This outline was created for the February 2008 California bar exam. The law changes over time, so use with caution. If you would like an **updated** and editable version of this topic outline, go to http://www.barexammind.com/california-bar-exam-outlines/.

Wills and Trusts

Wills operate at the time of T's death, but are construed in light of the circumstances at time of execution.

I. Validity of Will
   a. Testamentary Capacity
      i. Will VOID unless
         1. T is of required age; and
         2. of sound mind
      ii. Age
         1. usually 18+
         2. some states lower if married or armed services
      iii. Sound mind
         1. Three part test:
            a. Did T know natural objects of T's bounty?
            b. Did T know the nature and extent of T's property?
            c. Did T understand the dispository scheme under T's will?
         2. Std is very low
            a. Proponent of lack of capacity must show a "significant impairment" in ability to understand and appreciate the consequences of his actions
         3. Will can be valid if written in "lucid interval"
   b. Property that may be disposed of by will:
      i. 1/2 interest in CP
      ii. 1/2 interest in quasi-CP
      iii. all SP
   c. Execution (formal will vs. holographic will)
      i. Will VOID unless complies with all required formalities
         1. formalities encompass the
            a. ritual function
            b. evidentiary function
            c. protective function
      ii. <u>Formal will</u>
         1. in writing
         2. signed by T
            a. 3rd party if request by T in T's presence
            b. signature anywhere on will
         3. properly witnessed
            a. joint presence of 2 witnesses
            b. each must either

            i. see T sign will; or
            ii. hear T acknowledge T's signature
                1. some states permit T acknowledging merely that the will itself is his
        c. Witnesses must sign the will
            i. Before T dies (no need for Ws to sign in each other's presence)
    4. witnesses must *understand* that the instrument is T's will
    5. Irrelevant
        a. Undated
        b. Witnesses don't read will
    6. Signature
        a. T and witnesses may use name or some "mark" so long as:
            i. They intent to authenticate the will; and
            ii. Complete the act of authentication
iii. <u>Holographic will</u>
    1. "material provisions" of will in T's handwriting
    2. signed by T with handwritten signature
    3. no witnesses needed
iv. Interlineations
    1. holographic will
        a. changes made by T after will completed *are* given effect
    2. formal will
        a. changes not given effect, and may work a revocation
    3. holographic codicil
        a. changes to attested will could be a valid holographic codicil!!
v. CA statutory will
    1. T must fill in the blanks and sign the will; and
    2. each witness must observe T's signing and sign *in the presence of* T
vi. Modern reforms
    1. some states have relaxed strict compliance with formalities and now only require *substantial compliance*
        a. grant "dispensing power" to courts to excuse harmless errors

d. Interested witness
    i. Def: witness who gets a *direct financial benefit* if will upheld
        1. not a problem if witness is supernumerary
    ii. approaches:
        1. CL: T's will is entirely VOID;
        2. Modern **purging statutes**:
            a. Devise to interested witness (unless 2 other non-interested witnesses) raises presumption of duress, undue influence, etc, and devise will be purged unless presumption rebutted,
            b. the rest of will valid; but

c. If interested witness is also an intestate heir, then only void as to the witness's *profit*

e. Testamentary Intent, undue influence, fraud

i. <u>Testamentary Intent</u>

1. T must have the *present* intent to make a *particular instrument* her will
2. look to language of the instrument
3. language can be voided if undue influence or fraud

ii. <u>Undue Influence</u>

1. "mere influence" is permissible and doesn't invalidate will
2. undue: destroys T's free will. 4 elements:
   a. a susceptible T;
   b. other person had opportunity to influence;
   c. the other person is *disposed* to influence; **and**
   d. the provisions of the will are unnatural
3. Evidentiary presumptions:
   a. Confidential relationship = presumed undue influence
   b. Active participation in making will = presumed UI
   c. Will provisions appear unnatural = presumed UI
   d. <u>Rebut UI presumption if T gets independent legal advice</u>
4. Statutory limits on transfer to drafter:
   a. CA holds invalid any provision making a donative transfer to:
      i. Drafter of will[1]
      ii. Person related to, living with, employed by drafter
      iii. Partner or shareholder of law firm in which drafter has an interest
      iv. Any person in fiduciary relationship with T who transcribed will
      v. Any person related to, living with, or employed by a person referred to in iv; or
      vi. A care custodian of a dependent adult
5. Effect of UI
   a. Voids only those parts of will affected by the UI
   b. If wrongdoer already has property, then holds it in *constructive trust*

iii. <u>Fraud</u>

1. 4 elements
   a. misrepresentation made to T;
   b. with intent to *deceive*;
   c. T is in fact deceived; AND
   d. Causation (T does what T otherwise would not have done)
2. Types:
   a. *Fraud in the execution* = T deceived as to nature/contents of document T is signing

