



In re Johnston Scoring Guide

Public Release

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In re Johnston Source Material

Memorandum

To: [You]
From: [Supervising attorney]
Date: [Today]
Re: Johnston Will Contest

We have a new client, Laila Johnston. Laila's mother, Michelle Johnston, recently passed away. In a handwritten will written one month before she died, Michelle left all her property to her neighbor, Josie Robinson. Laila wants to contest that handwritten will.

I have attached the following documents from Laila's file:

- an excerpted transcript of my interview with Laila;
- the affidavit of Michael O'Connor, who witnessed the handwritten will; and
- a copy of the handwritten will.

Additionally, I have included the following sources:

- excerpts from the Franklin Probate Code;
- *Thomas v. Anderson* (Franklin Court of Appeal, 2007); and
- *Ramirez v. Ramirez* (Franklin Court of Appeal, 2020).

Please draft an objective memorandum analyzing the following questions:

- (1) Whether a court would likely find that Michelle suffered from an "insane delusion" at the time she executed the handwritten will.
- (2) Whether there is sufficient evidence to submit to a jury the question of whether Josie exerted undue influence over Michelle when the handwritten will was created. There are four elements required to show undue influence. Analyze only the first element ("person who is susceptible to undue influence") and the third element ("a disposition to exert undue influence"). Assume that the evidence for the other two elements is sufficient.

Discuss only these issues. When preparing your memorandum, follow the Office Guidelines for Drafting Objective Memoranda, attached. As noted in the guidelines, include only the Discussion section of the memorandum.

End of memorandum

Memorandum

To: Associates
From: Firm Partners
Re: Office Guidelines for Drafting Objective Memoranda

The following guidelines apply to drafting objective memoranda.

Memorandum Caption

Omit this section.

QUESTION PRESENTED

Omit this section.

BRIEF ANSWER

Omit this section.

STATEMENT OF FACTS

Omit this section.

DISCUSSION

The Discussion section should provide applicable legal authority and apply that authority to the facts to support an objective conclusion on each legal issue.

Organize the memorandum by legal issue. For example, if the memorandum involves two legal issues, discuss each issue separately, providing a subject heading for each issue.

The subject headings need not be complete sentences. They need only demonstrate which legal issue you are discussing.

CONCLUSION

Omit this section.

End of memorandum

Excerpt of Transcript of Telephone Interview with Laila Johnston

[Attorney]: Tell me about this new will.

Johnston: Shortly after my mother passed away, I was at her house cleaning, and her neighbor, Josie Robinson, stopped by. During the conversation, Josie said that my mom had made a new will and that the new will was in the top drawer of my mom's desk.

Sure enough, I found a new will. It was dated the same day that my mom and Josie were in a car accident. The will left everything to Josie.

In my mom's previous will, which she had signed four years ago, she had left a generous gift to Josie—about \$10,000 to say "thank you" for helping her throughout the years. But this new will leaves everything—the house, all my mom's savings—to Josie. I'm my mom's only child, and it leaves me nothing.

[Attorney]: Tell me about your mom's relationship with Josie.

Johnston: My mom and Josie always had a close relationship. They were neighbors for 20 years. Josie was also always there to help my mom when I couldn't be there. My mom had a long history of medical concerns: migraines, chronic fatigue, joint pain, anxiety, and depression.

I work a lot of hours, so I wasn't always available for my mom when she needed me. I don't have any other family to turn to, and I never wanted my mom to be alone if she was experiencing a health issue, so I often asked Josie for help when I couldn't be there. Josie was always so kind, driving my mom to medical appointments or going by the house to check on my mom.

[Attorney]: What about your relationship with your mom?

Johnston: It was not easy taking care of my mom and all her health issues. I have a very busy job, and it can be hard to get away during working hours. So, as I said, I couldn't always be there for my mom exactly when she wanted me to be.

In the year before she died, my mom was getting frustrated with me. She began accusing me of going to the Bahamas for vacation when I wasn't able to leave work to see her. Of course, I was never in the Bahamas, and I never went more than two days without seeing my mom. In fact, due to my mom's health issues, I have not left the state of Franklin once this past year. My boss can tell you that I haven't taken a vacation in more than a year.

[Attorney]: What do you know about the events leading up to your mom writing the new will?

Johnston: After Josie told me about the will, I asked Josie to explain it. Apparently, my mom wrote the will while she was at the hospital. She and Josie were in a car accident. Josie had been driving my mom to a doctor's appointment. Another driver ran a red light and hit Josie's car. Josie was fine because she was wearing a seat belt, but my mom had taken hers off because she said it was painful to wear. My mom was thrown against the front windshield.

Josie didn't need any emergency medical treatment, but an ambulance brought my mom to the hospital. Josie rode with my mom in the ambulance. The medical records show that my mom was in pain after the accident, but she was coherent; she could respond to the paramedic's questions. It was later revealed that my mom broke several vertebrae in her back due to the accident. She also had cuts on her face and neck.

According to Josie, on the way to the hospital, my mom was complaining that I wasn't there. My mom kept repeating, "Once again, Laila is in the Bahamas, instead of here with me. She might be my daughter, but she doesn't deserve anything from me." Josie called me during that ambulance ride and put my mom on speakerphone. I told her I was at work and would be arriving at the hospital within the next two hours. I was in a meeting with my boss when they called, and since we were on speakerphone, my boss wished my mom well and assured her that I would be heading to the hospital promptly. My mom thanked him and told me to get to the hospital quickly.

I arrived at the hospital approximately two hours later, like I said I would. I assured my mom that I had not been in the Bahamas. I said, "Mom, I saw you yesterday, and I'm here right now. Of course I was not in the Bahamas today. The Bahamas is a four-hour flight away, so you know it is impossible for me to have been in the Bahamas today." But she still said, "I can't believe you are always choosing a vacation instead of visiting me." At that point I couldn't argue with her and just had to let it go.

[Attorney]: And did Josie explain why she thought your mom created the new will?

Johnston: I found out after my mom's death that as soon as they got to the hospital after riding in the ambulance, my mom told Josie that she was nervous she wasn't going to survive because she was in severe pain and that she wanted to make a new will so she could leave everything to Josie. So Josie went to the hospital gift shop and bought a pen and paper. She gave them to my mom, and my mom handwrote the will right there in her hospital bed. It happened less than one hour after she arrived at the hospital, and I arrived at the hospital to see my mom shortly after that.

[Attorney]: And then?

Johnston: According to Josie, Josie put the will in the top drawer of my mom's desk at home. Josie has a key to my mom's house, so after Josie left the hospital, she drove to my mom's house and put the will in the desk drawer.

[Attorney]: Tell me about the witnesses. How did they come to sign the will?

Johnston: Apparently, as my mom was writing the will, Josie mentioned that witnesses might be needed to make it legitimate. Josie approached a nurse and another hospital employee and asked whether they would sign it. Eventually, they came over and watched my mom sign the will, and then they signed it too.

[Attorney]: When did your mom pass away?

Johnston: It was one month after the car accident and just two days before her 80th birthday. She seemed fairly coherent immediately after the accident. I was able to see her and talk to her once I got

to the hospital. She was in a lot of pain from her injuries, but she was talkative. But about a week after she entered the hospital, she developed pneumonia. Her physical state rapidly declined after that, and she remained hospitalized.

[Attorney]: Okay. I'm going to see whether I can track down the people who witnessed your mom's new will. After that, I'll be able to give you a better assessment of where we stand.

End of excerpt

Affidavit of Michael O'Connor

State of Franklin
County of Westchester

I, Michael O'Connor, being first duly sworn, hereby affirm as follows:

1. My name is Michael O'Connor, and I am a registered nurse. I was working in the emergency room at Mercy Hospital when the events described below occurred.
2. While I was talking with my colleague Angelo Abad, Josie Robinson approached us and asked us to witness a handwritten will for a patient, Michelle Johnston.
3. I initially refused and advised Ms. Robinson that it was not an appropriate time to make an important decision like this when Ms. Johnston was in so much pain. However, Ms. Robinson insisted that I help and explained that Ms. Johnston was upset. Ms. Johnston had been in a car accident and was concerned she might not survive. Ms. Robinson believed that having witnesses sign the will would help Ms. Johnston relax.
4. Mr. Abad and I walked over to Ms. Johnston. Ms. Johnston told us that she had just written a new will and wanted Mr. Abad and me to watch her sign it and be witnesses to the will.
5. We saw Ms. Johnston sign the will. Then Mr. Abad and I signed and dated the will.
6. After we signed, I heard Ms. Johnston say, "Good. That will teach her to go to the Bahamas while I'm here dying."
7. The attached document is the will that I witnessed. The first witness signature is mine.
8. The information contained in this affidavit is true and correct to the best of my knowledge and belief.

[Date]

Michael O'Connor
Michael O'Connor

Notary Public
My commission expires: [Date]

End of document

Handwritten Will of Michelle Johnston

Today, I write my Last Will and Testament. I, Michelle Johnston, being of sound mind, leave all my possessions and other assets of all kinds to my neighbor, Josie Robinson. I leave my daughter, Laila, nothing.

Michelle Johnston

[Date]

Witness 1: Michael O'Connor, registered nurse

[Date]

Witness 2: Angelo Abad, patient care assistant

[Date]

End of document

Excerpts from the Franklin Probate Code

§ 301 Who May Make a Will

An individual 18 or more years of age who is of sound mind may make a will.

§ 309 Undue Influence Prohibited

The execution or revocation of a will or a part of a will is ineffective to the extent the execution or revocation was procured by . . . undue influence.

End of excerpts

Thomas v. Anderson
Franklin Court of Appeal (2007)

Opinion

The daughter of the testator appeals from the probate court's decision to invalidate the testator's 2005 will. In 2005, on the advice of the testator's doctors, the testator's son moved the testator into a nursing home. The testator was miserable in the nursing home, but his son refused to move him out of the nursing home.

While still in the nursing home, the testator accused the son of stealing money from him. After the testator had been in the nursing home for two months, the testator's daughter moved him out. The testator continued to complain that his son had stolen money from him.

One month after moving out of the nursing home, the testator executed a new will (the 2005 will), which disinherited the son and left the testator's entire estate to the testator's daughter. Six months after that, the testator died.

All parties agree that no evidence suggests that anyone, including the son, stole any money from the testator.

Discussion

For a will to be valid, Franklin law requires that the will be made by a person "of sound mind." Franklin Probate Code § 301. If a will is contested, the law presumes that the testator was of sound mind and had the mental capacity to make a valid will. A testator's "insane delusion," however, will invalidate a will to the extent that the will, or a part of it, was the result of an insane delusion. *Jackson v. Lewis* (Franklin Ct. App. 1982).

In this case, the sole issue on appeal is whether the probate court correctly held, as a matter of law, that the testator suffered from an "insane delusion" at the time he executed the 2005 will. For the reasons discussed below, we affirm the probate court's determination.

The first inquiry is whether the testator suffered from a delusion. A "delusion" is simply a false belief, and this standard is met when the contestant of the will provides evidence that the belief at issue is objectively false. *Doyle v. Roddy* (Franklin S. Ct. 1942). That burden is easily met in this case because the testator's belief that his son was stealing from him was objectively false.

Next, the court must ask whether that "delusion" was an "insane delusion." A delusion is "insane" if there is no reasonable foundation for the false belief. *Id.*

In *Jackson v. Lewis* (Franklin Ct. App. 1982), the Franklin Court of Appeal addressed the insane delusion rule. In that case, the testator's earlier will left his entire estate to his wife. However, about two months before his death, the testator told a friend that his wife had been unfaithful. As evidence of an affair, the testator said he had seen his wife and another man talking in a coffee shop. Both the friend, and later the wife, tried to persuade the testator that the wife was not having an affair, to no avail. A few

weeks after the conversation with the friend, the testator created a new will, which left nothing to his wife. In a handwritten note written just before he died, the testator again ranted about his wife's alleged infidelity and said he would leave her nothing as punishment. Although the wife admitted to talking to a man in a coffee shop, no evidence suggested that the testator's wife had ever been unfaithful to him. *Id.*

The *Jackson* court held that these facts were sufficient evidence to support a finding that the testator was laboring under a delusion when he created his will. *Id.* However, the court concluded, as a matter of law, that the delusion was not an insane delusion because there was a basis in reality for the husband's delusion—namely, he had seen the wife with another man. *Id.* Although the husband's conclusion may have been illogical and unfounded, the husband's delusion was not an insane delusion because his belief had some basis in reality. *Id.*

This case is distinguishable from *Jackson*. Here, the testator's false belief that his son had stolen from him had no basis in reality. No facts have been presented suggesting that anything was ever stolen from the testator. For example, there is no evidence that money was missing from a bank account that the son could access. Furthermore, there is no evidence that any checks were forged or that cash was taken from a safe. Unlike the testator in *Jackson*, who saw his wife at a coffee shop with another man, here, the testator never saw the son do anything to suggest that he was stealing. Therefore, the testator's delusion was an insane delusion that had no basis in reality.

The daughter's contrary argument is without merit. The daughter points out that, at the time he made his will, the testator felt betrayed by his son because the son had refused to remove the testator from the nursing home. That betrayal, the argument goes, was based in reality, and it was that sense of betrayal that led the testator to conclude that the son had also stolen from the testator.

However real the testator's sense of betrayal may have been, that sense of betrayal did not stem from any real-world evidence that his son had stolen from him. For these reasons, in this case, the testator's delusion was an insane delusion—it had no basis in reality.

The final inquiry is whether the disinheritance was the direct result of the insane delusion. This is an issue of causation. However, the trial court's determination regarding causation was not brought to this Court on appeal; therefore, we will not address it.

