

HYBRID  
WILLS AND TRUSTS -SECTION 1  
FINAL EXAMINATION  
FALL 2024  
Professor M. Caves

Instructions:

Answer one (1) Essay Question.

Answer 60 Multiple Choice & True/False Questions in Exemplify. To select the answer which you believe is correct, click on that answer. Use the 'Next' and 'Previous' buttons to navigate between questions. Read each question carefully and choose the best answer, even though more than one answer may be "correct."

Total Time Allotted: Three (3) Hours.

Your answer should demonstrate your ability to analyze the facts in the question. Your answer should evidence your ability to apply the law to the given facts and to reason logically, lawyer-likely from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles; try to demonstrate your proficiency in using and applying them. You will receive little credit if your answer contains only a statement of your conclusions. State fully the reasons that support your conclusions and discuss all points thoroughly. Your answer should be complete, but you should not volunteer information or discuss legal doctrines that are not pertinent to the solution of the problem.

Essay Question 1

Hank and Wilma were married and had one child from this marriage, namely Sam. Wilma had a daughter from a prior marriage, namely, Donna. Donna was a minor when Wilma married Hank in 1982, and although not adopted by Hank (Hank didn't want to hurt Donna's dad's feelings), Hank always referred to Donna as his child; introduced her as his child and named her as "his daughter" on his health care directive.

At Hank's death in 2023, two documents were submitted for probate:

1. A typed document entitled "Last Will and Testament." signed by Hank and Witness One on June 1, 2018 and signed by Witness Two on June 3, 2018. Both witnesses were disinterested. The document stated that Hank was married to Wilma and had two (2) children. The Will then provided that Hank's community property was to pass to Wilma. The Will however did not mention any separate or quasi-community property, nor did it have a residuary clause.
2. A typed document with the heading: "I declare this is my Will." On the form Hank had typed, "I'm really pissed right now, so I want to get this done. I give all of my separate property and 25% of my community property to my son, Sam." Hank signed the typed document "the old man" and dated it "1/7/2021 1:00 a.m." No witnesses signed it. (On January 6, 2021, Hank had worked a 14 hour shift as a federal security officer, and while watching the news late that evening, drink a six pack of beer; which for Hank, was a lot. "Old man" is what his children and grandchildren called him.)

In 2022, Hank mentioned to Donna that he had updated his Will.

At his death, in 2023, Hank's property consisted of:

- A. Separate property (inherited from a deceased sibling) worth \$100,000;
- B. Community property – Hank's half being worth \$500,000;
- C. California land worth \$100,000, which Hank had bought with his earnings during his marriage but had taken title in his name alone. In 2020, on Donna's birthday, without Wilma's written consent, Hank executed and recorded a deed to the land conveying it to himself and Donna, as joint tenants.

What rights, if any, do Wilma, Sam, and Donna have in Hank's estate? Discuss.

Answer according to California law.

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# Wills and Trusts Sec 1 Exam Question #1-M. CAVES

## ANSWER OUTLINE

### Summary of issues:

A is 2018 Will valid – irrelevant that it did not dispose of the entire estate. capacity presumed. Problem with witnesses. Technically invalid; but harmless error rule might cure defect if you can show c/c evidence of intent that the writing be a Will. Likely a valid Will as to cp.

B. 2021 writing – does it qualify as a Will. Lack of witnesses. Generally an issue; but harmless error might save. Mostly likely valid if H had capacity as c/c evidence of intent that it serve as a Will. H has the right to dispose of his separate and community property.

Discussion of sound mind test. Discussion of signature. Tried, inebriated. Questionable validity.

If valid, then the writing would serve as a revocation of the 2018 Will as to the gift of cp by means of inconsistency. Discussion of what is required for revocation by a writing ...Sam would get all separate property and 25% of cp.

They might talk about how Donna is not named, but under the omitted child rules, no applicable unless Donna born post Will. Same with 2018 Will.. I don't see as an issue but some may discuss.

If not valid, then the separate property would go intestate. Issue is whether Hank had one child or two ... if one, Wilma gets 50%, if Donna a child, then Wilma gets 1/3. Balance of separate to child(ren) depending.

