WILLS AND TRUSTS
FINAL EXAMINATION
FALL 2022
Professor S. Christakos

Instructions:

Answer three (3) Essay Questions.
Total Time Allotted: Three (3) Hours.
Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and facts upon which the case turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other. Your answer should evidence your ability to apply the law to the given facts and to reason in a logical, lawyer-like manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles; instead, try to demonstrate your proficiency in using and applying them. If your answer contains only a statement of your conclusions, you will receive little credit. State fully the reasons that support your conclusions and discuss all points thoroughly. Your answer should be complete, but you should not volunteer information or discuss legal doctrines that are not pertinent to the solution of the problem.

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Question 1

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

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

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

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

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

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

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

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

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

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

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

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Wills & Trusts Final Examination
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Question #2

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

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

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

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

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

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

How should Wilma's estate be distributed?

Answer according to California law.

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Question 3

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

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

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

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

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

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

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

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Wills & Trusts – Answer Outline
Fall 2022
Prof. Ascher

Question 1

Issues:

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

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

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

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

DRR – original gift to sister not "revoked."

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

Intestate succession – re. omitted spouse (see above)

Community property assumptions – account in both names;

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

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

Wills & Trusts
Fall 2022
Prof. Swanson

Answer Outline: Question 2

Issues:

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

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

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

Undue influence by Wilma.

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

Anti-lapse statute for Frank.

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

Wills & Trusts

Fall 2022

Prof. Ainsworth

ANSWER KEY – 3 OF 3

1. ***WAS A TRUST CREATED?***

Trust Creation

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

Requirements

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

Intent

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

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

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

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

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

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

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

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

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

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

(16007) duty to make trust property productive

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

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

ISSUE: Did Stephanie breach duties owed to beneficiary?

(16060) duty to keep beneficiary reasonably informed

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

(16062) trustee shall account [at least annually]

ISSUE: what remedies?

(16420) trustee removal and surcharge

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

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

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

1)

Valid 2014 will?

A valid will needs intent, capacity, and formalities. It needs to be be written, signed by testator (T) in presence of 2 disinterested witnesses during the lifetime of T of a person over age 18. T needs to understand the nature of the bounty, its relations to their descendants and who is affected by the will.

Here, Anne (A) did not have a valid will because she did not have witnesses, However she could have a valid holographic will if she had intent to create a will, hand wrote the material provisions and signed the documents in her handwriting.

Here, A wrote on the back of a grocery list during a likely very stressful time on a turbulent plane, possibly thinking she could die (when many people decide to write a will.) She also held the will out to a reporter. These events will likely be considered intent to create a will. A wrote the material provisions in her handwriting to give her sister $100 and leave the rest of estate to her children in equal shares. A signed the document.

This is likely a valid holographic will.

Revocation of Will

A will can be revoked by a intent to create a subsequent will or by physically destroying it in partial or total.

Here A's 2014 will was destroyed in a fiery car crash and opponents to the will may claim it was destroyed. However, there needs to be intent to destroy it, and from the facts, she held the will out to the reporter, took a photo of it and saved it to her "important stuff,"

so we can infer she did not revoke the will. Just because it is destroyed dose not mean it is not valid, and there are copies of the will on her computer. ✓

There was no revocation of 2014 will.

2018 Valid holographic will?

A codicil is a T instrument to modify, amend, or revoke an existing will. It needs to be made in the same formality as the will.

Here, A crossed out he $100K and wrote $500K and dated and signed the change to the 2014 holographic will. Here, A created a codicil to modify the previous will in the same manner (holographic) She included the material provisions in her handwriting and signed it, however, A did not write what the intent to change the document was. - she should sign

This is likely not a valid codicil and modification to the valid 2014 holographic will, and her sister will only get the $100K, not $500K. – why? dependent relative revocation should be discussed

Omitted Child

A child born after the last testamentary instrument was executed and NOT provided for may receive an intestate share, unless there are exception (intentional omission, decedent (D) had more than one child and provided for otherwise or substantially left the estate to the other parent of the omitted child, or D provided fro the child by transfer other other assets.

Here, Moonshine (M) estate may argue he was an omitted child, as equitable adoption did not happen, even though A and Rocky (R) discussed formal adoption, they never pursued it. A held M out to be her soon, claiming "biology is not important. I will always be your mom and you have always been and always will be my son."

