

KERN COUNTY COLLEGE OF LAW
WILLS & TRUSTS
Final Examination
Fall 2020
Prof. V. Oddo

Instructions:

There are three (3) questions in this examination. You will be given four (4) hours to complete the examination.

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

Hal and Wanda are an elderly married couple.

Hal has two sons from a prior marriage, Jeff and Jerry. Tragically, Jeff died as a result of a drug overdose quite some time ago. Hal has a great relationship with Jeff's two children, Anna and Anthony. Jerry feels it is his responsibility to look after his elderly father and stepmother. Jerry picks up their groceries, drives them to doctor appointments, and even makes trips to the bank to withdraw cash (Jerry is named as Hal's agent and Wanda's agent under their powers of attorney). Jerry hosts a family dinner every Sunday at his home (which is regularly attended by Hal, Wanda, Wanda's daughter, and other family members). Really, the only thing that Jerry does not do for Hal and Wanda is drive them to Sunday family dinner at his house; Hal and Wanda always drive Hal's car for Sunday dinner.

Wanda has one daughter from a prior marriage, Janie. Janie has long felt that her mother has neglected her after marrying Hal and resents her greatly. Still, Janie continues to be involved with her new blended family in anticipation of inheriting from her mother (although Janie's patience is running thin). Being a car mechanic with a business on the verge of bankruptcy, Janie could really use that inheritance money—and fast. Wanda has repeatedly told Janie that “she will be taken care of.”

Although they have no biological children together, just last month, Hal and Wanda adopted a baby boy named Joe.

Hal and Wanda do not own much. During their marriage, they have maintained a joint bank account, which is titled in their names as joint tenants with rights of survivorship. Hal and Wanda purchased a home together shortly after they became married. The home is not titled in their names as joint tenants. Hal recently purchased a car with funds from the joint bank account; only his name appears on title to the car. The same is true for Wanda—she recently purchased a car with funds from the couple's joint bank account and took title in her name alone. Neither Hal nor Wanda have any separate property.

Last year, Jerry (being the person who handles all of Hal and Wanda's personal and financial affairs) had his attorney friend, Fred, type up Wills for Hal and Wanda. As a favor to Jerry, Fred prepared the Wills according to Jerry's instructions, which were as follows: “Leave their respective estates to one another. But, regardless of who dies first, my dad's car will go to me. If Wanda fails to survive my dad, then my dad's estate will pass to me. I think that's fair—my dad gave a lot of money to my brother for his rehab stays and I heard my dad tell my brother that it was coming out of his inheritance. I don't see why Anna and Anthony should get anything. Janie is the black sheep in our family, but Wanda feels obligated to provide for Janie, so let's do this—if my dad fails to survive Wanda, then Wanda's estate will be distributed half to Janie and half to me. I deserve it, I do a lot for Wanda.” The Wills were prepared accordingly.

Jerry brought the Wills to Hal and Wanda for them to execute. It turns out that Fred is not the brightest attorney—he spelled the names of Jerry, Anna, and Anthony wrong (he put “Gerry, Annie, and Tony”). Fred also did not insert the correct make and model of Hal’s car. Thinking it would be best to resolve these ambiguities now, Hal crossed out the incorrectly spelled names and wrote in the correct spelling. Hal also wrote in the correct make and model of his car. Hal was surprised at how much he had to correct in the typed Will. There were a number of typed mistakes in Wanda’s Will, so Hal made the handwritten changes for Wanda (Wanda has a very shaky hand). Jerry guided Wanda’s hand in affixing her signature to her Will.

After Hal and Wanda signed their Wills, Jerry noticed there were signature blocks for witnesses. Jerry signed his name as a witness on both Wills. Jerry went next door to Nancy’s house and brought just the witness signature pages, and asked that Nancy sign. Being a long-time friend of Hal and Wanda, Nancy signed the documents without even reading them or understanding what she was signing.

Tragically, this past Sunday, on their way to Sunday family dinner at Jerry’s house, Hal and Wanda were instantaneously killed in a car accident. As Hal’s car approached a busy intersection, his car failed to stop despite Hal repeatedly pumping the brakes. Hal and Wanda collided with another vehicle and were pronounced dead on the scene. Hal’s car was totaled beyond repair.

