

# Monterey College of Law

## Wills and Trusts 2019

### 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.

Exam Question #1  
75 points

After watching a show about zombies, Tammy decided it was time to get her affairs in order. Tammy handwrote the following on the back of her shopping pad: "I want my estate distributed equally among my children." She then signed it "Granny T," dated it "May 1, 1993," and placed the writing in her recipe box. The next day, Tammy called a lawyer to schedule an appointment to draft a Will. She later cancelled the appointment as Donna, her daughter, told her she didn't need to draft a formal Will.

At the time of the writing, Tammy had two (2) living children, Donna and Sue. She had one (1) deceased child, Mike. Sue was married to Wendy, while Donna was single.

At such time, Tammy had the following grandchildren, Abby, the daughter of Mike; Jessica and Joe, the children of Sue; and Bertha, Donna's child.

Donna died in 2008, survived by her daughter, Bertha.

Tammy died in 2018. Later that same day, Sue was found dead from a self-inflicted gunshot wound. It was unclear if Sue died before or after Tammy. Sue died intestate.

- a. Discuss how Tammy's estate is to be distributed.
- b. If Sue's estate is found to have an interest in Tammy's estate, how would such an interest be distributed?

Answer according to California law.

Question #2  
100 points

Theodore validly executed a typed will in 2012, providing:

1. My house to my friend, Felipe.
2. The residue of my estate to the Monterey Museum of Art.

He placed the original in his safe deposit box located in his home.

In 2014, Theodore validly executed a typed Will providing:

1. I hereby revoke all prior Wills.
2. My house to my friend, Felipe.
3. The residue of my estate to the Carmel Animal Rescue Charity.

Theodore placed the original in his safe deposit box located in his home.

In 2015, angry over Carmel Animal Rescue Charity's policy concerning homeless pet Guinea pigs, Theodore decided he wanted to revoke the gift to the Carmel Animal Rescue Charity. He told Felipe about the Charity's terrible treatment of Guinea pigs and his intention and mentioned how much he still loved going to the Monterey Museum of Art and hoped they would do good things with his future gift.

In 2016, Theodore sold his Pebble Beach home and purchased a home in Marina, with his newly acquired Wife, Wilma. The down-payment for the Marina house came from the sale of the Pebble Beach house. He and Wilma took title as Community Property.

Later that year, Theodore took \$15,000 from a community property account and opened a "pay on death account" in favor of his niece, Naomi.

When Theodore died in 2017, in his safe deposit box only the 2012 Will was found.

Theodore was survived by his wife, Wilma, Felipe and Naomi.

Theodore's estate consisted of the Seaside House, the POA account, and \$200,000 in a separate property account.

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

**Question #3**  
**125 points**

On January 1, 2016, Hank (H) and Wilma (W), an elderly couple, in writing, executed a document which created a Trust, entitled the "Family Trust." The Trust instrument named H and W as the initial Trustees and declared that the assets listed on the attached Schedule A, entitled "Schedule of Trust Assets," were held by them as trust assets. The only asset listed on Schedule A was: 515 Cherry Lane, Monterey, CA. APN 001-007-006. This was their primary residence. The Trust also affirmatively provided that all trust assets were the community property of Hank and Wilma. At the same time, H and W validly executed "pour-over" Wills in favor of the Trust.

The Trust provided for H and W to have all beneficial interests during their lifetime. On the death of the survivor, the trust estate was to pass one-half (1/2) to W's daughter from a prior marriage, Alice, and one-half (1/2) to H's son from a prior marriage, Tim.

The Trust provided that it could be revoked by a writing signed by either Trustor and delivered to the Trustee and all living Trustors.

W, convinced by Alice that Candy, H's professional caregiver, was really H's lover, signed a document entitled "Revocation of Trust," in which she stated that she revoked the Family Trust. On the same date, W signed a valid Will directing all her estate be distributed to her daughter, Alice. Told that it was now void by Alice, W also torn up her 2016 "pour-over" Will.

In 2018, W died. At the time of her death, the Deed to 515 Cherry Lane was shown to be in "joint tenancy" with H and W.

After W's death, H formally revokes the Trust and executes a valid Will leaving his entire estate, including his interest in the home at 515 Cherry Lane, in trust for Candy, remainder to Tim. Tim was nominated as Trustee and given discretion to distribute as much income and principal as he determined necessary, in his absolute discretion, to Candy for her health and support. The Will directed Tim to be generous to Candy as she had had been a kind and compassion caregiver.

