

WILLS AND TRUSTS  
FINAL EXAMINATION  
FALL 2022  
Professor T. Swanson

Instructions:

Answer three (3) Essay Questions.

Total Time Allotted: Three (3) Hours.

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

Question 1

Anne, a famous rock star, lived with her boyfriend, Rocky, her biological child, Ziggy, and Rocky's son, Moonshine. She always introduced Moonshine as her son, as she had acted like his mother since he was an infant. She was always telling him that he was the best son a mother could ever have. At some point, Anne and Rocky discussed a formal adoption, but Rocky didn't want to try and find Moonshine's biological mother, so the matter was never pursued.

One evening in 2014, while on a very turbulent flight home, Anne wrote on the back of her grocery list "I give my sister, \$100,000 and leave the residue of my estate to my loving children, in equal shares." Anne then signed the writing and dated it. She carefully placed the writing inside her wallet.

In 2015, when Anne became pregnant, she and Rocky decided it was time to marry. Six months later, Happy was born.

In 2018, shortly after Prince, another famous rock star, died without a will, Anne was being interviewed. The reporter asked her "Given how much you travel; do you have a will." Anne smiled, patted her purse and said "I have it right here, in my wallet. I always have it with me."

After the interview, Anne decided she needed to confirm that her will was really there. So, she pulled it out and re-read it. After some reflection, using a crayon she found in her purse, she crossed out the \$100,000 and wrote "\$500,000." She then dated the change. She then took a picture on her phone of the revised writing, folded up the writing, and returned it to her purse. Later that day, she emailed herself the photo of the writing and saved it in her "important stuff" file on her computer.

In 2019, after graduating from college, while applying for the military, Moonshine learned that he was not Anne's biological child. When he brought it up to Anne, she responded "Biology is not important. I will always be your mom and you have always been and always will be my son."

Later that year, Anne gave Ziggy \$500,000 to help him buy a house. When she transferred the funds, she told him, "I need to be fair to your siblings. I'm keeping a record of this in my head."

In 2021, Moonshine is killed in a military accident. He is survived by his newborn son, Starlight.

Anne was so upset when she gets the news, she drives erratically to the coast and dies in a fiery crash. Her purse, which was in the car with her, is consumed in the flames.

Anne's estate consists of \$1,500,000 in a bank account in her name alone, and \$500,000 in an investment account that is titled in her name and Rocky's. Her "image" is valued in her estate at \$250,000. The bank account was opened in 2014 with her royalties from her first concert and has not received any contributions other than on-going royalties from those songs, and interest on the account.

How is Anne's estate to be distributed? Answer according to California law.

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Question #2

Wilma is a widow with two children, Anne and Bob, from her first marriage to Stuart. That marriage ended in divorce. Later, Wilma married Ted, and had one child, Christine, with him.

In 2005, Wilma, impatient because Ted kept putting off making a joint estate plan, went ahead and had an attorney prepare her will, which she executed in the attorney's office. In that will, she left all her separate property "equally to my children," and her community property to Ted.

Ted died in 2010. In 2012, Wilma started having difficulty with her memory, so Christine moved in with her to "keep an eye on mom." Christine had Wilma sign a power of attorney so she could help manage the bills, etc. Christine also hired a caregiver, Ernest, to help with Wilma's care. Anne disliked Ernest, and got into a big fight with Christine, which ended with Christine prohibiting Anne from ever visiting again.

In 2013, Bob died, leaving a child, Frank. Whenever he visited his grandmother, Wilma would call him Bob.

In 2015, Christine prepared a new will for Wilma to sign using a website to draft the document. This Will provided that Christine was going to receive \$100,000.00 and the Mercedes, Ernest was to get \$10,000.00 with the residue going equally to Wilma's children. Christine arranged for a longtime neighbor of Wilma's to serve as a witness. Wilma signed as the second witness. After signing as a Witness, neighbor and Wilma played a game of cards, while drinking tea.

In 2017, Wilma died. Her estate contained her house, which was still titled in her name and Ted's, as community property, an Audi, and \$500,000.00 in a bank account.

How should Wilma's estate be distributed?

Answer according to California law.

