

Wills: Essay Approach

I. Execution

A. Validly Executed Will

1. Requirements: signed by testator, two attesting witnesses sign in testator's presence
2. Order of signing: W signs before T ok if execution ceremony is a contemporaneous transaction

B. Sign in T's presence

1. IL: W in T's line of sight; UPC requires conscious presence (know where are and what doing)

C. Attorney Liability for Negligent Preparation:

1. IL: atty's duty runs to intended beneficiaries, privity of K is not a defense
2. Minority rule → only client can sue

D. Interested witness → no affect on validity, W loses legacy, unless 2 disinterested Ws (supernumerary) OR W would take if admitted to probate (takes lesser of bequest by will or intestate share)

E. Holographic Wills → not valid in IL, if valid where executed then valid in IL

II. Revocation

A. Valid if

1. later testamentary instrument w/ proper formalities OR physical act (mere intent not enough)
2. revocation by another must be @ T's discretion & in his presence

B. Presumptions:

1. if last in T's possession/control & not found after death of T or found mutilated → revoked
2. If two wills, and 2nd doesn't revoke prior read together if possible, if not second revokes

C. Dependent Relative Revocation

1. 1st will revoked when 2nd executed, 2nd will revoked by physical act, no revival → DDR applied
2. Permits revoked 2nd will to be disregarded when act was based upon mistake

D. Changes on Face of will after execution

1. IL: changes on face w/o attorney have no affect, need new will or codicil to make changes
2. UPC: partial revocation by physical acts are valid

III. Beneficiary Dies During Testators Life

A. Anti-Lapse Statute

1. Rule: if beneficiary predeceases T, gift lapses unless saved by anti-lapse statute
2. Applies only when the predeceasing beneficiary was a child or other descendent of the testator.
3. Lapsed gifts fall into the residuary

B. Lapse in Residuary Gift (surviving residuary beneficiaries rule)

1. Rule: If residuary left to two and one predeceases, one takes whole unless anti-lapse applies and bene left descendants who survived the T.

C. Class Gifts:

1. Rule: if class gift and member predeceases T, class members who survive take
2. Rule of Convenience: class closes when some class member is entitled to a distribution

D. Death in Quick Succession

1. Rule: governed by Uniform Simultaneous Death Act, if no evidence other than persons died simultaneously, the property of each passes as though he or she survived. If sufficient evidence of survival, minutes are enough, USDA doesn't apply.
2. UPC → 120 hour rule.

IV. Changes in Family After Will's execution

A. Marriage following Will → no affect on validity, spouse has right to elective share (1/2 or 1/3)

B. Divorce after Will → revokes all gifts to former spouse

C. Child Born after Will → pretermitted child takes his intestate share unless omission appears intentional

V. Problems Associated with Testamentary Gifts

A. Types of Gifts

1. Specific devise: specific described property
2. Demonstrative Legacy: gift of general amount from a specific source
3. General Legacy: certain sum of money to a certain individual
4. Residuary Gift: devise of residuary estate
5. Intestate Property: if will does not completely dispose of property and no residuary clause

B. Abatement

1. gifts are sacrificed to pay creditor claims
2. intestate property, residuary assets, general legacies, specific bequests/demonstrative

C. Ademption: Specific gift of prop, and prop not owned by T at death, ademption → devisee takes nothing.

D. Stocks and securities “My 100 shares” → specific bequest, ademption applies; “100 shares” → give value of 100 shares not actual shares

E. Gift of Encumbered Property: legatee takes subject to lien, unless will says otherwise

VI. References to Acts and Events Outside of Will

A. Incorp by reference: if in existence @ time of execution, will refers to it, will describes doc sufficiently

B. Act of Indep legal significance: may use parol evid to establish ID of bene/gift if fact would exist indep. of will.

VII. Other Will Doctrines

A. Mistake/ambiguity in will: plain meaning rule, no extrinsic evidence

1. latent ambiguity (mistake not on face) & patent ambiguity (on face), use extrinsic evidence or gift fails

B. Contracts relating to Wills: Will not contractual unless says so or if H&W and: “joint and mutual” entire estate to survivor etc. If contractual, can revoke however liable for breach

C. Words of Disinheritance: if not complete distribution or estate, words of disinheritance are not effective

D. Unlawful Conditions: encouraging divorce/total restraint on marriage

VIII. Intestate Succession

A. Intestate Share of Surviving Spouse: ½ if survived by descendants OR all if no descendants + family allowance \$10,00 + \$5,000 per minor/disabled adult child (priority over all expense except funeral and admin)

B. Inheritance by Descendants: Per stirpes; if no descendants → parents and siblings take equally

C. Adoptive Children: if under 18 full inheritance rights; once adopted no inheritance rights from natural parent, unless adopted by spouse of natural parent.

D. Lifetime gift: not and advancement unless in writing and acknowledged in writing

E. Satisfaction of Legacy: lifetime gift to *child* named in earlier will is presumed partial satisfaction of the legacy

F. Right to Disclaim: in writing, signed, notarized, delivered to trustee or person in poss of property

IX. Elective Share Statute-Right of Renunciation

A. Rule: Surviving spouse has right to take under will or renounce and take elective share

B. Amount: 1/3 if descendants; ½ if no descendants; property devised outright will be applied to share first (i.e. T left house to W, house applied to elective share amount first)

C. Revocable Trust: elective share doesn't include this (UPC allows elective share to include amt in trust)

X. Will Contests

A. Rule: only interested parties have right to contest, interest if economic interest adversely affect by will's probate