

Delaware Wills and Trusts Practice Test (Sample)

Study Guide



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SAMPLE

Questions

- 1. In trust law, what does a breach of trust generally indicate?**
 - A. Trustee negligence or misconduct**
 - B. Beneficiary misconduct**
 - C. Improper reporting**
 - D. Trust depletion**
- 2. How long do creditors have from the date of death to file a claim against the estate?**
 - A. 6 months**
 - B. 8 months**
 - C. 1 year**
 - D. 2 years**
- 3. How soon must a personal representative file an inventory of all estate assets after being granted letters?**
 - A. 1 month**
 - B. 3 months**
 - C. 6 months**
 - D. 1 year**
- 4. Which element is NOT typically required for the establishment of an express trust?**
 - A. Formalities**
 - B. Disinterested witnesses**
 - C. Beneficiaries**
 - D. Trustee**
- 5. What must a trustee avoid to fulfill their duty of loyalty?**
 - A. Open communication with beneficiaries**
 - B. Conflicts of interest**
 - C. Minimizing expenses related to trust management**
 - D. Involvement in the management of the trust's assets**

- 6. In Delaware, who generally inherits a deceased person's estate if there is no will?**
- A. The state government**
 - B. The deceased's parents**
 - C. The deceased's children**
 - D. The deceased's siblings and other relatives**
- 7. What authority does a probate court have in Delaware?**
- A. To create trusts on behalf of beneficiaries**
 - B. To oversee the administration of estates and ensure the validity of wills**
 - C. To validate oral wills**
 - D. To distribute assets directly to beneficiaries**
- 8. When there is no surviving issue but at least one parent is alive, what does the spouse take at intestate?**
- A. All real and personal property**
 - B. \$50,000 and a life estate in real property**
 - C. Half of all property and debts**
 - D. Nothing, everything goes to the parents**
- 9. What are the two statutory methods in Delaware to contest or request a review of a will?**
- A. Caveat and right of review**
 - B. Caveat and will contest**
 - C. Right of review and objection**
 - D. Challenge and opposition**
- 10. What is meant by "per stirpes" in intestate succession?**
- A. Equal division among heirs without regard to relationship**
 - B. Distribution based on the deceased's wishes documented in a will**
 - C. Division of assets among relatives based on their relation to the decedent**
 - D. Mandatory distribution to charities before family members**

Answers

SAMPLE

- 1. A**
- 2. B**
- 3. B**
- 4. B**
- 5. B**
- 6. C**
- 7. B**
- 8. B**
- 9. A**
- 10. C**

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Explanations

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1. In trust law, what does a breach of trust generally indicate?

A. Trustee negligence or misconduct

B. Beneficiary misconduct

C. Improper reporting

D. Trust depletion

A breach of trust typically indicates that the trustee has failed to adhere to their obligations and duties as outlined in the trust document or under applicable law. This can involve a range of actions, such as negligence or misconduct, which negatively impact the beneficiaries or the proper administration of the trust. Trust law holds trustees to a fiduciary standard, meaning they are expected to act in the best interests of the beneficiaries and manage the trust assets responsibly. When a trustee demonstrates negligence—such as failing to invest trust assets prudently or mismanaging funds—or engages in misconduct—such as self-dealing or failing to follow the explicit terms of the trust—it constitutes a breach. This breach could lead to legal actions by beneficiaries seeking to hold the trustee accountable for any losses incurred due to their actions. In contrast, the other options—beneficiary misconduct, improper reporting, and trust depletion—do not reflect the primary responsibility placed on trustees under trust law. Breach of trust is specifically linked to the trustee's failings rather than the actions of beneficiaries or issues related to administration that do not directly involve negligence or misconduct by the trustee.

2. How long do creditors have from the date of death to file a claim against the estate?

A. 6 months

B. 8 months

C. 1 year

D. 2 years

In Delaware, creditors have an important timeframe within which they must file their claims against a deceased person's estate. This period is established to ensure that debts are settled before the distribution of the estate's assets to the beneficiaries. The correct timeframe is 8 months from the date of death. This 8-month window is significant for both creditors and executors. Creditors need to be aware of this deadline to assert their claims effectively, while executors must manage the estate's administration and settle any debts within this timeframe before distributing assets to beneficiaries. The law aims to provide a clear structure for resolving the financial affairs of the deceased and protecting the interests of all parties involved. Understanding this period also underscores the importance of timely actions in the estate administration process, ensuring that all claims are addressed without unnecessary delays.

