WILLS AND TRUSTS

Final Examination

Fall 2016

Prof. Y. Ascher

Instructions:
You will be given three (3) hours to complete this examination.

The format of this examination is as follows.

There are two (2) essay questions:

- One (1) essay will be worth 150 points (should take approx. 90 mins)
- One (1) essay will be worth 100 points (should take approx. 60 mins)

Total essay points available: 250 points

There are seven (7) short answer questions:

- Each short answer question is worth 5 points

Total short answer points available: 50 points

TOTAL FINAL EXAMINATION POINTS AVAILABLE: **300 points**

Please use your time wisely and good luck.

Question 1 - 150 points

On November 1, 2012, Harold created a trust that was funded with $200,000 of Harold's separate property. Trustee, Inc., named as trustee, was instructed to pay the income to Harold for life and the remainder to Willow, Harold's wife. At the time, Willow and Harold had one (1) son, Stewart. Later that day, Harold executed a valid typed Will that provided as follows:

Article I:	$20,000 to my friend Frank.
Article II:	$50,000 to the person named on a sheet of green paper dated October 30, 2012, and located in my top desk drawer.
Article III:	The residue of my estate to my son, Stewart.

In 2014, Willow died while giving birth to the couple's second child, Daisy.

Shortly thereafter, Harold pulled out his 2012 Will and crossed out the figure "$50,000.00" and handwrote in the figure of "$200,000.00." He then initialed and dated the change.

Later in 2015, while grieving Willow's death, Harold began regularly consulting a much younger and attractive financial advisor, Farrah. After several visits, Harold and Farrah began a romantic relationship and Harold became more and more dependent on Farrah for advice. After only a few months of seeing Farrah, Harold proposed marriage.

Prior to the marriage ceremony, Harold asked his best friend and family attorney, Brent, to prepare a pre-nuptial agreement in which Farrah would waive her right to any claim to an intestate interest. Harold and Farrah met with Brent, where the pre-nuptial agreement was orally explained to her. Farrah confirmed that she understood what she was waiving. The only pages that Farrah spent a considerable time reviewing were those that contained the financial information. In her capacity as a financial advisor, Farrah routinely signed legal contracts and documents, and thus she said that she felt comfortable not reading the entire document. On the morning of the wedding Farrah signed the document just before getting into her custom-made wedding gown.

Later that year, while meditating, Harold had a vision that Stewart would become involved in money laundering and other criminal activity. Very upset by such a vision, and at Farrah's urgings, Harold prepare a typed codicil to his 2012 will, changing the residuary beneficiary from Stewart to Farrah. Harold signed the codicil. Later that night, while out drinking with Farrah and Frank, Harold asked Frank if he could sign something for him as a witness. Harold pulled out the Codicil and turned to the last page, which was blank except for Harold's signature and the date. Harold pointed out to Frank his signature and where Frank should sign as a witness, but Frank did not read the document prior to signing the document. At that time, Stewart was studying to be a Monk and had taken a vow of poverty, which upset Harold.

In early 2016, Harold and Frank, passengers on a bus, were simultaneously killed when the bus rolled down an embankment and exploded into flames. The green sheet of paper referred to in Article II of the 2012 will provided: "To my next-born child, if any."

Harold was survived by Stewart, Farrah, Daisy and Fred, Frank's son. At the time of his death, the Trust held $250,000.00 and his separate property estate consisted of $500,000.00 in cash and other liquid assets.

1. To whom should the trust property be distributed? Discuss.

2. To whom should Harold's separate property estate be distributed? Discuss.

Answer according to California law.

Question 2
100 points

When Brenda was born in 1994, her Uncle John gave to Brenda's parents, Mark and Carol, a gift to Brenda of a $10,000 U.S. Savings Bond and 1,000 shares of stock of Yahoo!, a small California technology company. He told them that he wanted to encourage Brenda to get a good education and asked that it be used to help pay for college. John endorsed both the bond and the stock "to Mark and/or Carol, for Brenda." Mark and Carol thanked him for the generous gift and put the bond and the stock in a safe deposit box. John died in 1997 intestate, leaving his brother, Mark, and niece, Brenda, as his only heirs.