Jerry has already begun to clean out Hal and Wanda’s home. In doing so, he came across some video footage from Hal and Wanda’s surveillance cameras. The quality is not great, but Jerry is certain that the footage shows Janie cutting the brakes on Hal’s car just hours before the deadly car crash. Jerry has always been suspicious of Janie.

1. How will Hal’s estate be distributed? Discuss all possible alternatives. Answer according to California law.
2. How will Wanda’s estate be distributed? Discuss all possible alternatives. Answer according to California law.

QUESTION 2

Tommy attended the University of Utopia and continues to be an avid supporter of the University of Utopia. In fact, he recently visited his attorney's office and executed a valid Will that left his entire estate to the University of Utopia, subject to some "gifts of tangible personal property identified in a separate document located in a safe deposit box." The Will expressly revoked all prior Wills and codicils. Tommy does not have any children of his own, so he felt that naming University of Utopia as the residual beneficiary of his estate made sense.

Right before going to his attorney's office, Tommy deposited into his safe deposit box a signed document that said: "It should all go to my girlfriend, Sally." After leaving his attorney's office, Tommy met Sally for coffee. To Tommy's surprise, Sally broke up with Tommy. Tommy did not want to leave his tangible personal property to an ex-girlfriend, so he wrote a new piece of paper that said "Forget that other list. All tangible personal property to my sister, Tammy," placed it in his safe deposit box, and poured his coffee all over the prior list but left the coffee-soaked list (still legible) in the safe deposit box. Tommy did not sign the new list.

Tommy's sister, Tammy, attended Cornerstone College, the rival of University of Utopia. As Tommy's older sister, Tammy supported Tommy financially so that he could attend the University of Utopia (despite her loyalty to Cornerstone College). As her only sibling, Tammy felt the need to care for her younger brother after their mother and father unexpectedly died.

Tammy recently learned about Tommy's Will and became very upset. After all she did for Tommy, Tommy's Will did not leave a penny to Tammy and instead left it all to her alma mater's rival. Tammy decided to take matters into her own hands and told Tommy that the University of Utopia had hired a twice-convicted felon as its president. Having heard this news from Tammy (which he did not know to be fake), Tommy became paranoid that his entire estate could end up being distributed to the University of Utopia, led by a person he disapproved of. Tommy was about to leave his house to go skydiving and could not run the risk of his estate being distributed under his current Will (should his parachute decide not to work). So, based on what he had heard from his sister, Tommy took his Will, crumbled it into a ball, and threw it in the trash. On his way out the door, Tommy said to Tammy: "You know, I will leave it all to Sally after all."

As fate would have it, Tommy's parachute failed to open and he died. At his funeral, a woman named Tawny approached Tammy, claiming to be the love child of Tammy's father and his college girlfriend.

Discuss all possible alternatives for disposition of Tommy's estate according to California law.

QUESTION 3

Tim creates an inter vivos trust, naming himself as the trustee and his accountant, Alvin, as the successor trustee. Hanks transfers title to his home, his car, and his bank account to his trust. The trust includes the following dispositive provisions:

- (a) Specific bequest of Tim's Porsche Cayenne to his nephew, Brett;
- (b) Specific bequest of Tim's Ford Mustang to his friend, Cory;
- (c) The balance of the trust estate to be distributed to Tim's friend, Dan.

Tim has one adult child, Erica, but does not provide for her under the terms of his trust. Tim has no other children, living or deceased. Tim's trust does not include a disinheritance clause.

Tim subsequently meets Felicia and immediately falls in love. The two married soon after they met. On their honeymoon, Tim tells Felicia: "I don't want to pay that attorney of mine any more money than I have to, so I'll make sure you get my life insurance money and that will take care of you when I'm gone." Tim designates Felicia as the pay-on-death beneficiary of his life insurance policy when they return from their honeymoon; the death benefit is \$1,000,000. Tim never updates his trust after marrying Felicia.

Later that year, Tim died in a hang-gliding accident. At the time of his death, Tim's trust estate consisted of his bank account, his house (worth \$900,000), his Porsche Cayenne (worth \$60,000), and his Ford Mustang (worth \$40,000). At this death, Tim's bank account consisted of about \$20,000 cash, \$10,000 of which was used to pay for his funeral expenses. Tim's trust estate consisted solely of his separate property. Tim had \$50,000 of debt at the time of his death.

