Trust, Wills, & Estates Outline

I. Intestate Succession

A. General Principles

- Intestate succession governs the distribution of property when an individual dies without a valid will.
- It also applies when a will fails to dispose of all property (partial intestacy).
- Rules of intestacy are determined by state statutes, often based on the Uniform Probate Code (UPC).
- Intestate succession rules apply to determine heirs when a will references "heirs".

B. Share of the Surviving Spouse

1. **Decedent Not Survived by Descendants or Parents**
   - Surviving spouse inherits the entire estate.
2. **Decedent Survived by Descendants**
   - Under many state statutes, the surviving spouse inherits one-half or one-third of the estate.
   - The UPC provides variations depending on whether the descendants are also children of the surviving spouse and if the surviving spouse has other children.
   - California: surviving spouse gets 100% of CP and at least 1/3 of SP depending on surviving kindred or issue.
3. **Decedent Survived by Parents**
   - In some jurisdictions, a surviving parent is entitled to a nominal amount of the estate exceeding a certain value (e.g., $200,000).
   - California: If decedent is survived by parents, surviving spouse gets ½ of SP, remainder to parents.

C. Share of Children and Remote Descendants

1. **Surviving Spouse**
   - Descendants take the portion of the estate not passing to the surviving spouse.
2. **No Surviving Spouse**
   - Estate is distributed to the decedent's descendants.
   - Living children share equally.
   - California: If no surviving spouse, SP passes to issue, then to parents, then to parent's issue, then to grandparents or their issue, then to predeceased spouse’s

issue.

3. **Child Predeceases Intestate Decedent**
   - Distribution methods address how to handle the share of a deceased child:
     - **Strict Per Stirpes:** Estate is divided at the children's generation, with each line taking an equal share, regardless of living members.
     - **Modern Per Stirpes/Per Capita with Representation:** Estate is divided at the closest generation with living descendants, with shares of deceased members passing to their descendants.
     - **Per Capita at Each Generation (UPC):** Similar to Modern Per Stirpes, but shares are pooled at each generation and divided equally among representatives at the next level.
4. **Adopted Children**
   - Generally treated the same as biological children for inheritance purposes.
   - Equitable adoption may apply in some situations where formal adoption did not occur.
   - California: Adopted person dies intestate - property is distributed among those who would have been kindred.
5. **Children Born Out of Wedlock**
   - Inheritance through the mother is permitted in all states.
   - Inheritance through the father requires proof of paternity.
   - Uniform Parentage Act establishes paternity through acknowledgment, adjudication, or adoption.
   - California: Natural parent may not inherit from the child unless they acknowledged the child.
6. **Half-Blood Children**
   - Treated equally as whole-blood children in most states.

D. Share of Ancestors and Collaterals

1. **Surviving Descendants or Spouse**
   - Ancestors and collaterals generally inherit nothing.
2. **Surviving Parents, Siblings, or Descendants of Siblings**
   - Parents and siblings take in equal shares if there are no surviving spouse or descendants.
   - Surviving parent takes a double share.
   - Descendants of deceased siblings take per stirpes.
3. **Descendants of Grandparents**
   - Inherit if there are no surviving descendants, spouse, parents, or siblings.
   - Divided equally between maternal and paternal lines.
4. **Descendants of Great-Grandparents**
   - Allowed to inherit in a minority of jurisdictions.
5. **Escheat**
   - Property passes to the state if there are no heirs.

E. Advancements

- Lifetime gifts to heirs are considered advancements only if:
  - The decedent declared the intent in a contemporaneous writing, OR
  - The heir acknowledged the transfer as an advancement in writing.
- California: Inter vivos property given to heirs during decedent's lifetime is treated as an advancement only if the decedent declares it in writing, or the heir acknowledges it in writing.

F. Simultaneous Death

- **Original USDA:** Property passes as if each person survived the other if there is no sufficient evidence of who died first.
- **Revised USDA and UPC:** Requires clear and convincing evidence of survival by 120 hours to inherit.

II. Wills

A. General Principles

- A will allows individuals to control the distribution of their property after death.
- Courts strive to honor the testator's intent.
- Will must comply with specific legal requirements to be valid.

