

1. We came up with a question about the case that's had us a bit confused. We know that Gayle's lottery winnings were placed into a trust, but it's unclear of the terms of the trust. We also do not have any information about the other assets that are just in mom's name that the Will would control.

We understand that the main point of the case is whether or not the will is valid, but it can alter the case a bit if there's not ultimately that much money Gayle owns outside of the trust. I guess our concern is that if the Contestant presents first and the lawyers start talking about millions of dollars and the Proponent gets up and argues that all of the lotto winnings are in the trust and there isn't that much money anyway, it makes the case a bit confusing. Further, it changes the case drastically in terms of the magnitude of the funds.

There is approximately \$15 million left in the trust. The trust is part of the estate, therefore, whoever becomes the beneficiary of the will receives the funds that are left in the trust. Please see new stipulation #7.

2. Jury Instruction #4, provides that Contestant prevails if she "has proven any one or more of the claims that (1) Gayle Gergich lacked testamentary intent because, although she may have intended to leave money to Taylor Walken to care for her Corgi, she did not intend to leave all of the remainder of her estate to Terry Gergich; (2) Gayle was not of sound mind when she signed the will and, therefore, lacked testamentary capacity; or (3) Terry Gergich persuaded Gayle to sign the will by exercising undue influence, by a preponderance of the evidence, your verdict must be for the Contestant, Jerry Gergich.

In the last paragraph, the instruction provides that Proponent prevails if Contestant "has not proven **any one or more** of the claims of lack of testamentary intent, lack of testamentary capacity, or undue influence..." (Emphasis added). This is inconsistent, and we would ask for a change.

The problem is correct as written.

3. Dr. Traeger was convicted of draft evasion, but of course no women were subject to the draft. As it seems to be with most teams, most of our players are female, which will put such teams at a disadvantage to teams that have "gender-correct" Dr. Traegers; do we need a stipulation or additional facts to compensate for female students playing the doctor?

The mock trial problem occurs in a fictional setting, In the fictional setting for this case, the draft applied to women in 1968.

A stipulation will be added to the case problem to confirm this fact.

4. Both the Contestant and the Proponent appear to agree that at some point, Gayle Gergich's remaining unspent lottery winnings (\$15 million) were put into a trust. Terry Gergich suggests that the trust was structured so that the income on the trust principle would go to Gayle during her lifetime. No additional information was provided as the terms of the trust or as to the beneficiary of the trust.

Assets held in trust typically pass to the trust beneficiary outside of probate. The case appears to be written, however, with the assumption that the unspent lottery winnings remain available to be distributed in the probate proceeding.

Can you clarify which assets are at issue in the probate proceeding?

A stipulation is being added to the case materials that will address this issue.

5. Must the Contestant pursue all claims - this has been normal rule in past.
As indicated in Instruction No. 3, the Contestant has the burden to prove any one or more of the three claims.
6. If Jerry placed the money into a trust as s/he claims - how was there any money to distribute at Gayle's death
A stipulation is being added to the case materials that will address this issue.
7. The witnesses do not indicate that review other witnesses affidavits. It would seem that in a normal situation both Terry and Jerry would have at least read each other's affidavits - and there are some references which leads one to believe they have done so. Did any witness review any other affidavits?
Unless the case materials indicate that a witness reviewed a particular document, it may not be assumed that the witness did so.
8. Evidence rule 803(3) state of mind is different than C.R.E. 803(3). Is that correct?
Yes.
9. There is no definition of a self-proved will. These seems to aid the closings - should this be added? Instruction 3.
Since the court has found the will to be self-proved as a matter of law, the definition of a self-proved will is not an issue for the jury.
10. Instruction 4 - second sentence seems wrong
The instruction is taken from COLJI-CIV 34:7 and is correct as written.
11. Instruction 5 - paragraph 5 seems wrong as well
The instruction is taken from COLJI-CIV 34:11 and is correct as written.
12. Exhibit 1 - will - Article IV has two 4.1.
The problem is correct as written.
13. Rules of competition referred to Prosecution and Defense - should this be contestant and proponent?
For purposes of this case file, references to "Plaintiff/Prosecution" in the tournament rules are to the Contestant, and references to the Defendant in the tournament rules are to the Proponent.
The trial roster form, however, will be modified to include the terms Contestant and Proponent.