

In re Eli Doran

Model answer: the outline, then the written closing argument (annotated)

A persuasive closing argument for petitioner Carol Richards. Read the colors as in your marked-up File and Library: each highlight is the rule a fact serves, and the same color links a rule to the fact that triggers it.

Key: a highlighted phrase is the fact; **the teal → text** after it is the shorthand analysis, what it proves and which way it cuts.

marriage standard

will standard

Dr. Bush evidence

timing

Eli's confusion

suspicious conduct

case contrast

concede / rebut

STEP ONE The outline (what you jot before you write)

Two claims, two burdens, one body of evidence (mostly Dr. Bush). Note the authority by each rule; mark facts in their colors.

Frame: two burdens, one incompetence finding

R Marriage = clear and convincing (**Green**); will = preponderance (Dade). Prove capacity at each date.

- › The Dec 2019 incompetence finding alone is not enough (Tarr). → **still prove incapacity on Jan 15 and Oct 7**

Claim 1: annul the marriage (Jan 15, 2019)

R Rebut the presumption only by clear and convincing evidence that Eli could not understand the nature, effect, and consequences of marriage at the time. *Green (+ Simon)*.

A Apply:

- › Dr. Bush (only expert, disinterested): dementia, MMSE 19 then 17, executive dysfunction, permanent; exams 8 mo before + 4 mo after. → **no capacity at the wedding**
- › Eli thought he was married to Janet (dead) and to Vera; equated marriage with being cared for. → **no understanding of marriage**
- › Like *Simon* (caregiver + patient, no relationship, married fast), unlike *Green*. → **annulment warranted**
- › Paula kept it secret, used no minister, did not invite Carol. → **suspicious, undercuts consent**

Rebut Concede minister + Simms's belief + Paula 'in love'; but Simms is unqualified, saw Eli twice, ran no tests; no wedding-day test, but the trend covers it. → **presumption still rebutted**

C Conclude: clear and convincing evidence of no capacity → **ANNUL**

Claim 2: set aside the will (Oct 7, 2019)

R Prove by a preponderance that at execution Eli could not know the act, his property, and the natural objects of his bounty. *Dade; Tarr*.

A Apply:

- › Dr. Bush: as of June 21, 2019 Eli lacked testamentary capacity, could not verbalize what a will is; permanent + progressive. → **no capacity 4 mo later on Oct 7**
- › Carol: checkbook errors, repeated questions, did not recognize her family. → **corroborates incapacity**
- › Will = online kit, filled out by Paula (sole beneficiary), interested witnesses, reversed the 2016 church will. → **incapacity + influence**

Rebut Concede no Oct 7 exam + Mary's "yes" to Paula having his 'stuff'; but a scripted 'yes' is not knowing his estate, and Bush's trend fills the gap. → **preponderance still met**

C Conclude: preponderance of no testamentary capacity → **SET ASIDE THE WILL**

STEP TWO The written closing argument (persuasive, full IRAC)

Full-sentence argument headings (office rule), then the standard, the marshaled evidence, and a rebuttal of Paula. Essay on the left, teaching notes on the right.

CLOSING ARGUMENT OF PETITIONER CAROL RICHARDS

Petitioner Carol Richards, as guardian of Eli Doran, asks the court to annul Eli's January 2019 marriage to Paula Daws and to set aside the October 2019 will leaving Paula his entire estate. Eli concededly took part in a marriage ceremony and was later adjudged incompetent, but **neither fact resolves his capacity at the two critical dates**. On both, the **unrebutted testimony of Dr. Bush**, the only cognitive expert, together with Eli's own confusion and the circumstances of the marriage and will, carries petitioner's burden.

I. Because Eli Doran could not understand the nature, effect, and consequences of marriage, clear and convincing evidence rebuts the presumption of validity and the January 2019 marriage must be annulled.

A marriage that meets the licensing and officiating requirements of FUMDA is presumptively valid, and that presumption yields only to **clear and convincing evidence** that a party lacked capacity to consent. In re Estate of Green (Fr. Ct. App. 2014). Capacity to consent means the ability to **understand the nature, effect, and consequences of marriage and its duties, measured at the time of the marriage**.

Here, the evidence clears that bar. Dr. Bush, the only cognitive expert and a disinterested one, found that Eli suffered from **dementia and severe executive dysfunction**, with MMSE scores falling from 21 to 19 to 17 against a normal of 23, a condition she called **permanent and progressive**. Although

Persuasive closing to the judge as trier of fact. Organize one claim at a time.

