

Wills and Trusts Bar Practice Exam (Sample)

Study Guide



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SAMPLE

Questions

- 1. What is a requirement for the anti-lapse statute to apply?**
 - A. The deceased beneficiary must be a sibling of the testator**
 - B. The beneficiary must have no living descendants**
 - C. The deceased beneficiary must be the testator's grandchild or descendant**
 - D. The deceased beneficiary must have recently received a gift**
- 2. What is the primary function of probate?**
 - A. To distribute non-probate assets**
 - B. To validate the decedent's last will and testament**
 - C. To collect debts owed to the decedent**
 - D. To create a trust for minor beneficiaries**
- 3. Which of the following properties does not pass through probate?**
 - A. Real estate owned by the decedent**
 - B. Jointly held bank accounts**
 - C. Personal property listed in the will**
 - D. Debts owed to the decedent**
- 4. If a decedent is not survived by parents, what is the next preference for distribution?**
 - A. To grandparents**
 - B. To siblings**
 - C. To descendants of parents**
 - D. To the state**
- 5. What is meant by "testamentary capacity"?**
 - A. The ability to challenge a will's validity**
 - B. The legal ability of a testator to create a valid will**
 - C. The requirement for witnesses in will creation**
 - D. The need for notarization in will execution**

- 6. Which entities can serve as trustees of a trust?**
- A. Any individual over age 18**
 - B. Only banks and trust companies with relevant charters**
 - C. Any family member of the settlor**
 - D. Only legal professionals**
- 7. What is the rule against perpetuities?**
- A. A legal rule that allows for the indefinite holding of property by heirs.**
 - B. A legal rule that limits the duration of certain types of trusts and property interests.**
 - C. A guideline determining how long a will can remain valid.**
 - D. A requirement for all beneficiaries to be of legal age.**
- 8. Which of the following statements is true regarding revocable trusts?**
- A. They are always irrevocable after the settlor's death**
 - B. They can be modified or revoked by the settlor**
 - C. They never allow for any distributions**
 - D. They cannot hold any value**
- 9. What is a tangible personal property memorandum under the UPC?**
- A. A document that lists all real estate properties**
 - B. A list for distributing tangible personal property not covered by the will**
 - C. A formal contract detailing the distribution of assets**
 - D. A list prohibiting the distribution of personal assets**
- 10. What presumption arises when a will last seen with the testator is not found after death?**
- A. The will was gifted to another party**
 - B. The testator intended to revoke the will by physical act**
 - C. The will was lost in transit**
 - D. The testator had created an oral will**

Answers

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

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Explanations

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1. What is a requirement for the anti-lapse statute to apply?

- A. The deceased beneficiary must be a sibling of the testator**
- B. The beneficiary must have no living descendants**
- C. The deceased beneficiary must be the testator's grandchild or descendant**
- D. The deceased beneficiary must have recently received a gift**

The correct answer highlights a key aspect of the anti-lapse statute, which is designed to prevent a will from failing when a beneficiary dies before the testator. The anti-lapse statute typically applies when a deceased beneficiary is a close relative of the testator, such as a grandchild or a descendant of the testator. This ensures that the intended gift does not go to the estate but instead passes to the descendant, reflecting the testator's likely intent to benefit family members even if one dies before them. The statute's rationale is rooted in the family connection and the presumption that the testator would have wanted the gift to pass to the family line rather than revert to the estate. This focus on grandchild or descendant status aligns with most jurisdictions' interpretations of the anti-lapse statute, further solidifying the importance of family ties in bequests. In light of the other options, the requirement is not strictly that the deceased beneficiary be a sibling of the testator, nor does it depend on the beneficiary having no living descendants. Additionally, the status of having recently received a gift does not influence the applicability of the anti-lapse statute. The focus is firmly on the family connection, particularly regarding descendants, which is why the answer emphasizing the deceased

2. What is the primary function of probate?

- A. To distribute non-probate assets**
- B. To validate the decedent's last will and testament**
- C. To collect debts owed to the decedent**
- D. To create a trust for minor beneficiaries**

The primary function of probate is to validate the decedent's last will and testament. When a person passes away, their will must go through a legal process called probate, which ensures that the will is genuine and reflects the true intentions of the deceased. During this process, the court reviews the will, verifies its validity, and oversees the distribution of the decedent's estate according to the terms laid out in the will. This validation step is crucial because it establishes legal authority to administer the estate. It protects the interests of beneficiaries and creditors, as it confirms that the person who is administering the estate is doing so based on an authentic document that accurately represents the wishes of the deceased. Without this validation, disputes could arise, and there would be uncertainty about the rightful heirs and the distribution of the decedent's assets. Thus, the primary focus of probate is to ensure that the will is properly recognized and executed according to the law.