Judgment affirmed.

End of opinion

Ramirez v. Ramirez
Franklin Court of Appeal (2020)

This appeal concerns a will contest between the testator's son and the testator's daughter. The testator's last will and testament disinherited the daughter. Contrary to the contention of the son, who is the proponent of the will, the evidence raised sufficient issues of fact to warrant submitting the issue of undue influence to the jury.

Three weeks before he executed the will at issue in this case, the 94-year-old testator suffered a heart attack. He received treatment at a hospital and was then admitted to a nursing home. Two days after the testator's nursing home admission, the son, without notifying the daughter and against the advice of the testator's physician, drove the testator to a lawyer's office, where the testator executed a new will. That new will named the son as the testator's sole beneficiary.

Two months after the new will was executed, the testator died. The daughter testified that she learned of the new will only after the testator's death. She contested the will, arguing that the will was the result of the son's undue influence.

An otherwise valid will can be set aside if that will is the result of "undue influence." Franklin Probate Code § 309. There are four elements of undue influence: (1) a person who is susceptible to influence; (2) an opportunity to exert undue influence; (3) a disposition to exert undue influence; and (4) a result indicating undue influence. *Kelly v. Landers* (Franklin S. Ct. 1970).

Under Franklin law, the question of undue influence in will formation is an issue of fact for the jury. *Id.* However, it is only when there is evidence to support each of the four elements that the issue of undue influence should be sent to the jury for consideration. *Id.* Otherwise, the court will determine, as a matter of law, that the will was not the result of undue influence. *Id.*

Susceptibility to Undue Influence

Susceptibility concerns the general state of mind of the testator: whether he would be readily subject to the improper influence of others at the time he executed the will. Of particular concern is a testator who has undergone marked deterioration of mind or body shortly before the will was executed.

However, a testator is not considered susceptible to undue influence solely on the basis of the testator's advanced age or physical limitations. For example, the Court in *Edwards v. Robinson* (Franklin S. Ct. 1972) found no susceptibility to undue influence when the 85-year-old testator used a walker and had limited mobility because the Court found that the testator's health was "stable" at the time of will formation.

Here, the testator experienced a physical decline shortly before will formation—he had just been moved into a nursing home following treatment for a heart attack. Nevertheless, the son brought the testator to the lawyer's office just a few days after the move into the nursing home. On these facts, given the testator's physical decline shortly before he signed the new will, a jury could find that the testator had experienced a marked deterioration of his body and was susceptible to influence.

Opportunity to Exert Undue Influence

. . .

Disposition to Exert Undue Influence

Under this requirement, the question is whether the beneficiary's conduct shows a likely interest in taking advantage of the testator. One way to demonstrate the beneficiary's disposition to exert undue influence is through evidence of the beneficiary's suspicious conduct in the arranging of the will. *Taylor v. Taylor* (Franklin Ct. App. 2000). This includes actions taken in an attempt to control or alter the creation of the will. *Andrews v. Phillips* (Franklin Ct. App. 2012).

For example, in *Andrews*, the Franklin Court of Appeal held that the beneficiary's conduct was "suspicious" because the beneficiary was directly involved in arranging the will. He scheduled an appointment with the attorney who drafted the will and paid the fees associated with that appointment. He also suggested language to include in the will. The court held that the beneficiary's conduct showed a disposition to exert undue influence.

Similarly, in this case, a jury could find that the son exhibited a disposition to exert undue influence. The son took the testator to a lawyer to sign a new will against the advice of a doctor and without telling the daughter. His direct involvement in arranging the testator's new will could constitute "suspicious conduct" in the eyes of the jury.

A Result That Appears to Be the Effect of the Exercise of Undue Influence

. . .

Conclusion

Because there is evidence supporting each of the four elements of undue influence, the probate court properly submitted the question of undue influence to the jury.

Judgment affirmed.

End of opinion

In re Johnston Grading Materials

Outline of Analysis

In this performance task (PT), the examinee is an associate in a law firm representing Laila Johnston in a probate matter. Laila wants to contest a handwritten will that left all her mother's property to a neighbor, Josie Robinson. The examinee has been asked to prepare an objective memorandum to their supervising attorney analyzing (1) whether a court would likely find that Michelle suffered from an "insane delusion" at the time she executed the handwritten will and (2) whether there is sufficient evidence to submit to a jury the question of whether Josie exerted undue influence over Michelle when the handwritten will was created. Specifically, the examinee was instructed that there are four elements required to show undue influence, and they are to analyze only the first element ("person who is susceptible to undue influence") and the third element ("a disposition to exert undue influence").

The following is a complete outline of the rules, application, and conclusion for each issue. However, a response need not include everything in this outline to earn the highest score. Descriptions of the content required for each score level are noted later in the Rubric Grading Notes.

Issue 1: Did Michelle suffer from an "insane delusion" at the time she executed the will?

- **Rules:**
 - A "delusion" is a "false belief." *Thomas*.
 - "False belief" is met when the contestant of the will provides evidence that the belief at issue is objectively false. *Thomas*.
 - A delusion is "insane" if there is no reasonable foundation for the false belief. *Thomas*.
 - Example of delusion that was not insane:
 - In *Jackson*, the testator had a delusion that his wife was having an affair, but the delusion was not insane because there was a "basis in reality" for the delusion. The husband had seen his wife and another man in a coffee shop together. Although the wife was not having an affair, the belief that she was unfaithful was rooted in a factual "reality" because the testator saw her with another man. Thus, although the delusion was "illogical and unfounded," it was not insane.
 - Example of delusion that was insane:
 - In *Thomas*, the testator's belief that his son had stolen money from him was an insane delusion because it "had no basis in reality." The testator had not seen the son do anything to suggest he was stealing, and there

was no evidence that money was missing from a bank account that the son could access, that any checks were forged, or that cash was taken from a safe. Although the testator felt betrayed that his son put him in a nursing home, that betrayal did not stem from any real-world evidence that his son had stolen from him. Accordingly, there was no "basis in reality" for the delusion, and it was insane.

- **Application:**

- Michelle's belief that Laila was in the Bahamas while Michelle was in the hospital was objectively false and therefore a delusion. Laila was at work at the time of the car accident and went to see her mother two hours later.
- The delusion regarding the Bahamas was insane because there was no "basis in reality" for it.
- Laila was not out of town when Michelle was admitted to the hospital. She was at work—which she told Michelle and which her boss confirmed during a phone call. Laila had not left the state of Franklin in more than a year, and she did not go more than two days without seeing Michelle.
- Laila visited Michelle the day before the accident. As Michelle was riding to the hospital in an ambulance, she and Laila spoke on the phone. Laila told Michelle that she would be arriving at the hospital within the next two hours and did so. Within those two hours, Michelle drafted the handwritten will.
- The Bahamas is a four-hour flight from Franklin, so it would have been impossible for Laila to be in the Bahamas while her mom was in the hospital. Therefore, there was no "basis in reality" for Michelle to believe that Laila was on vacation in the Bahamas on the day of the accident, so her belief was not only "illogical and unfounded," but it was also not based on any reasonable foundation.
 - This is similar to the insane delusion in *Thomas* in which there was no basis in reality for the testator's belief that his son had stolen money from him and the testator merely felt betrayed that his son put him in a nursing home. Michelle may have also felt betrayed that Laila was not always present during her times of need, but that betrayal did not provide real-world evidence that Laila had traveled to the Bahamas.
 - This is distinguishable from the delusion in *Jackson* that was not insane because there was a factual basis for the testator's belief that his wife was having an affair because the testator saw the wife with another man.

- **Conclusion:**

- Michelle was suffering from an insane delusion at the time she executed the handwritten will.

Issue 2: Is there sufficient evidence to submit to a jury the question of whether Josie exerted undue influence over Michelle when the handwritten will was created?

Sub-issue 1: Susceptibility to Undue Influence (Element 1)

- **Rules:**

- Susceptibility to undue influence "concerns the general state of mind of the testator: whether he would be readily subject to the improper influence of others" at the time of will execution. *Ramirez*.
- A testator is more likely to be susceptible to influence when the testator has recently undergone a marked deterioration of mind or body. *Ramirez*.
- However, a testator is not considered susceptible to undue influence merely on the basis of the testator's advanced age or physical limitations. *Ramirez*.
 - Example in which there was susceptibility:
 - In *Ramirez*, the court held that the testator was susceptible to undue influence because he was just moved to a nursing home following treatment for a heart attack. The court held that a jury could find that, given his physical decline shortly before he signed the will, the testator had experienced a "marked deterioration of his body" that made him susceptible to influence.
 - Example in which there was no susceptibility:
 - The Court in *Edwards* found no susceptibility to undue influence for the 85-year-old testator, who used a walker and had limited mobility, because the Court found that the testator's health was "stable" at the time of will formation.

- **Application:**

- Here, Michelle's state of mind was not affected merely because of her advanced age or physical limitations.
- Instead, she was in a car accident shortly before she executed the new will. She was hurt in the accident, as she had not been wearing a seat belt and had hit the windshield, breaking several vertebrae in her back. This shows a "marked deterioration of the body" and a physical decline.

- This is similar to the testator's physical decline creating susceptibility after a heart attack in *Ramirez*.
 - Further, this is distinguishable from the situation in *Edwards*. Unlike the testator in that case, Michelle's health was not "stable" when she drafted the will, so Michelle was likely susceptible whereas the testator in *Edwards* was not.
 - Therefore, because of the marked deterioration of her body, Michelle was "subject to the improper influence of others" at the time she executed the will.
- **Conclusion:**
 - There is sufficient evidence to submit to a jury the issue of whether Michelle was susceptible to undue influence.

Sub-issue 2: Disposition to Exert Undue Influence (Element 3)

- **Rules:**
 - The question is whether the beneficiary's conduct shows a likely interest in taking advantage of the testator. *Ramirez*.
 - Evidence of "suspicious conduct" may demonstrate that the beneficiary had the disposition to exert undue influence. *Ramirez*.
 - "Suspicious conduct" includes "actions taken in an attempt to control or alter the creation of the will." *Ramirez*.
 - Examples of suspicious conduct:
 - In *Ramirez*, the beneficiary son took the testator to see a lawyer to sign a new will against the advice of a doctor and without telling the testator's doctor. His direct involvement in arranging the will could constitute "suspicious conduct" in the eyes of the jury.
 - In *Andrews*, the beneficiary arranged an appointment with the attorney who drafted the will and paid the fees associated with the appointment. He also suggested language to include in the will. These actions were "suspicious" and demonstrated his disposition to exert undue influence.
- **Application:**
 - Josie's conduct showed a likely interest in taking advantage of Michelle.
 - There is evidence that Josie's conduct in helping arrange the will was suspicious.
 - Josie took the following steps, which showed her direct involvement in the preparation of the will:

- She went to the hospital gift shop and bought the pen and paper used to draft the will.
- She told Michelle that "witnesses might be needed to make [the will] legitimate."
- She approached hospital staff and asked them to sign the will. Michael O'Connor and Angelo Abad signed the will.
- She persuaded the witnesses to sign the will after Michael O'Connor "initially refused."
- This provides evidence that Josie took actions in an attempt to control or alter the creation of Michelle's will.
 - This conduct is similar to the beneficiary's conduct showing a disposition to exert undue influence in *Ramirez*. There, the beneficiary was directly involved in arranging the will by driving the testator to the attorney's office against the advice of the testator's doctor.
 - This conduct is also similar to the beneficiary's conduct in *Andrews*, which showed a disposition to exert undue influence. There, the beneficiary was directly involved in arranging the will by making the appointment with the attorney, paying the fees associated with that appointment, and giving verbal directions on language to include in the will.
- **Conclusion:**
 - There is sufficient evidence to submit to a jury the issue of whether Josie had the disposition to exert undue influence.

In re Johnston Rubric

Grading Process

To score each issue in a response, the grader will assess two main components: (1) the issue's "legal analysis" (which consists of the response's rules and application) and (2) the issue's "additional requirements" (which consider the response's organization and structure and its language relating to audience and tone). First, the grader will score the legal analysis by entering a score of 0–4 for the issue's rules and a score of 0–4 for the issue's application (which includes the conclusion). Second, the grader will mark whether the additional requirements are "Satisfactory" or "Unsatisfactory."

After the grader scores the legal analysis and the additional requirements, the grading platform will calculate the total score for that issue, which the grader will not see. First, the grading platform will average the rules and application scores to reach one score. If the additional requirements are

“Satisfactory,” it will leave that averaged score unchanged; if the additional requirements are “Unsatisfactory,” it will reduce the averaged score by one point. For example, if an issue earns a score of 4 for its rules, a score of 2 for its application, and an “Unsatisfactory” for its additional requirements, then the scores of 4 and 2 will be averaged to a 3, and the “Unsatisfactory” additional requirements will reduce the averaged score by one point to a total score of 2. The grading platform will also weight the score; the grader should not consider any issues of weighting when assigning legal-analysis scores.

Note that the grading platform also has an option labeled “Off Topic” that the grader can select. “Off Topic” should be marked only in very limited circumstances. An “Off Topic” response is not merely incorrect—it is completely unrelated to any possible legal issue raised by the question. For example, responses including *only* random symbols or a comment about disliking the exam itself should be marked “Off Topic.” A response should not be marked “Off Topic” if it addresses an incorrect legal issue or if it has a single word addressing a possible legal issue, even if it also includes language or symbols that are not responsive (although the response might earn a score of 0). If a grader marks a response “Off Topic,” then the response will receive a score of 0.

Grading Notes

Legal Analysis – Rules and Application Scores

For each issue, the response’s rules and application are each assessed on their accuracy and thoroughness.

