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===== Start of Answer #1 (1445 words) =====

There is going to be a fight over who gets what here.

First, to be valid, a will must be signed by the Testator (T) and by two witnesses. There are multiple documents in play here, however, for the wills and the codicils (other than the holographic will), this is the standard for validity.

The first will, which was executed in 1970, appears to be valid. It was signed by T and two witnesses. There could be other issues regarding the execution of the will, but the facts are silent on those points. In order for this issue to arise, it would have to be shown that T did not know this was her will when she signed it, or the witnesses did not know it was T's will, among other potential problems. As the facts states that she executed this will and the two witnesses signed it, we will assume that such precautions were taken and legitamite, as T does have 45 years of estate planning experience. ✓

This will leaves ALL of the estate to The Charitable Club (CC) for use in eliminating homelessness. The language which instructs that what the money is to used for is vague and unenforcable against CC. Essentially, this will be a gift to CC with the suggestion that they use it to eliminate homelessness. But, there is no recourse should they use it for a seperate purpose.

In 1980, T executes a codicil. A codicil is a document which modifies or amends a previously executed will. Codicils, as previously stated, are required to have the same requirements of T's signature and two witnesses in order to be valid. The facts are silent as to if T actually signed the codicil, though it expressly states that an attestation clause is in place, thus validiating the two witnesses. Assuming that T signed the codil, it would be facially valid. ✓

This codicil amends the previous will, and divides the estate between CC and The

Giving Gals (GG)... "to use for getting homeless mothers with children back to work and self-supporting".

It is tragic that T did not set up a trust to distribute assets to these two charities to effectuate her goals. Then she could have had a pour over will, at which point her assets would go to the trust and the trustees directions would have been to use the money for the previously stated goals.

In 1990, T executed a new will, which revoked the 1980 codicil "as GG no longer exists", and leaves the estate to CC, essentially reverting back to the previous 1970 will.

This will contains a mistake by T, in that she believes that GG no longer exists. Different mistakes are treated differently by courts. If a will is missing a word, a court will not rewrite the will by adding in the word, for example. This mistake is not like a Dependant Relative Revocation, which can be reversed by the court. If an individual revokes a will because they, mistakenly, believe that the new will effectuates their intent, but in reality it does not, the court will hold, through legal fiction, that the new will never existed and allow the original will to be reinstated. Here the mistake is on the part of T, or at least, GG is going to argue that it is. As such, GG will argue that in fact they do exist, and as it was T's clear intention to split her estate they should share in the estate. CC is likely going to argue that in fact they do not exist, and it is clear from the language of the new will "Giving Gals no longer exists" that T's intent was to give the money to GG. CC is going to argue that it would be impossible to determine whether T meant "GG" as an organization is now non existent, or equally as likely, that "the organization that I knew as GG, which worked in this town, at this address, no longer exists." T may have known that GG did not exist and had changed their location, and that may have been the reason why they were cut from the estate planning. This all could be supported by extrinsic evidence, and if GG could show that but for T's belief, which may have been reasonable, they would have shared in the estate, they could recover something here. CC's argument is likely to prevail: T's intent was to give the money to the organization that she knew. GG was in a city she knew, she knew what they were doing, etc. The

new The Generous Girls and Guys (GGG) is not the GG, and as such, they get nothing.

The last wrinkle in this story is the lockbox find. After T dies, two more documents are found, together.

First there is a copy of the 1970 will, with a handwritten statement by T, stating that "as of December 2005" she revoked all other wills and revives this will." T has an issue with this however. No one witnessed her writing this statement, so it is not a valid new will. It could be holographic will, but the issue there is that for a holographic will to be valid, the material portions of the will must be handwritten by the T. Here, we only have the statement revoking other wills and reviving the 1970's one. Though that is material, there is one other material portion which she did not rehandwrite: the portion where she gives the estate to CC. It is unlikely that this note from 2005 would constitute a valid revival of the will. There is also good reason for not reviving previous wills based upon a note for revival, once a will is revoked, it cannot be revived in this way. The proper course of action would be to redraft the will and resign it. T would know this, and T would likely choose this option.

Good use
of facts

Second, there is a holographic will in the lockbox. As previously stated, a holographic will can be valid if the material provisions are in the T's handwriting and T signs the document. Arguably both of those elements are established here. The facts state that T's name appears in block letters at the bottom of the page. If that is how T signs documents, or it is shown that T did mark documents like that in the past, this may be enough to allow this document to be legitamite. If this is not a way that T signed things in the past, or is typed, then it will fail as a holographic will.

