KERN COUNTY COLLEGE OF LAW

WILLS AND TRUSTS

FINAL EXAMINATION

FALL 2025

Prof. TIMOTHY SWANSON

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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KCCL
Wills & Trusts
Fall 2025
Prof. T. Swanson

Essay Question #1

Anne, a famous artist, lived with her boyfriend, Rocky, her biological child, Drake, and Rocky's son, Ellis. She always introduced Ellis 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 Ellis's biological mother, who had disappeared, so the matter was never pursued.

One evening, while on a very turbulent flight home, Anne wrote on the back of a grocery list, "I give my niece, Brooklyn, $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 note inside her wallet.

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

In 2018, shortly after Prince, a 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 also 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, she crossed out the $100,000 and using the crayon nearby, wrote "$500,000." She then dated the change, folded up the writing and returned it to her purse.

In 2019, after graduating from college, Ellis learned that he was not Anne's biological child. When he brought it up to Anne, she responded "you are my child. Biology is not important. I will also be your mom."

Later that year, Anne gave Drake $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 2025, Anne is in an automobile accident, and is killed. Her purse was in the car with her, and was destroyed in the ensuing fire.

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. She also has unsold artwork valued in her estate at $100,000.

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

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Essay Question #2

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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Essay Question #3

Marie and Richard, both previously unmarried, got married in 2000 in California. They acquired a home and various other assets during their marriage. All of these assets were acquired with funds earned during the marriage.

In 2015, Marie inherited a beachfront property from her grandmother, which she never commingled with their other assets. Richard was fully aware of this property but never used it or contributed to its maintenance. They always referred to it as "Marie's beach house."

Richard had a son, Samuel, from a brief relationship with Tess before his marriage to Marie. Richard never lived with Tess. Samuel was legally adopted by Tess's husband when he was an infant. Marie and Richard then had twin daughters, Alice and Beth, in 2001.

In 2018, Marie executed a will that left "all my community property assets shall be distributed to my spouse, and all my separate property assets to my children." There was no residue clause included in the will, nor was there any mention of Samuel.

Richard, reluctant to do estate planning, never executed a will.

In 2021, after leaving the twins with their grandparents, both Marie and Richard were traveling on a small private plane, which unfortunately crashed. Authorities couldn't determine who passed away first.

The devastated twins claim their parents' entire estate. Samuel, having learned of his biological father's demise, steps forward to stake a claim.

Analyze and discuss:

1. How will the assets acquired during Marie and Richard's marriage be distributed?

2. What rights, if any, does Samuel have in Richard's estate?

3. How will Marie's beach house be distributed?

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1)

Anne's handwritten will (on the back of the grocery list) is a valid, holographic will.

A will is a testamentary document created by the testator directing how their estate is to be distributed upon death. The deceased's estate is all of their separate property, plus any community property they own with a spouse or domestic partner. The estate passes at death per the direction of the deceased if they have testamentary documents (like a will) or by the rules of intestacy if the deceased does not have valid testamentary documents.

A formal will is not necessary in California.

California is one state that will probate a holographic (handwritten) will. A holographic will differs from a formal will in several respects.

Formal Wills

A formal will is a typed document executed with all the formalities required by the statute of wills. For a formal will be to be valid, the testator (the person executing the will) must have *testamentary intent*. This means that they must intend the writing to be their will, and that they intend that their property be distributed upon their death per their directions in the will. To have testamentary intent, a testator must be at least 18 years old *when the will is executed* and must have testamentary capacity. Testamentary capacity is different from legal capacity. All that is required for testamentary capacity is the knowledge of the general nature and identity of their property, the identities of the individuals who would take their property (generally, spouses, children, and other family) absent their will, the identities of the individuals or other entities who would take their property if the will were executed, and the intent to carry their plans into effect by executing testamentary documents (like wills and trusts.)

Additionally, *all* wills (holographic or otherwise) must be in writing. Oral wills are not valid in California. A testator cannot simply tell someone "I want all my property to go to my kids when I die." All wills must be in writing. A formal will may be handwritten, but is usually typed.