[1] Unless drafter is related to T, lives with T, domestic partner of T, or if will is reviewed by an independent lawyer

b. *Fraud in the inducement* = T deceived as to some fact outside the will

3. Effect of fraud
    a. Voids only parts of will affected by fraud
        i. Typically the B who is guilty of the fraud
    b. *Constructive trust* is remedy

iv. <u>Mistake</u>
1. Mistake in execution
    a. If executes wrong doc, then not admissible to probate since intent lacking
    b. If mistake in inclusion of term in will, courts typically admit will without provision
2. Mistake in Inducement
    a. No relief unless mistake on face of will
    b. Exception: relief to pretermitted child if T mistakenly thought he was dead or unaware of birth

v. <u>Ambiguities</u>
1. extrinsic evidence admissible
2. CA rejects latent/patent ambiguity distinction

vi. General EXAM
1. where you have fraud or UI, state what part of will affected, and who takes instead.

II. Effect of Will
a. Identify property (nonprobate, testate, intestate) and devisees
i. EXAM analysis steps:
1. classify all property (probate vs. nonprobate)
2. determine which items devised by will
3. determine which items of probate property remain and *must pass* by intestacy
4. analyze devises:
    a. if identity unclear, court may admit extrinsic evidence to determine T's intent
        i. class gifts issue (when open; when closes)
    b. ask:
        i. is there any nonmarital, adopted, posthumous child?
        ii. Is any child pretermitted heir?
        iii. Can T's SS/SDP claim elective share?

b. Status of children (nonmarital, adopted, posthumous)
i. <u>Nonmarital</u>
1. CL: child gets nothing
2. Modern:
    a. All states permit inheritance from mother
    b. Can inherit from father if paternity proven:
        i. Father admits it
        ii. Successful paternity suit
        iii. Parents later married

ii. <u>Adopted children</u>
    1. CL: nothing; only birth relationship mattered
    2. Modern: adoptive relationship replaces birth
iii. <u>Posthumous children</u>
    1. CL & Modern: afterborn child rebuttably presumed child of dead T if born within 280-300 days after T's death

c. Pretermitted child
    i. RULE: parent is permitted to affirmatively disinherit his children
    ii. However, states have statutes to protect against *unintentional* disinheritance
    iii. CA: if decedent fails to provide for a child born/adopted after execution of all testamentary instruments, the child receives her intestate share of the property
        1. child is not pretermitted and takes nothing if:
            a. T's intent clear;
            b. T provided for child by transfer outside will or revocable trust and intent that this was enough; OR
            c. T devised *all or substantially all* of his estate to *other parent* of omitted child
    iv. Ask 4 questions:
        1. is child of T completely omitted from will?
        2. was child born before OR after will written?
        3. any evidence that T intended to omit child?
            a. Yes = gets nothing
            b. No = probably protected by pretermitted heir statute
        4. what share of T's estate does child get?
            a. Most states give child an intestate share, and other devises *abate* accordingly

d. Surviving spouse's elective share
    i. SS has been *omitted* or given *very little*
    ii. States protect SS either by community property or "elective share"
    iii. Elective Share (vary hugely by state statute)
        1. SS can either take under the will; or
        2. elect to take against the will
            a. if election, then other devises will abate
    iv. Say on EXAM:
        1. SS must elect against will in very short period after death;
        2. state law will specify SS fraction
        3. state law will specify whether fraction applies to nonprobate property as well as probate property
        4. SS elective share rights may be **waived** in advance (prenuptial or postnuptial agreement ← see CP outline)
    v. California
        1. T may require SS/SDP to give up her half of CP to get benefits under the will
        2. T may require SS/SDP to elect to take:

