

# Where There's a Will, There Might be a Way

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As an attorney, one of my favorite authors is John Grisham. 'The Testament,' one of Grisham's many popular novels, centers on Troy Phelan, an eccentric elderly billionaire. In the story, Phelan makes a sweeping change to his final will, leaving his fortune to his illegitimate daughter. He then commits suicide by leaping from a balcony to his death.

The drama unfolds as Phelan's six other children from his three previous marriages contest his will, hoping to get the riches for themselves. They claim because Phelan left a holographic will, it should be thrown out.

A holographic will is one that has been entirely handwritten and signed by the person making out the will. Unlike a typical will which is signed by and in front of two witnesses, a holographic will has not been witnessed. A holographic will can be upheld so long as:

- There is evidence that the deceased person actually created the will;
- The person creating the will was of sound mind; and
- The will accurately depicts the person's wishes regarding the distribution of his estate.

Holographic wills are usually created in emergencies, such as when a person is trapped in an elevator or bank vault and is near death. The most famous holographic will was created by Cecil George Harris on June 8, 1948, in Saskatchewan, Canada. A farmer, Harris became trapped under his tractor and carved his will into the tractor's fender. The will read, "In case I die in this mess I leave all to the wife. Cecil Geo. Harris." The fender-will was upheld and is now on display at the law library of the University of Saskatchewan College of Law.

Holographic wills are not allowed everywhere, however. Only about half the states in the U.S. recognize holographic wills. Wisconsin is not one of those states. To be upheld in Wisconsin, the person signing the will, or testator, must be of sound mind and not under duress. In addition, the testator must sign the will in front of two witnesses who must also sign the will.

While Wisconsin doesn't allow us to use holographic wills, wills signed outside our borders or by non-residents visiting Wisconsin are valid so long as the will was valid in the state it was signed in or it was valid in the non-resident's home state. So a holographic will can be valid in Wisconsin so long as it was signed in a state where holographic wills are legal or by a resident of such a state.

Thoughts about holographic wills may be changing, though, in light of the digital age we live in. In another example of technology advancing faster than the law, the State of Ohio had to decide whether a will written on a Samsung Galaxy tablet computer was valid.

Because no paper was available, Javier Castro used his tablet to create his will. Because Castro electronically signed the will and it was witnessed, Lorain County Probate Judge James Walther upheld the will. In his decision, though, Walther asked the state legislature to address the validity of wills written on electronic devices.

In light of this case, I'm going to try to trademark the name "iWill."