

WILLS AND TRUSTS
FINAL EXAMINATION
FALL 2024

T. Swanson

Instructions:

Answer three (3) Essay Questions.

Total Time Allotted: Three (3) Hours.

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and facts upon which the case turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other. Your answer should evidence your ability to apply the law to the given facts and to reason in a logical, lawyer-like manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles; instead, try to demonstrate your proficiency in using and applying them. If your answer contains only a statement of your conclusions, you will receive little credit. 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.

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 (he didn't want to hurt her 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." On June 1, 2018, Hank declared in front of his neighbor Nancy, and his son, Sam, "this is my Will." He then signed it. Sam then signed as a witness. Nancy was about to sign, but had to leave due to a screaming child. She returned the next day and signed as a witness. 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 ?". On the document 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 document "the old man" and dated it 1/7/2021 1:00 am. There were no witnesses to the document. 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 including the California land? Discuss.

Answer according to California law.

Question 2

In 2015, Teresa married late in life and decided it was time to get her affairs in order. She created a written instrument in which she declared that she held certain property listed on the attached Schedule A in Trust, as Trustee. The written instrument provided for Teresa to be the sole beneficiary during her lifetime, but on her death, the instrument provided for the trust estate to be held for the benefit of her spouse, Stan, through his lifetime. The Trust indicated that the

Trustee had absolute discretion in determining how much to distribute to Stan, but that it was Teresa's desire that he be cared for in a loving and compassionate manner consistent with his lifestyle at the time of her death. Following Stan's life, the remaining assets were to be distributed to a charity or charities select by the Trustee, giving consideration to Teresa's love of nature.

Teresa's friend, Fergie was named as successor Trustee. The attached schedule A referenced Teresa's home in Central California on 123 Happy Lane and "my all Bank Accounts at ABC Bank."

Teresa never executed a Deed transferring the House to the Trust, nor did she retitle any accounts in to the name of the Trust.

When Teresa died in 2020, her estate consisted of the above referenced Home on Happy Lane, two accounts at ABC Bank totaling \$200,000 and a brokerage account at MF Financial with a date of death balance of \$500,000. All assets are Teresa's separate property. In addition to her spouse, Stan, Teresa is survived by a half sibling, John, and the issue of another half sibling, now deceased. Said deceased sibling, Mary, was survived by two children, Martin and Mabel. However, John dies two days after Teresa, survived by three children, Abe, Ben, and Cherry. Teresa never meet her half siblings as her father, Herb, abandoned her and her mother shortly after she was born. He later remarried after Teresa's mother finally divorced him and apparently was a respectable father to John and Mary. Herb is also still living. Teresa's mother is deceased.

1. Fergie comes to you and wants your advice as to what assets are in the Trust. What do you tell her?
2. Fergie believes that Stan should have to get a job now that Teresa is deceased, and thus wants to know if she can condition any distributions to him on his working. She has wants to know if she can just leave the funds in the Bank where they are, in a money market account. What do you advise her?
3. Fergie has her eye on a lovely undeveloped piece of land on the California Coast and is wondering if she could a create a corporation (of which she would be to sole shareholder) to purchase the property and then exercise her power to name the corporation as the charitable beneficiary. Fergie strongly believes Teresa would have wanted to preserve the property as public open space. How would you advise her?

4. How is Teresa's estate to be distributed?

Answer according to California law

Wills & Trusts
Fall 2024
Final Examination

Question 3

Jermaine, a famous surgeon, died recently, and you are hired to determine who will most likely receive the different portions of his estate under California law. When Jermaine died, he had the following property:

\$1,000,000 in his bank account

A life insurance policy with a death benefit of \$500,000. Debby is named as the beneficiary

A 1967 Shelby Mustang GT500 valued at \$200,000

A Home located in Los Angeles valued at \$2,000,000

A 2023 Tesla Model X SUV valued at \$85,000

Personal effects in the home with an estimated value of approximately \$1,000,000.

In 1970 while in college, Jermaine married his high school sweetheart Cynthia. Cynthia had aspirations of becoming a doctor, but she decided to forego medical school to start their family. Jermaine and Cynthia built a life together with 3 children, Debby, Jack, and Liz. They enjoyed 30 years of marriage. During their marriage, Jermaine wrote a valid attested will. The will included all the necessary provisions to make the will valid. The provisions related to the disposition are:

Bank account and real property to my wife Cynthia.

A 1980 Corvette to Liz.

A 1995 Toyota Camry to Debby.

