 767, Web 1984 Tex. App. Lexis 5503 (Court of Appeals of Texas).

52.3 Will: Lois wins. Generally, the intentional destruction or cancellation by the testator of a copy of his duplicate will creates a presumption that he intended to revoke the entire will and all copies thereof. In this case, the court held that this presumption was not rebutted where the testator declared his intention to revoke his entire will and contemporaneously destroyed an original thereof. Accordingly, the entire estate will be left to Lois under the laws of intestacy. *Succession of Talbot*, 530 So.2d 1132, Web 1988 La. Lexis 1597 (Supreme Court of Louisiana).

52.4 Intestate: Miss Campbell's daughter and son from her prior marriage share in one-half of the estate. Mr. Campbell's three sisters and brother share in the other half. Pursuant to the Uniform Simultaneous Death Act, where there is no sufficient evidence that two joint tenants or tenants by the entirety have died otherwise than simultaneously, the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived. The burden of proof is on the party whose claim depends upon survivorship. A court will not speculate as to which scenario is most probable; survivorship is a question of fact that must be proved by the evidence. In this case, the defendants reasonably argued that Mrs. Campbell likely survived her husband because she was in better health and because Mr. Campbell could not swim. The court held, however, that the defendants did not sustain their burden of proof because although their contentions are plausible, there are numerous scenarios, equally plausible, which would have resulted in Mr. Campbell's having survived Mrs. Campbell. The court stated that to hold otherwise would be mere speculation or conjecture. Accordingly, the court affirmed the lower court's holding directing the property to be divided pursuant to the Uniform Simultaneous Death Act. *In re Estate of Campbell*, 56 Ore.App. 222, 641 P.2d 610, Web 1982 Ore. App. Lexis 2448 (Court of Appeals of Oregon).

52.6 Murder: No, Loretta cannot recover under the will or take her elective share under the intestate statute. Generally, most states provide that a person who murders another person cannot inherit the victim's property. Moreover, the murderer cannot participate in the proceeds of life insurance policies on the victim's life. Public policy provides that no one shall be permitted to profit by his own fraud, or to take advantage of his own wrong, or to acquire property by his own crime. In this case, the court concluded that if Loretta was permitted to receive any portion of the estate, she would benefit from her own fraud and involvement in criminally obtaining the death of her supposed benefactor. Loretta argued, however, that there was no proof that Stith murdered her husband, a condition precedent to holding her vicariously liable for murder and barring her inheritance. The court held that Loretta's criminal conviction should be accepted as conclusive evidence that she was involved in the murder and that the killing of her husband was not done in self-defense. Accordingly, the judgment of the lower court barring Loretta's inheritance was affirmed. *In Re Estate of Danforth*, 705 S.W.2d 609, **Web** 1986 Mo. App. Lexis 3757 (Court of Appeals of Missouri).