

Question 1

One Hour

Harry and Wendy, recent residents of the State of California, died in a car accident where the coroner was unable to establish who died first. They were married 40 years though they had no children together. When they were first married, they had no assets to speak of. Harry and Wendy died intestate.

Harry and Wendy's assets consisted of a personal residence in Santa Rosa, California. Investment accounts with Charles Schwab. A vacation home in Florida titled in Harry's name that was purchased with their earnings prior to moving to California and a home in Carmel that Wendy had recently inherited from her mother's Estate.

Harry is survived by Elfie, Frank, and Gertrude, the children of a predeceased daughter, Angela; and Harry, III and Ida, the children of a predeceased son, Harry Jr.

Wendy is survived by a brother, Sam and Sam's children, Tom, Uma, and Victor.

Discuss all issues presented by this fact pattern, including but not limited to, determining distribution of these Estates.

Question 2

One Hour

George, an elderly widower, met with your new associate attorney at your office regarding creating an estate plan. Ms. Newby reports the following to you:

George cannot drive. His daughter, Kristen, drove him to your office. George asked Kristen to attend the meeting because “she takes care of everything for me.” In fact, Kristen does handle a lot of George’s affairs. She is his primary care provider; she helps pay bills; she drives her father to all of his medical appointments; cooks for him; and even walks George’s dog for him. If it were not for Kristen, George would be living in a care facility without his beloved dog, which is the last thing he wants.

George has one child, Melissa. Melissa has not talked with George for three years. She is still upset about George making a decision to “let her go” when her mother hospitalized after a stroke. Melissa and George were never really close anyway. Melissa lives out-of-state and seldom called even when her mother was alive.

Melissa has two children and Kristen has none.

Ms. Newby reports that George has asked her to draft an estate plan that nominates Kristen to handle George’s financial affairs and that leaves 100% of his assets to Kristen. George wants the Humane Society to receive Kristen’s share if Kristen passes away before George. He said he does not want Melissa to receive anything.

Ms. Newby also reports that while in their meeting, George sometimes repeated the same questions and asked for Ms. Newby’s name three times during the course of their 90 minute meeting.

The new attorney, Ms. Newby, attended a law school that did not have a Wills and Trusts class. She is now sitting in your office asking for guidance. What should you advise Ms. Newby to do with regard to George and his estate planning needs? What legal issues should you advise Ms. Newby to study and familiarize herself? For the purpose of this exam question, you do not need to discuss the estate planning documents themselves, such as trusts, wills, powers of attorney, etc.

Question 3

One Hour

Aunt Mabel died in 2014 leaving a valid inter vivos trust. She left one-half of her estate to her niece and nephew Barbara and John. The other half of her estate she left to the Friends of Fish nonprofit organization. Her trust contains the following language for the gift to Friends of Fish:

"The trustee is to take the one half of my estate set aside for the benefit of Friends of Fish and use the money to hire people to go to fishing docks and sink all fishing boats that use trawling gear. Fishing trawlers are evil as they often snare dolphins and other friendly non-edible fish.

There is a nonprofit organization called Friends of Fish. Their primary function is to secure sanctuaries along state coastlines for the protection of endangered species. They are a peaceful group and do not use violent means to accomplish their purposes. There is another local nonprofit called Fish Friends. They use loud protests and have been rumored to sink trawling vessels in our county.

Friends of Fish and Fish Friends are now in a legal battle to determine who will receive Aunt Mabel's bequest.

In the meantime Barbara assumed her duties as trustee. She liquidated much of Mabel's personal and real property. She deposited one half of the cash proceeds into her own savings account. The savings account is a CD from the 1980s which is still earning approximately 12% interest. She placed the other half in a trust checking account. She has periodically written checks to herself for gasoline and other travel costs which she claims were in furtherance of trust business. During the litigation between the nonprofits, she has appeared at deposition, three court hearings, and one mediation. Her total time involved with the trust thus far has been approximately 14 hours between the lawsuit and the sale of aunt Mabel's property. The travel expense she has claimed is \$15,000. Barbara lives in the neighboring county and has driven approximately 80 miles each round-trip to take care of at Mabel's estate.

John comes to you for advice. He thinks Barbara is overspending on travel. He also concerned about the general well-being of the trust estate. He has not received any information about the sales or the proceeds. He has not received any documents relating to the sale of a Mabel's residence and ranch. The trust estate was appraised at \$6.4 million on the Aunt Mabel's date of death. 18 months has passed and John has received nothing.

Empire College School of Law
Professors DeMeo & Sinigiani
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Student ID# _____

What issues will you discuss with John? Write John a letter describing the issues, potential solutions, and advice. Please use sound legal analysis in your letter to John. Do not discuss interpretation or construction issues regarding the similarity in names of the non-profits.