Here M's estate will likely be able to claim M was an omitted child be entitled to an intestate portion of A's estate, which would then pass to Starlight.

he wasn't a child so can't be omitted - but equitable adoption might have worked for him but mayb not his kid

Omitted Spouse

If D fails to provide in a T instrument for D's surviving spouse who married after execution of the instrument is consider omitted and can receive if intestacy, but no more than 1/2 separate property (SP) plus all community property (CP.) ✓

Here, Rocky (R) may try to claim the before marriage 2014 royalties and assets not already in both their names from the 2014 holographic will. Their marriage was in 2015, after execution of the will.

If R is entitled to the intestate share of A's estate as an omitted spouse, he could receive all of the CP and 1/2 of SP. Because they had a child together, Happy (H) and A had Ziggy (Z), he could only receive 1/3 of SP, as the remaining SP would go to the children. ✓

LapseAnti-lapse

If beneficiary (B) dies before T, the gift is said to be lapsed and now part of the residuary. In CA, the anti-lapse statute applies if D was a kindred of T thought blood (excluding spouse) to give the give to the issue of the D instead (unless mentioned otherwise in the will.)

Here, M died before T. He is the issue of R, but A never adopted him and he is not a blood relative, so it is likely the anti-lapse statute would not apply here, and Starlight would not receive M's intestate portion because of the lapse.

Advancement/Hogpoge - hotchpot ☺

If a T provides a gift to an beneficiary (B) and plans on it being an advancement of their portion of the estate, then the donor needs to contemporaneously document the gift as an advancement or the donee needs in their life time to document or a codicil needs to be made at a later time.

in writing!

Here, A gave Z $500K to help him buy a house. She likely intended it to be an advancement because she said she "needed to be fair to" his siblings, but she never documented it, and just kept track in her head.

The $500K to Z will not be considered an advancement, and remains in A's estate and not taken from Z's portion. ✓

120 hour rule

An intestate heir must not be proven by c/c to have survived the D by 120 hrs or else they are determined to predecease the D.

Here, A died after M was killed. We are not told the time-frame of when she died. If she died 120 hr from his death, and was intestate, it is possible Starlight might not receive M's share

Distribution:

Sister- as mentioned, $100K from valid 2014 holographic will not modified by holographic codicil

$1.5 million in bank with her name on it

Even though the account has her name on it, if contributed to during marriage with R, he will receive it intestate share of SP, in this case 1/3, the remaining 2/3 distributed to

Ziggy, Happy, and likely M's estate (and to Starlight) because he was an omitted child and of equitable adoption.

$500K investment account in A and R's name

This was in both their names, so 1/3 to R and rest to kids

"Image" in A's estate $250K

As SP ✓

2014 account with royalties- SP ✓

This is A's SP, so as SP to R.

would have liked to see more discussion of equitable adoption as it related to moonlight + Happy was the omitted child, not moonlight

END OF EXAM

2)

Validity of the 2005 Will

Attested Will

A attested will is valid if the will is in writing, signed by the testator or in the presence/by direction of testator, and in the presence of two witnesses who both witness each other signing the document, understanding the testamentary nature of the document.

Here, W went to her attorney's office to prepare her will. The facts say she executed the document in the attorney's office, indicating that she signed a document which she intended to be her will. However, the facts do not indicate that there were witnesses. If there were 2 witnesses, then the 2005 will is valid. If there were not, then the will can still be saved by the harmless error doctrine.

Harmless Error Doctrine

A will that is not valid because the signature requirement is not met can still be deemed valid if it shown by clear and convincing evidence that the testator intended the document to be their will. A harmelss error will only apply to the signature portion of the will.

Here, the signature portion of the will is the concern because that is the only questionable portion. However, Wilma (W) went to the attorney's office for the purpose of making a joint estate plan, thus intending the purpose of the visit for the attorney to create her will.

Therefore, the harmeless error doctrine will apply, making the 2005 will a valid will.

Is the 2015 will valid?

Attested Will (see rule above)

Here, Christine (C) prepared a new will for W using a website to draft a document. A preprinted document can still be a valid will but the query will be whether the document would pass as either a formal (Attested) will or holographic. It is likely the the document will be considered as a formal will because C used a website to create the document and the facts do not indicate that W wrote in any of the material terms. Thus, for the will to be valid, all formalities for an attested will must be met.

