

Issue Outline – Question 1

1. Requirements of a valid Will - (whether recited here or later below)
sub-issue: If homes were owned as Joint Tenants, then wife receives both properties as the survivor.

15 points total.

2. Proof of Will (attesting witnesses) and Lost Wills

10 points total

3. Will vs. Intestate Succession

Sub-issue: If will is proven, wife gets 100%

If died intestate:

Quasi-community property? Titled in both their names

If separate property:

Rule of situs applied (whatever it is in North Carolina). Otherwise, under California, Wife would get intestate SP share.

25 points total

4. Mental Capacity - Test for Capacity & Discussion

sub-issue: Susie's valid will and prima facie evidence of due execution. Burden shifts to contestant that Susie did not have capacity.

sub-issue: depression constitute incapacity?

sub-issue: professional responsibility - how did attorney know she had capacity if May did all the talking?

25 points total

5. Undue Influence - Mainconcept & Discussion- 10 points (note that 6 months passed? Opportunity to change?)

sub-issue: discussion regarding unnatural disposition (favoring one child over the 4).

sub-issue: discussion whether May's acts constitute undue influence.

sub-issue: professional responsibility - attorney allowing beneficiary to be present at signing and participate as she did.

25 points total

Issue Outline – Question 2

1. Prudent Investor Rule – 35 points
 - a. Diversity
 - i. House and most of the Banc stock should have been sold and proceeds reinvested
 - b. Uniform Principal and Income Act
 - c. Inception assets not really a rule of law
 - i. Must diversify despite Uncle Joe's directive not to sell
2. Duty of Loyalty – 20 points
 - a. Balance the interests of the Beneficiaries
3. Duty to provide accounting to all beneficiaries when trust becomes irrevocable. – 15 points
4. Duty to inform trust beneficiaries about the affairs of the trust. – 15 points
5. Self-Dealing? Possibly... - 15 points.
 - a. The Trustee receives a fee for management of the trust. The Trustee is also the Banc of California and may not have wanted to flood the market with its stock because of potential devaluation.
 - b. Factual discussion of this situation is warranted to determine whether the fee should be disgorged and whether the Banc is responsible for lost value.
 - c. Discussion of all remedies is required here.

Issue Outline – Question 3

1. Contract to make a will or trust? – 25 points
 - a. Contract principles
 - b. Consideration – Ned's help
 - c. Aunt Mabel's perception of value and her comment to leave "most" of her estate to Ned.
 - d. Was there an understanding or promise upon which Ned relied?
 - e. \$50,000 vs. \$4.95 million...

2. Valid Trust – 25 points
 - a. Mental Capacity
 - b. Aunt Mabel's conduct and idiosyncrasies

3. Valid Charitable Trust – 25 points
 - a. Elements of valid Charitable Trust
 - i. Intent
 - ii. Purpose
 1. General Community benefit.
 - iii. General reference to beneficiary(ies) – not specific
 - b. Impracticable to have \$4.95 million set aside for a local theater company and their program to support only 10-15 children each year seems excessive. On the other hand, the company could become a great entity with such riches.

4. Cy Pres – 25 points
 - a. Maybe the Trustee would consider seeking a more general disposition of the wealth through a cy pres petition.