

Wills
Fall 2010 Exam
Professor DeMeo

Question One

Issue Outline

Construction and Interpretation – 40 points

Is there an ambiguity?

Is it patent or latent?

What rules of law apply for interpretation where there is a patent ambiguity?

Traditional rule: No extrinsic evidence. Must examine the document as it exist and try to glean from context who shall receive the residuary devise.

What rules of law apply for interpretation where there is a latent ambiguity?

Extrinsic evidence is admissible for specific purpose of clarifying a specific ambiguity, but not for interpreting the rest of the document.

Can Extrinsic Evidence be admitted to show which Bill Fabeets will receive the inheritance?

Yes. This is a latent ambiguity, as there is equivocation in the name of the recipient and a patent mistake in the address, i.e., there is no Santa Rosa in Nevada. In some cases the offending aspects of the misdescription will be stricken. However, in this case what do you strike? Santa Rosa alone may be sufficient additional information to resolve the ambiguity. On the other hand, so may be “123 Elm Street...Nevada”. Both are alone inaccurate. We know there is no “Santa Rosa, Nevada”, therefore, even under the traditional rule, extrinsic evidence is needed because there is no logical way to strike one part of the address fairly.

So, take your pick: cousin, or co-worker/military friend.

The nieces and nephews opinion of co-worker Bill may be instructive.

Mistake - 15 points

Strike the incorrect information. Then see if the ambiguity is resolved. Can we strike the superfluous information fairly? Again, we probably cannot.

Undue Influence – 35 points

Four elements.

Co-worker Bill referred the attorney, he drove Joe to the appointment, and his share of the estate increased if he is the Bill Fabeets who takes the devise, so opportunity and disposition, i.e. motivation, are arguably present. Maybe unnatural result as the estate would go to a friend, not a family member. Therefore, undue influence requires at

least and look and analysis. The debatable element that we lack evidence is whether Uncle Joe is susceptible. He is dependent for transportation, so maybe.

A finding of undue influence gets the nieces and nephews more if co-worker Bill is the one who takes the residue. If Cousin Bill takes, then they get 10% collectively, because the alleged undue influence would only affect 10% if co-worker Bill takes, and not at all if cousin Bill takes.

Anti-Lapse Statute – 10 points

If there is an anti-lapse statute it may apply for the predeceased nephew's issue to receive his share of the estate.

Survivorship is implied where there is no anti-lapse statute. Without an anti-lapse statute the nephew's share lapses and the surviving nieces and nephews split his share equally as a class. Otherwise, it would fall into the residue of the estate and go to Bill Fabeets!

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Question Two

Issue Outline

Proper execution of the Will – 25 points

What is required under the wills statute?
Was the will published?
Was the witnessing requirement under California law satisfied?

Harmless Error – 20 points

What is the rule and under what circumstances can it be applied?

Attorney Malpractice – 30 points

Third party beneficiary contract theory
Negligence – Duty to intended beneficiaries
If the harmless error doctrine does not save the will, then Acme may recover from attorney what they can. But, Aunt Mabel is an heiress, so there may be a huge loss here.

Intestate Succession – 25 points

Apply the statute to determine who gets what.