WILLS AND TRUSTS
FINAL EXAMINATION
FALL 2024
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.

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Exam Question 1

Hari and Wanda were married to each other for 20 years, being domiciled in State X (a non-community property state) for the first 15 years, and thereafter, until Hari's death, being domiciled in California for 5 years.

At Hari's death in 2020, two documents were submitted for probate:

1. A formal will signed by Hari and Witness One on June 1, 2018 and signed by Witness Two on June 3, 2018. Both witnesses were disinterested. This document left all of Hari's community property to Wanda, but did not mention any separate or quasi-community property.

2. An undated pre-printed will form that had printing at the top, declaring that it was intended to be a will. On the form Hari had written, in his own handwriting, "All of my separate property and 25% of my community property goes to my son, Samir." Hari signed the will form, but no witnesses signed it, and there was no date on the form.

Hari had full mental capacity throughout his life.

At his death, Hari's property consisted of:

A. Separate property worth $100,000;

B. Community property – Hari's half being worth $50,000;

C. California land worth $100,000, which Hari had bought with his earnings while he and Wanda were still living in State X. In 2017, without Wanda's written consent, Hari gave this land to himself and his daughter, Deepa, as joint tenants on her birthday.

What rights, if any, do Wanda, Samir and Deepa have in Hari's estate? Discuss.

Answer according to California law.

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Exam Question 2

Wendy, a widow, owned a house in the city and a ranch in the country. She created a valid inter vivos trust, naming herself and her daughter, Dot, as co-trustees, and providing that she had the power to revoke or amend the trust at any time in writing, by a document signed by her and delivered to her and Dot as co-trustees.

At Wendy's death, Dot was to become the sole trustee, and was directed to hold the assets in trust for the benefit of Wendy's sister, Sis, until Sis's death. At Sis's death, the trust was to terminate and all assets be distributed to Dot.

The sole asset in the trust was Wendy's ranch. Years later, Wendy prepared a valid will in which she stated, "I hereby revoke the trust I previously established, and leave my house and my ranch to my son, Sam, as trustee, to be held in trust for the benefit of my brother, Bob. Five years after my death the trust shall terminate, and all assets then remaining in the trust shall be distributed outright to Sam." Wendy died.

Following her death, both Dot and Sam were surprised to find her will. Dot has refused to serve as trustee under the inter vivos trust, and claims that, as a result, the trust fails and that the ranch should immediately be given to her.

Sam has agreed to serve as trustee under the testamentary trust, and claims that the ranch is part of the trust. Sam then sells the house, at fair market price, to himself in his individual capacity, and invests all the assets of the trust into his new business, Sam's Solar. Bob objects to sale of the house and to Sam's investment.

1. What interests, if any, do Dot, Sam, and/or Bob have in the house and the ranch? Discuss.

2. What duties, if any, has Sam violated as trustee of the testamentary trust, and what remedies, if any, does Bob have against him? Discuss.

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Exam Question 3

In 2004, Mae, a widow, executed a valid will, intentionally leaving out her daughter, Dot, and giving 50 percent of her estate to her son, Sam, and 50 percent to Church (a charitable organization).

In 2008, after a serious disagreement with Sam, Mae announced that she was revoking her will, and then tore it in half in the presence of both Sam and Dot.

In 2010, after repeated requests by Sam, Mae handwrote and signed a document declaring that she was thereby reviving her will. She attached all of the torn pages of the will to the document. At the time she signed the document, she was entirely dependent on Sam for food and shelter and companionship, and had not been allowed by Sam to see or speak to anyone for months. By this time, Church had gone out of existence.

In 2011, Mae died. Her sole survivors are Dot and Sam.

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

Answer according to California law

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Q1

I. Validity of the Wills

Issue: Are the two submitted documents valid wills under California law?

Rule: In California, a formal will must be in writing, signed by the testator, and witnessed by at least two persons present at the same time who understand they are signing the testator's will (Cal. Prob. Code § 6110). A holographic will is valid if the signature and material provisions are in the handwriting of the testator, even if not witnessed (Cal. Prob. Code § 6111).