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Question 3

When Beth was born in 1998, her godfather Gordon gave to Beth's dad, Dave, a \$10,000 US Savings Bond and 1,000 shares of stock in Amazon Corp., a small start-up company engaged in on-line book sales. He told Dave that he wanted to encourage Beth to get a good education and asked that it be used for this purpose. Gordon endorsed both the bond and the stock "[t]o Dave, for Beth." Dave thanked him for the generous gift and put the bond and the stock in a safe deposit box. Gordon died in 2001.

The bond matured in 2005 and Dave redeemed it for the face amount, placing this money into a non-interest-bearing checking account that he had recently opened with his new wife, Stephanie. Dave used \$3000 of this money to take his newlywed wife Stephanie on a weeklong honeymoon cruise.

Dave put his wife Stephanie on as a joint owner of the safe deposit box and told her that the rest of the money from the bond on deposit in their checking account and the Amazon stock in the safe deposit box is for Beth's education. Stephanie never inquired further.

Dave died in 2008, and Beth was left in the custody of her stepmother Stephanie. Stephanie sold the Amazon stock, after stock splits, for \$90,000 and deposited the money into the same checking account.

Beth developed an interest in hip hop dance and studied dance privately for many years until she became quite proficient. She was eventually able to obtain a partial performing arts scholarship to attend Julliard upon her high school graduation. It was at this time that Beth first learned, during a conversation with Gordon's son Grant, of the existence of the gift from Gordon.

Beth asked Stephanie to use Gordon's gift to pay for her college expenses, but her request was refused. Stephanie told Beth that all of the money had been used to pay for private dance lessons. Stephanie refused Beth's requests to further explain how the money was spent. To assuage Beth's angered threat to sue, Stephanie told Beth, "I will leave the house to you when I die."

Was there a valid trust created by Gordon?  
What rights and remedies, if any, does Beth have against Dave  
What rights and remedies, if any, does Beth have against Stephanie?  
Discuss according to California law.

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*Wills & Trusts – Answer Outline  
Fall 2022  
Prof. Ascher*

*Question 1*

*Issues:*

*Holographic Will - Is the Will valid? Discuss elements, conclude yes. But a thorough answer will discuss how intestate succession would be similar given the omitted spouse interest.*

*Who is a child? Moonshine – would mostly likely be found to be a child; equitably adoption at a minimum; issue then would Starlight be issue – generally equitable adoption does not apply to grandchildren; but maybe? I would conclude under the family law a child given her holding out. does not qualify under the stepchild exception as the legal barrier did not continued to life; if Moonshine is a child (not under equitable adoption) then anti-lapse issue under Will, or under intestate.*

*Omitted spouse – Rocky get's intestate share; 100% CP and 1/3 separate property.*

*Omitted child – is Happy omitted? Is she included in the Will under the class gift? Doesn't really matter as under intestate succession gets the same interest.*

*DRR – original gift to sister not "revoked."*

*Advance – need a writing – if no writing, doesn't affect Z's interest*

*Intestate succession – re. omitted spouse (see above)*

*Community property assumptions – account in both names;*

*Character of image – this is a bonus issue - probably not a community property asset*

*Destruction of Will – is it a revocation? No intent; can determine terms from photo.*

Wills & Trusts  
Fall 2022  
Prof. Swanson

*Answer Outline: Question 2*

*Issues:*

*Validity of first will. Although not stated, probably qualifies as a formal will.*

*Validity of second will. Interested witness. What effect would that have.*

*Capacity to sign second will. Problems with memory, misidentified child.*

*Undue influence by Wilma.*

*Presumption of undue influence by Ernest as caregiver, but may be rebutted.*

*Anti-lapse statute for Frank.*

*Audi versus Mercedes – was this a mistake or did the gift lapse.*

Wills & Trusts

Fall 2022

Prof. Ainsworth

**ANSWER KEY – 3 OF 3**

**1. WAS A TRUST CREATED?**

*Trust Creation*

*Whether Beth has any rights or remedies against Stephanie depends on whether a valid trust was created. A trust is a fiduciary relationship with respect to property in which one person, the trustee, holds legal title to the trust property, the res, subject to enforceable equitable rights in another, the beneficiary. Beth will argue that Gordon created an express trust with Beth as beneficiary and Dave as trustees.*

