THE STATE BAR OF CALIFORNIA
BOARD OF LEGAL SPECIALIZATION

Area of Specialty:

ESTATE PLANNING, TRUST AND PROBATE LAW

STATE BAR OF CALIFORNIA
CBLS
CALIFORNIA BOARD OF LEGAL SPECIALIZATION

LEGAL SPECIALIST EXAMINATION

Registration & Preparation Packet

Examination Date: October 27, 2015

INTRODUCTION

This packet contains key information you will need to prepare for the legal specialist examination to be given on October 27, 2015.

For full detail, please be sure to visit the examination page as well as your legal specialty page on www.california specialist.org.

This packet contains:

- An Action List for Examination Preparation
- Examination Specification listing topics that may be tested on the examination
- Sample essay questions from past examinations (Multiple-choice questions are not released for practice)
- A fillable examination registration form

2015 EXAMINATION ACTION LIST

Start Today:

1. Registration is in this packet and also at www.californiaspecialist.org.
    a. Early Bird Pricing Ends **September 1, 2015**.
    b. Registration closes **October 1, 2015**.
    c. Choose Oakland Convention Center or Pasadena Convention Center.
2. Review this packet for an overview, and visit the examination and specific specialty pages at www.californiaspecialist.org for more details about the examination and the application you will file afterward.

Know the Examination:

1. Format: Four Hour Morning Session, 8 essays; Approximate 90-minute lunch; Two and One Half Hour Afternoon Session, 75 Multiple-Choice Questions.
2. Examination Topics: See attached Examination Specification for Examination Topics.
3. Examination Practice: Sample essays are enclosed. No multiple-choice questions are released for practice.
4. If you plan to register for an optional preparation class from a commercial provider, be sure to check the schedule right away, as some courses are already underway, and all are designed to accommodate your full-time working schedule. Your specialty page at www.californiaspecialist.org will list all preparation classes reported to the Department of Legal Specialization.

Prepare for Examination Day:

Arrive with enough time to arrive by 7:00 a.m. so that you have registered, found your seat, and started your laptop your laptop computer will be on if you are using one, by the time the examination begins at 7:30 a.m.

Bring only those items allowed on the examination bulletin that will be sent to you when you register.

You may bring one of the following annotated or unannotated code books free from markings, tabs or notations other than your name and contact information. No e-books, printouts or CD-ROMs are allowed.

1. Deerings California Probate Code 2015 Edition, LexisNexis, ISBN 9781632810212.
2. West California Probate Code 2015 Ed., Thomson Reuters, IBN 9780314662125.
3. McGovern California Probate Code Annotated 2015 Edition, Thomson Reuters, ISBN 9780314669445.
4. Parker's California Probate Code 2015 Edition, LexisNexis, ISBN 9780769855318

THE STATE BAR OF CALIFORNIA
BOARD OF LEGAL SPECIALIZATION
ESTATE PLANNING, TRUST AND PROBATE LAW
Examination Specifications

Purpose of the Examination: The Estate Planning, Trust and Probate Law Examination consists of a combination of essay and multiple-choice questions. It is designed to verify the applicant's knowledge of and proficiency in the usual legal procedures and substantive law that should be common to specialists in the field as represented by the skills listed below. We recognize that these skills are interrelated, which may require that you apply several skills in responding to a single exam question. Also, the order of the skills does not reflect their relative importance, nor does the skill sequence represent an implied order of their application in practice.

Your answers to the exam questions should reflect your ability to identify and resolve issues, apply estate planning, trust and probate law to the facts given, and show knowledge and understanding of the pertinent principles and theories of law, their relationship to each other, and their qualifications and limitations. Of primary importance for the essay questions will be the quality of your analysis and explanation.

Knowledge of the following fundamental lawyering skills may be assessed:

Subject Area 1: Professional Responsibility 1.0 Duties to clients, opposing counsel, and the Court 2.0 Bases for attorney's fees 3.0 Bases for sanctions 4.0 Fee agreements 5.0 Arbitration/mediation and dual representation 6.0 Conduct resulting in malpractice/discipline 7.0 Fiduciary duties 8.0 Conflicts of interest/ethics 9.0 The client's remedies against the attorney	**Subject Area 2: Tax Planning Matters, Tax Procedures, and Tax Returns** 2.1 Tax opinions, memoranda, and advice letters 2.2 Tax-sensitive wills, trusts, and powers of attorney 2.3 Audits, appeals, and ruling requests 2.4 Estate, gift, fiduciary, and personal income tax issues 2.5 Property taxes 2.6 Disclaimers, reformations, and constructions 2.7 Powers of appointment 2.8 Generation-skipping taxes 2.9 Preparation and filing of returns 2.10 Payment/deferral of taxes 2.11 Modification/termination of irrevocable trusts for tax planning purposes
Subject Area 3: Estate and Incapacity Planning 3.1 Wills (drafting, codicils, revocation) 3.2 Trusts (creation, amendment, restatement, revocation, termination) 3.3 Use of custodianships 3.4 Documents of title 3.5 Beneficiary clauses 3.6 Property agreements 3.7 Community property, separate property, and quasi-community property 3.8 Powers of attorney 3.9 Health Care Directives 3.10 Gifts	3.11 Powers of appointment 3.12 Disclaimers 3.13 Public benefit planning 3.14 Issues of diminishing capacity 3.15 Elder law/Medi-Cal planning 3.16 Retirement benefit planning 3.17 Business succession planning 3.18 Charitable planning 3.19 Use of business entities 3.20 Nominations of conservator/guardian 3.21 Special needs trusts 3.22 Elder abuse 3.23 Spousal and Registered Domestic Partnership rights

