I. Intro
   a. Terminology
      i. **Testate** - die w/ will in place; designate **beneficiaries**
         1) **Executor** - handles distribution of will
      ii. **Intestate** - die w/ out will; estate distributed via probate code to **heirs at law**
         1) **Administrator/trix** - handles distribution of estate
   b. Non-probate transfers
      i. Joint tenancy - supersedes a will, property passes to other joint tenant
      ii. Beneficiary designations - life insurance, bank account, retirement plan, supersedes will
      iii. Intervivos trust - created during lifetime
   c. Policy
      i. Hodel v Irving - right to distribute property at death regardless of worth
      ii. Shapira v Union National Bank - requirement that beneficiary marry Jewish girl w/in 7 years upheld, does not violate right to marry, no right to receive property

II. Intestacy - always the "fallback", estate liquidated into shares and split among heirs at law
   a. Basic Scheme
      i. Surviving Spouse/registered domestic partner (6401)
         1) Community property (6401(a)) - property acquired while domiciled in CA during valid marriage, owed 50/50 by spouses, passes to surviving spouse automatically
         2) Separate Property (6401(b)) - property acquired before or after marriage, or through gift, bequest, devise, or dissent, passes to surviving spouse if no issue
            a) Issue (child, issue of deceased child) - separate property 1/2 to issue, 1/2 to surviving spouse
            b) Parents (no issue) - 1/2 to parents (split equally if 2), 1/2 to surviving spouse
            c) Brothers/Sisters (no issue, no parents) - 1/2 to siblings, 1/2 to surviving spouse
            d) 2 or more issue - 1/3 to surviving spouse, 2/3 to issue
         3) Quasi-Community Property - personal and real property acquired during marriage while domiciled outside of CA that would have been characterized as community property if domiciled in CA at the time of acquisition
            a) Same-sex couple note - may not apply b/c other states don't have registered domestic partnerships
      ii. No spouse (6402)
         1) Hierarchy:
            a) Issues - split equally amount issues if all the same degree
            b) Parents - if no issue, estate goes to parents equally
            c) Siblings - if no issue or parents, split equally among siblings
            d) Grandparents, aunts & uncles, 1st cousins (once, twice, thrice removed) - split equally
            e) Step-child - if none above, then to issue of deceased spouse
            f) "next of kin" - columns 4-5 on "bloodline" chart (great-grandparents - third cousins thrice removed)
            g) In-laws - parent of deceased spouse if no one else alive
            h) State of California - if none above alive, estate goes to state (escheat)
         2) Shares for unequal degrees
            a) **Per Capita With Representation** - count up number of issue on 1st generational line with someone alive, only count deceased if they have issue, assign each a share, and deceased issue split deceased share equally
            b) **Classic Approach** - division of shares made at 1st generational line regardless, only count deceased if they have issue
iii. Children:

1) Half-Bloods - inherit the same way as "whole bloods" from biological parent
2) Posthumous - conceived before death, but born after inherit as if they were born in lifetime of decedent
3) Adopted - general rule: inherit same was as natural born children
   a) Whether or no adoptive child can inherit from natural parent: Condition 1
      i) Natural parent & adopted person lived together as parent and child
      ii) OR natural parent was married or cohabitating w/ other natural parent at time person was conceived and died before person's birth
   b) Condition 2
      i) Adoption by either spouse of natural parent or after death of either natural parent

4) Foster/step children
   a) Foster
      i) Relationship began during child's minority and continued throughout lifetime AND
      ii) Established by clear & convincing evidence that person would have adopted child but for legal barrier to adoption
         - Estate of Joseph - Evidence up until death (not just @ time of adoption), narrowed statute

5) Non-marital - parent/child relationship exists if they are your child, focus on how to prove paternity
   a) Presumptions of Maternity & Paternity
      i) Mother - proof established by giving birth
      ii) Father - several ways:
         - During marriage + 300 days - rebuttable presumption of paternity
         - Attempted marriage (annulled) before child's birth and birth during attempted marriage or 300 days after = rebuttable presumption
         - Attempted marriage after birth + father consented to being named father OR father required to pay child support
         - Father receives child into home and openly represents as his child
         - After death - court order entered during father's lifetime OR clear and convincing evidence that father openly held out child as his

