

Monterey College of Law – Hybrid
Wills & Trusts – Sections 1 & 2
Fall 2025
Final Exam
Prof. S. Foster

Final Exam Instructions

Read the following instructions prior to the exam. Do not turn the page or read the test prior to the exam beginning.

1. You get 3 hours for the exam once you start.
2. The exam is an individual exam. You may not discuss the exam with anyone else during the exam.
3. This is a closed book exam. You may not use any materials on the exam.
4. The exam is 3 questions. Each question is intended to be a 60-minute question and each is 100 points.
5. Manage your time, and GOOD LUCK!!!

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Question 1:

Naomi received the following letter in the mail last week:

Dear Naomi,

Hope your fall is going well. You may not remember me, but I lived next to your parents when you were a few years old. I always admired how hard they worked to provide for you. They would do anything to help you succeed. Even though you all moved when you were 10, I kept up with how you did in school. I was proud to see you graduate and attend University. Hard work should be rewarded, and since I don't have close family, I told myself I would do whatever I could to help you not have similar worries as your parents. I learned recently that I earned stock options at my current job. I want you to have all the stock options, and subsequent stock that I plan to purchase from those options next month, to send your kids to college. The stock should be worth enough to pay for 4 years of college by the time you have kids in college. I will send you the official stock certificates when I obtain them.

Keep up the hard work.

Sincerely,

Wanda Rhett

Ignoring any concepts not covered in class (i.e. – Rule Against Perpetuities), fully explain answers to the following questions:

Subpart A – Did Wanda's letter create a valid trust?

Subpart B – Assuming the letter created a trust, is it revocable?

ADDITIONAL FACTS: (Answer previous subparts without the following facts.)

Naomi remembered Wanda and got excited about the stock. She mailed a letter to Wanda setting up a meeting in a local attorney's office. They formalized a trust with Naomi as a trustee holding Ingrid Corp. stock for the benefit of Naomi's future children. The stock is currently valued at \$125 a share.

Naomi doesn't know much about Ingrid Corp. She is not confident the stock will be worth \$125 for much longer. She heard rumors the CEO was about to be fired.

Ignoring any concepts not covered in class, fully explain answers to the following questions:

Subpart C – Can Naomi sell the Ingrid Corp. stock and invest in Apple Inc. stock, which has historically been more stable than Ingrid? Does your answer change if Apple stock suddenly loses 25% of its value prior to purchasing Apple stock? If Naomi does not sell the Ingrid stock and the value drops to \$75 a share, did she violate any obligations to the beneficiaries?

Subpart D – Can Naomi trade the Ingrid Corp. stock with Apple stock from her personal portfolio and explain the legal consequences if she makes the trade?

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Question 2:

In 2021, Tommy, a CEO of a large corporation, got married to Ginny. Almost immediately, Ginny got pregnant with their first child which ended up being named James. The corporation was worried about Tommy's ownership interest if he died, so they encouraged him to write a will. Tommy sought an attorney who drafted an attested will in 2023. The will satisfied all the will requirements. The provisions gave Ginny his interest in the corporation and 1 million dollars. James received all separate property. The residue went to Tommy's brother.

Tommy worked relentlessly and did not spend much time with his family. Ginny was not happy with their situation, so she sought and was granted a divorce. They divorced in June 2024. Unbeknownst to either of them, Ginny was pregnant with their second child eventually named Roger.

Tommy continued to work so much that he let his health decline. One day at the office in 2025, Tommy felt chest pains. He thought he was having a heart attack, so he called 911.

Tommy laid on the floor of his office waiting for the ambulance. He was drifting in and out of consciousness. During one of his semi-alert states, he pulled out his smartphone. He opened the voice recorder app and said:

"This is Tommy and this recording is an amendment to my will. I want my ownership interest in Corporation to go to my brother. My red corvette should go to my dad because he loves cars. I want to give \$25,000 to my college roommate Billy. Signed Tommy."

Tommy died from a heart attack that night. At death, his estate only included his interest in the corporation, 10 million dollars, and a Porsche. Everyone in the fact pattern was alive at Tommy's death except for his dad.

Discuss how Tommy's estate should be distributed.