The testator must sign a formal will. The signature need not be the testator's complete name. A first name, a nickname, or a distinctive mark can all be signatures, so long as the testator intends for the signature to be interpreted as such on their will. If the testator is unable to sign the will, another may sign the will on their behalf but must do so in the testator's presence and at their specific direction.

A formal will must be witnessed by two disinterested persons. This means that the testator must either sign the will in the joint presence of two witnesses, or must sign the will and then acknowledge that it is their signature on the will, and that it is their will, in the joint presence of the two witnesses. The two witnesses must also sign the will, but need not do so at the same time, or in each other's presence. The two witnesses must sign the will while the testator lives. A signature affixed to a will after the testator has died is ineffective.

Only after all of these formalities have been observed does a formal will satisfy the statute of wills and is able to be admitted to probate.

Holographic Will

A holographic will is another type of will that differs from a formal will in several key respects. A holographic will must be written in the testator's own handwriting. The entire document need not be handwritten, but it is critically important that all the material provisions of the will be hand-written by the testator. The testator must also sign the will. The signature may be at the top, in the middle, or at the bottom. So long as it is signed by the testator, then the holographic will is valid. Of course, the testator must also have testamentary capacity and testamentary intent. These requirements are identical to that of a formal will.

A holographic will need not be dated; however, a testator should always date a holographic will because a missing date can cause problems when multiple wills exist and there are competing petitions to probate a specific will. If the holographic will is dated, then it makes the Court's job much easier.

Anne executed a valid holographic will.

The facts of this case state that Anne wrote a holographic will on the back of a grocery list during a very turbulent flight. It is apparent that she intended the document to be her will when she signed it, since the possibility of a plane crash was in her mind when she wrote it. The entire document was handwritten, and she signed it. Although not required, she also dated it. Because Anne possessed testamentary capacity, testamentary intent, signed it, and wrote each of the material provisions in her own handwriting, the holographic will leaving $100,000 to her niece and the residue to her children is a valid, holographic will and can be admitted to probate.

Anne's modification to her holographic will is not effective because it was not executed with the formality a codicil requires.

A will may be revoked or modified by the testator, but doing so requires a level of formality that Anne did not achieve here. A will may be revoked by following any method in the original will's provisions, or if not specifically prohibited by the will, by following the statutory requirements for a revocation or modification.

The $100,000 gift to Brooklyn was revoked when Anne crossed it out.

The original holographic will does not specify how it can be revoked, nor does it prohibit any of the statutory methods of revocation. A will may be revoked in whole or in part by executing a new will revoking a prior one, executing a writing simply revoking the previous will, or by obliterating, burning, tearing, or cancelling a part or the whole of a will. Because the will did not provide otherwise, Anne's act of crossing out the $100,000 gift to Brooklyn was effective to revoke that gift to Brooklyn IF (and only if) Anne intended to revoke that gift when she made that act. It is clear that Anne did not want Brooklyn to receive $100,000, so her act of crossing out that gift was effective.

It is clear from the facts, though, that Anne did not intend to *completely* disinherit Brooklyn. Indeed, the facts state that Anne intended to *increase* the amount payable to Brooklyn upon her death. This requires a new will, or at the very least, a codicil to the existing will modifying the gift. Both a new will and a codicil must be executed with the same formality as a formal will or holographic will. Anne hand-wrote the material term (the new gift amount) and dated it, but did NOT sign it. Because Anne did not sign the codicil, it is ineffective as a holographic codicil. The new $500,000 gift would therefore fail. Absent the $100,000 gift, Brooklyn would receive nothing under the terms of the new will.

Dependent relative revocation is effective under these circumstances to revive the original $100,000 gift to Brooklyn.

Dependent relative revocation is a legal principle that will, under certain circumstances, revive a previously revoked gift. If a gift in a will is revoked, and clear and convincing evidence shows that the gift was only revoked because the testator believed that their modification was effective but wasn't, Courts will revive the revoked gift. Here, it is obvious from the facts that Anne intended Brooklyn to receive more than the original gift. Anne revoked the gift of $100,000 in favor of a much larger gift. It is obvious that the revocation was predicated upon the larger gift being effective.