6) Conceived after death (frozen sperm case) - can't inherit
7) Giving money to minors:
   a) Guardian of estate - legally appointed to handle assets for minor, court accounting required
   b) Uniform Transfer to Minors Act - money into custodial account in name of minor, no court accounting required, through will or during lifetime
   c) Trust - most control over funds by trustee

iv. Survival Period for Heirs - 120 hours (5 days), must outlive the decedent by 5 days to be considered heir at law, also applies to community property

b. Advancements - treated as advancement on estate if:
   i. Decedent declares in contemporaneous writing that gift is advancement OR to be deducted from value of shares in estate
   ii. OR heir acknowledges in writing it is advancement or value to be deducted from shares of estate

c. Bars to Succession
   i. Homicide (250) - intentional killing of decedent, not entitled to property interest or benefit under will or trust or through intestate succession, cannot be appointed executor, trustee, guardian, custodian, or conservator
      1) Designated as pre-deceased, anti-lapse DOES NOT APPLY
      2) Intentional killing -1st degree murder, general intent to kill, voluntary manslaughter
      3) Joint tenancy (251) - severed by intentional killing, interest does not pass to killer

Trusts & Wills - Outline Page 2
3) Disclaimer - have a right to disclaim any gift/intestate succession, 9 month time limit to do so

4) Life Insurance (252) - killer cannot inherit, policy payable as if killer pre-deceased decedent

5) Killer (254) - criminal conviction, or civil (preponderance of the evidence standard) can determine

   ii. Disclaimer - have a right to disclaim any gift/intestate succession, 9 month time limit to do so

d. Simultaneous Death - ALL subject to **clear and convincing** standard
   i. Joint tenant - if 1 died first, other will take, otherwise property split evenly
   ii. Will - if testator died first, beneficiary will take, unless will dictates other terms, if indeterminable, then beneficiary deemed to predecease testator
   iii. Life insurance - if 1 died first, other can collect, otherwise 2ndary beneficiary or estate
   iv. Intestate - 5 day rule

III. Wills

   a. **Requirements:** (required for will + codicil)
      i. **Metal Capacity** - required at time of execution
         1) Elements:
            a) Understand nature of testamentary act?
            b) Did you know what property you owned?
            c) Did you know who your general beneficiaries were?
               - Attorney 2-steps - capacity to have attorney draft, capacity to sign once will drafted
               - **State of Wright** - testamentary capacity can't be destroyed by a few incidents unless they go directly to testamentary act
         2) **Insane Delusion** (6100.5) - will fails (all or part) if testator suffering insane delusion as it applies to particular individual
            a) **Elements:**
               i) False and unfounded belief
               ii) No reasonable basis for testator to believe this way based on facts he knows
               iii) Insane delusion has effect upon will
         3) **Legal Capacity** - must be at least 18 yrs old
      ii. **Present Testimonial Intent** - did the testator intend for will to take effect immediately, look for words of testamentary meaning (designating gifts, beneficiaries, executors, words of revocation)
         1) **Undue Influence** - substitutes another's intent for that of testator, independent witnesses usually necessary to refute
            a) **Categories used to prove:**
               i) Motive
               ii) Unnatural distribution
               iii) Opportunity & access
               iv) Susceptibility - physical & mental
               v) Confidential relationship
               vi) Active participation
         2) **Fraud**
            a) **Execution** - preparation of will by another individual (either whole or partial)
            b) **Inducement** - 3rd party makes false statement relied on by testator
            c) **Prevention** - testator prevented from drafting or changing a will
         3) **Mistake**
            a) **Mistaken execution** - signed wrong document, will fails
            b) **Mistaken inducement** - testator relies on wrong fact, court will not rewrite unless the mistake and what testator would have done but for mistake are both on face of will
            c) **Mistaken description** (terms or property)
               i) **Plain Meaning Rule** (majority)- where words of will are clear on their face,
extrinsic evidence NOT allowed to prove different meaning

ii) **Estate of Russell (CA Rule)** - extrinsic evidence IS admissible to show different meaning