For the rules score, *accuracy* assesses an examinee’s ability to identify the correct legal rules associated with the issue at hand. For the application score, *accuracy* assesses the examinee’s ability to apply the correct facts to those rules and to reach the conclusion designated in the Outline of Analysis provided above.

For the rules score, *thoroughness* assesses whether the examinee provides a sufficient number of relevant rules, which may include express rules, implied rules, and/or case illustration(s). For the application score, *thoroughness* assesses whether the examinee includes a sufficient level of factual detail and a sufficient tie-in of relevant rule language and/or case comparison(s) to analyze an issue.

The following table provides general descriptions of the achievement levels for the rules scores and application scores; each level is explained in more detail in the scoring chart that follows.

Score Point	Rules	Application
4	The rules are accurate and thorough.	The application is accurate and thorough.
3	The rules are mostly accurate and thorough.	The application is mostly accurate and thorough.
2	The rules are somewhat accurate and thorough.	The application is somewhat accurate and thorough.
1	The rules are mostly inaccurate or so unthorough that they are cursory.	The application is mostly inaccurate or so unthorough that it is cursory.
0	No rules exist for the issue.	No application exists for the issue.
OT (0)	An "Off Topic" response is completely unrelated to any possible legal issue raised by the question. "Off Topic" should be marked in very limited circumstances and only when the entire response is "off topic."	

The following scoring chart includes descriptions of the content required for each score level. Note that citations are not required in examinee responses.

Issue 1: Did Michelle suffer from an "insane delusion" at the time she executed the will?

- **Rules**

- **Accurate and thorough (score: 4):** Response includes any 4 of the following:

Express rule statements:

- A "delusion" is a "false belief," and that standard is met when the will contestant provides evidence that the belief at issue is objectively false. *Thomas* (citing *Doyle*).
- A delusion is "insane" if there is no reasonable foundation for the false belief. *Thomas* (citing *Doyle*).

Implied rule statements (Note: Credit should be given when this information is provided as a rule statement or when it is provided as the court's reasoning in a case illustration):

- When there is a "basis in reality" for the delusion, it is not insane. *Thomas*.
- An "illogical and unfounded" belief is not an insane belief (if it has a "basis in reality"). *Thomas* (citing *Jackson*).
- A testator's feeling of betrayal does not form a "basis in reality"/provide real-world evidence for a delusion. *Thomas*.

Thorough case illustration(s) (Note: Credit should be given when this information is provided as a case illustration (e.g., "the testator") or as a generalized statement (e.g., "a testator")):

- Example of delusion that was not insane – *Jackson*: Testator had a delusion that his wife was having an affair, but it was not insane. He had seen her with a man in a coffee shop.
- Example of insane delusion – *Thomas*: Testator had not seen the son do anything to suggest stealing, and there was no evidence that money was missing from a bank account the son could access, that any checks were forged, or that cash was taken from a safe. Therefore, the delusion that the son was stealing was insane.

- **Mostly accurate and thorough (score: 3):** Response includes EITHER
 - all requirements needed to earn a score of 4 but with minor omissions or inaccuracies

OR

- any 3 of the requirements in the list for a score of 4 (note that for a score of 3 or lower, the case illustration(s) may be unthorough).
- **Somewhat accurate and thorough (score: 2):** Response includes EITHER
 - all requirements needed to earn a score of 3 but with minor omissions or inaccuracies

OR

 - any 2 of the requirements in the list for a score of 4 (case illustration(s) may be unthorough).
- **Mostly inaccurate or so unthorough that it is cursory (score: 1):** Response includes EITHER, which may be unthorough or inaccurate:
 - all requirements needed to earn a score of 2 but with minor omissions or inaccuracies;
 - any 1 of the requirements in the list for a score of 4 (case illustration(s) may be unthorough);

OR

 - other rule language relating to insane delusions not listed above.
- **No rules exist (score: 0):** No relevant rule language or case illustration is provided.
- **Application**
 - **Accurate and thorough (score: 4):** Response includes
 - A thorough factual discussion and EITHER
 - a tie-in of at least 4 of the following rule words (or their synonym(s)):
 - false belief/objectively false
 - reasonable foundation
 - basis in reality/real-world evidence
 - illogical and unfounded
 - betrayal

OR

 - a thorough analogy to *Thomas* OR distinction from *Jackson* AND a tie-in of at least 2 rule words.
 - The correct conclusion (Michelle was suffering from an insane delusion at the time she executed the handwritten will).

- **Mostly accurate and thorough (score: 3):** Response includes
 - EITHER
 - a *thorough* factual discussion and **EITHER**
 - a tie-in of 2 or 3 rule words **OR**
 - a thorough analogy to *Thomas* OR distinction from *Jackson*
 - OR
 - an *unthorough* factual discussion and **BOTH**
 - a tie-in of 1 or more rule words **AND**
 - a thorough analogy to *Thomas* or distinction from *Jackson*.
 - The correct conclusion.
- **Somewhat accurate and thorough (score: 2):** Response includes
 - EITHER
 - a *thorough* factual discussion and EITHER
 - no tie-in of rule language and no analogy/distinction OR
 - a tie-in of 1 rule word OR
 - an unthorough analogy to *Thomas* OR distinction from *Jackson*
 - OR
 - an *unthorough* factual discussion and EITHER
 - a tie-in of 1 or more rule words **OR**
 - a thorough or unthorough analogy to *Thomas* or distinction from *Jackson*.
 - A correct, incorrect, or missing conclusion.
- **Mostly inaccurate or so unthorough that it is cursory (score: 1):** Response includes
 - EITHER
 - an *unthorough* factual discussion with no tie-in of rule language and no analogy to *Thomas* OR distinction from *Jackson*
 - OR
 - an inaccurate application.
 - A correct, incorrect, or missing conclusion.
- **No application exists (score: 0):** No facts, tie-in of rule language, or analogy or distinction relevant to the legal issue is provided, and the conclusion is missing.

Issue 2: Is there sufficient evidence to submit to a jury the question of whether Josie exerted undue influence over Michelle when the handwritten will was created?

Sub-issue 1: Susceptibility to Undue Influence (Element 1)

- **Rules**

- **Accurate and thorough (score: 4):** Response includes any 4 of the following:

Express rule statements:

- Susceptibility to undue influence concerns whether the testator’s general state of mind at the time of will execution made the testator readily subject to the improper influence of others. *Ramirez*.
- A testator is more likely to be susceptible to influence when the testator has recently undergone a marked deterioration of mind or body/a physical decline. *Ramirez*.
- A testator is not considered susceptible to undue influence merely on the basis of the testator's advanced age or physical limitations. *Ramirez*.

Thorough case illustration(s) (Note: Credit should be given when this information is provided as a case illustration (e.g., “the testator”) or as a generalized statement (e.g., “a testator”)):

- Example of susceptibility – *Ramirez*: Testator was susceptible because he was just moved to a nursing home following treatment for a heart attack.
- Example of no susceptibility – *Edwards*: No susceptibility when the 85-year-old testator used a walker and had limited mobility, but his health was “stable” at the time of will formation.

- **Mostly accurate and thorough (score: 3):** Response includes EITHER

- all requirements needed to earn a score of 4 but with minor omissions or inaccuracies

OR

- any 3 of the requirements in the list for a score of 4 (note that for a score of 3 or lower, the case illustration(s) may be unthorough).

- **Somewhat accurate and thorough (score: 2):** Response includes EITHER

- all requirements needed to earn a score of 3 but with minor omissions or inaccuracies

OR

- any 2 of the requirements in the list for a score of 4 (case illustration(s) may be unthorough).
 - **Mostly inaccurate or so unthorough that it is cursory (score: 1):** Response includes EITHER, which may be unthorough or inaccurate:
 - all requirements needed to earn a score of 2 but with minor omissions or inaccuracies;
 - any 1 of the requirements in the list for a score of 4 (case illustration(s) may be unthorough);

OR

 - other rule language relating to susceptibility not listed above.
 - **No rules exist (score: 0):** No relevant rule language or case illustration is provided.
- **Application**
 - **Accurate and thorough (score: 4):** Response includes
 - A thorough factual discussion and EITHER
 - a tie-in of at least 4 of the following rule words (or their synonym(s)):
 - state of mind
 - improper influence
 - marked deterioration of body/physical decline
 - advanced age/physical limitations
 - stable [health]

OR

 - a thorough analogy to *Ramirez* OR distinction from *Edwards* AND a tie-in of at least 2 rule words.
 - The correct conclusion (there is sufficient evidence to submit to a jury the issue of whether Michelle was susceptible to undue influence).
 - **Mostly accurate and thorough (score: 3):** Response includes
 - EITHER
 - a *thorough* factual discussion and **EITHER**
 - a tie-in of 2 or 3 rule words **OR**
 - a thorough analogy to *Ramirez* OR distinction from *Edwards*

OR

 - an *unthorough* factual discussion and **BOTH**
 - a tie-in of 1 or more rule words **AND**

- a thorough analogy to *Ramirez* OR distinction from *Edwards*.
 - The correct conclusion.
- **Somewhat accurate and thorough (score: 2):** Response includes
 - EITHER
 - a *thorough* factual discussion and EITHER
 - no tie-in of rule language and no analogy/distinction OR
 - a tie-in of 1 rule word OR
 - an unthorough analogy to *Ramirez* OR distinction from *Edwards*
 - OR
 - an *unthorough* factual discussion and EITHER
 - a tie-in of 1 or more rule words **OR**
 - a thorough or unthorough analogy to *Ramirez* OR distinction from *Edwards*.
 - A correct, incorrect, or missing conclusion.
- **Mostly inaccurate or so unthorough that it is cursory (score: 1):** Response includes
 - EITHER
 - an *unthorough* factual discussion with no tie-in of rule language and no analogy to *Ramirez* OR distinction from *Edwards*
 - OR
 - an inaccurate application.
 - A correct, incorrect, or missing conclusion.
- **No application exists (score: 0):** No facts, tie-in of rule language, or analogy or distinction relevant to the legal issue is provided, and the conclusion is missing.

Sub-issue 2: Disposition to Exert Undue Influence (Element 3)

- **Rules**
 - **Accurate and thorough (score: 4):** Response includes any 4 of the following:
 - Express rule statements:
 - The relevant question is whether the beneficiary's conduct shows a likely interest in taking advantage of the testator. *Ramirez*.
 - Evidence of “suspicious conduct” in arranging the will may demonstrate that the beneficiary had the disposition to exert undue influence. *Ramirez* (citing *Taylor*).

- “Suspicious conduct” includes “actions taken in an attempt to control or alter the creation of the will.” *Ramirez* (citing *Andrews*).

Thorough case illustration(s) (Note: Credit should be given when this information is provided as a case illustration (e.g., “the testator”) or as a generalized statement (e.g., “a testator”)):

- Example #1 showing suspicious conduct – *Ramirez*: Beneficiary took the testator to see a lawyer to sign a new will against the advice of a doctor and without telling the testator’s daughter. A jury could find this to be “suspicious conduct”/ demonstrate a disposition to exert undue influence.
 - Example #2 showing suspicious conduct – *Andrews*: Beneficiary arranged an appointment with the attorney who drafted the will and paid the fees associated with the appointment. He also suggested language to include in the will. These actions were “suspicious”/demonstrated his disposition to exert undue influence.
- **Mostly accurate and thorough (score: 3):** Response includes EITHER
 - all requirements needed to earn a score of 4 but with minor omissions or inaccuracies**OR**
 - any 3 of the requirements in the list for a score of 4 (note that for a score of 3 or lower, the case illustration(s) may be unthorough).
 - **Somewhat accurate and thorough (score: 2):** Response includes EITHER
 - all requirements needed to earn a score of 3 but with minor omissions or inaccuracies**OR**
 - any 2 of the requirements in the list for a score of 4 (case illustration(s) may be unthorough).
 - **Mostly inaccurate or so unthorough that it is cursory (score: 1):** Response includes EITHER, which may be unthorough or inaccurate:
 - all requirements needed to earn a score of 2 but with minor omissions or inaccuracies;
 - any 1 of the requirements in the list for a score of 4 (case illustration(s) may be unthorough);**OR**
 - other rule language relating to disposition to exert undue influence not listed above.

- **No rules exist (score: 0):** No relevant rule language or case illustration is provided.

- **Application**

- **Accurate and thorough (score: 4):** Response includes
 - A thorough factual discussion and **EITHER**
 - a tie-in of all 4 of the following rule words (or their synonym(s)):
 - take advantage
 - suspicious conduct
 - arrange/control/alter will
 - direct involvement

OR

 - a thorough analogy to *Ramirez* OR to *Andrews* AND a tie-in of at least 2 rule words.
 - The correct conclusion (there is sufficient evidence to submit to a jury the issue of whether Josie had the disposition to exert undue influence).
- **Mostly accurate and thorough (score: 3):** Response includes
 - **EITHER**
 - a *thorough* factual discussion and **EITHER**
 - a tie-in of 2 or 3 rule words **OR**
 - a thorough analogy to *Ramirez* OR to *Andrews*

OR

 - an *unthorough* factual discussion and **BOTH**
 - a tie-in of 1 or more rule words **AND**
 - a thorough analogy to *Ramirez* OR to *Andrews*.
 - The correct conclusion.
- **Somewhat accurate and thorough (score: 2):** Response includes
 - **EITHER**
 - a *thorough* factual discussion and **EITHER**
 - no tie-in of rule language and no analogy **OR**
 - a tie-in of 1 rule word **OR**
 - an unthorough analogy to *Ramirez* OR to *Andrews*

OR

 - an *unthorough* factual discussion and **EITHER**
 - a tie-in of 1 or more rule words **OR**
 - a thorough or unthorough analogy to *Ramirez* OR to *Andrews*.

