Wills Trusts and Estates for Paralegals 1st edition Anderson Test Bank

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Syllabus for Use with Test Bank

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Chapter 3. Testamentary Capacity and Undue Influence
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Student project – Estate Administration Exercise (*available for download at companion website)*

Section 3 – Trusts

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Student project – Trust Administration Exercise (*available for download at companion website)*

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Final Exam

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Chapter 1 – Introduction and History of Estate Planning

True or False:

1. T F It is legal to disinherit your spouse in every state.

2. T F Tenants by the entirety is available to all purchasers.

3. T F Community property laws apply to every state.

4. T F The law of estates is state specific law.

5. T F Beneficiary refers to the person who is receiving the benefits (or proceeds) of an estate, retirement plan, annuity, trust, or life insurance policy.

6. T F Joint tenancy cannot include a right of survivorship.

7. T F The blood relationship of the heirs is called the degree of consanguinity.

8. T F Fee simple ownership is considered to be the highest, or most complete, form of ownership.

9. T F A joint account designation that is done for the elderly person's convenience is called Totten Trust

10. T F Assets that pass by operation of law are non-probate assets.

Fill in the Blank:

11. _____is a general term that begins with having a last will and testament in order to distribute possessions at death.

12. A legal document that establishes a set of rules for the use of funds that are held for another person or group of people is called a _____.

13. A last will and testament appoints an executor, or personal representative, who will be in charge of the estate.

14. An estate plan consists of a _____, a _____ and some type of _____.

15. _____refers to the place in which a person resides, pays taxes, has a driver's license, etc.

16. When a person dies without having written a will, the person is said to have died _____.

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17. A _____ is a male who has written a will; a _____ is a female who has written a will.

Multiple Choice:

18. Which of the following assets usually does not have a beneficiary designation?

a. real property

b. life insurance

c. IRA

d. investment account

19. The portion of the estate that goes to the surviving spouse is known as the

a. marital share

b. statutory share

c. elective share

d. all of the above

20. The agreement to keep property separate after marriage is called a:

a. community property agreement

b. prenuptial agreement

c. Totten trust agreement

d. retainer agreement

21. Which of the following is not a form of ownership:

a. joint tenancy

b. tenants in common

c. community tenants

d. tenants by the entirety

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Short Answer:

22. provide an example for each

- ancestors, or ascendants
- descendants
- collateral

23. Describe the four ways in which assets can pass to a beneficiary at death.

24. Identify whether the asset is likely to be in the probate estate or the nonprobate estate:

- House owned as tenants in common
- Bank account in decedent's name
- IRA account with beneficiary designation
- Life insurance
- Decedent's car
- Investment property

25. Explain what the initials JTWROS stand for and how it affects property owned by a decedent

26. What are the four unities of property ownership?

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Answers - Chapter 1 – Introduction and History of Estate Planning

True or False:

1. F - It is not legal to disinherit your spouse.

2. F - Tenants by the entirety is available only to husband and wife

3. F - Community property laws only apply to states that have adopted those laws.

4. T - The law of estates is state specific law.

5. T - Beneficiary refers to the person who is receiving the benefits (or proceeds) of an estate, retirement plan, annuity, trust, or life insurance policy.

6. F - Joint tenancy can include a right of survivorship.

7. T - The blood relationship of the heirs is called the degree of consanguinity.

8. T- Fee simple ownership is considered to be the highest, or most complete, form of ownership.

9. F - A joint account designation that is done for the elderly person's convenience is called an account of convenience.

10. T-Assets that pass by operation of law are non-probate assets

Fill in the Blank:

11. Estate planning is a general term that begins with having a last will and testament in order to distribute possessions at death.

12. A legal document that establishes a set of rules for the use of funds that are held for another person or group of people is called a trust.

13. A last will and testament appoints an executor, or personal representative, who will be in charge of the estate.

14. An estate plan consists of a last will and testament, a power of attorney and some type of medical directive.

15. Domicile refers to the place in which a person resides, pays taxes, has a driver's license, etc.

16. When a person dies without having written a will, the person is said to

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have died intestate.

