

Wills & Trusts (California Bar Exam)

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I. Marital Property

A. Community Property

1. Community property is the property accumulated **after marriage** by the spouses. Each spouse owns an undivided $\frac{1}{2}$ interest in the community's property. (E.g., income earned by either spouse after the wedding ceremony is the property of both spouses, a house purchased after the wedding ceremony is the property of both spouses regardless of how titled.)

2. Quasi-community Property: When a couple marries and resides in a common law state and thereafter moves to California, the previously designated common law property classification is changed to community property for purposes of divorce or upon death. Prior to divorce or death, quasi-community property is treated as the spouses separate property.

3. Separate property is the property acquired by each spouse prior to marriage. It also includes **gifts, inheritances, and certain personal injury damages** received **after marriage**. Community Property may become separate property, and vice versa, through transmutation. Transmutation requires a writing declaring the change in property.

4. In order to sell community property, both spouses must consent to the sale in writing.

5. The titling of property does not dictate ownership.

[CBX July 2008] In 2000, H and W, husband and wife, lived in New York, a non-community property state. While living there, W inherited a condominium in New York City and also invested part of her wages in XYZ stock. Wilma held the condominium and the stock in her name alone. In 2001, H and W retired and moved to California.

[CBX July 2014] H and W married in 2000. During the first ten years of their marriage, H and W lived in a non-community property state. H worked on writing a novel. W worked as a history professor. W kept all her earnings in a separate account. They move to California.

Characterization upon W's death absent any changes in ownership?

[CBX July 2014] H sets up an irrevocable trust with the \$100,000 she saved from her savings during marriage. She directed one-half the trust income be paid to her for life, and the other one-half be paid to Charity for spending on disaster relief.

B. Common Law Property (Separate)

1. States not following community property law follow a common law property scheme. In those states each party retains their own property acquired before and after marriage. The titling of property is a determining issue regarding who owns the property in question.

II. Governing Law

A. Personal Property – the distribution of decedent's personal property is governed by the law of the state where decedent resided at the time of death

B. Real Property – the distribution of decedent's real property is governed by the law of the state where the real property is located.

1. Ancillary probate – occurs when real property is owned in states outside the decedent's state of residence. This requires the opening of additional probate cases in those states to transfer the real property.

H and W reside in California. They own a house in California, a ranch in Wyoming, and a commercial building in Florida. H dies leaving a will devising everything to W. Where must probate be established to resolve the estate? What if the will is deemed invalid due to improper execution?

III. Intestacy (Succession)

A. Inheritance

1. When a person dies without a testamentary instrument or will substitute, his estate will pass by intestacy. Even if a testamentary instrument is used, a clause or the instrument itself may fail or become invalidated. In all of those situations, a state's intestacy statutes govern the disposition of the estate or the part of the estate not covered by the testamentary instrument.

2. California's intestate succession proceeds as follows:

a) If there is a spouse (S):

(1) But no children, parents or siblings, then S gets all.

(2) And children, S gets all CP and $\frac{1}{2}$ (1 child) or $\frac{1}{3}$ (>1 child) SP.

(3) And parents, S gets all CP and $\frac{1}{2}$ SP

(4) And siblings, S gets all CP and $\frac{1}{2}$ SP.

3. Taking by Right of Representation

a) Per Capita with Representation (Modern Per Stirpes)

(1) Begin at the first generation with surviving descendants. Any descendant who has predeceased at that generation has his share pass to his issue.

b) Per Stirpes

(1) Begin at first generation below decedent. Shares are divided at this level and, if predeceased, transfer to issue based on share of deceased parent.

c) Per Capita at Generation

(1) Begin at the first generation that has living descendants. Then, for those who predecease with issue, pool all the predeceased shares together and divide among issue of all predeceased.