In 1987, Mark created a valid will leaving Carol $50,000 of his individual separate property, with the residue of his estate going to FourPawz Cat Shelter. FourPawz, a recognized valid charity, operates a euthanasia-free shelter that houses abandoned and disabled cats. Mark had a passion for helping disadvantaged animals.

In 1998, Mark and Carol obtained a dissolution of their marriage. Brenda continued to live with her mother Carol, who remarried in the winter of 1999. Suffering from esophageal cancer, Mark died at the end of the year in 2012. He left an estate of $100,000.00.

Carol retained control over the bond and shares of the stock. The bond matured in 2001 and Carol redeemed it for the face value and placed this money in a joint checking account, which she owned with her new husband, David.

Carol told David that the money was for Brenda's education. David never inquired any further. The 1,000 shares of Yahoo! stock increased in value and, in 2002, Carol exchanged these shares for shares of XYZ, Inc., worth $15,000 at the time of the exchange. The value of XYZ, Inc.'s shares has steadily declined and is now worth approximately $500.

In 2011, after experiencing some difficult financial times, FourPawz Cat Shelter was forced to close its doors indefinitely.

In the meantime, Brenda seriously studied ballet and become quite proficient. She was eventually able to obtain a partial scholarship to attend the prestigious Juilliard School upon her graduation from high school. Brenda personally financed the remainder of her education by obtaining student loans. In 2014, while studying at Juilliard, Brenda fell madly in love with a fellow dancer, to whom she became engaged on the day of their graduation. While talking to David about her student loans, Brenda inadvertently learned of the existence of the gift from her Uncle John. She asked her mother for the bond and the stock to help pay for her upcoming wedding, but Carol refused. Carol told Brenda that the gift had been fully expended to pay for ballet lessons.

1. What rights and remedies, if any, does Brenda have against:

    a. Carol? Discuss.

    b. David? Discuss.

    c. Mark? Discuss.

2. What interest does Brenda have in Mark's estate?

3. Can the "gift" be used for Brenda's wedding now that she has completed her education at Juilliard School? If gift cannot be used for the wedding, how should the gift be distributed? Explain.

Wills
Fall 2016 Exam

Question 1 OUTLINE

I. Distribution of Trust Property (total 15 points)

A. Creation of Trust (3 points)
   1. Elements – corpus, intent, valid purpose, ascertainable beneficiaries

B. Death of Trust Beneficiary (12 points)
   1. Lapses
   2. Resulting Trust
   3. Added to H's estate

II. Distribution of Harold's Estate

A. Handwritten revision (25 points total)
   1. Holographic Will (no – no testamentary language)
   2. Revocation of gift – (yes - physical act)
   3. Affected on "omission"? (republication – no)
   4. DRR (is revocation "conditional" on new gift)
   5. Conclude NOT a valid holographic change

B. Validity of Codicil (40 points total)
   1. Undue influence
   2. Formalities – lack of two witnesses – harmless error rule for witnesses
   3. Interested witness (no effect as not a change to Frank's gift)
   4. Republication
   5. Testamentary capacity – Delusions?
   6. Testamentary Freedom
   7. Republication of Will (so Julie not omitted), if valid

   Mostly will conclude valid – so Julie not omitted – but can conclude either way...

