

Wills & Trusts

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Final Examination

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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, tell the difference between material and immaterial facts, and 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 with each other. 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 not pertinent to the problem's solution.

QUESTION 1

Herb and Wilma married later in life. Each brought a roughly equivalent separate property estate into the marriage, and each had one adult child from a prior relationship. Herb and Wilma created a valid trust using Legal Zoom, and each transferred their respective separate property estate to themselves as co-trustees.

The trust provides that it is revocable by a writing signed by both settlors during their joint lifetimes, and revocable by a writing signed by the surviving settlor; that all property shall retain its character; that the entire trust estate shall be applied for the benefit and support of the settlors for their respective lifetimes; and that upon the death of the surviving settlor the estate shall be distributed equally to the settlors' issue by right of representation.

Wilma died. Herb began experiencing diminishing capacity and therefore appointed his son Sam acting co-trustee of the trust with Herb. Sam subsequently executed a deed as trustee conveying Sam's childhood home – which was originally Herb's separate property, from the trust to Herb and Sam as joint tenants.

Herb's capacity continued to diminish severely. Sam told Herb that he was angry with Wilma's daughter Deb for things Sam falsely accused her of having done to betray Herb and Wilma, and he wanted Herb to get rid of the trust because he did not think Deb deserved to get anything. Herb, incensed at Deb's reported betrayals, told Sam that he revokes the trust. Sam thereupon drafted a document that both Herb and Sam signed in their capacity as co-trustees stating that the trust is revoked.

Sam, as trustee, then transferred all trust property to himself in his individual name. Sam segregated and maintained all that property in his name without co-mingling any with his own property. Sam continued to apply all that property solely for Herb's benefit and support. Herb died.

What claims does Deb have? What defenses does Sam have? Answer according to California law.

QUESTION 2

Tim, a widower, had a child, Dora. He also had three sisters, Anita, Brenda, and Callie.

In 2016, Anita died, survived by a child, Adam. Tim then received a letter from a woman with whom he had once had a relationship. The letter stated that Sarah, a child she had borne in 1997, was Tim's daughter. Tim, until then unaware of Sarah's existence, wrote back in 1998 stating that he doubted he was Sarah's father.

In 2017, Tim executed a will. With the exception of the signature of a witness at the bottom, the will was entirely in Tim's own handwriting and signed by Tim. The will provided that half of Tim's estate was to be given "to my sisters." The other half of the estate was to go to "to my child, Dora."

The next day, Tim realized he forgot something in his will, and typed up a codicil to his will, leaving a gift of \$5,000 to University XYZ. He printed the page, and signed it and dated it.

One month after Tim signed the will and codicil, Tim's second sister, Brenda, died, survived by a child, Ben.

In 2023, Tim died. After Tim's death, DNA testing confirmed that Tim was Sarah's father.

What interests, if any, do University XYZ, Dora, Sarah, Adam, Ben, and Callie have in Tim's estate? What interests, if any, do University XYZ, Dora, Sarah, Adam, Ben, and Callie have under the will and codicil? Discuss. Answer according to California law.

QUESTION 3

Marie and Richard, both previously unmarried, got married in 2000 in California. They acquired a home and various other assets during their marriage. All of these assets were acquired with funds earned during the marriage.

In 2015, Marie inherited a beachfront property from her grandmother, which she never commingled with their other assets. Richard was fully aware of this property but never used it or contributed to its maintenance. They always referred to it as "Marie's beach house."

Richard had a son, Samuel, from a brief relationship with Tess before his marriage to Marie. Richard never lived with Tess. Samuel was legally adopted by Tess' husband when he was an infant. Marie and Richard then had twin daughters in 2001.

In 2018, Marie executed a will that left "all my community property assets shall be distributed to my spouse, and all my separate property assets to my children." There was no residue clause included in the will, nor was there any mention of Samuel.

Richard, reluctant to do estate planning, never executed a will.

In 2021, after leaving the twins with their grandparents, both Marie and Richard were traveling on a small private plane, which unfortunately crashed. Authorities couldn't determine who passed away first.

The devastated twins claim their parents' entire estate. Samuel, having learned of his biological father's demise, steps forward to stake a claim.

Analyze and discuss:

1. How will the assets acquired during Marie and Richard's marriage be distributed?
2. What rights, if any, does Samuel have in Richard's estate?
3. How will "Marie's beach house" be distributed?

