

Maryland State Board of Law Examiners
FEBRUARY 2020 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND –
REPRESENTATIVE GOOD ANSWERS

Representative Good Answer No. 2

Closing Argument

I. Mr. Doran did not have the capacity to consent to marriage when he married Paula Daws in January 2019, the January 2019 marriage of Paula and Eli should be annulled.

A marriage that complies with the licensing and officiating requirement of the Franklin Uniform Marriage and Dissolution Act (FUMDA) is presumptively valid. In re the Estate of Carla Mason Green. It can be overcome only with clear and convincing evidence. Id. Evidence is clear and convincing in a case if it establishes that it is substantially more likely than not that a party lacked capacity to consent to marriage. Id. The capacity to consent to marriage, a requirement of a valid marriage, is defined as the ability to understand the nature, effect, and consequences of marriage and its duties and responsibilities. Id. Each party to the marriage must freely intend to enter the marital relationship and understand what marriage is. Id.

Here, Eli Doran was placed in an assisted living home, run by Paula Daws, when his niece Carol Richards noticed that he was becoming forgetful and with the recommendation of his family doctor. After Eli moved in with Paula he was becoming more forgetful. Dr. Anita Bush ran several assessments for testing intellectual capacity when she met with him May 3, 2018. Of those tests was a MMSE which was conducted years ago by his family physician and yielded a result of 21 compared to the average 23 of someone in the same age, and health as Eli. Dr. Bush's results were 19 which was a significant decline. After the marriage of Eli and Paula Dr. Bush saw him a second time in which his memory got worse and when asked where he lived he stated that he lived with his wife Janet

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who died years ago. Dr. Bush also testified that she doubts Eli has moments of lucidity and if he does it is not the same as having the ability to exercise judgement. She further stated that Eli did not possess the mental capacity to consent to marriage. This could be contrasted with the Carla Mason case. In this case, Mason who had terminal cancer married Michael Green at the hospital. However, Mason was alert despite taking medications and it was said that patients can and do have periods of lucidity and alertness. Mason executed a POA two days after the wedding where it was said that she was "alert and oriented" and that her sister, the petitioner, believed that Mason had the capacity to make decisions when Mason signed the POA.

Opposing counsel could argue that if Dr. Bush believed Eli was being abused or exploited she would have called Franklin Elder Protective Services in which she did not. They could also argue that Paula Daws believed Eli had the mental capacity to consent to marriage because he stated over that "You take good care of me. We should get married" and that he stated "You are nice. I love you". However, Eli had said the same thing to Vera Wilson, the hired help, and had even asked her to marry him. Paula Daws has a lot to gain from the marriage and if she did not she would have invited his niece or went to Eli's minister to marry them. Instead Paula went to her own minister in which she is a long-time member of his congregation. Paula did not tell anyone about the marriage until recently as well.

Further, Paula Daws first met Eli when he and his niece came to her home in hopes to put him in assisted living. They did not know each other for long before they got married. Contrast to the Mason case, Mason and Green were engaged to be married for two years. They had planned for marriage and a life together. The case here aligns more with *In re Marriage of Simon*, in which the court annulled the marriage of Henry and Nancy Simon after Henry married Nancy while she lived in a residential facility. Nancy suffered a stroke which her doctors determined were disabling and that she was incapable of receiving or evaluating information. Nancy and Henry only knew each other for a few weeks prior to her stroke and they had no prior romantic or other relationship. The court found not only that Nancy was incapable of consenting to marriage but at the time of marriage she had no understanding of what marriage is. Eli and Paula had no prior romantic relationships or any other relationship more importantly Eli's cognitive assessments prove that he was not in the correct mental capacity to consent to marriage. He did not understand the nature, effect, and consequences of marriage and its duties and responsibilities. Eli did not have the required intent to be married and therefore the January 2019 marriage of Eli and Paula should be annulled.

II. Mr. Doran lacked testamentary capacity when he executed the October 7, 2019 will, the October 7, 2019 will should be set aside.

The law requires that the testator have testamentary capacity. That means that the testator must, at the time of executing the will, be capable of knowing the nature of the act he is about to perform, the nature and extent of his property, the natural objects of his bounty, and his relation to them. A will executed by a testator who lacks testamentary capacity is void. The time for measuring testamentary capacity is the time when the instrument is executed. A party who seeks to prove the lack of testamentary capacity must do so by a preponderance of evidence.

In this case, Eli, at the time of executing the will, did not have testamentary capacity to execute because he was not capable of knowing the nature of the act he was about to perform, the nature and extent of his property, the natural objects of his bounty, and his relation to them. According to Dr. Bush, Eli did not have the capacity to execute the October 7, 2019 will. Dr. Bush testified that in October Eli did not know who his relatives were or who might have a claim on his estate. He did not know who his niece was and thought that he lived with Janet,

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his deceased wife. Eli also did not know the nature and extent of his property or his estate. Opposing counsel could argue that Dr. Bush did not see on October 7, 2019 so she could not possibly know his mental capacity at that time. However, Eli did not have long periods in which he regained mental capacity as Matthew Dade had long periods of sobriety in the *In re the Estate of Dade* case. In *In re the Estate of Dade* case, Matthew Dade's adult children appealed to set aside their fathers' codicil due to his alcoholism. However, Dade was able to discuss his finances and correctly state his worth. He was also able to identify the extent and value of his investments and regularly provided updates to his niece and nephew and expressed his need to reward his house keeper. He also had long periods of sobriety between 1999 and 2000.

The court also assessed credibility which is critical to determinations of testamentary capacity. The court in *Dades* found that Dade's adult children were interested in protecting the original gift to them and that their testimony about their father's ability when he drafted the codicil was colored by their interest. In the case at hand, both Paula and her daughter Mary have something to gain. Paula did not take Eli to his lawyer to have the new will drafted but instead drafted it for him using an online kit. It was also brought to our attention that Paula has quite a bit of credit card debt of about \$15,000 or so. The money and assets left to her in the will would be more than enough to pay off her debt. As for her daughter Mary, who was present when Eli signed the will, gains her mother's inheritance if something was to happen to her mother after Eli's death. Here, Eli's niece has nothing to gain, in fact his 2016 will leaves his estates to his church that he loves so much.

In closing, Mr. Doran lacked testamentary capacity when he executed the October 2019 will. He did not know who his relatives were or who might have a claim on his estate. He did not know who his niece was and thought that he lived with Janet, his deceased wife, as evidenced by the testimonies of the witnesses. Paula Daws and her daughter both have interests worth protecting if the will is found to be valid. His niece had seen Eli's will from 2016 in which Eli saw his attorney and executed a will leaving his estate to his church, that he loved so much. Therefore, the October 7, 2019 will should be set aside. The reliefs requested are fair and just.