C. Simultaneous Death (15 points)
   1. Lapse
   2. Anti-Lapse Statue
   3. Effect of death on Fred's gift

D. Components of the Will (15 points)
   1. Integration
   2. Incorporation by Reference

E. Omitted Child Statute (20 points)
   1. Elements
   2. Exceptions
      a) Provided for by note
      b) Provided for parent in trust and child in existence – does it matter that wife does not take? Does it matter that wife was only given an interest in the Trust, and not in the estate?
   3. Interest (intestacy) (now married so only 1/3)

F. Omitted Spouse/Validity of Pre-nup (20 points)
   1. Was F omitted?
   2. Did Codicil make her not omitted (if valid)
   3. If not valid, did she waive? Was waiver valid?
   4. If valid, did it apply to the Codicil as she waived her "intestate" share.

Question 2 OUTLINE

I. Creation of Trust Property (15 points)
   A. Creation of Trust
      1. Elements – corpus, intent, valid purpose, ascertainable beneficiaries
      2. Co-Trustees

II. Against Carol: (25 points)
   A. Trustee Duties
      1. Duty of Care
      2. Duty to Separate and Earmark Trust Property
      3. Duty to Monitor
      4. Duty to Preserve Trust Property and Make it Productive
      5. Duty to Invest
      6. Duty to Diversify
      7. Duty of Loyalty
      8. Duty to Account
   B. Prudent Investor Rule
   C. Liability of Trustee
   D. Damages

III. Against David: (10 points)
   A. He has no interest; or liability. He had no duty to act. Funds can be recovered.
   B. Constructive Trust

IV. Against Mark's Estate – as a creditor (20 points)
   A. Co-Trustee; liability
   B. Cant' delegate
   C. As creditor – has 1 year to file claim – potentially too late

V. Interest in Mark's estate (20 points)
   A. Gift to wife revoked by operation of law on divorce (many will revoke the Will)
   B. Not omitted
   C. Gift to Charity - Cy Pres doctrine – if not, intestate

VI. Use of funds (and damages) – wedding issue (10 points)
   A. Was purpose satisfied?
   B. If purpose satisfied; remaining funds would revert to Uncle John's estate or to Brenda? Either way, goes to Brenda as intestate heir
   C. If not satisfied – can go to student loans – similar purpose
   D. (extra credit) –J ohn's estate would have no claims for damages because he was the "settlor" and retained no interest – so he can't enforce the Trust.

Short Answer Questions
50 Points Available

1)

1. To whom should the trust property be distributed?

As further explained below, the property in valid trust executed by Harold (H) on 11/1/12 will pass to H's estate, as there are no valid beneficiaries.

TRUST CREATION

A trust is created when there is: (1) a competent settlor; (2) a valid trust purpose; (3) trust property (corpus); and (4) ascertainable beneficiaries. Here, the trust created by H is valid because there are no facts to indicate that H was not competent when the trust was created, there is a valid trust purpose (to pay the interest to H for life and then pass to his wife Willow (W)), there is trust property (the $200,000 separate property funds), and there are ascertainable beneficiaries (H while living and then to W).

However, since there was no remainder beneficiary at H's death, the trust property will revert to H's estate. (The anti-lapse rule does not apply here because W is not kindred.) This is referred to as a ***resulting trust***. Thus, the $250,000 will pass to either: (1) the person who inherits H's residual estate (if there is a valid will); or (2) H's intestate heirs. This will be resolved by answering the second interrogatory.

2. To whom should Harold's separate property estate be distributed?

In order to address who will inherit H's separate property estate, we will need to determine whether the 2012 will is valid, and whether any of the changes made to the will are valid. We will also need to determine whether Daisy is an "omitted child".

INCORPORATION BY REFERENCE

A document that is not part of a will (but that is in existence at the time the will is executed) may be incorporated into the will by reference as long as the document is sufficiently identifiable in the will. Here, the $50,000 bequest references a document that is not part of the will (namely, "a sheet of green paper"). The document is sufficiently identifiable because it is referred to by its color, location, date, and content. There is sufficient evidence that this document was in existence at the time the will was executed because it is dated for two days before the will was executed. Therefore, the green sheet of paper is incorporated into the will by reference, and the person named (Daisy) on the paper will inherit that bequest (provided that none of the subsequent acts change the

bequest).