*Question 3 continued...*

H died in 2019.

- a. After W died, H comes to see you about the House. How would you advise him?
- b. What objections could Tim raise with respect to the Trust created for the benefit of Candy?
- c. Assuming the Trust for the benefit of Candy is valid, Candy asks Tim to pay for oral surgery, which she needs to prevent further medical issues. Tim would like to refuse the request. How would you advise Tim?

Extra Credit: Tim wants to live in the House following his father's death. How would you advise Tim?

Wills-Fall 2019- Answer Exam Question #1-MCL-Ascher/Espinoza  
75 points

Tammy's estate:

a. Is the writing a valid will?

1. Requirements for a formal will – not met
2. Requirement for a holographic will – discuss elements, all satisfied, except possibly, testamentary intent – unclear if this was just “notes” to herself for when she meet with the Lawyer or intended to be her Will.
3. Conclude, mostly likely a valid will if intent can be shown.
4. Class gift – since Mike deceased, his child not included under anti-lapse.

(1) Since Donna died post Will, anti-lapse would have her  $\frac{1}{2}$  going to her child, B.

(2) Issue on Sue's death – no 120 hour rule if Will. If survived, then goes to Sue's estate, if Sue did not survive, to her children, J & J under anti-lapse.

(3) If valid Will,  $\frac{1}{2}$  to Donna's child, and no survival by Sue,  $\frac{1}{2}$  shared by Sue's children.

5. Need to show survivorship by c/c evidence

b. If not a valid Will – intestate

1. 120 hour – Sue not deemed to have survived, thus under 240 count at gc level, equal shares to all five (5) grandchildren.

Sue's estate:

- a. Valid Will? Discuss elements, issue with witnesses. Did not see Sue sign or acknowledge together.
  - i. Fact that Wit did not read not relevant.
  - ii. Fact that Wendy did not realize a Will, invalidates her signature. Not an interested witness as she had no interest.
  - iii. Harmless error rule – requirements, most likely a valid Will.
- b. If Valid Will, all to ABC, including all separate and cp interests.
- c. If not valid Will, all cp to Wendy, sp (including interested in Tammy's estate, which is sp)  $\frac{1}{3}$  to Wendy and  $\frac{1}{3}$  to each child.

***Do we want to add more facts to force a capacity discussion? Day before suicide? Suffering from depression? On drugs – killed herself after taking a bad batch of Heroin?***

***Do we want to add a gift to Wit – so the interested witness is a real issue?***

Testing – requirements for Wills; class gifts, intestate succession, 120 hour, survival requirement.

MCL-Wills- Answer Question #2-Ascher/Espinoza  
100 points

1. 2012 - valid
2. 2014 - valid
  - a. Revoked 2012
3. 2014
  - a. Revocation
    - i. 2014 Will missing
    - ii. Presumption of revocation by destruction if not found at time of death
  - b. Revival- PC 6123
    - i. 2012 Will was expressly revoked by 2014 Will
    - ii. 2014 Will revoked presumption of destruction b/c not found
    - iii. Extrinsic evidence
      1. Statements to Brent about hoped Museum would do good things with his future gift
      2. Contemporaneous or subsequent statements?
      3. Prior statement of intention to revoke?
4. Pebble Beach House to Felipe
  - a. Acts of Independent Significance
  - b. Marina House
    - i. Title controls- ½ CP
  - c. But intent shown to revoke gift by making Marina House CP with wife
  - d. Extra issue DRR-would he have revoked 2014 if 2012 not revived?
5. Foster child
  - a. Although relationship began in minority and continued during joint lifetime
  - b. Treated like child
  - c. But did not adopt based upon a legal barrier
6. Lapse
  - a. Brent dies
7. Antilapse
  - a. Brent is not kindred of Theodore or of Theodore's spouse
  - b. Therefore antilapse not applicable to Sarah
8. CP \$15K to Sarah
  - a. Passes outside probate
  - b. But CP & Theodore can only give his ½ of the CP
9. Omitted Spouse
  - a. ½ of SP and 100% CP
10. Niece Naomi
  - a. PC 6402
  - b. \$200,000
11. Monterey Museum of Art
  - a. Residue

Distribution possibilities

2012 Will revived →

Wilma

- Marina home CP
- Omitted spouse-\$100,000 from SP acct
- ½ CP POD acct \$7,500, if only \$15K in CP account

Brent

- \$15K to Brent lapses and no antilapse for Jessica to take gift b/c not kindred of T or T's spouse
- Therefore-\$0.00

Felipe

- Act of independent significance
- Intent to revoke by title as CP
  - But not w/ right of survivorship
- Therefore- ½ of Marina home (T's ½ of the house b/c can give ½ of his CP)

Sarah

- POA passes outside probate
- \$15,000 if represents T's ½ of the CP
- If not→\$7,500??