\$50,000 to Jack

Jermaine's life drastically changed in 2000. He decided he didn't want to be with Cynthia anymore. They got a divorce, and he moved into his current home in Los Angeles. His children started families of their own. Jack had two children, Mona and Patrick. Liz had one named Trey. Debby is married, but she has not had children yet.

In 2020, Jermaine decided to retire and enjoy life. He found new love with Lori. They spent significant time together. They never officially married and did not file anything in California to be recognized as married. In 2022, Lori, worried about Jermaine's health, which was getting worse, talked to him about writing a will. Jermaine told Lori he wasn't sure what to write, so Lori sat next to him while he had paper and pen in hand and talked to him about various disposition options. The document ended up following most of her recommendations. Jermaine never consulted an attorney about the writing and had been worried throughout the process as to whether Lori would remain committed to him if he had not prepared the document.

At the top of the first page of the writing, Jermaine had written "1st Draft." Below, Jermaine had written: "Bank account, home, and 2023 Tesla Model X to Lori. 1967 Shelby Mustang to Debby." He then signed and dated the writing. At the conclusion of the writing, Lori had kissed him and said, "see that was not so hard. Now I know you love me."

In 2023, Jermaine's health declined. Lori wanted a connection with Jermaine forever. With the assistance of medical technology, they had a child together named Samaje. Unfortunately, shortly before his death, tragedy struck Jermaine's family. Jack and Debby passed away in a tragic accident.

Jermaine was survived by his children, Liz and Samaje, and his grandchildren, Mona and Patrick. And by Lori.

How will Jermaine's current estate be distributed?

ANSWER OUTLINE -Wills & Trusts -Fall 2024-Ascher-Espinoza-Swanson-Foster (mcl/kcl/hyb-sec2)

Wills and Trusts Exam Question #1 YAA

Summary of issues (Re: Profs. Ascher & Espinoza)

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.

Will update below after finalizing..

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 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 him 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. **Too easy of an issue – just delete the gift? Or if we delete the date issue on the holographic Will, do we want to have a DRR issue and this could be a gift to Fred of \$15,000 in the 2018 Will; crossed out, and in H's handwriting, \$30,000 is written and dated 4/2020 and initialed. Then we have a revocation by physical act.. so they discuss both. Thoughts? And then have Fred survive. And then we have a subtle issue (no points if they miss) as to whether the gift would be paid from community property or separate property. My gut is separate property, but I'm not sure that is right.**



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.

I. 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, 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.

Here's where the instructor in SLO and I disagreed – so I welcome your thoughts. He thought that if Wilma challenged, the entire transfer was void, and that the entire property came back into H's estate as cp; and then passed as above re. community property with Donna having no interest. The little research I did shows that if Wilma challenges during lifetime, it is fully voidable, but after death, void only has to her interest..

QUESTION 2 ANSWER OUTLINE – Not available? Re: Prof. Swanson -

Question 3 Brief Outline: (Re: Prof. Foster)

Issue #1 – Which will controls

Overall Rule – A valid subsequent will impliedly revokes all inconsistent provisions. The subsequent will must be valid.

Apply – Quick note the facts tell us Will #1 is valid.

Subissue – Is the handwritten document a valid holographic will?

Rule – Must have intent, capacity and formalities. Holographic will formalities – entirely handwritten and signed. Harmless error doctrine can be used. Document or evidence must demonstrate intent for the document to dispose of property.

Apply – The document said 1st draft. Did not contain any testamentary language. However, these were conditional gifts upon death. Specific words not needed, idea of conditional gifts could make it testamentary.

Rule – Must be entirely handwritten.

Apply – He wrote all of the dispositions in a notebook in his handwriting.

Rule – Must be signed. Anything intended to be a signature will work.

Apply – He did not put his name or signature anywhere on the paper. He didn't put his name in the title.

Rule – Harmless Error Doctrine

Apply – Could argue dispositions are condition gifts on death, so enough language to excuse the no signature.

Subissue – If notebook met formalities, then undue influence would void the will.

Rule – Undue influence. Could cite the general majority rule or the specific California Code rule. Should have a description of what counts as the influence and then specify that it must cause a change of disposition (In CA, "result in inequity).

Should give the presumption with the burden of proof.

Apply – Joni sat next to Jermaine and helped him write the provisions. He didn't know what to write. He was vulnerable due to his health. The writing followed her recommendations of the dispositions, which were different than previous will.

Conclude – Will #1 controls.

Issue #2 – Distribution

General rule – follow the will for distribution due to intent of the testator.