4) **Duress**
   - **Conditional gifts** - if condition is satisfied, then testator had testamentary intent, can take out condition if not satisfied, will still valid

iii. **Formalities**
1) Types of wills:
   a) **Attested Wills** (**6110**)
      i) In writing (no oral wills)
      ii) Signed by testator OR by someone else in testator's presence by testator's direction
         - Signature? Whatever testator intends to be signature counts except electronic signature
      iii) Witness - 2 required (notary doesn't count)
         - Must witness testator signing, or acknowledgement of signature by testator + know they are witnessing a will
   
         ▶ **Joint Presence** - for both witnesses
            - **Conscious Presence Test** (majority + CA) - witnesses so near at hand they are within the range of testator's senses, physical presence required
            - **Line of Vision Test** (minority) - must be within the line of each other's sight during signing or acknowledging
      
         - Signatures - must be during testator's lifetime, no requirement witnesses need to sign in front of testator or each other
         - Financially interested witnesses (**6112**) - anyone competent to be witness can, rebuttable presumption of fraud, menace, or undue influence of interested witness
   
         ▶ **Common law rule** - interested witness invalidated will
   
         ▶ **"PURGING statute"** - If presumption not rebutted, interested witness gets what they would have gotten had they not been witness if it is LESS (gift amount in 1st will, or intestate succession amount)

   iv) **Harmless Error Rule** (enacted 2009)
      - Will does not fail for lack of witnesses, or failing conscious presence test if there is **clear and convincing evidence** testator intended for document to be will
      - Only applies to WILLS, not codicils or words of revocation
   
   b) **Holographic Wills** (**6111**)
      i) Requirements:
         1. Material provisions - testamentary intent language (gifts, beneficiaries, etc)
         2. Signature
         3. Handwriting of testator
            - Can be handwriting of testator or part of commercially printed form (fill-in-the-blanks)
      
      ii) Later in time controls (**6111(b)**) - no date required
         1. Consistent provisions - no problem, both docs read together
         2. Inconsistent provisions - extrinsic evidence required to determine later in time, if indeterminable, gifts cancel out, go into residue
      
      iii) Capacity Challenges (**6111(b)(2)**) - can challenge capacity if no date, proponent has BoP to establish testator had capacity on date will executed

2) Types of gifts:
a) **Specific** - particular item of property distinct from all others in household
b) **General** - general economic benefit payable out of assets of estate
c) **Residual** - balance of assets on hand after satisfying general and specific gifts
   i) If no residual clause in will, whatever is left over goes intestate

b. Revocation of Wills
   i. Types:
      1) **Subsequent written instrument** (**6120**)
         a) **Express** - words themselves accomplish revocation, present intent required
            i) Partial - "I revoke paragraph 2 of my will dated X"
            ii) Total - "I revoke my will dated X"
         b) **Implied** - terms of later will are inconsistent with earlier will, 2nd instrument treated as codicil and only revokes inconsistent provisions from earlier will
            i) Partial - "I give gift A to person Y" (earlier will gave to person X)
            ii) Total - "I give the entirety of my estate to R" (earlier will dived estate)
               - Subsequent instrument must comply w/ formalities (**6110** or **6111**), Harmless Error Rule inapplicable (can argue if NEW WILL created by total revocation)
      2) **Writing or Physical Act** - act of revocation + intent to revoke required (either testator or 3rd party in testator's presence and at their direction)
         a) Ways to revoke:
            i) Burning - any cinging w/ intent to revoke is enough
            ii) Tearing - must hit words on document
            iii) Obliteration - mass markings on entire document, must touch words
            iv) Cancellation - partial or total using inking, must touch words
               1. Line through gift & attempt to change - Analysis:
                  - Valid revocation? Yes if done w/ intent to revoke
                  - Valid knew gift?
                     - Attested Wills:
                        * **Estate of Phifer** - take writing off face of will and look for testamentary intent on its own
                        - Holographic Wills - becomes holographic codicil on top of holographic will, change is valid
         v) Signature - taking out signature considered total revocation
            - Applies to "duplicate originals" but not copies
      b) **Complete**
         i) Copy
         ii) Codicil - doesn't exist w/out will, revoking codicil doesn't change will, revoking will DOES revoke codicil
         iii) Lost Will - creates rebuttable presumption of revocation if last known in testator's presence and lost at time of death
      c) **Partial**