Monterey Museum of Art

- Omitted spouse gets ½ of SP
- Starts w/ intestate property-none
- Then residue
- Therefore get \$100,000 of the \$200,000 SP account

Naomi

- \$0.00 b/c will disposed of all property

### Intestate

Wilma

- 100% of Marina home b/c CP
- ½ SP-\$100,000
- ½ CP POD acct \$7,500, if only \$15K in account

Brent

- No barrier, no belief was child
- Therefore not treated as a child and receives \$0.00

Felipe

- Because he's a friend, he takes nothing under intestate succession

Sarah

- POA passes outside probate
- \$15,000 if represents T's ½ of the CP
- If not→\$7,500??

Monterey Museum of Art

- \$0.00

Naomi

- Intestate share of \$200,000
  - ½ of SP- \$100,00

Question #3  
100 points

On January 1, 2016, Hank (H) and Wilma (W), an elderly couple, in writing, executed a document which created a Trust, entitled the "Family Trust." The Trust instrument named themselves as Trustees and declared that the assets listed on the attached Schedule A, entitled "Schedule of Trust Assets," were held by them as trust assets. The only asset listed on Schedule A was: 515 Cherry Lane, Monterey, CA. APN 001-007-006. This was their primary residence. The Trust also affirmatively provided that all trust assets were the community property of Hank and Wilma. At the same time, H and W validly executed "pour-over" Wills in favor of the Trust.

Requirements for a valid Trust

Was House validity transferred to Trust via Schedule (declaration, acting Trustees, sufficiently described.)

Find valid transfer as cp.

The Trust provided for H and W to have all beneficial interests during their lifetime. On the death of the survivor, the trust estate was to pass one-half (1/2) to W's daughter from a prior marriage, Alice, and one-half (1/2) to H's son from a prior marriage, Tim.

The Trust provided that it could be revoked by a writing signed by either Trustor and delivered to the Trustee and all living Trustors.

W, convinced by Alice that Candy, H's professional caregiver, was really H's lover, signed a document entitled "Revocation of Trust," in which she stated that she revoked the Family Trust. On the same date, W signed a valid Will directing all her estate be distributed to her daughter, Alice. Under pressure from Alice, W also torn up her 2016 "pour-over" Will.

Was revocation valid? Statutory vs. trust method. Since Trust method no exclusion, can use either. Here, satisfied statutory method. Valid revocation; fell out as cp. Wife had right to transfer her 1/2 cp.

Was Will valid – undue influence.

Tests for undue influence

Short test since confidential relationship, active participation, bad motive.

Alice as drafter- statutory method – not applicable as Alice related to W

If valid 1/2 house to Alice.

If not valid, the pour-over Will transferred back to Trust.

***Was revocation of pour-over Will valid? Physical act. Undue influence? DRR issue? Would she have revoked? Did she understand consequences of revocation? If valid revocation, and cp, all the spouse. If won't have revoked, same result, back in the Trust.***

In 2018, W died. At the time of her death, the Deed to 515 Cherry Lane was shown to be in "joint tenancy" with H and W. What controls – title or trust. If JT, all the spouse. But likely jt terminated when Trust executed.

After W's death, H executes a valid Will leaving the home at 515 Cherry Lane in trust for Candy, remainder to Tim. Tim was nominated as Trustee and given discretion to distribute as much income and principal as he determined necessary, in his absolute discretion, to Candy for her health and support. The Will directed Bob to be generous to Candy as she had had been a kind and compassion caregiver.

Will treated as revocation of Trust. No particular language needed Trust allowed for a writing – revoked by inconsistency.

Gift to caregiver, presumption of undue influence. Need to show dependent adult, not just elderly to invoke presumption. If no certificate of independent review, Candy has burden to overcome. If she can't, all to Bob.