Subissue #1 – Ex-Spouse

Rule – Revocation by operation of law occurs when a will provision provides for a former spouse. Divorce revokes portions of the will that provide for former spouse. The former spouse is treated as predeceasing.

Apply – Will #1 written during marriage. Divorced in 2000 with no subsequent remarriage. All gifts, including non-probate property, are revoked.

Subissue #2 – Ademption by extinction

Rule – Specific gifts in a will that are no longer in the estate are subject to the Ademption by extinction rules. Provide the CPC rules for ademption (21133-21134). Exact language not required.

Apply – The 1980 Corvette was in the original will. Jermaine sold that car and it is no longer in the estate. Discuss how the CA rule would apply to this Corvette and the immediate purchase of the Shelby Mustang.

Subissue #3 – Lapse

Rule – A gift to a beneficiary in a will that predeceases the testator is deemed to have lapsed and the gift then goes into the residuary. However, CA has an anti-lapse statute that allows the gift to pass to the predeceasing beneficiary's heirs if the heirs are blood relatives.

Apply – Jack predeceased Jermaine and he has kids, so his would pass down. Cindy predeceased but she does not have kids. Hers would not pass down and would lapse going into the residue.

Subissue #4 – Omitted Child

Rule – Child not mentioned in the will due but would have been included if decedent knew about them receives intestate share. Child born after execution is the traditional situation of would have been included.

Apply – Samaje was born after 2023. Both wills were created prior to 2023.

Subissue – Intestate Share

Rule – Provide the CA Default scheme for intestacy – Modern Per Stirpes

Apply – Start at the first generation with a living member and allocate a share to each live root.

Subissue – Abatement

Rule – Give the general rule for which devises are abated to allocate this share (start with intestate, residuary, etc.).

Apply – Discuss what is necessary to provide Samaje's intestate share (start with personal effects).

Subissue #5 – Residuary/Intestacy

Rule – Any property not disposed of in the will goes through intestacy. CA Default rule is Modern Per Stirpes.

Apply – Can easily combine this with the discussion for Samaje or refer to that discussion to get through this piece quickly.

1)

1. Did Hank have a valid will?

Validity of 2018 Will

A will is deemed valid when there is testamentary intent, testator capacity, and valid will formation. If no valid will exists, then the property goes through intestate succession.

Testamentary Intent

In order for a will to be valid, the testator must have had intent to create a will.

Here, Hank had a typed document that was entitled "Last Will and Testament," which shows that he had intent to create a will. This is further validated when Hank told Nancy, "this is my Will." Hank intended to create a will and testamentary intent is shown through the document title and statement to Nancy.

Testator Capacity

There are two types of capacity required for making a will: (1) legal, and (2) mental. Legal capacity is determined by the testator being 18 years of age or older. In order to determine mental capacity, a testator must: (1) know the nature of the act(s), (2) understand the property, and (3) have knowledge of the heirs.

Here, Hank is over 18 years of age as evidenced by multiple facts: Hank is married, has children, and has been able to be married at least 36 years at the time of drafting the 2018 will. In 2018, Hank seems to have the mental capacity to form a will. He knows the heirs, understands he is making a will, and seemingly knows the property.

Hank had the mental capacity to make the will.

Will Formation

There are two kinds of will formations that may be valid: (1) Formal and (2) Holographic. A formal will must be in writing, signed by the testator, and witnessed by two people. A holographic will must have the material provisions in the testator's handwriting, and be signed by the testator.

FORMAL WILL

A formal will must be in writing, signed by the testator, and witnessed by two people. The witnesses need to be present to see each other sign the will. An interested party may sign the will, but undue influence would have to be examined, and the interested party's signature would invalidate their share of the will.

Here, Hank's will was not in writing, as it was a completely typed document. Hank signed the will in front of Nancy and Sam, but Nancy's and Sam's signatures were improperly witnessed. Sam signed as an interested party and failed to witness Nancy's signature. Nancy's baby began to cry, so she signed as a witness without Sam being present.

Hank's will was invalid.

HOLOGRAPHIC WILL

A holographic will must have the material provisions in the testator's handwriting, and be signed by the testator.

Here, Hank's will is completely typed and none of the material provision's are in his handwriting.

Hank does not have a valid holographic will.

HARMLESS ERROR

Harmless error will allow a will to be valid, even if the testator failed to create a valid will. This is possible if clear and convincing evidence of intent can be shown.