2014 CHANGE

In order to determine whether the change made in 2014 is valid (changing the $50,000 bequest to $200,000), we will need to determine whether the handwritten change meets the formal requirements of a will. As explained below, the court will find that the $200,00 bequest is not valid. Ultimately, the court will likely find that the $50,000 gift was technically revoked, but that, under the theory of DRR, the $50,000 gift is still valid.

REVOCATION

A will, or part of a will, can be revoked by either : (1) a physical act (destruction, tearing, during, obliteration, crossing out, etc.) or (2) a subsequent writing that qualifies as a will. Here, as explained below, the handwriting does not qualify as a will. However, the court will find that the $50,000 bequest was revoked by a physical act because crossing out a bequest is a qualifying physical act; furthermore, H has clearly demonstrated his intent to revoke the $50,000 bequest because he wants to provide the mystery person with more money. Thus, the $50,000 bequest was validly revoked.

WILL FORMALITIES (HOLOGRAPHIC)

In order for a handwritten (holographic) will to be valid, the material terms must be in the testator's own handwriting and the document must be signed by the testator. Here, although the change was made in H's handwriting and was initialed by H, there aren't sufficient material terms for this to qualify as a will. When determining whether a holographic will is valid, the court will look at only the testator's handwriting (unless the testator is using a preprinted will form). Here, the only writing the court has is literally, "$200,000 H x/x/2014"; these items alone do not evidence the requisite intent to create a will as they do not specify what is to be done with the $200,000. Therefore, the $200,000 bequest is invalid. However, the court may apply the theory of DRR and find that the revocation of the $50,000 gift is invalid.

DEPENDENT RELATIVE REVOCATION (DRR)

Under the theory of DRR, the court will find that a revocation is not valid if: (1) the testator has a mistaken belief about how the revocation will affect the disposition of his property; and (2) the testator would not have revoked the will (or part of will) if he/she knew of the mistake. Here, H mistakenly believed that the change H made to his will

would result in the mystery person inheriting $200,000. If he knew that the mystery person would not inherit anything due to the change he made in 2014, he would not have made this change. This is evidenced by the fact that the person listed on the note was his next-born child (who was in existence at the time he made the change) and by the fact that H wanted to leave this person more money (rather than less money). Therefore, in applying DRR, the court will find that the $50,000 bequest was not affected in any way by the 2014 change.

SPOUSAL WAIVER/OMITTED SPOUSE

Under California law, spouses can waive their interest in their spouses' estates so long as the waiver was done knowingly and intentionally and there was sufficient disclosure to the waiving spouse. Spousal waivers do NOT have to meet the same standards as prenuptial agreements. Here, the court will find that Farrah's (F) waiver was knowing and intentional because H's attorney orally explained the prenuptial agreement, she "confirmed that she understood what she was waiving", she had the ability to read the full agreement, and she spent considerable time reviewing the financial information contained in the agreement. Furthermore, given F's experience as a financial advisor, it is more likely than not that F understood what she was doing. Although this prenuptial agreement would not be valid in a divorce proceeding, the spousal waiver is still valid in a probate proceeding. Therefore, F waived her interest in H's estate and will not inherit anything (unless the 2015 change is valid).

OMITTED SPOUSE

F may argue that she is an omitted spouse, since she married H after the most recent will was drafted. However, the spousal waiver would defeat this argument, if valid. If the spousal waiver was not valid, then F would inherit her intestate share.

2015 CHANGE

In order to determine whether the changes made by H in 2015 are valid, we will have to determine whether the codicil meets the requirements of a valid will. We will also have to consider whether H was suffering from an insane delusion or undue influence when he executed the codicil (which would void the codicil).