3. Which of the following properties does not pass through probate?

- A. Real estate owned by the decedent**
- B. Jointly held bank accounts**
- C. Personal property listed in the will**
- D. Debts owed to the decedent**

Jointly held bank accounts typically do not pass through probate because they are often structured with rights of survivorship. This means that when one account holder dies, the surviving account holder automatically becomes the sole owner of the account, bypassing the probate process entirely. This characteristic is a common feature of jointly held property, where the intent is to allow for immediate transfer of ownership upon the death of one party, ensuring that the funds are readily accessible to the survivor without legal delays. In contrast, other options involve property that does require probate. Real estate owned solely by the decedent is subject to probate processes because it is part of the decedent's estate. Personal property listed in the will also goes through probate, as it needs to be administered according to the terms of the will. Debts owed to the decedent, although not property in the traditional sense, are also part of the deceased's estate and may be addressed during the probate process to settle the estate's financial affairs. Thus, only jointly held bank accounts distinctively avoid going through probate, reinforcing the reason for their unique status.

4. If a decedent is not survived by parents, what is the next preference for distribution?

- A. To grandparents**
- B. To siblings**
- C. To descendants of parents**
- D. To the state**

In situations where a decedent is not survived by their parents, the next preference for distribution typically goes to the descendants of the parents, which means the decedent's siblings. This principle follows the rules of intestate succession, which dictate how a decedent's estate is distributed when there is no valid will. When there are no surviving parents, the law recognizes the importance of close relatives, specifically the next generation of the family, which is represented by siblings and their descendants. This ensures that the estate is passed to those who have a close familial connection to the decedent. By prioritizing descendants of the parents, the legal system seeks to preserve family ties and provide for those who are directly linked to the decedent's lineage. The other options, while they may seem reasonable in certain contexts, do not follow the typical order of precedence seen in intestate succession laws. For instance, grandparents, though family, would generally be considered only if there were no siblings or their descendants. Similarly, the state would only claim the estate under escheat laws if there were absolutely no relatives to receive the assets. Thus, descendants of the parents, often in the form of siblings or their children, are the rightful beneficiaries in this scenario.

5. What is meant by "testamentary capacity"?

- A. The ability to challenge a will's validity
- B. The legal ability of a testator to create a valid will**
- C. The requirement for witnesses in will creation
- D. The need for notarization in will execution

"Testamentary capacity" refers to the legal ability of a testator, or someone making a will, to create a valid will. This concept is crucial in wills and trusts law because, for a will to be considered valid, the testator must possess the mental capability to understand the nature of the act they are undertaking, the extent of their property, and the implications of their decisions regarding the distribution of that property upon their death. This standard is often assessed through a variety of cognitive abilities; the testator must comprehend who their beneficiaries are and must intend to distribute their assets in a particular manner. Testamentary capacity does not require the testator to be free of all signs of mental illness, but they must have sufficient mental competence to make informed decisions about their estate. The other choices pertain to different aspects of will creation and execution. While options about challenging a will, the requirement for witnesses, and notarization are all relevant in the context of wills and their validity, they do not define what testamentary capacity specifically means. Understanding that testamentary capacity is fundamentally about the mental state and legal soundness of the testator when creating a will is key to grasping this concept in estate law.

6. Which entities can serve as trustees of a trust?

- A. Any individual over age 18
- B. Only banks and trust companies with relevant charters**
- C. Any family member of the settlor
- D. Only legal professionals

The assertion that only banks and trust companies with relevant charters can serve as trustees of a trust is not entirely accurate. In many jurisdictions, the law allows for a wider range of parties to serve as trustees. While banks and trust companies are certainly qualified and commonly act as trustees due to their expertise in managing assets and fulfilling fiduciary duties, individuals—including those over the age of 18—may also serve as trustees unless otherwise restricted by the trust instrument or local laws. Any individual can serve as a trustee, provided they have the legal capacity to do so and are not disqualified from serving (due to factors such as bankruptcy or having a felony conviction). Furthermore, family members of the settlor can act as trustees as well, which allows for flexibility in estate planning. Legal professionals can also take on trustee roles, but they are not the only group allowed to do so. Understanding the potential roles of trustees helps clarify the wide latitude in selecting trustees based on the specific needs of the trust and the goals of the settlor. The law accommodates a variety of trustee options to ensure that trusts can be effectively managed according to the intentions of the person creating the trust.

7. What is the rule against perpetuities?

- A. A legal rule that allows for the indefinite holding of property by heirs.
- B. A legal rule that limits the duration of certain types of trusts and property interests.**
- C. A guideline determining how long a will can remain valid.
- D. A requirement for all beneficiaries to be of legal age.