Collaborated by:

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ANSWER OUTLINE-Q1

Deed. Deb will argue that the deed Sam signed as trustee conveying the residence to Sam and Herb as joint tenants was ineffective because it was executed by Sam alone – that any action (eg, discretionary distribution to a beneficiary) requires unanimity of all co-trustees. (15620.) Sam will argue that it was an effective “distribution” from the trust for the benefit of the surviving settlor and should be given effect under the trust. Deb will argue that Sam breached his fiduciary duties by self-dealing. Sam will argue Deb lacks standing as duties only owed to settlor with power to revoke. Deb will claim standing due to breach of fiduciary duty (Giraldin.) (See breach of fiduciary duties below)

Revocation. Deb will argue that there was no valid or effective revocation of the trust. Herb’s verbal expression was ineffective to revoke. She will argue that Herb lacked capacity to revoke (very low standard; akin to testamentary capacity); Herb was suffering “severely diminished” capacity, so much so that Sam did not transfer any property to Herb, creating an argument that Herb was unable to manage the property.

She will also argue that the signed document purporting to revoke the trust was not signed by a “settlor” – the document was signed only by Herb (and Sam) in the capacity as trustee(s); only a settlor has the power to revoke.

Undue influence/fraud. ...

Distribution. Deb will argue that the “revocation” was ineffective and therefore Sam’s withdrawal of all trust property was invalid. Sam will argue that it was nevertheless an effective distribution from the trust because Herb was the sole lifetime beneficiary with power to revoke. Deb will argue that Sam’s unilateral action as trustee was ineffective because Sam acted alone in transferring the property; any action requires unanimity of all co-trustees. (15620) Deb will argue that Sam was self-dealing.

Breach of fiduciary duties owed to Deb. Deb will argue that the trustee owed her fiduciary duties as a beneficiary to protect and preserve her remainder interest – to treat beneficiaries equally. Sam will argue that fiduciary duties are only owed to Herb as the person holding the power to revoke. (15800) Deb will argue that Herb lacked “competence” due to his diminished capacity, and that fiduciary duties were therefore owed to her as a beneficiary. (15800)

Constructive trust. Deb will seek imposition of a constructive trust in the property held by Sam.

Q2 - ANSWER OUTLINE

1. *If Will not valid, as will be discussed, estate passes intestate. Would go to Dora as child and Sarah, if she qualifies as a child.*

Sarah would not qualify as an omitted child, although not mentioned in the Will as she was born before the Will was executed and T did not believe Sarah was dead or was unaware of Sarah. (HE was aware = just didn't think she was a child.)

For Sarah to take as a child, she has to show she is a child under the Probate/Family Code. Generally, some lifetime action is required to confirm a parent-child relationship during lifetime unless impossible. Here not impossible. No court judgment, no holding out as his own, etc. Courts do not allow post death DNA to show paternity and creation of relationship unless impossible. Therefore, Sarah will have a hard time claiming as a child, omitted or otherwise.

So if Will void, Dora will take 100%.

2. *If Holographic will, don't need witnesses. Here qualifies as entirety in T's handwriting... including material terms. Missing date not fatal.*
 - a. *Formalities satisfied.*
 - b. *No indication that T not of sound mind or with valid capacity.*
3. *Generally, to be valid, codicil requires 2 witnesses. Unless a holographic Will, under prior law, this would have been fatal.. but today, can overcome with c/c of intent that document was a will, thanks to the harmless error rule in 6110(c)(2)*
4. *Gift was to class of "sisters." As A was then deceased, clearly, she is not entitled to any income. Does Adam get her share? No as A was already deceased at time Will was created. Anti-lapse rule not applicable to a member of a class then deceased.*
5. *Does Ben get Brenda's share of the income. As Brenda is kindred, and Brenda was a living member of the class at the time Will executed, general rule is that she would take. However, rule of construction... contrary intent could be shown that intent was to provide gift only to sisters...*

Q3- Model Answer

1. Distribution of Assets Acquired During Marie and Richard's Marriage:

In California, assets acquired during a marriage with funds earned during the marriage are typically considered community property. This means that both spouses have equal ownership interests in those assets.

Given the simultaneous deaths of Marie and Richard and the uncertainty surrounding who predeceased whom, California applies the Uniform Simultaneous Death Act. This law presumes that each spouse predeceased the other for purposes of distribution of assets.

