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Question 1



CALIFORNIA

Uncle Joe lives in CA, so the CPC will apply.

CAPACITY

When Uncle Joe executed the codicil in he was in failing health and had given up his driver's license. It is unknown what his specific health issues were, or why he gave up his driver's license, however testamentary capacity is one of the requirements of a valid will or codicil. If it can be determined that UJ had some form of dementia, or delusion, whereby he was not capable of executing the codicil, because the court found that "but for" his mental state he would not have changed the terms of his will, then the codicil will fail, because UJ lacked the requisite mental capacity.

CODICIL

In order to execute a codicil, in addition to having a valid will, the codicil must meet the other requirements of a will, per the equal dignity doctrine. The person executing it must have testamentary intent and testamentary capacity, the codicil must be signed and attested to by two disinterested witnesses, or the proponent must show through clear and convincing evidence that the codicil was done by Uncle Joe, with testamentary intent and capacity. The facts do not state whether this was a validly executed codicil and if it does not meet those requirements it would fail, leaving the terms of the original 1999 will intact.

If the codicil is validly executed, then it would revoke the prior will's designation of executor and percentage to the nieces and nephews. This is because a subsequent writing can, either through specific revocation language, or by implication, revoke a portion of the prior will. In this case, there is not specific revocation language, but the appointment of Bill Fabeets and lower percentage to the nieces and nephews conflict with the prior will, so they would revoke those terms by implication.

DUELING FABEETS

There is confusion created in the will by the fact that Uncle Joe named Bill Fabeets (BF) as a beneficiary and indicated a mixed address, which indicates an address which indicates both the City of Santa Rosa, in CA and the state of Nevada. To further confuse the issue, one BF lives in SR and the other in NV. This is considered a latent mistake, which means that on the face of the will, it seems ok, however when the executor attempts to execute the will the mixup of address and two of the same names makes it impossible to distribute the devise, without further extrinsic evidence to determine which, if any of the named BF is entitled to the devise. Modernly, the law allows the introduction of extrinsic, or outside evidence, which could be in the form of



testimony of the two named individuals, other witnesses and evidence.

If the probate court determines from the testimony or evidence that it is a particular BF then that person would receive the devise. If the court cannot determine which BF is the intended beneficiary, then the share would pass via intestacy.

UNDUE INFLUENCE

BF in SR helped UJ and had power of attorney. If the court determined that he was, in fact the BF that UJ intended to have the devise, then he would have to overcome a presumption of undue influence before he could collect. Undue influence can be found whenever a testator is found to be susceptible, a person has a close relationship with them, that person has motive to unduly influence them, usually because they can be a beneficiary, or increase their share. However, in this case, BF from SR is Power of Attorney, which gives him a special relationship with UJ, so undue influence in this case is presumed, which would shift the burden of proof to BF of SR to show that no such undue influence occurred. In order to do that he would have to show that his relationship to UJ was not coercive and that UJ drafted the codicil was independent of BF. In this case the attorney was recommended by BF and BF drove UJ to and from the lawyer he recommended. If the codicil is challenged on the grounds of undue influence, BF will likely lose and the codicil will be void. This would be the same for the original terms of the will, if the circumstances of its drafting were the same. If the codicil fails, then result would be that there was no valid codicil and the terms of the original will would take effect. If this same result was applied to the original will, then BF's share would pass through intestacy.

NIECES & NEPHEWS

Nieces and Nephews will receive the percentage share of UJ's estate, dependent upon the outcome of the resolution of the above mentioned issues. UJ's gift to them is a class gift, meaning that they are part of an identifiable group, named nieces and nephews. All of the members who fall into that class would therefore receive an equal share of UJ's estate, by dividing the final percentage, by the number of nieces and nephews. ✓

ANTI-LAPSE STATUTE

One nephew died prior to Uncle Joe, but after he had executed his 1999 will. CA has an anti-lapse statute, in lieu of the CL per stirpes, method for division of devises to beneficiaries who predecease the testator. In this case, that nephew's share would pass by intestacy. ✓

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Question 2

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Is Aunt Mabel's Will Valid?



