

San Luis Obispo College of Law

Wills & Trusts Final Examination

Fall 2025

Professor K. Gottlieb

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.

SLO
Wills and Trusts
Final Examination
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QUESTION 1

In 1996, Hal, married to Wanda, created a trust that he funded with \$200,000 of his separate property. Trustee Inc., named as trustee, was directed to pay the income to Hal for life and the remainder to Wanda.

At the same time, Hal executed a valid will that provided as follows: Article 1: \$20,000 to my friend Frank. Article 2: \$35,000 to the person named on a sheet of pink paper dated December 31, 1989 and located in my top desk drawer. Article 3: The residue of my estate to my son, Stan.

In 1998, Wanda executed a valid will solely in favor of her son, Stan. Shortly thereafter, Wanda died while giving birth to the couple's second child, Dawn.

Later in 1998, while grieving Wanda's death, Hal regularly consulted a fortune teller, Florence. In 1999, based on Florence's predictions that Stan would become a criminal, Hal executed a codicil to his 1996 will, changing the residuary beneficiary from Stan to Florence. In 2000, Hal and Frank, passengers on a commercial plane, were simultaneously killed when the plane exploded on takeoff. The pink sheet of paper referred to in Article 2 of the 1996 will provided: "To my next-born child, if any."

1. To whom should the trust property be distributed? Discuss.
2. To whom should Hal's estate be distributed? Discuss.

Answer according to California law.

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QUESTION 2

In 2001 Tom, a resident of California, executed a valid typewritten and witnessed will. At that time, Tom was married to Wynn. Tom also had two nephews, Norm, and Matt, who were the children of his deceased sister, Sue.

Tom's will made the following dispositions:

Article 1: I leave \$10,000 to my friend Frank.

Article 2: I leave my shares in Beta Corp stock to my friend Frank.

Article 3: I leave \$80,000 to my sister Sue's issue.

Article 4: I leave the residue of my estate to my wife.

The \$10,000 figure in Article 1 was crossed out and \$12,000 was handwritten in Tom's hand above the \$10,000 figure. Next to the \$12,000 Tom had handwritten, "Okay. 2/15/02."

In 2003 Tom and Wynn had a child, Cole. In 2004, Matt died in a car accident. Matt was survived by his children, Lynn and Kim. Tom died in 2005. Tom was survived by Wynn, Cole, Norm, Frank, and his grandnieces, Lynn and Kim.

At the time of his death, Tom owned, as separate property, \$500,000 in cash. He also had 100 shares of Beta Corp stock, titled in Tom's name, which he had purchased with his earnings while married to Wynn. The Beta stock was valued at \$1.00 per share at the time of Tom's death.

What rights, if any, do Wynn, Cole, Norm, Frank, and his grandnieces Lynn and Kim have in Tom's estate? Discuss.

Answer according to California law.

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QUESTION 3

In 2000, Ted was married to Wilma, with whom he had a child, Cindy. Wilma had a young son, Sam, from a prior marriage. Ted typed a document entitled "Will of Ted," then dated and signed it. Ted's will provided as follows:

"I give \$10,000 to my stepson. I give \$10,000 to my friend, Dot. I leave my share of all my community property to my wife. I leave the residue consisting of my separate property to my daughter, Cindy. I hereby appoint Jane as executor of this will." Ted showed his signature on the document to Jane and Dot, and said, "This is my signature on my will. Would you both be witnesses?" Jane signed her name. Dot was about to sign when her cell phone rang, alerting her to an emergency, and she left immediately.

The next day, Ted saw Dot. He had his will with him and asked Dot to sign. She did. In 2010, Wilma died, leaving her entire estate to Ted. In 2011, Ted married Bertha. In 2012, Ted wrote in his own hand, "I am married to Bertha and all references to 'my wife' in my will are to Bertha." He dated and signed the document.

Recently, Ted died with an estate of \$600,000, consisting of his one-half community property share of \$300,000 in the \$600,000 home he owned with Bertha plus \$300,000 in a separate property bank account.

What rights, if any, do Bertha, Sam, Dot, and Cindy have in Ted's estate? Discuss.

Answer according to California law.

Model Answer-Wills&Trusts-K.Gottlieb-Fall 2025-SLO

QUESTION 1

1) Trust property: "income to Hal for life, remainder to Wanda"

Issue

Who receives the trust corpus when Wanda (the named remainderman) **predeceases** Hal?

Rule

- Unless expressly irrevocable, a trust is **revocable** by the settlor; while revocable, duties

run primarily to the settlor.