3) **Revocation by Operation of Law**
   a) **Omitted Spouse**
      i) Forgotten - see below
      ii) Divorce (**6122**) - deems divorced spouse predeceased, takes them out of will if will predated divorce or annulment, unless expressly deemed otherwise, applies to domestic partnerships as well, but not separation
         1. Joint tenancy - severed if divorced at time of death
         2. Beneficiary designation - ex-spouse barred, except life-insurance
   b) **Omitted Child** - see below

ii. **Dependent Relative Revocation & Revival**
   1) **DRR** - revocation upon mistaken belief that another disposition is valid
      a) **External DRR** (revoked will #1 thinking will #2 was valid): Look to probable intent of testator, weigh options (cancelling revocation, or intestate succession) and figure out what testator wanted, compare beneficiaries under all scenarios
b) **Internal DRR** (crossed off gift): option to either let revocation stand (gift canceled), or cancel revocation, look to intent of testator (applies to attested wills only)

2) **Revival (6123)** - proper revocation, but allows later actions of testator to bring 1st will "back"; 2 scenarios:
   a) 2 wills - 1st will revoked by 2nd, 2nd destroyed by physical act
      i) Look to probable intent of testator, did they intend to bring back will #1?
         1. Extrinsic evidence allowed
   b) 3 wills - 1st will revoked by 2nd, 2nd revoked by 3rd
      i) Look to probable intent of testator if they intended to bring back #1, both #1 & #3 would be in effect, later in time controls
         1. Extrinsic evidence NOT allowed

c. Components of Wills - other docs that can be brought in to interpret will
   i. **Integration**
      1) Internal - look @ will and determine what pages make it up, are they all valid? Protects against tampering
      2) External - all other docs + will brought together, interpret all to determine distribution
   ii. **Republication by Codicil** - republishes will to the last date of codicil (can cure omitted spouse problems)
   iii. **Incorporation by Reference** - outside writing w/out testamentary formalities can be incorporated into will
      1) BEFORE EXECUTION - Requirements (6130):
         a) Document referenced in will must be in *existence* at time will was executed
         b) Doc must be *sufficiently described* so identification is clear
         c) *Intent* by testator to incorporate document
      2) AFTER EXECUTION - Requirements (6132):
         a) Unrevoked will refers to writing
         b) Writing to be incorporated must be *dated* and is in *handwriting* of testator
         c) Writing describes BOTH *items* and *recipients* of property with reasonable certainty
         d) Can only refer to *tangible personal property* (furniture, jewelry, precious metals, NOT real estate or monetary features)
   iv. **Acts of Independent Significance (6131)** - acts and events during testators lifetime that have a primarily non-testamentary purpose (ex: "I leave $X to everyone employed at my store at my death")
   v. **Contracts relating to wills** - to make, devise, or not to revoke a will
      1) Established by any:
         a) Provisions of will state material provisions of K
         b) Express reference to K in will + extrinsic evidence proving terms of K
         c) Writing signed by decedent evidencing K
         d) Clear & convincing evidence of K or promise by decedent that is enforceable in equity
         e) Clear & convincing evidence between decedent & another person for benefit of claimant (3rd party K)
      2) Joint or mutual wills DO NOT create presumption that there was agreement not to revoke