Here, it may be argued that Hank intended for this will to be valid, by making statements to both Sam and Nancy that "this is my Will." While clear and convincing evidence may be shown that the intent existed, the court may deem that the error was too great to be rectified. Here, not only was there a failure of proper witness signature, but the entire will was typed. Other than by word of mouth, and the title of the document, there is no way to prove that Hank intended for this to be his will or was not subject to undue influence. None of the provisions are in Hank's writing, so an argument could be made that the signature was forged, or Hank did not intend for this will to be what it purports itself to be.

Revocation/Modification

Excellent and thorough analysis

A will may be revoked by a subsequent will that follows the formal will requirements. A will may also be revoked through operation of law or by destruction of a document. A document is presumed destroyed if: (1) it was in the testator's possession, (2) testator had capacity, and (3) the document is lost. A codicil is a testamentary instrument used to modify a will. A codicil must follow the formalities of the will that it is modifying.

Here, there was no valid will to be revoked or modified.

Conclusion

Hank's 2018 will is not valid.

Validity of Hank's 2021 Will

A will is deemed valid when there is testamentary intent, testator capacity, and valid will formation. If no valid will exists, then the property goes through intestate succession.

Testamentary Intent

In order for a will to be valid, the testator must have had intent to create a will.

Here, Hank stated "I declare this is ?" Hank did not declare this document to be his last will or testament, nor did he declare any intent at all for the purpose of this document. Hank later types, "I am really pissed right now, so I want to get this done. I give all my separate property and 25% of my community property to my son, Sam." This statement shows that Hank was creating this document to establish where shares of Hank's property should go to, which may show Hank's intent for this document to serve as will. However, it may be argued that Hank states that he is really pissed off, and he may not intend for this to serve as a will, but mainly to express frustration and anger.

Hank will likely be found to have testamentary intent for this to be his will.

Testator Capacity

There are two types of capacity required for making a will: (1) legal, and (2) mental. Legal capacity is determined by the testator being 18 years of age or older. In order to determine

mental capacity, a testator must: (1) know the nature of the act(s), (2) understand the property, and (3) have knowledge of the heirs.

Here, Hank is over 18 years of age as evidenced by multiple facts, such as: being married for 39 years. Here, Hank stated "I declare this is ?" The question mark implies that Hank does not know the nature of the act he is performing. Additionally, by adding that he is "really pissed," it shows that Hank may not be in the right state of mind. Further, this was drafted by Frank after a 14 hour shift, at one in the morning, while drunk. Hank shows knowledge of his heirs, and property, however.

Hank's capacity is not distinctly clear, but Hank seems to not be in the right frame of mind.

Will Formation

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There are two kinds of will formations that may be valid: (1) Formal and (2) Holographic. A formal will must be in writing, signed by the testator, and witnessed by two people. A holographic will must have the material provisions in the testator's handwriting, and be signed by the testator.

FORMAL WILL

A formal will must be in writing, signed by the testator, and witnessed by two people. The witnesses need to be present to see each other sign the will. An interested party may sign the will, but undue influence would have to be examined, and the interested party's signature would invalidate their share of the will.

Here, Hank signed the will "old man" which is an invalid signature. There were no witnesses and the document was not in writing.

This is not a formal will.

HOLOGRAPHIC WILL

A holographic will must have the material provisions in the testator's handwriting, and be signed by the testator.

This was typed by Hank, and none of it was handwritten. Additionally, there was an improper signature.

HARMLESS ERROR

Harmless error will allow a will to be valid, even if the testator failed to create a valid will. This is possible if clear and convincing evidence of intent can be shown.

Here, it may be argued that Hank signed the will as "old man," because he believed it to be proper. Hank's grandchildren and children called him "old man" and he may have found it harmless, since potential heirs know that to be his name. However, Hank lacked any capacity to make this will valid. So, the defense is irrelevant.

Conclusion

good analysis

Hank's 2021 will is not valid.

2. How should Hank's estate be divided through intestate succession?

Intestate Succession

When a person dies "intestate" or without a will, the property of the decedent must go through intestate succession. If there is only one child or issue, the property may be split in half between the surviving spouse and child/issue. If a the decedent had two or more children living or predeceased with issue, then the property is split following the 1/3-2/3 rule. This means that 1/3 goes to the surviving spouse and the other 2/3 is divided amongst the surviving issue. Under per stirpes, the estate is split starting at the first line of living issue.

