

## ISSUE CHECKLIST - WILLS

### EXECUTION

- Requirements
  - Capacity
  - Testamentary intent
  - Signature
- Elements of attested will
  - Signature
  - Witnesses
  - Interested witnesses
    - Rebuttable presumption
  - Substantial compliance standard – CA law
- Holographic will
  - Handwritten material provisions
  - Signature
  - Dates
- Codicils
  - Ability to cure invalid will
  - Attested will and holographic codicil
- Choice of law

### REVOCATION AND REVIVAL

- Revocation by subsequent instrument
- Revocation by physical destruction
  - Partial destruction – interlineation
- Revocation by operation of law
- Revocation of a codicil
- Revival
  - Dependent relative revocation
- Contracts to make/not make a will
  - Methods of establishing contract
  - When cause of action accrues
  - Joint and mutual wills (no presumption of a contract)
  - Remedies

### CONTENTS OF THE WILL

- Integration
- Incorporation by reference
  - Holographic will
  - Codicil
- Acts of independent significance
- Pour-over gifts to an inter vivos trust

### DISTRIBUTION UNDER THE WILL

- Specific gifts
  - Ademption by extinction
    - Exceptions – no intent for gift to fail
- General gift
  - Ademption by satisfaction
- Demonstrative gift
  - Specific vs demonstrative gifts
- Residuary
- Abatement for debts
  - Exoneration
- Death of beneficiary – lapse and anti-lapse
  - Limitation of anti-lapse: class beneficiaries
  - Simultaneous death where there is a will
- Ambiguities in the will

### RESTRICTIONS ON TESTAMENTARY DISPOSITIONS

- Spousal/DP Protection
  - Widow's election
- Omitted spouse/domestic partner
  - Valid waivers
  - Domestic partner requirements
- Omitted child
  - Unknown children born before will executed

### WILL CONTESTS

- Defective execution
- Revocation
- Lack of testamentary capacity
  - Incapacity - insane delusion
- Lack of testamentary intent
- Undue influence
  - CA test
  - Presumptions of undue influence
  - Additional CA presumptions
- Fraud
  - Fraud in the inducement
  - Fraud in the execution
- Mistake
  - Mistake in content
    - Exception – mutual will
  - Mistake in execution
  - Mistake in inducement
  - Mistake in description
  - No contest clause
- Unworthy heirs or beneficiaries
  - Killers
  - Elder abuse

### INTESTACY

- Priority under intestacy scheme
- Surviving spouse
  - Community property
  - Separate property
- Issue
  - Calculating share
    - per capita
    - per capita with representation
    - per stripes
  - Bloodlines
  - Marital children
  - Non-marital children
  - Adopted children
  - Stepchildren/foster children
  - Equitable adoption
- Special issues
  - Advance payment of intestate share
  - Simultaneous death with intestate succession