Who is a child discussion. Per the probate code, you look to the Family Court, and holding out as a child confer status. Under PC 6453(b)(2) Donna could bring action based on c/c evidence of "holding out." Although not named, 2018 Will mentioned two (2) children, treated her as a child, etc.

C. Life time transfer of cp property.

Although in H's name, still cp. Voidable transfer. Wilma could void as to her 1/2 of cp; but since no action brought during lifetime, H's 1/2 vests in Donna.

### I. Validity of the Wills

A. Issue: Is the 2018 Will a valid Will

Rule: In California, a formal will must be in writing, signed by the testator, and witnessed by at least two persons present at the same time who understand they are signing the testator's will (Cal. Prob. Code § 6110).

Analysis:

1. Formal Will (June 2018): This writing meets all requirements, except it is unclear if the witnesses were both present at the time of signing or acknowledgment of signature. If both present, signing on different days okay. But if not, there is a problem with the witnessing of the Will. Extrinsic evidence could be introduced to address this issue.
2. If the witnesses were not present at the same time, the harmless rule might apply. This rule allows a defect in satisfying the witness requirement to be considered a "harmless error" if c/c evidence of t's intent that the instrument be his Will is shown.
3. Here, the document was titled Will, had testamentary language, and was witnessed.

Conclusion: A valid Will.

B. Was the document in H's handwriting a Will?

Rule: A holographic will is valid if the signature and material provisions are in the handwriting of the testator, even if not witnessed (Cal. Prob. Code § 6111).

Analysis: This document qualifies as a valid holographic will. The material provisions and Hank's signature are in his handwriting, the language expressly testamentary intent; thus meeting the requirements for a holographic will. The fact that there is pre-printed language addressing the testamentary intent is allowed. That fact that it is not dated does not affect its validity per se.

Conclusion: Both the formal will and the holographic will are valid under California law.

## II. Application of Holographic Will – Did it revoke the 2018 Will in part by inconsistency.

Issue: Does the holographic will revoke the earlier formal will in part?

Rule: A will may be revoked by a subsequent **writing that qualifies as a** will that revokes the prior will expressly or by inconsistency (Cal. Prob. Code § 6120). If the subsequent will does not expressly revoke the prior will, the prior will is revoked only to the extent it is inconsistent with the subsequent will (Cal. Prob. Code § 6120(b)). However, for the “revocation” to occur, it must first be shown that the holographic writing was done after the 2018 Will. (2 issues..)

Analysis: CPC 6111(b)(1) addresses the issue if a holographic Will is not dated. As the statute does not state a “standard,” the date may be shown by preponderance of the evidence. Extrinsic evidence as to the date would be allowed. Here, evidence of the 2020 gift to Donna could be introduced to confirm that the instrument was executed after the 2018 Will. Wilma may try and argue that it was written prior to 2018; if she is successful, the holographic instrument, as to the community property gift would be revoked as to inconsistency. However, the gift of separate would still be valid.

Assuming that the holographic will was post 2018, the following would apply:

First, the instrument qualifies as a Will, so that element is satisfied.

Second, although the holographic will does not expressly revoke the formal will, it is inconsistent regarding the distribution of community property. The formal will leaves all community property to Wilma, while the holographic will leaves 25% of community property to Sam. (The application of the gift to Fred will be addressed separately) The formal will is silent on separate property, while the holographic will leaves all separate property to Sam.

Conclusion: If it is shown that the holographic was written after 2018, it partially revokes the formal will by inconsistency. The provisions of the holographic will regarding community property and separate property will control.

If, however, written prior to 2018, the provisions will only govern the disposition of Hank’s separate property.

## III. Gift to Fred

As Fred is then deceased, and not kindred, the gift to his will lapse. The anti-lapse rule is not applicable. One is required to survive the decedent in order to take, unless the Will expressly provided otherwise.

## IV. Joint Tenancy Property

Rule: In California, a spouse can only dispose of their half of the community property by will. The surviving spouse retains their half of the community property by operation of law (Cal. Prob. Code § 100). California has the “item” theory of community property, thus it is irrelevant that Wilma received assets in excess of the “gift” of her ½ interest in the property to Donna. The gift to Donna as to Wilma’s ½ is voidable.

