

Wills & Trusts
Fall 2011
Final Exam
Question 1
Issue Outline

1. Promise/Contract to make a will.
 - a. Illusory Promise.
 - b. Is there Consideration?
 - c. Quantum Meruit.
 - d. Mere Expectancy.
2. Mental Capacity
 - a. Diagnosis shortly *after* execution of the will.
 - i. Is this enough evidence to find lack of mental capacity *at the time the will was executed*?
 - ii. Is Aunt Mabel oriented and lucid at time of execution.
 - b. Is there enough evidence for Undue Influence?
 - i. Four factors
3. Was the first will revoked?
 - a. By implication.
4. Mistake?
 - a. Patent? No
 - b. Latent? No
 - c. Is there anyway to get Nancy's testimony in to show she was the one to get 75%?

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Question 2
Issue Outline

1. Charitable Trusts
 - a. Purpose
 - b. Construction/Interpretation
 - i. Mistake?
 - ii. Remedy?
 1. Reformation?
 - c. Cy Pres
2. Validity of Trust
 - a. Ascertainable Beneficiaries re co-workers?
 - b. Failure of provision to co-workers results in charity arguing for 100% and intestate heirs arguing for 50%
3. Trustee Duties
 - a. Duty of Prudence
 - i. Diversify assets
 1. Old Rule
 2. Prudent Investor Act
 - ii. Duty to Earmark
 - iii. Duty to Not Commingle
 - b. Remedies
 - i. Surcharge
 1. Disgorge Fees
 2. Lost profits

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Question 3
Issue Outline

1. Class Gifts
 - a. What is the nature of the deceased nephew's interest in the estate?
 - b. Rule in Clobberie's Case
 - i. Who gets the income earned on the share until it is distributed?
 - ii. When would the share go to the nephew's estate?
 - c. How much will his heirs get?
 - d. This answer requires analysis of all other issues regarding trustee duties to quantify the nephew's estate interest.
2. Trustee Duties
 - a. Loyalty
 - i. Self-dealing
 - b. Impartiality
 - i. Too much to Mabel?
 - ii. No express provision to give Mabel corpus, but no prohibition either
 - c. Prudent Investor
 - i. Selling good investments
 - ii. Duty to diversify
 1. Putting 50% in Big Banks accounts, funds, and under its management
3. Duty to Inform
4. Duty to Account
5. What should the trustees do with the art collection?
 - a. Is it not an investment?
 - b. Should the collection be liquidated.
 - c. What purpose can be served, other than a whim of Tess, to keep the art in her home for 100 years, where the home and the art will be expensive to preserve and keep safe?