

Scott Pearce's  
Master Essay Method

Wills & Trusts

# *WILLS APPROACH*

## I. Validity: Capacity, Intent and Formalities

### A. Capacity

1. Age: Must be 18 when the will is executed.
2. Sound Mind
  - a. Tested as 'impaired or insane.'
  - b. One can be incapable of making a contract and still have the capacity to create a valid will.

### B. Intent

1. Undue Influence
2. Fraud
3. Mistake
  - a. Execution
  - b. Inducement
  - c. Description
4. Sham Wills and Conditional Wills

### C. Formalities

1. Witnessed Wills
2. Holographic Wills
3. Codicils
4. Incorporation by Reference
5. Acts of Independent Significance
6. Contracts involving an expected bequest or intestate share

## II. Revocation and Revival

### A. Revocation by Operation of Law

1. Source (community property crossover)
2. Omitted Spouse
3. Forgotten or Omitted Children

### B. Revocation by Written Instrument (express or implied)

- C. Revocation by Physical Act
- D. Revival of Revoked Wills
  - 1. Re-Execution
  - 2. Republication by Codicil
  - 3. Relevance of the Method of Revocation
- E. Dependent Relative Revocation (more available when original gift revoked by act)

### III. Distribution

- A. Post-Execution Changes in Property or Beneficiaries
  - 1. Changes in Property
    - a. Ademption
    - b. Satisfaction and Advancement
    - c. Increase
  - 2. Changes in People
    - a. Lapse and Anti-Lapse
    - b. Simultaneous Death
- B. Debts and Claims
  - 1. Abatement
  - 2. Exoneration
- C. Intestate Succession
  - 1. Level 1: Surviving Spouse, Kids, Parents, Siblings, Nieces and Nephews
  - 2. Level 2: Grandparents, Uncles and Aunts
  - 3. Level 3: Ancestors, "Next of Kin"
  - 4. Level 4: Heirs of Predeceased Spouse
  - 5. Note distinction between Per Capita and Per Stirpies

# *TRUSTS APPROACH*

## I. Validity of Express Trusts

- A. Intent
- B. Identifiable Corpus
- C. Ascertainable Beneficiaries
  - 1. Private Trusts
  - 2. Charitable Trusts
  - 3. Honorary Trusts
- D. Trust Purpose
- E. Mechanics of Creation
  - 1. Need a Trustee
  - 2. Need a Writing
    - a. Declaration of Trust
    - b. Testamentary Transfer
    - c. Inter Vivos Transfer

## II. Administration

- A. Trustee's Powers (Express and Implied)
- B. Trustee's Duties
  - 1. Duty to Administer
  - 2. Duty of Loyalty
- C. Remedies of Beneficiaries / Defenses of Trustees
- D. Third Party Issues (contracts and torts crossover)
  - 1. Trustee's Liability
  - 2. Trust Liability
  - 3. Third Party Liability to the Trust
- E. Accounting (expenses and receipts)

## III. Transfer of Interest by Beneficiary

- A. Freely Transferable
- B. Discretionary
- C. Spendthrift

IV. Modification and Termination of Trusts

A. Modification

1. By Settlor
2. By Trustee
3. By Beneficiaries

B. Termination

V. Charitable Trusts

A. Charitable Purpose

B. Cy Pres

C. Rule Against Perpetuities

VI. Trusts Created By Operation of Law

A. Resulting Trust

B. Constructive Trust

## Trusts

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Hank and Wendy married, had two children, Aaron and Beth, and subsequently had their marriage dissolved.

One year after dissolution of the marriage, Hank placed all his assets in a valid revocable trust and appointed Trustee. Under the trust, Trustee was to pay all income from the trust to Hank during Hank's life. Upon Hank's death, the trust was to terminate and Trustee was to distribute the remaining assets as follows: one-half to Hank's mother, Mom, if she was then living, and the remainder to Aaron and Beth, in equal shares.