Subject Area 4: Administration Procedures	**Subject Area 5: Transfers by Administration or Otherwise**
4.1 Trusts (court or non-court) 4.2 Powers of attorney 4.3 Custodial accounts 4.4 Conservatorships 4.5 Guardianships 4.6 Health care directives/issues 4.7 Accountings 4.8 Fiduciaries 4.9 Modification/termination of irrevocable trusts for non-tax planning purposes 4.10 Other procedures under the Probate Code	5.1 Terminations of interests with right of survivorship 5.2 Spousal set asides 5.3 Summary probate procedures 5.4 Formal probate 5.5 Pay on death/transfer on death accounts 5.6 Retirement accounts 5.7 Family claims/protection procedures 5.8 Will/trust contests 5.9 Determination of heirship 5.10 Creditor's claims/rights 5.11 Constructive trusts 5.12 Contracts to convey at death/contracts regarding wills 5.13 Asset ownership disputes

THE STATE BAR OF CALIFORNIA
BOARD OF LEGAL SPECIALIZATION
ESTATE PLANNING, TRUST AND PROBATE LAW
Certification Exam Sample Essay Questions

These questions are actual questions from past exams. These questions were designed to be read and answered within 45 minutes, though current examination questions are designed to be read and answered in 30 minutes. No 30 minute essay questions will be released publicly.

Sample Question #1

Decedent's two children, Daughter and Son, come to consult with you. They relate the following facts. Dad left a valid Will. The Will reads as follows:

> "I declare that I am a widower. I have had two children, namely, Daughter and Son.
> I direct that all my just debts be paid from the residue of my estate.
> I give my residence to my Daughter.
> I give all my stocks and corporate bonds in my trading account to my Son.
> I give the sum of $10,000 to my late wife's brother, Brother-in-Law.
> I give the sum of $1,000 to my Church.
> I give the residue of my estate to my surviving grandchildren, equally.
> I appoint my Daughter as executor or, in the alternative, my Son."

After the execution of the Will, Dad put an equity loan against his house to pay off some bills. He liquidated the portfolio in his trading account and invested the proceeds in a US Treasury Bond mutual fund. Brother-in-law died prior to Dad. The creditors' claims filed and approved exceed the value of the residue.

A. What are the legal issues bearing on the distribution of the estate? Please discuss any alternative arguments regarding the applicable rules of law.

B. Discuss the ethical issues:

1. regarding either of the children serving as the executor; and

2. regarding you representing either of them as the executor.

Sample Question #2

Harrison and Wendy have been married 10 years. It is Harrison's first marriage. Harrison is 80 years old and very alert. Harrison is worried about Wendy and wants to protect her now and in the event he predeceases her.

Wendy, age 78, suffers from advanced Parkinson's Disease and dementia. Wendy was a widow when she married Harrison. She has two children from her prior marriage, Dotty and Bruce. Wendy's estate plan consists of a revocable living trust, pour-over will, and a financial power of attorney.

Dotty, age 40, is developmentally disabled and receiving SSI. Dotty lives with Wendy and Harrison.

Bruce, age 42, lives independently and earns over $100,000 per year in his job, but is always short of money.

Bruce is Wendy's financial agent under her Durable Power of Attorney. Bruce has stopped bringing Wendy her financial records for review and refuses to provide Harrison with any financial information. Bruce refuses to provide Harrison with a copy of the power of attorney, but has told Harrison that it provides Bruce with the power to alter, amend or revoke Wendy's Revocable Living Trust on her incapacity. Bruce further told Harrison that the Power of Attorney expressly bars Harrison from petitioning any court regarding the Power of Attorney or from obtaining any financial information.

Wendy's Revocable Living Trust is silent on the power to alter, amend or revoke on Wendy's incapacity. Wendy's Revocable Living Trust leaves her separate property home to Harrison with the residue in equal shares to Bruce and Dotty. Harrison is the successor trustee of the Revocable Living Trust.

Wendy has the below listed assets which are titled as follows:

Asset	Owner	Amount
Home	Revocable Living Trust (with no Mortgage)	$750,000
Savings Account	Wendy	$400,000
Totten Trust	Wendy w/Dotty as Beneficiary	$300,000

Harrison knows that Wendy wants to provide for Dotty and protect her for her entire lifetime. Harrison understands that the Totten Trust is to be inherited by Dotty on Wendy's death, but is afraid that such an inheritance will eliminate Dotty's SSI benefits. Harrison does not trust Bruce to follow Wendy's wishes regarding Dotty.

A. Can Bruce modify the terms of Wendy's Revocable Living Trust using his Durable Power of Attorney? Discuss.

B. What should Harrison do to obtain a copy of the Durable Power of Attorney? Discuss.

C. What should Harrison do to obtain information regarding Wendy's assets being managed by Bruce pursuant to the Power of Attorney? Discuss.

D. What should Harrison do with regard to the Totten Trust to preserve Dotty's SSI Benefits when Wendy dies? Discuss.

Sample Question #3

Husband died on January 17, 2003 and Wife came to you on June 17, 2003. She gave you a copy of their revocable trust and Husband's pour-over will and explained that their goal was to pay as little estate tax as possible, to provide for the surviving spouse during his or her lifetime, and eventually leave everything to their one son and his children.

The trust provides for distributions to or for the benefit of the settlors during their joint lives and directs that the trust shall be divided into two trusts upon the death of the first spouse to die. During the lifetime of the surviving spouse, the terms of the Survivor's Trust and Bypass Trust are as follows:

Survivor's Trust. The trustee shall distribute to the surviving spouse all of the income from the Survivor's Trust and such amounts of principal as may be necessary for the surviving spouse's health, education, support and happiness. In addition, the trustee shall distribute to the surviving spouse, or for her benefit, or to whomever the surviving spouse indicates, such amounts of income or principal as the surviving spouse may direct in written instructions delivered to the trustee.