a. Either under the will or
b. Take the SS/SDP's 1/2 share in CP

3. Forced share in quasi-CP
    a. Statute protects spouses who move from common law state to CA
    b. If SS/SDP takes forced share, must renounce all benefits under the will
        i. This causes abatement of gifts
            1. either ordinary abatement; or
            2. pro-rata abatement
    c. SS/SDP gets **forced share of 1/2 quasi-CP**
        i. All personal property
        ii. All CA real property that would have been CP if T domiciled in CA when acquired
    d. If spouse or DP dies first, no rights in quasi-CP
4. Set aside inter vivos transfers
    a. SS/SDP can set aside Quasi-CP transfers and receive:
        i. 1/2 of transferred property; or
        ii. 1/2 proceeds from sale of property
    b. Can't set aside transfer to BFP

e. Codicil
    i. A written instrument; must meet all will formalities
    ii. Probated & read together with will
    iii. Legal effect is to **republish** underlying will as of the date of the codicil
f. Incorporation by reference
    i. Permitted where document clearly described; and
    ii. Document *existed* at time of execution of the will
g. Acts of independent legal significance
    i. The act or document must have *sufficient significance* apart from *its impact on the will*
        1. eg, "$1,000 to everyone ever employed by me"
            a. in CA, can occur before and after execution of will OR before or after T's death
h. Revocation
    i. May be implied by *operation of law* (see marriage and divorce below)
    ii. Intentional Revocation:
        1. Factors:
            a. Concurrent Intent[2] to revoke; AND
            b. Strictly complies with applicable state statutes
        2. Ways to revoke:
            a. by subsequent will
                i. express
                ii. implied by inconsistency
                1. totally inconsistent: entire will revoked

[2] If intent formed after destruction, then no revocation; if intent to revoke, and then wishes he hadn't, the will is NOT revived.

            2. partially incon: revoked only to extent of inconsistency
    b. by physical act
    c. by operation of law
3. <u>By subsequent will</u>
    a. Executed with all formalities;
    b. A valid codicil constitutes a will for revocation
    c. If subsequent instrument invalid for *any reason* (inc. fraud etc), there is no revocation
4. <u>By physical act</u>
    a. Must: perform physical act AND have intent to revoke
    b. Physical act:
        i. Mark across words or lines or will
        ii. Burning, tearing, obliteration
        iii. Performed on original (not copy) of will
        iv. May request 3d party to do in T's presence
    c. Partial revocation:
        i. Usually not permitted; original will remains
        ii. **Cancellation**
            1. strike through a single provision
            2. can't be used to *increase* a gift
            3. typically won't work; apply DRR to save devise
    d. Other instruments
        i. Destruction of one of two *executed* duplicate copies revokes the will
        ii. Physical destruction of codicil does NOT revoke will
        iii. Physical destruction of will revokes all codicils, *unless* T does NOT so intend
    e. **Lost will**
        i. Will is rebuttably presumed revoked by physical act if:
            1. was in T's possession prior to death; and
            2. cannot be found after death
5. <u>By operation of law</u>
    a. Subsequent marriage or domestic partner
        i. If excluded from will executed *prior* to new union, then SS/SDP may take:
            1. share of CP/quasi-CP *as well as*
            2. intestate share of decedent's estate[3]
        ii. EXCEPTIONS:
            1. no intestate share if T's intent was to exclude and is clear on face of will or revocable trust;

[3] Intestate share of SP can't exceed 1/2 value of decedent's SP

2. T provided for SS/SDP by transfer outside of will or revocable trust and intent is shown; or
3. SS/SDP made valid agreement waiving right to intestate share

b. Subsequent divorce or annulment of domestic partnership
   i. Unless will provides otherwise, any provision in will in favor of spouse/DP is revoked
   ii. NB: remarriage to former spouse, re-registration to former DP revives provisions
   iii. NB: legal separation does NOT work a revocation