For Marie's CP assets: Marie's half will be distributed according to her will. We distribute them as if Richard had already died before her, so the gift would fall to the residue. Here, however, there was no residue clause, so the gift falls to intestacy and would pass to her twin daughters via 240.

For Richard's assets: We distribute them as if Marie had already died before him. Since Richard did not have a will, his half will be distributed according to California's intestacy laws. As such, Richard's half will be divided equally between his twin daughters.

2. Samuel's Rights in Richard's Estate:

Under California law, an adoption severs the relationship of parent and child between the adopted person and a natural parent, unless certain exceptions are met. In this scenario:

(1) Richard and Samuel did not live together as parent and child, and we can assume that Richard was not married to or cohabiting with Samuel's other natural parent when Samuel was conceived, and did not die before Samuel's birth. Samuel was adopted by Tess' new husband, but since Samuel never lived with Richard, he does not keep his inheritance rights.

(2) Samuel's adoption was not by Marie (Richard's spouse) nor did it occur after the death of Samuel's other natural parent.

Given that neither of the exceptions apply, Samuel's legal relationship with Richard has been severed due to the adoption. Thus, under California intestacy laws, Samuel would not have a claim to Richard's estate as his son.

3. Distribution of "Marie's Beach House":

The beachfront property was inherited by Marie from her grandmother and was never commingled with community assets. Therefore, it is Marie's separate property.

Marie's will explicitly left all her SP assets, including the beachfront property, to her twin daughters, excluding Samuel. As such, the property will go solely to the twin daughters, as per Marie's will.

1)

Trust

A trust creates a fiduciary relationship with respect to property, creating legal title in the trustee and the equitable title in the beneficiary. A trust requires that there be (1) a settlor with capacity; (2) a trustee with duties; (3) ascertainable beneficiaries; (4) intent to create; (5) trust res or property; (6) and be for a valid purpose.

The facts state that the trust was valid, so this assumes that all the formalities are there. There is a settlor, Herb and Wilma, both of whom are presumed to have capacity, because it is later stated that Herb diminishes in capacity, There is a trustee with duties, H and W again, There are ascertainable beneficiaries, the settlors and their children, they had the intent to create it by going to a legal website and finding a trust document, there is trust property in the form of their respective separate property, and the trust is for a valid purpose, the benefit and support of them during their lives.

The trust is valid.

Deb's Claims

Trust modification/revocation

A modification or revocation of a trust must follow the the rules as laid out in the trust document. A revocable trust may be modified by the settlors during their lifetime. An irrevocable trust can only be modified by the complete agreement of the beneficiaries.

Here, the trust states how it can be modified or revoked, by a signing of both settlors during their lifetimes or by writing signed by the surviving settlor. At the time of the modification, only one settlor is still alive, Herb, which means that he can revoke the trust by signing a writing. Herb signs a writing that revokes the trust.

The trust is revoked.

What happens to property?

Undue Influence

Undue influence requires the (1) application of pressure from the influencer; (2) that overpowers the will of the settlor; (3) causing the settlor to make a modification or new instrument that they would not have but for the influence of the influencer. To prove this there can be direct evidence, which is

unlikely since the settlor is usually dead, or circumstantial evidence. This can include: (1) the vulnerability of the victim; (2) the apparent authority of the influencer; (3) the methods and tactics of the influencer; (4) and a showing of resulting inequity in the result.

It is presumed that undue influence is exerted by: fiduciaries; people in a confidential relationship with the settlor; caregivers; people who cause the instrument to be drawn up or modified; people who write the instrument.

Here, Sam told Herb that Deb had betrayed him, and that they should revoke the trust because of this. This is an application of pressure, however it is unlikely that this rises to the level required for undue influence. Sam only has to tell Herb once, and Herb doesn't fight back on this, which could indicate that his will is not overpowered. However, Herb would not have modified or revoked the trust if Sam had not influenced him.

Deb can point to the fact that Herb had even more diminished capacity at this point, beyond the point when Herb added Sam as Co-trustee. This points to Herb being vulnerable enough. Sam had apparent authority as a co-trustee and Herb's son, someone that Herb would listen to about issues with the trust and Deb. Sam used fraud and deception to get Herb to go along with his plan, using the fact that Herb had diminished capacity and would most likely not be able to dispute or care about disputing what Sam said. The result was that Deb received nothing from the trust, which is very inequitable since the initial trust left her mothers property to her.