Writing

Here, the will was created using a website to draft the document. Thus, the writing requirement has been met.

Signed

A will must be signed by the testator or at the direction of T and in her presence. Here, the facts do not indicate that W actually signed the will, only that the draft was being prepared to sign. If W didn't sign the will, then the will is invalid. If W did sign, then the will may be valid if the other requirements are made.

Witnesses

For a will to be valid, it must be witnessed by two-disinterested- witnesses, who both sign the will in the presence of each other, understanding the testamentary nature of the document.

Here, the two witnesses who signed the 2015 will were neighbor (N) and W. N was a valid witness, only if she understood that the document she was signing was W's will. It is debatable whether N understood what she was signing, as she signed the document, then proceeded to play cards and drink tea with W. *C* signed the will as a second witness. However, since C is an interested witness, that raises a presumption of undue influence.

Interested Witness & Supernumerary Rule

An interested witness is a beneficiary who signs a will that they will benefit from. A will or portion of the will signed by an interested witness is invalid because it is preemptively obtained by undue influence, duress, or fraud. To overcome the presumption. the interested witness can forfeit anything above their intestate interest or the supernumerary rule may apply. The Supernumerary rule states that if a will is signed by at least two disinterested witnesses, the will can still be valid.

Here, C is an interested witness because she is going to receive 10x more money than her siblings, as well as a Mercedes. C signed as a witness on a will that she will benefit significantly from. Therefore, it is presumed that the will is a product of undue influence, duress, or fraud. C can equalize her share but it is unlikely she will agree to that.

Harmless Error Doctrine

A will that is not valid because the signature requirement is not met can still be deemed valid if it shown by clear and convincing evidence that the testator intended the document to be their will. A harmless error will only apply to the signature portion of the will.

Here, C will claim that the will should be valid because W signed the 2015 document intending the updated will to be her new will. C will argue that W wanted the will because C stepped in to take care of her when she was ill, and even hired a caregiver to take care of her. Anne (A) will argue that a new will was not W's intent, and contest the will based on undue influence and capacity.

Capacity to make a will

It is presumed that a person is mentally capable of making a will. The proponent of the will carries the burden of proof to demonstrate that the will was validly executed and the

opposing party has the burden of proving that the will is not valid, due to undue influence, duress, fraud, etc.

Here, it is presumed that W had the capacity to draft and sign her will. C, the proponent, will claim the will was validly written because she used a website to make sure she did it correctly. A will argue the will is invalid because it was procured at a time when W was not competent. W was calling her grandchild, Frank, her son's name, Bob and W was having issues with her memory.

However, unless it can be shown that the will was signed during a time of mental incapacity, W is presumed capable.

Undue Influence

Undue influence is the excessive persuasion that causes another person to act or refrain from acting, and results in inequity. Undue influence can be tested 3 ways- a prima facie case, common law test, and statutory presumptions.

there was already a presumption in favor of C's undue influence so didn't need to go through the tests

Prima Facie Case

A court will weigh the following factors to determine if a will was procured by undue influence (i) vulnerability (ii) Opportunity for procurement (iii) tatics used by the wrongdoer, and (iv) the equity of the result.

Here, A will claim that W was vulnerable because she had issues with her memory. She will claim that C had the opportunity for procurement because she didn't let A see her. The tatics were sneaky because she created the new will without anyone knowing, and she result was inequitable because it left C with 10x more than the other kids. C will claim she took care of her mom and the girls fighting stressed W, so she kept A away. She didn't use

wrong tatics and looked up a valid website, and the will is not equitable because that is what the mom wanted.

Common Law Test

All must be met to prove undue influence- a confidential relationship, procurement by wrongdoer, and unnatural disposition

- and agent under power of attorney!

Here, A will argue that a confidential relationship existed because C was A's caregiver and was the only child allowed to see W. She procured the will by drafting the will herself and being one of the witnesses and the disposition was unnatural because W wanted her estate to be divided equally, as stated in the first will. C will argue that there was no confidential relationship because Earnest was the caregiver, not C. She didn't procure anything wrong, she just acted upon W's direction and the disposition is not unnatural because the other kids still get something from the estate.