*Requirements*

*To create an express, private trust, there must be a settlor, a trustee with duties, and a definite beneficiary. The settlor must have capacity and intend to create a trust. There must be trust property and a valid trust purpose. Here, Gordon is the settlor, and there is no reason to believe he lacked capacity. There is trust property, the savings bond and 1,000 shares of stock. Dave was named trustee with duties to hold the property for the benefit of Beth. Beth is a definite beneficiary. The purpose of the trust, to encourage Beth to get a good education, is a valid purpose. The only issue as to the trust requirements is whether Gordon intended to create a trust.*

*Intent*

*The settlor's intent to create the trust may be manifested by written or spoken words or conduct. An oral trust of personal property is valid. Although some expression of trust intent is required, it need not be manifested in any particular form. In this case, when Gordon gave the property to Dave, he "asked" that it be used for Beth's education. Usually, when a settlor does not clearly direct the trustee to carry out the intended terms but instead uses precatory words, such as "wish" or "hope," the court will infer from such language that no trust was intended. "Ask" could go either way. But even if the court makes such an inference, it likely could be overcome by the endorsement on the instruments. "To Dave, for Beth" makes it clear that Gordon did not intend Dave to have the benefit of the property, and that he wanted him to hold it for Beth's benefit.*

*Because all elements for a trust are present, a court will find that Gordon created a trust for Beth's benefit with Dave as trustee.*

**2. & 3. WHAT RIGHTS & REMEDIES (AGAINST DAVE/STEPHANIE)**

**ISSUE:** *Did Dave/Stephanie assume the office of trustee?*

*(15600) person named as trustee [in instrument] may accept the trust by knowingly exercising powers / performing duties*



ISSUE: Was "claimed" total expenditure on "dance lessons" consistent with trust intent/purpose?

(16000) on acceptance of the trust, the trustee has a duty to administer

ISSUE: Did Dave [Stephanie] breach by spending \$3000 on honeymoon?

(16004) duty not to use or deal with trust property for the trustee's own profit [self-dealing]

ISSUE: Did Dave, and then Stephanie, breach re: administration?

(16007) duty to make trust property productive

(16009) duty to keep property separate and to designate as property of the trust

(16012) duty not to delegate to others performance of [fiduciary role]

ISSUE: Did Stephanie breach duties owed to beneficiary?

(16060) duty to keep beneficiary reasonably informed

(16061) on reasonable request, trustee shall provide beneficiary requested information

(16062) trustee shall account [at least annually]

ISSUE: what remedies?

(16420) trustee removal and surcharge

(CCP 366.2) claims against Dave barred - must be brought within one year of the date of death

- Stephanie: Contract to make will / enforceable promise (estoppel)

(21700) A contract to make a will or devise ... can be established only by one of the following: ... Clear and convincing evidence of an agreement between the decedent and the claimant or a promise by the decedent to the claimant that is enforceable in equity.

1)

How will Anne's Estate be Distributed?

### **Will Formalities**

To have a valid will there must be elements that are met (1) over 18 years of age and (2) the decedent must be of sound mind.

Here, it may be presumed that A is over the age of 18 as she is married, lives with her boyfriend, and has two children. Also, for a will to be valid A must be of sound mind meaning that she (1) understands that she is making a will, (2) understands the property listed in the will and (3) knows the people in the will who will be in receipt of the property. In 2014 A wrote, I have my sister 100K and the residue to my children. This constitutes a will, specifically a holographic will. Also, when A was interviewed she stated that she has her will on her at all times. Thus, A intended the grocery list holographic will to be valid. A also listed her sister to take 100K and her children to take the residuary. She named sister and children and left 100K and the residue.

A has satisfied will formalities.

### **Valid Formal will**

A valid formal will consist of 4 elements: (1) Writing (2)Signed by the decedent (3) Intent to make a will (4) must have two witnesses.

Here, a formal will, will not be discussed because A has not met any of the above elements. It now must be determined if A has created a valid holographic will.

A did not create a formal will.

### **Valid holographic will**

A valid will holographic will consist of the following elements: (1) Writing (2)Signed by the decedent (3) Intent to make a will (4) material provisions must be in the testators handwriting. No witnesses are needed and a date is not needed but is preferred.