17. A testator is a male who has written a will; a testatrix is a female who has written a will.

Multiple Choice:

18. Which of the following assets usually does not have a beneficiary designation?

a. real property

19. The portion of the estate that goes to the surviving spouse is known as the

d. all of the above

20. The agreement to keep property separate after marriage is called a:

b. prenuptial agreement

21. Which of the following is not a form of ownership:

c. community tenants

Short Answer:

21. provide an example for each

- ancestors, or ascendants - a parent or grandparent
- descendants - child or grandchild
- collateral relatives – cousin, sibling

22. Describe the four ways in which assets can pass to a beneficiary at death.

1. Last Will and Testament: If the person who has died has a last will and testament, the will directs who gets what assets.

2. Intestate: following the laws of intestate succession in the state in which the decedent lived.

3. Form of Ownership: The person's assets can be jointly owned in a manner that allows the assets to pass to the joint owner.

4. Beneficiary Designation: Certain assets such as an investment account or annuity can include language that designates who receives the asset after the owner dies.

23. Identify whether the asset is likely to be in the probate estate or the non-

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probate estate:

- House owned as tenants in common – non-probate
- Bank account in decedent's name - probate
- IRA account with beneficiary designation - non-probate
- Life insurance - non-probate
- Decedent's car- probate
- Investment property - probate

24. Explain what the initials JTWROS stand for and how it affects property owned by a decedent

Joint tenancy with right of survivorship – property owned by the decedent as JTWROS in another person is a non-probate asset that passes by operation of law.

25. What are the four unities of property ownership?

Joint tenants must acquire their ownership with the four unities: time, title, interest, and possession.
(1) they must acquire the property at the same time
(2) they must have the same title to the property
(3) they must own an equal share of the property
(4) they must have an equal right to possess the whole property, meaning that no one joint tenant is considered an owner of any particular portion of the property.

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Chapter 2 – What is a Last Will and Testament

True or False:

1. T F The demonstrative bequests are the last bequests paid.

2. T F The testator must be a competent adult to make a valid will.

3. T F The term heir is another name for a beneficiary.

4. T F The capacity to draft a will is the highest form of capacity needed to execute a legal document.

5. T F There is no problem with a beneficiary of an estate acting as a witness to the testator's signing of the will.

6. T F A bequest is a distribution of personal property in a will.

7. T F If a state has adopted an anti-lapse statute, the estate will be subject to estate taxes.

8. T F The legal definition of capacity is the same in every state.

9. T F An adult is someone who has reached the age of majority, usually age 18 or older.

10. T F A will must be executed, or signed, by the testator and the witnesses.

Fill in the Blank:

11. _____is defined in old case law as knowing the "nature of your bounty and the objects of your affection.

12. A will that is written in the testatrix's own handwriting is known as a _____ will.

13. A _____will is a will that is dictated to another person in the presence of a witness.

14. A _____ is a distribution of personal property in a will

15. A _____ occurs when the beneficiary dies or predeceases the testator.

16. A distribution of real property is called a_____.

17. An _____is one who stands to benefit from the will.

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18. A person who dies with a will is said to have died _____, and a person who dies without a will is said to have died _____.

19. The court proceeding by which the validity and legality of the will are proven is called _____.

Multiple Choice:

20. A person who receives real property through a will is also called a

    a. legatee

    b. devisee

    c. issue

    d. residuary

21. Issue includes which of the following:

    a. children

    b. grandchildren

    c. great-grandchildren

    d. all of the above

22. When a residuary bequest lapses, the property passes according to

    a. intestacy statutes

    b. residuary statutes

    c. anti-lapse statutes

    d. Uniform Probate Code

Short Answer:

23. Describe each of the four types of testamentary bequests: specific, demonstrative, general, and residuary.

24. What are some of the ethical considerations that arise in preparing a will?

25. Describe the difference between a specific bequest written as an exact dollar amount and one written as a percentage.