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Question 3:

Horace enjoyed spending time with his whole family. His wife passed away about 10 years ago and they had 3 kids, Fanny, Dre, and Petunia. Fanny was married with 2 kids. Dre was not married, and Petunia was married with 1 kid.

Horace paid for the whole family to take a trip to an exotic location every summer. The family loved the trips and looked forward to them every year. One year during a trip to Scotland, Horace met Mary, a Scottish woman. They hit it off, and she spent time with the whole family the rest of the trip. Horace was sad to leave her at the end of the trip, but she stayed in Scotland when they left.

Over the next 5 years, Horace called Mary nearly every day. They sent text messages non-stop. They knew everything that was happening in each other's life. The family trips continued, but they went to Scotland every time. The family enjoyed the trips and time with Mary.

Unfortunately, Fanny and Dre died in a tragic accident on one of the excursions while in Scotland. Everyone was upset and returned home immediately to plan the funeral. Horace talked to Mary one night, and she told him the event made her contemplate writing a will. Horace said he needed one as well. She told him he should make one that left money to her to travel to see his kids every year in the states. She was worried they wouldn't want to come to Scotland anymore due to the tragedy. She emailed Horace an example with some clauses to help him get started.

A week later, Horace pulled his laptop out and started brainstorming for the will. The title of the document was "Horace's will?" He then wrote some bullet point thoughts with money left to Mary for traveling to the US. He left all real property to Petunia and personal property to the grandkids. The bullets included both complete and incomplete sentences.

Horace printed a copy to review with 2 lines for witness signatures at the bottom. He left the copy on his kitchen counter one morning before running errands. His normal cleaning service came over while he was out. They saw the will and two people from the cleaning crew signed the document. Horace returned and saw the signatures but didn't do anything about it. He passed away that night in his sleep.

Subpart A – Discuss all issues related to the will's validity and distribution.

Subpart B – If the court finds the will invalid, who receives Horace's estate?

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Brief Outline for WTE Exam

This is an extremely brief outline of each question on the final exam. The outline is intended to identify issues and see how to structure an analysis. Much deeper fact discussion and application is required on the exam.

Question 1:

Subpart A:

Issue – Is the trust valid

Rule – Must have Trust Intent, Res, Trustee, and identifiable beneficiaries

Subissue 1 – Trust Intent

Rule – Must have present intent to create trust (separate title).

Apply – “I want” language may be more precatory and not a definite intent to hold title for someone else. Argue both sides

Subissue 2 – Trust Res

Rule – Must have present identifiable property to place in trust.

Apply – Stock options are a current interest, not something that vests later. However, it is an option, so not actual stock now. Argue both sides.

Subissue 3 – Trustee

Rule – Not required for valid trust. If none, court appoints

Apply – Could be Naomi since she is asked to hold for kids. If not, court will appoint.

Subissue 4 – Identifiable beneficiaries

Rule – Must have beneficiaries. Must be able to pull someone from world and evaluate whether they should benefit.

Apply – “Kids” can be determined through blood relationship. Some people use kids more loosely. Argue both sides.

Subpart B:

Issue – Is it revocable

Rule – Yes, default rule is revocable unless clearly stated

Apply – No language here says can't revoke. Could argue some of the words make it seem irrevocable (going to help her kids). Could argue both sides.

Subpart C:

Issue 1 – Duty to make profitable/diversify

Rule – Must make trust profitable/invest.

Apply – She needs to make decisions that would make the trust profitable and make money. If she believes that is selling, she can sell.

Issue 2 – Duty of Prudence

Rule – When deciding, must exercise reasonable skill, care, and caution as a prudent person would.

Apply – Argue both sides here why going with the stable stock is better. Argue why the price drop makes it less stable, so shouldn't sell. The key is to use the specific facts and argue both sides.

Subpart D:

Issue 1 – Duty of Loyalty

Rule – Trustee must remain loyal to the trust and act fairly in good faith. Must not self-deal and transact with the trust.

Apply – Selling to and from personal portfolio would violate self-dealing. Could discuss the no further inquiry rule. Could discuss how transaction fairness and not losing money doesn't matter to whether the duty was violated.

Issue 2 – Consequences

Rule – The trustee could be personally liable for any damages on price, appreciation, lost value, etc.

Apply – Explain how the normal duty of prudence wouldn't make trustee liable for losses but if self-dealing happens, then personal liability can attach.