The life insurance policy paid out to Felicia as expected.

Brett, Cory, Dan, and Felicia are waiting for Alvin to provide a copy of the trust.

1. Why is Tim's trust valid?
2. What arguments should Felicia make to ensure she receives maximum benefit from Tim's trust estate? Discuss the merits of her arguments.
3. What arguments should Brett, Cory, and Dan each make to ensure each of them receive maximum benefit from Tim's trust estate? Discuss the merits of each of their arguments.
4. Explain how Alvin (as the successor trustee) will pay Tim's outstanding debt.

Answer all questions according to California law.

Wills&trusts -kccl-answer outline-f2020
QUESTION 1

Answer Outline re Question 1

- Character of property is community property
 - Hal and Wanda can each only dispose of their one-half community interests (bequests of cars under Wills becomes an issue to be discussed, can only dispose of what you own, does not matter that Hal owned it entirely, Wanda has community interest)
- Issue of simultaneous death—distributed half equally to each estate.
 - Joint tenancy asset is irrelevant because of simultaneous death
- Discuss validity of Wills, attested Will requirements. Discuss holographic Wills in the alternative.
 - Issue of Nancy's signature
 - Issue of Jerry helping Wanda sign
 - Jerry acting as interested witness
- Discuss presumption of undue influence re Jerry's fiduciary relationship. Discuss statutory presumption of undue influence (inapplicable to Hal, but applicable to Wanda, which affects his testate share).
- Possible slayer doctrine—Janie cutting the brakes
 - Sunday dinner was a regular occurrence
 - Hal and Wanda always drove Hal's car to Sunday family dinner
 - Janie was a car mechanic, had a failing business, expected an inheritance, etc.
- Issue of advancement re funds distributed to Jeff during his lifetime (oral advancements are not valid)
- Should discuss both testate and intestate distributions in light of above issues
 - Jeff failed to survive. His intestate share passes to his kids by right of representation.
 - Ademption re specific bequest of Hal's car—car was totaled
 - Omitted child under Wills (adopted son)
 - Stepchildren will not inherit under intestacy scheme—no parent child relationship
 - Adoption creates parent child relationship
 - Discuss Janie's argument re Wanda's oral statement
- **STILL DEVELOPING ANSWER OUTLINE; ABOVE IS SUBJECT TO CHANGE**

Answer Outline re Question 2

- Discuss whether there is a valid revocation of Tommy's attested Will
- Assuming there is a valid revocation of the attested Will:
 - Various possible outcomes re revival of list #1 as valid holographic Will followed by possible revocation of same
 - Discuss whether tangible personal property list #1 is a valid holographic Will
 - Discuss revival of revoked Will (Tommy's statement walking out the door, attested Will revoked all prior Wills)
 - Discuss whether there is a valid revocation of that holographic Will
 - Discuss whether poured coffee is a revocation of holographic Will (list #1)
 - Discuss list #2 and whether there is a revocation ("forget that list")
 - Discuss that tangible personal property list #2 is unsigned; not a valid holographic Will to distribute property to Tammy and not a revocation by inconsistency
 - Discuss intestate distribution (depending on answer above to revival of #1 and subsequent revocation question re list #1 if revived, should discuss all possible outcomes)
 - Half blood sister treated as whole blood
 - Alternatively, discuss intestate distribution if list #1 is not deemed revived
 - Should be discussion re partial or full intestate distribution
- Assuming there is no valid revocation, discuss incorporation by reference of the personal property lists and which will control.
- **STILL DEVELOPING ANSWER OUTLINE; ABOVE IS SUBJECT TO CHANGE**