B. Execution Requirements

1. **Governing Law**
   - The law of the decedent's domicile at death governs personal property distribution.
   - Law of the jurisdiction where real property is located governs its distribution.
   - California: Law where will was executed or where testator is domiciled governs validity.
2. **Compliance with Law**
   - Will must comply with the law of the domicile at the time of execution or the law where it was executed.
3. **Formal Requirements**
   - **Writing:** Will must be in writing.
   - **Signature:** Testator must sign the will.
     - Location of the signature can impact validity.
     - Signature on the testator's behalf is allowed in some circumstances.
   - **Witnesses:** Two or more witnesses are generally required.
     - Witness requirements vary by state.
     - Interested witnesses may be allowed under modern statutes.
4. **Testamentary Capacity**
   - Testator must be 18 years old and of sound mind at the time of execution.
   - Capacity requires understanding of:
     - Nature and extent of property.
     - Natural objects of bounty.
     - Disposition being made.

        - Testamentary plan.
5. **Testamentary Intent**
    - Testator must intend the document to be their will.
    - Must understand they are creating a document with legal effect after death.
    - Generally must know and approve the contents of the will.

C. Types of Wills

1. **Attested Will**
    - Meets the formal requirements of writing, signature, and witnesses.
2. **Holographic Will**
    - Handwritten will.
    - Material provisions must be in the testator's handwriting.
    - Signed by the testator.
    - Witnesses are not required.
    - Some states require a date.
3. **Nuncupative (Oral) Will**
    - Not permitted in most states, including those adopting the UPC.
    - May be valid in some states for limited personal property dispositions made in contemplation of death.
4. **Conditional Will**
    - Validity is conditioned upon an event.
    - Courts may construe excess language as an explanation rather than a condition to uphold validity.

D. Components of a Will

1. **Integration**
    - All pages present at execution and intended to be part of the will constitute the complete document.
2. **Codicil**
    - A supplement or addition to a will.
    - Must be executed with the same formalities as a will.
    - Republishes the will as of the date the codicil is executed.
    - May validate an invalid will.
3. **Incorporation by Reference**
    - Allows incorporation of an existing document into the will if:
        - It existed at the time of will execution.
        - The will shows the intent to incorporate it.
        - It is described with sufficient certainty for identification.
4. **Acts of Independent Significance**
    - Permits designation of a beneficiary or disposition based on an act or event outside the will if it has significance apart from the will.
5. **Personal Property List (UPC)**
    - Allows a separate list disposing of personal property (not money).
    - Must describe beneficiaries and property with reasonable certainty.

    - Can be created after the will is executed.
6. **Dispositions to an Inter Vivos Trust**
    - Allows gifts to trusts in existence at death, even if created after the will.

E. Revocation

1. **Methods of Revocation**
    - **Subsequent Instrument:** A later will or codicil can revoke a prior will in whole or in part.
    - **Physical Act:** Burning, tearing, canceling, obliterating, or destroying the will with the intent to revoke.
        - Requirements for revocation by physical act vary by jurisdiction.
    - **Operation of Law:** Certain events, such as divorce or homicide, can revoke provisions.
2. **Dependent Relative Revocation**
    - Allows a court to revive a revoked will if the testator revoked it based on a mistaken belief about the law or facts.
3. **Revival**
    - **Republication by Codicil:** Executing a codicil to a revoked will can revive it.
    - **Intention to Revive:** Some jurisdictions consider the testator's intent when reviving a previously revoked will.
4. **Lost Wills**
    - If a will is lost, its proponent must prove its contents by clear and convincing evidence.

F. Contractual Wills

1. **Requirements**
    - Must be in writing and signed by the party against whom enforcement is sought.
    - May be established through:
        - Provisions in the will.
        - Express reference to a contract and extrinsic evidence.
        - A signed writing evidencing the contract.
2. **Joint Wills**
    - A single instrument serving as the will of multiple people.
    - Does not create a presumption of a contract not to revoke.
3. **Reciprocal Wills**
    - Separate wills with identical or reciprocal provisions.
    - Does not create a presumption of a contract not to revoke.
4. **Enforceability**
    - Enforceable only against the party who signed the contract.
    - No remedy for breach while the testator is alive.