- Division 11's construction rules apply to **wills and trusts** (i.e., at-death transfers in instruments).

- **Anti-lapse**: Issue of a deceased transferee take only if the transferee is **kindred of the**

transferor or kindred of a spouse/former spouse; "transferee" **does not include a spouse**.

- If a transfer **fails** and the instrument has no alternative disposition, the property passes

to the **residue under that instrument**; if no residue (or if the failed gift is a residuary/future interest), it passes to the **decedent's estate**.

Application

Wanda's remainder was an at-death transfer under a revocable trust. She died **before** Hal. The anti-lapse statute does **not** save a gift **to a spouse** (spouse is excluded from "transferee"). With no alternate taker in the trust, the remainder **fails** and, under § 2111(a)(3), the corpus passes to **Hal's estate** at termination (Hal's death).

Conclusion

On Hal's death the trust terminates, and the **corpus is distributed to Hal's estate** for disposition under his will/codicil (see Q2).

2) Hal's probate estate

A. Article 1 — "\$20,000 to my friend Frank"

Issue

Does Frank take where Hal and Frank died **simultaneously** in a plane explosion?

Rule. When survival can't be proved and priority of death matters, each estate is administered as if its decedent survived the other. Cal. Prob. Code § 220, unless the instrument says differently. A transferee who fails to survive the transferor doesn't take; anti-lapse protects only "kindred" of the transferor (or of the transferor's spouse/former spouse). §§ 21109(a), 21110.

Application

For Hal's estate, treat Hal as having survived Frank; Frank is deemed not to have survived Hal, so the specific gift lapses and falls to the residuary.

Conclusion

Frank takes nothing; \$20,000 pours into the residue

B. Article 2 — "\$35,000 to the person named on a sheet of pink paper... (Dec. 31, 1989)"

Issue

Is the pink sheet effective to benefit **Dawn** ("To my next-born child, if any")?

Rule

- **Incorporation by reference:** a writing in existence when the will is executed may be incorporated if the will manifests intent and sufficiently describes the writing.

- **Acts/events of independent significance** may be used to identify beneficiaries (e.g.,

the **birth** of a child).

Application

The pink sheet pre-existed (1989), is precisely described (color, date, location), and Hal manifested intent to incorporate it. Its content ("next-born child") identifies **Dawn** (born 1998); alternatively, her **birth** supplies independent significance.

Conclusion

Dawn takes **\$35,000** under Article 2. She is therefore not an omitted child under §§21620–21623.

C. Article 3 Residuary —

DRR control the 1999 codicil (Florence vs. Stan)

Issue

Should the 1999 codicil's revocation of Stan as residuary taker and substitution of **Florence** be **disregarded** under **Dependent Relative Revocation (DRR)**, reinstating Stan?

Rule

- A will (or part) is revoked by a later instrument; "revival" of an earlier instrument is governed by § 6123, but courts also apply the **common-law DRR** doctrine to carry out **probable intent** when a revocation was **conditional** on a substitute plan or based on a **mistake**.
- **DRR**: If the testator would **not** have revoked the prior disposition **but for** a mistaken assumption or the efficacy/desirability of the new plan, the revocation is **disregarded** and the prior gift is given effect. Courts may use **extrinsic evidence** to determine conditional intent. Key California cases: **Estate of Kaufman**; **Estate of Cuneo**; **Estate of Robertson**; **Estate of Anderson**.

Application

Hal's 1999 codicil cut out **Stan** and substituted **Florence** **because** the fortuneteller predicted Stan would become a criminal. That change rests on a **factual assumption** about Stan's character/outcomes. If the court finds (via extrinsic evidence) Hal **wouldn't** have revoked Stan **but for** that assumption, DRR treats the revocation as **conditional** and **disregards it**, restoring the **1996 residuary in favor of Stan**. This aligns with Kaufman/Cuneo/Robertson/Anderson's use of DRR to avoid giving effect to a revocation tied to a mistaken premise or a substitute plan the testator would not have preferred over the prior disposition.

Conclusion

Apply **DRR**: **Stan** takes the **residue** (including the lapsed Frank gift and, from Q1, the trust corpus). If the court **cannot** find the requisite conditional/mistaken intent, the codicil controls and **Florence** would take instead. **Moderate confidence** given the fact-intensive DRR inquiry.