But because the larger gift was ineffective, the Court will rely on dependent relative revocation to revive the original, duly executed gift to Brooklyn--in this case, $100,000.

The residue of Anne's estate will pass to "her loving children"--which may or may not include Ellis.

The beneficiaries of a will must be ascertainable for a bequest to succeed. When ambiguous language is used, the Court must determine who does--and does not--qualify as a member of the gift class to take under the provisions of the will in question. The operative version of the will says that the residue of her estate is to be left to her "loving children."

It is possible, but unlikely, that one of Anne's heirs may take issue with the word "loving" and allege that some (or all) of her children didn't love her and therefore didn't qualify to receive as a beneficiary of that class. Rather than wade into that thicket, the rest of this analysis will focus on the remaining word "children."

Not all children are biological in the world of probate.

A parent-child relationship can be established in numerous ways. The most obvious way to establish a parent-child relationship is to give birth to a natural child. Drake is Anne's natural child, and (assuming he loves Anne) will qualify as one of her loving children, entitled to share in the residuary estate.

Ellis is not Anne's son. Ellis was not even her step-son when she executed her original will (he became her step-son when Anne and Rocky married in 2015.) This is no obstacle to Ellis, though. Parentage may be established outside of the bounds of natural parentage through the California probate code, which provides that a parent-child relationship is established when the parent *publicly* holds out a child as their own.

Here, Anne always introduced Ellis as her son. She discussed formal adoption with Rocky, but Rocky did not want to find Ellis's biological mother. No matter. Adoption is not required to form a parent-child relationship under the probate code (although it certainly can.) Although the probate code deals with legal barriers to adoption, these barriers are only necessary when a *parent* is trying to inherit from a *child*. There is no such requirement here, since Ellis is attempting to inherit from Anne.

Ellis will successfully argue that because Anne always held him out as her own child (indeed, Ellis didn't even know he wasn't her child until he reached adulthood) then a parent-child relationship was established, and Ellis can inherit as one of Anne's "loving children."

Francine is, at first glance, an omitted child--but the words of Anne's will do not actually omit her.

A child is "omitted" when a parent-child relationship is established (by whatever means) after the execution of testamentary documents and the documents are not updated to address the existence of a new child. This will typically occur when the testamentary document specifically names beneficiaries, and someone is left out. This can occur for several reasons.

The usual reason is that the testamentary documents are executed prior to the birth of a child, and never updated to include them. But a child can also be omitted because the testator doesn't know the child exists, or simply forgot to include them. In any event, an omitted child can petition the Court to receive a share of the testator's estate as an omitted child. This is permitted, so long as at least one of the following is true:

1. A child is born after the execution of the testamentary instrument.
2. The child was born before the execution of the testamentary instrument, but the testator did not know the child existed (or incorrectly believed the child to be dead) when the testamentary instrument was executed OR
3. The child was in utero when the testamentary instrument was executed, but the testator died before the child was born.

Francine is the biological child of Rocky and Anne. Francine was born in 2015, after Anne executed her original (valid) holographic will on a turbulent flight. Francine would then be an omitted child--except that she isn't. Anne's will uses the generic term "my loving children", which would tend to include any children born to Anne after she executed her will. Because Francine is not an omitted child, she will take a share of the residuary estate.

Brooklyn, Drake, Ellis, and Francine will all take under Anne's will. What about Rocky?

Like children, spouses can be omitted (intentionally or otherwise) from testamentary documents. Surviving spouses are entitled to a share of the deceased estate, so long as they are still married and have not otherwise disclaimed their interest. How this is handled depends on the circumstances of the estate and the testamentary documents.

Rocky and Anne married in 2015--after Anne executed her holographic will. Rocky is, like Francine, omitted from the holographic will. But Anne's will makes no provision for Rocky at all, and neither did her attempted modification in 2018 (well after they were married.)