G. Will Contests

1. **Grounds for Contest**

- **Lack of Testamentary Capacity:** Testator lacked the mental capacity to execute the will.
- **Undue Influence:** Testator was coerced into making the will.
- **Fraud:** Testator was deceived into making the will.
- **Mistake:** Error in the will's execution or content.

2. **Standing to Contest**
   - Only directly interested parties who stand to benefit financially can contest.
3. **No-Contest Clauses**
   - Designed to deter contests by forfeiting the beneficiary's share if they challenge the will.
   - Enforceability varies by jurisdiction.
   - California: Enforceable unless the contest was based on forgery, revocation, improper execution, or fraud/undue influence.

H. Construction Problems

1. **Lapsed Legacies**
   - A gift fails if the beneficiary predeceases the testator.
   - Anti-lapse statutes may substitute beneficiaries, typically descendants of the deceased beneficiary.
   - California: Anti-lapse statute applies unless the will states otherwise. Gift passes to issue of the intended beneficiary.
2. **Ademption by Extinction**
   - Applies only to specific bequests.
   - Gift fails if the property is no longer in the testator's estate at death.
   - Traditional Approach (Identity Theory): Focuses on whether the specific property is in the estate.
   - UPC Approach (Intent Theory): Considers the testator's intent.
3. **Ademption by Satisfaction**
   - A gift may be satisfied by an inter vivos transfer if that was the testator's intent.
   - UPC: Requires an express writing to presume satisfaction.
4. **Abatement**
   - Occurs when the estate's assets are insufficient to satisfy all gifts.
   - Gifts are reduced in a specific order to cover debts and expenses.
   - California: Abatement follows the order of intestate property, residuary devises, general devises, demonstrative devises, and specific devises.
5. **Ambiguities and Mistakes**
   - Extrinsic evidence is generally admissible to resolve ambiguities but not to correct mistakes.
   - Courts may consider surrounding circumstances to determine the testator's intent.
6. **Exoneration of Liens**
   - Common Law: Beneficiary of encumbered property could have the lien paid from the estate.
   - Most states (UPC): Beneficiary takes subject to the lien.
7. **Gifts to Classes**
   - A gift to a group of people described collectively.

- Class remains open until the named person dies or the gift becomes possessory.
- Common Law: Deceased member's share passes to their estate.
- UPC: Deceased member's share may pass to their issue.

I. Non-Probate Transfers

1. **Will Substitutes**
   - Methods of transferring property outside of probate.
2. **Revocable Trusts**
   - Allow the settlor to retain control over assets during their lifetime.
   - Assets pass to beneficiaries outside of probate upon the settlor's death.
3. **Pour-Over Wills**
   - A devise of property to a trust created during the testator's lifetime.
   - Property passes according to the trust's terms.
4. **Other Will Substitutes**
   - Bank accounts and securities registered in beneficiary form.
   - Payable-on-death clauses in contracts.
   - Life insurance proceeds payable to a named beneficiary.
   - Joint tenancy with right of survivorship.
   - Tentative (Totten) Trusts.

III. Family Protection

A. Spouse's Forced or Elective Share

1. **Purpose**
   - Protects a surviving spouse from disinheritance.
2. **Elective Share**
   - Allows the spouse to choose between taking under the will or taking a statutory share of the estate.
3. **Waiver**
   - Spouse can waive the elective share in writing after fair disclosure.
   - California: Omitted spouse receives their share of CP and up to ½ share of SP unless:
     - Omission was intentional
     - Decedent provided a substitute transfer outside the will
     - Waiver agreement exists.
4. **Augmented Estate**
   - The elective share is calculated based on an augmented estate, including certain non-probate assets.
   - California: No augmented estate. Spouse gets 100% of CP and a share of SP depending on survivors.

B. Share of After-Born or Pretermitted Child

1. **Omitted Child**
   - A child born or adopted after the will's execution who is not provided for in the will.