WILL FORMALITIES

In order for a typed codicil to be valid, it must be signed by the testator, and the signature must be witnessed by 2 disinterested witnesses. Here, there is only one subscribing witness, Frank. Furthermore, there is no evidence that Frank understood he

was signing H's will; in order for a subscribing witnesses's signature to be valid, the witness must observe the testator signing the will (or the testator must acknowledge his/her signature to the witness) and must understand that they are signing a will as a witness. Here, there are no facts to indicate that Frank knew he was signing a will because H only told Frank that he was signing "something" and Frank only saw a blank page with H's signature and date. Compounding this issue is the fact that Frank is technically an interested witness since he is inheriting property under the will (and the codicil is republishing the will). Thus, the requisite formalities are not present and the codicil is not valid unless the court applies the harmless error rule.

HARMLESS ERROR RULE

Under the harmless error rule, even if a will does not meet the witness requirements as described above, a will/codicil will be valid if the court determines that there is evidence that the testator intended to create a valid will. F will argue that the codicil is valid under the harmless error rule since there is evidence that H intended to create a valid will. Specifically, F will argue that H wanted to change his residual bequest because he was upset at Stewart (S) for studying to become a monk. However, S will argue that the codicil is not valid under the harmless error rule because there is evidence that H did not want the will to be valid. Specifically, H obscured the document from Frank, which implies that he didn't want Frank's signature to be valid. Ultimately, the court will likely find that H did intend for the codicil to be valid. However, if the codicil was procured via an insane delusion or while H was under undue influence, the codicil would be invalid.

INSANE DELUSION

An insane delusion is an irrational belief that a testator holds on to in spite of all facts. An insane delusion only invalidates a will/codicil if the disposition of property is affected by the delusion. Here, S will argue that H was under the influence of an insane delusion when he executed the codicil. Specifically, S will argue that H was under the belief that S would become involved in money laundering and other criminal activity, and that *H drafted the codicil after becoming "very upset"* by that vision. The court will likely find that this was an irrational belief, since at S was actually studying to become a monk and was had taken a vow of poverty at the time the codicil was drafted; it is irrational to think that a pre-monk who has taken a vow of poverty would ever be involved in criminal activity or money laundering. F will argue that, even if this is an insane delusion, it did not effect the disposition of property because H really made the change because he was upset at S for becoming a monk. Ultimately, the court will find that this was probably not an insane delusion, since S would have the burden to prove so.

UNDUE INFLUENCE (COMMON LAW/STATUTORY LAW)

Undue influence is excessive persuasion that is sufficient to overcome a person's will. A will/part of a will or codicil is void if it is procured by undue influence. Under the common law (and CA statutory law), the court will use the following factors to determine whether there is undue influence: (1) whether the testator is susceptible to undue influence; (2) whether the influencer has an opportunity to unduly influence the testator; (3) whether the influencer has a motive or predisposition to unduly influence the testator; and (4) whether the influence results in an unnatural disposition of property. Under the common law, all elements would have to be met; under CA law, these are merely factors that the court weighs.

Here, there is evidence that H is susceptible to undue influence. H is a widower who married his financial advisor, on whom he was dependent before marriage. Furthermore, there was evidence that H was distraught about S's behavior, which would potentially lead to self-doubt or a lack of confidence in one's self.

There is also evidence that F had the opportunity to unduly influence H because she was his wife and financial advisor. Furthermore, the facts state that H made the codicil at F's urging.

Additionally, there is evidence that F may have had a motive to unduly influence H, since she knew that she had previously waived her interest in H's intestate estate; presumably, F would not receive anything from H's estate if this codicil was not drafted.

Lastly, there is evidence of an un-natural disposition of H's estate. Here, if H did not have a will, F would inherit only 1/3 of the estate rather than the nearly 4/5 of the estate she would inherit if this codicil were valid.

F will argue that she was merely helping H deal with his unhappiness with his son. Furthermore, F will argue that, since his friend Frank was already receiving a gift, and since H thought that D would receive $200k, F was the natural replacement for S, assuming that H was dead-set on replacing S a the residual beneficiary.