Aunt Mabel went to an attorney, which the facts state is an expert estate planning lawyer. He drafted a will according to her instructions to leave the entire estate to Acme Charity of

Children. The facts do not state that Aunt Mabel informed the attorney about her family but it can be presumed since he is an expert estate planning lawyer. In order for there to be a valid will, the testator must have mental capacity and be over 18 years old. Even though Aunt Mabel is 92 years old, she appears to have sufficient mental capacity and the facts don't indicate otherwise. The facts describe the nature of her bounty, her sister, brother and their children. She must also know the extent of her bounty, which will be presumed because there are no facts to the contrary. She had the testamentary intent to leave her entire estate to Acme Charity for Children. The facts explain the reasons she did not want to leave her estate to any of her nieces and nephews because they did not bother to visit on holidays, mostly forgot her birthday, and only saw them when they needed money. In addition, the facts detailed the persons who were her family. ✓

The will that was drafted for Aunt Mabel appears to include all the necessary clauses consisting of an introduction, an express revocation clause revoking all prior wills and codicils, a status clause which would include whether she was a widow, had children, etc. It also included a disposition clause leaving her estate to the charity, an executor nomination and a no-contest clause.

When Aunt Mabel returned to the office to sign the will, the lawyer was not present. He left instructions for his paralegal and secretary to supervise the execution of the will. In the conference room where Aunt Mabel was shown, the secretary was present and they exchanged a few niceties. Aunt Mabel then proceeded to sign the will. The secretary signed as a witness. Then, the paralegal came in and notarized the document. In California, in order for a will to be valid, it must be acknowledged by the testator to be her will and signed in the presence of two uninterested witnesses. The two witnesses are not required to sign the document as witnesses in the presence of each other or the testator's presence. This did not occur.

Aunt Mabel signed her will in the presence of only one witness, the secretary. Thereafter, the paralegal came in and notarized the document. Wills are not required to be notarized in California. The notarization could be used for the second witness's signature, however, both the secretary and the paralegal were required to be present and were not present at the same time when Aunt Mabel acknowledged or signed her will which is required for a valid will.

The will is invalid due to improper execution. ✓

Distribution of Estate

The estate will be distributed in accordance with the laws of intestacy due to the improperly executed will. ✓

Aunt Mabel's estate will be distributed as follows:

The estate will be divided into two equal shares because the facts state that Aunt Mabel had two siblings and they are her closest relatives. Her sister is still alive and will take one half of the estate. Her brother predeceased Aunt Mabel 20 years ago. In accordance with the lapse statutes, a person's share who is not of kinship to Aunt Mabel will lapse. In accordance with the anti lapse provisions, if the brother was of kinship to Aunt Mabel, having her bloodline, and he did, then the brother's share will be subject to the anti-lapse statutes. The brother's share would be distributed by right of representation, or per stirpes. The facts state that the brother died leaving two children. The two children will share their deceased parent's share because a deceased person can't inherit. The brother's two children will each receive one quarter of the estate. ✓ Good

Sister - 1/2 of estate
Brother's issue 1 - 1/4 of estate
Brother's issue 2 - 1/4 of estate

The charity will not receive an intestate share because they are a charity and not blood relatives. The charity can't inherit under the will due to the improper execution as outlined supra.

Professional Responsibility/tortious interference with expectancy of inheritance

✓ The charity can present a complaint under the professional responsibility statutes for malpractice. A lawyer is responsible for the acts of his staff and the negligence of his staff is imputed directly to the lawyer. The lawyer incorrectly instructed and supervised the staff as to the procedures for the execution of a will or the staff didn't following directions and just didn't execute the will properly. Since Aunt Mabel was an heiress, there is a lot of money that the charity lost out on since the will was improperly executed. The charity can prove huge damages directly attributable to the lawyer's malpractice.

The charity may also present a tortious interference with expectancy of inheritance claim against the lawyer for the negligence of his staff and as a result, his negligence. The will was properly drafted, included all the proper provisions but due to the negligence of the attorney's staff, the will is invalid. The lawyer's actions resulted in the interference with the charity's expected inheritance from Aunt Mabel. The lawyer had a duty to act in the way an expert estate planning lawyer would in the circumstances of executing a will. An expert lawyer would ensure that the will had been properly executed, following the required procedures for the will to be valid. He breached the duty when he instructed his staff and they failed to follow the necessary procedures in executing the will to assure that it was validly executed. The breach caused the will to be invalid and resulted in the charity not receiving distribution of Aunt Mabel's entire estate. The result is that the charity has huge damages. Hopefully, the lawyer has malpractice insurance because he's going to need it.

END OF EXAM