Question 2:

Issue #1 – Does the Codicil alter the will

Overall Rule – A valid subsequent amendment impliedly revokes all inconsistent provisions. The subsequent amendment must be valid. Codicil's require the same formalities.

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

Subissue – Is the recording 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 – He says it is an amendment to his will and provides gifts upon death. That shows intent.

Rule – Capacity requires 4 Cunningham factors (list and explain).

Apply – He drifted in and out of consciousness. He gave property to someone already dead and gave away an item not in his estate. However, this is a low threshold. He knew he already had a will and knew the people in the will.

Rule – Must be entirely handwritten.

Apply – This is a recording and not written. However, it is in his voice and these requirements are broadening over time.

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

Apply – He said his name and the very last words were "signed Tommy". This is close since it is not an actual writing. Argue both sides.

Rule – Harmless Error Doctrine

Apply – Could argue dispositions are condition gifts on death, so while not writing, this is clear evidence of what he wanted to happen at death.

Conclude – Decide whether the Codicil is valid or not and make a decision.

Issue #2 – Distribution NOTE HERE – THERE ARE TWO OPTIONS, ONLY DISCUSS THE OPTION BASED ON YOUR CONCLUSION TO ISSUE #1

IF CONCLUDED CODICIL IS VALID:

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

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. Exception is if there is post-divorce execution of the will, and codicil's republish the will at the date of the codicil.

Apply – Will #1 had the spouse, and then they divorced. However, the codicil in 2025 republished the will at that moment. The codicil would be a post-divorce execution, so wife would take according to original will, the interest in the corporation and 1 million dollars.

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 Red Corvette was in the codicil. The car isn't in the estate. If the Porsche was an immediate purchase, CA might trace the funds. Need more facts to evaluate

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 – If the dad takes, then he predeceased Tommy. We know Tommy's brother is alive, so apply facts to go to Tommy's brother.

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. Also, republication by codicil could omit a child.

Apply – Roger was born after 2023 will. However, he was born prior to the 2025 codicil. The codicil would happen during his life, so he would be an omitted child.

Subissue #5 – Rest of will

Rule – follow the directions in the will when no other issue arises.

Apply – Billy receives 25k. James gets separate property, and brother gets residuary.

IF CONCLUDE THE CODICIL IS INVALID:

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 2024 with no subsequent remarriage. All gifts, including non-probate property, are revoked.

Subissue #2 – 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 – Roger was born in 2024. Attested will created prior in 2023. Get intestate share.

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 Roger'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 – The will has a residuary clause to Tommy's brother.

Question 3:

Subpart A:

Issue – Is the will valid.

Rule – Must have intent, capacity, and formalities.

Subissue 1 – Intent

Rule – must intend the specific document to be a will and distribute property.

Apply – included distributions to Mary and the kids. However, had question mark in title.

Only had bullet points with some incomplete sentences. Argue both sides.

Subissue 2 – Capacity

Rule – 4 Cunningham factors. Very low threshold.

Apply – Gave to specific family members. Knew property her owned.

Subissue 3 – Formalities

Rule – Attested Will must have writing, signed, 2 witnesses.

Rule – Writing must be some form of document with written words.

Apply – Printed hard copy that had the dispositions and witness signature lines.

Rule – signature is anything that is intended to be a signature. Could be his name at the top of the document if that was his intent.

Apply – He did not sign the document. However, he titled the document with his name.

The name at the top could be enough.

Rule – signed by 2 witnesses in the presence of the testator. Presence can be line of sight or conscious presence.

Apply – doesn't matter here because they sign when he is running errands. He was not in the house during the signing. He also did not request them to sign it. They could not witness that he was of sound mind.

Subissue 4 – Harmless error

Rule – Could overcome if there is clear and convincing evidence of testator's intent.

Apply – incomplete sentences and not signed makes intent hard to prove. Could use the vacations and the family enjoying spending time with Mary but probably not wanting to go to Scotland. Argue both sides.

Subissue 5 – If find formalities, then undue influence could 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 – Mary sent the document with suggestion to give her money to travel to the States. However, she didn't write anything. She was an entire continent away, and the will was not executed near the time of her sending the will.

Subpart B:

Issue – Intestacy

Rule – If invalid, CA follows modern per stirpes.

