

Trust & Estate Law: Final Study Guide

-Small estates → Estates under \$30,000

EPTL 5-3.1: Exempt property: Applies to spouses or children under 21 [if there is no spouse]

- Cash \$25,000
 - Car or cash equivalent \$25,000 [if car is over \$25,000 – the spouse takes the car & pays the difference/overage back to estate]
 - Sh*t around the house [ex. Furniture, clothes, fuel] \$20,000
 - Anything farm related, domestic animals [tractor, etc.] \$20,000
 - Things you put in a drawer [family bible, videos, photos, DVDs, CDs, etc] \$2,500
- Total = \$92,500

This overrides the will.

-Creditors cannot touch this property/assets

-Comes from probate assets

-If there is multiple children under 21, they split the exempt property equally

-Small Estates- LET IT GO

- Is the will probated? No. B/c jurisdiction over distributes isn't needed
- If there is a will, do you need waivers/citations? No.
- Are you entitled to commissions? No.
- Does judge sign a decree or letters? No.
- Is this a judicial proceeding? No.
- Is a judge involved? No.

-Small estates w/ a will – Can an alternate executor do the job w/o the executor renouncing?
YES.

-Exception → There's no will, there's a Spouse&child, child comes in & wants to do the job.

Does the mother need to renounce?

- YES. Spouse will always be 1st in line to do the job. Spouse must sign off in order for the child to do the job.

-Real estate is not included in \$30,000 level

- Real Estate: If there's a house, you could do small estate. At some point, it should be converted & probate the will.
- Exempt property is invisible building blocking blocks.
- Wrongful death & Conscious Pain and Suffering
- Conscious Pain & Suffering -> Passes through estate
- Wrongful Death -> Does not pass through the estate. It belongs to the distributees who suffered pecuniary lost.
- Social Service Law Section 269: Medicaid can NOT collect on its lien [what is owed], if the deceased was survived by spouse, child w/ disability, or a child who's a minor.
*If there is a lawsuit for WD & CPS can you still do a small estate? YES.
- Claims
- Creditors have 7 months to file claims from date of the apt.
- If you distribute after 7 months, you cannot be liable on the claim
- If you had NO clue about it, it'd be in the claim.
- Spouse get exempt property & 1/3 of the estate
*Can Medicaid make a claim against CPS? YES
*Can Medicaid make a claim against WD? NO

EPTL 5-1A: Right of Election – right to take at least 1/3 or \$50,000 [only applies to probate assets]

-Wife is entitled to the greater of \$50,000 or 1/3

-Bucket [what wife is entitled to]

-Testamentary substitute: Joint accounts, gifts made within ONE year of death over \$14,000 – wife can grab it

-She CAN'T grab: Life Insurance, gifts more than one year before death

-Any \$ going to spouse under will gets put into the bucket – After 1/3 we need to subtract it out.

Ex: Morgan has a will & leaves the Red Cross \$200,000, wife in will gets \$100,000. How much is left in the bucket? \$300,000.

- What's her right of election: \$0
- $\$100,000 + \$200,000 = \$300,000 \rightarrow 1/3 ? \$100,000$ (\$ she has under will \$100,000 - \$100,000 = 0)

-Joint accounts: Before or during marriage

*Before: Wife can grab all \$ husband contributed to it up to 1/2

*During: Wife can grab all \$ husband contributed

Ex: Before marriage, Morgan has joint account w/ gf w/ \$600,000 – Morgan put ALL the \$ in the account

*Bucket? \$300,000 [$\$600,000 \times 1/2$]

*Right of elections? $\$300,000 \times 1/3 \rightarrow \$100,000$

Ex: Joint account btw. Morgan & Fifi during marriage \$600,000

*Bucket? \$600,000

*Right of election? $\$600,000 \times 1/3 = \$200,000$

Ex: Joint account btw. Morgan & Martha [Husband & Wife] during marriage. \$600,000 Joint account, \$300,000 to Red Cross

* $\$600,000 \times 1/2 = \$300,000$

* $\$300,000 + \$300,000$ (Red Cross) = $\$600,000 \times 1/3 = \$200,000$

* Red Cross gets \$100,000 [$\$300,000 - \$200,000$]

- With joint accounts, it is presumed that husband & wife own 1/2 of the \$ in the account. Wife gets entirety of \$600,000 PLUS 1/2 of the joint account goes into bucket (DURING marriage)

-Testamentary Substitute: Valued at date of death

-Right of election: Must be filled 6 months after appt. date but there no later than 2 years if there's NO estate

-Administration: There's no will.

- -Ppl cannot inherit w/ or w/o will -> Divorced spouse, bigamist/incestuous marriage, ppl who signed separation agreement, spouse abandons the other, parent doesn't provide for their child
- Misc. Probate Issues
 - Bond for a trustee or executor (bond → protects against theft)
 - You never need bond for the executor unless the will says DO.
 - You need a bond for the trustee unless the will says you DON'T.
- Preliminary Letters
 - You have power to pay all debts but you cannot distribute
 - SPCA 1404 Hearing: A hearing of witnesses & the lawyer who drew the will
 - There is no trial – it's a discovery proceeding (sharing of information)
- The Dead Man's Statute

- You cannot testify as to what the dead man said if you benefit from that testimony
- Exceptions to the Dead Man's Statute:
 - 1) 1404 Hearing-> Discovery (sharing information) – deciding what you want to do
 - 2) Spouse of interested person (person who can't speak)
- The executor can testify – wants to testify that person in good mind
 - *Benefits? Yes, but only commissions which aren't gifts under the will.
- Burden of Proof for testamentary capacity & objector for fraud & undue influence
- Who needs to raise the issue first?
- Testamentary – executor ; undue influence: objector
- In terriren clause: Give them something to think over
- TU rule (Testamentary & Undue Influence) – On these grounds if you lose & the will is upheld, your bequest is out
- -Divorce: If you're divorced, you're OUT
- -Probate of copied will: If you have a copy of a will, it is presumed that the original will was revoked by the testator -> Can you probate? Only if a 3rd party can testify that they lost it
- -A will is valid when made/where made
- You get in a plane, fly to Montana w/ will in hand, you step onto Montana soil & ask random person to witness it. Will is VALID.
- Ancillary Probate: Probate will 2x [TWICE], once in the state they lived & 2nd time in NY
 - * Deceased owns assets in 2 states. First probate in the state where person lived then go to 2nd state [Always real estate].
- Closing estate: Must file an inventory & receipts & waivers
- Minors: If a minor inherits less than \$10,000 you can pay it to a parent. If its over, it has to go into a guardianship account [Get it at 18]. Court appoints relative to guard money in account.
- Commissions: 1) If there's less than \$100,000, you can only take 1 commission. 2) If it's more than \$100,000 you can only take 2 commissions. 3)No commissions on real estate unless sold. 4)No commission on specific property.