D. Pulling it together (estate + trust corpus)

1. **Dawn — \$35,000** under Article 2 (incorporation by reference / independent significance).
2. **Frank — \$0**; \$20,000 lapses to the residuary (simultaneous death + failure to survive).
3. **Residuary — Stan**, under **DRR** (preferred outcome on these facts).
4. **Trust corpus** — passes to **Hal's estate** on failure of Wanda's remainder and then with the **residue** (to Stan under DRR).

QUESTION 2

Preliminary matters

(1) Handwritten change "\$10,000" → "\$12,000"

Issue. Did Tom validly increase Frank's Article 1 gift by interlineation?

Rule. A later change to an attested will must either (i) be re-executed with witnesses (Prob. Code § 6110) or (ii) qualify as a holographic codicil—i.e., material provisions and a signature in the testator's handwriting (Prob. Code § 6111). An unsigned interlineation is ineffective.

Application. Tom wrote "\$12,000 ... 'Okay. 2/15/02' " in his hand but there is no signature or re-execution with witnesses.

Conclusion. Article 1 remains \$10,000. (§§ 6110, 6111.)

(2) Character of Beta Corp shares

Issue. How much of the 100 Beta shares could Tom devise?

Rule. Property acquired with a spouse's **earnings during marriage is community property** (Fam. Code § 760). At death, one-half belongs to the surviving spouse and one-half to the

decedent (Prob. Code § 100(a)).

Application. Beta shares were purchased with earnings while married to Wynn; they are CP. Tom could devise only **his one-half** (50 shares).

Conclusion. Article 2 can pass **50 shares** to Frank; Wynn owns the other **50 shares** outright. (Fam. Code § 760; Prob. Code § 100(a).)

(3) Class gift to "Sue's issue" and anti-lapse

Issue. How is the \$80,000 in Article 3 divided where Matt (a class member) predeceased Tom leaving issue?

Rule. A gift to a **class** (e.g., "issue of Sue") is determined at the testator's death. California **anti-lapse** saves a gift to a transferee who is **kindred of the transferor** if that transferee predeceases but leaves **issue** who survive; the issue take by representation unless a contrary intent appears (Prob. Code §§ 21110, 240).

Application. Class members at Tom's death: Norm (alive) and Matt (deceased, kindred) → anti-lapse substitutes Matt's children, Lynn and Kim, for Matt.

Conclusion. Article 3: **Norm \$40,000; Lynn \$20,000; Kim \$20,000.** (§§ 21110, 240.)

(4) Omitted (pretermitted) child—Cole

Issue. Cole was born **after** execution of the 2001 will. Does he take as an omitted child?

Rule. A child born after execution who is omitted takes a share **as if intestate**, unless:

(1) the omission was **intentional** on the will's face;

(2) the decedent **provided for** the child outside the will with intent it be in lieu of a testamentary gift; or

(3) the decedent **devised all or substantially all** of the estate to the child's **other parent** (Prob. Code §§ 21620–21623). Intestate benchmark (if reached): with a surviving spouse and one child, the spouse takes $\frac{1}{2}$ **of decedent's separate property**, the child $\frac{1}{2}$ (Prob. Code § 6401(c)).

Application. No evidence of intent to omit or outside provision. But Tom left the **residue** to Wynn, which comprises the **vast bulk** of the estate (see distribution below). That fits the “**substantially all to the other parent**” exception.

Conclusion. Likely no omitted-child share for Cole under §§ 21620–21623 (exception (3)). If a court found the exception inapplicable, Cole would take an intestate-equivalent share ($\approx \frac{1}{2}$ of **Tom’s separate-property estate**) satisfied **pro rata** from devisees (§ 21623), primarily shrinking Wynn’s residue.

Person-by-person analysis

A. Frank

- **Article 1 (cash).** Takes **\$10,000**; the attempted increase to \$12,000 is ineffective. (Prob. Code §§ 6110, 6111.)
- **Article 2 (stock).** Takes **50 shares** of Beta (Tom’s one-half CP). (Fam. Code § 760; Prob. Code § 100(a).)

Result for Frank: \$10,000 + 50 shares.

B. Norm

- Beneficiary under Article 3 as a living member of “Sue’s issue.”

Result for Norm: \$40,000. (Prob. Code §§ 21110, 240.)

C. Lynn and Kim (Matt’s children; grandnieces)

- **Anti-lapse** substitutes them for their father, Matt, for his class share.

Result for Lynn: \$20,000.

Result for Kim: \$20,000. (Prob. Code §§ 21110, 240.)