Analysis:

1. *Formal Will (June 2018): This will meets all requirements. It's in writing, signed by Hari, and witnessed by two disinterested witnesses. Although the witnesses signed on different days, they were both present at the same time when Hari signed, which satisfies the legal requirement.*

2. *Undated Will Form: This document qualifies as a valid holographic will. The material provisions and Hari's signature are in his handwriting, meeting the requirements for a holographic will.*

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

II. Revocation and Integration of Wills

Issue: Does the later holographic will revoke the earlier formal will?

Rule: A will may be revoked by a subsequent will that revokes the prior will expressly or by inconsistency (Cal. Prob. Code § 6120). If the subsequent will does not expressly revoke the prior will, the prior will is revoked only to the extent it is inconsistent with the subsequent will (Cal. Prob. Code § 6120(b)).

Analysis: The holographic will does not expressly revoke the formal will. However, it is inconsistent regarding the distribution of community property and separate property. The formal will leaves all community property to Wanda, while the holographic will leaves 25% of community property to Samir. The formal will is silent on separate property, while the holographic will leaves all separate property to Samir.

Conclusion: The holographic will partially revokes the formal will by inconsistency. The provisions of the holographic will regarding community and separate property will control.

III. Distribution of Property

A. Separate Property

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

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

Analysis: The holographic will explicitly states that "All of my separate property... goes to my son, Samir."

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

B. Community Property

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

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

Analysis: The holographic will leaves 25% of Hari's community property to Samir. This provision is valid for Hari's half of the community property. Wanda retains her half of the community property by operation of law.

Conclusion: Of Hari's $50,000 share of community property, Samir will receive 25% ($12,500), and Wanda will receive 75% ($37,500). Wanda also retains her own $50,000 share of the community property.

C. California Land (Quasi-Community Property)

Issue: What is the status of the California land, and how will it be distributed?

Rule: Property acquired during marriage while domiciled in a non-community property state is quasi-community property in California (Cal. Fam. Code § 125). A gift of quasi-community property requires written consent of the other spouse (Cal. Fam. Code § 852). Joint tenancy property passes to the surviving joint tenant by right of survivorship, outside of probate.

Analysis: The California land, worth $100,000, is quasi-community property because it was acquired with Hari's earnings during marriage while domiciled in State X. Hari's attempt to create a joint tenancy with Deepa in 2017 without Wanda's written consent is voidable. If Wanda challenges this transfer, it will be set aside, and the property will be treated as part of Hari's estate.

Conclusion: If Wanda challenges the joint tenancy, the land will be treated as quasi-community property. In this case, Wanda would be entitled to her half ($50,000), and the remaining $50,000 would be distributed according to the holographic will (to Samir). If Wanda does not challenge the transfer, Deepa would receive the entire property by right of survivorship.

Final Summary:

1. *Wanda's rights:*

    - *Her $50,000 share of community property*
    - *$37,500 from Hari's share of community property*
    - *Potential $50,000 from the California land if she challenges the joint tenancy*

2. *Samir's rights:*

    - *$100,000 in separate property*
    - *$12,500 from Hari's share of community property*
    - *Potential $50,000 from the California land if Wanda challenges the joint tenancy*

3. *Deepa's rights:*

    - *The entire $100,000 California land if Wanda does not challenge the joint tenancy*
    - *No rights if Wanda successfully challenges the joint tenancy*

This revised answer takes into account the correct interpretation of the California Probate Code regarding will execution and provides a comprehensive analysis of the distribution of Hari's estate based on the valid wills and applicable California law.

Model Answer

1. *Interests in the house and the ranch*

Issue 1: Is Wendy's revocation of the inter vivos trust valid?

Rule: California Probate Code § 15401(a) states that when a trust instrument specifies a method of revocation, that method must be followed. Revocation by will is only permitted if the trust instrument does not specify a method of revocation (§ 15401(a)(3)(A)).