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

Hank, who had never remarried, died three years after establishing the trust. At the time of his death, the trust was valued at \$300,000. Subsequently, it was proved by DNA testing that Hank had another child, Carl, who had been conceived during Hank's marriage to Wendy, but was born following dissolution of the marriage. Wendy, Carl's mother, had never told Hank about Carl.

Wendy, Mom, Aaron, Beth, and Carl all claim that he or she is entitled to a portion of the trust assets.

1. At Hank's death, what claims, if any, do the trust beneficiaries have against Trustee? Discuss.
2. How should the trust assets be distributed? Discuss. Answer this question according to California law.

**Trusts – Outline of Issues**  
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- I. Trust Beneficiaries v. Trustee
  - A. Hank's Trust
    - 1. Intent
    - 2. Corpus
    - 3. Beneficiaries
    - 4. Purpose
  - B. Trustee's Alleged Breaches
    - 1. Duty of Care
    - 2. Duty to Diversify
  - C. Trustee's Defenses
    - 1. Trustee Maximized Income to Hank
    - 2. Trustee exercised reasonable business judgment
  - D. Conclusion: The Beneficiaries have no claim against Trustee.
  
- II. How should the Trust assets be distributed?
  - A. The terms of Hank's trust
  - B. Carl will claim his intestate share
  - C. Conclusion
    - 1. Wendy gets nothing
    - 2. Carl get his intestate share: \$100,000
    - 3. Mom gets \$100,000
    - 4. Aaron and Beth get \$50,000 each

**Trusts – Answer**  
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I. Trust Beneficiaries v. Trustee

Hank's mother and his children Aaron and Beth were the named beneficiaries of his trust. They seek possible damages from Trustee. A careful analysis of the known facts shows that Trustee lived up to his duties, and that the beneficiaries do not have any claims against Trustee.

A. Hank's Trust

We know Hank's trust was valid. To determine Trustee's possible liability, it is necessary to examine the terms of Hank's trust.

1. Intent

Hank set up his trust one year after his marriage to Wendy was dissolved. It is apparent that Hank wished to receive income during the remaining years of his life, and to use this trust in place of a will in order to distribute his remaining assets outside of probate after his death.

2. Corpus

Hank placed all his assets in the trust.

3. Beneficiaries

Hank was the income beneficiary for life. Mom, Aaron and Beth were to be the beneficiaries after Hank's death.

4. Purpose

The purpose of Hank's trust was to provide income to Hank, and to serve as a substitute for a traditional will to distribute the trust assets that remained after his death.

B. Trustee's Alleged Breaches

In order to have a claim against Trustee, Mom, Aaron and Beth will have to show that Trustee did something wrong. No facts are present to indicate that Trustee engaged in any self-dealing or fraudulent conduct. That means the beneficiaries will have to prove that Trustee failed to act as a reasonable fiduciary.

1. Duty of Care

Under the trust, Trustee was to pay all income from the trust to Hank during Hank's life. Trustee chose to operate the trust in such a manner as to maximize income to Hank. Hank had the authority to fire



Trustee and revoke the trust at any time, but chose not to do so. It is apparent that Trustee did not do anything wrong. The beneficiaries' best argument is that Trustee's failure to diversify the trust corpus is a breach of his duty of care.

## 2. Duty to Diversify

Trustee invested all assets of the trust in commercial real estate. One way of judging whether or not a trustee's conduct is reasonable is to review the investment pattern to see if the trustee made appropriate business decisions. Here, the beneficiaries will point to the fact that commercial real estate's market value suffered a rapid decline during the three years the trust was in operation. They will argue that Trustee should have diversified the corpus in order to hedge against these losses.

The beneficiaries will argue that Trustee should be personally liable to them for at least some of the value of the corpus that was lost when Trustee left the all investments in a declining sector of the market. Although this is not an outrageous claim, it is unlikely to be a winning argument for Mom, Aaron and Beth.