Even if she did sign it through block letters, there is another issue: the holographic will is not dated. When a holographic will is undated, that does not automatically invalidate it, but it causes its effect to be questioned, for good reason. One cannot determine when it was signed and its relevance. Since the holographic will gives the entire estate to GG, GG will try to argue that it is legitamite. However, since it is undated, this is

almost impossible, since its provisions are materially suspect. This is the first time that T has left everything to GG, and in 1990, T believed GG to no longer exist. Thus, it is unlikely that this holographic will was written after 1990. As such, it is likely invalid on that grounds as well. Also circumstantially, the revocation does not mention the 1980 codicil. It is presumed that when an individual revokes a will they also revoke a codicil, but in this case, it would provide good circumstantial evidence of the date if the holographic will referenced the date. Lastly, GG could try to introduce evidence of when the lockbox was bought/rented. This would only show though when the document was placed inside, not when the document was written. Stronger evidence from GG would be a person who said they saw the holographic will being written, or was told that T was writing it, after 2005.

Walton

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Ultimately, I believe that the controlling document in play here will be the 1990 new will which reinstates the provisions of the 1970 will. GG will argue that T, by mistake erroneously cut them out of the will because she believed they no longer existed. However, they are unlikely to win on that argument and CC will likely take the whole estate.

The facts are silent, but if there was any family involved, I would argue that T was clearly of an unsound mind when she was writing and signing all these documents and they should all be invalidated and I should be allowed to take my share.

*has prob error
Substantive Compliance*

===== Start of Answer #2 (1237 words) =====

Question #2

90

General Power of Attorney (POA):

Aunt Mabel was approximately 87 years old when she executed a POA giving Nancy the power to write checks, make bank deposits and transfers, and move cash from the stock account. Nancy's powers are limited to the purposes that Mabel identified because Mabel needed help doing these things because of her advancing age. The POA was for Mabel's convenience and did not infer discretionary powers on Nancy. It appears that Nancy has abuse her powers under the POA to enrich herself.

Beneficiary's interests:

A fiduciary relationship is a position of trust-a very high standard of loyalty exists in a fiduciary relationship. A trust is a fiduciary relationship in relation to property between the trustee who holds legal title and the beneficiary who holds equitable title. Here, Mabel had 2 nieces and 2 nephews when she died. They were members of a class of potential devisees. The class closed when Mabel died. So Nancy, Carol, Bert, and Yano were the ascertained beneficiaries of the trust.

Beneficiaries may voluntarily or involuntarily alienate their interests in the corpus and income from the trust.

The trustee had duties to these beneficiaries and appears to have breached those duties.

Exculpatory Clause:

An exculpatory clause was included in Mabel's trust. It may have appeared to Nancy that she could do anything that she wanted without recourse, but an exculpatory clause will be enforced as against mere negligence but will not be enforced for gross negligence or for intentional torts or fraudulent acts against the beneficiaries interests. Here, we will see that Nancy will not be able to rely on the exculpatory clause to shield her from liability.

Powers of the Trustee:

A trustee has powers to administer the trust under express powers-which are expressly written in the trust, and by implied powers to administer-which all trustees normally possess, which gives them the power to buy, sell, and lease property, but not the power to mortgage or encumber property without the consent of the settlor or beneficiaries.

Here, Nancy has abused her powers by mortgaging the personal residence of Mabel and creating other debts that were not authorized or implied.

Duties of the Trustee:

✓ ✓
Duty to account and notify:

A trustee must timely notify beneficiaries upon the happening of certain material events. One such event is the death of Mabel. It took Nancy 6 months to contact the beneficiaries. She has a duty to timely notify the beneficiaries of Mabel's death and account to the beneficiaries, giving them a statement that clearly indicates the state of the trust corpus and a statement of income streams, and a copy of the trust. Any beneficiary may request an accounting from the trustee.

✓ Nancy further breached her duty to properly notify when she made false representations regarding the position and condition of the trust.

✓ Duty of Loyalty:

Nancy had the duty to be loyal to the beneficiaries and to the settlor. But, it appears that Nancy was self-dealing. Self-dealing by a fiduciary is covered under the No Further Inquiry Rule-there is a presumption of impropriety. Self-dealing is a breach of the duty of loyalty. It appears that Nancy helped herself to the trust corpus against the interests of the beneficiaries and the settlor.

