

Wills and Trusts 2017

Final Exam

Prof. Y. Ascher

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.

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Question #1
150 points

Terrance, an elderly widower, loved monkeys and visited the local Zoo's monkey exhibit daily. As a result of these visits, he became friendly with the Zoo janitor, Mikey. Mikey jokingly told Terrance that Terrance must have been a monkey in his prior life and that's why he was able to understand the animals so well. Terrance was so thrilled by this idea that he started climbing trees and banging his chest. He also changed his diet to mirror that of his favorite monkeys, which just so happened to coincide with the dietary changes recommended by his doctor.

Mikey encouraged Terrance to see his brother, Larry, a licensed Lawyer, to draft a Will. Terrance asked Mikey to schedule an appointment, which he did.

When Terrance met with Larry, Larry asked Terrance about his family and Terrance said "The ones I loved are dead. My sister died ten (10) years ago, and my brother, Ned, died a few years later. Their kids are bums. I rarely see them. I don't even remember their names because it's usually so long between visits." Terrance told Lawyer he wanted to leave his estate to a Trust, which would provide funds to care for monkeys at the Zoo. Smiling, Terrance commented that since he was sure he was going to be a monkey in his next life, he wanted to make sure he was well cared for. Terrance wanted the Will to reflect that the gift was in appreciation of all the joy his visits to the Zoo had given him in his later years, especially while he was watching the antics of the monkeys. Terrance wanted Mikey to act as Trustee. Mikey was to be granted absolute discretion as Trustee. Larry prepared the Will as requested and it was properly executed and witnessed.

Terrance died later that year from injuries sustained from a car crash. He was driving too fast, as was his habit, and crashed. Terrance's nephew, Ned Jr., the only son of his deceased brother, Ned, was in the car with him. Ned Jr. died intestate the next day.

Terrance was survived by three nieces (N-1, N-2, and N-3), the children of Terrance's deceased sister. He was also survived by one grandnephew, Nolan, Ned Jr.'s son. In addition to Nolan, Ned Jr. was survived by a spouse, Sally, and Sally's minor child, John, whom Ned Jr. had been trying to adopt. They all lived in the same neighborhood as Terrance, but visited infrequently after the death of Terrance's siblings. Among Terrance's papers was a valid Will dated 20 years earlier in which Terrance had left his estate "in equal shares to my sister and my brother. I love my family." On the cover page to the Will, in Terrance's handwriting was the following "This Will is revoked. I like my Zoo Will better." Following were Terrance's initials.

Question #1 continued...

- a. Assume the Zoo Will is valid. You represent Mikey. He wants to know if he can use the Trust money to build himself a new work shed at the Zoo, complete with internet, a sleeping cot and a small kitchen. He explains that this way he can just live at the zoo, which will allow him to take better care of the monkeys. What do you advise him with respect to this proposal in particular and his role as Trustee?
- b. Assume the Zoo Will is valid. The Zoo has announced that they can no longer afford to maintain the monkey exhibit as it is too expensive and want the Trust to support a new lion habitat. You represent the Zoo. What arguments in the petition to modify the Trust would you make in favor of using the Trust to support a new lion habitat? POMS, a non-profit devoted to the Preservation of Monkeys, has a valid competing petition to receive the remaining trust funds. What arguments would you make in support of POMS's claim to the trust estate?
- c. You represent Terrance's relatives. What do you argue on their behalf? What interest could they claim? Explain.

PART 2 OF 2017 FINAL EXAM
WILLS AND TRUST

SHORT ANSWER EXAMINATION INSTRUCTIONS

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50 POINTS

1. Viola creates a valid will that says, "I leave my estate in equal shares to my sister, Amy, my brother, Bob, my sister, Cindy, and the heirs of my brother, Dan."

When Viola died, all her siblings were then deceased. Amy and Cindy died without any issue surviving. Bob was survived by four living children 1,2,3,4. Bob also had two (2) deceased children (5 & 6). Child 5 had 1 living child (N1), and child 6 had two living children (N2 & N3). Dan, who was deceased when Viola drafted her Will, was survived by the issue of two children, now also both deceased, namely, 7 & 8. 7 had three children then living, N4, N5 & N6; while 8 had 1 child then living, N7.