Bypass Trust. The trustee shall distribute to the surviving spouse the net income annually. The trustee shall also distribute to the surviving spouse such amounts of principal as may be necessary for the health, education, support and happiness of the surviving spouse. The trustee shall also distribute to the surviving spouse, or for her benefit, or to whomever the surviving spouse indicates, such amounts of income or principal as the surviving spouse may direct in written instructions delivered to the trustee. In addition, the trustee may, in his or her sole discretion, also distribute to the issue of the settlors such amounts of principal as may be necessary for the beneficiary's health, education and support.

The bypass trust became irrevocable on the death of the husband.
It is governed by California law.
Husband has a pour-over will.
Husband and Wife made no significant lifetime gifts.
Wife is successor trustee of both trusts.

Assets

On Husband's death, Husband (H) and Wife (W) owned the following assets:

Assets	Title and description	Fair Market Value
Residence	c.p. with right of survivorship	1,500,000
Blackacre	H & W inherited from H's father in 2000 and took title as joint tenants at that time	1,000,000

Pay-on-death Account	Title in H's name, a married man, as his sole and separate property, pays on his death to W	1,000,000
100 Shares Big Oil Co.	Trustees (community property)	40,000
Account at Big Bank	Trustees (community property)	600,000
Account at Little Bank	Trustees (community property)	60,000
		$3,700,000

Wife's Actions Since Husband's Death

After Husband's death, wife took the following actions.

(1) In keeping with their practice over the last two years, Wife paid the $40,000 private-school tuition for the grandchildren. She used the proceeds from selling the Big Oil, Co. stock.
(2) She also hired a roofer to re-roof the cottage on Blackacre.
(3) Wife has been living off of the funds on deposit at Little Bank, which she transferred in their entirety to an account in her name alone. These funds are almost gone now, because Wife had some expensive In answering the following questions, do not discuss the 2000 Tax Act.

A. Identify the assets which are outside the trust and, for each, advise Wife of the steps she must take to get the assets titled in the trustee's name. In response to this sub-question, do not address the advisability of transferring the asset to the trust. Discuss only the mechanisms by which the transfer would be accomplished.

B. Discuss the advisability of transferring each asset to the trust.

1) You recommend that Wife fund the Bypass Trust and take steps to ensure that, on Wife's death, the assets in the Bypass Trust will not be included in Wife's estate. Describe how wife should use disclaimers to achieve this tax goal, discussing each of wife's actions since her husband's death and the obstacles created by these actions.

Sample Question #4

You represent Polly, a private professional conservator, who was just appointed conservator of the estate and person of Mrs. Cedar. Before Polly's appointment, the County's Public Guardian was Mrs. Cedar's conservator. The Public Guardian resigned and Polly was appointed in a manner that raises no concerns.

Mrs. Cedar is in a nursing home, where she has been since breaking her hip, five years ago. She is alert, querulous, slightly paranoid, and has short-term memory problems. She is physically frail and requires assistance with her most basic needs, such as eating, dressing herself, and getting out of bed. In the opinion of Mrs. Cedar's doctors, an opinion Polly shares, Mrs. Cedar will never return home. The nursing home is the best and least restrictive place for Mrs. Cedar to live.

To date, no inventory of Mrs. Cedar's assets has been prepared, but Polly is aware of the following:

> Mrs. Cedar owns a five bedroom, two-bath home in a neighborhood of million-dollar homes. Mrs. Cedar's only child, Junior, a 56-year old man, has lived in the home for 30 years, the last five of them alone. Junior has no telephone and will not answer the door. He has boarded over the downstairs windows and the front door and he has covered the upstairs windows with aluminum foil. Polly checked with the local utility companies and learned that the water, gas and electric services were cut off four years ago for non-payment. Junior frequently burns noxious materials in a large 50-gallon drum he keeps in the back yard.
>
> Mrs. Cedar apparently also owns some stocks. The post office forwards to Polly all of Mrs. Cedar's mail and Polly occasionally receives stock dividends in the mail. Mrs. Cedar has no brokerage account and no safe deposit box. Polly believes Mrs. Cedar's stock certificates are in her house in a lock-box Mrs. Cedar frequently mentions.
>
> Mrs. Cedar has a $50,000 bank account and receives Social Security.
>
> Mrs. Cedar's income is insufficient to meet her monthly expenses.

Junior occasionally visits Mrs. Cedar in the nursing home and, when he does, his appearance, odor and foul language frighten the staff. Mrs. Cedar complains that Junior is verbally abusive and that he steals from her, but she also complains when he does not visit. Junior's visits leave Mrs. Cedar agitated and often she cries episodically for several days after he leaves. Until lately, Junior paid Mrs. Cedar's nursing home bills each time he visited. Though he loudly declared he was paying with "his" money, he paid by forging Mrs. Cedar's name on checks drawn from her account. Mrs. Cedar talks of Junior incessantly, worrying alternately that no one is taking care of him and that he may be destroying her home.

Mrs. Cedar says Junior was well-behaved and a good student until about age 24. He then returned home to live with Mrs. Cedar. Mrs. Cedar has been Junior's primary source of support since he moved back into the family home 30 years ago. She says he manages to live on practically no money.

When the Public Guardian was the conservator, it obtained a Writ of Possession for Mrs. Cedar's residence, but took no steps to have Junior evicted. Polly has run into Junior while visiting Mrs. Cedar in the nursing home and, when Polly mentions finding Junior another place to live, Junior is adamant that he wants to remain in the home.