IV. Testamentary Capacity

A. In order to complete a will or trust, the signer (testator or settlor) must have testamentary capacity. In order to have testamentary capacity, the signer must:

1. Know the nature and extent of his property;
 2. Know the natural objects of his bounty (family and friends); and
 3. Know that he is creating a will or trust.
- a) Sometimes this is broken down into two elements: (1) Signer knows the nature of the testamentary act being performed; and (2) know the nature of the testamentary act being performed.

V. Contesting Testamentary Capacity

A. **Undue influence** – This occurs when the wrongful person influences the testator to such a degree that the testator's desires regarding distribution of property is supplanted by that of the wrongdoer.

1. **Prima facie case**

- a) *The testator had some sort of weakness that made her susceptible to influence;*
- b) *the person alleged to have exerted the influence had access to the testator and an opportunity to exert the influence;*
- c) *there was active participation by the influencing person in the devise;*
- d) *resulting in an unnatural result.*

2. **Case law approach (Presumptive) (California)**

- a) *A confidential (close) relationship with the testator;*
- b) *An active participation by the influencing person in the devise; and*
- c) *Person benefits unduly under the will or trust .*

B. **Insane Delusions** – A person is in such a mental state that he adheres to a false sense of reality despite all evidence to the contrary. In California, as long as **any factual basis** supporting the testator's belief, then an insane delusion does not exist.

C. **Duress** – devise is product of threats to cause harm or actually causing harm

D. **Fraud**

1. **In the inducement** - Misrepresentation causes the testator to execute or revoke a will, to refrain from executing or revoking a will, or to include particular provisions in the wrongdoer's favor.

2. **In the execution** – Person intentionally misrepresents the character or contents of the instrument signed by the testator, which does not in fact carry out the testator's intent.

E. **Elder Abuse** – If a person engages in elder abuse or another similar crime then any devise or gift they receive may be set aside.

F. **Tortious Interference with an Expected Inheritance**

1. Existence of **expectancy**;

2. A **reasonable certainty** that the expectancy would have been realized but for the interference;

3. **Intentional interference** with the expectancy;

4. **Tortious conduct** involved with the interference; and

5. **damages**.

[CBX Feb 2008] In 2002, Wilma's sister, Sis, began paying a great deal of attention to Wilma, preventing any other friends or relatives from visiting Wilma. In 2003, Wilma reluctantly executed a properly witnessed will leaving her entire estate to Sis. Following the execution of the will, Wilma and Sis began to develop a genuine fondness for each other, engaging in social events frequently and becoming close friends. In 2005 Wilma wrote a note to herself: "Am glad Sis will benefit from my estate."

[July 2012] At the time [testator] signed the [will leaving everything to Sam], she was entirely dependent on her son Sam for food and shelter and companionship, and had not been allowed by Sam to see or speak to anyone for months. The testator's sole survivors are her son, Sam, and daughter, Dot.

VI. Execution of Wills \$\$\$

A. Testator must be at least **18**.

B. **Will must be written with testamentary intent.**

1. A **conservator** may also create and sign a will for a Testator if allowed by court order.

C. **Signature:** May use any mark commonly used by Testator to sign documents, any mark intended to serve as a signature or made with the assistance of another person present and at Testator's direction.

D. **Two disinterested Witnesses see Testator sign or acknowledge signature**

1. Witnesses need to be in the presence of one another at the time they watch Testator sign or acknowledge his signature and must know they are witnessing the signing of a will. Each witness must sign the Will before the testator's death. California Probate Code 6110.

2. Witnessing by an interested witness raises presumption of undue influence, duress, fraud, etc. If interested witness would take by intestacy and amount devised under will is less than intestacy share, then devise survives. California Probate Code 6112.

E. A will is validly executed if it is executed **as stated above**, it is executed in compliance with the law at the time of execution at the **place the will was executed; or** the execution of the will complies with the **law of the place where at time of execution** or time of death the testator is domiciled, has a place of abode, or is a national. California Probate Code 6113.