### **Writing**

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A valid writing does not need to be on a specific piece of paper or need to be drafted by an attorney. It can be any writing.

Here, A wrote on the back of her grocery list to my sister 100K and to my children the residuary.

This is a valid writing.

### **Signed by A**

A signature can be anything such as a X or the decedents actual name. The signature element can also be signed on behalf of the decedent at their direction and in their presence.

Here, A signed her name on the document.

The will was signed by A.

### **Intent to make a will**

Intent is needed to show that the decedent actually intended to form a will and it was not crated due to undue influence or fraud, mistake etc.

Here, A wrote, I have my sister 100K and the residue to my children. She wrote this on a very turbulent flight home. It can be inferred that A may not have believe she would make it home safely and wanted her property to go to her loved ones. This constitutes a will, specifically a holographic will. Also, when A was interviewed she stated that she has her will on her at all times. Thus, A intended the grocery list holographic will to be valid.

A had intent to make a holographic will.

### **Material provisions must be in the testators handwriting**

Here, A wrote her bequest on a grocery list. It must be inferred that she wrote this bequest in her own handwriting. There is no indication of a preprinted will form or that someone other than A wrote this will. A wrote, "my sister 100K and the residue to my children"

A wrote the material provisions in her handwriting.

### **Date/witnesses**

A date is not needed but A did date the document, 2014. Witnesses are not needed and A did not have witnesses.

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**A has created a valid holographic will.**

*Excellent and thorough discussion*

**Distribution per 2014 valid holographic will:**

A is survived by her husband Rocky, natural child Ziggy, Moonshine's child Starlight, Natural son Happy.

The only assets in the will are 100K to sister and residuary to children.

**Rocky:**

R is A's husband per the 2014 will he takes nothing, unless it is community property (CP).

However, if the 2014 is held invalid he takes CP and her share of the estate because he is entitled to his 1/2 and since he survived A he also takes her 1/2. He will get the investment account with both A and R's name. *Inheritance share is 1/3 when 2 or more children*

**Omitted Spouse:**

R will also argue that he is an omitted spouse because he was married to A after she executed the 2014 will. A spouse will be able to take under the omitted spouse rule as long as it can be showed that the omission was not intention and that the spouse was not provided for in another way.

Here, R was not named in the 2014 will but he was provided for by the 500K account. It can be argued that R was left out intentionally bc A was giving him the 500K. However, R will argue that it was not intentionally and that the account was CP bc they both put funds into it. More likely than not a court will find that R was provided for outside of the will and he is not an omitted spouse.

R is not an omitted spouse.

**Ziggy**

Z is A's natural son. Per the will he will take the residuary with his brother Happy and potentially Moonshine's child Starlight. Starlight is to be determined but he will defiantly share with Happy.

**Out of Wedlock child**

Here, Z is an out of wedlock child and can still inherit from his biological father as long as there is no abandonment for 7 years, no support/visitation, a termination of parental rights, court order etc. This is not applicable as Z is not trying to inherit from his biological father.

### **Class gift**

A class gift needs to have beneficiary's that are identifiable after the decedent's death but do not need to be specifically named in the will's execution.

Here, A stated to my loving children. This is ambiguous as to natural or adoptive children. Here, Z is a natural son so he will more likely than not take because he is a child. An issue arises when it comes to step and adoptive children.

The gift to the residuary is a class gift and Z is an indefinable beneficiary.

### **Advancement:**

An advancement is when one gets something prior to inheritance, this is usually money.

Here, A helped Z by a house and gave him 500K. To be valid an advancement must be written by the decedent when the advancements given to the recipient or the recipient can make a writing at any time. There is no indication that A ever made a writing but she said she was keeping note in her head of the advancement. To be valid Z would have to give a writing to show that the 500K was an advancement.

### **Happy**

H is A's natural son with Rocky. Per the will he will take the residuary with his brother Z and potentially Moonshine's child Starlight. Starlight is to be determined but he will defiantly share with Z.