A. Identify the duties Polly owes Mrs. Cedar. For each duty, identify and discuss the obstacles Junior creates for Polly executing her duties to Mrs. Cedar.

B. **Polly is considering petitioning to be appointed as the conservator of Junior's person and estate. Duty by duty, discuss the problems Polly would have if she served as conservator for both Mrs. Cedar and Junior.**

Sample Question #5

Single father Tom is a 100% owner of a manufacturing corporation named Tools, Inc. The entire business is worth $2,000,000.

Tom has two adult daughters from a marriage which ended in divorce many years ago. One daughter, Mary, is unmarried and works at Tools, Inc. as the head of the sales department. The other daughter, Carrie, is a housewife with two children and a very rocky marriage. Carrie is a very poor money manager and is heavily in debt. Tom does not want to undertake family entity planning nor incur the cost of such planning.

Tom has a girlfriend named Paula with whom he has lived for the last 10 years. They live in a condominium with title vested in the name of Tom and Paula, joint tenants. Tom wants Paula to inherit the condominium, debt and estate tax free, on his death.

Tom owns the following assets with title vested in his name alone:

Corporate Stock in Tools Inc.	$2,000,000
Personal property, furniture, furnishings located in the Condo	$ 100,000
401k Plan with his ex-wife named as beneficiary	$ 300,000
IRA with no named beneficiary	$ 150,000
Checking account	$ 10,000
Mutual funds	$ 200,000

Tom owns the following asset with title vested in joint tenancy with Paula:

Condominium with a $100,000 mortgage	$ 400,000
Total Assets	**$3,160,000**

Tom comes into your office with a 10-year-old will prepared by corporate counsel for Tools, Inc. The will states that, on Tom's death, everything goes to his spouse (from whom he is now divorced) and, if she pre-deceases him, in equal shares to his two daughters or the survivor between them. There is no estate tax payment clause in this Will.

Tom wants Mary to inherit the business because she has worked there for a long time and "built it up" to where it is now. He does, however, wish to treat his daughters equally. Tom is very concerned about Carrie's long term financial stability.

Tom has an advanced case of cancer and seeks your estate planning advice.

A. What estate planning documents should you recommend for Tom? Discuss.

B. What estate tax provisions should you include in these documents to accommodate these goals? Discuss.

C. If Mary inherits the corporate stock, how might you equalize Carrie's inheritance? Discuss.

<u>Sample Question #6</u>

You are contacted by Sissy Peters, the named successor trustee and executrix for Harold Peters, her brother, who passed away on July 21, 2003.

Harold and his wife, Wanda Peters, separated on January 1, 2000. Neither Harold nor Wanda has any children. Harold and Wanda discussed filing for divorce, but Harold could never bring himself to move forward.

After his separation from Wanda, Harold established a revocable living trust and pour-over will. It has no special provisions allocating the payment of debts. His adult nephew, Nathan Peters, is the sole beneficiary of the trust.

Harold contracted a terminal illness early in 2003. Wanda moved back into the house with Harold to care for him. Because Harold was no longer employed, Wanda paid for all of the costs to maintain the house and other living expenses on Harold's credit cards. Harold's last days were spent at the Last Chance Hospital using untested and uninsured medical techniques in hopes of overcoming his terminal illness.

Sissy further disclosed that Harold had a business that he ran with a former business partner, John Brown. On June 1, 1998, Harold purchased John's fifty percent interest in the partnership for $20,000 down and an unsecured promissory note of $180,000. Harold took a loan out on his residence secured by a second deed of trust to expand the business. Harold soon discovered, however, that John had been inflating accounts receivable through irregular accounting practices and the business went under. John claims that Harold's mismanagement caused the business to fail. Harold refused to pay on the promissory note because of the alleged improprieties by John. The IRS assessed a $50,000 deficiency on Harold and Wanda's joint tax return filed for 1998. John is currently living in Toronto, Canada and last wrote a letter of

apology to Harold six months prior to his death, stating he wanted to work things out.Sissy discloses Harold's assets and liabilities as of the date of death as follows:

Asset	Title to Assets	Fair Market Value
Residence	Purchased with Wanda when first married as Joint Tenants	$550,000
Brokerage Account	Titled in trust as Harold's separate property	300,000
Life Insurance	Harold's separate property; Nathan is the named beneficiary	10,000
Personal Property	Titled in Harold's name only	25,000
	Total Assets	**$885,000**

Liabilities	Status of Security	Outstanding Balance
John Brown	Unsecured Promissory Note	$180,000
Friendly Bank	Original Purchase Money Deed of Trust on residence	300,000
Personal Bank	Second Deed of Trust on residence	200,000
Last Chance Hospital	Uninsured medical expenses for Harold's last illness	100,000
IRS	IRS tax deficiency from 1998 joint return filed with Wanda	50,000
Credit Cards	Unsecured debts for living expenses	75,000
	Total Liabilities	**$905,000**

Sissy is looking for advice on the following issues only:

A. Advise Sissy of the merits of notifying Harold's creditors under either a formal probate administration or a trust claims procedure versus providing no notice at all.

B. Once the estate assets are distributed, explain what rights and limitations a creditor has to pursue a claim from the following parties:

1. Sissy the Trustee

2. Nathan the Beneficiary

3. Wanda the Surviving Spouse

<u>Sample Question #7</u>

Harry and Wendy Johnson come to your office for their first estate planning appointment and tell you the following:

Harry is 60 years old and his first wife, Debbie, died 15 years ago. Harry had no estate planning documentation with Debbie. Wendy is 42 and was divorced from Frank Flores 11 years ago. She also had no estate planning documentation with Frank. Harry and Wendy have been married for 10 years and have no agreements with respect to their assets. Airport Security, Inc., wholly owned by Harry, is the sole means of support for the family.