F. **Harmless Error** – if it can be shown by clear and convincing evidence that the document was intended to be the will of the testator, then failure to meet the execution requirements of a will is excused. California Probate Code 6110 (harmless error) & 6111.5 (extrinsic evidence)

[CBX July 2004] The will left all of the rest of Hank's estate to Wanda if she survived him. The will did not mention Ann. Wanda was one of two witnesses to the will. Under the law of State X, a will witnessed by a beneficiary is invalid. The family moves to California and Hank dies thereafter.

[CBX July 2006] In 2003, Tom, a patient at Happy Home, a charitable convalescent hospital that specializes in caring for the disabled elderly, asked Lilly, his personal attendant, to help him execute his typewritten will. Tom suffered from severe tremors and had difficulty signing his name. In the presence of one other attendant, Tom directed Lilly to sign his name and to date "my will." She did so and dated the document. At Tom's request, Lilly and the other attendant in the presence of each other, then signed their names as witnesses.

[CBX July 2006] In 2004, Tom, created another typewritten will. He asked Lilly to send two attendants into his room to act as witnesses. After the first attendant arrived and was present, Tom explained the purpose of the document and then signed his name at the end of the document. The first attendant then signed her name as a witness and left the room. Immediately thereafter the second attendant came into Tom's room and quickly signed the document as a witness.

[CBX Feb 2015] A court appoints Greg as conservator for Tess, because of Tess's failing mental abilities. In 2013, the court authorized Greg to make a new will for Tess. Greg made a new will for Tess leaving Tess's entire estate to Susie and himself outright. Greg, without consulting Tess, then signed the will in the presence of two disinterested witnesses, who also signed the will. (Prior to this will, Tess had trust leaving assets to a zoo.)

G. **Holographic Wills**

1. Must be

- a) in the Testator's handwriting;
- b) Testamentary intent;
- c) Material provisions; and
- d) Signed

2. **Date:** If the holographic will is not dated then it will be deemed to have been in effect prior to any subsequent will and any provisions in conflict will be controlled by the dated will. California Probate Code 6111.

[CBX Feb 2011] In 2009, Tess, Able, and Bernice quarreled and Tess decided to draft a new will. She went to an office supply store, got a preprinted will form, and filled in the following in her own handwriting:

Because my son Able and daughter Bernice have been unkind to me, I specifically disinherit them. I give and bequeath all my property to University. (Tess signed and dated the form. No one witnessed the creation and signing of the will.)

[CBX July 2008] In 2004, Wilma, entirely in her own handwriting, wrote, dated, and signed a document entitled "Changes to My will," which stated, "I give my XYZ stock to Museum." The document was not signed by any witness.

VII. Revocation & Revival \$\$

A. **Revocation:** There are four ways to revoke a will:

1. **Act** – Occurs when the testator **intends** to revoke the will while engaging in the **act** of destroying or altering the will. So to revoke by act you must have the requisite intent at the time of the act. The act must be done by the testator or at the testator's direction in the testator's presence. Examples of acts: tearing up the will; writing over the will's text; writing a letter revoking the will, etc.
2. **Writing** – When a new will is created it revokes the previous will. This is the only manner in which a will may be revoked in writing.
3. **Presumption** – If the testator dies and the will cannot be found, if that will was last known to be in the testator's presence then a presumption of revocation arises.
4. **Operation of law** – The legislature may enact a law revoking a part of a will. The most common example are statutes that immediately revoke upon divorce devises to a spouse in a will written prior to divorce. Of course, if the will expressly states such devises will survive divorce, then they are not revoked.

B. **Dependent Relative Revocation**

1. If a will is revoked, in whole or in part, based on a mistake of fact or law and the testator would not have revoked but for the mistake, revocation will not be given effect.
 - a) Example: Testator wishes to increase devise from \$10 to \$20. So he lines through the \$10 stated in the will and above it writes \$20.