- a. How is Viola's estate to be distributed?
- b. Same surviving family and facts, but the will stated: "I leave my estate in equal shares to my siblings."
- c. Same facts, but the will read, "I leave my estate to my siblings that survive me, in equal shares."
- d. Would your answer to question c. above change if Bob had survived Viola by only 1 day? If so, in what manner and why?

Continued...PART 2 OF 2017 FINAL EXAM/WILLS AND TRUST

20 POINTS

2. When does the surviving spouse, under the intestate rules of California, receive the following interests in her deceased spouse's separate property:

100%

50%.

1/3rd

25 POINTS

3. Students frequently confuse the concepts of "revival" of a will and "DDR" (dependent relative revocation). Describe each rule/principle and give a factual example of each which shows that you understand the two (2) concepts and how they differ.

10 POINTS

4. Briefly explain the difference between a "rule of law" and a "rule of construction." Give an example of a rule of construction.

20 POINTS

4. In week 1 we discussed two competing principles that govern the laws in California pertaining to trusts and estates. We saw examples of them throughout the class. For example CPC §249.5, dealing with posthumous children, is an example of the law's attempt to balance these two principles. What are the two (2) principles? Give at least one example of a law/statute/case holding that balances these two principles.

25 POINTS

5. A client walks into your office and says he has heard that there are ways to avoid probate. His assets consist of a home, several bank accounts, and an IRA. He wants all his assets to pass to his two (2) adult children equally. Both children also have children. Describe to him his options. Briefly explain what steps he would need to undertake in order to achieve such a distribution and avoid a probate. Briefly describe what, if any legal documents you might prepare. Bonus points – discuss briefly the pros and cons of each option.

PART 2 OF 2017 FINAL EXAM
WILLS AND TRUST

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- a. How is Viola's estate to be distributed?

Because Amy and Cindy are deceased without issue, the residue will go 50% to Bob's family and 50% to Dan's family.

Under the anti-lapse rules, Bob's interests go to his issue. The interests are divided under 240 as follows:

Bob's 50% share will be distributed in 6 shares. 1 share to 1,2,3 & 4. 1 share to N1 and 1 share to N2 & N3

Dan's 50% will be allocated among his issue under the rules of intestate succession - because all Dan's children were also deceased, his 50% would go equally to N4-N7.

- b. Same surviving family and facts, but the will stated: "I leave my estate in equal shares to my siblings." Because Dan was then deceased, he would not be part of the "siblings" class, and thus 100% would go to Bob's family in the manner set forth above.
- c. Same facts, but the will read, "I leave my estate to my siblings that survive me, in equal shares." Because all the siblings are then deceased, the residue will be distributed according to the rules of intestacy. Since all siblings are deceased, start counting at the next level – 8 shares. 1/8th to 1-4, 5's child take 1/8, 6's 2 children share 1/8, 7's 3 children share 1/8th and 8's 1 child takes 1/8.
- d. Would your answer to question c. above change if Bob had survived Viola by only 1 day? If so, in what manner and why? Yes, since there is a Will, the 120 hour does not apply. Since he survived, 100% goes to his estate. ***If the student has it going to bob's children and grandchildren, they are wrong...since Bob survived by 1 minute, and there is no timeframe of survival required, it vested in Bob. If they mention the 120 rule not being applicable, they get partial credit.***

20 POINTS

2. When does the surviving spouse, under the intestate rules of California, receive the following interests in her deceased spouse's separate property:

100% - if the Decedent is not survived by issue, parents or issue of parents.

50% - if the Decedent is survived by a parent, or issue of parents, or one child, or the issue of a deceased child.

1/3rd – if the Decedent is survived by two (2) or more children, or the issue of any such children.

25 POINTS

3. Students frequently confuse the concepts of "revival" of a will and "DDR" (dependent relative revocation). Describe each rule/principle and give a factual example of each which shows that you understand the two (2) concepts and how they differ.

"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 effect as executed. (PC 6123) Revival involves bringing back to life a Will that was intentionally and properly revoked.

"DDR" is a rule of construction that is supposed to approximate intent – it makes a revocation "conditional" on something replacing the revoked instrument. To be applicable, there has to be a valid revocation, and then an attempt to replace it with something, that that attempt fails.

Unlike "revival" which is based upon actual intent, DDR is an implied intent concept.

Example of revival – T executes Will #1. T then executes Will #2 which fully revokes Will #1 either expressly or by inconsistency. Then T decides he likes Will #1 better. So in front of his friends, he tears up Will #2 and says, "I want Will #1 to govern."