Analysis: Wendy's inter vivos trust specified a method of revocation: "in writing, by a document signed by her and delivered to her and Dot as co-trustees." Wendy's attempt to revoke the trust through her will does not comply with this method, as there's no evidence that the revocation was delivered to Dot as co-trustee.

Conclusion: Wendy's attempt to revoke the inter vivos trust through her will is invalid. The inter vivos trust remains in effect.

Issue 2: What are the interests in the house and ranch?

Rule: Property transferred to a valid trust remains trust property. Property not transferred to a trust passes according to a valid will upon the testator's death.

Analysis: The ranch was the sole asset of the inter vivos trust and remains in that trust. The house was never part of the inter vivos trust and passes according to Wendy's will.

Conclusion:

- *The ranch remains in the inter vivos trust, benefiting Sis for her lifetime, then passing to Dot.*
- *The house passes to the testamentary trust created by Wendy's will, benefiting Bob for five years, then passing to Sam.*
- *Sis has a life estate in the ranch through the inter vivos trust.*
- *Dot has a remainder interest in the ranch after Sis's death.*
- *Bob has a beneficial interest in the house for five years (a type of shifting executory interest).*
- *Sam has a remainder interest in the house after five years, as well as his role as trustee of the testamentary trust.*

Issue 3: Does Dot's refusal to serve as trustee cause the inter vivos trust to fail?

Rule: A trust does not fail for lack of a trustee. If a named trustee declines to serve, a court can appoint a successor trustee.

Analysis: Dot's refusal to serve does not cause the trust to fail. A court can appoint a successor trustee to manage the trust.

Conclusion: The inter vivos trust remains valid despite Dot's refusal to serve.

2. *Sam's duties as trustee and Bob's remedies*

Issue: What duties has Sam violated as trustee of the testamentary trust, and what remedies does Bob have?

Rule: A trustee owes fiduciary duties including loyalty, prudent investment, earmarking trust property, separating trust property, and diversification. Beneficiaries can seek remedies including voiding self-dealing transactions, damages, trustee removal, and equitable remedies.

Analysis:

1. *Duty of loyalty: Sam violated this by selling the house to himself (self-dealing).*
2. *Duty of prudent investment: Sam violated this by investing all assets in his new business.*
3. *Duty to earmark and separate: Sam violated these by commingling trust assets with his business.*
4. *Duty to diversify: Sam violated this by concentrating all investments in one venture.*

Remedies for Bob:

1. *Void the house sale and return it to the trust.*
2. *Seek damages for losses from imprudent investments.*
3. *Petition for Sam's removal as trustee.*
4. *Compel diversification of trust investments.*
5. *Seek a constructive trust on Sam's Solar to recover trust assets.*
6. *Request an equitable lien on Sam's Solar to secure recovery of trust funds.*

Conclusion: Sam has breached multiple fiduciary duties in managing the testamentary trust holding the house. Bob has various legal and equitable remedies available to protect his interests and recover trust assets related to the house. However, these remedies only apply to the testamentary trust (house), not the inter vivos trust (ranch), as Sam is not the trustee of the inter vivos trust.

1)

Hari formed a valid will in 2018.

For a will to be valid, the settlor must have testamentary capacity, sign a document intended to be a will, appointing beneficiaries and witnessed by two disinterested beneficiaries.

Here, the formal will signed by Hari was witnessed by two disinterested witnesses. One witness signed on June 1, 2018, and the other on June 3, 2018. Wills need not be witnessed at the same time as signing-- the witness need only appreciate that the document is a will, intended to be a will, and attest that the signature on the will is that of the settlor.

Hari, in his will, bequeathed all community property to his spouse, Wanda, meaning, the will has a beneficiary.

Both witnesses were disinterested, meaning, they did not have any beneficial interest in the will.

Hari had full mental capacity through life.

Because all elements of valid will formation are present, the will of 2018 is valid.

Hari's statutory will became a holographic will; however, because the holographic will is not dated, the holographic will does not stand as it relates to community property, but it does stand as to separate property.