A. What rights does Donna have to Hank's estate?

Presumed Parentage

Parentage is presumed in a marriage or voidable marriage if the child was born within 300 days post-marriage. Parentage may also be presumed for a void marriage if the child was born within 300 days after the couple stopped cohabitating. Parentage may also be presumed if the alleged parent was placed on the birth certificate with consent, the alleged parent paid child support, or if the alleged parent acknowledged the child as their own.

Here, Donna was born prior to the marriage between Hank and Wilma, so the 300 day rule does not apply. Hank is not on the birth certificate, as Donna was born from a prior

marriage of Wilma's. Additionally, Hank was not paying child support. Hank always acknowledged Donna as his child; and would introduce her as "his daughter." Hank became a part of Donna's life when she was a minor, and held her out to be his own. This may also be present in the invalid 2018 will, where he deeded property to his two [2] children.

The court could find that Hank acknowledged to be his own, but it is unlikely considering that it is implied that Donna's father is still a part of her life through the statement of Hank not wanting to upset Donna's dad. While a child may have more than two parents, there must be more than simple acknowledgement, by someone who is known to not be the father.

Stepchild/Adoption

A stepchild does not inherit from a step-parent, unless the child had a long relationship with the step-parent from the time they were a minor or the parent would have adopted the child but for a prevention from doing so.

Here, Hank knew Donna from the time she was a minor and had a long-time relationship with her where he held her out to be "his daughter." Hank wanted to adopt Donna, but failed to do so, because he did not want to upset Donna's dad. This is not enough to establish that Hank was prevented from adopting Donna, unless there is more proof that Donna's biological father was preventing Hank from doing so.

Determination of Parentage

Donna may be determined to be Hank's child through his acknowledgement of Donna as "his daughter" from the time she was a minor.

good analysis

Donna's Share

1/3-2/3 Rule v. 50/50

Donna's share depends on whether the court deems Donna to be Hank's child or not. If Donna is deemed to be Hank's child, then Donna is entitled to 1/3 of Hank's separate property. If the court finds that Donna is not Hank's child, then Donna would receive nothing from Hank's estate.

Wilma's Share to Donna/ Anti-lapse/ 120 Hours

Since January 1, 2009, anti-lapse has kept a gift from the decedent to the beneficiary from lapsing, by allowing the estate to pass to other heirs. When a beneficiary predeceases the decedent, the gift to the beneficiary passes to the beneficiaries issues to keep the gift from lapsing. A person is deemed predeceased if they die within 120 hours or 5 days of the decedent's death.

Here, Wilma did not predecease Hank, so Wilma will receive her share. Donna will not keep the share from lapsing, but may later be entitled to the share, if Donna does not predecease Wilma.

B. What rights does Sam have?

Separate Property

When a person dies "intestate" or without a will, the property of the decedent must go through intestate succession. If there is only one child or issue, the property may be split in half between the surviving spouse and child/issue. If a the decedent had two or more children living or predeceased with issue, then the property is split following the 1/3-2/3 rule. This means that 1/3 goes to the surviving spouse and the other 2/3 is divided amongst the surviving issue. Under per stirpes, the estate is split starting at the first line of living issue.

Here, Hank and Wilma had one child, Sam. Wilma has a child outside the marriage with Hank, named Donna. If Donna is not presumed to be the child of Hank, then Sam will split his share of the separate property with Wilma: 50/50. If Donna is allowed to inherit from Hank, Sam will receive a 1/3 share of Hank's separate property.

C. What rights does Wilma have to Hank's estate?

Community Property

When a spouse dies, the decedent's share of the community property passes to the surviving spouse.

Here, Hank's half of the community property is worth \$500,000. So, Wilma would receive all \$500,000.

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D. What about the California land?

Hank purchased land using earnings made during his marriage, but had taken the title solely in his name. However, the commingling of the money in the marriage, makes the purchase of the property - quasi community property. Hank did not get Wilma's consent, but deed the land to him and Wilma as joint tenants. Wilma is entitled to all quasi community property. Sam or Donna may stake a claim only if it is proven that the land was bought with separate property funds, in which Hank's joint tenancy would pass through intestate succession.

2)

1. Fergie comes to you and wants your advice as to what assets are in the Trust. What do you tell her?

Trust

A trust is when a trustor grants a trustee the right to hold legal title of property under a fiduciary duty for the benefit of a beneficiary. Here, T created an inter vivos trust for the benefit of her spouse, S. We must determine whether the creation of the trust was valid and what properties are within the trust.