### **Omitted Child:**

H will also argue that he is an omitted child because he was born to A and R after A executed the 2014 will. A child will be able to take under the omitted child rule as long as it can be shown that the omission was not intentional and that the child was not provided for in another way. Also, a child can take even if they are lost, or thought to be dead.

Here, A was not named in the 2014 will and was born after its execution. However, H was provided for in the will. The will states for my children. Here, H is the natural son of A and R. He was not intentionally left out; he was just not named specifically. The gift was to a class.

More likely than not a court will find that H is not an omitted child was was provided fro in the class.

*correct*

### **Class gift**

A class gift needs to have beneficiary's that are identifiable after the decedents death but do not need to be specifically named in the wills execution.

Here, A stated to my loving children. This is ambiguous as to natural or adoptive children. Here, H is a natural son so he will more likely than not take because he is a child. An issue arises when it comes to step and adoptive children.

The gift to the residuary is a class gift and H is an indefinable beneficiary.

### **Moonshine/Starlight**

M is not a natural child of A. He is R's child. Per the will it is unclear as to what A meant when she wrote to my children, natural only or step/adoptive.

Here, M was never formally adopted even though adoption was discussed. A child can only take if they were adopted during minority, held out as the decedent's own, supported for, or there was a barrier that hindered adoption.

A held out M as her own and supported him. Also, she tried to adopt him but it was not feasible bc his mother had to be tracked down. However, it make be argued that it was not a barrier bc r did not want to the M's mom and he could have tried. the fact that he did not try does not show a willingness for adoption.

M could still take bc even after M founf out he was not blood to A she said biology is not important. Under the will M could take.

M Treated as predeceased.

### **120 rule**

Not applicable bc M died before A.

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### Anti-Lapse

A gift lapses if the beneficiary predeceases the decedent and they are of kindred with issue. Here, M is not kindred he is R's son not A. A held him out as his own but he still cannot take and the gift will not lapse to Starlight.

### Amendment/revocation

A will can be modified or revoked by express revocation, physical act, or inconsistencies.

Here, A physically revoked the 2014 by crossing out the bequest of 100K to sister and enhancing the amount to 500K. She signed and dated it

Sister will argue that she should get 500K rather than 100K bc than bc the will was revoked partially. She will state that the witnesses were not needed bc the harmless error rule. and that this was A's intent. She was not incapacitated and was of sound mind when she made the modification.

valid modification.

### Original will destroyed

Since the original will was destroyed the court will use the image saved on A's computer as the will bc there is no other document in existence

*why is will not revoked?  
Answer: evidence of intent rebuts presumption*

### Distribution per valid will

500 to Sister if court hold the modification valid. If not 100K to sister

R = CP and 500K account

H = 1/2 residue with Z

Z = 1/2 residue with H

M/S = nothing bc no adopted and antilapse does not apply.

### Intestacy dist:

R = 1/2 CP and A's 1/2 CP, 1/3 bc SP with Kids H and Z

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H = 1/3 with Z and R

Z = 1/3 with R and H

M/S = nothing bc no adopted and antilapse does not apply.

*Good job overall. Identified the issues.*



2)

How will Wilma's Estate be Distributed?

**Will Formalities** - which will? Be clear

To have a valid will there must be elements that are met (1) over 18 years of age and (2) the decedent must be of sound mind.

Here, it may be presumed that W is over the age of 18 as she has been married twice and has two children. Also, she is older in age as she needs a care giver. Also, for a will to be valid W must be of sound mind meaning that she (1) understands that she is making a will, (2) understands the property listed in the will and (3) knows the people in the will who will be in receipt of the property. In 2005 W went to an attorneys office to draft a will and executed it there. Thus she understood he was making a will and went with the intent to prepare a will. The will stated that she left her SP to her children equally and the CP to her husband T. This constitutes a will, specifically a valid formal will.

Thus, W intended the 2005 will to be valid. W also listed her children and her husband to take her SP and CP.

W has satisfied will formalities.

### **Valid Formal will**

A valid formal will consist of 4 elements: (1) Writing (2) Signed by the decedent (3) Intent to make a will (4) must have two witnesses.

### **Writing**

A valid writing does not need to be on a specific piece of paper or need to be drafted by an attorney. It can be any writing.