d. Changes w/in Will
   i. **Lapse/Anti-Lapse**
      1) **Lapse** (fallback) - when beneficiary predeceases testator, gift fails unless alternate beneficiary named (common law)
         a) Failed specific & general gifts - go to RESIDUE
         b) Failed residual gift - goes to other residual beneficiaries or intestate
      2) **Anti-Lapse**
         a) Was the beneficiary kindred of testator or of testator's current, former, or
deceased spouse?
   b) Does the beneficiary have issue?
      i) If yes, issue of beneficiary is substituted, split equally if more than 1
      ii) If no, go to common-law lapse rules
   c) Blocking:
      i) Substitute disposition - alternate taker
      ii) Contrary intent - survival clause on a gift
ii. **Class Gifts** - group of beneficiaries not designated by name ("to X's grandchildren")
   1) Class opens at time of execution of will and closes at death of testator
   2) Pre-deceased class members - apply anti-lapse rule, if they don't apply shares split among remaining class members (class gifts prevent common law lapse)
iii. **Ademption by Extinction** - failure of specific gift b/c property not in estate at death
   1) Majority - "identity theory" - if specific gift not in estate at time of death, beneficiary entitled to nothing
   2) Minority (CA) - "intent view" - beneficiary gets some value in place of missing specific gift, otherwise go to majority rule if this cannot be accomplished
      a) Balance of purchase price owed on promissory note to deceased (for sale of home)
      b) Eminent domain award unpaid balance
      c) Insurance in place of missing item - unpaid proceeds only
   3) **Tracing arg** - failure of form, not substance, for interchangeable goods (account switched to different bank, etc)
iv. **Ademption by satisfaction** - property given to beneficiary during lifetime treated as at-death satisfaction of that gift if it's in writing, or you're getting what you were going to get under will
v. **Securities Stock** - beneficiary may get additional shares of stock then what was named in will
   1) Stock split - company gives additional shares based on initial purchase of stock
   2) Merger or consolidation
   3) Company gives dividend
vi. **Abatement** - paying off creditors, taxes, expenses, & obligations of estate
   1) Order of Abatement (21402)
      a) Property not disposed of by the instrument (part of will fails)
      b) Residuary gifts
      c) General gifts to persons other than testator's relatives
      d) General gifts to testator's relatives
      e) Specific gifts to persons other than testator's relatives
      f) Specific gifts to testator's relatives
   2) Abatement w/in Classes (21403) - beneficiaries abate pro rata w/in each class
   3) Order of creditors:
      a) IRS - income tax + federal estate tax
      b) State of CA
      c) Costs of Administration (attorney, court, executor, appraisers)
      d) Funeral Costs
      e) Medical Bills w/ respect to last illness
      f) Unsecured debts (credit cards)
   4) Exoneration - right to have lien on specific gift paid off by estate
      a) 21131 - no right unless testator specifies, then use residual, general, then specific
   e. **Protection of Spouse & Children** - proportion taken from everyone's share
      i. Omitted Spouses - if decedent fails to provide for spouse, married after execution of testamentary instruments
         1) Omitted spouse will receive:
            a) 1/2 of community property belonging to decedent
            b) 1/2 of quasi-community property
c) Share of separate property that they would have received if decedent died intestate, no more than 1/2

2) How to avoid:
   a) Omission was intentional and appears on face of document (tough - doc written before marriage)
   b) Decedent provided for spouse by transfer outside of estate + meant in lieu of transfer by will
   c) Spouse made valid agreement waiving right to share in decedent's estate

ii. Omitted Child - failed to provide for child after execution of testamentary instruments, child receives share equal to what they would have received intestate
   1) How to cure:
      a) Intentional failure to provide appears on face of testamentary instrument
      b) Decedent had 1 or more children and entire estate given to other parent (potentially to care for child)
      c) Decedent provided for child outside of estate

f. Will Substitutes - non-probate transfers, anti-lapse does NOT apply, overrides will
   i. Contracts w/ payable on death provisions - life insurance (term, whole)
   ii. Joint Tenancies - bank account, real property, etc; automatically passes to surviving joint tenant
   iii. Inter-vivos Trusts - takes property out of your name and puts it in trust's name

III. Trusts - fiduciary relationship whereby a trustee holds legal title to property and manages it for the beneficiary
   a. Types
      i. Express - inter vivos & testamentary
         1) Private - most fall into this category
         2) Charitable - must have charitable purpose
      ii. Trusts that Arise by Operation of Law
         1) Resulting Trusts - trust created that fails for various reasons, left with resulting trust
         2) Constructive Trusts - equitable remedy to prevent unjust enrichment
         3) Purchase Money Trusts - real estate; only applies to real estate, considered a gift if supplier of purchase money & 3rd party are related, rebuttable presumption
      iii. Other Types:
         1) Honorary Trusts - usually for animals, someone on there honor to fulfill, trust as specific purpose, but no ascertainable beneficiary
         2) Secret/Semi-Secret Trusts - cross-over question w/in will