Example of DDR – T executes Will #1. Then he writes a Will on the computer, prints it out, but forgets to sign in. Believing he has a valid Will, he tears up Will #1. The revocation of Will #1 will not be considered effective if it can be shown that T would have preferred Will#1 to intestate succession.

10 POINTS

4. Briefly explain the difference between a "rule of law" and a "rule of construction." Give an example of a rule of construction.

Rules of law apply regardless of the decedent's intent. Rules of construction are applied to imply the decedent's intent, but always give way to expressions of actual intent. The "anti-lapse" statute is a rule of construction.

20 POINTS

4. In week 1 we discussed two competing principles that govern the laws in California pertaining to trusts and estates. We saw examples of them throughout the class. For example CPC §249.5, dealing with posthumous children, is an example of the law's attempt to balance

these two principles. What are the two (2) principles? Give at least one example of a law/statute/case holding that balances these two principles.

Testamentary freedom and efficient administration of estates (or if they say public policy concerns – that works as well). Limitations on the introduction of extrinsic evidence; requiring witnesses to wills to sign during lifetime; requiring an out of wedlock child to be acknowledged during lifetime and not allowing post death DNA, limitations on actions post death.

If they say public policy – allowing spousal and child support creditors preferred status; omitted spouse/child rules as the second principle, some credit..

25 POINTS

5. A client walks into your office and says he has heard that there are ways to avoid probate. His assets consist of a home, several bank accounts, and an IRA. He wants all his assets to pass to his two (2) adult children equally. Both children also have children. Describe to him his options. Briefly explain what steps he would need to undertake in order to achieve such a distribution and avoid a probate. Briefly described what, if any legal documents you might prepare. Bonus points – discuss briefly the pros and cons of each option.

(I don't expect them to know the creditor stuff – that would also be bonus)

IRA passes by beneficiary designation – name the children directly; simple, creditor free. No extra documentation required. If Trust created, could name Trust as beneficiary.

Joint tenancy – could hold bank accounts and property in joint tenancy with both children. Passes automatically on death to surviving children. Easy, inexpensive. Creditor protected after death. No additional documentation required. Disadvantage; children currently owners. If client wants to sell house or remove a child, need children's consent. If child has creditor issues, creditors could possibly attachment of house. Same re bank accounts during lifetime. Child could withdraw funds and you would have to sue to get them back. If a child predeceased client, doesn't go to issue of child.

POD/Revocable Transfer Deeds – Simple, inexpensive. Hold accounts as POD, execute Revocable Transfer on Death Deed. On death immediately transfers to children. Currently accounts are creditor protected; but not real property. Children have no access during lifetime. Can easily revoke. If a child predeceased client, doesn't go to deceased child's issue.

Create a Trust – more complex/costly. Would need to execute a trust and fund the trust. Would require re-titling accounts into Trust and signing a new Deed transferring house to trust. No creditor protection from C's creditors. But no risk during lifetime from children's creditors. Children have no access during lifetime. Client can unilaterally change at any time. Can provide for disposition if a child predeceases client.

1)

A.

Trust creation

To create a valid trust, there must be 1) testamentary intent by the settlor; 2) ascertainable beneficiaries; 3) corpus (property); 4) trustee; and 5) the purpose for the trust must be valid and not against public policy.

I would advise Mikey that as a trustee, he has fiduciary duties (FD) toward the settlor. His FD include: 1) duty of care- reasonable administration of the trust; 2) duty to avoid conflict; 3) duty to avoid delegation; 4) duty to not administer adverse trusts; 5) duty to diversify; 6) duty to invest prudently; 7) duty to balance the interest between existing beneficiaries and future beneficiaries; 8) duty to control-make productive; 9) duty to avoid self dealing; 10) duty to inform account; 11) duty of joint responsibility; 12) duty to co-trustees i.e making sure the co-trustees are doing what they are suppose to do; 13) duty to exercise special skills; 14) duty to use reasonable discretion.

The purpose of the trust is to provide funds to care for the monkeys at the zoo and anything other than the said purpose would be considered as a breach of the FD toward the settlor.

The question to Mikey here is: is the money that Mikey wants to spend to build himself a shed with internet, kitchen and sleeping cot is for the care of the monkey at the zoo or it is for Mikey's own benefit?