### C. Trustee's Defenses

#### 1. Trustee Maximized Income to Hank

Trustee was to pay all income from the trust to Hank during Hank's life. Trustee managed the trust in the way that maximized income to Hank. Far from being a breach of duty, Trustee will argue that these facts are evidence that he acted as an expert fiduciary. Trustee made the last three years of Hank's life as comfortable as possible.

#### 2. Trustee exercised reasonable business judgment

Trustee cannot deny that the value of the trust corpus fell. At the same time, Trustee can argue persuasively that it was reasonable for the money to stay where it was because Hank wanted the income and had the power to terminate Trustee at any time. Trustee's primary duty was to Hank, and none of the other beneficiaries can claim that Trustee's conduct harmed Hank in any way. Hank received very high income and the beneficiaries are going to receive a substantial windfall.

### D. Conclusion:

The Beneficiaries have no claim against Trustee.

## II. How should the Trust assets be distributed?

### A. The terms of Hank's trust

Upon Hank's death, Trustee was to distribute one-half of the remaining assets to Mom and one-quarter each to Aaron and Beth. This basic formula will be relevant to the distribution of Hank's estate, but it will be complicated by the existence of Carl, a third child between Hank and Wendy, who was conceived during their marriage but born after their divorce.

B. Carl will claim his intestate share

Wendy, Carl's mother, never told Hank about Carl. Since Hank did not know about Carl, he cannot be said to have deliberately disinherited him, nor can Hank have provided for Carl outside the trust. Hank did not leave any property, much less substantial property, to Wendy, Carl's mother. As a result California is likely to consider Carl to be a pretermitted child. The only possible problem with Carl's claim is that he was born before Hank set up his trust, but the fact Hank didn't know about Carl's existence is enough for Carl to be able to claim a share.

C. Conclusions

1. Wendy gets nothing

Wendy has no claims against Hank's estate. She could have claimed child support during Hank's life but she waived those claims by failing to even tell Hank about Carl's birth. Her possible marital interest in Hank's estate terminated when their marriage ended.

2. Carl get his intestate share: \$100,000

As an omitted child, Carl can claim his intestate share of Hank's estate. Hank died survived by three children, Aaron, Beth and Carl. California laws of intestacy would divide Hank's estate equally among his three children. One-third of \$300,000 gives Carl \$100,000.

3. Mom gets \$100,000

Once Carl's claim is paid, the trust value is \$200,000. Pursuant to the terms of Hank's trust, Mom's share is one-half the corpus, or \$100,000.

4. Aaron and Beth get \$50,000 each

Following the terms of Hank's trust, after Mom receives her share, Aaron and Beth split the remainder, in equal shares. This gives them \$50,000 each.

## WILLS

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In 1998, Tom executed a valid will. The dispositive provisions of the will provided:

1. \$100,000 to my friend, Al.
2. My residence on Elm St. to my sister Beth.
3. My OmegaCorp stock to my brother Carl.
4. The residue of my estate to State University (SU).

In 1999, Tom had a falling out with Al and executed a valid codicil that expressly revoked paragraph 1 of the will but made no other changes.

In 2000, Tom reconciled with Al and told several people, “Al doesn’t need to worry, I’ve provided for him.”

In 2001, Beth died intestate, survived only by one child, Norm, and two grandchildren, Deb and Eve, who were children of a predeceased child of Beth. Also in 2001, Tom sold his OmegaCorp and reinvested the proceeds by purchasing AlphaCorp stock.

Tom died in 2002. The will and codicil were found in his safe deposit box. The will was unmarred, but the codicil had the words “Null and Void” written across the text of the codicil in Tom’s handwriting, followed by Tom’s signature.

Tom was survived by Al, Carl, Norm, Deb and Eve. At the time of Tom’s death, his estate consisted of \$100,000 in cash, the residence on Elm St., and the AlphaCorp stock.

What rights, if any, do Al, Carl, Norm, Deb, Eve, and SU have in Tom’s estate? Discuss.

Answer according to California law.