## V. Distribution of Property

### A. Separate Property

Issue: How will Hank's separate property be distributed?

Rule: Property acquired before marriage or by gift, bequest, devise, or descent is separate property (Cal. Fam. Code § 770).

Analysis: The holographic will explicitly states that "All of my separate property... goes to my son, Sam." Regardless of when executed, as the 2018 Will was silent as to separate property, all separate property passes to Sam.

Conclusion: Samir is entitled to receive all of Hank's separate property worth \$100,000.

### B. Community Property

Issue: How will Hank's community property be distributed?

Rule: In California, a spouse can only dispose of their half of the community property by will. The surviving spouse retains their half of the community property by operation of law (Cal. Prob. Code § 100).

Analysis: The holographic will leaves 25% of Hank's community property to Sam. Assuming the holographic instrument was executed after the 2018 Will, this provision is valid as to Hank's half of the community property. Wilma retains her half of the community property by operation of law.

Conclusion: Assuming the holographic instrument was written after the 2018 Will, of Hank's \$500,000 share of community property, Sam will receive 25% (\$125,000), and Wilma will receive 75% (\$375,000). Wilma also retains her own \$50,000 share of the community property gifted to Donna. (See below). If Sam can't not show evidence that the holographic will written after the 2018 Will, all of Hank's community property will pass to Wilma.

### C. Joint Tenancy Property

Hank's attempt to create a joint tenancy with Donna in 2018 without Wilma's written consent is voidable. It is irrelevant, given California's item theory (absent a writing to the contrary)

that Hank give her at least 75% of his community property, which was in excess of the amount of Wilma's interest in this property.

If Wilma challenges this transfer, as to Wilma's interest, the transfer will be set aside; however, as to Hank's interest, the transfer will be valid, and Donna will be entitled to enjoy Hank's interest. This Donna, regardless, will be able to retain at least a one-half interest.

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**Validity of Will # 1 signed in 2018**

**Execution of a Valid Will**

Issue: Is Hanks Will signed in 2018 a valid Will?

Rule: The execution of a valid will requires that the testator: (1) have present testamentary intent; (2) testamentary capacity, and; (3) meet the requirements for formalities in the execution of either a holographic or attested will.

Here, Hank's Will that was signed in 2018 meets the requirements to execute a valid attested Will because he has intent, capacity, and meets the formalities requirement. First, he has intent because the testamentary document was titled "Last Will and Testament," which shows that he was writing a Will to be executed at his death. Second, he has capacity because he was over the age of 18 and presumed to be of sound mind, discussed below. Finally, he met the formalities for an attested Will because there are two disinterested witnesses. However, the facts do not indicate if the witnesses were present when Hank signed the will. On the other hand the two witnesses did sign the document within a reasonable time of each other. Each element of intent, capacity, and formalities are discussed below.

Conclusion: Since Hank had present testamentary intent, testamentary capacity, and met the formalities for an attested will it is presumed that Hanks Will signed in 2018 is valid.

**Intent**

Issue: Did Hank have present testamentary intent for his 2018 Will?

Rule: Intent requires the testator intend the document to be a testamentary document to become effective upon their death.

Here, as discussed supra, Hank has testamentary intent because the title of the document was "Last Will and Testament" that was submitted for probate. Because the title stated "Will" and "Testament" it shows that Hank intended for the document to be his Will effective upon his death.

Conclusion: Since Hank provided a clear title on the testamentary document that stated it was his, "Last Will and Testament," shows that he had intended for the document to be his Will.



## Capacity

Issue: Did Hank have testamentary capacity for his 2018 Will?

Rule: Testamentary capacity requires that the testator be at least 18 years old and of sound mind. Sound mind requires that the testator know and understand: (1) the nature of the testamentary act; (2) the nature and extent of his property, and; (3) the natural objects of his bounty. Testamentary capacity is a low bar ( higher than required for marriage but lower than that needed to form a contract).

