

Exam:	[REDACTED]
Exam Form:	C2502

Response

Will Formation:

To create a valid will, the testator must have the 1) present testamentary intent to create a will, 2) knowledge of his res/the property identified in the will, 3) testamentary capacity, 4) 2 witnesses who sign with awareness that the testator has created a will, and 5) a valid signature.

Here, Tammy recently died and executed a valid typewritten will before her death. In her will, Tammy gave \$10,000 to her niece Natalie, her coin collection to her friend Frank, and the remainder of her estate to Nothern Trust Company (NTC). Under these circumstances, a valid will was created.

Therefore, Tammy's typewritten will is valid.

Codicil:

A codicil is a separate document created after a valid will has been executed. To be valid, a codicil must be signed, dated, and references back to the original will, the testator must have valid testamentary intent to create a codicil.

Here, when the will was offered for probate, there seemed to have been a handwritten addition onto the valid will. The handwritten portions indicate that a specific provision that stated \$10,000 was crossed out and an additional term was added that states \$20,000. This handwritten addition is not a codicil because it is not a separate document, but rather an addition on the original will. Under these facts, it is unlikely that a valid codicil was created because there is no separate document that references back to the original will.

Therefore, the strikethrough and additional term added is not a valid codicil.

Will Revocation:

After a valid will has been executed, it may be revoked through physical destruction, or an additional document that indicates present intent to invalidate the original will. Generally, a will may be revoked when there is uncertainty as to the original testator's intent.

Here, it appeared that Tammy crossed out the sum in Article 1. As mentioned above, the value of this money was altered.

Therefore, the court may determine that the will was revoked by Tammy because the holographic additions to the type-written document are

Revival

A will may be revived after a revocation occurs if the testator has the present testamentary intent to

Testamentary Intent

The presumption of will revocation may be overcome by establishing the testator's intent to

Therefore, the court will likely determine the handwritten additions to the will to be invalid because there is no clear way to establish Tammy's testamentary intent to revoke part of her will and revive it the holographic addition. Because there is uncertainty as to the validity of the revocation and revival, the court will likely invalidate these terms.

1) Natalie's money

Here, the court will likely determine that Nathalie is entitled to \$10,000 through Tammy's will because evidence of the holographic addition is likely invalid. There is no evidence that the will in its entirety should be invalid. When balancing Tammy's testamentary intent with the additional clause, it is clear that Tammy intended Nathalie to have some monetary interest in the will.

Therefore, Nathalie will likely be entitled to \$10,000 because the court will likely hold that Tammy's clear intent was to give Nathalie \$10,000. Under these facts, it will be difficult for Nathalie to establish that she is entitled to \$20,000 because even though the item was edited and initialed by Tammy, there is no clear and convincing evidence to indicate that Tammy did this as opposed to another person.

2) Frank's Medals**Incorporation by Reference**

The doctrine of incorporation by reference allows for property referenced during will formation to be included in a will if 1) the testator has the present intent to do so, 2) the property was described during will formation, 3) there is clear and convincing evidence that the testator intended to include the specific property in the will. Generally, the courts will attempt to mirror to the testator's original intent as close as possible, however if a challenger establishes by clear and convincing evidence that an item was referenced in the will intended to be included, the court may consider the incorporation as valid.

Here, Tammy stated that she wanted to give her coin collection to her friend, Frank. However, in addition to these coins, Tammy has valuable medals that she kept in an album with her coins. Although this is not generally applicable in the general community, Frank may be able to prove Tammy's intent through clear and convincing evidence because she kept them in an album with her coins.

Therefore, Frank may be able to overcome the burden and show by clear and convincing evidence that Tammy intended to include her medals in her coin collection. As such, Frank will likely be entitled to Tammy's medals in addition to the coin collection.