Harry has two children from his previous marriage to Debbie:

1. Donna, a 36-year-old single daughter who has struggled with drug abuse problems all of her life.
2. Diane, a 28-year-old single daughter who has been on public assistance since a young child as a result of Down's Syndrome.

Wendy has two children from her previous marriage to Frank:

1. Frances, an 18-year-old daughter in a marriage that is not approved of by Wendy.
2. Freddy, a 14-year-old son.

Junior, a 9-year-old son, is the only common child between Harry and Wendy.

The assets in the Johnson's estate are summarized as follows:

Harry's Assets	**Status of Title**	**Fair Market Value**
Airport Security, Inc., "S" corporation	Harry Johnson Incorporated 1980	$2,500,000
Business Building	Harry and Debbie	1,500,000

	Johnson, Husband and Wife Acquired 1983	
Principal Residence	Harry and Debbie Johnson, Joint Tenancy with Rights of Survivorship (JTWROS) Acquired 1982	900,000
Condominium Unit Mammoth Lakes, CA	Wendy Flores	500,000
Joint Account at ABC Bank	Harry and Wendy Johnson, JTWROS	150,000

Harry's 100% interest in Airport Security, Inc., was originally valued at $500,000 when he married Wendy. Because of his children's potential creditors, spendthrift habits and public assistance needs, Harry is concerned about leaving his estate outright to them. Harry also feels close to Wendy's two children since he has participated in raising them. He thus would like his, hers, and their children to participate in his estate.

Wendy's condominium in Mammoth Lakes is a part of the divorce settlement with Frank. Wendy is concerned about the young ages of her daughter, Frances, and her husband and the future education costs of her grandchildren. Wendy has no relationship with Harry's children and thus wants her estate to be shared only amongst her two children.

Harry and Wendy want their respective estates to care for the surviving spouse, reduce administrative costs and taxes, but not engage in any current gifting or advanced planning for the children.

A. How can potential conflicts between Harry and Wendy be resolved before taking on the case?

B. Identify any issues of current title to each asset and briefly describe recommended steps to resolve any problems for planning Harry and Wendy's estate.

C. What recommendations should you make to equalize Harry and Wendy's estates to maximize their respective "applicable exclusion amounts" and yet allow them to transfer their share of the estate to their respective children?

D. To accommodate Harry and Wendy's desire to care for the survivor, what documents should you recommend for the estate to be distributed upon the first spouse's death and then the surviving spouse's death?

<u>Sample Question #8</u>

Settlor, Sam, was a widower. His wife had died twenty years previously. Sam had executed a handwritten will that left everything to her.

Later, Sam decided to get himself one of those Aliving trusts.@ The non-attorney "advisor" handed Sam the notebook with instructions on how to implement the trust. Instead of a detailed Exhibit "A" listing the individual assets, the notebook contained a form of general assignment of all Sam's assets to the trust, which was to be attached.

Later on at home, Sam signed the declaration of trust, general assignment, and the will above the respective signature lines. There was a notarial acknowledgment on the trust, but Sam never got around to seeing a notary. None of the documents were witnessed. The trust left the remainder interest to Sam's brother, Bruce, and a neighbor, Ethel, whom Sam was dating. The trust named Bruce as the successor trustee.

Subsequently, Bruce died. Sam interlineated the declaration of trust by drawing a line through Bruce's name with a ball point pen.

Eventually, Sam and Ethel had a falling out. He then interlineated the trust with a pencil by drawing a line through her name, wrote the name of his Church in the margin next to the cancellation, put his initials next to the name of the Church, but did not insert a date.

Some time later, Sam realized that he hadn't changed the successor trustee of the trust after Bruce died. He took a blank piece of paper, wrote "Codicil" at the top, and then wrote that, instead of Bruce as successor trustee, he wanted his pastor, Pastor Pete, to be successor trustee.

A few years later, Sam died. He left assets valued at approximately $300,000, of which $210,000 were vested in his name as trustee of the trust and another $90,000 still in his individual name. Due to a protracted terminal illness, he left unpaid debts of $110,000.

Sam had no children. He was survived by his late wife's sister, Silvia, and a nephew, Ned, through brother Bruce.

A. Who would be entitled to distribution of Sam's probate estate (ignore the impact of payment of the liabilities)? Discuss.

B. Who would be entitled to distribution of Sam's trust estate (ignore the impact of payment of the liabilities)? Discuss.

C. What are the legal issues bearing on the payment of Sam's debts? Discuss.

D. What are the alternative procedures for transferring title to the assets still in Sam's individual name to the trust? Discuss.

Sample Question #9

Wanda, who is age 80, married Hubert, who is age 70, 40 years ago. Debbie, age 38, is the only child of this generally unhappy marriage.

Wanda and Debbie came to your office to meet with you. Wanda said very little during the meeting. Debbie asked you to draw up a financial power of attorney for Wanda, designating Debbie as attorney-in-fact, so that Debbie can immediately deal with the City Building Department on Wanda's behalf. Debbie explained that lately Wanda has become increasingly forgetful and inattentive and was diagnosed with moderate Alzheimer's disease.

Debbie explained that Wanda has an ownership interest in two principal assets. First, there is the eight-unit apartment building titled in Wanda's sole name, which she inherited. Wanda has managed the building since acquiring it. It is located in a bad neighborhood, is operating on a barely break-even basis, and the rents, which Wanda has not raised in over six years, are well below the rents for comparable units in the neighborhood. Wanda has let the liability and fire insurance on the building lapse and, three days ago, she was served with a 15-day official notice by the City Building Department to correct defects in electrical wiring and plumbing or have the building boarded up by the City.