✓ Duty of Care:

Nancy had a duty to act as a prudent investor in her administration of the trust. And she had a duty to not delegate her duties unless to a proper expert, but still then she would be responsible for monitoring her delegatee to fulfill her fiduciary duty to the beneficiaries.

✓ Trustee Compensation:

A trustee may receive reasonable compensation based upon training and experience for her duties in the administration of the trust.

Here, Nancy paid herself exorbitant sums and ingratiated herself way over her pay grade. Nancy will not be allowed to keep these assets that she took from the trust corpus.

✓ Liability of the Trustee:

A trustee may be removed, and may have to return trust corpus and lost profits to the beneficiaries when a breach of duty by the trustee is proved.

Here, the exculpatory clause will be limited protection for Nancy.

Nancy breached her duty in many ways:

- Good*
- 1) She made misrepresentations to the beneficiaries to induce them to rely on her falsity.
 - 2) She bought a fancy car for herself
 - 3) She hired a fancy personal trainer for herself
 - 4) Accrued huge credit card bills for herself
 - 5) incurred huge salon and spa bills for herself
 - 6) removed equity from the personal residence by drawing out principal and encumbering the property
 - 7) used cash from the substantial bank account for herself
 - 8) hid the existence of the Malibu residence
 - 9) attempted to convey the Malibu residence to herself
 - 10) hid the Apple stock from the beneficiaries for her self interest

Nancy as trustee will be liable to the beneficiaries for all that she has taken unjustly and while abusing her power as trustee.

Fraud:

Nancy will also be liable to the beneficiaries under a theory of fraud. She made representations that were meant to induce or deceive in an attempt to take the beneficiaries interests in the trust res. Any reliance and damages from these statements will be the inducement needed for fraud. Nancy will be liable under a fraud theory to the beneficiaries for the trust property improperly appropriated.

May Nancy be removed as fiduciary?

A fiduciary's acts may be ratified, or the fiduciary may be removed, and the fiduciary may be liable to the beneficiaries for damages, and return to trust

property and lost income.

Here, because Nancy breached her duty to the trustor and the trust beneficiaries she may be removed as trustee. If no family member wants the job, an institutional trustee may be hired.

May the Malibu Property be recovered?

The trustee did not have a right to convey the property to herself in an act of self-dealing. She did not have the power so the property will be held in a constructive trust for the beneficiaries. A constructive trust arises when there is unjust enrichment for a wrongful act. A BFP for value may have a superior right over the beneficiaries, but Nancy is not a BFP for value. Here the property will be recovered by the beneficiaries.

May the Apple Stock be returned to the trust corpus?

All property that was unjustly taken from the trust must be returned by the wrongful trustee. It appears that Nancy may have been on a spending spree and that the Apple Stock may not be in the trust. It may have been sold and is in the form of cash or it may be in the form of stock in the portfolio. Nancy will be liable for the entire amount that she took without permission, except for a reasonable amount for administration if she can prove to the court that she did anything of value. Probably, Nancy will be in debt for the rest of her life to the beneficiaries and will be under a writ of execution to pay something to the beneficiaries out of her wages, etc.

Her 1/4 share
may be forfeited

Intentional Tortious Interference with Expectancy of Inheritance:

Nancy knew of the expectancy of the beneficiaries in the trust corpus and income. She intentionally interfered with the expectancy and was the but for

cause of the damages to the beneficiaries. nancy made misrepresentations.
Nancy will be liable in tort under an intentional interference with expectancy of inheritance theory.

Well Done!

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3) End of Answer #2 =====

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Start of Answer #3 (1170 words) =====

When Hal passed away, he was survived by three children, six grandchildren and his second wife, Jane. Hal set up a separate trust to benefit Jane, who had no children of her own. The trust he set up gave Jane power of appointment to appoint who the Trustee should distribute the remaining balance of his trust estate to upon her death. Powers of appointment preserve devises to trustor to be carried out after they are dead, and the main beneficiary of the trust they left is dead.

The donor is the one giving the power. The donee is the person who is granted power to appoint. The object of the appointment is the property that will be distributed.

Permissible appointees are those in a class that may be appointed the object. The appointee is the one that is actually appointed the object. In these facts, the Donor is Hal, who grants power to appoint to donee, Jane. The object of the appointment is the remaining balance of the trust estate he provided to Jane for her lifetime. The permissible appointees are the class including Hals children and grandchildren. The facts do not indicate whether the member class increased or decreased in the 20 years between Hal's death and Jane's death. It is assumed there was no change; the class of children could have decreased and the class of grandchildren could have either increased or decreased.