Answer Outline re Question 3

- Discuss elements to create trust
- Felicia's arguments
 - Felicia will argue she is an omitted spouse entitled to her intestate share of the trust estate (one-half of trust assets because that is her intestate share, Tim has a daughter). Argument will likely fail.
 - Felicia will argue that the life insurance policy was not intended to be a transfer in lieu of providing for her under Tim's testamentary instrument, and that Tim's statement to her is not indicative of his intent to provide for an outside transfer. Her argument will likely fail.
- Arguments of Brett, Cory, and Dan
 - Although Felicia is an omitted spouse, Tim provided for Felicia through life insurance policy and intended for that to be in lieu of a transfer through his testamentary instrument (his statement to Felicia). Life insurance proceeds represents the value of what she otherwise would have received under trust. Argument will likely prevail.
 - Dan will likely argue that the debt should be allocated proportionately among the trust beneficiaries. Argument will fail; should discuss procedure for abatement in analysis. Residuary gifts abated first.
 - Cory will argue that specific bequests should be abated proportionately. Argument will fail; specific bequests to non-relatives abated next and in full before specific bequests to relatives.
 - Brett will argue that residuary gifts are abated first, then specific gifts to non-relatives. Brett will receive the full value of his gift.
- Alvin will abate the residue of the trust first to pay debts before abating specific gifts. Next to be abated are specific bequests to non-relatives. So the balance of the bank account and the Ford Mustang will be abated to pay Tim's debt.
- STILL DEVELOPING ANSWER OUTLINE; ABOVE IS SUBJECT TO CHANGE

1)

In order to determine who will take Hal and Wanda's estate, there are rules that apply to both estates.

Simultaneous Death

If it cannot be established with clear and convincing evidence that one party survived the other, each one's property will be treated as if they survived the other. California requires 120-hour survive to take. Since Hal and Wanda were riding in the same car together when they crashed, it would need to be shown that one survived the other for 5 days in order to take the other spouses property. Both Hal and Wanda were "instantaneously killed." The brakes failed and both were pronounced dead at the scene. Therefore, Hal's estate will pass via his will (if valid) or through intestacy and Wanda's estate will pass via her will (if valid) or through intestacy.

Community Property

A testator can devise all of his or her own separate property and their 1/2 of community property. California is a community property state and community property is any property acquired during marriage, unless obtained by gift or inheritance. Since as shown above neither spouse survived each other for the required time, each estate will pass to the heirs of the 1/2 interest in the community property and all separate property to the respective estate. Their community property assets include: a joint bank account, a home (even though it is not held as joint tenants), and both vehicles. Even though Hal and Wanda each have a car that is held in their name only, they used community property funds to purchase the vehicles, which means they are community property. There is no separate property. Each estate will receive 1/2 interest of their assets.

1. How will Hal's Estate be distributed?

Hal's will should be contested by Anna, Anthony, and Joe.

Valid Will

A will is valid if it is in writing, signed by the testator (or at the testator's direction) and 2 witnesses attest. Witnesses must attest during the testator's lifetime to testator's signature and with knowledge they are signing testator's will. The first issue to address is whether the will is valid. Hal's will was a typed document which satisfies the first requirement. Hal signed it after he made handwritten changes to some of the terms, such as the spelling of the kids names and the make and model of the car that he was planning to leave. In California, a holographic will / codicil is handwritten changes to the material terms of a valid will. The material terms are in the testator's own handwriting and is signed by them. Since the changes were made prior to signing, it is likely they wouldn't count as a codicil, even though it appears to amend or modify the terms, it will be part of the will. However, the main issue with the execution of the will deals with the witnesses. Jerry signed his name on both wills. He is not a disinterested witness as he was slated to take all of Hal's estate if Wanda failed to survive. He is the main taker, which can be a problem. Additionally, the will was also signed by the next door neighbor, who is a friend of Jerry's. She didn't even get the entire will, just the signature page and did not know what she was signing. She signed because her friend told her to and so she had no knowledge that she was signing a will. The court has looked to harmless error (the will not being executed will all will requirements), if it can be shown with clear and convincing evidence that the decedent intended it to be, then it can still be valid. One issue is witnesses. Since the other facts show other forms of undue influence, it is unlikely the court will apply harmless error. As a result, Hal's will is invalid and will be distributed through intestate succession rules.

Freedom to Dispose

A testator has the freedom to dispose of their assets to whomever they please. When Hal's will was drafted, the information in the will was dictated by Jerry, Hal's son. It could be argued that Hal did not have the intent to dispose of his property in the manner than Jerry told the attorney to do it. He said that because Hal gave his deceased brother a lot of money during his lifetime for rehab, that Hal told Jeff that it would come out of his inheritance. This argument is likely to fail, not only because it was an oral promise, but Jerry is making arrangements with the attorney (who is also his friend) where he would receive all of the estate. Jerry will argue that Hal read over the will and was fine with the fact that his entire estate will go to Jerry (should Wanda not survive.)