Here, w went to an attorneys office to actually draft a will, where she left CP to T and SP to her children. The writing was executed in the attromeys office.

This is a valid writing.

### **Signed by A**

A signature can be anything such as a X or the decedents actual name. The signature element can also be signed on behalf of the decedent at their direction and in their presence.

Here, there is no indication that W signed her name on the document. However, the facts state that the will was executed in the attorneys office. If the will was executed in the office of an attorney he must be a probate attorney and must know the law as to what creates a valid will in CA. Thus, W must have signed the will

There is no mention that signed the will but it can be inferred that W signed in the attorneys office..

### **Intent to make a will**

Intent is needed to show that the decedent actually intended to form a will and it was not crated due to undue influence or fraud, mistake etc.

Here, In 2005 W went to an attorneys office to draft a will and executed it there. She went to the office bc she was tired of waiting fro T to make a joint estate plan and the facts state that W went to create a will. Thus she understood he was making a will and went with the intent to prepare a will. The will stated that she left her SP to her children equally and the CP to her husband T. This constitutes a will, specifically a valid formal will.

W had intent to make a will.

### **2 Witnesses**

For a formal will to be valid there must be two witness to sign the will in W's presence and the 2 witnesses should sign the will at the same time in each others presence. The witnesses must also acknowledge that they are signing the decedents will.

Here, there is no mention as to witnesses signing W's will. But, the will was executed in the attorneys office and if the will was executed in the office of an attorney he must be a probate attorney and must know the law as to what creates a valid will in CA. Thus, there must have been two disinterested witnesses sign the will. If a wintness signed teh will who was interested there must be supernumerary.

There is no indication that 2 witnesses signed the will at the attorneys office, in the presence of W, and in each others presence. Also the facts are lacking as to whether the two witnesses knew that were signing W's will. However, it can be inferred since the whole will was executed in the attorneys office the witnesses signatures were valid and they knew what they were signing.

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## Date

A date is not needed but is preferred. There is no date on the documents instrument the facts just state that the will was executed in 2005.

**The facts are lacking as to whether W has created a valid formal will bc there is no indication of a signature or witnesses. However, since the will was executed in the attorneys office it can be inferred that the will is valid and the attorney is knowledge with probate law and will formalities. If not, then W can sue for ineffective assistance of counsel and sue the attorney for malpractice.**

## Valid holographic will

A valid will holographic will consist of the following elements: (1) Writing (2) Signed by the decedent (3) Intent to make a will (4) material provisions must be in the testators handwriting. No witnesses are needed and a date is not needed but is preferred.

Here, a holographic will, will not be discussed because W has not met any of the above elements. She had an attorney execute a valid formal will.

A did not create a holographic will.

## 2015 will

### Will Formalities

To have a valid will there must be elements that are met (1) over 18 years of age and (2) the decedent must be of sound mind.

Here, it may be presumed that W is over the age of 18 as she has been married twice and has two children. Also, she is older in age as she needs a care giver. Also, for a will to be valid W must be of sound mind meaning that she (1) understands that she is making a will, (2) understands the property listed in the will and (3) knows the people in the will who will be in receipt of the property.

In 2015 W's daughter Christine (C) drafted a new will for her mom. There is no reference in the facts that W wanted a new will and that W even had the capacity to understand what was going on. W was having difficulty with her memory and needed a caregiver. Also, needed a power of attorney. The Will listed a greater bequest to C and something to the caregiver but it was not per W's intent.

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Thus W may not have understood that C was making a new will for her that changed the content of her original 2005 will.

Thus, W may not have intended the 2015 to be valid bc C made the will and not W.

W has not satisfied will formalities. *Issue isn't formalities, but capacity*

No valid 2015 will.

### **Valid Formal will**

A valid formal will consist of 4 elements: (1) Writing (2) Signed by the decedent (3) Intent to make a will (4) must have two witnesses.

### **Writing**

A valid writing does not need to be on a specific piece of paper or need to be drafted by an attorney. It can be any writing.

Here, there is a writing but it was drafted per C's bequest not what W wanted.

This is not a valid writing.

### **Signed by A**

A signature can be anything such as a X or the decedent's actual name. The signature element can also be signed on behalf of the decedent at their direction and in their presence.