- A correct, incorrect, or missing conclusion.
- **Mostly inaccurate or so unthorough that it is cursory (score: 1):** Response includes
 - EITHER
 - an *unthorough* factual discussion with no tie-in of rule language and no analogy to *Ramirez* OR to *Andrews*
 - OR
 - an inaccurate application.
 - A correct, incorrect, or missing conclusion.
- **No application exists (score: 0):** No facts, tie-in of rule language, or analogy relevant to the legal issue is provided, and the conclusion is missing.

Additional Requirements

Apart from legal analysis, there are additional requirements to consider when scoring a response. Graders should consider the response's organization/structure and its language relating to audience/tone.

If these components are satisfactory, mark "Satisfactory," and the score for that issue will not be affected. If any component is unsatisfactory, mark "Unsatisfactory," and the total score for that issue will be reduced by one point.

While it is up to the grader to weigh these factors and determine whether the response's deficiencies are severe enough to deem the response "unsatisfactory" for these criteria, it should be noted that deficiencies within examinee responses are expected. If those deficiencies do not severely affect the quality of the work product, the additional requirements should be deemed "satisfactory." However, if the deficiencies severely affect the quality of the work product or the ability to understand the response, the additional requirements should be deemed "unsatisfactory."

Organization and Structure

This component first assesses overall organization by evaluating the examinee's ability to organize the discussion of each issue in a logical sequence. Each issue should be fully developed in isolation, without any reference to another issue.

This component also assesses each issue's internal organization. Examinees should structure the analysis such that the explanation of the legal rules is connected to the application of those rules in a way that supports the legal conclusion provided in the Outline of Analysis.

The following are descriptive examples of when a response may be deemed "satisfactory" or "unsatisfactory."

Overall organization

- **Satisfactory:** The legal issue is discussed in isolation without including analysis for other legal issues.
- **Unsatisfactory:** The legal issues are combined and discussed all together, or there is such a mixture of the legal issues that it interferes with the reader's understanding of the analysis.

Internal organization

- **Satisfactory:** The analysis is structured such that, for the most part, rule language is provided before the application of such language. While the structure may be imperfect, it does not interfere with the reader's ability to understand the analysis.
- **Unsatisfactory:** The analysis is disorganized, and there is no logical flow from rules to application. For example, if the response includes an application of a rule but does not state the rule until the end of the analysis, this organization would interfere with the reader's understanding of the analysis.

Audience and Tone

This component assesses the examinee's ability to use language that is appropriate for the document's intended audience. Law-trained and lay audiences should be addressed with the appropriate level of assumed knowledge and understanding of the issue.

For this PT, examinees are writing an objective memorandum to a supervising attorney. They should use objective, rather than persuasive, language. Additionally, examinees must demonstrate their ability to communicate effectively in writing. (Note: Misspellings, typos, and/or grammatical errors should be disregarded unless they severely affect the substance of the response to the extent that the grader cannot understand what the examinee is trying to convey.)

The following are descriptive examples of when a response may be deemed "satisfactory" or "unsatisfactory":

- **Satisfactory:** The response includes language that is appropriate for the document recipient. For this PT, that is a supervising attorney, and the language should be objective. Language such as "a court would likely find," or other predictive language, is appropriate. In addition, the use of formal language and complete sentences is appropriate.
- **Unsatisfactory:** The response includes language that is not appropriate for the document recipient, which is a supervising attorney, and this language interferes with the quality of the work product. Language arguing for the client's position or stating that "this Court should find" would be inappropriate. In addition, because this is a memorandum to a supervising attorney, the use of slang, colloquialisms (such as "you only live once"), or incomplete sentences would be inappropriate.

In re Johnston Issue 1 (Insane Delusion) Scoring Chart Summary

SCORE	RULES DESCRIPTION	APPLICATION DESCRIPTION
4	Accurate and thorough: Response includes any 4 of the following: Express rule statements: - A "delusion" is a "false belief," and that standard is met when the will contestant provides evidence that the belief at issue is objectively false. <i>Thomas</i> (citing <i>Doyle</i>). - A delusion is "insane" if there is no reasonable foundation for the false belief. <i>Thomas</i> (citing <i>Doyle</i>). Implied rule statements (Credit should be given when this is provided as a rule statement or when provided as the court's reasoning in a case illustration): - When there is a "basis in reality" for the delusion, it is not insane. <i>Thomas</i>. - An "illogical and unfounded" belief is not an insane belief (if it has a "basis in reality"). <i>Thomas</i> (citing <i>Jackson</i>). - A testator's feeling of betrayal does not form a "basis in reality"/provide real-world evidence for a delusion. <i>Thomas</i>. Thorough case illustration(s) (Note: Credit should be given when this information is provided as a case illustration (ex.: <i>the testator</i>) or as a generalized statement (ex.: <i>a testator</i>)): - Example of delusion that was not insane – <i>Jackson</i>: Testator had a delusion that his wife was having an affair, but it was not insane. He had seen her with a man in a coffee shop. - Example of insane delusion – <i>Thomas</i>: Testator had not seen the son do anything to suggest stealing, and there was no evidence that money was missing from a bank account the son could access, that any checks were forged, or that cash was taken from a safe. Therefore, the delusion that the son was stealing was insane.	Accurate and thorough: Response includes - a thorough factual discussion and EITHER - a tie-in of at least 4 rule words (or their synonym(s)): - false belief/objectively false - reasonable foundation - basis in reality/real-world evidence - illogical and unfounded - betrayal OR - a thorough analogy to <i>Thomas</i> or distinction from <i>Jackson</i> AND a tie-in of at least 2 rule words. – the correct conclusion (Michelle was suffering from an insane delusion at the time she executed the handwritten will).

SCORE	RULES DESCRIPTION	APPLICATION DESCRIPTION
3	Mostly accurate and thorough: Response includes EITHER - all requirements needed to earn a score of 4 but with minor omissions or inaccuracies OR any 3 of the requirements for a score of 4 (note that for a score of 3 or lower, case illustration(s) may be unthorough).	Mostly accurate and thorough: Response includes EITHER - a thorough factual discussion and either a tie-in of 2 or 3 rule words OR a thorough analogy to <i>Thomas</i> or distinction from <i>Jackson</i> OR - an unthorough factual discussion and BOTH a tie-in of 1 or more rule words AND a thorough analogy to <i>Thomas</i> or distinction from <i>Jackson</i> - the correct conclusion.
2	Somewhat accurate and thorough: Response includes EITHER - all requirements needed to earn a score of 3 but with minor omissions or inaccuracies OR any 2 of the requirements in the list for a score of 4 (case illustration(s) may be unthorough).	Somewhat accurate and thorough: Response includes EITHER - a thorough factual discussion and EITHER no tie-in of rule language and no analogy/distinction OR a tie-in of 1 rule word OR an unthorough analogy to <i>Thomas</i> or distinction from <i>Jackson</i> OR - an unthorough factual discussion and EITHER a tie-in of 1 or more rule words OR a thorough or unthorough analogy to <i>Thomas</i> or distinction from <i>Jackson</i> - a correct, incorrect, or missing conclusion.
1	Mostly inaccurate or so unthorough that it is cursory: Response includes EITHER (which may be unthorough or inaccurate) - all requirements needed to earn a score of 2 but with minor omissions or inaccuracies any 1 of the requirements in the list for a score of 4 (case illustration(s) may be unthorough) OR other rule language relating to insane delusions not listed above.	Mostly inaccurate or so unthorough that it is cursory: Response includes EITHER - an unthorough factual discussion with no tie-in of rule language and no analogy to <i>Thomas</i> or distinction from <i>Jackson</i> OR - an inaccurate application - a correct, incorrect, or missing conclusion.
0	No rules exist: No relevant rule language or case illustration is provided.	No application exists: No facts, tie-in of rule language, or analogy or distinction relevant to the legal issue is provided. The conclusion is missing.

In re Johnston Issue 2 (Issue 2, Sub-issue 1: Susceptibility to Undue Influence) Scoring Chart Summary

SCORE	RULES DESCRIPTION	APPLICATION DESCRIPTION
4	Accurate and thorough: Response includes any 4 of the following: Express rule statements: • Susceptibility to undue influence concerns whether the testator's general state of mind at the time of will execution made the testator readily subject to the improper influence of others. <i>Ramirez</i>. • A testator is more likely to be susceptible to influence when the testator has recently undergone a marked deterioration of mind or body/physical decline. <i>Ramirez</i>. • A testator is not considered susceptible to undue influence merely on the basis of the testator's advanced age or physical limitations. <i>Ramirez</i>. Thorough case illustration(s) (Note: Credit should be given when this information is provided as a case illustration (ex.: <i>the testator</i>) or as a generalized statement (ex.: <i>a testator</i>)): • Example of susceptibility – <i>Ramirez</i>: Testator was susceptible because he was just moved to a nursing home following treatment for a heart attack. • Example of no susceptibility – <i>Edwards</i>: No susceptibility when the 85-year-old testator used a walker and had limited mobility, but his health was "stable" at the time of will formation.	Accurate and thorough: Response includes - a thorough factual discussion and EITHER • a tie-in of at least 4 rule words (or their synonym(s)): ○ state of mind ○ improper influence ○ marked deterioration of body/physical decline ○ advanced age/physical limitations ○ stable [health] OR • a thorough analogy to <i>Ramirez</i> or distinction from <i>Edwards</i> AND a tie-in of at least 2 rule words. - the correct conclusion (there is sufficient evidence to submit to a jury the issue of whether Michelle was susceptible to undue influence).

SCORE	RULES DESCRIPTION	APPLICATION DESCRIPTION
3	Mostly accurate and thorough: Response includes EITHER - all requirements needed to earn a score of 4 but with minor omissions or inaccuracies OR any 3 of the requirements for a score of 4 (note that for a score of 3 or lower, case illustration(s) may be unthorough).	Mostly accurate and thorough: Response includes EITHER - a thorough factual discussion and either a tie-in of 2 or 3 rule words OR a thorough analogy to <i>Ramirez</i> or distinction from <i>Edwards</i> OR - an unthorough factual discussion and BOTH a tie-in of 1 or more rule words AND a thorough analogy to <i>Ramirez</i> or distinction from <i>Edwards</i> - the correct conclusion.
2	Somewhat accurate and thorough: Response includes EITHER - all requirements needed to earn a score of 3 but with minor omissions or inaccuracies OR any 2 of the requirements in the list for a score of 4 (case illustration(s) may be <i>unthorough</i>).	Somewhat accurate and thorough: Response includes EITHER - a thorough factual discussion and EITHER no tie-in of rule language and no analogy/distinction OR a tie-in of 1 rule word OR an unthorough analogy to <i>Ramirez</i> or distinction from <i>Edwards</i> OR - an unthorough factual discussion and EITHER a tie-in of 1 or more rule words OR a thorough or unthorough analogy to <i>Ramirez</i> or distinction from <i>Edwards</i> - a correct, incorrect, or missing conclusion.
1	Mostly inaccurate or so unthorough that it is cursory: Response includes EITHER (which may be unthorough or inaccurate) - all requirements needed to earn a score of 2 but with minor omissions or inaccuracies any 1 of the requirements in the list for a score of 4 (case illustration(s) may be unthorough) OR other rule language relating to susceptibility not listed above.	Mostly inaccurate or so unthorough that it is cursory: Response includes EITHER - an unthorough factual discussion with no tie-in of rule language and no analogy to <i>Ramirez</i> or distinction from <i>Edwards</i> OR - an inaccurate application - a correct, incorrect, or missing conclusion.
0	No rules exist: No relevant rule language or case illustration is provided.	No application exists: No facts, tie-in of rule language, or analogy or distinction relevant to the legal issue is provided. The conclusion is missing.

In re Johnston Issue 3 (Issue 2, Sub-issue 2: Disposition to Exert Undue Influence) Scoring Chart Summary

SCORE	RULES DESCRIPTION	APPLICATION DESCRIPTION
4	Accurate and thorough: Response includes any 4 of the following: Express rule statements: - The relevant question is whether the beneficiary's conduct shows a likely interest in taking advantage of the testator. <i>Ramirez</i>. - Evidence of "suspicious conduct" in arranging the will may demonstrate that the beneficiary had the disposition to exert undue influence. <i>Ramirez</i> (citing <i>Taylor</i>). "Suspicious conduct" includes "actions taken in an attempt to control or alter the creation of the will." <i>Ramirez</i> (citing <i>Andrews</i>). Thorough case illustration(s) (Note: Credit should be given when this information is provided as a case illustration (ex.: <i>the testator</i>) or as a generalized statement (ex.: <i>a testator</i>)): - Example #1 showing suspicious conduct – <i>Ramirez</i>: Beneficiary took the testator to see a lawyer to sign a new will against the advice of a doctor and without telling the testator's daughter. A jury could find this to be "suspicious conduct"/ demonstrate a disposition to exert undue influence. - Example #2 showing suspicious conduct – <i>Andrews</i>: Beneficiary arranged an appointment with the attorney who drafted the will and paid the fees associated with the appointment. He also suggested language to include in the will. These actions were "suspicious"/ demonstrated his disposition to exert undue influence.	Accurate and thorough: Response includes - a thorough factual discussion and EITHER - a tie-in of all 4 rule words (or their synonym(s)): - take advantage - suspicious conduct - arrange/control/alter will - direct involvement OR - a thorough analogy to <i>Ramirez</i> OR to <i>Andrews</i> AND a tie-in of at least 2 rule words. - the correct conclusion (there is sufficient evidence to submit to a jury the issue of whether Josie had the disposition to exert undue influence).