    - California: Pretermitted child gets an intestate share unless:
        - Omission was intentional
        - Decedent provided a substitute transfer outside the will
        - Decedent had other children and left the estate to the omitted child's other parent.
2. **Intestate Share**
    - Omitted child is generally entitled to an intestate share unless the omission was intentional or other provisions were made.
    - California: Omitted child receives intestate share, unless the omission was intentional, the decedent provided for the child outside of the will, or the decedent had other children and left the estate to the omitted child's other parent.

C. Homestead Allowance and Exempt Property

1. **Homestead Allowance**
    - Allows the surviving spouse and minor children to live in the family home for a certain period.
2. **Exempt Property**
    - Permits the surviving spouse to claim specific personal property of the decedent up to a certain value.

D. Limitations on Charitable Bequests

- Mortmain laws, which historically limited charitable bequests, have been largely abolished.

IV. Living Wills and Durable Health Care Powers

A. Purpose

- Allow individuals to express their wishes regarding medical treatment if they become incapacitated.

B. Living Will

1. **Instructions for Medical Treatment**
    - Specifies life-prolonging measures to be taken or withheld if terminally ill or incapacitated.
2. **Requirements**
    - Must be in writing, signed, and witnessed.

C. Durable Health Care Power of Attorney

1. **Appointment of Agent**
    - Designates an agent to make healthcare decisions on the individual's behalf.
2. **Scope of Authority**

    - Agent can make any healthcare decision the principal could make if they had capacity.
3. **Requirements**
    - Must be in writing, signed, and may require witnessing.

D. Revocation

- Advance health care directives can be revoked by the principal at any time.

E. Agent's Authority

1. **Executed Power of Attorney**
    - Agent must act in accordance with the durable health care power of attorney.
2. **Family Consent Laws**
    - May allow family members to make decisions if no agent is designated or the power of attorney is unclear.
3. **Effective Period**
    - Continues until the principal's death or revocation, even if the principal becomes incapacitated.

F. General Considerations

- Advance healthcare directives must comply with state laws.
- Consultation with an attorney is recommended to ensure proper execution and compliance with legal requirements.

Trusts & Estates Outline

I. Trusts

A. What is a Trust?

- A trust is a **fiduciary relationship** in which a trustee holds legal title to property for the benefit of beneficiaries.
- **Bifurcated transfer**: A trust involves a split of legal and equitable title to property.
    - The trustee holds **legal title** and manages the property.
    - The beneficiary holds **equitable title** and is entitled to the benefits of the property.

B. Types of Trusts

1. Express Trusts

- **Express Trust**: Created when the settlor clearly expresses the intent to create a trust and complies with the requisite formalities.
    - **Private express trust**: A trust created for the benefit of specific, ascertainable beneficiaries.

    - **Charitable trust**: A trust created for a charitable purpose that benefits the public or a segment of the public.
- **Elements**:
    - **Intent**: Settlor must manifest present intent to create a trust for the benefit of ascertainable beneficiaries.
        - No specific words required but the settlor must intend to create the legal relationships and duties characteristic of a trust.
        - **Precatory language**: Words merely expressing a wish or hope for the use of property are generally insufficient to create a trust. However, courts will examine all facts and circumstances to determine the settlor's intent.
    - **Trust Property (Res)**: There must be identifiable trust property (res) that is described with reasonable certainty and segregated from the settlor's other property.
        - **Invalid for lack of assets**: If a trust is initially invalid for lack of assets, it will become valid if the settlor later funds the trust and re-manifests intent to create a trust.
    - **Valid Trust Purpose**: The trust's purpose must be lawful and not contrary to public policy.
    - **Ascertainable Beneficiary**: The beneficiaries must be identifiable or ascertainable.
        - **Honorary Trust**: A trust for a non-charitable purpose with no ascertainable beneficiary, generally invalid.
        - **Disclaimer**: A beneficiary may disclaim their interest, treating them as predeceasing the distribution.
    - **Trustee**: The trust must have a trustee who holds legal title and manages the trust property.
        - The court will appoint a trustee if the settlor fails to designate one.
        - The sole trustee cannot be the sole beneficiary.