D. Wynn (surviving spouse)

1. **Community property:** Owns **50 Beta shares** outright by CP law (not by will). (Prob. Code § 100(a).)
2. **Residue under Article 4:** Takes the **residue** of Tom’s estate.
3. **Omitted-child adjustment:** **No reduction** if the “substantially all to other parent” exception applies (§§ 21620–21623). If not, Wynn’s residue would abate pro rata to fund Cole’s intestate-equivalent share.

Result for Wynn (likely): Residue plus her 50 CP shares.

E. Cole

- **Likely** no omitted-child share because Tom left **substantially all** to Cole's other parent, Wynn (Prob. Code §§ 21620–21623).
- **If** exception not found, Cole would take $\approx \frac{1}{2}$ of **Tom's separate-property estate** (Prob. Code § 6401(c)), carved pro rata from devisees (§ 21623).

Result for Cole (likely): No share.

Putting the numbers together (assuming the omitted-child exception applies)

Estate subject to Tom's testamentary disposition

- Separate-property cash: **\$500,000**.
- Tom's one-half CP in Beta: **50 shares** (the other 50 are Wynn's outright).

Specific/class gifts paid from SP cash:

- Frank (Art. 1): **\$10,000**.
- "Sue's issue" (Art. 3): **\$80,000** → Norm **\$40,000**; Lynn **\$20,000**; Kim **\$20,000**.
- Frank (Art. 2): **50 shares** Beta (from Tom's CP half).

Residue to Wynn (Art. 4):

- Cash residue $\approx$ **\$500,000 – \$90,000 = \$410,000**.
- No stock residue (Tom's CP half already specifically bequeathed).

Final distribution (likely):

- Wynn: **\$410,000 cash (residue) + 50 Beta shares (her CP half)**.
- Frank: **\$10,000 cash + 50 Beta shares**.
- Norm: **\$40,000 cash**.
- Lynn: **\$20,000 cash**.
- Kim: **\$20,000 cash**.
- Cole: **\$0 (unless omitted-child exception fails)**.

QUESTION 3

1) Was Ted's 2000 will valid?

Issue

The will was typewritten and signed by Ted, shown to Jane and Dot together; Jane signed then, Dot **signed** the next day.

Rule

An attested will must be signed by the testator and signed **during the testator's lifetime** by **at least two witnesses**, each of whom, **being present at the same time**, witnesses either the testator's signing or acknowledgment and understands it's the will. Harmless-error can save a defective execution on **clear and convincing** proof of testamentary intent.

Application

Jane and Dot were **together** when Ted acknowledged "this is my signature on my will" and asked them to be witnesses; each then signed (Jane that day; Dot the next day) **during Ted's lifetime**. Section 6110(c)(1) does **not** require the witnesses to sign in each other's presence; it requires that they both be present **at the same time** for the acknowledgment. This satisfies formalities; harmless-error (§ 6110(c)(2)) is a fallback if needed.

Conclusion

The 2000 will is valid under § 6110(c)(1).

2) Effect of Dot being both a witness and a beneficiary

Issue

Dot is a subscribing witness and also receives \$10,000.

Rule

A devise to a subscribing **interested witness** raises a presumption the gift was procured by duress/menace/fraud/undue influence **unless there are two other disinterested witnesses**. If the presumption isn't rebutted, the witness is limited to what they'd take **if the will were not established** (typically **zero** for a non-heir).

Application

There was only **one** disinterested witness (Jane), so § 6112(c)'s presumption applies to Dot's \$10,000. On these facts we have no rebuttal evidence either way.

Conclusion

Dot **either** (i) takes **\$10,000** if the presumption is rebutted, **or** (ii) takes **\$0** if it is not (because Dot would receive nothing in intestacy). The **will itself remains valid**. **Outcome uncertain** pending proof; analyze both in distribution below.

3) 2012 handwritten note about “my wife” (Bertha)

Issue

Is the 2012 handwriting (“I am married to Bertha and all references to ‘my wife’ in my will are to Bertha.”) effective?

Rule

A holographic codicil is valid if the **signature and material provisions** are in the testator’s handwriting. A valid codicil **republishes** the will and is itself a “will.”

Application

The statement is entirely in Ted’s hand, dated, and signed—satisfying § 6111. It clarifies who “my wife” is and republished the will as of **2012**.

Conclusion

The 2012 writing is a **valid holographic codicil** that makes **Bertha** the spouse referenced in the will’s community-property clause. **High confidence**.

4) Omitted-spouse doctrine (Bertha)

Issue

Bertha married Ted in 2011, after the 2000 will. Does she claim as an **omitted spouse**?