SCORE	RULES DESCRIPTION	APPLICATION DESCRIPTION
3	Mostly accurate and thorough: Response includes EITHER - all requirements needed to earn a score of 4 but with minor omissions or inaccuracies OR any 3 of the requirements for a score of 4 (note that for a score of 3 or lower, case illustration(s) may be unthorough).	Mostly accurate and thorough: Response includes EITHER - a thorough factual discussion and either a tie-in of 2 or 3 rule words OR a thorough analogy to <i>Ramirez</i> OR to <i>Andrews</i> OR - an unthorough factual discussion and BOTH a tie-in of 1 or more rule words AND a thorough analogy to <i>Ramirez</i> OR to <i>Andrews</i> - the correct conclusion.
2	Somewhat accurate and thorough: Response includes EITHER - all requirements needed to earn a score of 3 but with minor omissions or inaccuracies OR any 2 of the requirements in the list for a score of 4 (case illustration(s) may be <i>unthorough</i>).	Somewhat accurate and thorough: Response includes EITHER - a thorough factual discussion and EITHER no tie-in of rule language and no analogy OR a tie in of 1 rule word OR an unthorough analogy to <i>Ramirez</i> OR to <i>Andrews</i> OR - an unthorough factual discussion and EITHER a tie-in of 1 or more rule words OR a thorough or unthorough analogy to <i>Ramirez</i> OR to <i>Andrews</i> - a correct, incorrect, or missing conclusion.
1	Mostly inaccurate or so unthorough that it is cursory: Response includes EITHER (which may be unthorough or inaccurate) - all requirements needed to earn a score of 2 but with minor omissions or inaccuracies any 1 of the requirements in the list for a score of 4 (case illustration(s) may be unthorough) OR other rule language relating to the disposition to exert undue influence not listed above.	Mostly inaccurate or so unthorough that it is cursory: Response includes EITHER - an unthorough factual discussion with no tie-in of rule language and no analogy to <i>Ramirez</i> OR to <i>Andrews</i> OR - an inaccurate application - a correct, incorrect, or missing conclusion.
0	No rules exist: No relevant rule language or case illustration is provided.	No application exists: No facts, tie-in of rule language, or analogy relevant to the legal issue is provided. The conclusion is missing.

In re Johnston Benchmarks

The following pages contain samples of examinee responses and the scores they received. The grid below is an index of the sample responses and their scores.

		Response 1	Response 2	Response 3	Response 4	Response 5
Issue 1	Rules Score	4	4	1	1	0
	Application Score	4	3	2	2	0
	Additional Requirements	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory
Issue 2	Rules Score	3	4	2	1	0
	Application Score	3	4	2	1	0
	Additional Requirements	Satisfactory	Satisfactory	Unsatisfactory	Satisfactory	Satisfactory
Issue 3	Rules Score	4	4	3	1	0
	Application Score	4	4	2	1	0
	Additional Requirements	Satisfactory	Unsatisfactory	Unsatisfactory	Satisfactory	Satisfactory

Benchmark Response #1

Issue	Rules Score	Application Score	Additional Requirements
Issue 1 (Insane delusion)	4	4	Satisfactory
Issue 2 (Susceptibility to undue influence)	3	3	Satisfactory
Issue 3 (Disposition to exert undue influence)	4	4	Satisfactory

I. Insane Delusion

It is likely that the court would find that Michelle Johnston suffered from an "insane delusion" at the time she executed the handwritten will. Under Franklin Probate code section 301, a person must be "of sound mind" to make a will. Franklin Probate Code Section 301. However, if a will was the result of a testator's "insane delusion," it will be invalidated. *Thomas v. Anderson*, Franklin Ct. App. 2007 (citing *Jackson v. Lewis* (Franklin Ct. App. 1982)). Additionally, "a 'delusion' is simply a false belief, and this standard is met when the contestant of the will provides evidence that the belief at issue is objectively false." Franklin Ct. App. 2007 (citing *Doyle v. Roddy* (Franklin S. Ct. 1942)). "[A] delusion is 'insane' if there is no reasonable foundation for the false belief." *Id.* But under *Jackson*, a delusion isn't insane when there is a "basis in reality" for it.

Here, Michelle Johnston was under an insane delusion at the time she drafted her new will. At the time Michelle Johnston drafted her new will she believed that her daughter was in the Bahamas and not at work. Michelle Johnston had discussed her daughter's trips to the Bahamas multiple times. Each time, Laila Johnston told her mother that she was not in the Bahamas, instead she was at work. Despite this, Michelle Johnston continued to blame her daughter for being in the Bahamas instead of taking care of her. Michelle Johnston was under a delusion when she believed that her daughter was in the Bahamas and this belief is objectively false. Laila Johnston has not left the Franklin in the past year. Further, this delusion is "insane" because Michelle Johnston was told numerous times that her daughter was not in the Bahamas, yet she continued to believe it to be true. Additionally, the Bahamas is a 4-hour plane ride from Franklin, and when Laila spoke with Michelle after the accident, she said she would arrive two hours later. She did arrive two hours later and Laila still believed Michelle had been in the Bahamas. This belief lacked a basis in reality. Laila and Michelle Johnston's situation is analogous to the situation in *Thomas v. Anderson*. In that case, the father believed that the son was stealing money from him despite there being no basis in reality to support

the belief that the son was stealing, no money was missing from a bank account the son could access, no checks were forged, and no cash was taken from a safe. The court ruled that the father was under an insane delusion at the time he made the will. In Michelle and Laila Johnston's case, there is no basis in reality for Michelle to believe that Laila was travelling because Laila constantly said she wasn't and saw her mom every couple days, just as there was no basis in reality for the father's belief in Thomas when there was no evidence of stealing, so like that testator, Michelle Johnston was under an insane delusion. Thus, it is likely that a court will find that Michelle Johnston was under an insane delusion at the time she drafted the new, handwritten will.

II. There is sufficient evidence to submit to a jury the question of whether Josie Robinson exerted undue influence over Michelle when the handwritten will was created.

The execution or revocation of a will or a part of a will is ineffective to the extent the execution or revocation was procured by...undue influence." Franklin Probate Code Section 309. Undue influence has four elements: "1) a person who is susceptible to influence; (2) an opportunity to exert undue influence; (3) a disposition to exert undue influence; and (4) a result indicating undue influence." *Ramirez v. Ramirez*, Franklin Ct. App. 2020 (citing *Kelly v. Landers* (Franklin S. Ct. 1970)). Elements 1 and 3 are addressed in this memorandum.

A. Person who is susceptible to undue influence

Element one of the test determines whether a person is susceptible to influence. This concerns the general state of mind of the testator and whether he would be readily subject to the improper influence of others at the time he executed the will. *Ramirez v. Ramirez*, Franklin Ct. App. 2020. A person must show more than just advanced age or physical limitations to prove that a testator was susceptible to undue influence. *Id.*

Here, it is likely that Michelle Johnston was susceptible to undue influence at the time she made the will. On the day she made the will, she was in an accident. Michelle Johnston wrote the new will directly after this accident, while she was still at the hospital. During this accident, Michelle Johnston was thrown against the front windshield and was under so much pain that she believed she would pass away. In *Ramirez v. Ramirez*, the testator had experienced a heart attack recently, causing him to be moved to a nursing home. *Ramirez v. Ramirez*, Franklin Ct. App. 2020. This was enough to show that the testator had experienced physical decline shortly before will formation, so he was susceptible to undue influence. *Id.* Similarly, Michelle Johnston had experienced a traumatic car accident shortly before will formation. This caused her to be in immense pain. This shows she was experiencing physical decline. Thus, at the time Michelle Johnston drafted her will, she was

experiencing physical decline and was susceptible to undue influence at the time she drafted her will.

B. A disposition to exert undue influence

Element three of the test addresses the question of whether "the beneficiary's conduct or character shows a likely interest in taking advantage of the testator." *Id.* Suspicious conduct regarding the arranging of the will will support a claim that the beneficiary "had the disposition to exert undue influence. *Id.* Suspicious conduct may include "actions taken in an attempt to control or alter the creation of the will." *Id.* In *Ramirez v. Ramirez*, the court found that a jury "could find that the son exhibited a disposition to exert undue influence" when the son showed "suspicious conduct" when he "took the testator to a lawyer to sign a new will against the advice of a doctor without telling the daughter." *Ramirez v. Ramirez*, Franklin Ct. App. 2020.

Here, Josie had the disposition to exert undue influence over Michelle Johnston at the time the will was created. At the time of will formation, Josie knew that Michelle Johnston was in extreme pain. She was also told by a nurse, Michael O'Conner, that "this would not be an appropriate time to make an important decision" when "her friend was in so much pain." Affidavit of Michael O'Conner. Despite this, Josie still assisted Michelle O'Conner in drafting a new will. This case is analogous to *Ramirez*: in both cases, the beneficiaries took actions to control the will's creation. In *Ramirez*, the beneficiary took the testator to the lawyer's office against the doctor's advice. Similarly, against the nurse's advice, Josie's conduct was also suspicious when she arranged the will when she bought the pen and paper used to draft the will and brought them to Michelle Johnston. Thus, it is likely that a jury could find, as it did in *Ramirez*, that Josie had a disposition to exert undue influence.

C. Conclusion

Michelle Johnston was susceptible to undue influence and Josie had a disposition to exert undue influence at the time the will was drafted. Thus, there is sufficient evidence to submit to a jury the question of whether Josie Robinson exerted undue influence over Michelle when the handwritten will was created.

Response #1 Annotation

Issue 1 – Insane Delusion

This issue's rules section and application section both received a score of 4 (accurate and thorough). The additional requirements are satisfactory.

Legal Analysis

Rules – 4

The response provides two express rule statements, one implied rule statement, and one thorough case illustration, which are sufficient to earn a score of 4 for the rules section.

- **Express rule statements:**
 - "[A] 'delusion' is simply a false belief, and this standard is met when the contestant of the will provides evidence that the belief at issue is objectively false."
 - "[A] delusion is 'insane' if there is no reasonable foundation for the false belief."
- **Implied rule statement:**
 - "But under *Jackson*, a delusion isn't insane when there is a 'basis in reality' for it."
- **Thorough case illustration:**
 - The response provides the relevant facts and holding of *Thomas*: "In that case, the father believed that the son was stealing money from him despite there being no basis in reality to support the belief that the son was stealing, no money was missing from a bank account the son could access, no checks were forged, and no cash was taken from a safe The court ruled that the father was under an insane delusion at the time he made the will." Although the illustration appears in the middle of the application, it includes the relevant facts and holding separately from the comparison to the client's case, so it receives credit as an illustration.

Application – 4

The response includes a thorough discussion of Laila's relevant facts, a tie-in of at least two of the required rule words, and a thorough analogy to *Thomas*, which are sufficient to earn a score of 4 for the application section.

- The response's **facts** are **thorough** because the response discusses Michelle's delusion that Laila was in the Bahamas and provides facts supporting the conclusion that the delusion was insane.

- The response uses **two rule words** when it states: “Michelle Johnston was under a delusion when she believed that her daughter was in the Bahamas and this belief is objectively false” and that “there is no basis in reality for Michelle to believe that Laila was travelling.”
- The response includes a **thorough analogy** to *Thomas* using clear words of comparison (“just as” and “like”), facts from each case, and outcomes from each case in comparing the delusions: “In Michelle and Laila Johnston’s case, there is no basis in reality for Michelle to believe that Laila was travelling because Laila constantly said she wasn’t and saw her mom every couple days, just as there was no basis in reality for the father’s belief in Thomas when there was no evidence of stealing, so like that testator, Michelle Johnston was under an insane delusion.” (Note: It is this language—not the case illustration of *Thomas* that came immediately before this language—that is considered the analogy because this is the portion that directly compares the facts and outcomes. The illustration that came before it addressed only *Thomas*, so it is not, by itself, an analogy.)
- The **conclusion** is correctly stated: “Thus, it is likely that a court will find that Michelle Johnston was under an insane delusion at the time she drafted the new, handwritten will.”

Additional Requirements – Satisfactory

The response’s additional requirements are satisfactory.

- The response uses **appropriate overall organization** by discussing this issue in isolation. It also includes an **appropriate internal structure** that connects the discussion of rules and their application.
- The response’s language is **appropriate in tone**. The language is sufficiently objective, properly taking into account the document’s **recipient**, which is the supervising attorney.

Total Score – 4

The grading platform will average the rules and application scores to a score of 4 overall for legal analysis. Because the additional requirements are satisfactory, that score is unaffected, and the total score for the response is 4. Note: The grader will not see the total score.

Issue 2 – Susceptibility to Undue Influence

This issue’s rules section and application section both received a score of 3 (mostly accurate and thorough). The additional requirements are satisfactory.

Legal Analysis

Rules – 3

The response provides two express rule statements and one thorough case illustration, which are sufficient to earn a score of 3 for the rules section.

- **Express rule statements:**
 - “Element one of the test determines whether a person is susceptible to influence. This concerns the general state of mind of the testator and whether he would be readily subject to the improper influence of others at the time he executed the will.”
 - “A person must show more than just advanced age or physical limitations to prove that a testator was susceptible to undue influence.”
- **Thorough case illustration:**
 - The response provides the relevant facts and holding of *Ramirez*: “In *Ramirez v. Ramirez*, the testator had experienced a heart attack recently, causing him to be moved to a nursing home. . . This was enough to show that the testator had experienced physical decline shortly before will formation, so he was susceptible to undue influence. *Id.*” This language receives credit as an illustration because no client facts are incorporated into it. As discussed below, it also counts toward the thoroughness of the analogy because it presents these precedent facts immediately before comparing client facts. If this language had incorporated client facts here, then this information would have received credit as an analogy only.