Discussion of Tim's duty – not absolute, fiduciary duty. For "health" - probably valid. Can ask for information about other available sources to pay.

H died in 2019.

- a. After W died, H comes to see you about the House. How would you advise him?
- b. What objections could Tim raise with respect to the Trust created for the benefit of Candy?
- c. Assuming the Trust for the benefit of Candy is valid, Candy asks Tim to pay for oral surgery, which she needs to prevent further medical issues. Tim would like to refuse the request. How would you advise Tim?

Extra Credit: Tim wants to live in the House following his mother's death. How would you advise him?

Fiduciary duty, duty to invest in diversified portfolio. If Candy consents, okay. Would have to pay rent, and all expenses, so funds available to distribute to Candy if needed. Could purchase from estate.

1)

### Question 1

#### Intestacy

When a person dies without a will (intestate) PC 240 governs. The property is divided equally among the closes living generation.

If Tammy's writing is never found, then her property would be distributed equally among her three children (Mike, Donna, and Susan), each receiving one third of Tammy's estate. However, Mike and Donna died before Tammy and each of their one-third share would pass on to their issues. Therefore, Bertha would receive her mother's one-third interest, and Abby would receive her father's one-third interest.

#### Susan

#### 120-hour Rule

When a donor dies intestate and a donee dies close in time to the donor, the donee must survive the donor by 120 hours. Otherwise, donee will be treated as having predeceased.

Here, Susan died the same day as her mother. Susan did not survive Tammy and will be treated as having predeceased Tammy.

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Susan's one-third share of Tammy's estate will go directly to her issues (Jessica and Joe, to share equally).

### Holographic Will

a valid holographic consists of a document that contains statements of testamentary intent and is signed in the testator's handwriting.

Tammy handwrote "I want my estate distributed equally among my children" and signed it "Granny T", dating it "May 1, 1993." The testamentary intent is present by clearly instructing that she wants her property to go to her children. A date is not required but it helps to determine who would be entitled to the property. However, Tammy's signature is questionable. If it is generally known to family and friends that Tammy and "Granny T" are one and the same person, then this is a valid holographic will.

Unfortunately, it is not stated whether the will was ever found because Tammy stored the writing in her recipe box and it is an unusual place to store such an important document. Tammy wanted to or whether Tammy wanted the holographic will to be her actual will. She intended to see a lawyer the next day to draft a formal will but her daughter Donna told her she didn't need to do that but it is unclear if Donna knew about the holographic will.

Ultimately, the writing is a valid holographic will and if found, the the property distribution would depend on the type of gift that it is.

### Class Gift

A class gift is when a testamentary instrument states a gift to a group of people. Only the people living at the time the instrument was drafted have an interest in the property.

Here, Tammy's holographic will stated, "I want my estate distributed equally among my children." When Tammy wrote her will, it was 1993 and only two out of her three children were living. Her son Mike had already predeceased her and her daughters Donna and Sue were still alive. Therefore, only Donna and Sue are eligible to the class gift.

At the time of Tammy's death, her estate would be divided equally between Donna and Susan.

### Anti-Lapse

Anti-lapse rule pertains to a situation where the beneficiary(ies) predecease the testator. Instead of that person's gift lapsing, the anti-lapse rule allows the kin to receive the interest.

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When Tammy died, Donna had predeceased her and by anti-lapse, her interest of half of the estate went to Bertha. Susan was still alive at the time her mother died and because Tammy left a valid will, the 120-hour rule does not apply here. Therefore, Susan would take her interest in half the property.

### Susan

When Susan died, she was survived by her spouse Wendy and her two children Jessica and Joe.

### Separate Property

Separate property is defined as property acquired by devise, descent, or bequest. It is distributed in California Law by one third going to the surviving spouse, and two-thirds to be distributed equally between the issues of the deceased.

Here, Wendy would receive one third of Susan's inheritance from Tammy through the testamentary instrument, and Jessica and Joe would share the two-thirds equally.

END OF EXAM

2)

**Formation/creation of a will:** The issue here is whether T's 2012 will is valid. In order to determine whether the 2012 will is valid, we must first determine where it was executed with testamentary intent by a testator adult, who is 18 yrs or older and has capacity. A will must also be signed by the testator (T) and witnessed by two or more people during the T's life. Here the facts state that the 2012 will was valid and therefore there is no need to determine if each and every requirement was met.