Capacity

A testator must have capacity, which includes being 18 and having a sound mind. A sound mind includes testamentary intent, testator understand the nature and extent of their property, knows they are making dispositions of their property, understands the effects on the beneficiaries. The main

argument against Hal having the capacity to understand what he was given to Wanda or Jerry is his age. He is elderly and appreciative of the fact that Jerry takes care of them. He may feel an obligation to repay him based on Jerry. From the facts, it appears Hal has his mental capacity still, even though Jerry does many things for them. If he is driving still, that takes a lot, so may be easy to show.

Undue Influence

A will is invalid if it is obtained through undue influence, such as mental or physical coercion, and the testator is deprived of their free will. The contestant must establish and prove: influence over the testator, effect of the influencer over testator's mind and free will; and product would not have been executed but for the influence. It doesn't appear there is mental or physical coercion specifically, but when Jerry was acting as power of attorney, he was not taking the testator's intent into consideration. He instructed the attorney (who was also his friend) to draft a will that excluded his brother's kids. Jerry unduly influenced Hal's will. Jerry will argue that Hal read the will and all of the terms, made corrections, didn't object or try to add anything else in, and signed it, so there was no undue influence. Since the will itself is invalid, he would still be able to take if undue influence was not proven.

Undue Influence Statutory Presumption

A statutory presumption of undue influence occurs when a donative transfer is made to: (1) either the person who drafted the will; (2) a person in a fiduciary relationship with the testator who transcribed the will; or (3) care custodian of the testator and can be proven by circumstantial evidence that combines opportunity, susceptibility of testator, procured the will, vary from expressed intent; or is unnatural. Jerry seems to meet all of the elements of when a statutory presumption of undue influence is present. He instructed his friend to draft the will. He is in charge of Hal and Wanda's personal and financial affairs, which creates the fiduciary relationship, and he is the care custodian (he is Hal and Wanda's power of attorney). There is a statutory presumption that he exerted undue influence that he would have to rebut. Hal has a great relationship with his grandchildren, Anna and Anthony. This type of relationship would call into question that he would want them to be excluded from taking from his estate. Jerry exerted undue influence when preparing the wills on behalf of Hal and Wanda.

Intestate Succession

Under intestate succession, any part of a decedent's share not properly disposed of will pass to their heirs by statute. Since there is no surviving spouse, Hal's estate will pass to his issues. Equal lines will be treated equally, and the estate divides at closest generation of live takers, and predeceased children's share will pass to their children.

Pretermitted Child

Children are not automatic takers and a testator can intentionally disinherit children. However, a pretermitted child is one who is born or adopted after the execution of a testamentary instrument. They will receive an intestate share of the decedent's property, unless the testator's intent to omit is shown, the child was provided for elsewhere outside of the will, or their surviving parent received a substantial part of the estate. Since Joe was adopted by Hal and Wanda after the will was executed, he would qualify as a pretermitted child. Hal's other children Jeff (who predeceased Hal so Jeff's issues (Anna and Anthony)) and Jerry were around prior to the will execution so they would not be pretermitted.

Omitted Child

A testator can omit a child if it can be shown that they had the intent to disinherit them. Even though Jeff predeceased Hal, that does not automatically disqualify Jeff's children from taking Jeff's share through intestate. Anna and Anthony will argue that the only reason Jeff was left out of the will was because Jerry was in charge of it, leaving the entire estate to him. As discussed above, the will is invalid. That means that Hal's share of the community property estate assets will pass to his family through intestate succession and will pass to Jeff's issues as a right of representation.

Step Children

Step children do not take unless the relationship began when the children were minors and continued through adulthood and they would have been able to be adopted if legally possible. Janie will argue that since she is Hal's stepchild that she has rights as his heir. However, Hal and Wanda didn't marry until later in life. He never held her out to be his or would have adopted. Janie is not a taker.

Ademption

If a specific item is not in the estate at the testator's death, then the gift has been adeemed. In California, ademption depends on whether the testator intended to adeem it. A specific bequest is a gift of a particular item of property. In the will, Hal's car, given to Jerry, would be classified as a

specific bequest, if it is found to a valid will. Jerry would be able to exclude the car from the remaining of the estate as Hal did not intend to dispose of the gift prior to his death. He was driving the car when he crashed and totaled it. As a result, the car is not in the estate.

