

Monterey College of Law

Wills and Trusts 2018

Final Exam

Professor L. Espinoza

ESSAY EXAMINATION INSTRUCTIONS

Your answer should demonstrate your ability to analyze facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and fact 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 relationship to each other.

Your answers 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 obtains only a statement of your conclusions, you will receive little credit. State fully the reasons that support your conclusion 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. Answer according to California law.

Q3 - NOT AVAILABLE

Question #1 (1 hr)

Al and Bea married in 2004 after the birth of their child, Carl. In 2006, Bea executed a valid will leaving Al all of her property, except for a cherished diamond wedding ring that belonged to her great grandmother, which she left to her sister, Cindy. Bea believed the ring was worth around \$5,000.

On January 1, 2008, Bea typed, dated, and signed a note stating that Al is to get the ring instead of Cindy. Bea never showed the note to anyone.

On January 20, 2008, Bea hand wrote the following on a piece of paper: "The note I typed, signed, and dated on 1/1/08 is to become a part of my will."

In 2010 Al and Bea's second child Dee was born.

In 2011 Al was criminally charged with transmitting sexually explicit materials through social media to a minor. Bea was outraged. Bea's father, a world renowned shaman and mystic, told Bea to divorce Al by announcing in public under a full moon: "I divorce you; I divorce you; I divorce you." Bea did as her father instructed, and never talked to Al again.

In 2014 Bea fell in love with Barry. Bea named Barry as the sole pay-on-death beneficiary of a bank account Bea opened at Community Bank after leaving Al, wherein she deposited only her post-separation earnings.

Bea died November 6, 2016. She is survived by Al, Cindy, Carl, Dee, and Barry.

At death, Bea's share of the community estate was worth \$500,000. Bea held post-separation earnings in her Community Bank account of \$40,000. The ring appraised for \$1 million.

What rights, if any, do Al, Cindy, Carl, Dee, and Barry have to:

1. Bea's \$500,000 share of the community estate? Discuss.
2. The \$40,000 on deposit in Community Bank account? Discuss.
3. The Ring? Discuss

Answer according to California law.

Question #2 (1 hr)

Among her other property, Betty, an elderly widow, had \$1 million cash on deposit in Big Branch Bank.

In 2011 Betty signed a preprinted fill-in-the-blank trust instrument declaring that she holds the property listed on Schedule A as trustee in trust. On the Schedule A, Betty listed only her Big Branch Bank bank account. Betty did not name an alternate or successor trustee in the trust instrument. The instrument grants the trustee broad administrative powers for the benefit of the beneficiary. Betty named the local animal shelter as sole remainder beneficiary upon Betty's death.

In 2012 Betty's sister Sissy began paying a great deal of attention to Betty; Sissy inserted herself into all aspects of Betty's life, interfering with efforts by friends and relatives to visit Betty. In 2013 Betty reluctantly executed a properly-witnessed will that leaves her entire estate to Sissy. Soon thereafter, Betty and Sissy developed a sincere fondness for one another, frequently engaging in social events and becoming close friends. In 2014 Betty handwrote on a paper, "Am glad that Sissy will get my estate."

In 2015 Betty named Sissy as acting trustee of the trust. This was when Sissy first learned about the trust. Without telling Betty, Sissy wrote across the trust instrument, "This trust is revoked," signing her name as trustee.

Betty died in 2016, survived by Sissy. Betty is also survived by her daughter Debby, with whom she had not spoken in over 30 years.

The animal shelter claims that the trust is valid and remains in effect. Sissy and Debby each claim that they are entitled to all of Betty's estate.

1. What arguments should the animal shelter make in support of its claims, and what is the likely result? Discuss?
2. What arguments should Sissy and Debby make in support of their respective claims, and what is the likely result applying California law? Discuss.

Answer according to California law.

Answer Outline- Fall 2018 – Wills & Trusts

QUESTION #1

TOTAL 100 POINT GRADING

What rights, if any, do Al, Cindy, Carl, Dee, and Barry have to:

1. Bea's \$500,000 share of the community estate? Discuss.

20 POINTS

Will validity

-revocation (codicil, etc.)? Republish

Marriage dissolution (ineffective)?