Intro. Overview. Frame both petitions, concede what you must (ceremony + incompetence finding), and preview that capacity at each date is the real question.

Heading. Claim 1 heading: the marriage standard applied to Eli's condition.

Rule. Standard. State the presumption, the heightened clear-and-convincing burden, the capacity definition, and the measured-at-the-time rule, all from Green.

Apply. Evidence. Lead with Bush; bridge the timing gap with 'permanent and progressive'; add Eli's confusion; then run the Simon analogy and Green contrast.

she examined Eli eight months before and four months after the wedding rather than on the day, a permanent, worsening condition makes it clear he lacked capacity on January 15 as well. Eli's own words confirm it: he believed he was still married to his late wife Janet and to Vera, his cook, and he equated marriage with someone who takes care of him. As in *Simon*, where a caregiver married an incapacitated patient with no prior relationship, and unlike *Green*, where the couple had a two-year engagement, Eli and Paula had only a caregiver relationship and married within days of any mention of it.

Paula will point to Rev. Simms, who believed Eli consented, and to testimony that she is happily married. But Simms is untrained in cognition, met Eli only twice, and ran no assessments, so his lay impression cannot outweigh Dr. Bush's expert, un rebutted findings. That Paula kept the marriage secret, used no minister Eli knew, and never told his only relative only deepens the doubt. Petitioner has shown by clear and convincing evidence that Eli lacked capacity, and the marriage must be annulled.

II. Because Eli could not know the nature of his property or the natural objects of his bounty when he signed the October 2019 will, a preponderance of the evidence requires that the will be set aside.

A valid will requires that, at execution, the testator be capable of knowing the nature of the act, the nature and extent of his property, and the natural objects of his bounty. In re Estate of Dade (Fr. Ct. App. 2015). The contestant carries this by a preponderance of the evidence, and while the court's later incompetence finding is not itself proof of incapacity, In re Estate of Tarr (Fr. Sup. Ct. 2011), the evidence here supplies that proof.

Here, Dr. Bush testified that as of June 21, 2019 Eli already lacked testamentary capacity and could not verbalize a reasonable understanding of a will; because his condition was permanent and progressive with no lucid periods, he could not have regained it by October 7, four months later. Carol corroborated the decline she saw first-hand: checkbook errors, the same questions asked over and over, and a failure to recognize her family. The will itself betrays both incapacity and influence: it was an online kit filled out by Paula, the sole beneficiary, witnessed by her own daughter and son-in-law, and it reversed the 2016 will Eli made with counsel leaving his estate to his church.

Paula will note that no one tested Eli on October 7 and that Mary Daws

Rebut. Rebut + close. Answer Simms and the 'in love' point head-on (no rebuttal round), use Paula's secrecy against her, and close on the burden.

Heading. Claim 2 heading: the testamentary-capacity standard applied.

Rule. Standard. Dade elements + preponderance; head off the incompetence-is-enough error with Tarr; note capacity is measured at execution.

Apply. Evidence. Carry the June finding forward to October via the trend, corroborate with Carol, then let the will's suspicious origins do work.

Rebut. Rebut + close. Defuse the 'yes' as

Johnson heard Eli say “yes” when asked whether he wanted Paula to have his “stuff.” But a one-word answer to a leading prompt is not proof that Eli knew the nature and extent of his estate or the church he had chosen before, and the absence of a same-day exam is filled by Dr. Bush's unbroken, worsening trajectory. By a preponderance, Eli lacked testamentary capacity, and the will must be set aside.