**WILLS**  
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**Outline**

- I. Validity of Tom's Will
  - A. 1998 Will
  - B. 1999 Codicil
  - C. Revocation of Codicil
    - 1. Revocation by physical act
    - 2. Revocation by holographic codicil
    - 3. Tom's statements in 2000
    - 4. Conclusion: Codicil Revoked by Physical Act
  - D. Conclusion: Original 1998 Will Governs Estate
  
- II. Distribution of Tom's Estate
  - A. The \$100,000 gift to Al in paragraph 1
  - B. The Elm St. residence to Beth in paragraph 2
    - 1. Lapse and anti-lapse
    - 2. Norm is entitled to half of the residence
    - 3. Deb and Eve split the other half of the residence
  - C. The Omega Stock in paragraph 3 - Ademption
  - D. The Residue to State University (SU) in paragraph 4
  - E. Conclusion

**WILLS, TRUSTS & COMMUNITY PROPERTY**  
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Theresa and Henry were married and had one child, Craig. In 1990, Theresa executed a valid will leaving Henry all of her property except for a favorite painting, which she left to her sister, Sis. Theresa believed the painting was worth less than \$500.

On February 14, 1992, Theresa typed, dated, and signed a note, stating that Henry was to get the painting instead of Sis. Theresa never showed the note to anyone.

In 1994, Theresa hand-wrote a codicil to her will, stating: "The note I typed, signed, and dated on 2/14/92 is to become a part of my will." The codicil was properly signed and witnessed.

In 1995, Theresa's and Henry's second child, Molly, was born. Shortly thereafter, Henry, unable to cope any longer with fatherhood, left and joined a nearby commune. Henry and Theresa never divorced.

In 1999, Theresa fell in love with Larry and, with her separate property, purchased a \$200,000 term life insurance policy on her own life and named Larry as the sole beneficiary.

In 2000, Theresa died. She was survived by Henry, Craig, Molly, Sis, and Larry.

At the time of her death, Theresa's half of the community property was worth \$50,000, and the painting was her separate property. When appraised, the painting turned out to be worth \$1 million.

What rights, if any, do Henry, Craig, Molly, Sis, and Larry have to:

1. Theresa's half of the community property? Discuss.
2. The life insurance proceeds? Discuss.
3. The painting? Discuss.

Answer according to California law.

**WILLS, TRUSTS & COMMUNITY PROPERTY**  
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**Outline**

- I. Theresa's Will
  - A. Theresa's 1990 Will is Valid
  - B. The 2-14-92 Typed Holographic Codicil
    - 1. The material provisions are not in Theresa's handwriting.
    - 2. The Codicil has no impact on Theresa's will in 1992
  - C. The 1994 Handwritten Codicil
    - 1. This is a valid, witnessed Codicil.
    - 2. The 1994 Codicil incorporates by reference the 1992 Typed Codicil.
  - D. Conclusion: Theresa's 1990 will is valid, as modified by the 1994 Codicil.
- II. Distribution
  - A. Henry
  - B. Craig
  - C. Molly
  - D. Sis
  - E. Larry
  - F. Conclusions
    - 1. Theresa's \$50,000 interest in community property goes to Henry.
    - 2. The life insurance policy proceeds go to Larry.
    - 3. The painting goes to Henry.

**TRUSTS - PROFESSIONAL RESPONSIBILITY**  
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Richard, a resident of California, created a revocable, inter vivos trust in 1998 at the urging of his wife, Alicia, who was also his attorney. Alicia drafted the trust instrument.

Richard conveyed all of his separate property to the trust. The trust instrument named Alicia as trustee with full authority to manage the trust and invest its assets. By the terms of the trust, Richard was to receive all of the income during his life. Upon his death, his child by a former marriage, Brian, and Alicia's daughter by a former marriage, Celia, would receive for their lives whatever amounts the trustee in her discretion thought appropriate, whether from income or principal. Whatever remained of the principal on the death of the last income beneficiary was to be divided equally among the then-living heirs of Brian and Celia. Celia was included as a trust beneficiary only after Alicia convinced Richard that his was necessary to avoid a possible legal action by Celia, although Alicia knew there was no legal basis for any claim by Celia.