Ultimately, the court will likely find that F unduly influenced H, especially since H was "dependent" on F even before marriage. Therefore, this codicil will be void and the 2012 will would remain valid.

The shorthand test for undue influence would also likely be met since F is H's wife and financial advisor (and thus in a confidential relationship).

OMITTED CHILD (DAISY)

Daisy may argue that she is an omitted child, since she is not specifically named in the will. An omitted child is a child who is born after the most recent will or codicil has been executed and is not "provided for" under the will. An omitted child will take what he/she would have taken if there was no will (their intestate share). Here, the will was executed in 2012 and D was born in 2014. Although D is not explicitly named in the will, there is no doubt that she is "provided for" under the will because she is the only person that fits the description of the green paper (which, as discussed above, was incorporated by reference). Even though D would receive much more that $50k if H died intestate, that is irrelevant to whether D was "provided for". Thus, D will inherit $50k from H's estate.

SIMULTANEOUS DEATH AND ANTI-LAPSE

A beneficiary of a will is considered to predecease the testator unless there is clear and convincing evidence that he/she survived the testator. Here, Frank and H died simultaneously, so there cannot be evidence that Frank survived H. Therefore, Frank is considered to predecease H.

Under the anti-lapse rule, if a predeceased kin is named as a beneficiary of a will, his/her bequest will pass to his/her issue upon the testator's death. Here, Frank is not kin (he is only a friend). Therefore, Frank's gift will not pass to Fred. Instead, the $20k bequest will fall into the residuary estate.

ULTIMATE DISTRIBUTION

Daisy will take $50k pursuant to Article II.

Farrah will take nothing because she waived her interest *and* the 2015 codicil is void due to undue influence.

Fred will take nothing.

Stewart will take everything else.

2)

1a. What rights and remedies does Brenda have against Carol?

Carol (C) is likely liable to Brenda (B) for breach of her duties as a trustee of a trust created by Uncle John (UJ).

TRUST CREATION

A trust is created when there is: (1) a competent settlor who intends to create a trust; (2) a valid trust purpose; (3) trust property (corpus); and (4) ascertainable beneficiaries. Here, there is evidence that UJ intended to create a trust since he endorsed the stocks and bond "to Mark and/or Carol *for* Brenda"; this evidences UJ's intent to give legal title to Mark (M) and C, and equitable tile to B. Since there is no evidence that UJ was incompetent, the first element is met. There is a valid purpose to the trust (to encourage B to get a good education and to pay for college). There is also trust property in the form of the US Savings Bond and Yahoo! stocks. Lastly, B is the ascertainable beneficiary. There is no requirement that the trust be in writing. Therefore, this was a valid trust for which M and C are trustees and B is the beneficiary.

BREACH OF TRUSTEE DUTIES

B will assert that C breached several duties when handling the trust including: Duty not to engage in self-dealing (when creating the joint checking account with David using the bond money); duty to diversify; duty to prudently invest; duty to investigate whether B needed any money from the trust; and duty of good-faith (by refusing to distribute any funds to B for her education expenses). Here, C will argue that she did not owe a duty to B because C spent all of the trust corpus to pay for ballet lessons. However, there is no evidence that this is actually true. Furthermore, the purpose of the trust was, in part, to pay for college, so these payments would have violated the trust purpose.

The court will find that C failed to diversify the trust portfolio because C did not change the form of the Yahoo! stock for 8 years. Furthermore, when C did exchange the stock, she invested it all in XYZ instead of diversifying by investing in multiple companies. Likewise, the court will find that C failed to invest as a reasonably prudent investor would for the very same reasons. The court will also find that C failed to act in good-faith and failed to investigate whether B needed money from the trust since B was required to take out student loans for her education. Thus, C will be liable to B for breaching her duties as a trustee.