Rocky will argue that he was unintentionally omitted from Anne's will. Anne's children will argue that he was not. After all, had Anne intended to update her will to include Rocky, she would've done so when she attempted to modify the gift to Brooklyn in 2018. She did not, so there is a strong argument to be made that Anne intentionally omitted Rocky.

Anne's children have the better argument. It is obvious from the circumstances that Anne knew she was married to Rocky, and never updated her documents to include him. She made no other provisions for him in a trust, and there is no mention of a life insurance policy. Because Rocky did not disclaim his interest, and Anne did not provide for him, Rocky is entitled to a distribution from Anne's estate.

Rocky will take an intestate share, Brooklyn gets a specific gift, and the three children get the rest. How much does everyone get?

Because Anne and Rocky were married and lived in California, there is some community property in the estate as well as Anne's separate property. All property Anne had before marriage, any gifts she received as her sole and separate property, any inheritance, and any of the rents, profits, or income from any of those categories are Anne's separate property. All property acquired during her marriage to Rocky, including both of their incomes, and all property that is not otherwise the separate property of each of them is community property.

Rocky takes Anne's half of the community property.

Upon death, the rules of intestacy require the deceased's share of the community property to pass to the surviving spouse. Rocky already owns half of the community property, so he will take the other half (because Rocky is taking under partial intestacy as an omitted spouse, he is entitled to whatever share of property he would have received had Anne's will be wholly void.) Rocky will, therefore, inherit the entire $500,000 in the joint investment account. The facts do not say whether the artwork is separate or community property. The rest of this analysis will assume that the artwork is community property (since the law would presume that, absent any other evidence) so Rocky will also inherit the unsold artwork (worth $100,000.)

Rocky takes 1/3 of Anne's separate property.

This leaves $1,500,000 in Anne's separate property for distribution. Rocky's intestate share would also entitle him to 1/3 of this property (a surviving spouse takes 1/3 of the deceased's separate property, so long as there are at least two children of the deceased. If one of those children is pre-deceased, then the 1/3 rule applies if the pre-deceased child has living issue.) Drake and Francine

are both still living, so even if a Court decides Ellis is not Anne's child, Rocky is limited to 1/3 of Anne's separate property. Rocky will take 1/3 of Anne's separate property, which is $500,000.

Brooklyn will receive $100,000.

As explained above, Brooklyn will receive only $100,000 of the remaining $1,000,000 of Anne's estate. She will not receive the $500,000 gift because that gift was invalid.

Drake, Ellis, and Francine will split the remaining $900,000.

The three children will take $300,000 each. Even though Anne gave Drake $500,000 to help him buy a house, this is not an advancement. An advancement occurs when a partial (or complete) distribution of an expected inheritance is gifted to a beneficiary while the testator is still alive. But for an advancement to be considered an advancement (and, therefore, reduce the amount the beneficiary receives upon death of the testator) the advancement must be memorialized in a writing by the testator at the time the advancement was made. Absent that, the recipient can later acknowledge that an advancement was received at any time. But since there was no writing mentioned in the facts, it is assumed that the $500,000 Anne gave to Drake was not an advancement.

Of course, if someone is contesting the final distribution and actually produces a writing memorializing the advancement to Drake, then his distribution will be reduced via the hotchpot method. The $500,000 advanced to Drake will be added back to the balance of the estate (taking it to $1,400,000 instead of $900,000), the larger number would be divided into equal shares, and Drake's advancement would be subtracted from whatever his share was. In that case, Ellis and Francine would receive (about) $433,000 and Drake would receive nothing (since his share would be less than what he already received, nothing would remain for Drake.)

All of this, of course, assumes that the contents of Anne's holographic will can be proved. The original holographic will was destroyed in a fire.

Destruction of a will operates to revoke the will if the testator intends to revoke the will by destroying it. But if the testator does not intend to revoke the will by destroying it and the will is destroyed anyway, its contents can be proved by clear and convincing evidence and admitted to probate. Here, although Anne had the will with her and the will was destroyed, she had no intent to destroy the will. The will was destroyed by the fiery crash that killed Anne. This will can only be admitted to probate if its contents can be proved by clear and convincing evidence. There are no facts in the fact

pattern that suggest Anne told anyone about the contents of the will, made copies of it, or otherwise made any record of its contents.