Trust Creation

In order for a trust to be created, the following must be established: (1) intent, (2) property, (3) purpose, and (4) beneficiary. A settlor must manifest his intent to create a trust. The property must be identifiable. The trust must have a purpose that is not illegal or against public policy. The beneficiaries must be ascertainable.

Here, T is the settlor and she manifested her intent to create the trust when she created a written instrument during her lifetime and named herself the trustee. Secondly, the property is identifiable because she attached as Schedule A to her written instrument which referenced the Central CA home on 123 Happy Lane and "all my bank accounts at ABC bank." Thirdly, the purpose of the trust is clear because T stated the it was her desire that the through the trust Stan (S) would be cared for in a loving and compassionate manner consistent with his lifestyle at the time of her death. Lastly, the beneficiary is ascertainable because T states that the trust is created for the sole benefit of S.

Therefore, it is more than likely that the court will find that T's trust is a valid one.

Trust Method

A trust may be created through one of the following ways: (1) the trustor transferred the property title to a trustee, (2) the the trustor transferred title of property to a trustee during the owner's lifetime, (3) a trust has been created through the execution of a will, and (4) an enforceable promise to create a trust.

Here, the trust is considered an inter vivos trust because it was created during the trustor's lifetime and through living. Here, it could be argued that the property such as the CA home and the ABC bank accounts are not in the trust because T never executed a deed transferring the house or

retitling the bank accounts to the trust. However, this is not necessary because at the time the trust was created T was the trustee of the trust and held legal title to all the property. Upon her death, Fergie (F) now held legal title as the trustee successor.

Therefore, I would advise Fergie that a valid trust was created and the property that is held in the trust is the 123 Happy Lane home and all the ABC accounts. *good*

2. What do you advise Fergie?

Trustee Powers

A trustee has enumerated powers as expressed in the trust itself. The trustee has the implied power to necessarily and appropriately execute the terms of the trust. Here, F has implied powers to necessarily and appropriately execute the terms of the trust which is ensuring that S has adequate care. However, T could argue that as trustee it is her power to ensure that the funds in the account last long enough for S to receive the appropriate quality of life. In this time, S could still be of able body to work. This would ensure that the trust funds last a long time for S's care.

Therefore, it does not breach a fiduciary duty then she is in her right as trustee to ask S to get a job and conditions distributions on that fact.

Trustee Duties

Trustees have the following duties: (1) account for and inform of all trust funds and provide an income and expenses statement to all beneficiaries on a regular basis, (2) under a traditional rule, not delegate duties to select agents but under a modern rule, delegate as long as it is done with due care and skill when selecting agents, (3) be impartial, (4) exercise due care and act as a reasonably prudent person, (5) duty to invest and diversify investments, (6) segregate and earmark all trust funds and not commingle them with trustee's personal funds, (7) duty of loyalty and not engage in self-dealings or have conflicts of interest, (8) duty to investigate, (9) duty to defend, and (10) duty to enforce.

Here, F is violating her fiduciary duty as trustee by conditioning distributions to S on the condition that he work. The sole purpose of the trust is to ensure that S has adequate care and is consistent with his lifestyle at the time of T's death. Here, F would be breaching her fiduciary duty because she has a duty of loyalty to the beneficiaries. Here, S could argue that F is breaching her duty by going against what T's desires were and what he would like. *good*

Therefore, I would advise F not to condition distributions on S's employment.

don't forget bank account issue - diversification?

3. How would you advise F as to the CA land?

Trustee Duties

Trustee have the following duties: (1) account for inform of all trust funds and provide an income and expenses statement to all beneficiaries on a regular basis, (2) under a traditional rule, not delegate duties to select agents but under a modern rule, delegate as long as it is done with due care and skill when selecting agents, (3) be impartial, (4) exercise due care and act as a reasonably prudent person, (3) duty to invest and diversity investments, (4) segregate and earmark all trust funds and not commingle them with trustee's personal funds, (5) duty of loyalty and not engage in self-dealings or have conflicts of interest, (6) duty to investigate, (7) duty to defend, and (8) duty to enforce.

Here, F is breaching her fiduciary duty because she engaging in self-dealings and commingling funds with her own for her own personal gain by creating a corp for the CA land and labeling it as charitable beneficiary. This is a way to funnel money back to F and her interests.