Celia had lived with Alicia and Richard from her 10th birthday until she graduated from college at age 21 in 1990. Although Richard had once expressed an interest in adopting her, he was unable to do so because her natural father refused to consent. After Celia's college graduation, however, she rarely communicated with either Richard or Alicia.

After creation of the trust, and while Richard was still alive, Alicia invested one half of the trust assets in a newly formed genetic engineering company, Genco. She lent the other one-half of the trust assets at the prevailing market rate of interest to the law firm of which she was a partner.

Richard died in 2000, survived by Alicia, Brian and Celia. Brian, upset with the way Alicia has handled the trust assets, seeks to have the trust declared invalid or, in the alternative, to have Alicia removed as trustee and require her to indemnify the trust for any losses.

1. What grounds, if any, under California law can Brian assert for invalidating the trust, and what is the likelihood Brian will succeed? Discuss.
2. What grounds, if any, under California law can Brian assert for removing Alicia as trustee and requiring her to indemnify the trust, and what is the likelihood Brian will succeed? Discuss.
3. As an attorney, independent of her capacity as trustee, has Alicia violated any rules of professional responsibility? Discuss.

**TRUSTS - PROFESSIONAL RESPONSIBILITY**  
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**Outline**

- I. Can Brian invalidate the trust?
  - A. Requirements for a valid trust
  - B. Undue Influence
  - C. Fraud
  - D. Conclusion: Brian can invalidate the trust.
  
- II. Can Brian remove Alicia as trustee and require her to indemnify the trust?
  - A. Fraud and Undue Influence
  - B. Duty of Loyalty
  - C. Duty of Care
  - D. Indemnification
  - E. Conclusion: Brian can remove Alicia and require her to indemnify the trust.
  
- III. Has Alicia violated any rules of professional responsibility?
  - A. Duty of Honesty - Fraud and Undue Influence
  - B. Duty of Loyalty - Conflict of Interest
  - C. Duty of Competence and Zealousness
  - D. Conclusion: Alicia is subject to discipline.



**WILLS and TRUSTS**  
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Ted, a widower, had a child, Deb. He had three brothers, Abe, Bob, and Carl.

In 1998, Abe died, survived by a child, Ann. Ted then received a letter from a woman with whom he had once had a relationship. The letter stated that Sam, a child she had borne in 1997, was Ted's son. Ted, until then unaware of Sam's existence, wrote back in 1998 stating he doubted he was Sam's father.

In 1999, Ted executed a will. With the exception of the signature of a witness at the bottom, the will was entirely in Ted's own handwriting and signed by Ted. The will provided that half of Ted's estate was to be held in trust by Trustee, Inc. for ten years with the income to be paid annually "to my brothers," with the principal at the end of ten years to go "to my child, Deb." The other half of the estate was to go to Deb outright. One month after Ted signed the will, Ted's second brother, Bob, died, survived by a child, Beth.

In 2000, Ted died. After Ted's death, DNA testing confirmed Ted was Sam's father.

What interests, if any, do Deb, Sam, Ann, Beth, and Carl have in Ted's estate and/or trust? Discuss. Answer according to California law.

**WILLS AND TRUSTS**  
**Outline**  
**Copyright July 2001 - Scott F. Pearce, Esq.**

- I. Validity of Ted's Will
  - A. Capacity
  - B. Intent
  - C. Formalities - One witness is not enough
  - D. Conclusion: Invalid Witnessed Will, Valid Holograph
  
- II. Distribution
  - A. The terms of Ted's will
    - 1. 50% in Trust for 10 years [settlor, trustee, beneficiaries, purpose]
    - 2. 50% to Deb
  - B. Material Facts
    - 1. 1998: Brother Abe Dies, survived by Ann. No lapse protection.
    - 2. 1999: Brother Bob Dies, survived by Beth. Lapse protection.
    - 3. Sam is Ted's Son - Omitted Child analysis - Sam Claims Intestate Share
  - C. Conclusion
    - 1. Sam gets 50% of the estate up front.
    - 2. Deb gets 50% now and the trust residual.
    - 3. Ann gets nothing.
    - 4. Beth gets 50% of the trust income for 10 years.
    - 5. Carl gets 50% of the trust income for 10 years.