i. Revival
   i. 4 methods for reviving a revoked will:
      1. reexecution
      2. republication by codicil
      3. uniform probate code (adopted by CA)
      4. dependent relative recovation (DRR)
         i. first 3 = will must be physically extant
   ii. <u>Reexecution</u>
      1. T has 2 witnesses sign original will and it becomes valid again
   iii. <u>Republication by codicil</u>
      1. codicil to earlier will republishes it on date codicil is executed
   iv. <u>UPC</u>
      1. T tears up second will, believing that this revives the first will that T never physically destroyed
         a. if extrinsic evidence shows T's intent to revive Will #1, then UPC applies to revive
      2. If 2d will revoked by execution of 3d will, then 1st will not revived unless 3d will states that terms of 1st will should govern
   v. <u>DRR</u>
      1. Available in all states. There are 3 requirements
         a. T's will has been revoked under state law;
         b. Revocation was induced by T's mistake; AND
         c. Revival of T's revoked will in is accordance with T's presumed "intent" (ie, T would prefer revival to dying intestate)
      2. DRR tends to arise in 2 situations where other disposition of property fails due to the mistake:
         a. Defective will #2
         b. Cross-out and substitution[4]
            i. State must recognize partial revocation by physical act before revival of cross-out possible
               1. if not recognized, simply read original text
      3. NB: if revocation of first will by subsequent instrument, then extrinsic evidence not admissible to show the mistake

[4] here, probably good to mention holographic codicil (NB: will be invalid unless signed by T!!)

            4. NB: if second instrument merely defectively executed, then there was no revocation and original will remains.

III. Events subsequent to will
    a. Satisfaction of devise
        i. 4 types of devises in will:
            1. specific
            2. general
            3. demonstrative (specific first; general to fully complete)
            4. residuary
        ii. Satisfaction applies to
            1. general OR demonstrative devises only
        iii. Presumptions:
            1. CL: lifetime transfer satisfied devise
            2. CA: lifetime transfer satisfies devise ONLY IF a contemporaneous writing evidences this intent
    b. Ademption by extinction
        i. Applies and devise fails where:
            1. will contains a specific devise; AND
            2. property devised no longer exists
            3. NB: California
                a. Ademption depends on the T's intent at the time he disposes of the item during his life
        ii. However
            1. if change *in form* (but not *in substance*) then no admeption
            2. nonademption statutes may apply:
                a. replacement property or cash value
                b. CA does not have such statutes
    c. Abatement
        i. Gifts reduced when estate is insufficient to pay all debts and legacies.
        ii. T may indicate order of abatement. If no indication, then abates:
            1. intestate property
            2. residuary gifts
            3. general gifts to non-relatives of T
            4. general gifts to T's relatives
            5. specific gifts to non-relatives of T
            6. specific gifts to T's relatives
    d. Increase in value of gifts
        i. Increase during T's life
            1. stock splits: is B entitled to additional shares?
                a. Traditional approach:
                    i. If specific devise: yes
                    ii. If general devise: no
                b. Modern Judicial approach:
                    i. B takes all, so long as proportional to amount of shares bequeathed in will
                c. UPC/California approach

i. If T *owned* the stock when will executed, B gets additional shares
ii. If T did NOT own the stock at time executed, then B gets only the specified # of shares

2. stock dividends
a. B takes if T owned shares of stock at time T executed will

ii. Increase after T's death
1. specific gifts: B gets right to all income earned
2. general: bears statutory interest beginning one year after T's death
3. residuary: no interest

e. Exoneration
i. CL: B receives personalty free of any lien, and residuary pays obligation
ii. CA: a specific devise of realty or personalty is devised *subject to* any lien existing on date of death, without right of exoneration, *regardless of* a general directive in instrument to pay debts [**!!!!**]

f. Death of devisee (including lapse)
i. CL: where devisee predeceased T, gift fails by lapse and gift goes to either residuary beneficiaries or intestate heirs
ii. Modern: <u>antilapse statutes</u>
1. is devisee in *category of persons* protected; AND
2. is devisee *survived by descendants*

iii. CA:
1. protected if devisee was
a. kindred of T; or
b. kindred of surviving, deceased, or former spouse or domestic partner of T

2. Issue of devisee take in his place

iv. <u>Anti-lapse only applicable where</u>
1. beneficiary alive when will executed
2. if B dies before execution of will, and T knows this, no anti-lapse protection (esp. with class gifts)

IV. Will substitutes

a. Deeds (Did the grantor create a *present interest?*)
i. Delivered to grantee
1. Effective if delivered during grantor's lifetime, even if grantor reserves a life estate
2. conditions:
a. oral conditions; void
b. written conditions, valid if:
i. grantee survives grantor
ii. deed is not effective until grantor's death
iii. deed is revocable by grantor

ii. Delivered to Escrow agent
1. valid if delivered with oral instructions to give to grantee at grantor's death
2. Exceptions:

a. If escrow is revocable, escrow fails
b. If directed to return deed if grantee dies first, escrow fails