Statutory Presumption

A will is presumably invalid if (i) written by a person who stands to benefit (ii) the beneficary is a blood relative or spouse of the will writer (iii) fidicuary relationship exist (iv) person is a care custodian. Presumption is rebutablle if certification of independent review exists or writer is a blood relative of testator.

Here, A will claim that since C took care of W, she was the care custodian. C will claim she is a blood relative and can write the will for her.

Therefore, since C is an intested witness, the presumption of undue inflence will stand, making the 2015 will invalid

CONCLUSION: W's estate will be divided based upon the 2005 will

- All property will be divided equally between A, C and Frank. The CP will lapse but will go to the kids still based on the antilapse statute, which will apply because the kids are blood relatives of W and have heirs.

END OF EXAM

other issues
- gift to Ernest - presumption of undue influence - caregiver
- anti-lapse statute for Frank
- undo vs mercedes - mistake or did gift lapse?

3)

Valid trust by Gordon?

Trust is a fiduciary relationship where the testator (T) holds title to specific property under a duty to administer it to the designated beneficiaries (B). It requires, intent ascertainable Bs to enforce the trust, a named trustee, specific property (res) to be held in the trust, a competent settlor, and in writing if to satisfy statute of frauds (SOF.)

Here, Gordon (G) had the intent by orally telling Dave that he wanted Beth (B) to get a good education and asked that Dave (D) use it for this purpose. Since the 10K Bond might be within the SOF, it may need to be in writing, however Dave did endorse the stock "To Dave, for Beth" thus transferring the property to Dave- Dave would be the trustee, and B the beneficiary. There is specific property of the $10K bond and the 1,000 shares of Amazon stock.

The trust may not be valid if it needed to be in writing, - S.O.F. relates to real estate so trust would be valid

Right/remedies Beth against Dave:

Rights: Duty of Loyalty and Duty to administer trust according to the trust. and Duty to avoid (not to commingle assets) Duty to inform, Duty to Diversify, Conflict of interest (COI)

There are duties of a trustee to the beneficiaries, and to administer the trust solely in the interest of the beneficiaries. There is no self-dealing, not to engage in transactions with the trust (ie sales, purchases, commingling), unless all the beneficiaries consent to the transaction.

duty to make productive

Here, D, put money into a non-interest bearing checking account he opened with his new wife, which means he did not diversify or put the funds somewhere would they could grow or keep them separate for Beth. D also used $3K of the money to take Stephanie (S) on a cruise, self-dealing the money for his own benefit, and a COI. He also commingled the money by placing the rest of the money he cashed when the bond matured into their checking account. Dave also never told Beth about the money to be used for her education.

duty to keep informed

Remedies: Since Dave died, there may not be much n the way of remedy, except through his assets via S. Beth could have be entitled to remove D as trustee. If there was not a valid trust, she could sue his estate for breach of contract (oral contract between Gordon and Dave.) Any specific performance and turn over of profits made from using the funds could be demanded from his estate.

not since it was more than 1 year past his death

Rights/remedies Beth against Stephanie:

Rights: Duty of Loyalty and to Administer the trust Duty to Avoid commingling, Duty to inform, Duty to diversify

Here, assuming S takes over a trustee, S sold the Amazon stock for $90K and deposited the money into the same checking account as above. She never told Beth about the money to be used for her education either, and Beth found out from Gordon's son, Grant.

duty to account

When B asked S for money for her education expenses, S refused the request, therefore going against what the trust was set up for, and not doing right by the beneficiary. S will argue the money was used up by dance lessons, but given the substantial gain from the stock split, it is arguable $90K was spent on dance lessons. Even if a substantial amount

was used, knowing the trust was supposed to be used for B's education, the trustees had the duty to invest and diversify to keep to the trust's intent.

Remedies include removing S as trustee, requiring specific performance to get the money, to be compensated by S's profit off the stock and bond. There is also breach of trust, where any profit made by the trustee through the breach, with interest is due to Beth. If not a valid trust, B could sue for breach of contract from Dave's estate.

Leaving the house to B when S dies- an oral contract/will?

It is possible S's comment about leaving the house to her when she dies is an oral contract, and if there truly is no money left, Beth could sue for specific performance. Yet this would have to be in writing because of SOF. Beth could also sue for the house, given the above remedy options, if there is not any of the trust money left.

END OF EXAM