1. **List the basic documents used in estate planning.**
   The basic documents used in estate planning include wills, codicils, side instruction letters, durable powers of attorney for health care or property, living wills or advanced medical directives, and do not resuscitate orders.

2. **What problems arise for someone who dies intestate?**
   To die intestate is to die without a valid will or with a will that does not dispose of all property. In this case, the decedent’s property will be transferred according to state law, which may not reflect the decedent’s desires. Intestacy may also require the state to appoint an administrator who will have to furnish a surety bond, thereby increasing the costs of administration.

3. **Briefly define the types of wills.**
   - **Holographic wills** are handwritten. The material provisions of the will must be in the testator’s handwriting. The will must be dated and signed by the testator, and does not generally need to be witnessed.
   - **Nuncupative/oral wills** are dying declarations made before sufficient witnesses. The use of nuncupative wills is fairly restricted and is not valid in most states.
   - **Statutory wills** are generally drawn by an attorney, complying with the statutes for wills of the domiciliary state. They are usually signed in the presence of the state’s required number of witnesses and generally notarized.

4. **List the common provisions in a valid will.**
   - An introductory clause to identify the testator (will-maker).
   - The establishment of the testator’s domicile and residence.
   - The identification of the spouse and children of the testator.
   - A declaration that this is the last will and testament of the testator.
   - A revocation of all prior wills and codicils by the testator.
   - The identification and selection of the executor/executrix and successor executor/executrix by the testator.
   - A directive for the payment of debts clause.
   - A directive for the payment of taxes clause.
• A disposition of tangible personal property clause.
• A disposition of real estate clause.
• Clauses regarding specific bequests of intangibles and cash.
• A residuary clause (the transfer of the balance of any other assets to someone or to some institution). Note that the failure to have a residuary clause will result in the risk of having intestate assets (assets accumulated after the making of the will) which pass through probate. Also, taxes will generally be paid from the residuary unless specifically directed otherwise.
• A clause regarding who will pay taxes on bequests.
• An appointment and powers clause, naming fiduciaries, guardians, tutors, trustees, etc.
• A testator’s signature clause.
• An attestation clause, or witness clause.
• A self-proving clause.

5. Briefly list and define at least three other additional clauses found in wills.
Some other clauses in a will are as follows:
• Simultaneous death clause – In the event that two people die simultaneously, this clause provides an assumption of which person died first.
• Survivorship clause – This clause provides that the beneficiary must survive the decedent for a specified period in order to receive the inheritance or bequest. This clause prevents property from being included in two different estates in rapid succession.
• Disclaimer clause – This clause simply reminds heirs that disclaiming inheritances may be an effective tool in estate planning. A disclaimer allows property to pass as if the disclaiming party predeceased the testator.
• No-contest clause – This clause discourages heirs from contesting the will by substantially decreasing or eliminating their bequest if they file a formal, legal contest to the will.

6. What is a living will?
A living will is a document detailing an individual’s last wishes regarding sustainment of life.

7. Why should a living will be prepared in advance?
A living will is prepared in advance to explicitly state the client’s wishes and to avoid the need to seek court approval regarding the use of life sustaining measures.

8. Identify a reason to use a living will.
An individual who has been diagnosed with lung cancer and has undergone several invasive, expensive medical treatments may write a living will directing the medical institution to suspend the use of any life-sustaining medical treatments or devices. Often people in these situations are suffering greatly and the expenses incurred have far surpassed any medical insurance coverage. The living will is used to curtail pain and suffering, and to avoid incurring additional expenses.

9. What is a power of attorney?
A power of attorney is a legal document that gives someone else (power holder/agent) the right to act on behalf of a principal.

10. Identify and discuss the parties to a power of attorney.
There are two parties to a power of attorney:
• Power Holder/Agent – Person to whom powers are given.
• Principal – Person who gives power to the power holder.
11. Identify a reason to use a power of attorney.
   An individual serving in the military will give a power of attorney to a family member so the family member can handle any circumstances that arise while the individual is actively serving. Most commonly, the family member only uses the power to sell assets, cars, homes, etc.

12. What is a durable power of attorney?
   A durable power of attorney is a power of attorney that survives (remains in force) after the incapacity or disability of the principal. Note that a durable power of attorney does not survive the death of the principal.

13. What is a springing durable power of attorney?
   A springing durable power of attorney does not become active until a certain defined point in time or event (the trigger). Often, the power will spring upon disability or incapacity.