If the lost will can not be proved up by clear and convincing evidence, then Anne's entire estate will pass by intestacy. The only real difference between her testamentary disposition and an intestate disposition would be the $100,000 gift to Brooklyn. Because Anne has a surviving spouse and surviving children, Brooklyn would not be one of Anne's heirs and would take nothing if the will were not found.

Outstanding essay. Thorough discussion.

2)

1. A trust is formed when a settlor, with the intention of creating a trust, transfers property to a trustee for a lawful purpose and designates a beneficiary.

Gordon intended to create a trust when he delivered the trust property to Dave.

A valid trust exists when the settlor intends to immediately form a trust. The intent can be express or implied by the settlor's conduct. Equivocal language is not sufficient. Words to the effect of "I will give you, at a later date, some property to handle for me" are not sufficient to demonstrate the necessary intent to form a trust. Here, Gordon, the settlor, intended to create a trust when he delivered the trust property (a $10,000 savings bond and 1,000 shares of Amazon (was Amazon publicly traded in 1998?)) to Dave. Gordon intended that the property be used for Beth's benefit, and intended that Dave serve as trustee to ensure the trust's purpose (educating Beth) was carried out. Gordon stated his intentions clearly to Dave, who understood and accepted the responsibility.

Good

Gordon properly transferred property to the trustee.

A trust is only created if property is promptly delivered to the trustee. A promise to deliver property at a later date is insufficient to create a trust. The trust does not exist until it is funded. No property = no trust. Here, Gordon immediately conveyed the trust property to the trustee. Because the property transfer was prompt and complete, this requirement is satisfied. Dave acknowledged receipt of the trust property when he thanked Gordon for the gift and immediately segregated it as trust property.

Good

The trust created by Gordon serves a lawful purpose.

A trust cannot exist without a stated purpose. The purpose may be any lawful one. Trusts are created for the benefit of individuals, for the benefit of charities, animals, gravesites, and others. The only requirement is that the trust not be for an unlawful purpose. The trust cannot encourage or aid in the commission of crime and cannot otherwise violate public policy. If the trust were created to induce Beth to end a marriage, that would be against public policy and not a lawful purpose. Further, the trust cannot violate the rule against perpetuities unless it is a charitable trust. The education of Beth is not a charitable trust, but this particular trust does not violate the RAP since Beth's interest was vested immediately on creation.

Gordon created the trust for the benefit of Beth. The exact purpose of the trust is subject to some debate--Gordon "asked" Dave to use the trust property to further Beth's education. This is equivocal enough that the stated purpose of the trust may not necessarily be for Beth's education. But it is

clear from the actions of Gordon, Dave's understanding, and the endorsements on both the bond and stock certificates that the trust is to benefit Beth. Whether it is for her general care and maintenance in a comfortable lifestyle, or specifically for education is not relevant to the discussion about whether a trust was actually formed. It is clear that the trust has a stated purpose, and that the purpose is lawful, so this element is satisfied.

A trust must have a beneficiary.

A trust cannot be created without a beneficiary. A settlor may name himself a beneficiary, but if he does so, he must name a successor beneficiary. The successor beneficiary for a private trust must be ascertainable. Here, the identity of the beneficiary is certain--it is Gordon's goddaughter Beth. This element is satisfied. Good!

Because Gordon intended to form a trust, declared a beneficiary, and delivered the trust property to a trustee, a valid trust has been formed.

2. Beth's rights and remedies as against Dave

A trustee has fiduciary duties to the beneficiary of a trust. Those duties include the duty of loyalty, the duty to account, the duty to segregate and earmark property, the duty to personally administer the trust, and the duty to carry out the trust's stated purpose. The trustee also has a duty to protect the trust property from waste, pursue claims and defend the trust, and make the trust property productive.

A trustee has all of the powers specifically granted to him by the trust, the powers granted to him by statute (so long as the trust instrument does not prevent him from exercising those powers), implied powers to manage the trust assets, and powers conferred by the Court.