As an attorney, I would argue that the internet, the kitchen, the sleeping cot are not for the care of the monkeys because Mikey is a janitor at the zoo. Usually janitors do not need internet or a kitchen to do their job properly. Mikey here wants to use the funds for his own benefits; for his own self enrichment. However, Mikey may argue that the statement in the trust stated that the funds should be used for the care of the monkeys and this is ambiguous. What does it mean to care for the monkeys? does it mean to clean their area? or does it mean to feed them? or does it mean to set them free? or does it mean that

Mikey have to spend some of his time to play entertain the monkeys? Thus, Mikey may argue that having a shed, kitchen, internet, and sleeping cot will help him preform his duties as a trustee because they (the internet, kitchen...) are integral part of the caring procedure. I may rebut Mikey argument by stating to him that this is a charitable trust and it is within the attorney general province so he (Mikey) will be under scrutiny. Thus, if he is found to be in breach of his FD, then the proponents will have a several remedies against him such as removing him as a trustee; money damages; fee reduction; compelling him to preform his duties. Here, also, Mikey's mitigating factors are really minimal.

In sum, Mikey should not use the trust money to build himself a shed with internet, kitchen, and sleeping cot.

b.

I would argue that POMS should try to use Cy Pres as a remedy because T's general purpose is more important than the specific gift to the zoo monkeys. However, the zoo may argue that the trust purpose failed and it was more important to T to have the money from the trust to to the zoo than to any monkey preservation.

The main difference between private trust and a charitable trust is that the in charitable trust are 1) there is no ascertainable beneficiaries; and 2) it does not fall under the rule against perpetuities.

when the purpose of a charitable trust fails because it is impossible, impracticable ;wasteful; or illegal and if the general purpose of the charity is bigger than the specific purpose, then Cy Pres should be use as a remedy to apply the trust fund toward the general purpose.

Here, Terrance (T) was in love with monkeys and he wanted to care for them; he did not care for lions; he never mentioned them and did not leave them anything. Thus, POMS should argue that T's general purpose was to care for the monkeys in general and T's specific gift to the monkeys at the zoo was in furtherance of his general purpose which is to help monkeys in general. Thus, cy pres should apply and POMS should receive the funds. However, the zoo may argue that T had a special relationship with this particular zoo because he visits the zoo daily and he does not go to any other zoo. T made a friendship with Mikey and because Mikey worked at the zoo, T wanted to have the doors of the zoo to stay open. Therefore, the purpose of T's trust was to benefit the zoo and not any general monkey preservation organization.

In sum, the court may use cy pres remedy on the issue here because the purpose of the trust was impracticable and T's general purpose (caring for monkeys) of the trust is more important to him than caring for a specific monkey at a specific zoo.

C. 34

The will created by Larry is valid. However, it may be the product of insane delusion capacity.

The question here is whether or no T has capacity when he made the will. To have capacity T must understand the nature of the testamentary act; 2) the nature and the condition of his property; and 3) the people who will be affected by his will such as his relatives. Since this is a valid will, and capacity to make a will is really low, I will not discuss this.

Insane delusion.

It is 1) false belief that is 2) the product of a sick mind 2) even though there is no evidence to support such belief; and 3) the delusion directly affected the testamentary disposition in the will.

Here T's relatives (R) may argue that T suffered from insane delusion because he believed what Mikey told him that T was a monkey in the previous life and that is evident by T reaction. After this statement, T started climbing tress and banging his chest. R may argue that there is no sane person would do that unless they are joking or acting. Moreover, T changed his diet to eat like monkeys. This is not normal because humans are no monkeys and they should not eat like monkeys. However, the zoo may argue that Mikey statement was said in a joking manner and that the diet was recommended to T by his doctor.

In sum, the court will likely find that T did not suffer from insane delusion

Undue influence (UI)

it is excessive persuasion that cause a person to act or refrain from acting by overcoming their free will and it results in inequity. There are three ways to find UI:

1- Common law

under the common law, the claimant must show by clear and convincing evidence that 1) T was susceptible to UI; 2) there was opportunity to influence 3) dispassion to do the wrongful act ; and 4) unnatural disposition. All of the four elements must be proved. Here, R will argue that Mikey (M) unduly influenced T because T was a loner. T was a widower and no relatives visited him. Thus, M took advantage of this opportunity and influenced T to assign M as a trustee.

However, there is not enough facts to support this claim.

In sum, the court will likely find that the common law ui is not satisfied.