Application – 3

The response includes a thorough discussion of Laila’s facts and a tie-in of one of the required rule words, which are sufficient to earn a score of 3 for the application section.

- The response’s **facts** are **thorough** because they explain the decline in Michelle’s physical state after her accident.
- The response uses **one rule word** when it states: “This shows she was experiencing **physical decline**.”
- The response also includes a **thorough analogy** to *Ramirez* using a clear word of comparison (“[s]imilarly”), facts from each case, and outcomes from each case in comparing each testator’s physical decline: “In *Ramirez v. Ramirez*, the testator had experienced a heart attack recently, causing him to be moved to a nursing home. . . . This was enough to show that the testator

had experienced physical decline shortly before will formation, so he was susceptible to undue influence. Id. Similarly, Michelle Johnston had experienced a traumatic car accident shortly before will formation. This caused her to be in immense pain. This shows she was experiencing physical decline. Thus, at the time Michelle Johnston drafted her will, she was experiencing physical decline and was susceptible to undue influence at the time she drafted her will.”

- The **conclusion** is correctly stated: “Thus, at the time Michelle Johnston drafted her will, she was experiencing physical decline and was susceptible to undue influence at the time she drafted her will.”

Additional Requirements – Satisfactory

The response’s additional requirements are satisfactory.

- The response uses **appropriate overall organization** by discussing this issue in isolation. It also includes an **appropriate internal structure** that connects the discussion of rules and their application.
- The response’s language is **appropriate in tone**. The language is sufficiently objective, properly taking into account the document’s **recipient**, which is the supervising attorney.

Total Score – 3

The grading platform will average the rules and application scores to a score of 3 overall for legal analysis. Because the additional requirements are satisfactory, that score is unaffected, and the total score for the response is 3. Note: The grader will not see the total score.

Issue 3 – Disposition to Exert Undue Influence

This issue’s rules section and application section both received a score of 4 (accurate and thorough). The additional requirements are satisfactory.

Legal Analysis

Rules – 4

The response provides three express rule statements and one thorough case illustration, which are sufficient to earn a score of 4 for the rules section.

- **Express rule statements:**
 - “Element three of the test addresses the question of whether ‘the beneficiary’s conduct or character shows a likely interest in taking advantage of the testator.’”
 - “Suspicious conduct regarding the arranging of the will will support a claim that the beneficiary “had the disposition to exert undue influence. Id.”
 - “Suspicious conduct may include ‘actions taken in an attempt to control or alter the creation of the will.’”
- **Thorough case illustration:**
 - The response provides the relevant facts and holding of *Ramirez*: “In *Ramirez v. Ramirez*, the court found that a jury ‘could find that the son exhibited a disposition to exert undue influence’ when the son showed ‘suspicious conduct’ when he ‘took the testator to a lawyer to sign a new will against the advice of a doctor without telling the daughter.’”

Application – 4

The response includes a thorough discussion of Laila’s relevant facts and a tie-in of at least two of the required rule words and a thorough analogy to *Ramirez*, which are sufficient to earn a score of 4 for the application section.

- The response’s **facts** are **thorough** because they describe Josie’s actions in helping Michelle create the will.
- The response uses **two rule words** when it states: “Similarly, against the nurse’s advice, Josie’s conduct was also suspicious when she arranged the will when she bought the pen and paper used to draft the will and brought them to Michelle Johnston.”
- The response also includes a **thorough analogy** to *Ramirez* using clear words of comparison (“analogous to” and “[s]imilarly”), facts from each case, and outcomes from each case in comparing the beneficiaries’ suspicious conduct: “This case is analogous to *Ramirez*: in both cases, the beneficiaries took actions to control the will’s creation. In *Ramirez*, the beneficiary took the testator to the lawyer’s office against the doctor’s advice. Similarly, against the nurse’s advice, Josie’s conduct was also suspicious when she arranged the will when she bought the pen and paper used to draft the will and brought them to Michelle Johnston.”
- The **conclusion** is **correctly** stated: “Thus, it is likely that a jury could find, as it did in *Ramirez*, that Josie had a disposition to exert undue influence.”

Additional Requirements – Satisfactory

The response's additional requirements are satisfactory.

- The response uses **appropriate overall organization** by discussing this issue in isolation. It also includes an **appropriate internal structure** that connects the discussion of rules and their application.
- The response's language is **appropriate in tone**. The language is sufficiently objective, properly taking into account the document's **recipient**, which is the supervising attorney.

Total Score – 4

The grading platform will average the rules and application scores to a score of 4 overall for legal analysis. Because the additional requirements are satisfactory, that score is unaffected, and the total score for the response is 4. Note: The grader will not see the total score.

Benchmark Response #2

Issue	Rules Score	Application Score	Additional Requirements
Issue 1 (Insane delusion)	4	3	Satisfactory
Issue 2 (Susceptibility to undue influence)	4	4	Satisfactory
Issue 3 (Disposition to exert undue influence)	4	4	Unsatisfactory

I. Did Michelle Suffer from an insane delusion?

The issue is whether Michelle suffered from an insane delusion at the time that she executed her will which left all of her property to her neighbor Josie and nothing to her daughter Laila. In order for a will to be valid in Franklin, Franklin Probate Code Section 3.01 requires the person to be of sound mind. It is presumed that a testator is of sound mind and had the mental capacity to make a valid will. An insane delusion will invalidate the will if the will, or a part of it, was a result of the insane delusion. *Jackson v. Lewis* (Franklin Ct. App. 1982). A delusion is an insane delusion if there is no reasonable foundation for the false belief. In *Jackson v. Lewis* (Franklin Ct. App. 1982), the Court held that the testator was operating under a delusion, but not an insane delusion, when he believed that his wife had been unfaithful and was having an affair with another man. The testator had seen his wife engaging in conversation with another man at a coffee shop and this was the basis for his belief that his wife was being unfaithful to him. *Id.* The Court held that a delusion did exist, but it was not insane because his belief had a basis in reality. In *Thomas*, the Court distinguished the case from *Jackson* as there were no facts presented that suggested that anything was stolen from testator nor that his son stole anything from him. The testator never saw his son do anything to suggest that he was stealing, which creates the insane aspect as this had no basis in reality. The final inquiry is whether the disinheritance was the direct result of the insane delusion, which is an issue of causation.

In the present case, the testator told her friend that Laila was in the Bahamas and that she might be her daughter but does not deserve anything from her. The nurse, Michael, swore in an affidavit that he overheard the testator state that altering the will will "teach her to go to the Bahamas while I'm dying. Laila was not in the Bahamas as she went to the hospital later that evening and saw the testator. In *Jackson*, the Court held that the testator was not operating under an insane delusion when he altered his will because he had a reasonable basis to believe that his wife was cheating on him as he saw his wife engaging in conversation with another man at a coffee shop. This case is distinguishable from

Jackson as Laila never went more than two days without seeing her mother and never left the state of Franklin in the past year when her mother was accusing her of leaving for the Bahamas. Laila states that her boss can testify that she hasn't taken a vacation in more than a year. Therefore, as the Court held in *Thomas*, Michelle's belief is insane.

The final issue is causation. Did the insane delusion lead to the disinheritance. Based on the affidavit by Michael, it is reasonable to conclude that the insane delusion lead to the disinheritance as he overheard the testator state that this will will teach her daughter a lesson to not see her and go to the Bahamas. Laila was not in the Bahamas, and the testator's belief that she was appears to bear a direct correlation to her mother disinheriting her from her will. As such, Laila will be able to overcome the presumption and demonstrate that her mother was operating under an insane delusion that resulted in her being disinherited from the will.

II. Are the First and Third elements of undue influence satisfied?

The issue is whether the first and third elements of undue influence are satisfied in Laila's will contest against the testator. For the purposes of this memo, we are assuming that the second and third elements are satisfied. The elements that will be analyzed are: (1) a person who is susceptible to influence; and (3) a disposition to exert undue influence. *Kelly v. Landers*

Element 1

The first element, susceptibility to undue influence, concerns the general state of mind of the testator: whether he would be readily subject to the improper influence of others at the time he executed the will. *Ramirez v. Ramirez*. The testator is more likely susceptible if they have undergone marked deterioration of mind or body shortly before the will was executed. Advanced age or physical limitations does not directly mean that someone is susceptible to undue influence as the court found in *Edwards v. Robinson* when the man was 85-years-old and use a walker and the court determined that he was stable. In *Ramirez*, the Court found the testator was susceptible to undue influence as the testator suffered a heart attack and was relocated to a nursing home a few days prior to the execution of his will. The Court held that this was marked deterioration of the testator's body and a jury could find that the testator was susceptible to undue influence on these facts.

The facts demonstrate that the testator was involved in a car accident prior to her drafting her will in the hospital bed after the incident. The testator was 79 at the time of the incident. The testator had been throw against the windshield as she was not wearing a seatbelt as she had broken several vertebrae in her neck and had cuts on her face and neck. The testator appeared to be coherent at the time of the will being drafted, however her state of mind still made her susceptible to improper influence because of her physical decline. Her advanced age and underling health conditions would not satisfy the first

element as shown in Edwards. However, a jury could determine that, similar to Ramirez, that executing a will hours after an injury that resulted in broken vertebrae could be a sign of marked deterioration that would show the testator is susceptible. Therefore, this element is satisfied.

Element 3

As to the last issue, the facts show that Josie had a close relationship to the testator and was already receiving \$10,000 in the will for helping the testator during her life. But Josie's conduct was suspicious when she was adamant to the nurses about going and signing the will as a witness. She even arranged the will when she was directly involved by buying the paper and pen and taking them to Michelle, deciding they needed witnesses and finding those. That shows her interest in taking advantage of her. The third element, disposition to exert undue influence, requires a showing that the beneficiary's conduct shows a likely interest in taking advantage of the testator. Ramirez. Evidence of suspicious conduct in arranging of the will supports a claim that the beneficiary had the disposition to exert undue influence. Suspicious conduct includes actions taken to control or alter the creation of the will. For example, in Ramirez, the Court found a disposition to exert undue influence when the son took the testator to a lawyer to sign a new will against the advice of the testator's doctor. This Court should find that Josie had a disposition to exert undue influence on this basis and this element is satisfied.

Response #2 Annotation

Issue 1 – Insane Delusion

This issue's rules section received a score of 4 (accurate and thorough), and the application section received a score of 3 (mostly accurate and thorough). The additional requirements are satisfactory.

Legal Analysis

Rules – 4

The response provides one express rule statement, one implied rule statement, and two thorough case illustrations, which are sufficient to earn a score of 4 for the rules section.

- **Express rule statement:**
 - “A delusion is an insane delusion if there is no reasonable foundation for the false belief.”
- **Implied rule statement:**
 - The response receives credit for an implied rule because it incorporates the “basis in reality” language in the reasoning section of each case illustration. (Note: See the underlined text in the next bullet point to see this language in the context of the illustrations).
- **Thorough case illustrations:**
 - The response provides the relevant facts and holding of *Jackson*: “In *Jackson v. Lewis* (Franklin Ct. App. 1982), the Court held that the testator was operating under a delusion, but not an insane delusion, when he believed that his wife had been unfaithful and was having an affair with another man. The testator had seen his wife engaging in conversation with another man at a coffee shop and this was the basis for his belief that his was being unfaithful to him. *Id.* The Court held that a delusion did exist, but it was not insane because his belief had a basis in reality.”
 - The response provides the relevant facts and holding of *Thomas*: “In *Thomas*, the Court distinguished the case from *Jackson* as there were no facts presented that suggested that anything was stolen from testator nor that his son stole anything from him. The testator never saw his son do anything to suggest that he was stealing, which creates the insane aspect as this had no basis in reality.”

Application – 3

The response includes a thorough discussion of Laila's facts, a thorough distinction from *Jackson*, and

an unthorough analogy to *Thomas*, which are sufficient to earn a score of 3 for the application section.

- The response's **facts** are **thorough** because the response discusses Michelle's delusion that Laila was in the Bahamas and provides facts supporting the conclusion that the delusion was insane.
- The response includes a **thorough distinction** from *Jackson* using a clear word of comparison ("distinguishable from"), facts from each case, and outcomes from each case in comparing the delusions: "In Jackson, the Court held that the testator was not operating under an insane delusion when he altered his will because he had a reasonable basis to believe that his wife was cheating on him as he saw his wife engaging in conversation with another man at a coffee shop. This case is distinguishable from Jackson as Laila never went more than two days without seeing her mother and never left the state of Franklin in the past year when her mother was accusing her of leaving for the Bahamas. Laila states that her boss can testify that she hasn't taken a vacation in more than a year. Therefore, . . . the testator never observed or heard about any behavior which could substantiate such a belief and as such the belief is insane."
 - Note: Although the response uses rule words in the distinction from *Jackson*, those words are not used as a tie-in to the client facts, so they do not count toward the tally of rule words to earn a score of 4 for the application.
- The response also provides an **unthorough analogy** to *Thomas* because it omits a factual comparison and includes only the *Thomas* case name, the word of comparison ("as"), and a comparison of the cases' outcomes: "Therefore, as the Court held in Thomas, Michelle's belief is insane."
- The **conclusion** is correctly stated: "Therefore, as the Court held in Thomas, Michelle's belief is insane."

Additional Requirements – Satisfactory

The response's additional requirements are satisfactory.

- The response uses **appropriate overall organization** by discussing this issue in isolation. It also includes an **appropriate internal structure** that connects the discussion of rules and their application.
- The response's language is **appropriate in tone**. The language is sufficiently objective, properly taking into account the document's **recipient**, which is the supervising attorney.