Dispo – all CP per will – or even if no will all CP by intestate to spouse

2. The \$40,000 on deposit in the Community Bank account? Discuss.

20 POINTS

POD – Totten, to POD beneficiary

--not an at-death (testamentary) transfer (not anti-lapse, not pretermitted share)

Sep prop

Dispo –

3. The Ring? Discuss

50 POINTS

Will validity

Codicil 1 typed – witness fail + substantial compliance?

Codicil 2 holograph – formation elements

+incorp by ref

Test intent = mistake value (Estate of Duke?)

Pretermitted Child

Dispo 1/3 (sp) preterm child

Bal _____ testate

10 POINTS – Overall Performance Eval

Answer Outline-Fall 2018 – Wills & Trusts

QUESTION #2

TOTAL 100 POINT GRADING

- 1. What arguments should the animal shelter make in support of its claims, and what is the likely result? Discuss?**

30 POINTS

Trust Creation elements

- a. *Trustee Succession (no named trustee – appointment – undue influence)*
 - i. *Revocation*
 - Trustee Authority – Revocation – powers of trustee/duties*

- 2. What arguments should Sissy and Debby make in support of their respective claims, and what is the likely result applying California law? Discuss.**

60 POINTS

*Will Creation – intent/capacity Undue influence -elder abuse (Disinherit?)
Debby - omitted child & other claims*

*Sis – Will Capacity, intent, Undue Infl.
Dora – Will fail – Intestate – omitted child*

10 POINTS – Overall Performance Eval

85

1)

What rights do Al, Cindy, Carl, Dee, and Barry Have?

1. \$500,000 Community Property estate.

Rights of AL - 2004 Will

To determine the rights of all with regards to the community property estate we must first determine if the 2004 will is still valid. The facts indicate that the will was valid in 2004 which left Al (A) all of her property, except her diamond wedding ring which she left to Cindy (CY), therefore i will not discuss the elements of a valid will.

Codicil

A Codicil is a document that can add to, delete or modify provisions in a will. A codicil can cure defects of a prior will and can republish a will. A codicil still requires the same formalities that a Will does. A Codicil requires that the person be 18 years of age, have a testamentary intent and be of sound mind. A sound mind requires the Testator to understand that they are making a will, understand what there property is, and understand what there relationships to the persons named in the testamentary documents. A will also needs to be attested by two non interested witnesses. This will/codicil must be acknowledged in front of the witness by the testator and they witness need to sign the document in the Testators lifetime.

Here, On January 1, 2008, Bea (B) typed, dated and signed a note stating that A is to get the ring instead of Cindy (CY). B then never showed the note to anyone, therefore this would not meed the requirements and this document would fail to be valid.

Holographic Will

A holographic will is a will where the material provisions are handwritten in the testator's own handwriting. This document must show that the testator's intent is to create a will and it must be signed. It does not need to be dated.

Here, on January 20, 2008 B hand wrote a note stating, "The note I typed, signed and dated on 1/1/2008 is to become part of my will. This note does not indicate if it was signed nor does it have a testamentary intent to it. Therefore, this would not be a valid holographic will.

Incorporation by Reference

Any documents that are referred to in a will if they are specific enough to be discovered and readily identifiable can be incorporated by reference and would become part of that will. Here, B is attempting to incorporate by reference her document dated 1/1/08 leaving A the ring instead of CY.

Since the document dated 1/1/08 fails to meet the requirements of a valid codicil and the Holographic will fails to meet the requirements of a holographic document, both documents fail and the 2004 Will would still be in full effect leaving A all of B's property in her estate.

The facts that indicate that A was criminally charged with a crime, and that B wanted a divorce and announced in public under a full moon "I divorce you; I divorce you; I divorce you" would not be a valid divorce and therefore A and B would still be married but would be legally separated, A would still have rights to the Community Property.

Therefore based on the above analysis, A would get the \$500,000 share of the community property.