Debbie also explained that Wanda's second principal asset is an investment account at a brokerage firm. That account, which Hubert manages, has an asset value of about $1,500,000. The account is in the joint names of Wanda and Hubert, was acquired during their marriage, and is community property. Last year, the account generated about $100,000 in dividends and interest, but Hubert refused to apply any of the income for Wanda's benefit. He asserted that he was in charge of the account and that Wanda received sufficient income from her apartment building to meet her needs. Hubert has recently put Wanda on a low-protein, low-carb diet costing almost nothing. Wanda immediately suffered a substantial weight loss. When Debbie complained to Hubert about the diet, he replied that Wanda did not need the extra pounds, and he wanted to save the community monies for his old age.

Debbie mentioned in passing that, some years ago, Wanda executed a valid health care durable power of attorney nominating Hubert as her conservator in the event one was ever needed. Debbie stated that, if the creation of a conservatorship would be helpful to Wanda, she would be willing to act as her mother's conservator or to have you, the attorney, so act.

A. Whom can you represent in connection with the power of attorney and conservatorship? Discuss.

B. What significant problem is presented in connection with the preparation of a power of attorney? Discuss.

C. What should Debbie do to protect Wanda's interest in each asset? Discuss.

D. Are there any viable alternatives to conservatorship in dealing with Hubert's refusal to apply the brokerage monies for Wanda's benefit? Discuss.

E. Other than elder abuse remedies, what steps should Debbie take to resolve Wanda's diet problems? Discuss.

F. **Under these facts, discuss the rules of priority for the appointment of a conservator.**

Sample Question #10

Harry and Wilma were married for 20 years. They have one adult daughter, Dana, and one adult son, Sam who are both single. All of their property was community property titled in their living trust (the "Living Trust"). Wilma died in 1994, when the maximum unified credit exemption equivalent was $675,000. At that time Harry and Wilma's assets consisted entirely of 1,000 shares of Stealth Internet (the "Shares"), a privately held company they owned for more than a year.

The Living Trust provided that on Wilma's death it would be divided into a marital deduction trust, a survivor's trust, and a residuary bypass trust. The allocation to the marital deduction trust was based on a pecuniary marital deduction formula with funding based on date-of-distribution values. Wilma's executor elected to treat the marital deduction trust as a Qualified Terminable Interest Property (QTIP) trust. As of the date of death, the 500 Shares in Wilma's estate were valued at $1.5 million on her Form 706. Nine months later, the Shares were distributed to these subtrusts when the 500 Shares were valued at $1.75 million.

Following Wilma's death, Stealth Internet established a qualified profit-sharing plan (a defined contribution plan) of which Harry was a participant. Harry named Sam and Dana as equal primary beneficiaries on the profit-sharing plan and his survivor's trust as the contingent beneficiary.

Harry died at age 75 in September 2004 when the "applicable exclusion amount" was $1,500,000 and the highest marginal estate tax rate was 48%. At the time of Harry's death, the 1000 Shares were valued at $30 million and Harry's benefit in the profit-sharing plan was valued at $250,000.

The testamentary trusts created under the Living Trust provide that the estate is to be divided equally between Dana and Sam upon Harry's death. But if either predeceases Harry or disclaims any portion of the trust benefit, then the share is to be held in trust for the benefit of the disclaiming child and his or her surviving children. The disclaiming child is prohibited from acting as trustee of the disclaimed trust.

Dana owns no assets, has no income, but has substantial creditors. She has two children. Sam is very wealthy but childless.

A. **What is the value of the assets allocated to the QTIP and bypass trusts at Wilma's death. What, if any, federal income taxes are payable by the Living Trust following Wilma's death?**

B. **How much of the $30 million in value of the Stealth Internet shares is subject to estate tax at Harry's death? Discuss.**

C. **What disclaimers and decisions must Dana make to prevent her inheritance from being subject to claims of her creditors?**

D. **Assuming there are no administrative expenses or other deductions, show the taxable estate and how to calculate the estate tax (only use the highest marginal estate tax rate) and discuss the following:**

   1. **How can the estate defer, if at all, the payment of estate taxes?**

   2. **How can Stealth Internet help pay the estate tax?**

   3. **How can either or both of the profit-sharing plan beneficiaries defer the payment of income taxes?**

Sample Question #11

John owned as his separate property two parcels (70 acres and 50 acres) of unimproved land on the California coast that have a value in excess of $8,000,000. John decided to (1) preserve all views to and from the entire 120 acres for posterity; (2) prevent the development of a hotel and golf course by his heirs; (3) obtain a discount on his federal estate taxes by creating an easement across the land; and (4) take a current income tax deduction by making a current gift of an easement to the Carmel Coastal Conservancy ("CCC"). John and CCC entered into a valid easement agreement covering the entire 120 acres. The easement provided that 70 acres along the coast would be restricted from being developed and would be used solely for walking and wildlife habitat and environmental studies. The easement also provided that, on the remaining 50 acres, two houses could be built, one by each of his two children, on the North East corner of the parcel on lots of no more than five acres each.

Separate from the unimproved land, John owned a residence and a vacation home. John had a valuable collection of antique furniture and Ansel Adams art ($200,000) in his vacation home. John executed a valid revocable living trust. He named his son Fred as Trustee. The Trust left John's second wife Wendy "our residence." The Trust left John's daughter, Daisy, "the vacation home and all of the antique furniture and art located therein." The Trust left Wendy, John's coin collection worth $275,000. The Trust left the 120 acres, subject to the recorded easement, to Fred and Daisy.