If a trustee violates his duties to the beneficiary, the beneficiary can seek an injunction, suspension or removal of the trustee, and damages from the trustee.

Dave violated several of his fiduciary duties to Beth.

Although Dave kept the trust property safe (by placing the bond and the stock certificates in a safe deposit box) he may have breached his duty to diversify the investment. Because a substantial part of the trust property was Amazon stock, Dave may have breached his duty to protect the trust by diversifying this investment. Although in hindsight, a large investment in Amazon in 1998 (if that was possible) was quite lucrative, Dave may have breached his duty to Beth by not diversifying. Because

that decision ultimately worked to the trust's benefit (although the facts do not say this, I will assume that if you could buy Amazon stock in 1998, it cost a lot less back then than it did in 2008), the beneficiary (Beth) can waive this particular breach and approve of the trustee's failure to diversify. But if the investment had not paid off (perhaps 1000 shares in WorldCom or Enron instead) then Beth would have a valid claim that Dave violated his duty to protect the trust by diversifying the asset.

The Court would assess an allegation of a failure to diversify against what a reasonably prudent investor would do when faced with the same or similar circumstances. Most investors would not hold 90% of a trust's value in one security, so the Court would likely find Dave to have breached his duty.

Dave also failed to keep the trust property segregated and earmarked. He commingled his own funds with the trust property, commingled his wife's funds with the trust property, and invaded the trust corpus to take Stephanie on a cruise. Further, he did not even put the money in an interest bearing account. The trust could have had at least some interest income if the funds were not property reinvested (yet another breach of his duty to Beth.)

Dave named Stephanie as a joint owner of the safe deposit box, which has the practical effect of making Stephanie the owner of everything inside the box as well. This was yet another breach of his duties to Beth.

Should mention non-delegation specifically, but you did mention relevant facts

Dave's various breaches of his fiduciary duties to Beth make him liable for damages.

Beth can successfully pursue claims against Dave, so long as she does so promptly. There is a short statute of limitations period against estates for this type of action--a topic for a different essay.

Dave (or his estate) would be liable to Beth for all of the profits from the sale of the Amazon stock ($90,000) plus the $3000 Dave took from the account to pay for the cruise. Beth would also be entitled to interest on those amounts.

3. Although never named as trustee, Stephanie acted as a trustee and had the same fiduciary duties as Dave.

Stephanie was on notice that the property in the safe deposit box was held in trust for Beth's benefit. Although Stephanie was never formally named by Dave (or Gordon) to be the successor trustee, Stephanie assumed control of trust assets. Regardless of whether Stephanie was the actual trustee, she acted as such. When someone acts as a trustee, they assume all of the fiduciary duties to the beneficiary as any other trustee.

Stephanie, like Dave, also violated numerous duties to Beth. Stephanie commingled her own funds with the trust funds in her own checking account. Stephanie had a duty to account to Beth, which she breached when she refused to tell Beth how the money was spent. Finally, Stephanie refused to make disbursements to Beth.

Regardless of whether the purpose of the trust was to simply provide for Beth or to provide for her education, it is clear that Beth was entitled to some sort of disbursement from the trust as a beneficiary. Stephanie refused this request. On the other hand, Stephanie may be able to actually show that the money was actually spent for Beth's private dance lessons. But Stephanie's duty is to show Beth, not the Court. For these breaches, Beth has valid claims against Stephanie.

Beth can successfully ask for a constructive trust to be imposed against Stephanie's own money.

Because Stephanie chose to commingle trust funds with her own, she has assumed substantial personal risk. When a trustee commingles their own funds with trust property, the Court will always rule against the trustee to protect trust assets.

If a trustee commingles trust funds and personal funds, and some of those funds are lost, the Court will rule the lost funds to be those of the trustee, and not the trust. In practice, it looks like this: If Stephanie had $180,000 in the checking account ($90,000 of her own money, and $90,000 of trust money) and spent $90,000 on dance lessons, the Court could find that Stephanie spent all of her own money and the trust money is still in Stephanie's checking account. The Court could then impose a constructive trust on the remaining $90,000 and order it transferred to the trust for Beth's benefit.