REMEDIES

The remedies that a beneficiary has against a trustee include: damages, disgorgement, removal as a trustee, and constructive trust. Here, the court will apply a constructive trust to the joint checking account. B would also likely be successful in a suit for damages, alleging that there are at least $14,500 in damages due to C's failure to prudently invest and diversify the trust corpus. Lastly, the court would likely remove C as a trustee since she does not seem to want to comply with her duties.

1b. What rights and remedies does Brenda have against David?

Brenda does not have any remedies against David (D) under the probate code, since David is not a trustee. However, if the court does consider D a trustee (because his name was on a joint account with C), then B would have all of the same remedies available against D as she does B with regard to the bond money. Of course, D would have no liability with regard to the stocks because he did not have any control over them (as they were not community property).

1c. What rights and remedies does Brenda have against Mark?

M would not be shielded from liability merely because C retained control over the bond and stock; in fact, this may provide for liability in and of itself since M is completely neglecting his duties as a trustee by not asserting himself. Although B can assert that M was liable to B as a trustee for failing to diversify the bond money and stock (under the same theories outlined above in ***1a***), this would ultimately prove futile as B is already inheriting everything that M left (see below).

2. What interest does Brenda have in Mark's estate?

In order to determine what interest Brenda has in Mark's (M) estate, we must determine whether any of Mark's will is valid. Even if the will is valid, we will need to determine whether Brenda is an omitted child. Ultimately, the court will find that Brenda will inherit all of Mark's estate because both provisions of the will are invalid AND because Brenda is an omitted child. Since there is no evidence that Mark had any other heirs, Brenda will inherit everything.

EFFECT OF DIVORCE ON BEQUEST

A testamentary gift made to a spouse is void upon dissolution of that marriage (regardless of whether the gift was made before or during the marriage). Here, the $50k bequest to C in Mark's will became void in 1998 when their marriage was dissolved. Thus, as of the date of the dissolution, the only valid gift in the will is the residual gift to FourPawz Cat Shelter.

LAPSING GIFT

A gift lapses when the beneficiary is no longer in existence at the time of the testator's death. Here, it appears that the gift to FourPawz lapsed because FourPawz "was forced to close its doors indefinitely" in 2011, which was before Mark died. Technically, if the entity is was still in existence at Mark's death (for example, if it was a non-profit or corporation that was still technically in business at the time of Mark's death), then the gift did not lapse. Although the court will typically allow a charitable *trust* to remain intact so long as the trust purpose can still be effectuated (under the cy pres doctrine), this only applies to charitable *trusts*, not charitable bequests in general.

A lapsing residual gift falls into the testator's intestate estate. Here, the Mark's sole intestate heir would be Brenda, since there is no evidence that M remarried or that any other kin survived M.

OMITTED CHILD

An omitted child is a child who is born after the most recent will or codicil has been executed and is not "provided for" under the will. An omitted child will take what he/she would have taken if there was no will (their intestate share). Here, B was an omitted child since she was born about 7 years after the will was created and she is not directly provided for in the will. There are exceptions to the omitted child rule, but none apply here (since B is not provided for outside of the will and the bequest to C does not count (since it was made before the M had any children and because it was void, as explained above)). Therefore, B is an omitted child and will receive her intestate share.

INTESTATE SUCCESSION

When an unmarried person dies and is survived by a child, that child will receive all of the deceased person's estate. Here, M was survived by his daughter B. There is no evidence that M had any other children. Therefore, B will receive all of M's estate.

3. Can the gift be used for Brenda's Wedding now that she has completed her education? If not, how should the gift be distributed?

The trust corpus can only be used to further the purpose of the trust. Here, the purpose of the trust is to "encourage B to get a good education" and to "help pay for college." Therefore, the trust corpus cannot be used to pay for the wedding directly. The corpus can most likely, however, be used to pay off B's student loan debt, since this would classify as "helping" to pay for college, albeit retroactively.