C. **Revival**

1. **Intent** – a will may be revived if intent is known that it be revived (e.g., statement that you wish to have revoked will revived)
2. **Subsequent instrument** - a will may be revived by a subsequent testamentary instrument stating revival (e.g., will or codicil)
3. **Re-execution of revoked will**

[CBX July 2012] In 2008, after a serious disagreement with Sam, Mae announced that she was revoking her will, and then tore it in half in the presence of both Sam and Dot.

In 2010, after repeated requests by Sam, Mae handwrote and signed a document declaring that she was thereby reviving her will. She attached all the torn pages of the will to the document.

[CBX Feb 2007] The \$10,000 figure in Article 1 was crossed out and \$12,000 was handwritten in Tom's hand above the \$10,000 figure. Next to the \$12,000 Tom had handwritten, "Okay. 2/15/02."

VIII. Incorporation by Reference & Independent Significance

A. Incorporation (e.g., pour-over will)

1. Document must be in **existence** at time of will execution
 - a) Exception: **Tangible Personal Property Memorandum** – by statute a tangible personal property memorandum may be completed after the will execution, but must meet the other two elements of incorporation.
2. Will must demonstrate **intent** to incorporate document
3. Document must be **described sufficiently** to permit identification

B. Acts of Independent Significance

1. A will may dispose of property by reference to acts outside the will as long as the referenced act has significance independent of its effect on the Testator's probate estate. (E.g., All my personal property in my garage to Ed, \$5 to my sons-in-law.)

IX. Bequests, Lapse & Anti-lapse

A. Bequests (Gifts) (CBX Feb 2007)

1. **Specific** - a gift of a specific item. (e.g., I give my boat to Ed.)

a) **Ademption** - If the specific item is not in the estate at the time of death the gift is said to have adeemed and the devisee receives nothing. A presumption arises that the testator intended to revoke the gift by transferring it out of the estate.

b) **Change in Form** - When the gift is an investment, and the funds from sale of the asset subject to the specific bequest can be traced, it may be possible to overcome the presumption of revocation by showing the change in asset was merely a change in form of that asset. That the change was part of a prudent investing strategy.

c) **Intent** - If it can be proven that the testator's intent was not to revoke the gift when transferring the asset subject to the specific bequest, the devisee may still take something. This is true as long as the funds received in exchange for the asset are not made part of a different bequest.

2. **General** - A gift of pecuniary value. (E.g., I give \$10,000 to Jill.)

a) **Demonstrative gifts** - Are general gifts taken from a specific source. (E.g., I give \$10,000 from my Wells Fargo checking account to Jill.)

3. **Residuary** - A gift that gives away all the assets not already given away in the estate.

B. **Lapse** - When a devisee predeceases the testator, the bequest is said to have lapsed. The asset underlying the gift will then pass as part of the residuary.

C. **Anti-lapse Statute** - some states (including California) have an anti-lapse statute. These statutes avoid lapsing of bequests based on the assumption that the testator would not want the gift to lapse. In order to qualify for the anti-lapse statute: (1) the gift must lapse; (2) the deceased devisee must be an immediate relative of the testator (or testator's spouse); (3) the deceased devisee must have issue that survive testator; and (4) the will must expressly disallow anti-lapse for anti-lapse not to apply.

X. Omitted or Pretermitted Child/Spouse \$\$\$\$\$

A. Omitted Child

1. An omitted child gets an intestate share when the testator executed a will prior to birth (or without knowledge of the child), and did not update the will following learning of the child's existence.

a) Exception: If the child is provided for outside of the will (trust or other gift) then the omitted child will not take under the will and testator's intent can be shown that the child was to take outside the will.

b) Exception: If the testator had several children and gave substantially all of the estate to the omitted child's mother, then the omitted child takes nothing.

c) Exception: Omission was intentional

2. Children may be disinherited.

3. Adopted children treated same as traditional issue.

B. Omitted Spouse – An omitted spouse gets an intestate share when the testator executed a will prior to marriage, and did not update the will following the marriage but prior to death.