While there is not much pressure, the fact that Herb had diminished capacity could show that Sam applied undue influence to him.

Capacity

Capacity can be legal or mental. Legal capacity requires the testator to be over 18 years of age. Mental capacity requires that the trustee: (1) know the nature of the act they are committing; (2) understand the scope of their property and estate; and (3) understand the persons that are the natural objects of their bounty. The settlor must have capacity at the time the instrument is executed. The bar for capacity is generally very low.

Here, Herb is over 18 so there is legal capacity. Herb is said to be severely diminished in his capacity, which could mean that he does not understand the nature of the act he is committing. However, the facts state that he understood what the trust was and that he was revoking it when he told Sam he did. This can point to Herb having enough capacity to understand what he is doing.

Herb most likely has capacity to revoke.

Fraud

Fraud requires that (1) the influencer make a fraudulent statement to the trustee; (2) which the influencer knows to be false; (3) and the trustee reasonably believes the false statement.

Here, Sam makes a fraudulent statement, as given by the facts. He lied about what Deb supposedly did to betray Herb and Wilma. Sam knew this was a lie when he told Herb, and Herb reasonably believed it, because it is possible that Deb would betray them, and since Deb is not Herb's biological daughter this is an even greater chance.

Sam committed fraud when he told Herb about Deb's "betrayal."

Constructive Trust

To prevent unjust enrichment, a court can place fraudulently procured title to property into a trust, of which the fraudster is trustee, the sole purpose of the trust being to give the property back to the person who should rightfully hold title.

Here, Sam fraudulently procured title to all the trust property when he got the trust revoked and transferred it to his name. The court can create a constructive trust with Sam as trustee in order to place title back with Deb. Deb should receive what she would've if the trust had not been revoked, which is half of the trust assets.

The court will impose a constructive trust on the trust assets.

Sam Defenses

Trustee Powers

The trustee has express powers as granted in the trust, or by law. Trustee has implied necessary and appropriate powers to carry out the terms of the trust. These can include the power to sell trust property, lease trust property, and incur debt in the course of administering the trust.

The facts do not state what powers the trustee has. Sam can claim that he had the necessary and appropriate powers to carry out the terms of the trust, which is to benefit and support the settlors during their lifetimes. In order to benefit and support Herb, Sam will claim that he had to remove the childhood home from the trust, otherwise Deb might get it by betraying Herb. However, as discussed supra, Sam is lying and this is not a defense. He didn't sell or lease trust property to benefit herb, he took it for himself.

Sam abused his trustee powers.

Trustee Duties

The trustee has: the duty to administer the trust according to the trust instrument; the duty of loyalty including no self-dealing, no buying property from the trust even if for fair value, no borrowing from the trust or giving personal money to the trust, and no using transferring or selling trust property to another trust they are trustee for; General duty of care which requires the trustee to act as a reasonably prudent person would in their position, and if they have special skills or training to act as a reasonably prudent person with those skills or training would; Duty to protect and defend the trust from attacks legally unless there is sufficient reason to believe they would lose; duty to invest prudently, or as a prudent investor would; duty to ensure the continuation and health of the trust; duty to earmark and segregate trust property, no commingling with other property; duty to personally do things for the trust unless unreasonable, and the trustee cannot delegate all responsibilities of the trust; duty to account for all transactions of the trust and give a written accounting to the beneficiaries; and a general duty to act in the interest of the beneficiaries.

Here, Sam had the duty to administer according the trust instrument which he did, seeing as he supported the surviving settlor, Herb, and then wrote up a document to revoke with Herb's signature as stated in the trust. Same violated his duty of loyalty to the trust by transferring the childhood home out of the trust and putting it in his name as joint tenant. He can argue that he did it for Herb's benefit and Herb is also a joint tenant, but this is still a violation of his duty of loyalty. He violated his general duty of care, as a reasonable person in his position would not destroy the trust under fraudulently procured reasons and transfer the trust property to themselves. No duty to protect from attack is present. Sam will claim that he did his duty to invest the property as a prudent investor would, since he applied the trust property for the support and benefit of Herb. He also earmarked the trust property and segregated it from his own property so as not to commingle it. He violated his duty to ensure the continuation and health of the trust since he got it revoked. He violated his duty to account for all transactions, as the facts do not state that he gave a written accounting of the transfer of the childhood home to Deb, nor did he act in the interest of the beneficiaries.