b. Creation
   i. Validity Requirements:
      1) Intent to Create - present intent required, look at language used, timing
         a) Precatory words - give the court doubt over whether or not you intended to create trust relationship
      2) Identifiable Corpus - specific property designated
         a) Current assets required - cannot declare trust over FUTURE assets (profits from 1928 stock ex)
      3) Ascertainable Beneficiaries - by name or class (can't bee too vague - "my friends")
      4) Proper Purpose - cannot be prohibited by public policy or illegal
      5) Mechanisms of Creation - must be split of title accomplished
         a) Oral? Can meet all criteria, but difficult to sustain in "real world" scenario
            i) Real estate trust - writing required
         b) Transfer asset to Trustee required - acceptance by trustee is NOT required to complete trust formation
            i) Delivery can be accomplished by:
               i) Actual
               ii) Constructive
               iii) Symbolic
c) Testamentary - terms are spelled out w/in will, split of title occurs at death, will must be valid, if will fails, trust fails
d) **Revocable Living Trust** - individual is both trustor, trustee, & beneficiary w/ contingent beneficiary upon death (required for proper title split)
   i) **POUR OVER WILL** - trust created w/ no assets, will transfers all assets to trust upon death
e) **Doctrine of Merger** - title split between trustee X & beneficiary X + Y, Y dies, legal & equitable title merges to X, trust terminated

c. Constructive trusts
   i. **Oral inter vivos trusts in land** - statute of frauds requires writing, court may use constructive trust remedy to fix, must have "clean hands"
      1) **Heeble v Heeble** - mom conveyed land to son & daughter, thought she was dying of cancer, oral agreement to transfer property back, daughter reconveyed property, son didn't, court created constructive trust to remedy
   ii. **Oral trusts for disposition at death** - partially contained in will, partially in oral agreement
      1) **Secret** - bequest to X, with oral agreement to hold in trust for Y, court allowed parol evidence to be admitted to prevent unjust enrichment, constructive trust created
      2) **Semi-secret** - bequest to X to use "as discussed"; no parol evidence admitted b/c no danger of unjust enrichment, trust fails for lack of beneficiary
         a) CA Statute (6111.5) - allows extrinsic evidence, semi-secret same result as secret trust in CA
   d. Trustee Power - did trustee follow the "plan" laid out by trustor
      i. Distribution types:
         1) Mandatory - ex: "income payable on 1st of each month, principal 1/2 at 25, 1/2 at 30"
            a) **Forced decision** - instructions require trustee to make payment of income or principal, creditor can attach, beneficiary can assign at this point
         2) Discretionary - ex: "income and principal payable as needed"
            a) More discretion = more power for trustee = harder for creditors to get at trust
         3) Combination - ex: "income at end of each quarter, principal as needed, then 1/2 at 30, 1/2 at 40"
      ii. **Support provisions** - subject to objective and ascertainable standard, tells trustee how to use discretion and for what purpose (health, education support = food clothing, & shelter)
         1) Way to protect corpus - creditors cannot collect unless it is part of trust purpose
      iii. Beneficiary interest - freely assignable & reachable by creditors absent statutory provision or trust provision to the contrary
      iv. **Spendthrift Provisions** - clause in trust saying no one can get at it, limits ALL creditors (except IRS, state, spouse/child support, & necessities of life) & prevents all assignments
   e. Modification & Termination - trustee cannot modify substantive provisions of trust
      i. **Doctrine of Changed Circumstances** - trustee can petition the court to modify administrative terms of trust to better administer (apt building in bad neighborhood ex)
         1) Requirements:
            a) Compliance w/ terms of trust would defeat or substantially impair the accomplishment of trust purpose AND
            b) Trustor did not know or anticipate these circumstances
      ii. Termination
         1) 2 ways:
            a) Trust purpose accomplished
            b) Trust ends on its own terms
         2) Early termination:
            a) Trust is too uneconomical to continue
            b) Trust no longer operational (beneficiaries die, no contingency)
      iii. **Claflin Doctrine** - can beneficiary modify or terminate trust?
         1) Requirements:
            a) All beneficiaries must agree to termination AND
b) Modification or termination will not interfere with material purpose of trust