Total Score – 3.5

The grading platform will average the rules and application scores to a score of 3.5 overall for legal analysis. Because the additional requirements are satisfactory, that score is unaffected, and the total score for the response is 3.5. Note: The grader will not see the total score.

Issue 2 – Susceptibility to Undue Influence

This issue's rules section and application section both received a score of 4 (accurate and thorough). The additional requirements are satisfactory.

Legal Analysis

Rules – 4

The response provides three express rule statements and two thorough case illustrations, which are sufficient to earn a score of 4 for the rules section.

- **Express rule statements:**
 - “The first element, susceptibility to undue influence, concerns the general state of mind of the testator: whether he would be readily subject to the improper influence of others at the time he executed the will.”
 - “The testator is more likely susceptible if they have undergone marked deterioration of mind or body shortly before the will was executed.”
 - “Advanced age or physical limitations does not directly mean that someone is susceptible to undue influence. . . .”
- **Thorough case illustrations:**
 - The response provides the relevant facts and holding of *Edwards*: “Advanced age or physical limitations does not directly mean that someone is susceptible to undue influence as the court found in *Edwards v. Robinson* when the man was 85-years-old and use a walker and the court determined that he was stable.”
 - The response provides the relevant facts and holding of *Ramirez*: “In *Ramirez*, the Court found the testator was susceptible to undue influence as the testator suffered a heart attack and was relocated to a nursing home a few days prior to the execution of his will. The Court held that this was marked deterioration of the testator's body and a jury could find that the testator was susceptible to undue influence on these facts.”

Application – 4

The response includes a thorough discussion of Laila's relevant facts and a tie-in of at least four of the required rule words, which are sufficient to earn a score of 4 for the application section.

- The response's **facts** are **thorough** because they explain the decline in Michelle's physical state after her accident.
- The response uses **four rule words** when it states that "[t]he testator appeared to be coherent at the time of the will being drafted, however her state of mind still made her susceptible to improper influence because of her physical decline. Her advanced age and underling health conditions would not satisfy the first element. . . . However, a jury could determine that . . . executing a will hours after an injury that resulted in broken vertebrae could be a sign of marked deterioration. . . ." Note: Although the responses includes both the *marked deterioration* and *physical decline* rule-word options, only one of those counts in the tally of rule words because those two options are separated with a slash in the list of rule-word options.
- The **conclusion** is **correctly** stated: "Therefore, this element is satisfied."

Additional Requirements – Satisfactory

The response's additional requirements are satisfactory.

- The response uses **appropriate overall organization** by discussing this issue in isolation. It also includes an **appropriate internal structure** that connects the discussion of rules and their application.
- The response's language is **appropriate in tone**. The language is sufficiently objective, properly taking into account the document's **recipient**, which is the supervising attorney.

Total Score – 4

The grading platform will average the rules and application scores to a score of 4 overall for legal analysis. Because the additional requirements are satisfactory, that score is unaffected, and the total score for the response is 4. Note: The grader will not see the total score.

Issue 3 – Disposition to Exert Undue Influence

This issue's rules section and application section both received a score of 4 (accurate and thorough). The additional requirements are unsatisfactory.

Legal Analysis

Rules – 4

The response provides three express rule statements and one thorough case illustration, which are sufficient to earn a score of 4 for the rules section.

- **Express rule statements:**
 - "The third element, disposition to exert undue influence, requires a showing that the beneficiary's conduct shows a likely interest in taking advantage of the testator."
 - "Evidence of suspicious conduct in arranging of the will supports a claim that the beneficiary had the disposition to exert undue influence."
 - "Suspicious conduct includes actions taken to control or alter the creation of the will."
- **Thorough case illustration:**
 - The response provides the relevant facts and holding of *Ramirez*: "For example, in *Ramirez*, the Court found a disposition to exert undue influence when the son took the testator to a lawyer to a sign a new will against the advice of the testator's doctor."

Application – 4

The **application section** is also accurate and thorough (score of 4). The response includes a thorough discussion of Laila's relevant facts and a tie-in of at least four of the required rule words, which are sufficient to earn a score of 4 for the application section.

- The response's **facts** are **thorough** because they describe Josie's actions in helping Michelle create the will.
- The response uses four rule words when it states that "Josie's **conduct was suspicious** when she was adamant to the nurses about going and signing the will as a witness. She even **arranged** the will when she was **directly involved** by buying the paper and pen and taking them to Michelle, deciding they needed witnesses and finding those. That shows her interest in **taking advantage** of her."
- The **conclusion** is correctly stated: "This Court should find that Josie had a disposition to exert undue influence on this basis and this element is satisfied."

Additional Requirements – Unsatisfactory

The response is deficient as to internal organization and audience/tone. Note that either deficiency on its own would be cause to mark the “Unsatisfactory” box within the grading platform.

- The response’s **internal structure is inappropriate** because its rules section is included after its application. While the misplacement of a rule statement will not always interfere with the reader’s understanding of the analysis and render the additional requirements unsatisfactory, it does in this situation. The placement of the relevant rules at the very conclusion of the analysis fails to provide the reader with any foundational legal standards needed to understand the relevance of the provided case facts and the applied rule language.
- The response’s language is also **inappropriate in tone** because it is not sufficiently objective. The response states that “this Court should find,” which is persuasive, not objective, and is addressing an **inappropriate audience**, which should be a supervising attorney, not “this Court.”

Total Score – 3

The grading platform will average the rules and application scores to a score of 4 overall for legal analysis. Because the additional requirements are unsatisfactory, that score is reduced by 1 point, and the total score for the response is 3. Note: The grader will not see the total score.

Benchmark Response #3

Issue	Rules Score	Application Score	Additional Requirements
Issue 1 (Insane delusion)	1	2	Satisfactory
Issue 2 (Susceptibility to undue influence)	2	2	Unsatisfactory
Issue 3 (Disposition to exert undue influence)	3	2	Unsatisfactory

Insane delusion.

The first issue is whether Michelle suffered from an "insane delusion" at the time she executed her handwritten will. An insane delusion is enough to invalidate a will to the extent the will was the result of said delusion. *Jackson v. Lewis* (Franklin Ct. App. 1982). In order for someone to suffer an insane delusion, they must have suffered a "delusion" and the delusion must have been insane. *Thomas v. Anderson*. A "delusion" is simply a false belief, and the standard is met when the contestant of a will provides evidence that the belief at issue is objectively false. *Id.* Here, the "belief at issue" is whether Laila, the daughter, was too busy vacationing in the Bahamas to visit her mother, Michelle. Here, is it very likely that Michelle was suffering from a delusion at the time the will was executed in the hospital. Josie herself states that in the car ride before Josie and Michelle suffered a car wreck that Michelle was complaining that Laila had been in the Bahamas and never made time to see her. Michelle also complained of the same thing in the hospital, stating something to the effect of "I'm here dying and my daughter can't come because she's on vacation in the Bahamas." This false belief, which was objectively false, led her to want to create a new will which left everything to Josie. The delusion could be found to be insane, in which the will could be invalidated-the court will have to decide.

Undue influence

The second issue is whether there is sufficient evidence to submit to a jury the question of whether Josie exerted undue influence on Michelle when the will was created, specifically, the first and third elements of "undue influence."

It must be determined whether there was enough evidence for the first element of undue influence. The Franklin Probate Code section 309 states that "the execution or revocation of a will or a part of a will is ineffective to the extent the execution or revocation was procured by . . . undue influence." The first element is that, for there to be undue influence, there must be a person who is susceptible to influence.

Kelly v. Landers, Franklin S. Ct. 1970. Susceptibility concerns the general state of mind of the testator and whether that person would be readily subject to the improper influence of others at the time the will was executed. Ramirez v. Ramirez, Franklin Ct. of App. 2020. Of particular concern is a testator who has undergone marked deterioration of mind or body shortly before the will was executed. Id.

We must also show that the third element of undue influence was met, in which there must be evidence that the beneficiary possessed the disposition to influence the testator. Kelly. To show this, there must be evidence that the beneficiary's conduct shows a likely interest in taking advantage of the testator. Franklin. Suspicious conduct in arranging the will may demonstrate the disposition to exert undue influence. "Suspicious conduct" includes actions taken to control or alter the creation of the will. Andrew v. Phillips (Franklin Ct. App. 2012).

Here, as to the first element, Michelle experienced a severe physical decline shortly before the will was formed: Michelle formed the will immediately after she was in a car wreck in which she broke several vertebrae and suffered cuts to the face. These injuries would be enough for a jury to find that Michelle experienced a marked deterioration of body to find the first element of undue influence to be met. However, the opposition may try to argue that Michelle being of advanced age is not enough to mark her as susceptible, but her injuries were severe enough to mark her as susceptible. Overall, the first element of undue influence is very likely met.

Here, as to the third element, Josie is the direct beneficiary of the entirety of the will in question, and she was actively involved with the preparation of the will documents. The will could not have been prepared without her conduct.

Response #3 Annotation

Issue 1 – Insane Delusion

This issue's rules section received a score of 1 (cursory), and the application section received a score of 2 (somewhat accurate and thorough). The additional requirements are satisfactory.

Legal Analysis

Rules – 1

The response provides one express rule statement, which is sufficient to earn a score of 1 for the rules section.

- **Express rule statement:**
 - "A 'delusion' is simply a false belief, and the standard is met when the contestant of a will provides evidence that the belief at issue is objectively false."

Application – 2

The response includes an unthorough discussion of Laila's relevant facts and a tie-in of one of the required rule words, which are sufficient to earn a score of 2 for the application section.

- The **facts** are **unthorough** because although they thoroughly describe Michelle's belief, they fail to include reasons why that belief is false and insane; for example, the response does not provide that Laila was never on vacation or that she saw Michelle at least once every couple of days.
- The response uses **one rule word** when it states that "[t]his **false belief**, which was **objectively false**, led her to want to create a new will which left everything to Josie." (Note: Although the response includes both the *false belief* and *objectively false* rule-word options, only one of those counts in the tally of rule words because those two options are separated with a slash in the list of rule-word options.)
- The **conclusion** is missing. Although the response states that "[t]he delusion could be found to be insane, in which the will could be invalidated-the court will have to decide," that does not provide a clear conclusion on the issue. However, this does not affect the score because a conclusion may be correct, incorrect, or missing for a score of 2 for application.

Additional Requirements – Satisfactory

The response's additional requirements are satisfactory.

- The response uses **appropriate overall organization** by discussing this issue in isolation. It also includes an **appropriate internal structure** that connects the discussion of rules and their application.
- The response's language is **appropriate in tone**. The language is sufficiently objective, properly taking into account the document's **recipient**, which is the supervising attorney.

Total Score – 1.5

The grading platform will average the rules and application scores to a score of 1.5 overall for legal analysis. Because the additional requirements are satisfactory, that score is unaffected, and the total score for the response is 1.5. Note: The grader will not see the total score.

Issue 2 – Susceptibility to Undue Influence

This issue's rules section and application section both received a score of 2 (somewhat accurate and thorough). The additional requirements are unsatisfactory.

Legal Analysis

Rules – 2

The response provides two express rule statements, which are sufficient to earn a score of 2 for the rules section.

- **Express rule statements:**
 - "Susceptibility concerns the general state of mind of the testator and whether that person would be readily subject to the improper influence of others at the time the will was executed."
 - "Of particular concern is a testator who has undergone marked deterioration of mind or body shortly before the will was executed."

Application – 2

The response includes a thorough discussion of Laila's relevant facts and a tie-in of one of the

required rule words, which are sufficient to earn a score of 2 for the application section.

- The response's **facts** are **thorough** because they explain the decline in Michelle's physical state after her accident.
- The response uses **one rule word** when it states: "Michelle experienced a severe **physical decline** shortly before the will was formed: Michelle formed the will immediately after she was in a car wreck in which she broke several vertebrae and suffered cuts to the face. These injuries would be enough for a jury to find that Michelle experienced a **marked deterioration of body** to find the first element of undue influence to be met. The first element of undue influence is very likely met." (Note: Although the response includes both the *marked deterioration* and *physical decline* rule-word options, only one of those counts in the tally of rule words because those two options are separated with a slash in the list of rule-word options.)
- The **conclusion** is **correctly** stated: "Overall, the first element of undue influence is very likely met."

Additional Requirements – Unsatisfactory

The response's additional requirements are unsatisfactory.

- The response's **overall organization** is **inappropriate**. It combines the discussion of issues 2 (susceptibility to undue influence) and 3 (disposition to exert undue influence), instead of discussing each issue in isolation.

Total Score – 1

The grading platform will average the rules and application scores to a score of 2 overall for legal analysis. Because the additional requirements are unsatisfactory, that score is reduced by 1 point, and the total score for the response is 1. Note: The grader will not see the total score.

Issue 3 – Disposition to Exert Undue Influence

This issue's rules section received a score of 3 (mostly accurate and thorough), and the application section received a score of 2 (somewhat accurate and thorough). The additional requirements are unsatisfactory.

Legal Analysis

Rules – 3

The response provides three express rule statements, which are sufficient to earn a score of 3 for the rules section.

- **Express rule statements:**
 - “[T]here must be evidence that the beneficiary’s conduct shows a likely interest in taking advantage of the testator.”
 - “Suspicious conduct in arranging the will may demonstrate the disposition to exert undue influence.”
 - “‘Suspicious conduct’ includes actions taken to control or alter the creation of the will.”

Application – 2

The response includes an unthorough discussion of Laila’s relevant facts and a tie-in of one of the required rule words, which are sufficient to earn a score of 2 for the application section.