2. The \$40,000 on deposit in Community Bank.

Pay on Death Account (POD)

This is a POD account and would not be probated under B's estate. The facts indicate that B fell in love with Barry and made him the sole beneficiary of that account. Since this account was opened and operated only with post-separation earning, A would have no claim to any of the funds in the account. Since this account would not be probated, Dee and Carl would have no claim to this account either.

Therefore Barry would be the sole payee of these funds.

3. The Ring - 2004 Valid Will

Rights of Cindy

The facts indicate that the will was valid in 2004 which left CY the cherished diamond wedding ring that belonged to her great grandmother. The facts also indicate that B had originally thought the ring was worth 5k but it was appraised at \$1 million. That would make no difference in the valid will.

Unless the court determined that B's codicil or holographic will were valid then CY would get the ring. If the court found the Codicil valid then A would get the ring and CY would get nothing. Based on the above analysis CY would get the ring.

Rights of Carl and Dee

Omitted Children

Carl and Dee are children of A and B. If a child is not provided for under a will or in some other way outside of a will at the Testators death then they are considered Omitted children and are entitled to take there intestate share.

Carl was born in 2006 when B made her will and she seemed to provide for Carl indirectly with her leaving all her property to A, Carl's father. This is an exception to the Omitted child rule.

Dee was born in 2010, after B had filed her will and would likely be an omitted child, but that does not change the analysis since A was also Dee's father.

The will in this case appears to be completely probated and it does not seem there is any intestate part of the estate left.

With the community property going to A - \$500k, the POD account going to Barry \$40k and the ring going to CY there is no intestate property, therefore the both Carl and Dee would take nothing with the death of B. Both Carl and Dee would take in the event of A's death.

END OF EXAM

2)

1. Animal Shelter

Valid Trust

In order for a valid trust to be formed Betty must intend for the trust to be formed, be competent, put assets in the trust, name beneficiaries, have some sort of documentation/writings, and name a trustee.

Intent, here nothing leads me to believe that Betty did not intend to form a trust. She actively searched and printed a fill-in-the-blank trust instrument which she filled out. It is pretty clear that Betty intended to form a trust. Despite being elderly nothing in the facts indicate that Betty was not competent. No mention of any memory problems or anything else that would prevent her for understanding what a trust was and the consequences of such in regard to potential beneficiaries. Betty used Schedule A to put the Big Branch Bank Account in the trust. It does not appear that she renamed such but that is not required. Her listing it as part of the trust was sufficient. Betty named the local animal shelter as her beneficiary. The trust was created using a fill-out-form. That is not a problem as she did fill it out. Betty named herself as the trustee and then to the trustee board for administrative powers.

A valid trust was created.

Revocation

Revocation requires a writing revoking the trust and delivered to the trustee.

Here, Betty named Sissy as her trustee. Note I will discuss later whether that naming was valid or if Sissy should be removed. Sissy took the trust and wrote across it that the trust

is revoked. It is reasonable to assume that Sissy made a copy of such thereby delivering it to herself the trustee.

If Sissy is a proper trustee then the trust is revoked and the animal shelter would not get anything.

Undue Influence

Undue influence occurs when someone exerts pressure on another overcoming their will. Undue influence requires a vulnerable victim, an intent to influence with actions, relationship with the victim, and an inequitable result.

Here, Sissy started paying attention to Betty who is an elderly widow. As an elderly widow she is susceptible to influence as she is likely lonely following the death of her spouse. The attention that Sissy gave to Betty went so far as to control her relationships with friends and other relatives by interfering with visits. As Betty's sister Sissy had a relationship that led to authority/control over Betty. This led to Betty reluctantly executing a will that left everything to Sissy which wouldn't have occurred if Betty died intestate. Following this manipulation, the two became close in actuality. That closeness led to Betty naming Sissy as her trustee. At the time when Betty named Sissy as the trustee three years had passed since the initial manipulation. The facts show that the time following was not manipulative and genuine in nature. It does not appear that Sissy did anything to influence Betty to name her as trustee. This is supported by the fact that Betty did not know that the trust even existed.