For a holographic will to be valid, the material terms of the document must be in the settlors handwriting, and the document must be signed by the settlor, declaring a beneficiary.

Statutory wills follow the same requirements as testamentary wills. If a statutory will does not meet the requirements, it may be considered a holographic will.

Here, an undated pre-printed will form was signed by Hari indicating a transfer of all separate property and 25% community property goes to Samir. The will appears to be a statutory will, meaning, a will printed from where Hari included handwritten material terms. However, because this statutory will was not witnessed by two disinterested witnesses, the will may be viewed as a holographic will.

Although the document meets the requirements for a holographic will (both signed by the settlor and material terms in the settlors writing), the holographic will does not contain a date. Dating a holographic will is not required; however, because there is a competing will (2018 will), the Court may be inclined to use the holographic will as extrinsic evidence at best.

When there exists an undated holographic will in unison with a testamentary will, in most cases, the holographic will fails.

Furthermore, because the holographic will is undated, and there are insufficient facts to support a codicil, the holographic will would likely only be applicable in part, specifically to the separate property.

The transfer of the California property in 2017 is valid because it was purchased using presumably separate property funds.

Properties held in joint tenancy have an implied right of survivorship, meaning, the survivor of the deed holders takes the entire property in fee simple absolute.

Here, Hari transferred a property to himself and his daughter, Deepa, as joint tenants for her birthday. It is undetermined when the property was acquired, but the transfer occurred only two years after Hari and Wanda moved to California. Assuming the property was purchased prior to the settlors domicile being changed, the purchase of the property was used through Hari's earnings. In State X, Hari's earnings are not community property, meaning, the property, when purchased, was likely purchased as Hari's separate property.

There are no facts to indicate how property was held prior to transfer, and there are no facts that show that Wanda made any contributions to the property. The California property is assumed to be Hari's separate property, and Hari may do what he wants with his separate property, including transferring it to himself and his daughter as Joint Tenants.

Furthermore, joint tenancy (and other transfers at death) are considered non--probate transfers. The right of survivorship kicks in at the time of death, not after, meaning Deepa is entitled to the entirety of the California property upon the death of Hari.

If Hari was smart, he would do a transfer on death deed instead to give Deepa substantially less tax repercussions; however, as it stands currently, Wanda does not have a claim in the separate property of Hari.

Wonda is entitled to all of the community property through the properly executed will.

Because the will was validly executed, Wanda is entitled to all of the community property through the 2018 Will of Hari. The will clearly states that all community property goes to Wanda.

Samir, an heir of Hari is entitled all of Hari's separate property through the holographic will.

Because a holographic will exists in conjunction with the 2018 will, the terms of the holographic will relating to community property are not valid; however, because the 2018 will is silent as to distribution of separate property, and the holographic will states how separate property is to be distributed, Samir is entitled to all of Hari's separate property, except for the California house, which is a non-probate transfer.

Deepa is entitled to the California property through right of survivorship.

Because the California property was transferred during Hari's lifetime as Hari's separate property, and joint tenancy is a non-probate transfer that occurs at the time of death, Deepa is entitled to the California property.

END OF EXAM

2)

Is this a valid trust?

In order to have a valid trust, (1) there must be a grantor/settlor, (2) the trust must be funded by either real property or some finance, the settlor/grantor in his full mental capacity uses the trust as an instrument to hold the property until it can be (3) conveyed to a named beneficiary, (4) a trustee can be named, but is not necessary because the court can appoint one.

Here, Wendy created a valid inter vivos trust meaning within the life, naming herself and daughter as co-trustees. The trust is valid, because there is nothing in the fact pattern that states otherwise. The trust is funded by Wendy's ranch.

Can a will revoke a trust?

No, a will may not revoke a trust. In order to revoke a trust, the trust has instructed in the instrument how to revoke it. In order to revoke it the settlor/grantor must abide by the instructions written in the trust that state how to revoke it, if those instructions are met, then the trust is revoked. But by merely stating in a will that you revoke a trust is not valid.

