

### **Question 1**

Pearl Scruggs, a lifetime resident of California, was an estate planning and litigation lawyer for 45 years. She was “old-school” and did not like trusts. She often told her clients, “Just give it to them. Trusts just cause resentment and most fiduciaries cannot be trusted. You know how people use other people’s money!”

In 1970 Pearl executed a formal will signed by her and two disinterested witnesses as follows:

“All of my estate shall be distributed to The Charitable Club (CC) for use in eliminating homelessness.”

In 1980 Pearl executed a codicil to her will dividing the estate between CC and another non-profit called The Giving Gals (GG) “...to use for getting homeless mothers with children back to work and self-supporting.”

There is a full attestation clause at the end of this codicil with two signatures:

“I.M. Nizeguy, witness, May 1, 1980.” And, “Ina Goody, witness, May 8, 1980.”

In 1990 Pearl executed a new will with the following language:

“I hereby revoke my 1980 codicil as Giving Gals no longer exists. I leave my entire estate to The Charitable Club.”

It turns out that GG still exists, however they changed the name from The Giving Gals to The Generous Girls & Guys (GGG) and changed their location and business address to another city.

Pearl died in 2014. In her lockbox located at her house a handwritten document was found among her wills and deeds. The contents of the document are as follows:

“I revoke my 1970 will and leave my entire estate to The Giving Gals in trust for the benefit of homeless mothers with children.”

Her name appeared at the bottom of the page in block print. There is no date.

Also in the lockbox is a copy of the 1970 will with a handwritten statement above the signature line: “I revive this will as of December 2005 and revoke all other wills I have executed.” Pearl’s signature was placed just below this statement and just above the signature of the 1970 will.

Who gets what? Use sound legal analysis in your response.

## Question 2

Aunt Mable executed an inter vivos revocable trust in 2005 and transferred all of her assets to the trust at that time.

In May 2011, Aunt Mabel went to her lawyer and executed a general power of attorney giving Nancy power to write checks from Aunt Mabel's checking account, make bank deposits and transfers, and transfer cash from Aunt Mabel's substantial stock account. Aunt Mabel executed an amendment to her trust making Nancy co-trustee.

Aunt Mabel died in 2014. The following language was in her trust:

“Upon my death the trustee shall distribute all of my property, both real and personal, free of trust, to my nieces and nephews, in equal shares.”

“I nominate and appoint my niece Nancy as successor trustee of this trust. Nancy shall not be liable for any unintentional or negligence breach of trust, or loss of value to the trust estate through no fault of her own.”

She died in November 2014 at the age of 90. She has 2 nieces and 2 nephews, Nancy, Carol, Bert and Yano, who survived her. There are no other relatives living.

Six months after Aunt Mabel's death, Nancy sent a letter to her three cousins with an inventory and appraisal of the assets of the estate showing a total value of \$10 million. In the letter she indicated that Aunt Mabel had “horrendous debts and a lot of cash was needed to pay them, which I did just after Auntie died.” The inventory indicated other debts consisting of a car payment of \$600 per month, current health club dues with personal trainer fees of \$800 per month, credit card bills of \$60,000, nail salon and spa bills of \$8,000, and a mortgage payment of \$3500 per month.

Nephew Bert was Aunt Mabel's stock broker for 25 years until he retired in late 2012. He told Carol and Yano that when he retired Aunt Mabel had \$18 million in stocks, and is pretty sure she owned a vacation home in Malibu worth \$6 million. He did not see the Malibu home listed on the inventory and appraisal provided by Nancy, and is “certain that her house was free of debt because she sold \$1 million of Chevron stock in 2006 to pay it off”. Her personal residence in Sonoma County was listed in the inventory with a value of \$750,000 and a \$500,000 debt against it. Based on his knowledge of the economy since his retirement in 2012, the stocks should have increased in value by about 16% per year, not declined. He also noticed that Aunt Mabel's substantial holdings in Apple Computer, Inc. were not listed in the inventory and appraisal. Finally, Niece Carol remembered that Aunt Mabel lost to driver's license in 2011 and recently saw Niece Nancy driving a brand new corvette to Aunt Mabel's funeral. Nancy listed the Malibu home as her permanent residence address her letterhead. Upon digging a little, Yano found a deed dated August 2012 for the Malibu property. It was signed by Nancy as “co-trustee/Grantor” conveying the property to Nancy as sole Grantee and owner.

When questioned about the inventory and appraisal, the Apple stock, and the Malibu property, Nancy said, “Auntie gave me power of attorney and made me co-trustee, and told me to do it for the help I have given her these past 5 years.”

Bert, Carol and Yano come to you for advice. They want to remove Nancy as fiduciary and recover the Malibu property and the Apple stock back into the estate. What is your advice? Use sound legal analysis in your response.

Do not discuss capacity or undue influence.

### **Question 3**

Hal Fun passed away, survived by his three children and six grandchildren. Hal was also survived by his second wife, Jane Fun. Hal set up a separate trust for the benefit of his wife who did not have any children of her own. Jane also owned a house of her own.

The trust provided, in part:

“Upon the death of Jane Fun, the Trustee shall distribute the remaining balance of the Trust estate to any of the Settlor’s children or grandchildren as Jane Fun shall appoint and direct in any writing which specifically references this provision and delivered to the Trustee, other than a Will, or if none, then to Settlor’s issue who survive Jane Fun.”

Jane lived for an additional 20 years before passing away in January of this year at the age of 95. Jane had a special affinity for Hal’s grandson Bobby. Bobby was only two years old when Hal died and had bonded with Jane in the years that followed Hal’s death. Since the time he could drive at age 16, Bobby would drive his step-grandmother to her bridge club and take her to the movies every week. In the last two years of Jane’s life, Bobby lived with Jane while Bobby was between jobs. He cooked for Jane; did her yardwork; balanced her checkbook and cleaned her house. Jane also paid Bobby \$5,000 per month during these last two years because he “helped her out,” but Jane continued to direct her own finances until the day she died.

Hal’s kids and Bobby’s cousins often complained in those last two years of Jane’s life, Bobby would not let them visit without him being present. Bobby also always answered the phone; read Jane’s mail; and attended each of Jane’s various appointments, including her doctors, accountant, and lawyer.

Ten months before she passed away, she executed her own Revocable Living Trust which left “all of the trust estate to my husband’s grandson, Bobby.” Jane’s trust does not mention Hal’s trust, or anyone else.

For the purposes of this question, do not address potential issues relating to the support trust for Jane and distributions to her during her lifetime.