Here, it is likely that Hank was at least 18 years of age when he created his will because he was married in 1982 and signed his the will in 2018. Since there was 36 years that had passed from the time he was married, it is reasonable to presume that Hank was at least 18 years old when he signed the Will. Then, the issue of whether or not Hank was of sound mind in 2018 is not contested because his intent clearly showed he was creating a will and specified that Wilma receive his community property. However, Donna and Sam could argue that Hank did not know the nature and extent of his property because he did not include his separate property or place a residuary clause. This argument is likely to fail because the separate property would be probated and distributed to his spouse and children, discussed below. Finally, it is stated in the Will that Hank was married to Wilma and had two children showing that he knew the nature and object of his bounty.

Conclusion: Thus, Hank has testamentary capacity for this 2018 Will.

## Formalities

Issue: Did Hank meet the required formalities for his 2018 Will?

Rule: The execution of a valid will requires that the testator's Will be in writing and signed by the testator in the presence of two disinterested witnesses. The witnesses are not required to sign in each other's presence. However, the witnesses must sign the will within a reasonable time of one another.

Here, the facts indicate that Hank's Will in 2018 was a typed document that was signed by Hank. Further, the facts indicate there were two disinterested witnesses that signed the will. The first witness signed on June 1, 2018 and the second witness signed on June 3, 2018. Because the two witnesses signed within a reasonable time (3 days) of one another it is presumed to be valid. However, it can be argued that the witnesses were not jointly present when Hank signed the will.

This argument is likely to fail because the two witnesses were disinterested and Hank's estate could argue the Harmless Error Doctrine, discussed below.

Conclusion: Thus, it is likely that Frank met the formalities or could argue that the Will is valid because the will was in writing, signed by Hank, and signed by two disinterested witnesses.

### **Harmless Error Doctrine**

Issue: If the two disinterested witnesses were not jointly present at the time when Hank signed his Will, would that impact the validity of his Will?

Rule: A Will or Codicil may still be valid if there is an absence of a witness. If the will or codicil is absent a witness it nevertheless may still be valid if there is clear and convincing evidence that the testator intended the document to be his last will and testament.

Here, the facts do not indicate whether or not the witnesses were jointly present at the time Hank signed his Will. However, the facts do show that the witnesses did sign the Will within three days of each other. A person contesting the Will could argue that the two witnesses were not jointly present, which is a formalities requirement, because they did sign on two separate days. This argument is likely to fail under the Harmless Error Doctrine because it is evident there were two witnesses that did clearly sign the will that was intended to be a testamentary document.

Conclusion: Thus, under the Harmless Error Rule, the 2018 will would be valid whether or not the witnesses were jointly present when Hank signed the Will.

All in all, Hank's 2018 will is considered a valid executed will.

### **Validity of Will # 2 signed on 1/7/2021**

#### **Execution of a Valid Will/ Codicil**

Issue: Is Hanks Will signed in 2021 a valid Will or Codicil?

Rule: The execution of a valid Will or Codicil requires that the testator: (1) have present testamentary intent; (2) testamentary capacity, and; (3) meet the requirements for formalities in the execution of either a holographic or attested Will. A Codicil amends, modifies, clarifies or revokes an underlying Will. A Codicil republishes a Will at subsequent date. A codicil is required to meet the same formalities as a holographic or formally attested will.



Here, Hank's created another will in 2021 subsequent to his will in 2018. This Will would be considered a Codicil because Hank republished his Will. To begin with, Hank did have testamentary intent because he titled the document, "I declare this is my Will." Because he wrote the statement declaring the typed document was his Will indicates he had testamentary intent. Second, an argument can be made whether or not Hank had testamentary capacity because he wrote the will when he was "pissed" and after drinking a six pack of beer. However, the fact that he was angry and drank a six pack would not effect his testamentary capacity because the bar is low for capacity. Finally, since the Will was typed it would need to meet the requirements for a formal will, including a signature and two disinterested witnesses. The facts do indicate no witnesses signed or were present and he signed the will "old man" which is not the formal signature of his name. Each element of intent, capacity and formalities are discussed further, below.