3) NTC's Petition**Trust Formation**

A trust is formed when 1) the trustor has present intent to create a trust, 2) there is a valid trust purpose, 3) there is an identifiable beneficiary, 4) there is a trustee, and 5) there is an identifiable property to be placed into the trust. A valid trust may be created during the formation of a valid will if the testator has the intent to create a separate trust and identified this intent in the original will document.

Trustor's Intent

Here, Tammy created a valid will. In Article 3, she stated that she would like to give the remainder of her estate to NTC to establish a foundation dedicated to finding the cure of a RG syndrome. Although she created this in Article 3 on her will, Tammy intended to gift the remainder of her estate to the aforementioned foundation to find a cure to a disease that impairs people's eyesight. Here, Tammy has the intent to create a trust because she intended to gift part of her estate to a foundation. She further expressed a specific intent by stating what goal the foundation intended to achieve.

Valid Trust Purpose

There is a valid trust purpose when the trust provides some value to society such as a charity. A valid trust purpose is evidenced by the trust's ability to benefit society in a positive way.

Here, NTC is a foundation that seeks to find the cure to a disease that impairs eyesight.

Therefore, this is a valid trust purpose.

Identifiable Beneficiary

A beneficiary is identifiable when they are explicitly identified by name in the trust or there is sufficient information in the trust to locate a specific foundation with the trustor's intent.

Here, Tammy explicitly named and identified NTC.

Therefore, there is an identifiable beneficiary.

Trustee

For a trust to be valid there must be an identifiable trustee who will abide by the fiduciary duties as trustee and will ensure that the trustor's trust purpose is executed.

Here, Tammy did not indicate a trustee. Generally, trustees are required for a trust to be valid. However, since Tammy created this trust in Article 3 of her will, courts will generally deem it to be created as apart of the will and it will be integrated upon the testator's death. However, no trust has been created because there is no trustee. Although the beneficiary may be still entitled to their bequests through the testator's will and not the trust.

Therefore, there was no valid trust creation. Article 3 will be executed in the form of Tammy's will as opposed to a trust.

Cy Pres Doctrine

The Cy Pres Doctrine applies when a valid trust purpose has been extinguished or no longer exists. In an instance where the trustor's original intended charity or trust purpose no longer exists, the courts will apply the Cy Pres Doctrine to revive the trust and mirror the trustor's intent as closely as possible.

Here, a complete and inexpensive cure was found for RG syndrome after Tammy died. Thus, she was unable to modify the trust purpose prior to it being executed. However, since no valid trust this doctrine cannot apply.

Therefore, the cy pres doctrine does not apply.

Intestacy

If a person dies with no valid will or a part of the will is extinguished, the gifts will pass through intestacy or through to the original person intended to receive the gift.

Here, NTC will be entitled to receive the remainder of Tammy's estate because although the trust purpose is extinguished it will pass through her will. Intestacy does not apply because NTC was an identifiable person in her will. NTC will be entitled to the remainder of the estate for use of the money to establish a scholarship at the local ophthalmology school.

Therefore, NTC will be entitled to remainder of the estate.

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Response

Tammy, who recently died, executed a valid typewritten will before her death containing the following Articles:

I give \$10,000 to my niece, Natalie.

I give my coin collection to my friend, Frank.

I give the remainder of my estate to the Northern Trust Company (NTC), in trust, to establish a foundation dedicated to finding a cure for RG syndrome, a disease that impairs a person's eyesight.

When the will was offered for probate, it appeared that after executing the will, Tammy crossed out the sum "\$10,000" in Article 1 and wrote above it the number "\$20,000," her initials and the date.

In addition to her coins, Tammy had valuable medals which she kept in an album with her coins. Most coin collectors do not consider medals to be coins. The album included a typewritten note signed by Tammy which stated that she wanted Frank to take care of her album after she was gone.

A complete and inexpensive cure was found for RG syndrome soon after Tammy died. NTC petitioned the court to change the purpose of the trust to establish a scholarship at a local ophthalmology school.