

Two years ago, Testator, age 70, met Friend, age 50, through a dating service. Testator was a successful businessman and a widower. Friend worked for low-income wages. Friend showered Testator with affection and appeared to enjoy sharing his interests.

Three months ago, Testator proposed marriage to Friend, and Friend accepted. Thereafter, Testator decided to consult Friend's Brother, an attorney, about executing a will that would provide for Friend after Testator's death.

Without Testator's knowledge, Friend promised Brother that she would "be very generous" to him if Testator left her everything.

Testator consulted Brother and told him that he would like to leave his entire estate to a testamentary trust that would give Friend all trust income during her lifetime and give Charity the remaining trust assets after Friend's death. Brother told Testator that he would draft a will in accordance with these instructions. Brother instead drafted a will in which Testator bequeathed all of his assets to a trust, named Friend the beneficiary of "all trust income during her lifetime," gave Friend a "general power of appointment exercisable by deed or will" over trust assets, and named Charity the taker in default of appointment. After Brother advised Testator that the will reflected Testator's instructions, Testator properly executed the will drafted by Brother.

Shortly thereafter, Friend properly executed a will leaving her entire residuary estate to her Sister. Neither the residuary clause nor any other clause in Friend's will made reference to the power of appointment in Testator's will.

On the way to their wedding, Testator and Friend were in an automobile accident. Testator died immediately, and Friend died one week later.

Testator left a substantial estate. He was survived by his elderly Uncle and his Niece, both of whom he had not seen in several years. Friend is survived by Sister and Brother.

1. Is Testator's will invalid on the basis of undue influence? Explain.
2. Is Testator's will invalid on the basis of fraud? Explain.
3. If Testator's will is valid, to whom should Testator's estate be distributed? Explain.
4. If Testator's will is invalid, to whom should Testator's estate be distributed? Explain.