Rule

An omitted spouse takes under § 21610 **only if** the spouse married the decedent **after the execution of all** the decedent’s testamentary instruments and the spouse wasn’t provided for, subject to § 21611 exceptions.

Application

Ted executed a **post-marriage codicil in 2012** expressly tying “my wife” to Bertha and leaving “my share of all my community property to my wife.” Because there **is** a testamentary instrument executed **after** the marriage that provides for Bertha, she is **not** an omitted spouse.

Conclusion

No omitted-spouse share for Bertha. She takes under the will/codicil.

5) Specific gifts

A. “My stepson” — Sam

Issue/Rule.

A description (“my stepson”) can be identified by **extrinsic evidence**; the transferor’s expressed intent controls (§ 21102; § 6111.5). Stepchildren are recognized terms of relationship (§ 21115).

Application

At execution, the only stepson was **Sam** (Wilma’s child). The later death of Wilma doesn’t change identity; the phrase functions as a description.

Conclusion.

Sam takes \$10,000.

B. Dot — \$10,000

As above, Dot’s gift is subject to § 6112(c). She takes **\$10,000** if the presumption is rebutted; otherwise **\$0**.

6) Community-property clause to “my wife” (now Bertha)

Rule

Property acquired during marriage is **community property** (Fam. Code § 760). At death, **one-half** belongs to the surviving spouse and **one-half** to the decedent; the decedent may devise **their half**.

Application

Ted and Bertha owned a \$600,000 home as CP. Bertha already owns her **\$300,000** half by law. Ted's will (as clarified by the 2012 codicil) leaves **his CP half (\$300,000 value)** to **Bertha**.

Conclusion

Bertha gets **Ted's CP half** of the home, ending with **100%** of the home.

7) Residue ("consisting of my separate property") to Cindy

Rule

Where a will gives the **residue of separate property** to a named beneficiary, general pecuniary legacies are paid first; the balance of **separate property** residue then passes per the residuary clause. (§ 21102 for intent.)

Application

Ted's separate property at death: **\$300,000** bank account. General gifts:

- Sam \$10,000 (cash)
- Dot \$10,000 (cash) or \$0 if § 6112(c) presumption not rebutted

The **residue of separate property** then goes to Cindy.

Conclusion

Cindy takes the **SP residue** after cash gifts.

8) Numbers (two scenarios for Dot)

Estate composition:

- **Community property home:** \$600,000 total → Bertha owns \$300,000 by law; Ted's half **\$300,000** passes by will to Bertha.
- **Separate property bank account: \$300,000.**

If Dot rebuts § 6112(c) presumption

- **Sam:** \$10,000 (SP cash).
- **Dot:** \$10,000 (SP cash).

- **Bertha:** Ted's **\$300,000 CP half** (plus her own \$300,000 CP half by operation of law).
- **Cindy:** SP residue **\$280,000**.

If Dot does not rebut

(§ 6112(d) limits gift to intestate share = \$0 for a non-heir)

- **Sam:** \$10,000 (SP cash).
- **Dot:** \$0.
- **Bertha:** Ted's **\$300,000 CP half** (plus her own \$300,000 CP half).
- **Cindy:** SP residue **\$290,000**.

Bottom lines (rights)

- **Bertha:** Takes **Ted's CP half of the home** ($\approx$ \$300,000 value) under the will/codicil; **no omitted-spouse share**.
- **Sam:** **\$10,000** under "my stepson," identified by extrinsic evidence.
- **Dot:** **\$10,000** if she rebuts § 6112(c) presumption; **\$0** if not.
- **Cindy:** **All SP residue** after cash gifts ($\approx$ **\$280k or \$290k** depending on Dot).

1)

1. Trust Property

Who Takes From the Trust

The Trust set up by Hal in 1996 was funded with \$200,000 of Hal's own separate property money. The trustee was directed to pay the income to Hal for the duration of Hal's life and the remainder to Wanda. The facts do not indicate whether any conditions precedent apply to Wanda's taking of the remainder of the Trust, therefore her remainder interest would be considered vested. Since Wanda's remainder interest is vested, she would have received the income from the Trust.

However, Wanda predeceased Hal, since Wanda died in 1998 while giving birth. Since the vested remainder beneficiary died before the creator of the Trust, her remainder interest would pass through her own estate. Here, Wanda's estate was dispensed through her own validly executed will that is solely in favor of her son, Stan.

