

Wills
Fall 2010 Exam
Professor DeMeo

Question One

Uncle Joe, a very rich uncle who lives in Santa Rosa, California, executed a valid will in 1999. The will states in pertinent part:

“Third: I leave twenty percent of my estate to my nieces and nephews collectively. I leave the balance of my estate to Bill Fabeets who lives at 123 Elm Street, Santa Rosa, Nevada.”

In 2004 Uncle Joe was failing in health and gave up his driver’s license. In 2005 he executed a codicil to his will reducing the amount left to nieces and nephews to ten percent of his estate collectively, and changed the executor to Bill Fabeets.

One nephew died in 2006. Uncle Joe died in 2007, and his will was probated.

During the probate administration the executor identified a Bill Fabeets that was a co-worker and long-time friend of Uncle Joe. They were in the military together, and this Bill Fabeets helped Uncle Joe around the house and used a power of attorney to help pay the bills. The executor also discovered there is a Bill Fabeets living at 123 Elm Street, Sparks, Nevada, and is a cousin of Uncle Joe.

All nieces and nephews told the executor that Uncle Joe spent a few nights every December holiday season in Sparks with “Cousin Bill.” Some nieces and nephews mentioned that they did not like the co-worker Bill. The lawyer who drafted the codicil told the executor that co-worker Bill referred Uncle Joe to her to draft the codicil. She supervised the execution of it. Co-worker Bill drove Uncle Joe to the lawyer the day he signed the codicil.

You represent the Executor. Tell him who is likely to get what and why? Please use sound legal analysis in your response. Do not discuss lawyer ethics or malpractice in responding to this exam question.

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Question Two

Aunt Mabel, a 92 year-old heiress living in California decided to leave her entire estate to Acme Charity for Children. Her nieces and nephews did not bother to visit her on holidays, and most forgot her birthday. She only saw them when they needed money. Her sister is still alive and has three children. Her brother died 20 years ago leaving two children.

Aunt Mabel went to I. M. Nizeguy to discuss her will. Mr. Nizeguy is a local estate planning lawyer who possesses expert skills in his field. Aunt Mabel told I.M. what she wanted and he drafted it for her. It was a typical will with an introductory clause, a revocation clause, status clause, disposition clause, executor nomination clause and no-contest clause.

A few weeks later she returned to Mr. Nizeguy's office to sign the will. He was not there, but he instructed his paralegal and secretary to supervise the execution of Aunt Mabel's will. When she arrived she was shown into a conference room where the secretary sat waiting for her. A few niceties were exchanged and they got down to business. Aunt Mabel proceeded to sign the document. The secretary signed as a witness. The paralegal then joined them and notarized the document.

Three months later Aunt Mabel died.

The Charity comes to you asking what it needs to do to collect the inheritance.

What will you tell them? Please use sound legal analysis in your response.