A week before John died, he amended his Trust by deleting the bequest of the coin collection to Wendy, and named his son Fred as beneficiary of the coins.

Wendy, shortly before John died, removed all of the antique furniture and art work from the vacation home and placed it in the residence.

When John died, Wendy told Fred she thought John was "losing it" when he made the Trust Amendment.

After John's death, Daisy and Fred discover that the North East corner of the 50 acres covered by the easement cannot be developed at all because of a rising water table. The South West corner of the same 50 acres does not have the same problem. The CCC is willing to amend the easement.

Fred seeks your advice.

A. **What should you advise Fred are his duties with respect to the antique furniture and art?**

B. **What should you advise Fred are his duties with respect to the coins?**

C. **What should you advise Fred about negotiating the amendment of the easement?**

D. **What should you advise Fred are the proper sources for payment of legal fees as to the: (a) antique furniture and art, (b) coins, and (c) easement? Discuss.**

E. **Depending on your advice, in which court or courts should each of the pleadings be filed? Discuss.**

Sample Question #12

Ted is 85 years old. He has severe arthritis and is a little forgetful, but he is mentally competent. Ted has no children and no living siblings, but he has a dozen nieces and nephews. They send him holiday cards, but Ted ignores them.

Patty lives in the same duplex as Ted. She has known him for 25 years. Five years ago, Ted entered into a legal "confidential marriage" with Patty who is 55. Neither Ted nor Patty disclosed their "confidential marriage" to their friends and family. They were too embarrassed by the age difference. Ted and Patty do not want Ted's relatives to snoop into their financial affairs. All of the property of Ted and Patty is separate and has been maintained that way throughout the entire marriage to minimize Ted's liability for Patty's business. Ted provides Patty with a monthly allowance and has made generous gifts to her.

Ted and Patty file their income tax returns as "married," and Ted has designated Patty as his spouse and beneficiary on his retirement beneficiary forms. Patty sees Ted daily, helps him with his bill paying, takes him to his doctor's appointments, and arranges for housekeeping services. They go on vacations together.

At Ted's request, Patty, an estate planning attorney, drafted two separate trust instruments for Ted. Patty has her own living trust for her separate property.

The first trust is Ted's "Family Trust." The trust is funded with $1,000.000. Ted designates his living nieces and nephews as beneficiaries, share and share alike. Patty is the Trustee. She is instructed to serve annual accountings commencing with date of death.

The second trust is Ted's "Personal Trust." Under Ted's Personal Trust, Ted leaves his "wife" Patty all of the remainder of his estate. The Personal Trust is funded with Ted's home and securities. Patty is also named a joint tenant on Ted's bank accounts and as sole beneficiary under Ted's retirement plan. Patty is named as Trustee of the Personal Trust.

Ted told Patty not to tell his nieces and nephews about his Personal Trust because he thought they would get greedy and give Patty a lot of problems trying to get their hands on the rest of his estate.

On Ted's death, advise Patty what her obligations are with respect to:

A. the validity of a donative transfer from Ted to Patty in the Personal Trust.

B. her obligation to give notice to Ted's relatives as to the (a) Family Trust and (b) Personal Trust; and describe what that notice must contain.

C. her duties to account to Ted's relatives, and specify what the accountings must include to comply with the Probate Code for each trust.

D. her liability for failure to serve notice of the trust administration on Ted's relatives with respect to the Personal Trust.

Application to take the Certified Legal Specialist Examination

Examination Date: October 27, 2015

Registration Deadline: October 1, 2015

You are eligible to take the examination if you have been practicing in the specialty area since January 2014. Registration with payment will guarantee your space in the test center. Registration fees are non-refundable, non-transferable, and applicable only to the October 2015 administration of the legal specialist examination.

State Bar Number: _____

We will communicate with you via your address, phone, and e-mail as provided in your "My State Bar Profile" under private contact information. To update your profile, visit www.calbar.ca.gov and log on with your State Bar username and password. For assistance with updating your profile, contact Member Services at (888)800-3400.

Examination Registrant's Name: _____

1. Subject Matter

Examination for which you are registering (Please check one box):

- ☐ Admiralty & Maritime
- ☐ Appellate – Civil
- ☐ Appellate – Criminal
- ☐ Bankruptcy
- ☐ Criminal – State
- ☐ Criminal – Federal
- ☐ Estate Planning, Trust & Probate
- ☐ Family
- ☐ Franchise & Distribution
- ☐ Immigration & Nationality
- ☐ Legal Malpractice
- ☐ Taxation
- ☐ Workers' Compensation

2. Test Center

- ☐ Southern California (Pasadena Convention Center)
- ☐ Northern California (Oakland Convention Center)

3. Choose Handwriting or Laptop/Netbook

Please read the laptop/netbook bulletin available at www.californiaspecialist.org which sets forth the requirements for using a laptop/netbook to take the examination.

I wish to take the essay portion of the examination using the following method (check one):

- ☐ Handwriting
- ☐ Typing on Laptop/Netbook. (Please review and sign the Release of Liability Form on page 3).

