

860.25 WILLS - *DEVISAVIT VEL NON*.¹

The (*state number*) issue reads:

"Is the propounder's exhibit (*state number*), and every essential part thereof, the will of (*name deceased*)?"

The propounder's exhibit (*state number*) is not a will unless and until you pronounce it to be one.²

Therefore, I instruct you that if you find, by the greater weight of the evidence, that the propounder's exhibit (*state number*) was executed according to the requirements of law for a valid [attested] [handwritten] will, then it would be your duty to answer this issue "Yes" in favor of the propounder.

If, on the other hand, you find, by the greater weight of the evidence, that

[the propounder's exhibit (*state number*) was not executed according to the requirements of law for a valid [attested] [handwritten] will],

[the deceased lacked sufficient mental capacity to make a will at the time the propounder's exhibit (*state number*) was executed],

[the execution of the propounder's exhibit (*state number*) was procured by undue influence],

[the execution of the propounder's exhibit (*state number*) was procured by duress],

then it would be your duty to answer this issue "No" in favor of the

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1. The literal translation is: "Did he devise or not?" See *In re Will of Dunn*, 129 N.C. App. 321, 500 S.E.2d 99 (1998).

2. See *In re Will of Sessoms*, 254 N.C. 369, 119 S.E.2d 193 (1961); *In re Will of West*, 227 N.C. 204, 41 S.E.2d 838 (1947).