2- statutory

Under the welfare statute, the court will consider the four common law elements above. R do not have to prove all of them. Here, there was susceptibility and opportunity because T was an old person who believed that he was a monkey before and M took advantage of that and convinced T to assign him as a trustee.

3- confidential relationship

Here, R must show that there was confidential relationship and there were an opportunity and ability by the donee to influence T. Here, it does not seem from the facts that there was any confidential relationship between T and M.

Prohibitive transferee

This is a class of people who are presumed to have caused UI if they receive under the instrument. The class is 1) The drafter of the document ; 2) a fiduciary who transcribed or caused to transcribe the will; and 3) care custodian.

Here, there is no facts to indicate that there was any member of the prohibited class.

In sum, there is no ui because the R cannot prove this from the facts.

simultaneous death.

If survivorship cannot be established by clear and convincing evidence that a beneficiary who died simultaneously with the decedent, the beneficiary and the decedent are deemed to predeceased each other.

Here, since this is a will, the 120 will not apply because it only apply to intestate succession. Ned Jr and T died at the same car crash and it is not clear who died first. If Nolan and John can prove by c/c evidence that their father survived, they will not get anything under the will.

revocation of the 20 year old will

A will may be revoked by a subsequent writing or by a physical act. The subsequent writing can be either expressed such as " I revoked this will" or by inconsistency. Here, the revocation is by an express statement of the will cover itself. However, the writing must be accompanied with intent to revoke. Here, R may argue that this will is not revoked and R may try to have the court apply Dependent relative renovation (DRR)

DRR

If the first will was revoked based on a mistaken belief that the second will is valid. However, the second will is invalid for any reason, the first will is not revoked. Here, R may argue that the first will was never revoked because the second will was the product of insane delusion

Holographic will

To execute a valid holographic will T must have a capacity; testamentary intent; the material terms must be in T's handwriting and it must be signed.

Did the statement "This will is revoked. I like my zoo will better." qualify as a holographic will? The best argument R can make here is that there is no testamentary intent by T and there is no material terms written by T. However, zoo may argue that T's statement clearly reflect his intent to revoke the will because he said that he like the zoo will better. T must necessarily understood the nature of his action.

If the court determines that the first will was not revoked then the gift to his sister would go to her children N1, n2, n3 because of the anti-laps statute. Also, Nolan and John would get Ned J share.

Anti-laps

When a beneficiary dies after the execution of the will, the gift will go to the beneficiary's kids because it is presumed that T wanted the beneficiary's children to have the gift.

Adoption

Adoption sever the relationship between the kid and the natural parent unless 2) the child lived with the natural parent at any time during minority and 2) step parent adoption.

Further, step child will be treated as natural child if 1) the relationship between the step child and the step parent started at the age of minority and continued till the end of the either's one's life and 2) the step parent would have adopted the child, but for a legal barrier. The legal barrier has to last throughout the step parent's life time.

Here, the facts do not state that there is any legal barrier that prevented Ned Jr from adopting John. However, the facts state the John is a minor and he lived with his mother, Sally with Ned Jr. It is very likely that John is a step child.

Indicate #1000

2)

1a. Rules of Construction

Rules of construction are utilized when a testamentary documents isn't clear and they assist in determining the intent of a person whereas the rules of law are black and white.

Anti-Lapse

Anti-Lapse theory applies when a person named on a testamentary instrument has predeceased the testator. Anti-lapse will only apply when the person who was supposed to take under the testamentary instrument is a relative. Anti-lapse provides that the share will pass to the relative or kindred of the deceased person or the wife (wife is not considered kindred). Anti-lapse also applies to class gifts but will not apply if the issue of the the person who was supposed to receive under the testamentary instrument dies before the instrument is executed and the testator knows of the death.

At the time Viola (V) created her will she left her estate in equal shares to Amy (A), Bob (B) and Cindy (C), and the heirs of Dan (D). When she died all of her siblings were deceased. Since Amy and Cindy died without an issue therefore, their share will not lapse. Since Bob and Dan died with issue the estate will be divided in half for the issue of Dan and the issue of Bob. Bob's share will anti-lapse to 1, 2, 3, 4, 5, and 6 equally. Since 5 is deceased his share will anti-lapse to N1. Since 6 is deceased his share will anti-lapse to N2 and N3. Dan's share will be divided between 7 and 8. Since 7 is deceased N4, N5 and N6 will take his share. Finally, since 8 is deceased N7 will take under anti-lapse also.