Conclusion: Thus, it can be argued that Hank's will signed in 2021 is not valid because there is an issue of not having capacity and not meeting the formalities required for a formal will. However, if the Will is considered valid it would be a revocation of the first will because it modifies/ amends the gift of community property, discussed below.

### **Intent**

Issue: Did Hank have present testamentary intent for his 2021 Will/ Codicil?

Rule: Intent requires the testator to intent the document to be a testamentary document to become effective upon their death.

Here, Hank has the intent for the testamentary instrument to be his Will because it is titled, "I declare this is my Will." The title clearly indicates that Hank intended for the typed document to be his Will. Further, he also stated in his Will that he was really pissed and he wanted to get the Will done.

Conclusion: Thus, Hank had testamentary intent when creating his 2021 Will/Codicil.

### **Capacity**

Issue: Did Hank have testamentary capacity for his 2018 Will?

Rule: Testamentary capacity requires that the testator be at least 18 years old and of sound mind. Sound mind requires that the testator know and understand: (1) the nature of the testamentary act; (2) the nature and extent of his property, and; (3) the natural objects of his bounty. Testamentary

capacity is a low bar ( higher than required for marriage but lower than that needed to form a contract).

Here, Hank was at least 18 years old because the Will was written after the 2018 will and as discussed supra, he was well over 18 years of age. To indicate that Hank was of sound mind would require that he meet the elements of knowing and understanding of the nature of the testamentary act, nature and extent of his property, and the natural objects of his bounty. However, a person contesting the will may argue that Hank was drunk off a six pack of beer, irrationally wrote in the will that he was really pissed, and he signed the will "old man." These arguments are likely to fail because testamentary capacity has a low bar. The fact that Hank had drank a six pack and was angry would not jeopardize his capacity. Additionally, the reason he signed the document "old man" is because that is what his children and grandchildren called him. The fact that he used the term "old man" also shows that he knows the natural objects of his bounty because it can be presumed he knows about his children and grandchildren. Finally, Hank did know and understand the nature and extent of his property because he mentions his separate property in this subsequent will.

Conclusion: Thus, Hank does have testamentary capacity for his subsequent 2021 Will/ Codicil.

### **Formalities**

Issue: Did Hank meet the required formalities for his 2021 Will/ Codicil?

Rule: The execution of a valid will requires that the testator's Will be in writing and signed by the testator in the presence of two disinterested witnesses. The witnesses are not required to sign in each other's presence. However, the witnesses must sign the Will within a reasonable time of one another.

Here, Hank did not have any witnesses sign the 2021 will. He signed and dated the will on 1/7/2021 at 1:00 am. Because he signed the will at 1:00am it is unlikely that he had any witnesses watch him sign the will as "old man." However, a year later in 2022, he did mention to Donna that he updated his Will and she could be considered a witness under the Harmless Error Doctrine. Under the Harmless Error Doctrine, Hank's Will could be considered valid because in the absence of a witness, a Will/ Codicil clear and convincing evidence is needed to show that Hank intended the subsequent Will to be executed.

Conclusion: Although Hank did not meet the required formalities for a valid Will/ Codicil it may still be valid under the Harmless Error Doctrine.



**Harmless Error Doctrine**

Issue: Since Hank did not have witnesses for his subsequent Will/Codicil in 2021 would it still be considered valid?

Rule: A will or codicil may still be valid if there is an absence of a witness. If the will or codicil is absent a witness it nevertheless may still be valid if there is clear and convincing evidence that the testator intended the document to be his last Will and Testament.

Here, Hank did not have any witnesses present at the time he signed his Codicil or have any witnesses sign the Codicil. However, there is evidence to show that Hank did intend for the 2021 testamentary document to be his Will as evidenced by the title. Further, Donna could argue that she was a witness because Hank let her know sometime in 2022 that he updated his Will. However, this argument is likely to fail because Donna did not sign the Will/ Codicil as a witness nor was the time Hank notified Donna reasonable because it was over a year later. The mere fact he told Donna is not clear and convincing because he is required to have at least two disinterested witnesses. Further, Donna as the only potential witness did not know she was a disinterested witness because she was not specified in the subsequent Codicil. However, Donna could take separate property that is probated, discussed below.

