

WILLS & TRUSTS SPRING 2018 ISSUE OUTLINE

Question One: Issue Outline

Basics of Administration (50 points)

- Notice to Beneficiaries
- Marshaling Assets
- Inventory and Appraisal of Assets
- Ascertaining Creditors
- Duties as Trustee (Accounting, Loyalty, Impartiality, etc)
- Conflicts of Interest - Beneficiary-Trustee
- Estate tax?
- Opportunity to buy matters of sentimental value before being auctioned to cover debts.

Specific Gift of Real Property (20 points)

- Type of gift (specific)
- Ademption - Order of ademption (family v. non-family, specific v. residuary)

Rule Against Perpetuities (15 points)

- the provision violates the Rules Against Perpetuities. It is possible that the interest will vest more than 21 years after the death of everyone involved because Ben's children could all die and Ben could have another child. Anthony could then die when that child is one year old, thus the interest would not actually vest in Ben's oldest child until 29 years after the death of Anthony.

Remedies for violation of RAP: (15 points)

- Does trust have a backstop for violation of RAP?
- Modification of Trust - Trustee and/or Beneficiaries petition the court to modify the trust? If so, what basis?
 - Mistake? Was provision intended to state that if children were under 30, their interest would vest but be held by a trustee until 30?
 - Consent of beneficiaries? Impact of Spendthrift provision.
 - Unborn/Unascertained heirs need a GAL?
 - What happens if violates RAP?

Issue outline - Exam Question Two

Probate of Will (10 points)

Revocation: (30 points)

*Revocation By Physical Act (destruction)

*Revival and DRR (apply here?)

*Intestate Succession (goes to daughter anyway).

Capacity: (30 points)

-- Capacity to Revoke?

___presumption of capacity

-- Same for revocation as for execution?

--prove by lay witness testimony &/or Medical Testimony

Undue Influence (30 points)

--Revocation by undue influence?

--Confidential Relationships + Suspicious Circumstances = Shifting burden of proof

--Statutory presumptions of undue influence - CA Probate Code 21380 (n/a because daughter)

--Already asked attorney to draft - make any difference?

Question No. Three Issue Outline:

Will execution: (30 points)

Requirements of valid will

Will execution problem (witness issue)

Substantial compliance and Statutory Dispensing Power

Lapse and Anti-Lapse (15 points)

Omitted child (15 points)

How is it distribution: 50% to grandchild, 50% to second child. Grandchild in trust. (10 points)

Testamentary Trust (30 points):

Prudent Investor Rule

Principal and Income Act

Discretionary trust

Spendthrift provision