Step 1 – Start at the first generation with a living member.

Apply – Petunia still allows

Step 2 – Count the live roots

Apply – Just 2: Petunia, Fanny. Dre died without kids.

Step 3 – Allocate a share to each live root and divide down.

Apply – 2 shares, so $\frac{1}{2}$ each. Petunia takes because she is alive. Fanny's $\frac{1}{2}$ is split between her 3 kids, so each of her kids receives $\frac{1}{6}$.

1)

1. Did Wanda's letter create a valid Trust?

Inter-vivos Trust

Good Rule
A trust is a fiduciary instrument utilized to devise property to a beneficiary by means of a trustee who is intended to maintain control of the property and act according to the instructions of the settlor. A trust requires the same capacity as would be required of a will. A trust requires several key elements including intent, a trustee, trust res, ascertainable beneficiaries, and must be in writing if it is dealing with testamentary property or real property.

Capacity *Good organization*

Capacity requires the settlor be over the age of 18, understand the nature of their actions, understand the nature of their property, understand the relationships of those affected by the instrument, and not be under an insane delusion.

Here, the fact pattern does not indicate there are any issues with capacity. Therefore, Wanda had the requisite capacity to create a trust.

Trust Intent

Trust intent requires the immediate intent to create a trust along with affirmative words indicating that intent. Pecuniary words (I hope) are not enough to create a valid trust.

Here, Wanda indicates her intent to set up a trust for Naomi's child, identifies some property, and indicates her intent. However, Wanda does not indicate her intent to immediately transfer the property and create the trust when she writes "I will send you the

Good use of facts.

official stock certificates when i obtain them." This language indicates she wishes to set up the trust in the near future and is not immediate.

Therefore, the trust fails on this prong.

Trustee

A trust must have a trustee to function. A settlor can be a trustee and the trust will not fail for lack of a trustee. A court can appoint one if needed.

Here, Wanda indicates she wishes Namoi to be the trustee by stating she wishes for her to hold the property. There are no issues with this prong.

Trust Res

A trust needs property in the trust to property function.

Here, Wanda indicated some of her property that she wished to go into the trust "the stock options" but failed to properly identify the additional property "the subsequent stock that I plan to purchase next month." This language is not explicit and does not properly convey the appropriate property which should go into the trust. Additionally, the "stock options" she planned to purchase to begin with are not explicitly stated and would likely fail due to lack of specificity. Finally, Wanda did not transfer any property into the trust, telling Namoi that she would transfer the property later.

Future interest arg.

Therefore, because no property was actually given, the trust fails on this prong.

Ascertainable beneficiaries.

A trust must have ascertainable beneficiaries in order to be valid.

Here, Wanda names Namoi's kids as the beneficiaries

Class Recipients

Recipients as a part of a class, while arguably not specific, do not necessarily fail if the class is sufficiently defined.

Here, "Naomi's kids" can be extrapolated to mean any lineal descendent (issue) of Naomi. This class is sufficiently narrow that it most likely would fulfill the requirement that a trust must have ascertainable beneficiaries in order to be valid. Naomi, as a woman, can easily trace a clear line of succession to her lineal children (issue) by virtue of her birthing them.

therefore, this class of recipients fulfills this prong.

In writing if Testamentary or Real property

Here, the trust res consists of stock certificates. The stock is not real property (property involving land) and the trust does not involve testamentary property as it is an inter-vivos trust.

Therefore, the trust does not need any additional writings in order to be valid.

Conclusion

This trust contains some essential elements but fails in others. While the court could correct some issues such as the lack of a trustee, it cannot recover from the arguable lack of a testamentary intent and certainly fails due to lack of trust res.

Therefore, although the trust contains some essential elements including capacity, and recipients, this trust is invalid.

2.If the letter created a trust, is it revocable?

There is split authority on whether or not an inter vivos trust is revocable. Some states hold that a inter vivos trust is irrevocable unless explicitly stated in the instrument. Under California law however, an inter vivos trust is revocable by the settlor during life unless it is explicitly stated in the trust. Steps taken in order to revoke a trust may be written in the instrument.

Here, Wanda is still living and this is therefore an inter vivos trust. Using California law, Wanda has the authority to revoke the trust as she sees fit.