**WILLS AND TRUSTS**  
**Copyright February 1999 State Bar of California**

In 1990 Harry and Wanda, husband and wife, properly executed wills, each stating:

“All my property goes to my surviving spouse, and if my spouse does not survive me, then to the children of Harry by Fran, his former wife.”

While signing the wills in the presence of Wanda’s siblings, Sis and Buddy, Harry and Wanda orally promised never to revoke the 1990 wills.

At Harry’s death in 1991, he was survived by Wanda and by Abby, Carl and Dan, all children of Harry and Fran. Abby died in 1992, while visiting Wanda, and was survived by Abby’s three young sons.

In 1995 Wanda, having become angry with Harry’s surviving children, revoked her 1990 will and signed a new will. Her new will left all her property to Sis and Buddy, as trustees of a trust for “the children of Harry and Fran,” to last until the death of the last surviving child of Harry and Fran. The trustees were given total discretion over distribution of any income to trust beneficiaries prior to trust termination. Wanda died in 1996.

After Sis and Buddy accepted the job as trustees, Buddy let Sis handle everything. For the next three years Sis distributed all trust income to Abby’s three young sons.

In 1998 Sis died, insolvent. Carl and Dan then sued Buddy as surviving trustee, asserting that:

1. Based on Wanda’s promise never to revoke her 1990 will, the trust should be terminated, and
2. Buddy should be ordered personally to repay the total of \$1 million in trust income which Sis had distributed from the trust to Abby’s sons.

How should the court rule on each of these assertions? Discuss.

Answer according to California law.

## WILLS AND TRUSTS

### Outline

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- I. Carl and Dan will fail to terminate Wanda's trust.
  - A. Wanda's 1995 will is valid
  - B. Wanda's promise never to revoke the 1990 will was unenforceable.
  - C. The testamentary trust established in Wanda's 1995 will was valid.
  - D. Sis distributed \$1 million to Abby's sons.
    - 1. Wanda granted "total discretion" to the trustees.
    - 2. Sis's distribution of trust income to Abby's sons was proper.
    - 3. Buddy will be liable for any breach by Sis.
  - E. Conclusion
  
- II Carl and Dan will fail to get Buddy ordered to repay the \$1 million paid by Sis to Abby's sons.
  - A. Buddy and Sis were co-trustees of Wanda's testamentary trust.
  - B. Buddy and Sis owed the trust and beneficiaries duties of loyalty and care.
  - C. Conclusion

## WILLS

Copyright February 1998 - State Bar of California

In 1994, Testator (T), a widow with two adult children, executed a typewritten will providing:

- “1. \$100,000 to Son (S).
- “2. My farm to Friend One (F1) and Friend Two (F2), share and share alike.
- “3. The residue of my estate to Daughter (D).”

T signed the will in the presence of S and Witness (W), each of whom, being present at the same time, witnessed the signing, understood the document was T’s will, and signed as a witness. T had testamentary capacity and was not subject to duress, menace, fraud, undue influence, coercion or other pernicious influence.

In 1997, T and D were killed instantly in an automobile collision. T’s will was found in her safe deposit box with a line drawn through part of paragraph 2, as follows:

- “2. My farm to Friend One (F1) and Friend Two (F2), share and share alike.”

D is survived by Husband (H) but no issue. She did not have a will. T’s estate consisted of \$100,000 cash, her farm (worth \$50,000), and other property worth \$100,000.