If there is no way to further the trust purpose, the beneficiaries can petition the court to terminate the trust. Here, since there are no remainder beneficiaries (and no instructions for what happens when there is no more education to pay for), the court would likely terminate the trust. When a trust terminates, and there are no remainder beneficiaries, the trust corpus reverts to the settlor's estate. Thus, if the trusts terminates, the trust corpus will revert to UJ's estate. Since B is UJ's only living heir, B will inherit all the trust corpus under this scenario. (Even if the court looked to UJ's deceased heirs, B would still inherit everything since the only other heir was M and B is entitled to all of M's estate, as explained above).

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3)

1. Sister Sammy is to receive the house which is a specific gift. However the gift sold to purchase a condo, and the house no longer exists. Abatement by extenction occurs when a gift in a will no longer exists, and under common law the devisee will not get the value of the gift. Modernly the intent of the testator is viewed, and tracing may be used to see where the funds went and what they grantee should obtain if anything. Here the Condo can be traced to the House, so Sammy would get the Condo subject to the mortgage, if she wasn't dead, but she is dead so she gets nothing. However Sammy is survived by Rob, and therefore Rob would get the condo subject to the mortgage, under the anti lapse rule. Usually when a beneficiary predeceases the testator the gift lapses, but if the beneficiary left issue which is kin to the testator the issue will get the gift. 10

However the mortgage was done by the conservator, and it was not the intent of the testator to have the beneficiary subjected to the mortgage therefore the mortgage would be deducted from the estate before paying out residue. Since there is only 150 grand in residue that would be subtracted from the 200, and hence Rob would take the condo subjec to the remain 50 grand and any fees due to the estate or attorney.

2. Latent ambiguity, or clear and convincing extrinsic evidence of a contradictory intent by the testator. 2

3. a. 1/3rd to H, and of the remaining 2/3rds; Y and Z get a third each, while C1 and C2 split the remaining 1/3rd. 5

3.b. well T is survived by her husband, but her will states "... to my wife..." so if she was in a domestic partnership with another woman while married to her husband that might nullify one of the marriages whichever one was second. However the husband may still take as a putative spouse his intestate share if he did not know their marraige was not legal but believed in good faith that it was. The children would then take under the will as that portion of the will would still be valid. W and X did not need to meet the 120 hour rule to take their share, so Ws kids would get her equal share, X's spouse would get X's equal share, and Y and Z would each get an equal share. 5

The husband may also have been an omitted husband if the will was created prior to her

marraige with her husband, and hence would take an intestate share of 1/3rd the estate. The prior wife would take nothing if they had divorced, since a divorce revokes the portion of the will that benefit's the exspouse by operation of law.

4. A trust can be revoked before the death of the settlor by a method designated in the trust to revoke, or by statutory method which requires the settlor to notify the trustee in writing the revocation of the trust.

5. An adopted out child can still inherit from a natural parent if they lived together when the child was a minor, and the adopting parent is married to the ex-spouse of the natural parent.

6. a. Since Stanley was deceased at the time the will was created it is presumed that T did not intend Stanley's issue to take, and therefore they take nothing. Since Casey and Ashley predecased T their gift would have lapsed if not kin of T, but since they are kin the antilapse rule applies and the gift goes to their issue. Mario and Michelle would split Casey's gift, and Jenna would get the other half.

6.b. It would go to all the cousins in equal shares under the 240 rule.

7. Dependant relative revocation, or DRR, is when a testator revokes a prior will under a mistaken belief of fact or law that a subsequent will is valid or validly expresses his or her intent. The prior will will be revived if it substantially similar to the subsequent will, and evidence that revival would comply with the intent of the testator. Example is a testator crossing out a gift of $100 on a will and writing next to it $200, but not making any futher marks to establish a valid codicil of the will. The court would not allow the $200 for lack of formalities, but may allow the revocation of the $100 not to be valid, and the allow the grantee to keep the $100.

END OF EXAM