1. Exception: Provided for outside of the will

2. Exception: Premarital agreement (intentional)

[CBX Feb 2010] H had two children, Aaron and Beth. H died three years after establishing a trust providing one-half of the assets equally divided between Aaron and Beth. Subsequently, it was proved by DNA testing that H had another child, Carl, who had been conceived during H's marriage to W, but was born following dissolution of the marriage. W, Carl's mother, had never told H about Carl.

[CBX Feb 2011] In 2004, Tess, a widow, executed a valid will leaving her estate to her children, Able, Bernice, and Cassie *per stirpes*. At some point after executing the will, Tess became upset with Able and Bernice. As a result, she wrote the following valid holographic will:

Because my son Able and daughter Bernice have been unkind to me, I specifically disinherit them. I give and bequeath all my property to University.

Does Cassie take at all from the estate?

What if Cassie predeceased leaving issue born after the will's execution?

What if Cassie was born after the will's execution?

XI. Prenuptial and Antenuptial agreements

- A. Writing signed by both parties;
- B. Voluntarily entered into;
- C. Not unconscionable;
- D. Financial disclosure; and
- E. Each party has a chance to be represented

[CBX Feb 2006] In 2002, Tim and Beth married. Two days before the wedding, Beth executed a prenuptial agreement waiving all rights to Tim's estate. Beth was not represented by counsel when she executed the prenuptial agreement.

XII. Will Substitutes

A. Purpose – will substitutes avoid probate. If an asset has one of the clauses or is held as titled below, regardless of what the will says, the property will pass according to the method of will substitution used.

B. Personal Property

1. Beneficiary designation (e.g., insurance)
2. Revocable Trusts
3. Payable-on-Death clauses (e.g., stocks, bonds)
4. Totten trust (e.g., bank accounts)
5. Joint tenancy (e.g., bank accounts)

C. Real Property (law of location governs)

1. Joint tenancy
2. Tenancy by the entirety
3. Transfer-on-death Deed

XIII. Advanced Healthcare Directives & Powers of Attorney

A. **Living Will** – A signed statement discussing use of life sustaining measures when the signer enters a vegetative or end of life state.

B. **Durable Healthcare Power of Attorney** – Allows appointment of an agent to make healthcare decisions.

C. **Durable Power of Attorney** – Appoints agent to engage in designated financial affairs. If expressly designated, may create and transfer assets to revocable trusts. However, it does not have power to allow agent to create a will. It's durable nature allows it to survive incapacity, but not death.

XIV. Miscellaneous

A. **Simultaneous Death** – if both spouses die at the same time, each estate operates as if the other spouse predeceased.

B. **Advancement of Inheritance** - Lifetime gift treated as advancement if
(1) contemporaneous writing by decedent stating that gift is advancement or
(2) writing by heir acknowledging gift is advance. If giftee dies before giftor –
advance not taken into consideration when computing giftor's estate.

1. **Hotchpot:** Gift treated as advancement will be accounted for in distributing
the decedent's estate by bringing it into the hotchpot. Add advancement to estate
then divide. After division, subtract advancement from early inheritor's share.

C. **Extrinsic Evidence:** May be liberally used in will cases to show intent,
mistake, etc.

XV. Valid trust \$\$

A. **Testamentary Capacity [see Wills outline]**

B. **Contesting capacity [see Wills outline]**

C. **Requirements**

1. Intend to create a trust;

a) There must be clear terms expressing that the trust property be used
for the benefit of the beneficiaries.