3. How soon must a personal representative file an inventory of all estate assets after being granted letters?

- A. 1 month
- B. 3 months**
- C. 6 months
- D. 1 year

The requirement for a personal representative to file an inventory of all estate assets is set forth in Delaware law, which stipulates that this inventory must be submitted within three months of the issuance of letters of administration or letters testamentary. This timeline is designed to ensure that beneficiaries and the court have a clear understanding of the estate's assets and liabilities in a timely manner, allowing for efficient management and distribution. The three-month period allows the personal representative sufficient time to gather and assess all assets within the estate, including real property, financial accounts, and personal property, prior to reporting to the relevant parties. This structure helps maintain transparency and provides a framework for handling the estate in accordance with the decedent's wishes and Delaware probate laws.

4. Which element is NOT typically required for the establishment of an express trust?

- A. Formalities
- B. Disinterested witnesses**
- C. Beneficiaries
- D. Trustee

An express trust is a legally recognized arrangement in which a trustor intentionally creates a trust with specific terms and designates the relevant parties involved. The requirement for formalities often includes proper documentation and adherence to legal standards to ensure the trust's validity, as recognized by Delaware law. A trustee is also essential, as this individual or entity manages the trust property and carries out the trust's terms. Beneficiaries are crucial as they are the individuals or entities that hold an interest in the trust and will benefit from it in some way. In contrast, while having disinterested witnesses can be a good practice to strengthen the validity of the trust and to help avoid future disputes, it is not a universally required element for the establishment of an express trust. Courts may not invalidate an express trust solely on the lack of disinterested witnesses, as long as the other key elements are properly established and the intent of the trustor is clear. Therefore, the absence of this requirement distinguishes it from the other critical components necessary for forming a valid express trust.

5. What must a trustee avoid to fulfill their duty of loyalty?

- A. Open communication with beneficiaries**
- B. Conflicts of interest**
- C. Minimizing expenses related to trust management**
- D. Involvement in the management of the trust's assets**

A trustee's duty of loyalty is a fundamental principle in trust law, requiring the trustee to act in the best interests of the beneficiaries without allowing personal interests to interfere. To fulfill this duty, it is critical for a trustee to avoid conflicts of interest. When a trustee has a conflict of interest, they may be tempted to make decisions that benefit themselves rather than the beneficiaries. This could undermine the beneficiaries' trust and the integrity of the trust itself. A trustee is expected to make decisions impartially and solely based on what is best for the beneficiaries. Avoiding conflicts of interest ensures that the trustee's actions are transparent, fair, and aligned with the goals of the trust. This fosters trust among beneficiaries and maintains the legal and ethical standards expected of a trustee. In contrast, open communication with beneficiaries, minimizing expenses, and being involved in asset management are all important aspects of responsible trust administration, provided they are handled appropriately and do not lead to conflicts of interest.

6. In Delaware, who generally inherits a deceased person's estate if there is no will?

- A. The state government**
- B. The deceased's parents**
- C. The deceased's children**
- D. The deceased's siblings and other relatives**

In Delaware, when a person passes away without a will, the distribution of their estate is governed by the state's intestacy laws. According to these laws, the first tier of inheritance typically falls to the deceased's children. This means that if the deceased has surviving children, they are the primary beneficiaries and will inherit the estate. Delaware's intestate succession rules prioritize children over other relatives, which reflects the legal principle that a person's direct descendants are to be supported and acknowledged first in the absence of a will. If there are no surviving children, the estate would then flow to the deceased's parents or siblings, depending on the specific family situation. In summary, because children's inheritance rights are prioritized under Delaware law, the correct answer highlights this critical aspect of intestate succession in the state.