2. Inter Vivos Trusts

- **Inter vivos trust**: Created during the settlor's lifetime.
- **Elements**:
    - **Delivery**: Must accompany the declaration of trust if a third-party trustee is named. Settlor must part with dominion and control over the trust property.
    - **Writing**: Required only for real property under the Statute of Frauds. A constructive trust may be imposed if a writing is lacking.
    - **Parol Evidence**: Evidence outside the written trust agreement is admissible only to show the settlor's intent if the writing is ambiguous.

3. Testamentary Trusts

- **Testamentary trust**: Created by the terms of a valid will.
    - Takes effect only upon the testator's death.
- **Types**:
    - **“Secret” Trust**: A testamentary gift that appears absolute but relies on the beneficiary's promise to hold and administer the property for another. A constructive

trust is imposed on the property for the intended beneficiary.
    - **“Semi-Secret” Trust**: A testamentary gift directed to be held in trust, but the testator fails to name a beneficiary or specify trust terms. A resulting trust is imposed, holding the property for the testator's heirs.

4. Pour-Over Trusts

- **Pour-over trust**: A provision in a will that directs property to an existing inter vivos trust upon a specified event (usually the testator's death).
    - Valid even if the trust was not executed in accordance with the Statute of Wills, as long as the trust is identified in the will and its terms are in writing.
- **Benefits**:
    - Avoids probate.
    - Allows the settlor to make changes to the trust during their lifetime.

5. Remedial Trusts

- **Remedial trusts**: Created by operation of law as an equitable remedy, not driven by intent.
    - They are passive trusts where the trustee's sole duty is to convey the property to the rightful owner.
- **Types**:
    - **Resulting Trust**: Arises when an express trust fails or partially fails, or when there is an excess of trust property. The trustee holds the property for the benefit of the settlor or the settlor's estate.
    - **Constructive Trust**: Imposed to prevent unjust enrichment due to fraud, duress, undue influence, or breach of duty. The trustee holds the property for the benefit of the person who was wrongfully deprived.

6. Other Types of Trusts

- **Revocable Trust**: Can be amended or revoked by the settlor during their lifetime.
    - The majority rule presumes trusts are irrevocable unless stated otherwise.
    - The UTC presumes trusts are revocable unless stated otherwise.
- **Irrevocable Trust**: Cannot be amended or revoked by the settlor.
- **Mandatory Trust**: Trustee is required to make specific distributions.
- **Discretionary Trust**: Trustee has discretion over distributions.
- **Support Trust**: Distributions are made to support the beneficiary's needs.
- **Spendthrift Trust**: Protects the beneficiary's interest from creditors and alienation.

C. Trustee Powers and Duties

- **Trustee's Powers**: Derived from the trust instrument, state law, court decrees, and implied powers necessary to carry out the trust's purposes.
    - Power to settle or abandon claims, borrow money, sell or lease trust assets, and incur reasonable expenses for maintaining trust property.
- **Trustee's Duties**: Owed to the beneficiaries and enforceable by them.

1. Duty of Loyalty and Good Faith

- **Duty of Loyalty**: Requires the trustee to act solely in the best interests of the beneficiaries.
  - **Self-Dealing**: Prohibited. Trustee cannot engage in transactions with the trust for personal benefit, even if fair and in good faith.
    - **Exceptions**: Self-dealing may be permitted if authorized by the settlor, court order, or all beneficiaries. However, the transaction must still be fair and reasonable.
  - **Conflicts of Interest**: Trustee must avoid situations that place their personal interests in conflict with the beneficiaries' interests.
    - Assessed under a "reasonable and in good faith" standard.

2. Duty of Care (Prudence)

- **Duty of Care**: Requires the trustee to exercise reasonable care, skill, and caution in managing trust property.
  - **Prudent Person Rule**: Trustee must manage the trust as a prudent person would manage their own affairs.
    - **Prudent Investor Rule**: Requires prudent and reasonable investments, considering economic conditions, diversification, and preservation of capital.
  - **Duty to Make Property Productive**: Trustee must pursue all claims, maximize income from investments, sell assets when appropriate, secure insurance, pay expenses, and act promptly in all matters.
  - **Duty to be Impartial**: Trustee must balance the interests of present and future beneficiaries, considering income needs and preservation of principal.