b. In this case Viola leaves her estate in equal shares to "my siblings." "My siblings would be considered a class gift, which means that under the anti-lapse theory any issue of the siblings that were deceased at the time the will was executed are excluded from the class. Since Dan was deceased when Viola drafted the will his issue (7 & 8, N4-N7) are excluded

from the class and will not take under will. Further, since Cindy and Amy died without an issue, Bob's issue would take under anti-lapse. 1, 2, 3, 4, 5, and 6 would take equally. Since 5 & 6 and deceased their share would pass to their issue under anti-lapse.

c. "I leave my estate to my siblings that survive me, in equal shares"

This is a conditional will that will only take effect if the condition is met. When Viola died all of her siblings were deceased. Therefore, since her siblings failed to survive her they would not take. Since Viola's will does not include an alternative disposition then her estate would likely be distributed under intestate succession. Probate code 240 (per capita) distributes the estate of a deceased person who died intestate to their heirs at law to the nears generation then living. In this case, their issue of her deceased children.

d. Bob survived Viola

There are two different tests that apply when two people die simultaneously or within 120 hours of each other. The simultaneous death test applies when there is an existing testamentary instrument. The proponent of the will must prove by clear and convincing evidence that he survived the deceased testator. The 120 hour rule applies in cases of intestate succession. In this scenario Viola executed a valid will and Bob survived her by one day, As long it is established by clear and convincing evidence that Bob survived Viola by 1 day his issue will take all of Viola's estate since the other siblings predeceased her.

2. Intestate Rules for a Surviving Spouse

Under the CA intestate rules, a surviving spouse will take 100% of the deceased spouse's separate property when the deceased spouse has no children (or issue of children) and no parent(s) or issue of parents. A surviving spouse will take 50% when the deceased spouse has one surviving child (or issue of surviving child) or surviving parent(s) or their issue.

The surviving spouse takes 1/3 when there are two or more children (or issue of deceased children).

3. Dependent Relevant Revocation (DRR)

Dependent relevant revocation is a conditional revocation. Generally, the person revokes a testamentary instrument under the mistaken belief of the disposition of property. If it was not for the mistaken belief the testamentary instrument wouldn't have been revoked.

T prepares a will devising \$10,000 to C. T later crosses out \$10,000 and writes \$15,000. The \$15,000 is invalid. If it wasn't for T's mistaken belief that the \$15,000 would be valid he wouldn't have revoked the \$10,000 will. Therefore, the court will find that the first will is not revoked.

Revival

A will is validly revoked and a second will is executed. The testator later revokes the second will. The first will is presumed revoked. However, T makes contemporaneous or subsequent declarations expressing intent to enforce the first will or circumstances surrounding the revocation of the second will demonstrate T's intent to enforce the first will. The first will is then revived.

T executes a valid will leaving his home to M. He revokes his will and executes a second valid will leaving his home to C. T later validly revokes his second will telling everyone that he intended to leave his home to M. The first will is revived.

4. Rule of law are laws that are black and white. They are strictly construed, whereas rules of construction help clarify testamentary instruments that are not clear. Most importantly, one must always yield to the intent of the testator. A rule of construction is anti-lapse gifts.

If T leaves a will devising his property to his "siblings" and one of his siblings is deceased at the time the will is executed. It can be implied that T did not intend to leave to the issue of the deceased sibling because at the time he executed the will he knew his sibling was deceased yet the will was executed for a specific class - his siblings. This would exclude the issue of that deceased sibling.

5. The two competing principles are (1) effective administration and (2) testamentary freedom.

A child could inherit from a parent so long as paternity is established. Paternity is established when the parents holds the child out as his own or the court declares paternity. A child can't appear after the death of the decedent claiming to be a child if these elements are not established.

6. There are several ways to distribute property while avoiding probate. A few examples are:

a. joint tenancy - A joint tenancy creates a right of survivorship. The person who outlives the other will take. The pros are that they are easy to form and they are cheap. The cons are that one does not have full control over them.

b. POD - A POD account can be created by going to bank and filling out a sheet including someone on your account that will be "payable on death". POD accounts are easy to form, cheap and one has full control to change the POD recipient before death. The cons for the beneficiaries is that only one will take (the one that survives the other)

c. Inter vivos Trust - An intervivos trust is a little expensive and complex. However, one can control it after death.

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d. life insurance

END OF EXAM