- 1. Was T’s will validly executed? Discuss.
- 2. Assume T’s will was validly executed. How should T’s estate be distributed? Discuss.

Assume the applicable statutory law is that of California.

**WILLS**  
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**Outline**

- I. Was T's will validly executed?
  - A. Capacity and Intent
  - B. Formalities
  - C. Interested Witness
  - D. Conclusion: T's will was validly executed.
  
- II Distribution of T's estate:
  - A. Gift of \$100,000 to Son (S)
  - B. Farm to Friend 1 (F1) and Friend 2 (F2)
    - 1. Revocation by physical act as to F2
    - 2. Partial revocation cannot serve to increase F1's share.
  - C. Residue of Estate to Daughter (D)
    - 1. Simultaneous Death - Lapse
    - 2. Anti-Lapse
  - D. Intestacy
  - E. Conclusion

## TRUSTS

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Connie, who died in 1989, left a will which created a trust of which her son, Sam, was to be both trustee and life income beneficiary. On Sam's death, the successor trustee was to distribute the corpus outright to the then surviving issue of Connie's predeceased daughter, Deborah. The trust contained a standard clause regarding trustee's powers, including the power to "sell, invest, and manage" the trust property.

Common shares of Hercules Corp., a well-established, successful manufacturing company, made up 30% of the original trust corpus. For years, Hercules regularly paid generous cash dividends, all of which Sam, as trustee, allocated to income. In 1993, instead of paying a cash dividend, Hercules distributed a dividend of its own stock, which Sam also allocated to income.

In January 1994, Fabulon, Inc., a newly formed company, made an initial public offering of its common stock. The prospectus stated that Fabulon had created a new material similar to fiberglass, but which experimental testing had shown to be of superior durability. The prospectus further disclosed the company's intent to distribute most of its earnings as dividends.

After reading the Fabulon prospectus in February 1994, Sam sold the trust's Hercules stock to his wife at its current fair market value. The sale of stock produced a profit for the trust, and Sam allocated the capital gain portion to the income account. He used the balance of the proceeds to purchase Fabulon stock for the trust.

Hercules continued to prosper and its stock continued to appreciate. Fabulon's product failed and, in December 1995, Fabulon went bankrupt and its stock became worthless.

Has Sam breached his duties as trustee? Discuss.

**TRUSTS**  
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**Outline**

- I. Sam has breached his duties as trustee.
  - A. Connie's trust is valid.
  - B. Sam owes fiduciary duties of loyalty and care.
    - 1. Allocation of cash dividends to income was proper.
    - 2. Allocation of stock dividend to income was a breach.
    - 3. Sale of Hercules stock to Sam's wife was a breach.
    - 4. Purchase of Fabulon stock was a breach.
      - a. Fiduciary duty of loyalty
      - b. Prudent Investor Rule
      - c. Sam did not diversify - a breach of the duty of care.
  - C. Conclusion
  
- II. Remedies of Beneficiaries
  - A. Rescission
  - B. Restitution
  - C. Damages



**WILLS AND TRUSTS**  
**Copyright February 1995 - State Bar of California**

Gloria, a widow, signed a typewritten will in the presence of Tom and Larry, who, being present at the same time, witnesses Gloria's signing, understood the document was Gloria's will, and signed the will as witnesses. The will contained the following provisions:

1. \$10,000 to my friend, Tom.
2. My residence to my only daughter, Dora, provided she survives me by thirty days.
3. All my Mega Corp. stock to my friend, Max, requesting that he distribute it as indicated in a letter to be found with this will.
4. The residue of my estate to my only son, Seth.

Subsequently, Gloria and Dora were involved in an automobile collision. Dora was killed instantly, and Gloria died one day later in the hospital.

Gloria's will is found in her safe deposit box together with a typewritten, signed, but unwitnessed letter requesting Max to distribute the Mega Corp. stock to Ben, a needy cousin whom Gloria had assisted financially in the past. Max truthfully testifies that the letter was prepared after the will was executed and that he orally agreed with Gloria to distribute the stock as requested in the letter.

