

## **Exam Question 1**

Issues:

Power of Appointment – Nongeneral - **20 points**

Cy Press - convert to sprinkling trust to distribute to non-profits that fight to end poverty, generally - **40 points**

Looking for long discussion on charitable intent and settlor's intent here. Lots of facts provided for this discussion.

Prudent Investor Rule - **25 points**

Duty to Diversify

--Petition the Court to diversify when trust terms prohibit but would be breach of duty otherwise

Reasonable Trustee fee? Should he accept the 10% of \$10 billion? - **15 points**

---Attorney General Oversight

---Potential loss of charitable status if fees aren't reasonable (remember Hawaii case!)

## **Exam Question 2**

Issues:

### **Formalities and Execution – 35 points**

Elements of formal will

- Testamentary Intent
- Testamentary Capacity
- Writing
- Executed by Testator
- Signed by two independent witnesses observing the execution in each other's presence and signing at the same time.
- Harmless Error
- Substantial Compliance

### **Undue Influence and Fraud – 35 points**

Undue Influence

- Susceptibility
  - Bofort's age
  - Stranger lawyer/Adolph
- Opportunity
  - Frau Blucher changed the appointment and the lawyer
  - Daughter was present
- Disposition
  - Frau Blucher was making sure she was getting the estate outright
- Unnatural Result
  - Because Bofort expressly stated he wanted Frodrick to get something

Fraud

- Misrepresentation
- Secrecy
  - Romantic affair

Capacity

- Age
  - Frailty; nervousness; agitation; said nothing
  - Bofort was taken to a stranger for his estate plan
  - Bofort already had a lawyer he trusted

- Infirmity
- Delusions
- Mental State

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**Legal Malpractice – 20 Points**

Duty to Intended Beneficiary

Bofort wanted Frodrick to get something, yet Adolph recommended a will, not a trust

Knowledge of Client's Desires

Loss of objectivity: romantic affair with client's wife

Life income to frau Blucher, not the whole estate

**Intestate Succession – 10 Points**

Who gets what?

Daughter and Frodrick would split the estate if it comes to intestacy.

### **Exam Question 3**

Issues:

#### **Question 1: 30 points**

Wife Clara:

Contingent Remainder Beneficiary (After Fannie's death but must survive Fannie)

Wife get's her share of community property.

\*Hugh and Clara were married 5 years. She gets ½ of the CP.

Wife's Heirs:

Contingent Remainder Beneficiary (Must survive Fannie and Clara must predecease Fannie)

Class gift that closes at the death of Fannie.

Greeden:

Sole beneficiary of Fannie's estate and does not appear to be contingent on survival (no facts)

Greeden will be paid reasonable compensation from Hugh's Trust Estate for services as Trustee

Fannie:

Life-time beneficiary of Hugh's Trust

Beneficiary of a discretionary trust

non-discretionary income beneficiary

#### **Question 2: 70 points**

Duty of Loyalty & Duty of Impartiality - 10 points

Duty to Avoid Conflicts of Interest - 20 points

(Conflict between Greeden and Clara - the more he pulls out of Hugh's Estate to Fannie, the more he gets when Fannie dies)

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Duty of Prudence (Duty to Inquire) - Does she need the money? - 5 points

Discretionary Trust - 10 points

Prudent Investor - 5 points

Uniform Principal and Income Act (balancing between lifetime beneficiaries and remainder beneficiaries) - 15 points

Duty to Inform and Account (if they don't get along, is he going to keep her informed?) - 5 points