Here, Wendy prepared a valid will in which she stated, "i hereby revoke the trust i previously established, and leave my house and my ranch to my son, Sam as trustee, to be held in trust for the benefit of my brother, Bob." Five years after my death the trust shall terminate , and all assets then remaining in the trust shall be distributed outright to Sam."

This is invalid, if Wendy wanted to revoke her previous trust, she needed to go through the instructions outlined in the trust to do so. A valid will cannot revoke a trust.

If no Trustee does trust fail?

As stated above, the trustee is the least significant part of a trust. If a trustee is not named or if one decides to resign, if a successor trustee is named then that one can take over, if one is not named then the court can appoint one.

Here, Dot refused to serve as trustee under the inter vivos trust and claims that as a result the trust fails and the ranch immediately goes to her. This is incorrect, if she refuses to be trustee then a successor trustee can step in, since there is no successor trustee named, then the court can appoint one. The appointed trustee would hold the assets in the benefit of Sis, once Sis passes, then Dot would be distributed all the assets.

What interests does Dot have?

If Sis passes away, Dot has a right to all assets in the original inter vivos trust. But in the mean time she is just the trustee and can only hold the assets for Sis. The sole asset was Wendy's ranch, so Dot when Sis passes will own the ranch. If the home is not named it will go to probate and be distributed in equal shares to each sibling, meaning equal shares of the home to Sis, Dot and Sam.

What interests does Sam have?

If a valid will could revoke a trust, then Sam would have a right to all assets in the testamentary trust five years after his mother passes away. Since a valid will cannot revoke a valid trust, then Sam does not have any interests as the trust assets are to go to Sis and after she passes, to Dot.

What interests does Bob have?

If a valid will could revoke a trust, then Bob would have a right to the ranch and the house for the first five years after his sister's death. Since a valid will cannot revoke a valid trust, then Bob does not have any interests as the trust assets are to go to Sis and after she passes, to Dot.

Can Bob sue Sam for breach of Fiduciary Duty?

Trustees Duties

A trustees duties are to hold assets in a trust until they can be disbursed to the beneficiaries. The trustee has a duty of loyalty and must act in good faith. The trustee must always act in the best interest of the beneficiaries and must not breach his duty by self dealing. The trustee does not have the power to sell assets of the trust, unless given permission by all named beneficiaries.

Duties violated by Sam

Here, Sam as trustee is breaching his duty of loyalty and is self dealing. He sold the house at fair market value to himself and invested all of the assets of the trust into his new business. This is fair dealing at its finest. Sam is not acting in the best interest of the beneficiary Bob, he is self dealing and utilizing the trust assets to benefit himself and exhausting the assets of the beneficiaries.

Sam has breached his trustee duties.

Beneficiary Rights

A beneficiary has a right to accounting, a right to know if trust assets are being sold and a right to remove a trustee if he or she is breaching their fiduciary duty to the beneficiary.

What Remedies does Bob have?

Here, Sam is self dealing and exhausting the assets of the trust for his benefit. Bob has a right to sue him for breach of fiduciary duty, request to have him removed as trustee and request reversal of the sale of the home and request any trust assets be paid back to the trust.

As a named beneficiary, Bob can sue Sam and will be able to have him removed as trustee and request reimbursement of all trust assets that have been spent.

Overall, everything with Sam and Bob is not valid because the original trust was not revoked and the testamentary trust does not exist because a valid will, even though valid cannot revoke a trust.

END OF EXAM

3)

Mae intentionally omitted Dot from the 2004 will.

A settlor may disinherit or otherwise omit a child or beneficiary from their testamentary documents if the omitted child is expressly omitted in the document. If the child is not expressly omitted in the estate planning document, the omitted child may petition the probate court and be included as a beneficiary through intestate succession.

Here, the Will of Mae, executed in 2004, was validly executed, such that Dot was intentionally left out, giving 50% of her estate to her son, Sam, and 50% to the Church, a charitable organization.