Conclusion:

Hal has 3 takers, assuming the court allows Jerry to still inherit a share of his father's estate, even though he mismanaged and took advantage of his dad and step mom. Hal's estate of the 1/2 community property interests will pass equally to Anna and Anthony (1/3 share of their predeceased father Jeff's share), 1/3 to Jerry, and 1/3 to Joe.

2. How will Wanda's Estate be distributed?

All of the issues discussed above apply to Wanda's estate as well, with a few other exceptions.

Shaky Hand

In California, a person other than the testator can assist with the will if they have a shaky hand. Wanda's hand was shaky and Hal had to help her make changes and sign her name. This would be valid and not negate her will. However, as discussed above, the will was invalid because of Jerry's undue influence and lack of proper will execution.

Slayer Statute

If there is a felonious killing of the decedent, the killer forfeits (or is not entitled) to any interest as they cannot benefit from their own wrong. In order for the statute to apply, the killing must have been intentional. Jerry discovered that Hal and Wanda had video surveillance at their home. Jerry suspects that Janie, Wanda's daughter is shown cutting the breaks on Hal's car. When Hal was driving for Sunday dinner, his car failed to stop even after repeatedly pumping the breaks, which was the cause of the accident. It would need to be determined if the intent to kill them was present whenever Janie cut the breaks. Janie felt neglected by her mother after she married Hal. She may have intended to hurt them by cutting the breaks, but it doesn't appear that she intended to kill them. It would be

foreseeable that cutting the breaks would cause a collision, but maybe not one that would kill both. Janie could take her intestacy share if the slayer statute didn't apply.

Conclusion:

Wanda's estate will either pass 100% to Joe, her adopted son, or 1/2 Joe and 1/2 Janie, if the slayer statute does not apply. Jerry will take nothing as he is her step son.

END OF EXAM

2)

1. Disposition of Tommy's Estate

Valid will?

A valid will must be in writing, signed and witnessed.

According to the facts, Tommy's (TO) will was validly executed.

Incorporation by Reference:

A writing outside the will may be incorporated by reference into the will if the writing existed at the time the will was executed and the will manifests the intent to incorporate it and sufficiently describes the writing so that it is identifiable. In CA regarding tangible personal property, a writing even if it cannot be incorporated by reference may be admitted into probate when it disposes of limited tangible personal property if the writing was referred to in the will, is dated and either in the testator's handwriting or signed by him, describes the items and beneficiaries with reasonable certainty and each item may not exceed 5k and the total value may not exceed 25k.

Note leaving Tangible PP to Sally or Tammy:

Here, the signed writing by TO to Sally (SA) was valid. It was signed and dated and referenced in the will. However, it was not clear as to what TO meant by "it should all go to SY". The note to Tammy described the property but wasn't signed. Also, the note leaving everything to SY had coffee spilt all over it. This would go to show TO's intent. Tammy will argue that the note leaving everything to her should be incorporated. But, Sally will argue that TO intended to give her everything as evidenced by the statement to Tammy just before TO died.

The court will likely distribute the property according to TO's original note and incorporate it into the will, if the will is still validly executed.

Revocation:

Was there a valid revocation?

A valid revocation of a will can happen by a physical act of the testator or another person in the testator's presence.

Here, TO revoked his will. He took the will crumpled it and threw it in the trash after being told by Tammy that the University had hired a twice convicted felon to be president. This would be deemed a valid revocation, as he performed a physical act that clearly expressed his intent to disinherit the University. However, this information was not true and the court will find the revocation to be void.

Fraud:

When the execution of a will or the inclusion of a particular gift is the result of fraud, the will or particular gift is invalid. A revocation procured this way may be declared void. This requires a willful deceit as to instrument or extrinsic facts and the testator must rely on these facts and it must be perpetrated by the beneficiary.

Here, Tammy lied to TO regarding the university president because she found out that he had not left anything substantive in his will to her. TO relied on this information and revoked his will. Tammy stands to benefit because if the will is validly revoked she will inherit TO's estate through intestate succession.

The court will likely find that TO's revocation is void.

Distribution:

The university of utopia will likely inherit from TO's will and Sally will receive all of TO's tangible Personal property.

However, if the court finds the revocation to be valid then the property passes through intestate succession.

Intestate Succession:

This applies when the decedent dies without leaving a surviving spouse and/or valid will.