Sam violated many of his duties as trustee.

Overall, excellent answer.

2)

To determine what interests the parties have we must ascertain the validity of the testamentary instruments, whether the codicil is valid, whether the issue of Anita and Brenda can inherit via anti-lapse, whether Sarah is an omitted child and if so, the parentage of Sarah.

Valid Will

For a will to be valid there must be testamentary intent, testator capacity, and the statutory requirements of either a formal or a holographic will.

Testamentary intent

To have testamentary intent the testator must intend to make a will.

Here, the facts indicate Tim executed a will. From this we can infer intent.

Testamentary Capacity

To have testamentary capacity the testator must be over 18 and of sound mind. Sound mind only requires that the testator understands the nature of the testamentary act, understands the nature and extent of their property, and knows their relationship and heirs.

Here, Tim is widower with children and can be presumed to be over 18. The will was entirely in his own writing and disposed of his entire estate to family members. From this we can infer he understood the testamentary act, knew the nature and extent of his property (despite forgetting to include relatively small \$5,000 gift to university XYZ.) and knew his relationships and heirs.

Formal Will formalities not met, but may be saved by harmless error doctrine

A formal will requires that the will be in writing, signed by the testator, and in California it must be witnessed by two witnesses who are present together, and the witnesses must know that they are witnessing the testator's will.

Here, the will is in writing and signed by the testator. However the will was only signed by one witness, failing to meet the requirement for two witnesses.

Harmless error

Good.

After January 1, 2009 a will that fails to meet the witnessing requirements may nonetheless be probated where there is clear and convincing evidence that the testator intended the document to be their will.

Here, the entire will is in Tim's handwriting, and it was witnessed by one person. The estate was not distributed unnaturally.

The court will likely find the failure to be harmless error and the will to be valid.

Even if the formal will requirements fail it is still a valid holographic will

To be a valid holographic will the instrument must show testamentary intent, be signed by the testator and the material provisions must be in the testator's handwriting.

Here, the will disposed of the entirety of Tim's estate to his close family members demonstrating testamentary intent. The will was signed by Tim. Finally the will was entirely in Tim's handwriting, including all material provisions.

The will is a valid holographic will.

Good.

Valid Codicil

A codicil is a subsequent testamentary instrument that amends, modifies, or revokes in whole or in part, a prior testamentary instrument(s). To be valid a codicil must follow the same formalities as either a formal or holographic will.

Formal Codicil formalities not met, and it is doubtful it could be saved by harmless error doctrine

A formal codicil requires the same formalities as a formal will, it must be in writing, signed by the testator, and in California it must be witnessed by two witnesses who are present together, and the witnesses must know that they are witnessing a codicil to the testator's will.

Here, the will is in typewritten and signed by the testator. However there are no witnesses at all.

The codicil fails to meet the requirements for a formal codicil

Good discussion

Harmless error

After January 1, 2009 a will that fails to meet the witnessing requirements may nonetheless be probated where there is clear and convincing evidence that the testator intended the document to be their will.

Here XYZ university could argue that Tim intended the codicil to be part of the will, but because it lacks any witnesses this argument most likely fails.

The codicil fails to meet holographic formalities

To be a valid holographic codicil the instrument must show testamentary intent, be signed by the testator and the material provisions must be in the testators handwriting.

Here the codicil showed a testamentary intent to leave gift to University XYZ. The codicil was signed by the testator. However the codicil was typed and in its entirety and did not contain material provisions in the testators handwriting as required.

The codicil is not a valid holographic codicil.

Conclusion: The codicil fails and University XYZ has no interest in the estate,

Omitted child

When a child is born or adopted after the last testamentary instrument is executed the child is entitled to the intestate share unless, the child is intentionally omitted on the face of the instrument, the child is provided for outside the instrument (life insurance, trust, etc.) or the surviving parent inherits substantially all of the testators estate. there is an exception where if the parent did not know of the existence of a child prior to the execution of the will they can still be an omitted child because they were not know at the time of the last testamentary instrument.

sorry about the typo → good discussion

Here, the facts are a little confusing because they appear to indicate tim received the letter in 2016 that Sarah had been born in 1997 and was tim's daughter. the facts then indicate that Tim wrote back in 1998 denying the child was his, (20 years before he received the letter in 2016???) Sarah

was not intentionally omitted, provided for outside the will, and Sarah's mom did not receive any of the estate so she could be an omitted child depending on when Tim knew of her existence.