14. What is a side instruction letter?
   A side instruction letter details the testator's wishes regarding the disposition of tangible possessions, the disposition of the decedent's body, and funeral arrangements. The side instruction letter exists separately from the will.

15. Identify some examples of instructions included in a side instruction letter.
   The side instruction letter usually includes burial, funeral, and other similar type instructions. It sometimes also includes information related to debts, safety deposit box locations, and other personal type information that the executor will need during the administration of the estate.
MULTIPLE-CHOICE PROBLEMS

1. Carl is married and owns and manages several rental properties. He is concerned that if he became incapacitated, the properties would not be properly managed and his tenants would be upset. Of the following arrangements, which one could fulfill Carl's desire to plan for the management of his rental properties in the case of his unanticipated physical or mental incapacity?
   a. A durable power of attorney.
   b. A will.
   c. A living will.
   d. A side instruction letter.

   The correct answer is a.
   A durable power of attorney would give the power-holder the ability to manage the property if Carl becomes incapacitated. Note, if the property is owned joint tenancy or tenancy by the entirety, the joint tenant could manage the property in the event of Carl's incapacity. A will does not solve the problem as it directs property to be distributed after one's death. A living will deals with life sustaining treatments, such as CPR. A side instruction letter goes along with the will and is only applicable after death.

2. Donald drafted his own will utilizing the “Will-Maker” software that he purchased at the local office supply store and sends it to you for a review. In your first review of the will, you look for which of the following most common provisions?
   a. A left-over clause.
   b. A statement of the domicile of the testator.
   c. A primary clause.
   d. A codicil.

   The correct answer is b.
   A well-drafted will contains the statement of the domicile of the testator. Both a left-over clause and a primary clause are made up terms. A codicil is an amendment or supplement to the will, not a provision of a will.

3. After listening to a popular radio financial planning talk show, Deborah decided to grant a durable power of attorney to her neighbor, Jimmy. All of the following statements regarding the durable power of attorney are correct except?
   a. At the creation of the durable power of attorney, Deborah must be at least 18 years old and competent.
   b. The power can spring at a certain age or event.
   c. After Deborah’s death, the power remains in force.
   d. If Deborah becomes disabled, the power remains in force.

   The correct answer is c.
   A durable power of attorney does not remain in force after the death of the principal, but a durable power of attorney does remain in force after the disability or incapacity of the principal. All of the other statements are true.
4. Claudette's cousin, John, gave her a general power of appointment over his assets. Disregarding any fiduciary problems, which of the following is not true regarding the power?
   a. Claudette can pay for her own groceries with her cousin’s money.
   b. Claudette can pay for John’s groceries with John’s money.
   c. Claudette’s gross estate will include John’s assets if Claudette dies before John.
   d. The general power of appointment only allows Claudette to appoint John’s assets for expenditures related to health, education, maintenance, or support.

   The correct answer is d.
   A holder of a general power of appointment can appoint the assets of the grantor for any reason, and to anyone, including herself. The holder of a general power of appointment must also include the value of the assets over which the power has been granted in her gross estate if she dies before the principal. A special power of appointment, which restricts the ability of the power holder to appoint the assets to herself, would not cause the value of the assets to be included in the power holder's gross estate if the power holder died before the principal.

5. Which of the following documents appoints a surrogate decision-maker for health care?
   a. Durable power of attorney for health care.
   b. General power of appointment.
   c. Life insurance beneficiary designation.
   d. All of the above.

   The correct answer is a.
   A durable power of attorney for health care appoints a surrogate decision-maker for health care decisions. A general power of appointment gives the power holder the ability to appoint the principal's assets to anyone and for whatever reason. It does not give any powers related to health care decisions. A life insurance beneficiary designation only designates the beneficiary of life insurance proceeds.

6. Which type of will is handwritten and does not generally require a witness?
   a. Holographic.
   b. Oral.
   c. Nuncupative.
   d. Statutory.

   The correct answer is a.
   Holographic wills are handwritten. The material provisions of the will must be in the testator's handwriting. The will must be dated and signed by the testator, and does not generally need to be witnessed.

7. Which type of will complies with the statutes of the domiciliary state and is drawn by an attorney?
   a. Holographic.
   b. Oral.
   c. Nuncupative.
   d. Statutory.
The correct answer is d. Statutory wills are generally drawn by an attorney, complying with the statutes for wills of the domiciliary state. They are usually signed in the presence of two witnesses.