**Revocation;** the issue here is whether T's 2012 will was revoked. A will or part of a will can be revoked by:

1. a physical act like destruction, tearing, or crossing out.
2. a subsequent writing that qualifies as a will or other inconsistencies.

Here, T drafted another subsequent writing that qualifies as a will in 2014. The first part of will was similar to his old will where Felipe was to have his house. However, the second part of his will was different in that it gave the residue of his estate to Carmel Animal Rescue (CAR) and not Monterey Museum of Art (MMA). Here, the residue to MMA was revoked by a subsequent will. This clearly demonstrated intent to revoke. However, later that year T again changed his mind and expressed an intent to revoke the residue to CAR because they treated pigs bad. Now, there may be an inconsistency.

**Revival 6123:** revival of a will occurs when a second will, revokes a prior will and then the second will is also revoked. Generally, the first will continues to be revoked unless it is evident from the circumstances of the revocation of the second will or from the testator's contemporary or subsequent declarations that the testator intended the first will to take

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effect as executed. revival involves bringing back to life a will that is intentionally and properly revoked.

Since only the 2012 will was found when T passed away. This will most likely indicate that T revoked his 2014 will on his own by a physical act like destruction, tearing or burning since it was not found. If this is not enough, The court will most likely bring in extrinsic evidence and allow Felipe to testify that T wanted his residue to go to MMA because he still liked them so much. This satisfies the subsequent decelerations portion of revival. Here the court will most likely find that T intended to revive his 2012 will.

Here, I will not discuss DRR because unlike revival, DDR is a rule of construction that is supposed to approximate intent. it occurs when that attempt fails. Here nothing really failed, T just decided he didnt like CAR anymore.

**Omitted spouse:** the issue here is whether W was an omitted spouse because the will was drafted before she married T. An omitted souse is a spouse that is left out of a will because the will was drafted before the marriage. Here, W will argue that she was an omitted spouse because she married T in 2016 and he drafted his last will in 2014. If the court finds W argument to be compelling they will give her, her intestate share of T's estate. However, they may determine that she was already provided for because T specifically put a down payment on a house and took title under community property.

Although T's act may have been made independently and without Felipe in mind, he did take title of the marina home as community property. W will argue that the Marina home is hers. Felipe will argue that T intended for him to have a home and that T payed the down payment of the marina home with his SP. However, the court will most likely find that F does not get the marina home and that his wife who gets the rest of his CP does. In terms of the T's SP, W will most likely get hald of T's SP estate while MMA gets the remaining half.

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**POD/ Totten Trust:** A POD is simple and inexpensive. it is created by going to the bank and filling out a sheet that includes someone on your account that will be payable upon the happening of your death. Here, the facts indicate that T opened this account for Naomi (N). Here, T is the settlor/grantor of the account. He placed 15,000 in his bank account with the instruction that open his death, everything in the account will pass to N as beneficiary. a POD is not probated under T's estate. Thus, N will receive all of the 15,000 and no one else will be able to dispute that.

In conclusion, W will get the house, N will get her POD account and receive 15k and In terms of the T's SP, W will most likely get half of T's SP estate , 1000k. While MMA will receive the remaining of T's SP estate which is which is also 100K.

**END OF EXAM**

1)

Question #3:

A. To determine what to advise H about the house, it must first be determined if a valid trust was created on Jan 1, 2016.

Valid Trust

A valid trust is presumed revocable and requires a 1) competent settlor 2) testamentary intent 3) must be for a legal purpose 4) trust property and 5) ascertainable beneficiaries.

Competent settlor: The trust was created in writing by H and W. The facts state they are an elderly couple, however, there are no other facts to suggest that they lacked capacity, therefore, they are presumed competent.

Testamentary intent: H and W intent's to create the trust is evidenced by their present desire to place their house to be in the trust, and placing it in a Schedule A as well as affirmatively providing that all trust assets were the community property of H and W.

Legal purpose: The trust provided for H and W to have all beneficial interests during their lifetime, therefore, this is a legal purpose

Trust property: The trust property must exist at the time the trust is created. H and W placed their house into a Schedule A. Because it is their primary residence, it existed at the time the trust was created.

Ascertainable beneficiaries are identified as H and W; W's daughter Alice and H's son Tim.

Therefore, a valid express, revocable trust has been created.