2. Fund the trust;

a) Delivery of assets to Trustee

(1) Legal title = trustee

(1) Equitable title = beneficiaries

3. Have ascertainable beneficiaries; and

a) Requires beneficiaries to be named or the use of an objective method
for identifying the beneficiaries

4. May require a writing.

a) Writing is required for a testamentary trust or a trust that will hold
real estate

2. Resulting trust - If a trust fails, court orders assets transferred back to
settlor

D. Types

1. Testamentary Trusts – Trust imbedded in a will
2. Inter Vivos Trusts – Revocable trust made during life (will substitute)
3. Irrevocable Trusts – Trust that may not be revoked (separate entity)
4. Charitable Trusts
 - a) Does not require ascertainable beneficiaries, only charitable purpose
 - b) Charitable purposes are: poverty; education; religion; health; government purposes; or anything else beneficial to the community at large
 - c) May be enforced by Attorney General
 - d) **Cy Pres** – If a charitable trust's specific purpose becomes **impossible, impractical, or illegal** then court may modify trust purpose to benefit another particular charitable purpose.
 - e) Rule against Perpetuities does not apply

[CBX Feb 2008] In 2001, Wilma, an elderly widow with full mental capacity, put \$1,000,000 into a trust. The trust named Wilma's church as the beneficiary. Although the trust instrument did not name a trustee, its terms recited that the trustee has broad powers of administration for the benefit of the beneficiary. Valid trust?

Charitable Trust [CBX Feb 2015] July 2014

[CBX July 2004] In 1996, H married W, his second wife. Thereafter, while still domiciled in State X, H executed a will that established a trust and left "five percent of my estate to Trustee, to be paid in approximately equal installments over the ten years following my death to the person who went skiing with me most often during the 12 months preceding my death." The will did not name a trustee.

Hank gives up skiing and took up fishing instead. He went on numerous fishing trips during the two-years preceding his death with a fellow avid fisherman, Fred.

[CBX July 2006] Tom created a testamentary trust with Happy Home as beneficiary for continued care of the disabled elderly. Lilly to act as trustee. At the time of Tom's death there were only two convalescent hospitals in the county where he lived, Happy Home and Sunnyside. A few days after Tom's death, Happy Home went out of business. Sunnyside, also a charitable convalescent hospital, provides care for disabled persons of all ages. Sunnyside has petitioned the court to substitute Sunyside as the beneficiary of Tom's trust.

[CBX Feb 2015] Tess has a trust distributing income to grandchildren, then after death of last grandchild the trust assets were to go to the Zoo to care for its elephants.

In 2015, Tess died. That same year, Zoo's only remaining elephant died.

Zoo has petitioned the court to modify the trust to provide for the care of its animals generally.

XVI. Trustee Powers

- A. Powers outlined in the trust (historically only way to have powers)
- B. Statute

XVII. Trustee Duties \$\$\$\$\$

A. Loyalty

- 1. Everything done must be in best interest of beneficiaries
- 2. Act reasonably
- 3. Act in good faith
- 4. **No self-dealing**
- 5. Avoid conflicts of interest
- 6. Work arounds: (1) court order; (2) trust terms allow for activity; or (3) all beneficiaries consent

B. Prudence (Care)

- 1. Administer trust with skill and care of a person of ordinary prudence would when dealing with their own affairs
- 2. Duty to **obey settlor's intent**
- 3. **Duty to make trust property productive**
- 4. **Uniform Prudent Investment Act**
- 5. **Diversification**

C. Take proper care

- 1. Trustee must take proper care of the trust property.
- 2. Collect and protect property
- 3. Earmark property
- 4. Not commingle
- 5. Assert trust's rights

6. Keep good records
3. Segregate trust property from other property

D. Impartiality

4. Must treat current and remainder beneficiaries with equal loyalty
1. **Financial mishandling** – current beneficiaries prefer income, remainder beneficiaries prefer appreciation (growth)
2. Principal and income allocation - May reassign some of the return under the prudent investment act to ensure both sets of beneficiaries are treated fairly

E. To inform and account – notify beneficiaries of major investment changes, trust performance (at least annually)

F. Distributions – Duty to make distributions

G. Liability for breach

1. Standing: beneficiaries, settlor
 - a) Charitable: Attorney General, beneficiary, settlor
2. Removal as trustee
3. Trustee privately liable
 - a) Loss of trustee fees
 - b) Loss of profits (gains) – profits transferred to trust
 - c) Responsible for losses
 - (1) Damages
 - (a) Difference between market and sales price
 - (b) Appreciation
4. **Constructive trust**
 - a) Created to prevent unjust enrichment. Court orders party currently holding the property at issue to transfer the property to the party entitled to the property.