2) Waiver possible IF trustor is alive & petitions court w/ beneficiaries

f. Charitable Trusts - exempt from RAP
   i. Requirements:
      1) Intent to Create
      2) Identifiable Corpus
      3) Indefinite beneficiaries (opposite of private trusts) - no one should hold equitable title, trust is to benefit PUBLIC
      4) Charitable purpose - broad discretion to determine, generally accepted standard
         a) Advancement of education
         b) Relief of poverty
         c) Promotion of health
         d) Governmental trusts
         e) Advancement of religion
      5) Mechanisms of Creation (same as private trust)
         - If charitable trust fails, will not work as private trust b/c it violates RAP
            ∗ Uniform Statutory Rule Against Perpetuities - allows private trusts not to violate RAP at their inception, check if title vests at some point in the future

ii. Modification
   1) Cypres - "as near as possible" - court can alter charitable purpose when purpose is accomplished or impossible to carry out,
      a) GENERAL CHARITABLE INTENT required on part of trustor

ii. Duty of Inquiry
   i. Duty of Inquiry - affirmative duty to find out what needs of beneficiary are
   ii. Duty of Care to follow trust directions
   iii. Duty of Loyalty - trustee must be completely unselfish and undivided in loyalties to the beneficiaries of trust
      a) Avoid self-dealing - no person gain from trust except what you are entitled to as trustee, can't keep profits, must pay back losses
         i) Specific Prohibitions:
            i) Cannot sell own property to trust or purchase trust assets
            ii) Cannot loan or borrow money from trust
         ii) No Further Inquiry Rule - don't look beyond self-dealing, SL standard
         iii) Permitted self-dealing:
            i) If provisions of trust allow (rare)
            ii) Petition court after all beneficiaries informed and agree
      b) Avoid conflicts of interest - no further inquire rule does not apply, can justify conflict situations, must give back profit

4) Duties Relating to Care of Trust Property - must got the "extra mile"
   a) Rules:
      i) Must record docs that need to be recorded
      ii) Deposit jewelry and valuables in safe location
      iii) Deposit cash and commercial instruments in bank that is FDIC insured
      iv) Securing financial liability and other insurance on property
   b) Duty to properly title trust assets - if you don't, have breach, but no damages
   c) Duty not to co-mingle assets - "shrinkage" - trust assets diminished b/c of co-mingling

5) Duty not to delegate - can't delegate if it requires trustee judgment
   a) Ministerial functions - can be delegated (record keeping, collection of rent, etc)
      i) Can delegate to money manager for investments

6) Duty of impartiality - can't favor one beneficiary over another, or primary from 2ndary

7) Duty to keep and render accounts - to beneficiaries yearly (asset value, income,
expenses), beneficiaries have 3 years to object to accounting

8) **Duty to properly invest assets** - judged by **Uniform Prudent Investor Act**, subject to PRUDENT INVESTOR STANDARD at time of investment (no hindsight bias)
   a) **Due Diligence** - can invest in any asset as long as it's done w/ due diligence
      i) Factors to consider:
         i) What the expected rate of return of income might be, should be *reasonable yield*
         ii) Appreciation in the asset (stock vs CD)
         iii) Any resources other than trust available to beneficiary
         iv) Risk tolerance of beneficiary
   b) **Diversification** - to spread the risk
   c) **Total Asset Management** - look at investments of trustee as a whole
      i. **Surcharge** - if trustee liable for any of the above breaches, court will surcharge

ii. **Grounds for Removal**
   1) Physical or mental incapacity to perform trustee duties
   2) Unfit for position (multiple breaches of duties, convicted of dishonest crime)
   3) Existence of serious conflict of interest
   4) Insolvency on part of trustee (declared bankruptcy at some point)
   5) Extreme hostility and/or friction between trustee and beneficiaries

iii. **Trustee Liability**
   1) Liability of successors of trustees - not liable for acts of predecessors
   2) Co-trustees liable under the following circumstances:
      a) Participating in or approving alleged misconduct
      b) Improperly delegating authority to breaching trustee
      c) Concealing breach of co-trustee or failing to take action
   3) Liability to 3rd parties - 3rd party must seek damages from trust unless trustee at fault (intentional torts only)