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### Revocation

The trust provided that it could be revoked by a writing signed by either Trustor and delivered to the Trustee and all living Trustors. A trust can be revoked by the "Trust" method, which is a statement in the trust that specifically defines how a trust can be revoked, or by a the "Statutory" method, which must be a signed writing by the settlor to the trustee and delivered to the trustee during the settlor's lifetime. Unless the Trust method states it is the exclusive method for revoking the trust, the trust can be revoked by either method. Here, the method provided does not appear to be exclusive, therefore, H or W can use either method to revoke.

W signed a document entitled "Revocation of Trust" in which she stated that she revoked the family trust. To be a valid, she was required to deliver to the H as the trustor/trustee. Because she didn't deliver it to H, the revocation is invalid so the house remains as a trust asset.

The revocation may also be invalid because of undue influence by Alice, because being "convinced" of the idea that Candy was H's lover instead of his caregiver likely doesn't give rise to excessive persuasion sufficient to overcome her free will.

In 2018, W died and at the time of her death, the deed to the house was shown to be in joint tenancy with right of survivorship as between H and W.

I would advise H to petition the court to terminate the trust based on changed circumstances. Now that W is dead, the material purpose of the trust is now defeated as the neither H and W can enjoy beneficial interests during their lifetime so it is now impossible to carry out the purpose of the trust and also no longer conforms to their testamentary intent for the house to be community property as it is no longer part of the community. If the court grants the termination, I would advise H to place the house in a

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will to Candy if he so desires, but since she is his caregiver (paid), she is prohibited transferee, so to avoid the presumption of undue influence (UI), I would suggest to He that he obtain a certificate of independent review to establish whether there is any UI by Candy. A certificate of independent review requires thorough counseling by an independent attorney in a confidential setting.

B.

### Trustee Duties

A trustee's duties are subject to the express and implied terms of the trust and subject to fiduciary duties. Here, Tim was nominated as Trustee and given discretion to distribute as much income and principal as he determined necessary, in his absolute discretion, for the health and support of Candy. While Tim was given "absolute" discretion, he in fact does not have absolute discretion -- his powers are subject to review and he cannot abuse his powers as a Trustee. He does, however, have discretion as to the time, manner and amount of money that is to be given to Candy.

Tim could object to the based on the grounds of undue influence (UI) because Candy was H's paid caregiver. When a person is a paid caregiver of a dependent adult at the time the trust/will was created and executed (or within 90 days before/after), it is presumed that the transfer is procured by UI and the burden shifts to the proponent of the will to show by clear and convincing evidence that it wasn't procured by UI.

### Undue Influence (UI)

UI is the excessive persuasion sufficient to overcome one's free will. There are three tests to determine whether UI exists - the common law (C/L) presumption, where a confidential relationship exists, the common law that requires certain factors to be met,

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and the CA statutory test that allows the court to consider certain factors, although not required.

UI exists under the confidential relationship test if 1) a confidential relationship exists between the trustor and beneficiary 2) the beneficiary actively participated in the created/execution of the trust and 3) the beneficiary unduly benefited by the transfer.

As H's professional caregiver, a confidential relationship exists between them as Candy especially if Candy is providing 24/7 care to him. H also stated to Tim that he sees her as kind and compassionate. However, it is not clear from the facts that she actively participated in the creation/execution of the will, although it is clear that she is unduly benefiting from it by having interest in the house and income and principal for her care. Because the facts are silent as to whether she actively participated, the court will likely find the trust was not procured by UI and is valid.

c. I would remind Tim that he has a fiduciary duty to administer the trust according to its terms in order to carry out the material purpose as established by H. The purpose of the trust is to distribute as much income and principal necessary to provide for Candy's health and support, therefore, it is H's intent that Candy's medical needs be properly covered - it can be inferred that H also wanted this care to include preventative health care. The oral surgery is needed in order to prevent future medical issues, which qualifies as preventative care. If Tim refused the request and he acted in bad faith in doing so, I would advise him to not refuse, as he would violate his fiduciary duties that he owes to the trust, and Candy, as the beneficiary, could sue him.

Bonus: If Tim wants to live in the house following H's death, I would advise against it as he would be violating his breach of duty of loyalty duty to avoid conflicts of interest, and duty to be impartial. He may also be violating his duty to keep the trust productive.

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**END OF EXAM**