CONCLUSION

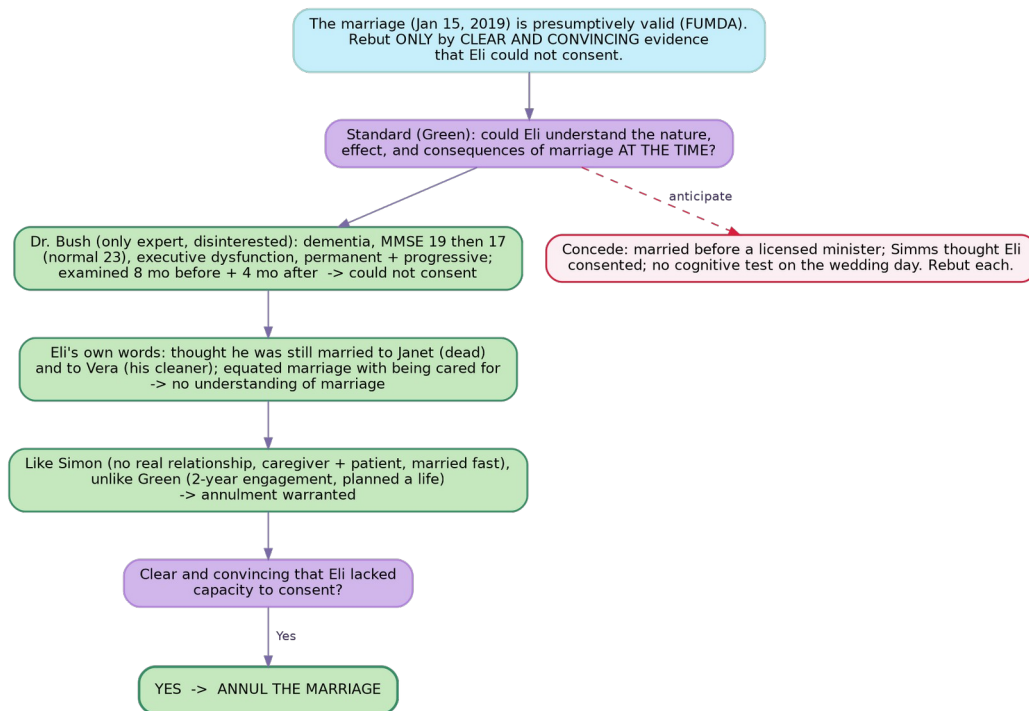
The evidence on both petitions points one way: Eli Doran could not understand marriage in January 2019, and he could not comprehend his estate in October 2019. Petitioner respectfully asks the court to annul the marriage and set aside the will.

a scripted prompt and the no-exam point with the trend; close on the preponderance burden.

Conclude. Conclusion. Tie both claims together and state the two requests plainly.

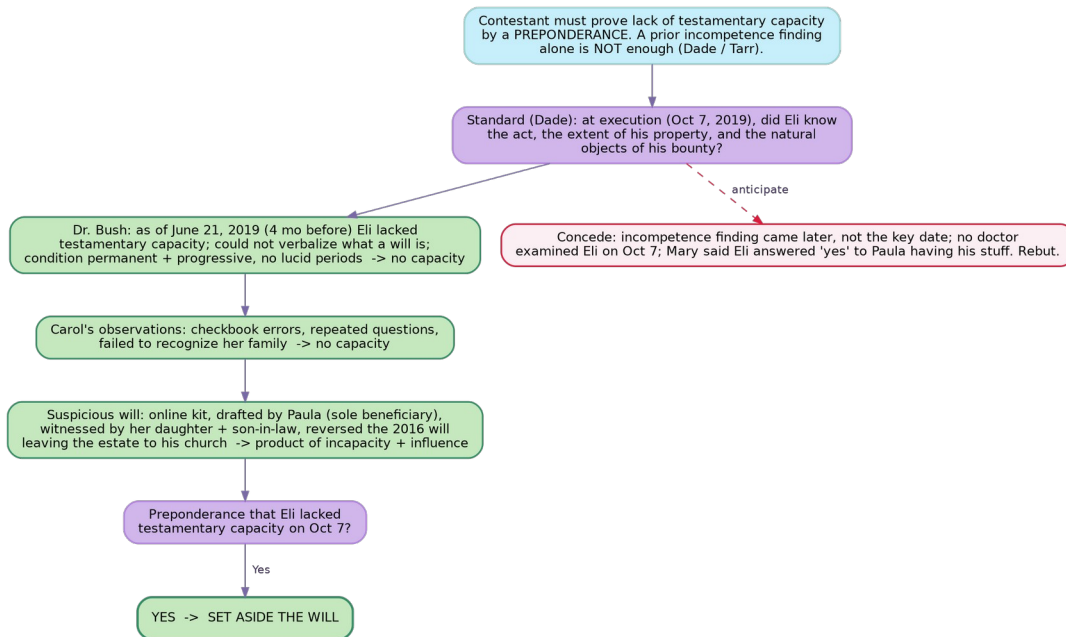
AT A GLANCE The two decision paths

Claim 1: capacity to consent to marriage



Clear and convincing evidence rebuts the presumption, so the marriage is annulled.

Claim 2: testamentary capacity



A preponderance shows no capacity at execution, so the will is set aside.