The rule against perpetuities is a fundamental legal doctrine in property law that serves to limit the duration of certain types of trusts and future property interests. Specifically, it prevents interests in property from being held for an indefinite period, ensuring that such interests must vest, if at all, within a specific timeframe. Under this rule, any non-vested interest must vest or fail within 21 years after the death of a life in being at the time the interest was created. This is designed to promote the free transferability of property and avoid the potential for property being tied up for generations beyond the lifetimes of identifiable individuals, which could impede its use and alienation. The other options do not accurately capture the essence of the rule against perpetuities. One option mistakenly suggests the rule allows indefinite property holding by heirs, which contradicts the rule's purpose. Another option implies it relates to the validity period of wills, while the rule is specifically concerned with future interests in property and trusts, not the validity of wills themselves. Finally, the requirement for beneficiaries to be of legal age speaks to capacity in trusts or estates but does not pertain to the temporal limitations imposed by the rule against perpetuities. Understanding this rule is crucial for effectively navigating property

8. Which of the following statements is true regarding revocable trusts?

- A. They are always irrevocable after the settlor's death
- B. They can be modified or revoked by the settlor**
- C. They never allow for any distributions
- D. They cannot hold any value

The correct statement about revocable trusts is that they can be modified or revoked by the settlor. A revocable trust offers the flexibility for the individual who created it, known as the settlor, to make changes to the terms of the trust or to completely revoke it during their lifetime. This characteristic distinguishes revocable trusts from irrevocable trusts, which generally cannot be altered once created without the consent of the beneficiaries. Revocable trusts are often utilized in estate planning for several reasons, including the ability to manage assets during the settlor's lifetime and to provide for seamless transfer of assets upon their death, avoiding the probate process. The flexibility to modify the trust can be particularly advantageous if the settlor's circumstances or intentions change over time. The other statements do not accurately describe revocable trusts. After the settlor's death, the trust typically becomes irrevocable, but this isn't the defining characteristic of revocable trusts during the settlor's lifetime. While revocable trusts can certainly allow for distributions to beneficiaries, stating they never allow for distributions is incorrect. Additionally, revocable trusts can hold value such as cash, real estate, and investments, which reinforces their purpose in asset management and estate planning.

9. What is a tangible personal property memorandum under the UPC?

- A. A document that lists all real estate properties**
- B. A list for distributing tangible personal property not covered by the will**
- C. A formal contract detailing the distribution of assets**
- D. A list prohibiting the distribution of personal assets**

A tangible personal property memorandum under the Uniform Probate Code (UPC) serves a specific purpose in the distribution of a decedent's assets. This memorandum allows a testator to specify how certain tangible personal property—items that are movable and not classified as real estate—will be distributed upon their death. This is particularly useful for items such as jewelry, art, furniture, and personal effects that may hold sentimental value. The memorandum acts as a supplemental document to the will and can be created or modified more easily, allowing for flexibility in how personal property is addressed without the need to amend the will itself. It ensures that the testator's wishes regarding those items are respected and carried out after their death. In comparison, the other options do not align with the definition of a tangible personal property memorandum. A document that lists real estate properties does not encompass the intangible personal property focus. A formal contract detailing asset distribution generally implies a more complex legal agreement than what the memorandum entails. Lastly, a list prohibiting the distribution of personal assets is contradictory to the purpose of a memorandum, which seeks to clarify and facilitate the distribution of such assets, not restrict it.

10. What presumption arises when a will last seen with the testator is not found after death?

- A. The will was gifted to another party**
- B. The testator intended to revoke the will by physical act**
- C. The will was lost in transit**
- D. The testator had created an oral will**

When a will that was last seen in the possession of the testator is not found after their death, the legal presumption arises that the testator intended to revoke the will through a physical act. This presumption is based on the understanding that since the testator had control over the will and chose not to have it found among their belongings, it suggests an intent to invalidate it. This presumption is significant in probate law because it affects how the estate is administered. If a will cannot be located, the court may have to determine whether to accept that the testator had revoked it or if there's sufficient evidence to establish that the will still exists and reflects the testator's wishes. In many jurisdictions, the absence of a will raises questions about the testator's intentions, especially if there is no subsequent will or a clear declaration to prove otherwise. Other options do not accurately reflect the legal implications surrounding the missing will. For example, the notion that the will was gifted to another party lacks a basis in this context because gifting a will would typically involve an explicit act of transfer rather than simply it being lost. Similarly, the idea that the will was lost in transit does not correlate with the presumption surrounding a directly observed possession at the time of the