3.Naomi and Ingrid Corp

Inter-vivos trust

see supra

Here, Naomi and Wanda set up a meeting with an attorney and set up a formalized trust. This trust named Naomi as a trustee and specified specific stock which would be added to the trust for the benefit of the beneficiary (the future children). The fact pattern indicates that the trust res was property given to the trustee.

Therefore, as all elements of a trust have been correctly fulfilled, a valid trust has been established.

Fiduciary duties of a Trustee

After a valid trust has been established, the trustee owes certain duties to the trustee.
These duties are

1. Duty of loyalty
2. Duty of prudence

Duty of prudence

A trustee has a duty to property care for, and grow the trust for the benefit of the beneficiary. A trustee must act with the reasonable care and prudence that another trustee would in a similar circumstance. Under modern investment theory, this duty also includes the duty to diversify the portfolio in order to maximize the earning potential of the trust.

Here, Naomi wishes to sell the Ingrid stock and invest in Apple which has historically been more stable than Ingrid. Additionally, she, as a prudent investor, believes the stock may soon decrease in value and noted that the CEO was about to be fired which would likely lead to a decrease in the stock valuation.

Conclusion

Therefore, not only can Naomi sell the Ingrid stock and invest in Apple, it would be a violation of her duty of prudence to NOT sell the stock and diversity the assets.

This analysis changes if the Apple stock were to suddenly loose value prior to the purchase. As a prudent investor, it would be unwise of the trustee to make the purchase or it should at least give her pause. Following the modern theory of investing, Naomi should still look to diversify the portfolio and should therefore look to diversity by purchasing other stock instead.

If Naomi decided to not sell at all and the stock value of Ingrid plummeted, she would have violated her duty of prudence as she failed to diversify the stock at all. Namoi should have diversified by stock by seeking other stock opportunities.

4. Can Naomi trade the stock

Duty of loyalty

A trustee has the duty to act in the best interest of the trust as well as the beneficiary. A trustee may not use the money for her own interests, make other deals, usurp the business opportunities of the trust, or in any other way act outside of good faith and fair dealing (including comingling the funds of the trust).

No further inquiry rule

Should a trustee comingle funds or use the funds of the trust for her own interests, the court will make no further inquiry as to the motivations of the trustee as the court will recognize that there was a violation of the duty of loyalty.

Here, Naomi as the trustee automatically has a duty of loyalty to the trust. Naomi violated that duty by trading the Ingrid stock with the Apple stock in her personal portfolio, thereby comingling funds.

Therefore, because the court will follow the no further inquiry rule, Naomi is in violation of her duty of loyalty and will not even get to explain her motivations behind her actions. Naomi's children may be entitled to damages or the court could remove Naomi as the trustee.

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2)

Will #1 Valid (Assumed)

Here, in 2023 Tommy sought an attorney and created an attested will in 2023. At this time its assumed that all the formalities were followed and it currently valid at this time.

Will #2 Smartphone Recording

A will a written instrument that indicates the intent of a testator regarding the disposition of their property.

Here, we see that Tommy gets out his phone and does a voice recording and he notes what he wants done with his property. say why that is at death.

Testamentary Intent

Testamentary intent is determined by the language in the instrument and the testator must intent that it become effect upon their death.

Here, the intent of his holographic will that he wants to amend his will to change the ownership interest in the corp to his brother, red corvette to his dad, and 25k to his college roommate.

Testamentary Capacity

To make a valid will the testator must have capacity meaning they must be over the age of 18 the be of sound mind at execution. To be of sound mind the testator must understand: (1) the nature and extent of his property, (2) the nature object of their bounty, (3) the nature of making a will, and (4) the disposition of their property.

Here, Tommy is over the age of 18 which can be assumed. He may not be of sound mind because he did not know that he did not have a red corvette, he has a porche, he made no mention of his two children which are his bounty and decided to give 25k to his friend, he does however understand he is making a will and he knows where he wants his property to go. A big issue is that he was going in and out of consciousness due to his heart attack. This could go either way but likely in this case, I have to say he did in fact have capacity because the analysis would end if he didn't.

Holographic Will 2025

A holographic will is valid if: (1) its in writing, (2) the testator has handwritten the material terms, and (3) it signed by the testator personally.