Conclusion: Despite the Harmless Error Doctrine, Hanks 2021 Will/ Codicil will not be considered valid because there is no clear and convincing evidence that the 2021 Will/ Codicil met the requirements for a valid Will/ Codicil.

**Revocation of a Will**

Issue: Does Hank's 2021 Will/ Codicil revoke the 2018 Will?

Rule: A will may be revoked if the testator has the intent to revoke coupled with a physical act (burn, tear, destroy or by another destructive act) or by operation of law.

Here, Hank was "pissed" when he wrote his 2021 Codicil and may have had the intent to revoke the 2018. However, there is no clear or convincing evidence or probable cause that he wanted to revoke the 2018 will because he did not use any language in the 2021 Codicil that he wanted to cancel the 2018 will. Further, the 2021 Codicil amended the community property gift to provide his son Sam with 25% of the community property. Since he did not revoke the entire gift from his wife Wilma in the codicil it does not provide that he wanted to completely eradicate Wilma from inheriting from his estate.

Conclusion: Thus, Hank did not intend to revoke his 2018 Will.

All in all, Hanks 2021 Will/ Codicil is not valid and the 2018 Will would be the only valid testamentary document. Thus, the 2018 Will will determine the testamentary distribution of Hank's estate.

### **Wilma's inheritance from Hank's Estate**

#### **Community Property**

Issue: Does Wilma inherit Hank's half of the community property?

Rule: Community property is property that is acquired during marriage. The share of the deceased spouse is taken by the surviving spouse.

Here, Wilma is the surviving spouse and Hank declared in his 2018 Will that Wilma would receive his community property. Although in Hank's 2021 Will/ Codicil he left 25% of the community property to his son Sam, Sam would not be able to take because the 2021 Will/ Codicil is not valid. Further, Hank bought California land worth \$100,000 bought with his earnings during his marriage to Wilma. Since the California land was bought during marriage with his earnings during marriage, the California land would be considered community property. Although Hank used his earnings to buy the California land, his earnings were acquired during marriage making the California land community property. Further, if Hank had any debt that needed to be collected they could not use the California land because Hank conveyed Donna as a **Joint Tenant** and he no longer has ownership of the California land upon his death.

Conclusion: Thus, Wilma would inherit Hank's half of the community property worth \$500,000 and the California land for \$100,000 per the 2018 Will.

#### **Separate property valued at \$100,000**

Issue: Does Wilma inherit any portion of the separate property?

Rule: Separate property is acquired prior to marriage, by inheritance or by gift, unless it is comingled.

Here, there are no facts to indicate that the separate property was comingled with community property assets. Further there are no facts indicating that Wilma made any improvements to the separate property or enjoyed the separate property evidencing there was no comingling of the separate property. Additionally, Hank's 2018 will did not indicate that Wilma would inherit any of the



separate property. However, because Hank did not specify how his separate property would be distributed in his will it would have to pass through probate as intestate, discussed below.

### **Intestate Succession**

**Issue:** Does Wilma inherit from Hank's estate for separate property that was not listed in his 2018 will?

**Rule:** A person who dies without a will dies intestate. The default order of intestate succession is: spouse, issue, parent, sibling and sibling issue, grandparent and grandparent issue, step-children, next of kin, then escheats to the state.

Here, Hank did not include his separate property valued at \$100,000 to be distributed in his 2018 will. Since the the separate property was not included it would have to pass through probate as an intestacy. The default order of intestate succession does include the spouse as the first taker. However, since Hank is also survived by his two children the separate property would be split amongst his children and spouse. Further, Sam is Hank's biological child and Donna is a putative adopted child, discussed below. Because Donna is a putative child and Sam is a biological child the separate property would be divided in 1/3rds to his wife Wilma and two children Donna and Sam.

**Conclusion:** Thus, Wilma would inherit 1/3 of the separate property valued at \$100,000 and receive \$33,333.33.

### **Donna's inheritance from Hank's Estate**

#### **Putative Adoption**

**Issue:** Is Donna considered a putative adopted child because she is not Hank's biological child?

**Rule:** Under CA Probate Code 6453 (b) 2, if a testator hold out a child as their own through their actions and conduct through clear and convincing evidence the putative/ adopted child would be able to inherit from the testator's estate as the testator's child.