[CBX Feb 2002]

[CBX Feb 2008]

[CBX Feb 2010] Trustee invested all assets of the trust in commercial real estate, which yielded very high income, but suffered rapidly decreasing market value.

[CBX Feb 2012]

[CBX Jul 2014]

[CBX Feb 2015] [Tess had trust distributing income to grandchildren, then after death of last grandchild the trust assets were to go to the Zoo to care for its elephants.] In 2013, the court authorizes Greg to make a new will for Tess. Greg made a new will for Tess leaving Tess's entire estate to Susie and himself outright. Greg, without consulting Tess, then signed the will, in the presence of two disinterested witnesses who also signed the will.

[CBX Feb 2016] Sam has agreed to serve as trustee under the testamentary trust containing a house and a ranch. Sam then sells the house, at fair market price, to himself in his individual capacity, and invests all of the assets of the trust into his new business, Sam's Solar.

XVIII. Spendthrift Provisions

A. Purpose - If included in trust, it protects the beneficiary from his spendthrift ways. Creditors not allowed to reach assets of trust with spendthrift provisions

1. Exception
 - a) Child support
 - b) Spousal support
 - c) Taxes
 - d) Creditors providing necessities

XIX. Trust Modification and Termination

A. Modification or Termination allowed if:

1. Express terms of trust
2. Agreement of beneficiaries and trustee
3. Agreement of beneficiaries and settlor
 - a) Beneficiaries consent

Clafflin doctrine - If trust has unfulfilled material purpose, trustee may block termination (e.g, spendthrift clause)

B. Modification

1. Settlor's intent
2. Unforeseen change
3. Substantial impairment

[CBX Feb 2008] What if Sis is named trustee and without [settlor's] knowledge writes "This trust is revoked" across the trust and signing her name as trustee?

[CBX Feb 2012] Sam, a widower, set up a valid, revocable inter vivos trust, naming himself as trustee, and providing that upon his death or incapacity his cousin, Tara, should be successor trustee. He

directed the trustee to distribute the income from the trust annually, in equal shares, to each of his three children, A, B, and C. He specific that, at the death of the last of the three named children, the trust was to terminate, and the remaining assets were to be distributed to his then living descendants, by representation.

For three years after Sam's death, Tara administered the trust as trustee, Because A had very serious medical problems and could not work, and because B and C had sufficient assets of their own, Trustee distributed nearly all of the trust income to A and little to B or C.

Will B and C be successful in terminating the trust?

[CBX Feb 2016] Wendy, a widow, owned a house in the city and a ranch in the country. She created a valid inter vivos trust, naming herself and her daughter, Dot, as co-trustees, and providing that she had the power to revoke or amend the trust at any time in writing, by a document signed by her and delivered to her and Dot as co-trustees.

Years later, Wendy prepared a valid will in which she stated, "I hereby revoke the trust I previously established, and leave my house and my ranch to my son, Sam, as trustee, to be held in trust for the benefit of my brother, Bob. Wendy died. Following her death, Dot and Sam were surprised to find her will.

XX. Powers of Appointment

- A. General – person holding power may appoint to themselves, their estate, their creditors, or their estate’s creditors. Assets included in estate for estate tax purposes.
- B. Specific - person holding power may **not** appoint to themselves, their estate, their creditors, or their estate’s creditors. Assets are not included in estate for estate tax purposes.
- C. Exercised by will or inter vivos (as directed by appointment).