It is unclear if in the will, the settlor expressly disinherited Dot. If the 2004 will indicates that Dot is an heir, but there is expressly no inheritance for Dot, then Dot is disinherited. However, if Dot is not included in the estate plan in any capacity, Dot is considered an omitted child, and may take from the estate through intestate succession.

The charitable gift may be transferred to a different like-minded charity

When an estate plan leaves a gift to a charitable organization, the gift may or may not be completed based on the circumstances. For some organizations, like the Church, the lack of existence of a church in that area may not void the gift; however, if a charitable gift expressly states it wants to give to an exact charity, and that charity is no longer in existence, the gift may lapse back to the estate.

Assuming the will was not destroyed

Here, the validly executed will of Mae, dated 2004, left a charitable donation to the Church, a charitable organization. Unfortunately, the charitable organization is no longer

located in that town. However, because the Church is a widespread organization, the personal representative (or executor) may still donate to the church. Had the will said "the local church" or something along those lines, and the church was no longer in existence, the charitable gift would lapse back to the estate.

Will revoked

Unfortunately for the charitable organization, the will was later destroyed in 2008. Because the will cannot be revived as a matter of law, the church will get nothing.

The will was revoked.

A will may be revoked in writing, or by an act of destruction of the will. Destruction of the will can be (not a complete list) a large line running through it, a stamp that says void, burning, or tearing of the document.

Here, Mae, the settlor, announced she was revoking the will in the presence of Sam and Dot, then proceeded to tear the will in half. Normally, the statement alone would not have constituted a proper revocation; however, the intentional destruction of the document is indicative of a revocation.

Sam committed undue influence and elder abuse.

Undue influence, under Probate Code 86, which parallels the Welfare and Institution Code for undue influence, is the substantial persuasion of another (typically an elder) that results in substantial gain for the influencer. Courts look at the authority of the influencer, the control of the influencer, and the tactics of the influencer.

Here, when Mae was completely and utterly dependent on Sam for food, shelter, and companionship, she was pressured by Sam to revive the will. Thankfully, Sam knows

nothing about probate law, and does not know this is not an option for him. Despite this, he exuberated a substantial amount of control and authority over Mae, being Mae's only source for food and shelter. Using his clear authority and position of power, he persuaded Mae to revive the will.

The control over Mae was food and shelter. The authority was Sam's control over Mae, completely and entirely dependent on Sam. The tactics used was Sam's forbiddance to speak with anyone for months, effectively isolating Mae.

Sam committed undue influence.

Wills cannot be revived by codicil.

A trust may be revived by trust amendment expressly stating the intent to revive the document, and restating or attaching the former trust to the amendment. A will cannot be revived by codicil in the same way, or at all.

Here, the document was a will that was validly executed, then validly revoked. At the request of Sam, through his clear amount of control, authority, and control, was able to request Mae handwrite and sign a document reviving her will.

Unfortunately for bad faith actor Sam, this "revival" will be unsuccessful, meaning, the property will pass through intestate succession. Unfortunately for the deceased settlor, Sam and Dot are entitled to 50% of the estate each.

The estate will pass intestate

When there exists no estate plan, the estate is to be distributed through intestate succession. California uses Per Stripes, or "through the root" succession, governed by Probate Code 240. Other states use Per Capita, which is to the then-living heirs.

Per Stripes (California law) vs. Per Capita.

In a Per Stripes jurisdiction, each heir is entitled to an equal split of the estate. If a beneficiary does not survive the settlor, the deceased beneficiaries heirs are entitled to the deceased beneficiaries share.

In a Per Capita jurisdiction, only the then-living heirs are entitled to the estate. If a beneficiary does not survive the settlor, the deceased beneficiaries share goes back into the estate, and is split between the then-living heirs.

Here, California uses Per Stripes. This is not relevant, as both Dot and Sam are alive. The estate, through intestate succession, means that both Sam and Dot are entitled to 50% of the Estate of Mae. The charitable organization gets nothing.

END OF EXAM