- The **facts** are **unthorough**. The response reaches conclusions about Josie’s conduct when it states that “she was actively involved with the preparation of the will documents. The will could not have been prepared without her conduct.” However, it does not specify which facts led to those conclusions.
- The response uses **one rule word** when it states that “[Josie] was **actively involved** with the preparation of the will documents.” (Note: Although this does not include precise *direct involvement* rule language, the response’s use of *actively involved* is synonymous with *direct involvement*, thus conveying the same meaning as the language used in *Ramirez*.)
- The **conclusion** is **missing**. However, this does not affect the score because a conclusion may be correct, incorrect, or missing for a score of 2 for application.

Additional Requirements – Unsatisfactory

The response’s additional requirements are unsatisfactory.

- The response’s **overall organization** is **inappropriate**. It combines the discussion of issues 2 (susceptibility to undue influence) and 3 (disposition to exert undue influence), instead of discussing each issue in isolation.

Total Score – 1.5

The grading platform will average the rules and application scores to a score of 2.5 overall for legal analysis. Because the additional requirements are unsatisfactory, that score is reduced by 1 point, and the total score for the response is 1.5. Note: The grader will not see the total score.

Benchmark Response #4

Issue	Rules Score	Application Score	Additional Requirements
Issue 1 (Insane delusion)	1	2	Satisfactory
Issue 2 (Susceptibility to undue influence)	1	1	Satisfactory
Issue 3 (Disposition to exert undue influence)	1	1	Satisfactory

A court will likely find that Michelle did not suffer from an "insane delusion." In Franklin the law requires that a testator be "of sound mind" when executing a will. Franklin Probate Code §301.

However, a testator suffering from an "insane delusion" is not considered to have the capacity to validly execute a will, and any such will would be invalid to the extent that the will resulted from an insane delusion. Jackson v. Lewis.

A delusion is simply a false belief, and this standard is met when the contestant of the will provides evidence that the belief at issue is objectively false. Doyle v. Roddy.

Our client asserts that her mother suffered from the delusion that she was always on vacation in the Bahamas, and that was used to explain our client's absence from her mother's life.

In truth, our client spent a great deal of time at her mother's house assisting with various needs. She has foregone vacations and never travels so that she can be close to her mother.

It is clear her mother has a desire for her to be at her every beck and call, which is impractical for our client who works. Her absences are always chalked up to her being in the Bahamas, even though she has never traveled there.

In the present case, it is unlikely that a court would find that our client's mother was operating under an "insane delusion."

This is largely because her assertion of our client always being on vacation in the Bahamas was precipitated by our client's absence at what her mother believed to be important moments of need in her life, such as her inability to be at the hospital when she had her car accident.

Our client's absence in these moments is not disputable fact, as she readily admits that she works

long hours and is often unable to be with her mother at a moment's notice.

Regardless of the reason for her absence, even though the idea that she was in the Bahamas is a false belief, those absences could be sufficient facts to base any delusion that her mother had in the reality that our client was not present at certain times. But she can try to argue that the belief was insane, not just illogical and unfounded.

Thus, Michelle's delusion does not pass the test for an assertion of "insane delusion."

Whether there is sufficient evidence to submit to a jury the question of whether Josie exerted undue influence over Michelle when the handwritten will was created. There are four elements of undue influence: (1) a person who is susceptible to influence; (2) an opportunity to exert undue influence; (3) a disposition to exert undue influence; and (4) a result indicating undue influence. *Kelly v. Landers* (Franklin S. Ct. 1970)." *Ramirez v. Ramirez*. If all four elements are met, then the question may be put to a jury.

Michelle was susceptible to undue influence.

There is sufficient evidence to state that Michelle was susceptible to undue influence. She drafted and executed her final will in the hospital, shortly after having been involved in a car accident which resulted in several broken vertebrae and resulted in tremendous pain.

In *Ramirez*, the court found that the testator's physical decline shortly before will formation was sufficient for a jury to find that "the testator had experienced a marked deterioration of his body and was susceptible to influence." *Id.*

Similarly, Michelle sought to execute a new will on the same day that she was in a car accident.

Given her health at the time of execution, a court could find as a matter of law that Michelle was susceptible to undue influence.

Josie was not disposed to exerting undue influence. The disposition to exert undue influence regards whether the beneficiary wants to take advantage of the testator. *Id.*

There is no legal standard as to where the line of suspicious conduct.

Josie rode with Michelle to the hospital in the ambulance, and did what Michelle asked and helped her write a new will.

Whether this was simply her being helpful or was a calculated move to procure the will is a matter for further investigation.

However, with nothing to support a malicious intent, the simple fact that Josie purchased paper and a pen from the hospital gift shop is insufficient to assign a label of suspicious conduct.

Thus, a court would likely find that Josie was not disposed to exerting undue influence over Michelle.

Response #4 Annotation

Issue 1 – Insane Delusion

This issue's rules section received a score of 1 (cursory), and the application section received a score of 2 (somewhat accurate and thorough). The additional requirements are satisfactory.

Legal Analysis

Rules – 1

The response provides one express rule statement, which is sufficient to earn a score of 1 for the rules section.

- **Express rule statement:**
 - "A delusion is simply a false belief, and this standard is met when the contestant of the will provides evidence that the belief at issue is objectively false."

Application – 2

The response includes a thorough discussion of Laila's relevant facts and a tie-in of three of the required rule words, which would be sufficient to earn a score of 3 for the application section. However, the conclusion is incorrect, so the application cannot earn a score higher than 2.

- The response's **facts** are **thorough** because the response discusses Michelle's delusion that Laila was in the Bahamas and provides facts supporting the conclusion that the delusion was insane.
- The response uses **three rule words** when it states: "Regardless of the reason for her absence, even though the idea that she was in the Bahamas is a false belief, those absences could be sufficient facts to base any delusion that her mother had in the reality that our client was not present at certain times. But she can try to argue that the belief was insane, not just illogical and unfounded."
- The **conclusion** is incorrect: "In the present case, it is unlikely that a court would find that our client's mother was operating under an 'insane delusion'" and "[t]hus, Michelle's delusion does not pass the test for an assertion of 'insane delusion.'" Because the conclusion is incorrect, the application section cannot earn a score higher than 2.

Additional Requirements – Satisfactory

The response's additional requirements are satisfactory.

- The response uses **appropriate overall organization** by discussing this issue in isolation. It also includes an **appropriate internal structure** that connects the discussion of rules and their application.
- The response's language is **appropriate in tone**. The language is sufficiently objective, properly taking into account the document's **recipient**, which is the supervising attorney.

Total Score – 1.5

The grading platform will average the rules and application scores to a score of 1.5 overall for legal analysis. Because the additional requirements are satisfactory, that score is unaffected, and the total score for the response is 1.5. Note: The grader will not see the total score.

Issue 2 – Susceptibility to Undue Influence

This issue's rules section and application section both received a score of 1 (cursory). The additional requirements are satisfactory.

Legal Analysis

Rules – 1

The response provides one unthorough case illustration, which is sufficient to earn a score of 1 for the rules section.

- **Unthorough case illustration:**
 - The response provides an illustration of *Ramirez*: "In *Ramirez*, the court found that the testator's physical decline shortly before will formation was sufficient for a jury to find that 'the testator had experienced a marked deterioration of his body and was susceptible to influence.'" However, it does not provide the facts explaining what constituted physical decline; therefore, it is unthorough.

Application – 1

The response includes an unthorough discussion of Laila's relevant facts and no tie-in of the required rule words, which are sufficient to earn a score of 1 for the application section.

- The response's discussion of Laila's relevant **facts** is **unthorough** because although it mentions the accident, it does not indicate how severe Michelle's injuries were to show that she suffered

a marked deterioration.

- The **conclusion** is missing. Although the response states that “a court could find as a matter of law that Michelle was susceptible to undue influence,” that does not provide a clear conclusion on the issue. However, this does not affect the score because a conclusion may be correct, incorrect, or missing for a score of 1 for application.

Additional Requirements – Satisfactory

The response's additional requirements are satisfactory.

- The response uses **appropriate overall organization** by discussing this issue in isolation. It also includes an **appropriate internal structure** that connects the discussion of rules and their application.
- The response's language is **appropriate in tone**. The language is sufficiently objective, properly taking into account the document's **recipient**, which is the supervising attorney.

Total Score – 1

The grading platform will average the rules and application scores to a score of 1 overall for legal analysis. Because the additional requirements are satisfactory, that score is unaffected, and the total score for the response is 1. Note: The grader will not see the total score.

Issue 3 – Disposition to Exert Undue Influence

This issue's rules section and application section both received a score of 1 (inaccurate or so unthorough that it is cursory). The additional requirements are satisfactory.

Legal Analysis

Rules – 1

The response provides one express rule statement with an omission, which is sufficient to earn a score of 1 for the rules section.

- **Express rule statement:**
 - “The disposition to exert undue influence regards whether the beneficiary wants to take advantage of the testator.” (Note: This is unthorough because it omits the language about the beneficiary’s *conduct*.)

Application – 1

The response is inaccurate (score of 1), which is sufficient to earn a score of 1 for the application section.

- The response’s **application** is **inaccurate** because it discusses a lack of “malicious intent,” which is not part of the body of law for this issue; downplays Josie’s purchase of the pen and paper; and states that “[w]hether this was simply her being helpful or was a calculated move to procure the will is a matter for further investigation.”
- The **conclusion** is **incorrect**: “Thus, a court would likely find that Josie was not disposed to exerting undue influence over Michelle.” However, this does not affect the score because a conclusion may be correct, incorrect, or missing for a score of 1 for application.

Additional Requirements – Satisfactory

The response’s additional requirements are satisfactory.

- The response uses **appropriate overall organization** by discussing this issue in isolation. It also includes an **appropriate internal structure** that connects the discussion of rules and their application.
- The response’s language is **appropriate in tone**. The language is sufficiently objective, properly taking into account the document’s **recipient**, which is the supervising attorney.

Total Score – 1

The grading platform will average the rules and application scores to a score of 1 overall for legal analysis. Because the additional requirements are satisfactory, that score is unaffected, and the total score for the response is 1. Note: The grader will not see the total score.

Benchmark Response #5

Issue	Rules Score	Application Score	Additional Requirements
Issue 1 (Insane delusion)	0	0	Satisfactory
Issue 2 (Susceptibility to undue influence)	0	0	Satisfactory
Issue 3 (Disposition to exert undue influence)	0	0	Satisfactory

There is a presumption that a person was of sound mind at the time of the execution of a will and therefore, the burden is on the person contesting the will to show that the testator was not of sound mind.

Section 309 states that "[t]he execution or revocation of a will or a part of a will is ineffective to the extent the execution or revocation was procured by . . . undue influence." In other words, a valid will can be set aside if there is a showing of undue influence. *Ramirez v. Ramirez* (citing 309).

There are four elements of undue influence.

I ran out of time

Response #5 Annotation

Issue 1 – Insane Delusion

Legal Analysis (Rules – 0; Application – 0)

This response's rules section and application section both receive a score of 0 because **no rules or application** exist for the legal issue of insane delusion.

Notes:

- Although the response includes background rules about undue influence and a reference to “a sound mind,” it provides no relevant rules or application for the issue at hand—insane delusion.
- Additionally, although the response earns a score of 0 and states that the examinee “ran out of time,” this response is not “Off Topic” because it attempts to engage with the item.

Additional Requirements – Satisfactory

The response's additional requirements are satisfactory.

- The response uses **appropriate overall organization** by discussing this issue in isolation. It also includes an **appropriate internal structure** that connects the discussion of rules and their application.
- The response's language is **appropriate in tone**. The language is sufficiently objective, properly taking into account the document's **recipient**, which is the supervising attorney.

Total Score – 0

The grading platform will average the rules and application scores to a score of 0 overall for legal analysis. The additional requirements are satisfactory. Note: The grader will not see the total score.

Issue 2 – Susceptibility to Undue Influence

Legal Analysis (Rules – 0; Application – 0)

This response's rules section and application section both receive a score of 0 because **no rules or**

application exist for the legal issue of susceptibility to undue influence.

Notes:

- Although the response includes background rules about undue influence, the rules referenced are not specific to the issue at hand—susceptibility to undue influence.
- Additionally, although the response earns a score of 0 and states that the examinee “ran out of time,” this response is not “Off Topic” because it attempts to engage with the item.

Additional Requirements – Satisfactory

The response's additional requirements are satisfactory.

- The response uses **appropriate overall organization** by discussing this issue in isolation. It also includes an **appropriate internal structure** that connects the discussion of rules and their application.
- The response's language is **appropriate in tone**. The language is sufficiently objective, properly taking into account the document's **recipient**, which is the supervising attorney.

Total Score – 0

The grading platform will average the rules and application scores to a score of 0 overall for legal analysis. The additional requirements are satisfactory. Note: The grader will not see the total score.

Issue 3 – Disposition to Exert Undue Influence

Legal Analysis (Rules – 0; Application – 0)

This response's rules section and application section both receive a score of 0 because **no rules or application** exist for the legal issue of disposition to exert undue influence.

Notes:

- Although the response includes background rules about undue influence, the rules referenced are not specific to the issue at hand—disposition to exert undue influence.
- Additionally, although the response earns a score of 0 and states that the examinee “ran out of time,” this response is not “Off Topic” because it attempts to engage with the item.

Additional Requirements – Satisfactory

The response's additional requirements are satisfactory.

- The response uses **appropriate overall organization** by discussing this issue in isolation. It also includes an **appropriate internal structure** that connects the discussion of rules and their application.
- The response's language is **appropriate in tone**. The language is sufficiently objective, properly taking into account the document's **recipient**, which is the supervising attorney.

Total Score – 0

The grading platform will average the rules and application scores to a score of 0 overall for legal analysis. The additional requirements are satisfactory. Note: The grader will not see the total score.