4. Payment Options

The following payment is enclosed (check one):

- ☐ Enclosed Check made payable to The State Bar of California
- ☐ Enclosed Money Order made payable to The State Bar of California
- ☐ MasterCard or Visa (complete and sign the credit card authorization form on the last page)

5. Source

How did you learn about the legal specialization program? (check all that apply)

- ☐ A colleague
- ☐ State Bar Website
- ☐ Information booth at conference: _____
- ☐ Mailing or e-mail to State Bar of California section members
- ☐ California Bar Journal
- ☐ Other: _____

The undersigned states:

- I am an active member of The State Bar of California.
- I understand that the examination is the first step in the certification process and that if I am successful on the examination, I will be required to file an application for certification with the appropriate fee demonstrating compliance with all other requirements of the legal specialization program, including education, tasks and experience, and recommendations, on or before April 27, 2017 before my application can be considered by the California Board of Legal Specialization.
- I am aware that the requirements for becoming a certified specialist are set forth in the Rules and Standards available at www.californiaspecialist.org and that the California Board of Legal Specialization recommends that I review these rules prior to applying to be sure that I can meet the requirements by January 31, 2019, if I have not fulfilled these requirements prior to taking the examination. After that date, the examination results will no longer be valid and I will need to take the examination again to continue with the recertification process.
- I understand that the program is self-funded, and, if certified, I will be required to pay an annual fee and to recertify every five years, though I will not need to take the examination again.
- I understand that any and all fees related to this examination are non-refundable, non-transferrable, and applicable only to the 2015 Legal Specialization examination and not any future examination.
- I understand that failure to make a truthful disclosure of any fact or item of information required may result in denial of my registration, revocation of my certificate of specialization, if granted, or referral to disciplinary investigation by The State Bar of California.

I have carefully read the foregoing and declare, under penalty of perjury under the laws of The State of California, that the information I have provided is true and correct.

Executed on _____ at _____ , California
(Date) *(City and/or County)*

Signature _____
(Please print and manually sign this document or use Adobe's e-signature function.)

Before mailing, please check to see if you have:
1) Answered all questions.
2) Signed this registration application and if you plan to use a laptop, the Release of Liability.
3) Enclosed payment or filled in the attached credit card authorization form.

Mail or fax application and payment to:

Mail: Department of Legal Specialization
The State Bar of California
180 Howard Street
San Francisco, CA 94105
-or-
Fax (with Credit Card Payment Page):
415-538-2180.

You will receive an e-mail confirmation and receipt when your application has been processed.
THANK YOU!

CALIFORNIA BOARD OF LEGAL SPECIALIZATION
OF THE STATE BAR OF CALIFORNIA
180 HOWARD STREET
SAN FRANCISCO, CALIFORNIA 94105-2120
TELEPHONE: (415) 538-2120
FAX: (415) 538-2180
E-MAIL: legalspec@calbar.ca.gov
WEBSITE: www.californiaspecialist.org

RELEASE OF LIABILITY – LAPTOP COMPUTER PROGRAM

I, _____ , acknowledge that the California Board of Legal Specialization of the State Bar of California (Board) is allowing examination applicants to use personal laptop computers with pre-installed SofTest software from ExamSoft (Software) to take examinations administered by the Board. I understand that the use of personal laptop computers is offered by the State Bar of California (State Bar) as a convenience to me and that the State Bar does not warrant or guarantee said Software. I agree to bear sole responsibility for the use of said Software and I hereby release the State Bar (its Board of Trustees, officers, agents, representatives and employees, as the same may be constituted now and from time to time hereafter), including the Board, from all liability, claims, damages, or demands for personal injury or property damage, arising from or related to my use of a personal laptop computer during the examination. I further acknowledge that the State Bar does not warrant or guarantee the Software nor does it accept any liability in the event there is a technical or mechanical failure of the personal laptop computer and all associated equipment, Software and/or associated materials during administration of an examination, the uploading of my examination answers, or in the printing of my examination answers.

I will accept the use of SofTest under the provisions of the ExamSoft click license at the ExamSoft website and agree to be bound by its terms and conditions. By my election to use a personal laptop computer to take an examination administered by the Board, I also agree to begin or continue the examination by handwriting in the event there is any malfunction, or issue with access to, the computer, Software, electrical system or such other items associated with administration of the examination; and, understand I will not receive a refund of the fees I paid to use my laptop computer if any of these events should occur. I agree: 1) that I will exit the exam file upon the conclusion of each examination session; 2) that I will not attempt to access my exam file(s) following the examination for the purpose of altering my answers; 3) that I will upload the exam file(s) that contain the examination answers, which I completed during the examination, by the published deadline; 4) that a deduction of ten scaled points will be taken from my total written scaled score if I fail to upload my answer file(s) by the published deadline and, 5) that I will receive a grade of zero (0) for each answer not uploaded timely if I fail to upload my answer file(s) within two (2) weeks of the published deadline.

Date of Examination Administration: October 2015 Legal Specialist Examination

Bar Number: _____

Applicant Name (please print): _____

Applicant Signature: _____

(Please print and manually sign this document)

Date: _____

The State Bar of California
Board of Legal Specialization
Legal Specialist Examination
Payment Page

Bar Number: _____

Name: _____

Legal Specialization Examination Fees if valid payment is received between

<u>September 2, 2015 and October 1, 2015</u>: (please select one)

☐ **$600** - Examination registration without laptop fee

☐ **$750** - Examination registration with laptop fee (applies to Registrants who wish to type the essay portion of the exam on their laptop/notebook rather than handwrite answers)

Payment Options:

☐ Check made payable to The State Bar of California

☐ Credit Card – Complete and return Credit Card Authorization below

Credit Card Authorization:

☐ Visa

☐ MasterCard

Only Visa and MasterCard credit cards are accepted.

Credit Card Number: _____

Expiration Date (Month/Year): _____

Name on Card: _____

Billing Address: _____

City: _____ State: _____ Zip: _____

Signature: _____ Date: _____

(Please print and manually sign this document)

By my signature on this document, I hereby authorize The State Bar of California to charge my Visa or MasterCard account for the amount that I have entered in the "total" box above. Registration fees are non-refundable, non-transferable, and applicable only to the Legal Specialist Examination to be administered in October 2015.