If Tim knew of Sarah prior to executing his will then she is not omitted.

However, if Tim did not know of Sarah prior to the time he executed his will than if Sarah can establish parentage she may be an omitted child.

Parentage of non marital children

Parentage of non marital children can be established if the child was born during a failed or attempted marriage, born within 300 days of a failed or attempted marriage, the father is named on the birth certificate with their consent, the father voluntarily paid child support, the father was court ordered to pay child support, or the father held the child out as their own.

Here, none of these factors are present in the fact pattern, there was never any attempt at marriage, Tim is not named on the birth certificate, he never paid child support, there was no court order, and he never held Sarah out as his own.

Sarah will not establish parentage. *Good*

Anti-Lapse

California has an Anti-lapse statute that provides an alternate beneficiary that is the issue of a deceased beneficiary who is kin with the testator.

Here, both Anita and Brenda predeceased Tim. Since they are both kin with Tim, their gifts would not lapse and instead would be provided to their issue Adam, and Ben by representation.

Ben would inherit via the anti-lapse statute but there is another problem that may prevent Adam from inheriting.

Class Gift

Whether Adam will inherit depends on whether Anita was included in the class gift, of half Tim's estate to be given to "my sisters" because Anita predeceased Tim.

Here, unless Tim did not know that Anita had died she is likely not included in the class of "my sisters" because Anita died on year before Tim executed his will at which time Anita

could not have been part of that class. If Tim intended to include Adam he could easily have provided for him or specified to my sisters living or dead or to their issue.

Adam most likely does not have an interest in the estate,

Final disposition of Tim's estate

Half of Tim's estate will go to the class of sisters alive at the time the will was executed. 1/4 of the estates (1/2 of 1/2) to Callie, and the other 1/4 to Ben via anti-lapse statute.

The other half of Tim's estate will go to Dora.

Sarah will inherit nothing because she cannot establish parentage.

University XYZ will get nothing because the codicil fails.

Good job.

3)

Marnie's Mysterious Will

An attested will must follow all of the requirements set forth by the applicable wills statute, and the testator must have capacity to execute the will. In California, a valid attested will must be (1) signed by the testator or someone else at the testator's direction; (2) signed in front of, or previously signed and acknowledged in front of, two disinterested witnesses; (3) signed by the witnesses during the testator's lifetime; and (4) understood by the witnesses that what they are signing is a will. Any failure to adhere to the formalities can be argued as a harmless error, provided the will was executed in good faith by the testator. A holographic will is a testamentary instrument that does not require the same formal requirements as an attested will. To be valid, a holographic will needs only the material provisions in the testator's handwriting and a signature by the testator.

The facts give no details regarding the execution of the will, so it is unknown whether it followed the formalities of an attested will or the requirements of a holographic will.

Thus, two analyses will be conducted: one in which Marnie has a valid will, and another in which Marnie's will is invalid.

Survivorship Requirement

California requires beneficiaries to survive the testator by at least 120 hours.

Here, because Marnie and Richard were traveling together, and it cannot be determined who died first, Marnie and Richard are considered to have predeceased each other. Thus, their respective interests in community property stay with their respective estates. *Good.*

Richard's Intestacy

If a person dies without a will, they have died intestate. Under intestacy, if the decedent has a living spouse, the decedent's 50% interest in community property (CP) and quasi community property (QCP) goes to the spouse (who already held 50% interest, so they take 100% interest in CP and QCP). For separate property, if the decedent had a living spouse and one living child, the spouse gets 50% and the child receives the other 50%. If there is a living spouse and two or more living children (or one living child and a living grandchild from a deceased child), the spouse receives 1/3, while the children split the remaining 2/3 equally by representation.

Richard died without a will, so he died intestate. However, Marnie predeceased him, so Richard's interest in CP stays with Richard's estate. The facts do not indicate that Richard had any separate property, so Richard's estate consists of his interest in the CP and QCP from the marriage.