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Answers - Chapter 2 – What is a Last Will and Testament

True or False:

1. F- The demonstrative bequests are not the last bequests paid.

2. T - The testator must be a competent adult to make a valid will.

3. T - The term heir is another name for a beneficiary.

4. F - The capacity to draft a will is the lowest form of capacity needed to execute a legal document.

5. F - There is a problem with a beneficiary of an estate acting as a witness to the testator's signing of the will.

6. T - A bequest is a distribution of personal property in a will.

7. F-If a state has adopted an antilapse statute, it has nothing to do with estate taxes.

8. F - The legal definition of capacity is different in every state.

9. T - An adult is someone who has reached the age of majority, usually age 18 or older.

10. T - A will must be executed, or signed, by the testator and the witnesses.

Fill in the Blank:

11. Testamentary capacity is defined in old case law as knowing the ‘‘nature of your bounty and the objects of your affection.

12. A will that is written in the testatrix's own handwriting is known as a holographic will.

13. A nuncupative will is a will that is dictated to another person in the presence of a witness

14. A bequest is a distribution of personal property in a will

15. A lapse of a bequest occurs when the beneficiary dies or predeceases the testator.

16. A distribution of real property is called a devise.

17. An interested party is one who stands to benefit from the will.

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18. A person who dies with a will is said to have died testate, and a person who dies without a will is said to have died intestate.

19. The court proceeding by which the validity and legality of the will are proven is called probate.

Multiple Choice:

20. A person who receives real property through a will is also called a

    a. legatee

21. Issue includes which of the following:

    d. all of the above

22. When a residuary bequest lapses, the property passes according to

    a. intestacy statutes

Short Answer:

23. Describe each of the four types of testamentary bequests: specific, demonstrative, general, and residuary.

A specific bequest is a specific item, or amount of money, that is given to a single beneficiary. A demonstrative bequest is a gift of a certain amount of property from a specific source. A general bequest is a gift of property payable from any asset in the testator's estate. A residuary bequest distribute the money and assets remaining in the residuary estate, which is the amount remaining after payment of estate expenses, taxes, and the specific, demonstrative, and general bequests, if any.

24. What are some of the ethical considerations that arise in preparing a will?

Does the person have capacity? The attorney will have to determine whether or not the person has sufficient capacity to form an attorney-client relationship.

Who is the client? If the attorney finds that the client does have sufficient capacity, that person will be the client. If the attorney feels the person does not have sufficient capacity, the person cannot be the client, and then other options such as a guardianship will have to be discussed, and other family members may become the client.

25. Describe the difference between a specific bequest written as an exact dollar amount and one written as a percentage.

A specific bequest can give an exact dollar amount. For example - I bequest the

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sum of $1,000 to the American Cancer Society. The specific bequest can provide for a percentage distribution from the estate. For example - I bequest an amount equal to 10% of my total estate to the American Cancer Society.

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Chapter 3 – Testamentary Capacity

True or False:

1. T F A diagnosis, such as Alzheimer's, is positive proof of lack of capacity.

2. T F The party alleging undue influence bears the burden of proving that claim.

3. T F An attorney should always suggest that he or she serve as a client's executor

4. T F Lack of testamentary capacity and undue influence are claims that arise after the testator has passed away.

5. T F The date of the evidence of lack of testamentary capacity is as of the date of death.

6. T F Case law and statutory law are the same.

7. T F Clear and convincing evidence is a midlevel standard requiring the party to prove that the allegations are more probable to be true than not.

8. T F Undue influence occurs because the testator is in a vulnerable condition.

9. T F Having a lucid moment means that a testator lacks capacity.

10. T F Case law changes and develops with each case heard by the courts.

Fill in the Blank:

11. _____ is found in the state statutes that have been adopted by the legislature and codified, or arranged in a code

12. The set of requirements that a party must meet to prove the case is called the _____.

13. The highest level of proof requiring the trier of fact has no doubt as to the guilt of the party, the standard most often used in criminal matters is called _____.

14. If the testator is aware of the assets that comprise the estate, to whom he or she wants those assets to go, and how the estate-planning documents

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accomplish the desired distribution, the testator has _____.