8. While he was in the hospital, Emile told his wife that if he died he wanted to give his fishing tackle to his son, Joseph; his golf equipment to his son, Joshua; his truck to his daughter, Abigail; and everything else to her (his wife). Emile died the next day without writing anything that he told his wife, but a nurse and another patient were in the room and heard his declarations. What type of will does Emile have, if any?
   a. Holographic.
   b. Nuncupative.
   c. Statutory.
   d. Emile does not have a will.

The correct answer is b. Emile has an oral/nuncupative will - oral dying declarations made before sufficient witnesses. An oral/nuncupative will may or may not be valid in Emile's state of domicile.

9. Of the following, which is not a clause commonly found in a will?
   a. Introductory clause.
   b. Payment of debts clause.
   c. Payment of taxes clause.
   d. Conclusory clause.

The correct answer is d. A conclusory clause does not exist so it is not a clause commonly found in a will. An introductory clause identifies the testator. A payment of debts clause directs which heirs/assets will bear the debts of the estate. A payment of taxes clause directs which heirs/assets will bear the taxes of the estate.

10. Which of the following clauses are commonly found in a will?
    1. Residuary clause.
    2. Secondary clause.
    3. Witness attestation clause.
    4. Simultaneous death clause.
    a. 1 only.
    b. 2 and 3.
    c. 1, 3, and 4.
    d. 1, 2, 3, and 4.

The correct answer is c. A secondary clause does not exist so it is not a clause commonly found in a will. A residuary clause directs the transfer of the balance of any assets not already bequeathed. A witness attestation clause is a declaration that the will was signed in front of witnesses. A simultaneous death clause provides an assumption of which person died first in the event that two people die simultaneously.
11. Which of the following clauses in a will would detail the required amount of time a beneficiary must live following the death of the decedent to receive a bequest?

   a. Survivorship clause.
   b. Living clause.
   c. Remaining life clause.
   d. Simultaneous death clause.

The correct answer is a.
A survivorship clause provides that the beneficiary must survive the decedent for a specified period in order to receive the inheritance or bequest. Neither a living clause nor a remaining life clause exists. A simultaneous death clause provides an assumption of which person died first in the event that two people die simultaneously.

12. Jenny’s will leaves her car to her brother, her boat to her sister, and her vacation home to her cousin. Her will directs the remainder of her assets to be divided equally among her two children. Jenny’s will directs all debts and taxes to come from the children’s assets. Of the following, which are included in Jenny’s will?

   1. Residuary clause.
   2. Specific bequests.
   3. Payment of debts and taxes clause.

   a. 1 only.
   b. 3 only.
   c. 1 and 3.
   d. 1, 2, and 3.

The correct answer is d.
Jenny’s will includes all of the listed items. The residuary clause directs the remainder of Jenny’s assets transfer to her children. Specifically listing the property and the person to whom she is leaving the property, as with her brother, sister, and cousin, are specific bequests. Jenny also directs the payment of debts in her will.

13. Glen’s will leaves all of his property to his wife. If she does not survive him by more than eight months, the property will transfer to Glen’s only son. Glen dies on April 13 and his wife dies the following January 12. Of the following statements, which is true?

   a. Glen’s property will transfer to his son.
   b. Glen’s property will not transfer to his wife.
   c. Glen’s property will transfer to his wife, but the property will not be eligible for the unlimited marital deduction in Glen’s estate.
   d. Glen’s property will transfer to his wife and the property will be eligible for the unlimited marital deduction in Glen’s estate.
The correct answer is c.
Glen's will contains a survivorship clause requiring his wife to survive him by more than eight months to receive his property. Glen's wife dies nine months after Glen and does receive his property. However, if a will contains a survivorship clause, the clause cannot be written to require the spouse to outlive the decedent by more than six months to qualify for the unlimited marital deduction. In this case, the survivorship clause requires eight months, so Glen's wife will receive the property, but the property will not qualify for the unlimited marital deduction.

14. Jorge spent four hours with his attorney drafting his will and ensuring that the will accounted for everything. The will was signed, witnessed, and notarized before it was filed away in the attorney's safety deposit box. Two years later, Jorge reviews the will and determines that he had forgotten to account for grandchildren not yet born at the time the will was written. Which of the following would be the least expensive way for Jorge to add in this new language?
   a. Write a codicil.
   b. Add a generation-skipping transfer clause to his current will.
   c. Revoke the prior will and write a new will.
   d. Issue a disclaimer indicating his intentions.

