

Exam:

Exam Form:

C2502 - Static Form

## Response

It is a basic premise of law that a person is entitled to pass their property to those of their choosing upon their death. The courts will go to great measures to honor the will of the deceased in this regard.

**PROBATE**

Probate is a special place in hell where the court will decide the fate of a decedent's property for those who die intestate (without a will) and for those with a valid will. The probate court will examine all available evidence to determine the authenticity of a will.

To avoid the burden and expense of probate, one can choose to create a trust which is a form of holding assets. A trust is not a separate entity per se, just a form of holding title. Upon the death of the Testator, a pre-designated trustee will administer the trust according to the trust instrument which usually included distribution to trust beneficiaries.

**HOW MUCH \$\$ FOR NATALIE****Valid Will**

A valid will must be executed and signed by the testator who has sufficient capacity of mind. A will is an expression of the testator's testamentary intent to pass their property to those designated in the will. It must sufficiently describe the property to be devised along with the identity of the recipients of the property. Additionally, the will must be witnessed by two uninterested parties who understand the general testamentary nature of the document.

**Here**, Tammy executed a valid typewritten will before her death, devising \$10,000 to her niece Natalie. Absent any other fact, Natalie is entitled to \$10,000 under the will.

**Thus**, Nat is entitled to 10K under the will.

**Valid Codicil**

A codicil is an amendment to a will and will serve to replace a previously executed will. For a codicil to be valid, it must conform with the same formalities as a will and there must be sufficient evidence that the codicil was executed after the will.

**Here**, it appeared the Tammy crossed out 10K and wrote \$20k along with her initial and date.

**Thus**, the court may recognize this as a valid codicil since it did include T's initial and the date which would show that the correction was to come after the original date of the will. Alternatively, the court may view this as a holographic will (supra).

**Holographic Will**

A holographic will is a handwritten will and does not have the same requirements as a typed will because its authenticity may be verified via extrinsic evidence such as handwriting analysis. So long as the material terms are in the testator's handwriting, the property is identified along with the ID of the beneficiary, and the will is signed by the testator, the court will honor it.

**Here**, it appears Tammy crossed out the 10K and handwrote 20k. Since it is in writing, the court may view this "essential term" as a proper holographic will or codicil.

**Thus**, the court may honor the correction if T's signature can be authenticated. If not, the court will only award Nat \$10K and the remaining \$\$\$ will become part of the residual which will go to NTC.

**DOES FRANK GET METALS**

T devises her coins to Frank "I give my coin collection to my friend Frank". But most coin collector's do not regard metals as coins. As discussed above, the probate court strives to uphold the testator's intent while guarding against fraud. If the court finds that the metals are not coins, the metals will become the residual and be devised to NTC.

**Typewritten Note**

As discussed supra, a valid condicil must conform to the same formalities as a will to be valid.

**Here**, the typewritten note does purport to devise the metals to Frank but it is not signed by T and does not conform to the formality requirements therefore it cannot be authenticated.

**Thus**, the court would likely find that the metals are not considered coins since they are not explicitly described in the note.

**NTC's PETITION****Valid Pour Over Will**

A pour over will is one that devises the testator's assets to a trust. A trust has 3 essential parties: A trustor, a trustee (person or entity that administers trust assets) and beneficiary (recipient of trust assets).

**Here**, all remaining assets not expressly devised are to go to NTC. This provision of the will is a pour over provision.

**Thus**, Tammy has executed a valid pour over will where all the residue will be devised to the charitable trust with NTC as beneficiary (infra).

**Charitable Trust**

A charitable trust is established to put trust property to good use at the discretion of the trustor. The beneficiary (NTC) has a duty to use the trust property in accordance with the intent of the Trustor.

**CY PRES**

Under the doctrine of cy pres, when the purpose of a trust is defeated for whatever reason, the court may fashion an alternative purpose for the trust property. The court will do its best to conform with the trustor's original testamentary intent.

**Here**, a complete and inexpensive cure was found for RG syndrome soon after Tammy died. This means that the trust purpose has been fulfilled. Accordingly, NTC petitions the court to change the purpose of the trust to establish a scholarship. If the scholarship is sufficiently close in relationship to Tammy's interest in curing RG syndrome, the court will likely grant NTC's petition.

**Thus**, the court will likely grant NTC's petition.

**CONCLUSION**

If the court does not recognize the crossed out section and handwritten portion in favor of C, that will become part of the residual.

If the court does not recognize the metals as coins, that too will be devised to NTC.

The court has discession as to the fate or terms that are vague or ambiguous

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