7. What authority does a probate court have in Delaware?

- A. To create trusts on behalf of beneficiaries**
- B. To oversee the administration of estates and ensure the validity of wills**
- C. To validate oral wills**
- D. To distribute assets directly to beneficiaries**

A probate court in Delaware primarily oversees the administration of estates and ensures the validity of wills. This means that the court is responsible for validating the will, confirming that it meets all legal requirements, and managing the process of distributing the deceased's assets according to the terms outlined in the will, or according to the laws of intestacy if no valid will exists. The role of the probate court includes appointing personal representatives or executors, overseeing the payment of debts and taxes owed by the estate, and ensuring that the assets are properly distributed to rightful heirs or beneficiaries. The authority to create trusts or validate oral wills is typically outside the jurisdiction of probate courts, since trusts are usually established through separate legal documents and oral wills may not always be recognized in Delaware. Additionally, while the probate court facilitates the distribution of assets, it does not distribute assets directly; rather, it oversees the executor or administrator who handles these tasks in accordance with the court's directives and the probate process.

8. When there is no surviving issue but at least one parent is alive, what does the spouse take at intestate?

- A. All real and personal property**
- B. \$50,000 and a life estate in real property**
- C. Half of all property and debts**
- D. Nothing, everything goes to the parents**

When a person dies intestate (without a will) in Delaware and there are no surviving children (issue) but at least one parent is alive, the distribution of the estate to a surviving spouse is clearly defined. In this situation, the spouse is entitled to a specific amount of the estate, which includes a monetary amount plus a life estate in the real property. Specifically, the spouse receives \$50,000 in addition to a life estate in any real property. This arrangement means that the spouse has the right to live in and use the real property for their lifetime, but does not own it outright in a manner that allows for transfer or sale. After the spouse's lifetime, the property would then pass according to the laws governing intestate succession, often reverting to the deceased's family or heirs. The other options do not align with Delaware's intestacy laws in this scenario. For instance, taking all real and personal property would overlook the need to acknowledge the deceased's parents as potential heirs. Similarly, receiving half of all property and debts misrepresents the specific entitlement spelled out in Delaware's intestate succession rules. Lastly, the notion of the spouse getting nothing contradicts the established rights afforded to a surviving spouse in cases where parents are still

9. What are the two statutory methods in Delaware to contest or request a review of a will?

- A. Caveat and right of review**
- B. Caveat and will contest**
- C. Right of review and objection**
- D. Challenge and opposition**

The accurate methods provided in the correct answer refer to the statutory avenues available in Delaware for individuals who wish to contest or seek a review of a will. The first method, known as a "caveat," is a formal legal objection to the probate of a will. It essentially serves as a notice to the court that someone believes the will should not be admitted to probate due to reasons such as lack of testamentary capacity, undue influence, or failure to comply with formalities in execution. The second method, referred to in this context as the "right of review," involves formally seeking the court's examination of a will after it has been probated. This process allows interested parties to request that the court re-evaluate the validity of the will or the actions taken during the probate process. Understanding these two methods is essential for those involved in estate planning and probate law, particularly in Delaware, where the legal processes and terminologies are specific and governed by state statutes. The distinction and recognition of these mechanisms reflect the options provided to individuals when navigating disputes related to wills, ensuring that there are structured legal pathways available for such challenges.

10. What is meant by "per stirpes" in intestate succession?

- A. Equal division among heirs without regard to relationship**
- B. Distribution based on the deceased's wishes documented in a will**
- C. Division of assets among relatives based on their relation to the decedent**
- D. Mandatory distribution to charities before family members**

In the context of intestate succession, "per stirpes" refers to a method of distributing a deceased person's estate such that assets are divided among the deceased's descendants based on their lineage. This term translates to "by branches," indicating that if a beneficiary (for example, a child) is not alive at the time of inheritance, their share will be passed down to that child's descendants (such as grandchildren), preserving the equality of distribution among branches of the family tree. Using this method ensures that each branch of the family receives an equal share of the inheritance. For instance, if a person had three children and one of those children predeceased them, the assets would be divided into three equal parts, with the share of the deceased child passing to their own children (if they exist). This approach recognizes the importance of familial lines and aims to keep the inheritance within those lines, fostering a sense of equity among relatives. Other options do not accurately describe the concept of "per stirpes." Equal division without regard for relationship does not consider familial connections, while distribution based on a will represents testate rather than intestate succession. Mandatory distribution to charities does not relate to family inheritance, which is the focus of "per stirpes." The correct understanding of