Here, when Tommy recorded his voice we can assume that it changed it to written text so it's in writing and he also signs it personally with his name. This only issue might be that he did not hand write the material terms; however, in a case we read which I cannot recall the name concerned a similar situation of a man in the hospital and recorded his voice to text and it was deemed to be valid. We live in a modern world with new techonogly so courts are likely to honor this a valid holographic will.

Harmless Error Rule

The harmless error rule provides that a defective will, will be treated as valid if clear and convincing evidence shows the testator intended it to be their will and they are in substainlly compliance

Here, I do believe that the holographic will is valid but if the court deems it defective the harmless error rule will treat it as valid.

Codicil

A codicil is a written document that can add to, modify, or revoke a already existing will without replacing the entire will. A codicil is better known as an amendment. It also requires the same formalities as a will.

Here, Tommy's 2025 holograph will should be considered a codicil and that it simply amended his previous will and did not completely replace his old 2023 one.

Revocation by Subsequent Will

A will can be revoked by a later will by either: (1) expressly saying that it revokes the previous will, or (2) its inconsistent with it, which means only the inconsistent portions will be replaced.

Here, Tommy only replaces portions of his will that are in conflict with each other.

Be specific to what they are.

Revocation by Operation of Law: Divorce

A will's provision to an ex-wife will be revoked by operation of law.

Here, the 2023 attested will's provision about Tommy's ex-wife Ginny getting his interest in the corporation and 1 million dollars will be revoked because they are not married anymore.

replaced by codicil so she takes

Ademption by Extinction

Ademption by extinction occurs when a specific gift is no longer in the testator estate at death. At common law the gift failed; however, under the UPC the beneficiary may receive: (1) the sale proceeds, (2) replacement property, or (3) the gift's value if the testator did not intend ademption.

Here, Tommy wants his dad to have his red corvette but not at his death and it no longer exists. California follows the UPC and his dad will likely get replacement property in the

form of the Porsche but the issue is that his father is not alive so he can not receive the gift. The gift will lapse.

Lapse/Anti-Lapse Statute

Under the rule of lapse a beneficiary must survive the testator by 5 days (120) to receive the gift of it will fail and go to the residuary estate; however under an anti-lapse statute the gift will not lapse if they deceased beneficiary has a qualified relative who may take the gift.

Here, the gift will lapse and go to the residuary estate because Tommy's dad predeceased him. However, since California does have a Anti-lapse statute the gift can go to Tommy's brother because he is a heir of the father and it also goes to him because in the first will a provision which hasn't been revoked notes that Tommy's bother shall get the residuary estate.

Posthumous Child

A posthumous child may inherit from a decedent if the child was in gestation before the death of the decedent and the child survives at least 5 days after birth.

Here, Roger was in gestation in 2024 which is before Tommy died in 2025 and can assume he survives. Roger is an heir and child of Tommy.

The Unified Parentage Act

A man will be deemed to be the father a child if: (1) the man was married to the mother when the child was born or within 300 days after the marriage was terminated, (2) the man married the mother after the child was born and asserted parentage, or (3) the man lived with the child for the first two years and open held out the child as his own.

Here, the child Roger was likely born 300 days after Ginny and Tommy got divorced. Tommy will legally be Rogers father.

Omitted Child Doctrine

An omitted child has a right to a share of the testator estate if they were not mentioned in the will due to be adopted or born after the execution of the will unless the omission was intentional or the child was adequately provided for.

Here, Rodger is a omitted child because he is not mentioned at all in Tommy's first will or his amendment. Rodger will be entitled to inherit.

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3)

A. Is "Horace's will?" Valid?

In order for a will to be valid, there must be present testamentary intent, testamentary capacity, and the required will (attested will or holographic will) formalities.

INTENT

In order to have intent, the testator must have made the document with the intent that it would be executed at the time of his death.

Here, Horace ("H") decided to type up a will on his laptop which he titled "Horace's will?". This was after both of his daughters passed away in a tragic accident while in Scotland. H spoke with Mary ("M"), his very good lady friend that he spoke to nearly every day and sent messages non-stop to. After speaking with M, H decided to put some bullet points and complete and incomplete sentences regarding how his estate should be distributed. This shows H's intent to have the document be his will.