Here, Donna is Wilma's daughter from a previous marriage prior to Wilma's marriage to Hank. The facts show that Donna was a minor when Wilma married Hank in 1982. Hank's conduct and actions always referred to Donna as his child, including introducing her as his child. Further, Hank referred to Donna as "his daughter" on his health care directive which indicates through his actions that he held out Donna as his child. The facts also indicate that Hank never officially adopted Donna because he did not want to hurt Donna's dad's feelings.

Conclusion: Thus, Donna would be held as Hank's own child and be eligible to inherit under intestate succession for property not specified.

### **Omitted Child**

Issue: Is Donna an omitted child in Hank's 2018 will?

Rule: An omitted child is left out of a testators will because the child was born after the Testator executed their Will and would still be able to inherit.

Here, Donna was deemed as Hank's child prior to his creation of his 2018 will because of his actions and conduct causing Donna to be a putative child. Although, Hank did not specifically leave anything to Donna in his will, he did mention in his will that he had two children. Sam was one child and the only other child in his life, according to the facts, was Donna. Further, there was no language in the Will that shows that Hank intentionally omitted Donna from the will. However, it can be argued that Donna was omitted because for his subsequent 2021 will that is invalid, he did not include her in the will but did let her know that the will was updated. This argument is likely to fail because the 2021 will is invalid.

Conclusion: Thus, Donna is not an omitted child.

### **Intestate Succession/ Probate Property**

Issue: Does Donna inherit from Hank's estate for separate property that was not listed in his 2018 Will?

Rule: A person who dies without a Will dies intestate. The default order of intestate succession is: spouse, issue, parent, sibling and sibling issue, grandparent and grandparent issue, step-children, next of kin, then escheats to the state.

Here, Donna through intestate succession would inherit on the separate property as a child of Hank because she is a putative child. Since Sam and Wilma would also take inheritance on the separate property she would inherit 1/3 of the separate property.

Conclusion: Thus, Donna would inherit 1/3 of the separate property valued at \$100,000 and receive \$33,333.33.

### **Sam's inheritance from Hank's Estate**



## **Omitted Child**

**Issue:** Is Sam an omitted child in Hank's 2018 will?

**Rule:** An omitted child is left out of a testator's will because the child was born after the Testator executed their Will and would still be able to inherit.

Here, Sam was born before Hank wrote his will. The facts do not indicate that Sam was intentionally omitted from the Will because there is no language that he did not want Sam to inherit. Further, there is an acknowledgment in the 2018 will that he had two children. Additionally, in his 2021 Will, albeit invalid, Hank did leave all of his separate property to Sam. Because the 2021 Will is irrelevant and does not dictate how the separate property would be distributed, indicates that Sam was not intentionally omitted from Hank's inheritance. Additionally, because the 2018 Will did not indicate the distribution of the separate property, the separate property would be subject to probate through intestate succession. On another note, because Sam is presumed to be over 18 years old and would be able to inherit as a child because he would not need to be cared for by his mother.

**Conclusion:** Thus, Sam is not an omitted child nor intentionally omitted because there is a natural parent-child relationship.

## **Intestate Succession/ Probate Property**

**Issue:** Does Sam inherit from Hank's estate for separate property that was not listed in his 2018 will?

**Rule:** A person who dies without a will dies intestate. The default order of intestate succession is: spouse, issue, parent, sibling and sibling issue, grandparent and grandparent issue, step-children, next of kin, then escheats to the state.

Here, as discussed supra, the separate property would be passed through probate as an intestacy. Sam is Hank's biological child and would inherit based on the default order of intestate succession. Further, Donna, considered a putative adoptive child, would also take under intestacy as a child of Hank. The separate property would be divided into 1/3rds amongst Sam, Donna and Wilma.

**Conclusion:** Thus, Sam would inherit 1/3 of the separate property valued at \$100,000 and receive \$33,333.33.

**END OF EXAM**