Heirs:

Heirs at law will be determined by the relationship or degrees of consanguinity.

Here, TO's legal heirs would be Tammy and Tawny. TO left no issue, was not married and his parents have died. This means that next in succession are the issue of parents. TO and Tammy are siblings and share the same parents. Tammy will argue that Tawny should not

be considered because her claim of being a half sibling is just a claim. However, Tawny will argue that she can prove herself as a half sibling.

Should Tawny prove she is TO's half sibling, she and Tammy will be considered TO's legal heirs.

Modern Per Stirpes:

Makes an equal distribution at the first level of living heirs. If any of these heirs are deceased and leave issue still living their share will be distributed equally between their issue. If any deceased heirs don't leave issue then their share will be added back to the original distribution and divided among the remaining closest heirs.

Here, Tawny and Tammy are TO's legal heirs. They would receive 1/2 of TO's estate each. Tammy will try to argue that Tawny is not a legal heir and attempt to receive the full estate interest. However, it is more than likely that they will receive a 1/2 share of the intestate estate.

The court will likely find Tawny and Tammy to share the estate.

However, it is unlikely that the court will find the estate to pass through intestate succession.

END OF EXAM

3)

1. Why is Tim's trust valid?

Trust

A trust is created when there is a (1) competent settlor; (2) with intent to create; (3) a legal purpose; (4) ascertainable beneficiaries; (5) specific property; and a (6) trustee. Here, there is no indication that Tim was not competent when he created the trust. He had the intent to create the trust and the purpose is to convey his property to his ascertainable beneficiaries certain pieces of his property. His beneficiaries included his nephew, Brett, his friend, Cory, and his friend Dan. The specific property Tim was conveying included his cars and the rest of his estate. He named himself as trustee and designated a successor trustee in Alvin, his accountant. All of the elements of a valid trust have been satisfied. Tim has a trust and has transferred his assets to it.

Inter Vivos Trust

An Inter Vivos Trust is created during the settlor's lifetime by declaration of personal property with intent and delivery or deed of trust and becomes irrevocable at death. As discussed above, Tim created a valid inter vivos trust as it was created in his lifetime and declared the personal property to be distributed at his death. The only issue becomes if there is any other claims to be made by his adult child, Erica, or his wife at his death, Felicia. There is no indication that the trust was revoked, modified, is invalid, or was influenced by anyone else. As a result, Tim created a valid inter vivos trust.

Separate Property

California is a community property state and any assets acquired during marriage are community property, unless received by gift or inheritance. Separate property is property was acquired prior to marriage and will remain separate unless the owner does something to change the character of the property to become community property. A testator can devise all of his separate property and 1/2 of his community property. Tim created a trust prior to meeting Felicia. The trust included 2 cars, his bank account, and his home. All of these assets are separate property and he is free to devise without having to leave any to his spouse. The trust was created prior to his marriage to Felicia, with separate property assets. The trust is valid.

2. What arguments should Felicia make?

Omitted Spouse

An omitted spouse may be able to take their share of the estate if the couple got married after the execution of the testator's will and they did not waive their interest in the estate. A waiver can be done if it is done voluntarily after all of the assets are disclosed. Felicia will argue that she did not waive her interest to Tim's estate. She will claim that because he executed his trust prior to them meeting and their subsequent marriage, she shouldn't be excluded from taking part of his estate as his omitted spouse. However, the other beneficiaries to the trust will argue that she was rightfully paid because she received a \$1 million life insurance proceeds. Felicia will still claim omitted spouse and no waiver. Her argument is likely to fail because of the POD life insurance policy that Tim designated her to receive after their honeymoon.

Non-Probate Instruments / Payable on Death

Some instruments are considered non-probate because they have designated beneficiaries and will therefore not be included in a decedent's estate. Such things include bank accounts, payable on death instruments such as life insurance, retirement accounts, inter vivos trust, and joint tenancy. Tim purchased a life insurance policy that designated his new wife as the sole beneficiary. Tim's other heirs will argue that because she was the designated beneficiary on the life insurance that she was not entitled to any other parts of his estate. They will argue that all of the other assets at Tim's death were separate property because he had them prior to their marriage and that she has no claim to them. His comments to her about making sure she got his life insurance policy would show his intent to provide her with that money, but not necessarily to prove that he wanted her to have access to any of his other assets. Felicia will receive the \$1 million and nothing else.