V. Trusts

Intro: A trust is a fiduciary relationship with respect to specific property (res) wherein the trustee holds legal title to the property subject to enforceable equitable rights of the beneficiary. The creator of the trust is the settlor, who must have had the intent to create the trust. The trust must have a valid trust purpose. No consideration is required.

a. Elements
   i. Settlor
   ii. Manifestation of intent
      1. personal property trust: oral creation possible
      2. real property trust: SF requires a writing
         a. failure of writing: court may create *constructive trust*
      3. gratuitous promise does NOT create a trust
      4. precatory[5] language does NOT create a trust
      5. Intent must be manifested at the time settlor *owned* the property
         a. Though conduct of parties subsequent to conveyance may be evidence of earlier intent
   iii. Trustee
      1. must accept the job; or else court appoints another person
      2. MERGER
         a. If single individual is the **sole trustee** and the **sole beneficiary** then legal and equitable interests merge and trust terminates
         b. Will NOT occur if there is a co-trustee or a contingent remainder beneficiary
   iv. Trust property
      1. must have legal title to at least one piece of property
         a. property must *exist*: ie, a mere expectancy is insufficient
      2. can be anything: property right; contract right, etc
   v. Beneficiary
      1. must be a *definite beneficiary*: ie, someone who can enforce the trust terms, inc. corporation
         a. if B is a class, the class must be "reasonably definite"
      2. **resulting trust**: if all beneficiaries die out, then trust property returns to settlor or settlor's heirs
      3. *Honorary trust*
         a. Momument; grave care; animals
         b. May be permitted by case law or statute
            i. Trustee must be willing to carry out duties
            ii. Can't violate RAP
   vi. Lawful purpose

[5] e.g., I hope that you do this with my property

            1. and is not contrary to public policy
            2. can't be *criminal* or *tortious*
        vii. (if 3d party trustee, then one piece of property transferred to trusts ownership)
        viii. No consideration required
b. Creation of Express Trusts
    i. Inter vivos trusts
        1. Must be created by
            a. Conduct (delivery of property to trustee); or
            b. Words (person declaring himself trustee)
    ii. Testamentary Trusts
        1. All of the essential terms of the trust must be ascertained from:
            a. The will itself;
            b. From a writing incorporated by ref in will;
            c. From facts having ind legal significance; or
            d. From exercise of power of appointment created by the will
        2. Secret Trust
            a. Will makes absolute gift, but
            b. Was made in *reliance* on B's promise to hold property in trust,
            c. May prove this by extrinsic evidence
            d. If proved, a constructive trust imposed
        3. Semi-secret trust
            a. Will makes gift in trust, but fails to name beneficiary
            b. The gift FAILS, and
            c. Named trustee holds as resulting trust for T's heirs
c. Revocation of Trusts
    i. RULE: silent on revocability means it is irrevocable and unamendable
        1. some states have changed this by case law or statute
    ii. Procedure
        1. follow what trust says; or
        2. if trust silent, then by any manner, provided settlor's intent is clear
    iii. Modification/Termination of Trusts by B's
        1. all must consent;
        2. change cannot frustrate any material trust purpose
d. Spendthrift trust
    i. Used to
        1. prevent *beneficiaries* from voluntarily alienating their interests; and
        2. prevents *creditors* from reaching trust property
    ii. creditors vs:
        1. settlor: can reach whatever settlor entitled to as distributions
        2. beneficiary: can only reach property *after* it has been distributed
            a. EXCEPTION: dependents and necessaries creditors can normally reach B's assets
e. Charitable trust

i. Must be for a <u>charitable purpose</u>:
    1. good of the public as a whole; indefinite beneficiaries; and may be perpetual
        a. if a *specific* intent to benefit limited number of Bs, then not valid charitable trust, even if valid trust, and cy pres not applicable
    2. health, religion, education, govt aid, etc
ii. Law gives them favorable treatment:
    1. special tax treatment
    2. RAP inapplicable
    3. cy pres reformation
iii. Cy Pres
    1. court uses equitable powers to reform trust to "come as near as possible" to carrying out settlor's intent
    2. 3 requirements:
        a. trust is for charitable purpose;
        b. purpose has become impossible OR impracticable; AND
        c. reformation in accord with settlor's "presumed intent"
            i. court looks at the *effect of the gift* to determine