Omitted Child Analysis

A child is considered to be an omitted child for probate analysis when the child was born after the creation of a will, when the will makes no mention of the child, and if no exception applies. Here, Wanda gave birth to her second child, Dawn, who was not present when Wanda created her will in 1998. This child was not mentioned in the will, and there are no exceptions present that would interfere with Dawn qualifying as an omitted child. Therefore, Dawn would be an omitted child and would be entitled to a share of Wanda's estate as if Wanda died intestate. In regards to Wanda's vested remainder interest in Hal's Trust, that remainder interest would have been passed on to Wanda, but because Wanda died before Hal, her vested remainder interest passed to the beneficiary of her own estate. Wanda's estate would be divided between her two children, Stan and Dawn, since her will made Stan her sole beneficiary and Dawn would take as an omitted child.

Since Wanda's estate is being distributed as if she dies intestate due to the existence of an omitted child, her remainder interest in Hal's Trust would be divided evenly between her children Stan and Dawn.

2. Hal's Estate

Hal's Will

Article 1

Article 1 of Hal's Will dictates that \$20,000 would be given to his friend Frank. This Will makes no mention of a survival clause, therefore the requirement for a beneficiary to take under a non-statutory will would be proof that the beneficiary survived the testator by clear and convincing evidence. There is no minimum survival time required. Here, the facts state that both Hal and Frank died simultaneously in a plane explosion. Since Hal and Frank died at the same time, Frank's estate would be unable to prove that Frank died after Hal.

The gift in Article 1 cannot be saved because the facts do not indicate the existence of an alternate taker for Article 1. Anti-lapse would not apply because Frank is not Hal or Wanda's kin, so even if Frank did have children, they would not be able to receive the Article 1 benefit. Since the Article 1 gift would fail, the \$20,000 allocation would become a part of the residual.

Article 2

Article 2 states that \$35,000 would be given to "the person on a sheet of pink paper dated December 31, 1989 and located in [Hal's] top desk drawer". Hal's Will was executed with this language in 1996, so this additional piece of paper would have existed at the time the Will was created. This additional page would likely have testamentary authority as it was incorporated by reference into the original Will. To incorporate by reference, the Will must show the testator's intent to incorporate the document, must describe the document enough to properly identify it, and the document must exist when the Will was completed. Here, the pink paper was dated 1989 and was referenced directly by Hal's Will. Hal's intent to incorporate is expressed in Article 2 of his Will and is sufficiently identified as a pink piece of paper with a specific date, located in a specific place, his desk drawer.

This paper incorporated into Hal's Will by reference dictates that his "next-born child, if any" should receive the \$35,000 in Article 2. This language constitutes an act of independent significance, as it references an event that is independent of the Will itself. When Hal executed his Will in 1996, he had a single child, his son Stan. However, by the time Hal died, he had a second child in 1998, his daughter Dawn. Hal's "next-born child" would be Dawn because Dawn was his second child as of the writing of his Will. Therefore, Dawn would receive the \$35,000 devised in Article 2 of Hal's Will.

Article 3

Hal's Will leaves the residue of his estate to his son, Stan, as of the writing in 1996. However, in 1998, Hal executed a codicil to his 1996 Will, changing the residuary beneficiary from Stan to a fortune teller named Florence. The facts do not specify whether this codicil was handwritten or typed, nor do the facts indicate if Hal signed the codicil. Here, the Court would likely look to the testator's intent when determining the validity of the 1998 codicil. Assuming that the material provision and testator's signature were done in Hal's own handwriting, the Court would likely deem the codicil to be valid, thereby granting Florence the benefit of the residuary of Hal's estate.

Stan could try to argue that he qualifies as an omitted child for purposes of probate analysis, but this argument is weak. Stan was born prior to Hal's 1996 Will and was alive for Hal's 1998 codicil. The original Will did mention Stan, but Stan was removed from Article 3 in the subsequent codicil. This is an indicator of the testator's intent to divert residuary benefits from Stan to Florence. Stan could also argue that Florence was made beneficiary in Hal's codicil through undue influence. But this argument is also unlikely to succeed as Florence was not a witness to Hal's Will, and a witness is not needed for the execution of a codicil, only the testator's intended modifications and signature.

The residuary of Hal's estate would pass to Florence, the fortune teller, because of the validity of Hal's 1998 codicil which modified Article 3 of his original Will.