The court will find that undue influence did not result in Betty naming Sissy as the trustee.

Trustee Duties

A trustee has a duty of loyalty, duty to act a reasonably prudent person, duty not to self-deal, ect.

The duties breached by Sissy are the duty of loyalty, duty to act as a reasonably prudent person, and a duty not to self-deal. Naming someone as a trustee creates a fiduciary duty where that person needs to put the trusts interest above there own. Here, Sissy owed a loyalty to the wishes of the trust which were to go to the local animal shelter upon Betty's death. Sissy breached that duty by unilaterally revoking the trust without permission or notice to Betty. The second duty breached is the duty to acts as a reasonable person. A reasonable person would not unilaterally revoke a trust for no reason like Sissy did. The duty not to self-deal was breached because Sissy new that she was going to inherit everything from the will. By revoking the trust she essentially increased her inheritance.

Sissy breached her duties as a trustee.

Remedies

Remedies for a breach of duty as a trustee are to have that person removed as the trustee and to have that person pay for what was loss.

Here, the animal shelter should argue that the trust should stand and that Sissy's revocation is invalid as she breached her duties as a trustee. The court would then assign a new trustee who would distribute the remainder of the Big Branch Bank account to the animal shelter.

Intestate

Undue Influence

Valid Will

Omitted Child

2. Sissy/Debby

Valid Will

A valid will requires that the person be competent, testamentary intent, understand the nature and extent of their property and understand the effect on potential beneficiaries. The will must be in writing signed by the testator or at the testator's direction and be witnessed by two people who also sign.

Sissy should argue that the will is valid and that she therefore receives the estate in its entirety. Sissy can argue that despite being elderly that the her sister was competent and new what she was doing would she executed the will. It can be inferred from the facts that Betty understood what she had in her estate and the effect on potential heirs if her sister got everything. The facts state that the will was properly witnessed. Sissy should argue that while her sister was initially reluctant that she changed her feelings before her death as evidenced by her handwritten not indicating that she was happy that she left her estate to her sister. This is further evidenced by Betty naming her as a trustee. The naming of Sissy as a trustee was completely unsolicited as Sissy did not know that the trust existed and further evidences the level of trust which developed.

It is unlikely that this argument will win based on the undue influence discussed below. As a result the court will find that a valid will was not formed and that Betty died intestate.

If the court does find that a valid will has been formed then Sissy would get the entire estate less the trust money. This would occur because Debby was not an omitted child. In order to be an omitted child, the child must not be born at the time of the instrument. The facts indicate that Betty has not spoken to her daughter in 30 years which means that

the daughter was clearly born when the will was written in 2013. Sissy may also argue that the will revoked the trust. This would not win because you need actually words of revocation and there were none.

Undue Influence

Undue influence occurs when someone exerts pressure on another overcoming their will. Undue influence requires a vulnerable victim, an intent to influence with actions, relationship with the victim, and an inequitable result.

Here, Sissy started paying attention to Betty who is an elderly widow. As an elderly widow she is susceptible to influence as she is likely lonely following the death of her spouse. The attention that Sissy gave to Betty went so far as to control her relationships with friends and other relatives by interfering with visits. As Betty's sister Sissy had a relationship that led to authority/control over Betty. This led to Betty reluctantly executing a will that left everything to Sissy which wouldn't have occurred if Betty died intestate. Following this manipulation, the two became close in actuality. Sissy may argue that while undue influence may have occurred initially that Betty's note showed that she supported the will without any influence.

The court will find that undue influence did result in Betty executing the will

Intestate

To die intestate means that a person died without a valid will. When a person dies without a valid will the rules of 240 govern. Under 240 when a person dies without a will and no surviving spouse the estate goes entirely to any living issue or child of issue. Following that the estate would go to the deceased parents if living or issue of parents if not.

Debby is Betty's only issue according to the facts. As a result, Debby would be entitled to the entire estate less the money in the trust. Sissy would take nothing. Sissy would only take if Debby and Sissy's parents were both deceased along with Betty's spouse.

END OF EXAM