f. Trust distribution provisions
    i. Income
    ii. Principal
    iii. When does trust terminate
    iv. Who is remainder beneficiary
    v. EXAM
        1. discuss these and determine if objective (maintenance/support) or subjective (welfare) standard

g. Breach of fiduciary duty by trustee
    i. Standard of care:
        1. degree of care, skill, and caution that would be exercised by a reasonably prudent person in managing her own property
    ii. There are 8 duties:
        1. administer trust in accordance with terms
        2. Loyalty
            a. No self-dealing/dealing to relatives or COI
            b. Absolute liability; no good faith defense
        3. separate and earmark trust property – no commingling
        4. invest prudently
            a. Traditional Rule: diversify and avoid specualation
            b. Prudent Investor Rule: portfolio investing
        5. preserve and protect trust property
        6. account to trust beneficiaries
        7. defend trust from attack
        8. Not delegate trust duties
            a. Use reasonable care in hiring and supervising any agents
            b. Traditional Rule: no delegation of investment decisions

            c. Uniform Prudent Investor Act: may delegate investment decisions
    iii. Remedies for breach:
        1. recover money or property wrongfully paid out
            a. unless BFP takes property without notice of the trust
        2. recover any *profits* earned by trustee due to breach
        3. surcharge trustee personally for losses
        4. remove trustee from office

h. Investing trust property
    i. Governed by:
        1. uniform prudent investor act (UPIA); or
        2. statutory "legal lists"
    ii. UPIA
        1. must exercise reasonable care, skill, and caution
        2. prudence evaluated based on entire trust portfolio and overall investment strategy
            a. any investment permitted if prudent
            b. diversification is important
        3. compliance evaluated *at the time of the trustee's decision or action*
    iii. Statutory legal lists
        1. permissive: trustee may make investments outside list
        2. mandatory: trustee probably commits breach of fiduciary duty by investing outside of list

i. Trustee's Allocation power
    i. <u>UPIA</u>: If trust income (eg, interest, dividends) not sufficient to realize trust purposes, then trustee may decide to adjust between principal and income to some extent
    ii. Such decision should be made using a multi-factor test:
        1. nature, purpose, duration of trust
        2. intent of settlor
        3. circumstances of Bs; duty of fairness to Bs
        4. need for liquidity, etc
        5. does trust give trustee power to invade principal
        6. tax consequences

j. Trusts arising as a matter of law: resulting and constructive
    i. Resulting Trust
        1. involve reversionary interests and are based on presumed intent of settlor
        2. Three types
            a. <u>Purchase money resulting trusts</u>
                i. X (ie, the beneficiary) furnishes money for purchase of real or personal property, but,
                1. with X's consent, title is taken in name of Y alone
                ii. *Pro Rata Resulting trust*

1. where X only furnishes part of the consideration

iii. Exceptions:

1. no trust presumed where close personal relationship
2. no trust when title taken for illegal purpose
3. no resulting trust where title obtained wrongfully (ie, by fraud), but constructive trust possible

b. arising out of failure of express trust

c. arising from an incomplete disposition of trust assets

ii. Constructive Trust

1. a flexible equitable remedy used to prevent unjust enrichment
2. Used in various circumstances:

a. Theft or conversion

b. Fraud, duress, etc

c. Breach of fiduciary duty

d. Homicide

VI. Other issues

a. Contract to make/not to revoke a will

i. Can existence of contract be proved?

1. California requires some sort of writing
2. From 2001 on, proof of contract can only be established by:

a. provision in will states material terms of agreement;

b. will refers to agreement and it can be proved by extrinsic evidence;

c. separate writing signed by decedent evidences the contract; OR

d. CCE of agreement or promise between decedent and claimant

ii. If proved, law of K trumps law of wills

1. typical remedy is *constructive trust* to convey title to person who should have property under the contract

iii. Joint and Reciprocal wills

1. joint will admitted to probate on death of each T
2. any joint T can revoke will for himself, but not others.

a. May give rise to breach of K action

3. Oral contracts, void under SF, unless

a. Admission to probate on death of first party creates part performance; or

b. Estoppel if 2d T accepts benefits

4. NB: joint wills do not, in CA, create presumption that there is a contract not to revoke

b. Intestate succession

i. Community Property (CP)