2)

Cole

Omitted Child

A child is considered to be an omitted child for probate analysis when the child was born after the creation of a will, when the will makes no mention of the child, and if no exception applies. Here, Tom's son Cole was born in 2003, after Tom executed his Will in 2001. Tom's Will makes no reference to Cole, therefore Cole would qualify as an omitted child. An omitted child receives a share of the estate as if the decedent had died intestate. Tom's estate consists of \$500,000 in separate property and \$100.00 in value of 100 shares of Beta Corp stock which constitute community property. After distributing 50% of the stock shares to Tom's wife Wynn as her community property interest, Tom's remaining estate is \$500,000 cash and 50 shares of \$1 stock. If Tom had died intestate, both his wife and his 1 child would receive 50% of his separate property estate each. Therefore, Cole would receive \$250,000 cash and 25 shares of Beta Corp stock.

Wynn

California Community Property

In California, any property acquired over the course of a marriage with marital funds or earnings is presumed to be community property. Each spouse has a 50% interest in all community property with a right of survivorship. Here, Tom's estate at the time of his death consisted of \$500,000 cash which is separate property and 100 shares of Beta Corp stock which was purchased by Tom using his earnings while married to Wynn. Because the stock was purchased with money Tom earned during his marriage, those shares of stock constitute community property. Tom and Wynn each had 50% interest in those shares.

Tom's Will references his wife Wynn in Article 4, leaving the residue of his estate to Wynn. Wynn will receive whatever is left of the estate after the other takers receive their benefits. Wynn will receive 50 shares of the Beta Corp stock as that is her community property interest in the stock shares. Tom's estate also included \$500,000 separate property cash. \$250,000 would go to Tom's son Cole as an omitted child, \$40,000 would go to Tom's sister's child Norm, \$12,000 would go to Tom's friend Frank, and Tom's grandnieces Lynn and Kim would receive \$20,000 apiece. After the above pecuniary distributions, the residual of Tom's estate would be \$158,000. Therefore, Wynn would receive 50

shares of Beta Corp stock that constitutes community property and the residual of Tom's separate property money after all other takers receive their allocations, which would be in the amount of \$158,000.

Norm

Norm one of the sons of Tom's sister Sue. Norm and Frank were brothers and are referenced in Tom's Will in Article 3: "I leave \$80,000 to my sister Sue's issue." Here, Sue had two children so the \$80,000 would be divided evenly between them. Norm and Matt would receive \$40,000 each from Tom's separate property \$500,000 cash. The \$80,000 gift was contingent upon the condition that Sue had children. Since Sue had issue, the gift survives and Norm will receive his \$40,000 share.

Frank

Frank is the friend of the testator, Tom. Frank is mentioned in 2 separate articles in Frank's 2001 Will, Articles 1 and 2.

Article 1 states that "I [Tom] leave \$10,000 to my friend Frank". The \$10,000 figure in Article 1 was subsequently crossed out and \$12,000 was written above it. This crossing out and new figure was done in Tom's verified handwriting. Because the change was in the testator's handwriting, this would qualify as an interlineation and be seen as a valid adjustment to the gift to Frank. The change was in Tom's handwriting with the word "okay" and the date of the change, 2/15/02, both illustrating the testator's intent to adjust the Article 1 gift to Frank from \$10,000 to \$12,000. Therefore, Frank would receive the adjusted \$12,000 as indicated in Article 1 from Tom's \$500,000 separate property cash.

Article 2 states that "I [Tom] leave my shares in Beta Corp stock to my friend Frank." While there are 100 shares of this stock in Tom's estate, these shares were purchased with community property funds and therefore Tom's wife Wynn would be entitled to Tom's of those shares before Frank receives the distribution. In addition, since Tom's son Cole was omitted from Tom's will, Cole would receive a portion of Tom's estate as if Tom was intestate, thereby leaving Cole with 25 of the remaining 50 shares in Tom's community property interest. After Wynn and Cole receive their shares, the remaining 25 shares of stock would be given to Frank under Article 2 of Tom's Will.

Lynn and Kim

Lynn and Kim are Tom's grandnieces, the daughters of Tom's sister's son Matt. As stated above, Article 3 of Tom's Will leaves "\$80,000 to my sister Sue's issue." Sue's issue are Norm and Matt. Norm

and Matt are both entitled to \$40,000 each of Tom's separate property money. However, Matt died after Tom's Will was executed. Since Matt had issue, Lynn and Kim, they would be entitled to receive Matt's share of the \$80,000 that Tom left to Sue's children. Therefore, both Lynn and Kim would receive equal shares of the \$40,000 that Matt would have received had Matt been alive when Tom died. Lynn and Kim would each get \$20,000 from Tom's separate property cash.