The correct answer is a.
Jorge has the option of writing a codicil to amend the will. This would be the least expensive and probably easiest way to amend the will. Jorge could also revoke the prior will and write a new will, but writing a codicil would certainly be less expensive. Neither a generation-skipping transfer clause nor a disclaimer amends a will.

15. Melissa is terminally ill. Her doctors gave her twenty-four months to live thirty-six months ago. Melissa has decided that she does not want to be placed on life support. Which document will direct Melissa's doctors to refrain from putting her on life support?
   a. Living will.
   b. Power of attorney.
   c. Durable power of attorney.
   d. General power of appointment.

The correct answer is a.
Only a living will would give the doctors the ability to refrain from placing her on life support. A living will, also known as an advance medical directive, is an individual's written last wishes regarding sustaining life. It establishes the medical situations and circumstances in which the individual no longer wants life-sustaining treatment. Neither a power of attorney nor a durable power of attorney would give the ability to end life-sustaining treatment.

16. Roger agreed to sell his house to his brother, but could not attend the closing date of the sale (act of sale). Of the following options, which would allow Roger's mother to attend the closing and sign the necessary documents on Roger's behalf?
   a. Living will.
   b. Advanced real estate directive.
   c. Power of attorney.
   d. Side instruction letter.
The correct answer is c.
Roger could give his mother a power of attorney to sign the documents at the closing date of the sale. None of the other options would be appropriate in this case. An advanced real estate directive does not exist.

17. As part of his military duties, Matthew has been called to active duty. Six years ago, in anticipation of being called to service, Matthew gave his brother a power of attorney over all of his property that should only be effective when Matthew is on active duty. Of the following, what should this power of attorney include?

1. Springing powers.
2. Durable powers.
3. Limited powers.
4. General powers.
   a. 4 only.
   b. 1 and 2.
   c. 3 and 4.
   d. 1, 2, and 3.

The correct answer is d.
The power Matthew gives to his brother should include springing provisions, should be limited, and should be durable. The power should spring to force only when Matthew becomes active in the military. The limited powers would restrict Matthew’s brother’s abilities to appoint the property to himself. It would also keep the value of Matthew’s assets out of his brother’s gross estate, if his brother were to die before him. Including a durability feature in the power would keep the power of attorney in force even if Matthew becomes incapacitated or disabled. Remember, however, that no power of attorney survives death.

18. Martin has given his father, Edward, a springing durable power of attorney over his real estate holdings. The power of attorney springs if Martin is ever out of the country. Of the following statements regarding this power, which is not true?

   a. If Martin becomes disabled while travelling in Italy, Edward can continue making decisions regarding the real estate.
   b. If Martin dies while travelling in Taiwan, Edward can continue making decisions regarding the real estate under the power of attorney.
   c. Martin can revoke the power at any time.
   d. Edward can do anything that Martin can do with respect to the real estate.

The correct answer is b.
No power of attorney survives death. If Martin dies, the executor of Martin’s estate or the court appointed administrator of Martin’s estate, controls the property and will act in Martin’s place. All of the other options are correct with regard to the power of attorney.
19. Bob has been a party animal his entire life. Many times, after his late night partying, Bob has been heard telling his friends that when he dies he wants his friends to throw a party in his honor. He tells them that he has even set aside some funds in his estate to pay for the party. If Bob is serious, in what document should he include this type of information?

a. Will.  
b. Living will.  
c. Side instruction letter.  
d. Durable power of attorney.

The correct answer is c. Bob should include this information in a side instruction letter. A side instruction letter details the testator’s wishes regarding the disposition of tangible possessions, the disposition of the decedent’s body, and funeral arrangements. This type of information should not be included in the will because it may create confusion, the will might not be located timely, and if the testator wants to change his desires, it is much easier to change the side instruction letter. The other options are not appropriate for these details.

20. Match the following characteristics:

<table>
<thead>
<tr>
<th>A</th>
<th>Survives incapacity</th>
<th>A. Durable power of attorney</th>
</tr>
</thead>
<tbody>
<tr>
<td>D</td>
<td>Survives death</td>
<td>B. Nondurable power of attorney</td>
</tr>
<tr>
<td>C</td>
<td>Can be revoked by a competent party</td>
<td>C. Both</td>
</tr>
<tr>
<td></td>
<td></td>
<td>D. Neither</td>
</tr>
</tbody>
</table>

A durable power of attorney survives incapacity. Neither a durable power of attorney nor a nondurable power of attorney survives death. Both a durable power of attorney and a nondurable power of attorney can be revoked by a competent party.