Of course Stephanie would still be liable for any lost profits, interest, or other income that the trust would have generated while the money was missing.

Good Job!

3)

1. Distribution of Marie and Richard's community property

California is a community property state. All property acquired during marriage is community property, unless it is separate property. Further, any property that one of the spouses inherits or is gifted as separate property is separate property. All of the property acquired by Marie and Richard during their marriage was community property, since they were all acquired with funds earned during marriage. Marie and Richard each own 50% of all of the community property.

Marie also owns separate property which was never transmuted into community property. She inherited a beachfront property, and it was never transmuted because it was not commingled with Marie and Richard's community property. Although the facts do not say so, it can be assumed that Marie kept any rents or other income derived from the beachfront property separate as well. The facts do state that Richard did not use or contribute to the maintenance of the property. There are no facts which would lead to any argument that the beachfront property is anything other than separate property.

The assets acquired during the marriage are thus:

1. A home and various other assets, which are community property.
2. A beach house, which is Marie's separate property.

Although the beach house was acquired during marriage, question 3 asks specifically about it. The balance of the answer to this question will only deal, then, with the community property.

Under the rules of intestacy, community property ordinarily passes to a surviving spouse. However, in this case, there is no surviving spouse.

Richard died intestate. Because he died intestate, ordinarily his half of the community property would pass to the surviving spouse. But in this case, there is no surviving spouse. Marie and Richard were killed together in a plane crash. There is no clear and convincing evidence about who died first. Even if there was, for Marie to be considered a surviving spouse under the rules of intestacy, she would have to survive Richard by 120 hours. There is no evidence whatsoever that Marie survived anywhere near the requisite 120 hours, so she is treated as though she pre-deceased Richard under the rules of intestacy.

Richard's half of his community property would, then, go to his own heirs. Heirs are determined at the time of death. In cases where the decedent has children and no surviving spouse, under the rules of intestacy, the children of the deceased are the only heirs who can take. Here, there are three possible heirs of Richard: Alice, Beth, and Samuel.

Alice and Beth are the natural children of Richard, born during his marriage to Marie. Richard is the actual and presumed father of both Alice and Beth. Alice and Beth will take from Richard's share of the community property. Whether they each take 1/2 or 1/3 depends on whether Samuel also takes. That question is answered below in question #2. Good

Marie died testate, so her community property passes according to the terms of her will.

Marie had a duly executed and valid will which disposed of her community property thus: "All my community property assets shall be distributed to my spouse."

When dealing with testate distribution, there is no 120 hour rule. All that is required is clear and convincing evidence that the beneficiary of a gift outlived the testator, even if only for a minute or two. Unfortunately, there is no evidence either way. Marie may have outlived Richard, and Richard may have outlived Marie. There is no way of knowing. And because there is no way of knowing, the Court will assume for the purposes of this probate that Richard pre-deceased Marie. This is problematic for a couple of reasons.

The first is that, if the recipient of the gift pre-deceases the testator, the gift can lapse. Lapse is prevented when the testamentary document names an alternate recipient in the case of a failed gift. Marie's will does not. Her will does not provide any answers about what to do if a gift is in danger of lapsing because the recipient was pre-deceased.

If a gift lapses entirely, the gift passes into the residue of the estate. This is the portion of an estate that is not specifically devised via will. A well-written will contains a residuary clause specifying who is to receive any property left undisposed by the will. The facts state that Marie's will does not have a residue clause, so if the gift lapses, it lapses entirely out of the distribution plan of the will into intestate distribution.

California's Anti-Lapse statute operates here, but may operate to an effect Marie did not intend.

Anti-lapse statutes are designed to save lapsed gifts under these circumstances. The anti-lapse statute in California assumes that the testator would want the gift to be made to the issue of a pre-

deceased recipient of a gift, so long as the original recipient was "kindred". The recipient is "kindred" if they are related by blood or marriage to the testator. Friends, acquaintances, and law professors are not considered "kindred" so the anti-lapse statutes do not operate to save gifts to those individuals.

