

Wills & Trusts
Spring 2015
Exam
Question 1
Issue Outline

Intent – 20 Points

This problem tests all the rationale for exceptions to will execution formalities for the purpose of accomplishing Pearl's intent.

Interpretation

What does Pearl really want.

Mistake of fact – GG still exists under a different name

See DRR below

Holographic Wills – 15 Points

Power to revoke a formal will?

Date of holograph – implication by evidence in the document

“The Giving Gals” indicates it was done before the 1990 will as she thought they did not exist at that time.

Handwritten statement on 1970 will. Is it a valid holographic will or codicil?

Are the material provisions in her handwriting.

Revocation – 25 Points

Unequivocal?

Revocation by implication

Revocation by inconsistency

Equal dignities

DRR – 1970 & 1990 wills – 20 Points

Mistake

What is her probable intent?

Execution – 20 Points

Formalities of 2005 will

Substantial Compliance/Harmless Error

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Question 2
Issue Outline

Breach of Fiduciary Duties – 40 Points

Fidelity

- Loyalty
- Impartiality
- Duty to Inform

Prudence

- Collect, inventory, and marshall the assets
 - Safe-keeping from loss
 - No commingling
- Investments
 - Prudent Investor Rule
 - Allocation
- Duty to Account periodically
 - Can trustor/testator excuse accountings?

Remedies – 40 Points

- Disgorgement of Fees – Assets given for services rendered to Aunt Mabel
- Return of assets
- Replacement of Value of assets
- Diminution in Value
- Self-Dealing
 - Shifts burden of proof
 - May require penalties and interest if acted in bad faith
- Absolution/Forgiveness clauses

Removal of Trustee – 20 points

- Accounting for Power of Attorney Transactions
- Accounting required after removal Breaches of Fiduciary Duties

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Question 3
Issue Outline

Issue: Power of Appointment (40 points)

Who are the parties: (10 points)

- Donor- Husband
- Donee - Wife Jane Fun
- Appointee - Settlor's Grandson, Bobby.
- Objects of the power - Settlor's children or grandchildren
- Takers in Default - Settlor's three children, in equal shares.
- Full credit if the student notes that this is a non-fiduciary obligation of the Donee, Jane.

What type of Power: *Exclusive* (5) *Special* (5) Power of appointment (total 10 points).
Full credit for noticing the term "any."

When is it exercisable: Postponed power (effective upon death of Jane) (5 points).

Is the document effective? Who takes? (15 points).

- UPC v. CA Probate Code
- Takers in default (three children) receive Hal's Trust because no specific reference (and if you believe U/D influence, then because of this as well but it is secondary to the failed power of appointment).

Issue: Capacity (15 points)

Capacity

Age

Needed assistance but still managed own affairs

Issue: Undue Influence (35) points

- Susceptibility
 - age
 - confidential relationship
- Opportunity
 - lived with her and took care of everything

- Disposition

Bobby received 100% but no indication that he actively participated or otherwise knew about the trust.

Alternate argument: was receiving too much pay for his services.

Undue influence was already occurring during Jane's lifetime.

- Unnatural Result

prior close relationship. no caregiving presumption. (alternate argument: was already exerting undue influence during lifetime by excessive pay).

Full points for thorough discussion of facts and both sides of argument.

Issue: Who gets Jane's Trust? (10 points)

If Undue Influence is found, then heirs at law via *intestacy*. We don't know who that is here.

If no undue influence or capacity issues then Jane's house goes to Bobby.