Where a power of appointment includes a requirement of specific reference, the donee must include the specific reference in the instrument she creates for the appointment. That means, Jane would include in a written statement to the Trustee, that the Trustee shall distribute the remaining balance of the Hal Fun Trust, upon death of Jane Fun. Hal did not want the written statement to be in a will; it could be a written directive to trustee. He also provided an alternate disposition, if none, then to Settlor's issue who survive Jane. This appears to impose a condition that only those issue of Hal who survive Jane would share in the remainder of Hal's estate equally if they were of the same kin. Those of further degree would share per CA Probate Code 240. It is not clear if the "if none, then to Settlor's issue who survive Jane Fun" means if "no children or grandchildren" or if it means no appointment made by donee. It is ambiguous, but could mean that if Jane does not make an appointment, the remaining balance of Hal's trust is distributed to Hal's issue that survive Jane.

The power of appointment was a specific one, where Hal limited class membership to identified individuals "Settlor's children or grandchildren." A general power of appointment is one where donee could appoint to donee, donee's estate, or anyone else. In this case, Jane's power of appointment was limited specifically to Hal's children or grandchildren. This is a member class that could have increased or decreased before the power of appointment was made, but doesn't appear to have done so.

The power of appointment could be exclusionary or non-exclusionary. An exclusionary power of appointment is one where the donee could exclude permissible members of the class; non-exclusionary would mean she could not exclude any members of the class but could provide they take in different amounts. It doesn't appear Hal provided for any minimum amount. Since Jane could appoint any of the children or grandchildren, it was exclusionary power.

By the time Jane passed, she failed to exercise the power of appointment as granted to her by Hal. Since she failed to exercise the power, the remaining balance of Hal's

trust would be distributed to Hal's issue who survive Jane, the alternate disposition in Hal's trust. The takers in default.

well done

Ten months before dying, Jane executed her own revocable living trust leaving all of the trust estate to my husband's grandson, Bobby. This is a valid trust as it includes an identifiable beneficiary, trust property, and a trustee (of if there isn't one, the court will appoint one). Jane's interest in the trust from Hal was one for her to use for her lifetime. It was not part of her estate to dispose of upon her death. It is known that Jane owned her own house. It is not known if Jane had other assets. It is assumed that Jane included at least her separate property home in her trust. Bobby would take under Jane's trust all assets that Jane put into the trust.

Jane is free to dispose of her property as she wishes. It was her intent that Bobby would take her estate upon her death. One who makes a trust must have capacity such as is required to make a will. In this case, there may be a claim of undue influence, that external pressure was put on Jane, who may have been in a weakened state, and that she made property dispositions that she wouldn't have done absent the influence. Elder abuse is defined as taking the real and/or personal property of another by undue influence. In these facts, Jane had a special bond with Bobby; he stayed with her, drove her around, took her to the movies, cooked, did yardwork, helped with her finances, and cleaned. In return Jane paid Bobby quite a large sum. However, she was in charge of her own finances until she died and there is no evidence she suffered any mental deficiency.

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The court would look to the purported victim's vulnerability. Jane was of advanced age but there is nothing to indicate that he was ill, manic, depressed, injured, or in any other way vulnerable. Next the court looks to the influence of the apparent authority. Here it was Bobby, her favorite step-grandson, a close family member and caretaker. The court would look to how the apparent authority was applied. It appears that Bobby may have kept others away from Jane but the other things he did were of a caretaking type of relationship in that he opened her mail, answered the phone for her. It could be that

Jane couldn't see or hear very well in her advanced age, not that Bobby was taking undue advantage of her. Finally the court would look to the economic consequences of the authority applied. In this case, there was no hastily made trust, there doesn't appear to be a different disposition of property than Jane would have made at any other time.

Had there been a question of the disposition of Jane's trust prior to her death, she could have had an independent review by an attorney who would counsel her about her property disposition, question her about her capacity, question her away from heirs and beneficiaries, discuss the intended disposition of property and the effects of the decision, then sign a certificate that the transfer appears to have been an independent decision by Jane.

It appears Bobby would take through Jane's estate, but that all of Hal's issue would share in the remainder of his estate.

==== End of Answer #3 =====
END OF EXAM