Here, there is no mention that W signed the will. It just states that W signed as a witness, the second witness.

There is no mention that W signed the will as the decedent with the intent to create a will, rather W signed as the second witness.

### **Intent to make a will**

Intent is needed to show that the decedent actually intended to form a will and it was not created due to undue influence or fraud, mistake etc.

Here, in 2005 W went to an attorney's office to draft a will and executed it there. She went to the office bc she was tired of waiting for T to make a joint estate plan and the facts state that W went to

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create a will. Thus she understood he was making a will and went with the intent to prepare a will. The will stated that she left her SP to her children equally and the CP to her husband T. This constitutes a will, specifically a valid formal will.

W had intent to make a will.

## 2 Witnesses

For a formal will to be valid there must be two witness to sign the will in W's presence and the 2 witnesses should sign the will at the same time in each others presence. The witnesses must also acknowledge that they are signing the decedents will.

Here, there was only one witness, neighbor, and the facts do not state that she knew she was signing W's will. Also, W signed the will as a second witness which is invalid. *— why?*

Witness requirement not met.

*witness is interested, but that doesn't invalidate whole will, just extra to Christine*

## 2015 will Not valid.

## If the court hold that the 2015 and 2005 wills are not valid the property will be distributed via intestacy, PC 240.

Since T is passed and W is too the property will be distributed to A, C, and F equally. F takes for B bc the anti-lapse rule. *Anti-lapse isn't for intestacy*

the house will be split btwn W's and T's kid bc it had both their names.

## W's Estate Distribution per 2005 will.

### Anne:

A is natural daughter. she is entitled to share. A will get 1/3 of W SP with F, and C. Alos since T is deceased she will get share CP with other heirs.

### Class gift

A class gift needs to have beneficiary's that are identifiable after the decedents death but do not need to be specifically named in the wills execution.

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Here, W stated that kids split SP. This is ambiguous as to natural or adoptive children. Here, A is a natural child so she will more likely than not take because she is a child. An issue arises when it comes to step and adoptive children.

The gift of SP is class gift and A is an indefinable beneficiary.

**Bob/Frank:**

B is a natural child of W, So he is entitled to take.

Here, B is deceased to his gift lapses.

B Treated as predeceased.

**120 rule**

Not applicable bc B died before W.

**Anti-Lapse**

A gift lapses if the beneficiary predeceases the decedent and they are of kindred with issue. Here, B is kindred of W and he has issue so the gift to B lapses to F and F can take.

*Good*

**Ted:**

T get nothing bc he is deceased.

**Christine:**

C is a natural child so she can take unless there is fraud or UI.

**UI**

**Victim vulnerability.**

W was older and could not remember things. She needed a care giver.

**Apparent authority.**

Here, C was W's power of attorney and her daughter. She paid all of W's bills and lived with her.

**Acts/Conduct by influencer:**

---

here, C drafted the document for W and she kept A away.

**Equity challenged, unjust**

here, C will get 100K which is more than prior bequest

The court will find that C had some slight UI but not enough per statutory requirements, all must be met.

**Condoednftla relationship**

here C and W are mother daughter, this is not enough for a CR. however, C was W's power of attorney.

**helped draft doc**

C drafted the whole doc.

**Equity challenged, unjust**

here, C will get 100K which is more than prior bequest

The court will find that C did UI W.

**Fraud**

**C also can be charged with fraud bc she induced W into signed. W did not have the right capacity and did not know what she was signing.**

Ernest:

E is a caregiver cannot take. It is presumed that W and E did not have a prior relationship and that W is paid.

E gets 0

**dist under 2005 will**

A C and F share equally , unless C is found to be UI.

---

**dist under intacy**

A, C and F share equally

C was actually a witness not W and still not valid bc C is an interested witness. there needs to be more than one.

*I think you were rushed at the end. Good outlining can help you prioritize. However, solid analysis.*



# Blue Book

NAME

SUBJECT Will + Trust

INSTRUCTOR Swanson

EXAM SEAT NO

SECTION 3

DATE 12/5/22

GRADE

**10<sup>7/8</sup> x 8<sup>1/4</sup>**

25 - 24 PAGE

## Valid Trust Elements

- (1) settlor (2) trustee (3) intent (4) beneficiaries  
(5) legal purpose (6) property.