The anti-lapse statute will operate unless the will specifically prohibits its use. Marie's will does not prohibit the use of anti-lapse to save the gift to Richard. Richard was Marie's spouse, so for the purposes of an anti-lapse statute, Richard is kindred. The gift that would have gone to Richard (Marie's share of the community property) will pass via the anti-lapse statute to Richard's issue.

Anti-Lapse does NOT apply to decedent's spouse.

Of course, the subject of Richard's issue is a complicated one. As discussed above, Alice and Beth are the natural daughters of Richard and Marie. But Samuel is a possible heir of Richard as well, as well as Marie's step-child. Ordinarily a step-child would not take as a result of intestacy (subject to exceptions not relevant here) but the anti-lapse statute would work to grant Samuel some of Marie's community property.

So whether Alice and Beth take 1/2 shares of Marie's community property or 1/3 shares depends, again, on whether or not Samuel is Richard's heir.

2. Samuel does not have any right to Richard's estate (and therefore also has no right to Marie's community property.)

Richard died intestate. Richard's children are entitled to shares of his estate. Whether Samuel is entitled to a share of Richard's estate depends on whether Samuel can establish that Richard was his parent.

Richard is not the presumed parent of Samuel.

Parentage can be presumed via the uniform parentage act or established under the California probate code. To be the presumed parent of Samuel under the uniform parentage act as adopted in California, Richard would have either had to have been married to Tess at some point, cohabitated with Tess at some point, or pay for the support of Samuel (voluntarily or otherwise.) None of these is true, so Richard is not the presumed parent of Samuel.

Samuel cannot establish parentage through the probate code.

Samuel can also attempt to establish parentage via the probate code. Samuel fails here, as well. To establish parentage, Richard would have to hold out and acknowledge Samuel as his child in public.

Richard never did so. It is not stated in the facts whether Richard actually knew about Samuel or not. If Richard never knew about Samuel, it would have been impossible for Richard to acknowledge Samuel. Under those circumstances, Samuel may still prove parentage by providing clear and convincing evidence of parentage, which may include DNA results.

Even if Samuel could establish parentage through the probate code, his adoption by Tess's husband cuts off Samuel's right to inherit from Richard.

A fully executed legal adoption cuts off the right to inherit in both directions. Once a child is legally adopted, the child loses the right to inherit from their natural parents via intestacy. Samuel was legally adopted by Tess's husband as an infant. For all purposes, Tess's husband is Samuel's father--not Richard. Because Samuel was adopted by Tess's husband, Samuel does not take from Richard's estate. And because Samuel is not considered Richard's heir, he will not take any portion of Marie's community property under anti-lapse. Good discussion

3. Marie's beach house will be distributed to Alice and Beth.

As explained above, Marie's beach house is her sole and separate property. She inherited it from her grandmother, never commingled it (or its income) with her community assets, and never transmuted it to community property.

Marie executed a will in 2018 which devised her "separate property assets" to "her children." Although the will is a little vague on the details, the Court can reasonably conclude that Marie knew that the separate property her will addressed was her beach house, and knew that her children were Alice and Beth. The Court will not have any difficulty ordering the beach house to be transferred to Alice and Beth.

Alice and Beth will take share and share alike and will each have an undivided half interest as tenants in common in Marie's beach house.

Samuel has no claim to the beach house under any theory. He is not Richard's child, and is certainly not Marie's child. He would not be entitled to an intestate share of the beach house, since even under the most generous ruling for Samuel, even if he were omitted from Marie's will, he would be Marie's step-son. Omitted step-children do not take.

Final distribution of the estate

Alice and Beth will take the entirety of Richard's estate through intestacy, and will take the entirety of Marie's community property in her estate through the anti-lapse statute. Even if the anti-lapse statute did not operate to save Marie's testate gift to Richard, the gift would pass into the residue of Marie's estate, which would pass by intestacy to Alice and Beth. Alice and Beth take Marie's separate property via a valid bequest in Marie's will.

END OF EXAM