3. Other Duties

- **Duty to Inform and Account**: Trustee must disclose complete and accurate information about the trust property to beneficiaries and provide regular accountings.
- **Duty of Prudent Administrator**: Requires the trustee to administer the trust as a prudent person would, including securing possession of property, maintaining real property, segregating personal and trust assets, and earmarking trust assets.
- **Duty to Perform Personally**: Trustee cannot delegate duties except for tasks that would be unreasonable to perform personally.
  - Modern law allows for delegation of investment and management functions, but the trustee must exercise reasonable care in selecting, establishing the scope of authority, and monitoring the agent.

D. Modification and Termination

1. Termination

- **Automatic Termination**: Occurs when the trust purpose is accomplished.
- **Termination by Consent**: All beneficiaries and the trustee consent, and the settlor is deceased or has no remaining interest.

- **Termination by Court Order**: Occurs if the trust purpose has been achieved or becomes illegal, impracticable, or impossible.
- **Expiration**: Occurs at the end of the term specified in the trust instrument.

2. Modification

- **Settlor's Intent**: The settlor must expressly reserve the right to modify or terminate the trust.
- **Modification by Consent**: All beneficiaries consent, and the modification does not interfere with the primary purpose of the trust.
- **Judicial Modification**: May be allowed to reflect the settlor's wishes or due to changed circumstances.
  - **Deviation**: Modification to adjust to unforeseen circumstances while still fulfilling the trust's purpose.
  - **Cy Pres**: Modification to achieve a charitable purpose as near as possible to the settlor's original intent when the original purpose becomes impracticable or impossible.

E. Beneficiary Rights and Creditor Claims

- **Alienation**: Beneficiary's interest is freely alienable unless restricted by the trust instrument or a statute.
- **Creditor Rights**: Creditors can generally reach the beneficiary's interest unless there are restrictions like spendthrift provisions.
- **Spendthrift Trust**: Limits the beneficiary's ability to transfer their interest and protects the trust property from creditors.
  - **Exceptions**: Certain creditors can reach trust property, including:
    - Spousal or child support
    - Creditors providing necessities to the beneficiary
    - Government claims (e.g., tax liens)

F. Principal and Income

- **Traditional Approach**:
  - Life beneficiaries were entitled to income generated by trust property (interest, dividends, etc.).
  - Remainder beneficiaries were entitled to the principal upon termination of the trust.
- **Modern Approach (UPAIA)**:
  - Focuses on the total return of the trust portfolio.
  - Allows trustee to re-characterize and reallocate items between principal and income to fulfill trust purposes and treat beneficiaries fairly.
  - Factors to consider include the settlor's intent, trust purpose, beneficiary circumstances, economic conditions, and tax consequences.

G. Powers of Appointment

- **Power of appointment**: Allows the holder (donee) to direct the distribution of property, typically trust property, to others.
- **Types**:
  - **General power**: No restrictions on the donee's ability to appoint the property.
  - **Special power**: Limits the donee's ability to appoint the property to a specific class of people.
- **Exercise**: Donee must manifest intent to exercise the power in a valid instrument (e.g., a will) and comply with any conditions set by the donor.

II. Future Interests

A. Introduction

- **Future Interest**: A present right to possess property in the future.
- **Possessory Estate**: The current right to possess property.

B. Fee Simple Interests

- **Fee Simple Absolute**: Full ownership with unlimited duration and no conditions.
- **Fee Simple Determinable**: Ownership that automatically ends upon the occurrence of a specified event, at which point the property reverts to the grantor.
- **Fee Simple Subject to Condition Subsequent**: Ownership that may be terminated by the grantor upon the occurrence of a specified event.