Thus, intent is met.

*argue other side.
Say why those facts show intent*

CAPACITY

To meet testamentary capacity, the testator must be at least 18 years old and of sound mind. Generally, to be of "sound mind" the testator must have the ability to understand the (1) nature of his testamentary act, (2) nature and extent of his property, (3) and natural object of his bounty and understand relations with family members and beneficiaries.

Here, H is of 18 years old; he has kids and grandkids. In addition, H knows that he what he is typing up is a will; he calls the document "Horace's will?". H also understands the nature and extent of his property. In this regard, H notes in the document that he is leaving his real property to his daughter Petunia and personal property to his grandkids. H

also knows the natural object of his bounty and understand relations with family members and beneficiaries. He did not list his deceased daughters and leaves personal property to his grandkids. He also knows M. He know who they are and how they are related to him.

Thus, capacity is met.

FORMALITIES

In order to meet formalities for an attested will, the will must be in writing (can be typed), signed by the testator, and signed by two disinterested witnesses.

Here, H's document "Horace's will?" is typed on H's laptop. Although not in writing, modernly this would satisfy the writing requirement for an attested will. However, the document is not signed by H. M, who stands to gain from the document, may argue that two disinterested witnesses signed the will. In this regard, two people from H's normal cleaning service signed the will while H was not in his home. They were not present to see H sign the will (no need to go through the line of sight test or conscious presence test as H never signed the document). As such, the document fails to meet the required signature from the testator and witnesses.

Thus, it is not an attested will.

Holographic Will

A holographic will requires that the will have all the material provisions (identifiable property and beneficiaries) in writing and be signed by the testator.

Here, the document identifies property and the beneficiaries that it would be devised too. However, it is not in H's handwriting. In addition, it is not signed by H.

Therefore, the document "Horace's will?" does not meet the holographic will requirements.

HARMLESS ERROR RULE

Under the harmless error rule, a will can be admitted to probate even if it does not adhere to will formalities and witness requirements. It must be shown that the decedent substantially complied with the requirements, and the intent to leave the will as his final will at the time of his death by clear and convincing evidence.

Here, H had the requisite intent to leave the document as his will. This is shown in the way H thought of leaving real property to his daughter and personal property to his kids and bullet point thoughts about leaving money for M to travel to the US. He typed this after both of his daughters passed away in a tragic accident while in Scotland. In addition, it would satisfy the clear and convincing evidence element because H titled the document as his will.

Thus, it may be that the will will be valid because it meets the requisite intent to be executed at H's death.

UNDUE INFLUENCE

If there is undue influence, the alleged wrongdoer who stand to not inherit via the will and intestacy. Undue influence requires that the following be met: (1) susceptibility to undue influence, (2) alleged wrongdoer had the opportunity to exert undue influence, (3) alleged wrongdoer had the disposition to exert undue influence, (4) the results show there was likely undue influence.

Here, H's issue may argue that M's devise was procured due to undue influence. They will state that H was susceptible to undue influence from M because they talked almost every day and sent text messages non-stop. Moreover, they will point out that M had the opportunity to exert undue influence on H because of the example clauses that she sent H. M may argue that she got along well with H's family and they visited her in Scotland. However, H's issue may also state that M had the disposition to exert undue influence

because of the constant communication between M and H. In addition, the results show there was likely undue influence because H included bullet points leaving M money to travel to the US.

Thus, undue influence will be found and M will not take under the will.

How is the Estate Distributed?

Based on the above, H's estate will be distributed as follows: H's real property will be given to Petunia (it satisfies the statute of frauds because it was technically in writing) as directed by the laws of the state in which they are located in, and the personal property will be given to H's grandkids. M will not take under the will.

B. If the Will is found to be invalid, who receives H's estate?

If the will is found to be invalid, then H will have died without a will and his estate will go through intestate succession. The default order of intestate succession is: spouse, issue, parents, siblings, sibling's issue, grandparents, grandparent's issue,

In this present case, modern per stirpes (CA rule) will not be applicable. The strict per stirpes will likely be applied by probate. *This would apply*

Thus, H's estate will be given as 1/2 to Petunia and 1/4 to each of Fanny's children. If modern per stirpes (CA rule) is applicable, then distribution would be the same.

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END OF EXAM