A Trust is a fiduciary relationship between

Trustee and beneficiary. The beneficiary have a

right of enforcement via equity from the

trust.

### Settlor

Here there is a settlor Gordon.

### Trustee

Here, D is the trustee and he has duties to

use the stock and company to help B get

a good education.

## Intent

Here there is intent as G did intend to cheat this trust for B's benefit.

## Legal purpose

The purpose is legal as it is for the benefit of B's education.

## Property

Here, the property is US Bond, 1000 Amazon stock and start up co.

A valid trust has been made.

B v D

Here D has duties as a trustee.

He has a duty to act in compliance w/ the trust

A duty to invest prudently, a duty to diversify funds,

Good

A duty of loyalty, duty of care, duty to defend trust, duty to protect and preserve trust, duty not to commingle funds.

### DUTY TO INVEST PRUDENTLY

Here D breached his duty when he put the \$ in a non interest bearing account.

Good

This account caused the \$ to not gain interest and increase in value. Here D did not invest prudently.

### DUTY TO ~~INVEST~~ ~~THE~~ DIVERSIFY.

Here D did not diversify the \$ into other stock bonds stocks etc. He just placed it not a non bank account. The D should have put the \$

in various portfolios to increase the value of the trust and \$.

DUTY NOT TO COMINGLE

This is not comingle, but is self-dealing

Here D breached his duty when he opened the account w/ his wife stephanie. also, D comingled ~~trust~~ funds when he took \$ from the account to pay for a honeymoon.

DUTY TO PROTECT / PRESERVE TRUST

Good  
D did not protect and preserve the trust when he took out money for his own interest. Rather he was not preserving it bc he was wasting \$ on his self.

## DUTY TO NOT SELF DEAL

Good  
D Breached this duty when he took \$ from the trust for his own self interest. He used the \$ for a honeymoon for the benefit of S and him and not B.

Duty to Act in compliance w/ Trust as a Reasonable Person

Here D did not act in compliance w/ trust when he used funds for other purposes rather than the edu of B. B did not act w/ care.

Remedies Statute of limitations may be issue re: Dave

B can have Trust terminated bc D did not act in compliance of Trust and the trust purpose is

extinct. B is no longer in school. she needs to pay expenses.

B v S

Supra Trustee duties

DUTY to invest prudently

SUPRA

Here, S put the 90K into the same non interest account. Here S was not investing prudently and could have gained more if the account had interest.

DUTY to account

Here, S did not account for B. S said the \$ was

Good!

gone bc of dance lessons but has no receipts to

show. S has a duty to keep records and give

beneficiary update no funds.

### DUTY TO DIVESTIFY

Here, S did not divestify the \$ she just put it into the same non bearing account.

### DUTY TO PROTECT TRUST

Here S did not protect and insure the trust when she wasted all the \$ on dance lessons. If S would have invested \$ more prudently there may be more money to use.

### DUTY OF CARE

This is a duty to act reasonably. Here S did not act reasonably when she put the \$ in a non interest account and the facts ~~is~~ are



lacking as to whether the cash out of stock was good. If the stock was left in or taken out sooner more \$?

## REMEDIES

Supra

(1) terminate trust bc no more trust purpose; B has

finished education and now needs to pay.

(2) remove trustee bc breached duty.

## D and S Argument

D and S will argue that they acted in compliance

of trust bc B did get a good edu. she went

to Julliard which is one of the best if not the

best performing art schools.

B can also ask court to appoint a new trustee and the trustee can give B \$ to pay for edu.

More likely than not depending on the court the trust will be terminated ~~and~~.

B could enter into a contract will regarding the house.

Also B can allege a constructive trust bc <sup>P and S</sup> ~~she~~ ~~was~~ unjustly enriched re the trust.

A court will likely hold that D can be liable for breach but not S bc D cannot

~~the~~ delegate his trust duties. A court will have

to appoint a new trustee for B. IF the court

finds that S is reasonable bc she is her

step man then she could potentially be charged.

w/ not respecting the trustee duties.

Good job overall. Solid analysis, and all issues identified