Therefore, I would advise F that she is breaching her fiduciary duty by doing this. *good!*

4. Distribution of T's estate.

MF Financial Account

The MF Financial account was never referenced in the Schedule A during the trust creation and the facts do no state that T left behind a will. Therefore, the MF account would go through intestacy. Intestacy distribution is as follows: (1) all CP/QCP goes to the surviving spouse, (2) all SP goes to the surviving spouse when there is are no issues, parents, siblings, or their issues, (3) when there is a surviving spouse and one child, the surviving spouse will get 1/2 of the SP, and (4) when there is one surviving spouse and two or more children, issues, parents, or their issues, then the surviving spouse will get 1/3 of the SP. *good*

120 hour Rule

In intestacy, the issue must survive the decedent by 120 hour unless antilapse applues. Here, John passed away two days after T. Therefore, the 120 hour rule does not apply to him unless antilapse does. *good*

Antilapse

Antilapse applies when the beneficiary predeceases the testator, the beneficiary's issue will take in their place, thus avoiding the gift from lapsing, unless the will states otherwise. Here, since John died two days after T then, J's issue A, B, and C could receive the gift.

good

Therefore, antilapse applies.

Abandonment

A parent can not receive through intestacy when they have abandoned their child for 7 or more years. Here, T's father would not have a right to share in her estate due to the fact that he abandoned T and her mother when she was little. Based on the facts, it can be reasonably assumed that T's father abandoned them for more than 7 years.

Therefore, the father will not receive anything.

Distribution is as followed:

the 123 happy lane home and the abc bank accounts stay in the trust.

as for the mf account, stan would get $\frac{1}{3}$ and $\frac{2}{3}$ would be shared among john's issue and mary's issue.

Herb would get nothing.

good essay

3)

Is There a Valid Will?

Formation of Will: To have a valid formal will there must be 1) a writing, 2) a signature by the testator (T), or someone signs on the testator's behalf with their permission, 3) two witnesses, 4) the witnesses must have seen the T sign or T acknowledges their signature, 5) witnesses sign in the presence of each other or acknowledge their signature, and 6) the T acknowledges the instrument is their will. The other form of a will is a holographic will which requires: a writing, material provisions are in the T's handwriting, and signed by the T.

Will during Marriage to C:

Here, the will was created during the marriage to C and the facts declare the will is valid.

2022 Will:

Here, the 2022 will was fully handwritten by J and provided most of his property (bank account, home, and 2023 tesla) go to his girlfriend Lori and that his Mustang go to his daughter Debby. There were no witnesses, but J signed and dated it. Due to not having witnesses it is not a valid formal will, but does qualify as a holographic will. The representative of the estate can argue that J did not have the required intent for this to be his last and final will due to the header saying 1st draft. That heading proves he intended to make revisions to this instrument.

good

The court can rule that Holographic will elements are met. If the court found there was no intent, the will will be invalid and the previous will remains invalid.

However, the representative of the estate will argue that there is undue influence from Lori to J and that the will is invalid.

Undue Influence: Undue influence is proven when the victim is vulnerable, the perpetrator has authority over the victim or the perpetrator has credibility with the victim, the acts of the perpetrator are foul and enforces their authority, and when the result is not equitable.

Here, J can be presumed vulnerable because he is an older man who divorced after 30 years. It is presumed that he may have gone through a mid life crisis, when he retired which prompted him to leave C and move to a new home in Los Angeles. He found new love with Lori and they spent a significant amount of time together. It can also be presumed that Lori became a caretaker for J because the facts indicate his health was declining.

Lori in fear of him dying prompted J to create a new will. At the direction of Lori he sat down, with her next to him, and she told him what to write. That shows that Lori has influence, authority, and credibility over him. J mentioned he did not know what to write and took direction from Lori. Her actions of sitting with him to create the will, informing him of what to write, and her statement "see that was not so hard. Now I know you love me" proves that she had control over J and that she intended to ensure she got what she wanted out of the will. The new wills distribution is clearly inequitable based on the fact he gives most of his property to his new girlfriend. The representative can also argue that Lori took it a step further by ensuring she had a child by J before he passed away to ensure her child would potentially be a beneficiary to his estate. *good*

The court can conclude there was undue influence and can rule the 2022 will invalid. *yes to gift to Lori*

To have a valid will the T must have Capacity: A T must show capacity by understanding the testamentary act, the property involved in the act, and the people the act will affect. The T must also show intent to create a will. Hallucinations and Delusion automatically disqualify a T from having capacity.

Here, the representative of the estate can argue J lacked capacity because he did not have intent for the 2022 will to be his last and final will, he did not consider the property involved because he did not mention the life insurance policy he has, nor did he mention the personnel effects in his home. He focused solely on the property that Lori mentioned she wanted for herself. Lastly, J did not consider all the people this new will would affect, being that this will was significantly different than the will because he outlined property to give to all three of his children.