Richard's Parentage of Samuel

Parentage can be established if the alleged parent holds the child out as their own and welcomes the child into their home. Under the Probate Code, parentage can be established by (1) formally adopting the child; (2) a paternity test or judgment issued during the alleged parent's lifetime; or (3) a showing by clear and convincing evidence that it was impossible for the alleged parent to acknowledge the child *and* there is evidence of parentage, such as DNA. Under the Family Code, if a child is born and the parents never marry, parentage can be established by (1) having the alleged parent be named, with consent, on the birth certificate, and (2) an obligation, whether by agreement or judgment, to pay child support.

Here, Tess's husband legally adopted Samuel, so he is a parent of Samuel. Tess and Richard never cohabited or married, so parentage is not established down that avenue. While it is legally possible to have more than two parents, the facts give no details regarding Samuel's birth or Samuel's relationship with Richard, so it is unknown whether Richard held Samuel out as his own, abandoned him, was on the birth certificate, paid child support, or terminated his parental rights.

Thus, more facts are required to determine whether Richard is an established parent of Samuel.

If Marnie Had a Will...

Marnie's will left all community property (CP) to her spouse Richard and all of her separate property (SP) to her children.

Anti-Lapse of Richard's Gift from Will

Under California's anti-lapse statute, a gift to a beneficiary that predeceases the testator but was a blood relative to the testator does not automatically fail. Rather, the issue of the predeceased beneficiary may take by representation. If there is no kindred, the gift lapses and goes to the residue, provided the will contains a provision as such. If there is no such residual provision, the gift is distributed according to intestacy.

Richard is considered to have predeceased Marnie, and he is not a blood relative of Marnie, so Richard's issue cannot take by representation. Because there is no kindred and the facts specifically state there is no residue clause in Marnie's will, the gift has lapsed and will be distributed according to intestacy.

Anti-lapse doesn't apply to either spouse.

Marnie's Partial Intestacy

See rule above for intestacy.

Because Richard predeceased her, Marnie does not have a living spouse. Additionally, Richard's gift under the will does not fall under the anti-lapse statute, so the gift of Marnie's interest in the CP will be distributed equally to Marnie's issue, her two children. *Good.*

Class Gift

A class gift is a gift to a group of ascertainable beneficiaries that does not list the specific names of people, such as a gift "to my sisters."

Marnie's will leaves her separate property "to [her] children" and, while Marnie does have two biological children, does not specify whether the class was to include Samuel. Depending on he and Marnie's relationship, Samuel could argue that Marnie held Samuel out as her own and welcomed him into her home. Nothing in the facts supports or denies this claim, but it is likely Samuel would lose this argument considering he was adopted as an infant by his step-father.

If Marnie's Will is Invalid...

Marnie's Separate Property--Beach House

California is a community property state. Any property acquired during marriage is presumed to be community property. Separate property is property acquired before marriage or during marriage through gift or inheritance.

Marnie inherited the beach house from her grandmother and kept it separate from the CP of the marriage. However, it is likely that CP funds were used to pay for the upkeep of the house, so there could potentially be a claim there. However, the facts state that Richard knew of the property but never used it or contributed to it, so it is likely to be characterized as solely Marnie's separate property.

Marnie's Intestacy

See rules regarding intestacy above.

Richard predeceased Marnie, so Marnie's interest in the CP and QCP of the marriage remains with her respective estate. Additionally, Marnie's beach house is considered separate property, so that property remains in her estate to be distributed equally to her issue.

Distribution of Marriage Assets

If Marnie's will is valid, Richard's gift lapses and is distributed according to intestacy, and the twins receive Marnie's separate property, split equally. Thus, the twins equally split Marnie's separate property as well as her CP interests.

If Marnie's will is invalid, the twins equally split Marnie's separate property as well as her CP interests.

Richard's intestate estate will be distributed equally to his issue, including his CP and QCP interests, but there are not enough facts to determine if he is legally Samuel's parent.

Samuel's Rights in Richard's Estate

More facts are required to determine whether Richard is an established parent of Samuel.

If Richard is a legal parent of Samuel, Samuel is entitled to 1/3 of Richard's estate, which is Samuel's intestate share.

If Richard is not a legal parent of Samuel, Samuel is not entitled to anything from Richard's estate.

Marnie's Beach House Distribution

Marnie's beach house is solely her separate property, so it will be distributed to the twins in equal shares.

END OF EXAM

Overall good discussion