3)

Bertha

Bertha was the testator Ted's wife when Ted died. Over the course of their marriage, Ted and Bertha purchased a home valued at \$600,000. In California, any property acquired over the course of a marriage with marital funds or earnings is presumed to be community property. Each spouse has a 50% interest in all community property with a right of survivorship.

When Ted died, Bertha automatically received her 50% interest in the home for her community property interest, valued at \$300,000. Ted's Will states that he will "leave [his] share of all community property to my wife." While Ted's Will does not provide the name of his wife in his Will, at the time of Ted's death, Bertha was his wife. Therefore, Bertha would then receive the other half of the community property interest in the \$600,000 home, leaving Bertha with ownership of the entire community property home.

The above distribution is solidified by Ted's inclusion of a handwritten codicil on his Will in 2012. He wrote "I am married to Bertha and all references to 'my wife' in my will are to Bertha." This notation was dated and signed in Ted's own handwriting, thereby validating the additional language as a proper codicil to the Will. This addition clears any doubts as to whether Ted was referring to his first wife Wilma or his second wife Bertha when distributing his community property interests through his Will. Therefore, Bertha would receive Ted's 50% community property interest in the \$600,000 home, thus leaving her with full ownership of the home.

Sam

Sam is the child of Ted's first wife Wilma that she had with her previous husband. Ted's Will states that "I [Hal] give \$10,000 to my stepson." At the time of Ted's death, Ted did not have any other stepsons, under the doctrine of acts/events of independent significance, Sam would be considered Ted's stepson for the purpose of taking under Ted's Will. The identity of Ted's stepson was determined at Ted's death, and since the facts do not indicate that any other people are claiming to be Ted's stepson, the Court would recognize the Will's language to be referencing Sam. Therefore, Sam would receive \$10,000 from Ted's separate property cash.

Dot

Dot is the friend of the testator Ted. Ted's Will states that "I [Ted] give \$10,000 to my friend, Dot." On its face, the Will dictates that Dot receive \$10,000 in cash from Hal's separate property funds. However, while Dot is a beneficiary to Ted's Will, Dot also was a witness for the Will. Since Dot is both a beneficiary and a witness, and there are only two witnesses, the Court would maintain a rebuttable presumption that Dot's benefit in the Will was obtained through fraud, coercion, or undue influence unless proven otherwise. Here, the only witnesses to Ted's Will were the uninterested executor Jane and the interested friend Dot. In order for Dot to overcome this presumption and receive the \$10,000 gift, she would need to prove with clear and convincing evidence that she did not obtain the benefit in the Will through any illicit means. If she is unable to prove the legitimacy of the gift, the \$10,000 would be distributed via intestacy.

It could be argued that since Dot did not sign as a witness alongside Jane at the same time, that Ted's Will may be invalid for lacking two witnesses. However, the witnesses need not sign the Will at the same time, nor are they required to physically see the Testator sign the Will. So long as the Testator represented to the witnesses that he signed the Will and requested that they sign as Witnesses, any attenuation between witness signatures is permissible.

Ultimately, whether Dot receives the \$10,000 cash from Ted's separate property funds depends on her ability to prove that she did not receive the benefit by way of undue influence, duress, or fraud.

Cindy

Cindy was the daughter of Ted and his first wife Wilma. Ted's Will states that "I [Ted] leave the residue consisting of my separate property to my daughter, Cindy." Ted's estate consisted of his \$300,000 community property interest in the house he purchased with his second wife Bertha, and \$300,000 in separate property cash. The \$300,000 community property interest in the house was bequeathed to his second wife Bertha, as described above. \$10,000 of the separate property cash would go to Ted's stepson Sam. And whether \$10,000 of separate property cash is given to Dot is contingent upon her proving she did not have undue influence over Ted at the time of his writing of the Will. The remaining assets that constitute the residuary would be either \$280,000 or \$290,000. Whichever figure remains would be given to Cindy as the residue of Ted's estate.

END OF EXAM

Essay 1

80

A strong and focused answer. You correctly route the failed trust remainder through Hal's estate and accurately analyze lapse, incorporation by reference, and DRR. Minor compression of reasoning prevents a higher score.

Essay 2

85

An excellent essay. You correctly reject the ineffective interlineation, apply community property limits, and handle class gifts and omitted-child analysis with precision and confidence.

Essay 3

80

You provide a careful and accurate analysis of execution, interested witnesses, and the holographic codicil. Slight underdevelopment of the interested-witness forfeiture mechanics is the only weakness.