Separate Property

See rule supra. Felicia could try to claim that Tim intended to share his separate property with her in order to claim a larger share. If the trust was somehow determined to be invalid and that property went to the estate, she would only hold a partial share in the property because he also has a child, so she would receive a 1/2 share and Erica would claim the other 1/2 share.

3. What arguments should Brett, Cory, and Dan make?

Valid Trust

See rule supra. Tim's nephew, Brett, his friend, Cory, and his friend Dan, will argue that the trust is valid and should be upheld. They will argue that the marriage to Felicia did not change their interests and because Tim provided her with a \$1 million life insurance policy, she was already adequately compensated. They will argue that Tim's daughter, Erica (who was left out of anything) was left out intentionally and she shouldn't have any claim to the estate. They will seek to enforce Tim's trust as valid with no modifications so as each can receive their maximum benefit. Because the trust was valid when written, they will take according to Tim's wishes.

Gifts / Specific legacy

A specific bequest is a gift of a particular item of property such as a car, painting, watch. If the item is not in the testator's estate at their death, it is thought to be adeemed (unable to be passed) and applies only to specific bequests. Brett and Cory will both be able to take their respective cars, free of any issues. Tim gifted his nephew Brett with the Porsche, and Cory was gifted the Ford Mustang. Both of the vehicles are in Tim's trust when he died. Even though the value of the cars is different, neither party will object to receive the specific gift that Tim wanted them to have.

Residual

The residuary gift is what remains in the estate after paying debts, expenses, taxes, and satisfying other specific, general, or demonstrative gifts. If there is no residuary in a will or trust, the residual passes through intestacy. Since Tim provided that his friend Dan would take the balance of his trust, absent some other issues with his surviving spouse and omitted child, Dan would take the balance. This includes the \$900,000 house and \$10,000 bank account. However, since there is \$50,000 in debt, that amount would need to be satisfied before Dan would receive the rest.

Separate Property

See rule supra. They will use the same argument as discussed above for the property held in the trust. It was Tim's separate property and should be distributed per his wishes. Felicia should not gain a share of his separate property as he did nothing to try to include her in it. In fact, he even told her he did not want to deal with the attorney to change anything else, so he designated her as the beneficiary as the life insurance policy to make sure she was taken care of. The assets are not SP.

Class Gifts

A gift to a class of common persons (such as children or members of a group) closes at the testator's death. Since the gifts are specific bequests, they will pass to the named beneficiaries unless they are no longer in the estate at the testator's death (ademption). This does not apply here.

4. How will Alvin pay Tim's debts?

Alvin, as the successor trustee, has several duties and obligations to adhere to the trust requirements. One of those is to satisfy the debts of the trustee, which includes paying them. Tim had \$50,000 in debts and his funeral cost \$10,000. Since those amounts will come from his estate, the remaining residual of the estate will be impacted. The cars are specific bequests that would not, in this case, be affected by the outstanding debts. If Tim had more debt than his estate could satisfy, the cars may be sold to satisfy his debts. However, the cars will go to Brett and Cory as they are specific bequests. The house, valued at \$900,000 and bank account balance, now valued at \$10,000 (after paying his funeral expenses), are considered to be the balance of the trust. Those assets are available and will be used to satisfy his outstanding debts. Alvin will use the \$10,000 bank balance and expect to use \$40,000 of the value of the home to satisfy the debts. This can be done by leveraging the home through a lien to pay off the debt before it passes to Dan. The home could also be sold to satisfy outstanding debts and remaining cash money given to Dan. Dan may also provide the estate with the balance in exchange for the house, free of any encumbrances. There is sufficient value in the assets to be able to satisfy his outstanding debts and close out the trust as Tim wanted.

**Omitted Child

An omitted child is a child that was left out of the testamentary instrument. While children do not automatically inherit and a testator is free to devise their property, omitted children can contest. If it is not shown that there was intent to disinherit or omit them, they may be takers. Another possible person who contests the trust and could be a taker is Tim's daughter, Erica. She was not provided for under the terms of the trust. There is no disinheritance clause listed in the trust. Erica was not mentioned as a taker or mentioned as intentionally disinherited. She may challenge the trust under the omitted child.

END OF EXAM