Dora is survived by her husband, Hank, and her daughter, Gail. In addition to Hank and Gail, Tom, Max, Ben and Seth all survived Gloria. Gloria's net estate consists of her residence, Mega Corp. stock, and \$100,000 in cash.

What portion of Gloria's estate, if any, should be distributed to each of Tom, Hank, Gail, Max, Ben and Seth?

Discuss.

Assume that the applicable statutory law is the same as that of California.

**WILLS AND TRUSTS**  
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**Outline**

- I. Gloria's will was valid.
  
- II. The \$10,000 gift to Tom, a Witness-Beneficiary
  - A. Presumption of Undue Influence
  - B. Consequences of the failure of the \$10,000 gift.
  
- III. The residence gift to Dora
  - A. This gift was conditioned on Dora's surviving Gloria by 30 days.
  - B. Anti-Lapse Analysis
  
- IV. The Mega Corp. stock gift to Max
  - A. Integration and Incorporation by Reference
  - B. Codicil
  - C. The Trust for Ben
  
- V. The residue gift to Seth
  
- VI. Conclusion
  - A. Tom
  - B. Hank
  - C. Gail
  - D. Max
  - E. Ben
  - F. Seth

## TRUSTS

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When Bonnie was born in 1968, her Uncle Albert gave to Bonnie's parents, Max and Carol, a \$1,000 U.S. Savings Bond and 100 shares of stock of Delta Company, a small California corporation. He told them that he wanted to encourage Bonnie to get a good education and asked that it be used for that purpose. Albert endorsed both the bond and the stock "to Max and/or Carol, for Bonnie." Max and Carol thanked him for the generous gift and subsequently put the bond and the stock in a safe deposit box. Albert died in 1971.

In 1972, Max and Carol obtained a dissolution of their marriage. Bonnie continued to live with her mother, Carol, who remarried in 1974. Carol retained control over the bond and the shares of stock. The bond matured in 1975 and Carol redeemed it for the face amount and placed this money in a joint non-interest bearing checking account which she owned with her new husband, Daniel. Carol told Daniel that the money was for Bonnie's education and he never inquired any further. The 100 shares of Delta stock increased in value and, in 1976, Carol exchanged these shares for shares of ABC Corp., worth \$5,000 at the time of the exchange. The value of ABC Corp. shares has steadily declined and is now approximately \$250.

Meanwhile, Bonnie developed an interest in music and studied piano privately for many years until she became quite proficient. She was eventually able to obtain a partial music scholarship to attend the state university upon her graduation from high school. It was at this time that she first learned, from her father, of the existence of the gift from her Uncle Albert. She asked her mother for the bond and the stock, but her request was refused. Carol told Bonnie that the gift had been used to pay for the piano lessons.

What rights and remedies, if any, does Bonnie have against:

1. Carol? Discuss.
2. Daniel? Discuss.
3. Max? Discuss.

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**Outline**

- I. Bonnie's Rights Require A Preliminary Trust Analysis
  - A. Uncle Albert's Intent Is Debatable Because of his Precatory Language.
  - B. The Trust Corpus: Savings Bond and Delta Stock
  - C. Beneficiary: Bonnie
  - D. Proper Trust Purpose: Bonnie's Education
  - E. Mechanics of Trust Creation:
    - 1. A writing is not required.
    - 2. Carol and Max are co-trustees.
  
- II. Bonnie v. Carol
  - A. Does Bonnie Have A Right To Money In The Checking Account?
  - B. Does Bonnie Have A Claim Re: The Delta Stock?
  
- III. Bonnie v. Daniel: Bonnie Probably Has No Valid Claim.
  
- IV. Bonnie v. Max
  - A. Max Is Vicariously Liable For Carol's Bad Acts.
  - B. Max's Defense: He's Not Liable If Carol Became Sole Trustee Upon Their Divorce.
  - C. Conclusion
  
- V. Conclusion