The court can rule J lacked the capacity required to carry out a valid will. The 2022 will is invalid.

The representative of the estate can also argue that since the second will in 2022 was inconsistent from his previous will that it is invalid. To have a valid secondary will, **the subsequent will** must not be inconsistent with the first will. The subsequent will was vastly inconsistent that the previous will because it only devised property to one of his children instead of devising property to all three like the first will did.

The court can also rule the 2022 subsequent will as invalid due to the inconsistencies in both wills.

Inconsistency just revokes earlier will as to those provisions
Operation of Law: invalidates a devise to a beneficiary if there is a change (divorce).

Here, the first will is deemed valid, but that does mean that all the stated beneficiaries will receive their interest. Due to C and J no longer being married, due to the change in their status by law (divorced) C's devise is cut off. *good*

The court will rule C is unable to receive her devise as stated in the first will completed during their marriage.

AntiLapse: Occurs when B predeceases T, and B's heirs receive their interest to prevent their interest from lapsing. Must be kindred to receive.

This doctrine applies here because J's children who were named in his first will have predeceased him. J left behind two children (M and P) who will now receive their father's share because he is deceased. M and P are kindred of J because they are blood relatives (parent-child).

Establishing Parentage: To show parentage under the Family Code & Probate Code there must be a showing that a child was conceived within 300 days of the marriage. That a child was conceived within 300 days of a voidable marriage. That a child was conceived within 300 days at the end of cohabitation for a void marriage, that if a child was born before marriage the marriage the alleged parent is on the birth certificate, that the alleged parent acknowledged the child. Under Probate Code must show that there is/was a court order, that the deceased parent did not have the ability to acknowledge child, or the child was welcomed into home or acknowledged.

Here, Lori and J were not married, nor did they have a void or voidable marriage. Since Semaje was born during the relationship of Lori and J it is presumed they all lived together and that J was apart of Semaje's birth. He more than likely signed the birth certificate. J also more than likely acknowledged Semaje as his own child since he went through the different processes and appointment with Lori to conceive Semaje through assistive technology. *300d*

The court will more than likely find that parentage was established and J is Semaje's parent.

Assistive Technology: When a child is conceived through assistive technology the child typically belongs to the parents that are going through the process to conceive the child, not the sperm donor. In order for the sperm donor to be recognized as the legal parent there must be a writing declaring their desire to be the legal parent.

Here, there are no facts given about the details of the process. However, the facts do not declare that the potential sperm donor desired to be the legal parent of Semaje. Since J and Lori were in a relationship and she expressed her desire to have a connection with him forever J and Lori held out semaje as their child.

The court will rule that J and Lori are Semaje's legal parents.

Omitted Child: Allows a child that was born or adopted after a will to receive their intestate share because they came after the will was created. Cannot receive share if 1) intentionally left out, 2) provided for through an instrument outside of will and that was T's intent, 3) waived their right to sign, 4) their parent receives majority share of the estate.

Here, J and Lori created Semaje through assistive technology, before he died, while in a relationship with each other. Semaje was born after Lori had J create the 2022 will that is invalid. The facts do not indicate that J intended for Semaje to be taken care of through another instrument such as a life insurance policy. As a baby Semaje did not have the ability to waive her right to the estate. Lastly, Lori did not receive the majority share of J's estate.

The court will more than likely presume J did not intentionally omit Semaje and she will receive her share of her father J's estate. *good*

Distribution of Estate

Cynthia will not receive anything from J's estate due to their divorce.

Lori will not receive anything from J's estate because they were not legally married.

Debbie has predeceased J and left no issues to receive her devise through antilapse.

J has his two children (M and P) who will receive his devise through antilapse.

J has 2 children remaining after his death and 2 grandchildren.

J's estate will be devised to only Liz (daughter), Semaje (child), and his two grandchildren M and P.

Pursuant to the first valid will - M & P will receive \$50,000 (1/2 each) that was devised to their father Jack. Since the first will devised a car to Liz that J did not have at death she can choose to inherit the Mustang or the Tesla). The remaining assets (\$950k in bank account, life insurance \$500k, mustang \$200k/tesla \$85k (whichever Liz did not pick), LA home \$2million, and personal effects \$1million will be devised 3 ways: 1/3 to Liz, 1/3 to Semaje, and 1/3 to J that his children will split (1/2) each.

Overall, very good essay

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END OF EXAM