15. _____ is a legal claim challenging the validity of a last will and testament.

16. An attorney-client relationship is a _____ relationship.

17. A _____exists where one person is in a position to exercise dominant influence over another.

Multiple Choice:

18. Put the levels of burden of proof in order from lowest to highest

1. clear and convincing evidence
2. beyond a reasonable doubt
3. preponderance of the evidence

a. 1, 2, 3

b. 2, 3, 1

c. 3, 2, 1

d. 3, 1, 2

19. What factors can cause a switch in which party bears the burden of proof in an undue influence claim?

a. Filing a caveat

b. testamentary capacity

c. suspicious circumstances

d. confidential relationship

20. The document filed with a court to challenge a will alleging the testator lacked capacity or was subject to undue influence is called:

a. caveat

b. confidential

c. capacity

d. complaint

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Short Answer:

21. What are three of the elements needed to prove suspicious circumstances?

22. What are questions that can be asked to determine if a client has capacity?

23. Explain why lack of testamentary capacity and undue influence are often both alleged in the challenge of a will.

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Answers - Chapter 3 – Testamentary Capacity

True or False:

1. F - A diagnosis, such as Alzheimer's, is not positive proof of lack of capacity.

2. T - The party alleging undue influence bears the burden of proving that claim.

3. F - An attorney should never suggest that he or she serve as a client's executor

4. T - Lack of testamentary capacity and undue influence are claims that arise after the testator has passed away.

5. F- The date of the evidence of lack of testamentary capacity is as of the date of the testator signed the will no the date of death.

6. F - Case law and statutory law are not the same.

7. T - Clear and convincing evidence is a midlevel standard requiring the party to prove that the allegations are more probable to be true than not.

8. T - Undue influence occurs because the testator is in a vulnerable condition.

9. F - Having a lucid moment means that a testator has capacity during that moment.

10. T - Case law changes and develops with each case heard by the courts.

Fill in the Blank:

11. Statutory law is found in the state statutes that have been adopted by the legislature and codified, or arranged in a code

12. The set of requirements that a party must meet to prove the case is called the burden of proof.

13. The highest level of proof requiring the trier of fact has no doubt as to the guilt of the party, the standard most often used in criminal matters is called beyond a reasonable doubt.

14. If the testator is aware of the assets that comprise the estate, to whom he or she wants those assets to go, and how the estate-planning documents

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accomplish the desired distribution, the testator has testamentary capacity

15. Undue influence is a legal claim challenging the validity of a last will and testament.

16. An attorney-client relationship is a confidential relationship.

17. A confidential relationship exists where one person is in a position to exercise dominant influence over another.

Multiple Choice:

18. Put the levels of burden of proof in order from lowest to highest

1. clear and convincing evidence
2. beyond a reasonable doubt
3. preponderance of the evidence

d. 3, 1, 2

19. What factors can cause a switch in which party bears the burden of proof in an undue influence claim?

c. suspicious circumstances

20. The document filed with a court to challenge a will alleging the testator

d. complaint

Short Answer:

21. What are three of the elements needed to prove suspicious circumstances?

Suspicious circumstances include (1) participation by the donee in the procurement of a gift; (2) lack of independent and disinterested advice to the donor; (3) secrecy and haste in the transfer or gift; (4) change in the donor's attitude toward others; (5) change in the donor's plan of disposing of property; (6) an unjust and unnatural gift; and (7) the donor's susceptibility to influence

22. What are questions that can be asked to determine if a client has capacity?

What can the client report about personal history
What can client report about current history?
What does the client know about personal finances
What can client report about current events?
Does client know today's date?

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Does client know where he or she is at the moment?
Can client recall an address after three minutes?
Can client read a sentence and repeat the content?

23. Explain why lack of testamentary capacity and undue influence are often both alleged in the challenge of a will.

A testator that lacks testamentary capacity will often be subject to undue influence because the testator is in a vulnerable condition, is dependent on another person for care, or is otherwise unable to resist the pressure to change the will.

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