C. Future Interests of the Grantor

- **Possibility of Reverter**: Automatically arises when the grantor conveys a fee simple determinable.
- **Right of Entry**: Arises when the grantor conveys a fee simple subject to a condition subsequent.
- **Reversion**: Arises when the grantor conveys a lesser estate than they own (e.g., a life estate).

D. Future Interests of Transferees

1. Remainders

- **Remainder**: A future interest that becomes possessory upon the natural termination of the preceding estate.
- **Types**:
  - **Vested Remainder**: No conditions precedent for the remainder to become possessory.
    - Passes to the remainderman's heirs if they die before the preceding estate terminates.
  - **Contingent Remainder**: Subject to a condition precedent for the remainder to become possessory.

2. Executory Interests

- **Executory Interest**: A future interest that cuts short a prior estate or divests a vested remainder.
- **Types**:
  - **Springing Executory Interest**: Divests the grantor's interest in the future.
  - **Shifting Executory Interest**: Divests another transferee's interest in the future.

E. Rule Against Perpetuities

- **Purpose**: Prevents interests from being tied up indefinitely in the future.
- **Rule**: An interest must vest, if at all, within 21 years after the death of some life in being at the creation of the interest.
- **Modern Approaches**: Many states have adopted the "wait and see" approach, which waits to see if the interest actually vests within the perpetuities period.
- **Cy Pres**: Courts may modify a grant to comply with the Rule Against Perpetuities.

III. Construction Problems

A. Gifts to Classes

- **Class Gift**: A gift to a group of individuals described collectively (e.g., "my children").
- **Class Closing**: When any class member becomes entitled to a distribution.
- **Death of Class Member Before Distribution**:
  - **Common law**: Deceased member's share passes to their estate.
  - **UPC**: Deceased member's share may pass to their issue (descendants) unless the trust specifies otherwise.

B. Gifts to Heirs

- **Heirs**: Individuals who would inherit under the intestacy laws if the decedent died without a will.
- **Interpretation**: The scope of "heirs" or "family" depends on the trust instrument and circumstances.

C. Ademption

- **Ademption**: When a specific gift in a will fails because the property is no longer in the testator's estate at their death.
- **Types**:
  - **Ademption by Extinction**: Property specifically bequeathed is no longer owned by the testator at death.
    - **Exception**: UPC may allow the devisee to receive replacement property if the testator acquired it as a replacement for the specifically devised property.
  - **Ademption by Satisfaction**: Testator gives the property to the beneficiary during their lifetime.

D. Abatement

- **Abatement**: Reduction or elimination of gifts in a will when the estate's assets are insufficient to satisfy all bequests.
- **Order of Abatement**:
  - Property not disposed of by the will
  - Residuary gifts
  - General gifts
  - Specific gifts

E. Lapsed Legacies

- **Lapse**: Occurs when a beneficiary named in a will predeceases the testator.
- **Anti-Lapse Statute**: May save a gift from lapsing if the predeceasing beneficiary was a close relative of the testator and left surviving descendants.

F. Ambiguities and Mistakes

- **Plain Meaning Rule**: Courts will generally uphold the plain meaning of the will even if there is evidence of a mistake.
- **Ambiguities**: Extrinsic evidence is admissible to resolve patent and latent ambiguities in the will.
- **Mistakes**: Extrinsic evidence is admissible to show a mistake in the execution of the will.

G. Will Contests

- **Grounds**: Lack of testamentary capacity, undue influence, fraud, mistake, or improper execution.
- **Standing**: Only those with a potential pecuniary interest in the estate have standing to contest a will.

H. Non-Probate Transfers

- **Non-Probate Transfers**: Ways to transfer property outside of probate, such as:
  - **Inter Vivos Gifts**: Requires intent, delivery, and acceptance.
  - **Gifts Causa Mortis**: Gifts made in contemplation of imminent death.
  - **Joint Tenancy**: Property passes to the surviving joint tenant(s) automatically.
  - **Revocable Trusts**: Assets held in a revocable trust avoid probate.
  - **Pay-on-Death Accounts**: Bank accounts or securities that designate a beneficiary to receive the funds upon the account holder's death.
  - **Life Insurance**: Proceeds paid to a named beneficiary outside of probate.

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