1. decedent's share passes to SS or SDP (surviving domestic part)
2. decedent's share of quasi-CP also passes to SS or SDP

ii. Separate property:
1. SS/SDP
    a. Always gets a share
        i. If no surviving issue, parent, siblings, or issue of deceased siblings, then SS/SDP takes 100%
    b. If decedent has children, then 1/3 to 1/2
2. Decedent's issue
    a. If issue survive, then property passes *per capita*
    b. If issue survive and are of unequal degree of kinship, they take by *right of representation*
3. Order of taking:
    a. Issue
    b. Parents
    c. To issue of parents
    d. To decedent's grandparents or issue by representation
    e. To issue of predeceased spouse of domestic partner
    f. To decedent's next of kin
    g. To parents of predeceased spouse or domestic partner
    h. Escheats to state
    i. NB: property returns to heirs of predeceases spouse/dp if:
        i. Real property of predeceased, died not more than 15 years before intestate's death
        ii. Personal property over $10,000 of predeceased, if died not more than 5 years before intestate's death

iii. Additional rules
1. simultaneous death
    a. heir must survive by 120 hours, or gift fails
    b. if CCE can't establish who died first, then person assumed to have survived other person for distribution of the property of each
2. Disclaimer
    a. Passes as though party had predeceased decedent
    b. Disclaimer must be;
        i. In writing
        ii. Signed by disclaimant
        iii. ID the decedent
        iv. Describe interest being disclaimed
        v. State extent of disclaimer
    c. Must be made within a reasonable time
        i. 9 months after decedent's death OR interest becomes vested
3. Advance gifts against intestate share
    a. Advancement intent must be stated in a writing

c. RAP

i. If violation of RAP, what happens?
    1. CL: gift fails
    2. Modern:
        a. Wait and see
        b. Cy pres
        c. Uniform statutory RAP: wait and see for 90 years, then apply cy pres if devise failed

d. Inter vivos gift
    i. 3 requirements:
        1. donative intent;
        2. delivery to donee (manual, constructive, symbolic); AND
        3. acceptance by donee (presumed)

e. Advancement
    i. Where an **intestate decedant** has made lifetime transfer to one of his heirs
    ii. Modern: only reduces intestate share if evidence in a writing

f. Prohibited Beneficiaries
    i. Slayers
        1. Three CL views on a slayer's right to inherit from victim:
            a. Legal title to slayer outright
            b. Slayer may not inherit and profit from his wrong; or
            c. slayer inherits, but court imposes *constructive trust* to prevent unjust enrichment [CA applies this unless slayer statute applicable]
        2. CA slayer statute
            a. Felonious and intentional killer of decedent not entitled to any property or benefit under will, intestate succession or other mechanism
            b. Can't bring wrongful death action for decedent's death
        3. Joint Tenancy
            a. Killing works a severance
            b. Decedent's share stays with decedent
            c. Killer has no rights of survivorship
        4. Murder of Insured by B of policy
            a. Benefit passes as though killer *predeceased decedent*
        5. BFP
            a. May retain property purchased from killer
            b. Killer liable for amount of proceeds or value of property
    ii. Persons who abuse or neglect elder or dependent adults
        1. RULE: Any person who has committed physical abuse, neglect, or fiduciary abuse of an elder or dependent adult is prevented from receiving property from the victim's estate.
            a. Abuser is *deemed to have predeceased* decedent
    iii. Aliens
        1. no restrictions in CA

g. Duties of executor or administrator
    i. Executor: named in will or codicil

ii. Administrator: administers estate, but not named in will or codicil
iii. Is a *fiduciary* and has only those powers expressly conferred by will, statue, or court
iv. Has 5 duties:
    1. give notice to interested persons
    2. collect assets and file inventory
    3. settle claims against estate
    4. pay debts, taxes, expenses of administration
    5. distribute remaining assets as req'd by will, statute, or court

h. Will Contests
    i. Time
        1. in CA, may be contested 120 days after admission to probate
    ii. Only persons directly interested may contest will
        1. NB: neither pretermitted kids nor persons taking forced share can contest, since they take the same regardless
    iii. No-contest clause
        1. states that any contestant loses gifts under the will
        2. certain legal actions are never contests

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