WILLS AND TRUSTS
Final Examination
Fall 2009

Professor Ford

Instructions:

Please write on only one side of a page in the answer booklet. Skipping lines may be beneficial for you should you decide to make a change in your answer and need space to insert writing between lines. You are cautioned to read all questions fully before beginning. Thereafter, you should approach each question by making an outline of your answer so as to best organize your response. You may write your outline in a separate booklet. The outline is for your purposes and will not be considered any part of the examination answer. Pass in every booklet in which you write plus the exam sheets. **Write your student identification number, my name and the course title, on the front of each booklet. Insert booklets one inside the other, in order, when you pass in your exam.**

Issue identification and discussion are most important. You are cautioned to follow an orderly, step-by-step pattern of analysis in noting the issues you identify. This will help keep you on track and better allow me to understand your analysis and answer. Answer only the questions that are asked.

If you find an issue of law that you have previously identified and explained, do not repeat your discussion of law on that issue, but rather simply note the issue and proceed immediately to apply the law previously discussed to the new set of facts. E.g., when you spot an issue, explain the applicable law (elements a, b, c, and d). Then apply the law to the facts When you spot the same issue again, do not repeat your explanation of elements a, b, c and d, but rather proceed immediately to apply the law to the facts.

If you feel you do not have all the facts necessary to resolve a pertinent issue, note what additional information is needed and state conclusion in the alternative.

All questions are of equal weight.

You have **three hours** to complete this exam.

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BEST WISHES AND HAPPY HOLIDAYS

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Question 1

Ella executed a valid will in 1990. She died on July 28, 1999. The will established two trusts. The terms of the trusts provide that the income from the trusts was to be paid in equal shares to Ella's two granddaughters, Frances and Rose, until the first of them died. After the death of one granddaughter, the deceased granddaughter's share of the trust income was to be paid to her "*lawful issue*" then living by right of representation during the life of the surviving granddaughter, who would continue to receive her share of the income from the trusts. After the surviving granddaughter died, the trusts were to terminate.

Pursuant to the terms of Trust "A", one-half of the property in the trust was to be distributed to the "*issue*" of Frances and the other half to the "*children*" of Rose, both by right of representation.

Pursuant to the terms of Trust "B", one-half of the property in the trust was to be distributed to the "*children*" of Frances and the other half to the "*lawful children*" of Rose, both by right of representation.

Frances and her husband, William, had two biological sons. The older, Wesley, was born on December 8, 1969. The younger, Jerry, was born on April 15, 1972, and died (without issue) on February 2, 1985. Ruth, who was born on October 25, 1980, began living in Frances and William's home in 1986, when she (Ruth) was five years old. Frances and William adopted her when she was six years old. Frances died on November 20, 2009, survived by Wesley and Ruth.

Ella's second granddaughter, Rose, died on December 3, 2009, survived by a daughter, Pauline, and also Chastity, born out of wedlock, to a second daughter, Charity, who predeceased Rose.

The trustee has received conflicting claims from Wesley., Ruth, Pauline and Chastity as to who is entitled to remainder interests under the two trusts.

Who is now entitled to what share of each of the two trusts? Why?

Question 2

Upon his death, Sam, by will, left his property to Ted in trust. Sam's property consisted of (1) A bar and grill which he had owned and operated, and (2) 100 shares of stock of Basic Electronics, a corporation listed on the NYSE. Sam's will authorized Ted to make investments "in his discretion" and, at the end of two years to distribute the principal and accrued interest among such of those individuals who were employed at the bar and grill at the time of Sam's death, and in such amounts, as Ted shall decide.

During the first year following the death of Sam, Ted operated the bar and grill at a profit of $100,000.00. At the end of the first year, Basic Electronics was purchased by Experimental Electronics, a new company engaged exclusively in developing experimental electronic devices. All shareholders of Basic Electronics were given the option of receiving the fair market value of their stock, or receiving a one-half share of Experimental Electronics stock in exchange for each share of Basic Electronics stock. The trust stock at the time was worth $10,000.00. Ted elected to take 50 shares of Experimental Electronic stock for the 100 shares of Basic Electronics. At the end of the second year, Ted sold all of the Experimental Electronic stock for $4,000.00, its then fair market value. He also sold the bar and grill which had lost $50,000.00 during the preceding year.

At the time of Sam's death, Alan, Betty and Charlie were all of the employees of the bar and grill. Before Ted could make any selection among the three for receipt of trust benefits, Ted died. Sam's heirs now claim the trust property. Alan, Betty and Charlie claim they are entitled to the property.

Who is entitled to the trust estate? In what proportions? Why ?
Has Ted committed any breaches of trust for which his estate is liable, and if so, in what amount? Explain your answer.

Question 3

Paul, a widower, has transferred $100,000.00 in trust to Trust Company to pay all income to his son, Sam, for his life, and to pay the remainder to Sam's children living at the time of Sam's death. The trust provides that Paul may revoke the trust by a signed writing delivered to the trustee. The trust contained a spendthrift clause that applied to all beneficiaries.

After establishment of Paul's trust, Sam married Susan and they had a child, Kathy. Two years after Kathy's birth, Susan divorced Sam and obtained a large alimony award against him. Upon learning this news, Paul telephoned Trust Company and stated: "I revoke my trust and I will confirm revocation by mail." Paul died the following day without having written a letter of revocation. Paul died intestate. Sam is Paul's only child. Sam has no income other than what is due him from the trust.

Sam and Susan have made written demand upon the trustee to either turn over the entire trust estate, free of trust, to the administrator of Paul's estate, or, in the alternative, to pay out of income of the trust, and to the extent necessary, out of principal of the trust, the money now due Susan for alimony, and thereafter continue paying her, first out of income, and if insufficient, out of principal, the continuing periodic alimony awarded to her in the divorce. Sam and Susan assert that they represent their minor child, Kathy, now age three, and on Kathy's behalf, they agree to an invasion of the trust principal for purposes of payment of alimony. Lastly, Sam and Susan have written to the trustee asserting that they hereby terminate the trust, and they demand that the trust estate be turned over to them forthwith.. The trustee has petitioned the probate court for instructions.

You are the judge. How do you instruct the trustee? Explain your answer.

Question 4

Sidney executed his last will and testament on January 17, 1991. On the same day, he executed a declaration of revocable trust, naming himself and his wife, Marjorie, as trustees. Then he transferred virtually all his assets, except his interest in the marital home, into the trust. The trust instrument provides:

> "*SECOND: Administration During My Lifetime.* During SIDNEY'S lifetime, all of the annual income and such principal as the trustees deem necessary shall be paid to SIDNEY and MARJORIE.
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> "*THIRD: Administration Following Death of SIDNEY and MARJORIE.* At the death of both SIDNEY and MARJORIE, this trust shall terminate and distribute all assets to our children, STEPHEN, JAMES, LOUISE and ROBIN, if they survive us. If any of our said children do not survive us but leaves issue, then the share that should have gone to our deceased child shall be distributed equally and in equal shares to his/her issue by right of representation.
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> "If any of our said children's issue are under the age of thirty (30) years, then the trust shall remain in existence until the youngest child reaches the age of 30 years, and, as each child reaches the age of 30, his/her respective share shall be paid to him/her. When all assets and income have been paid hereunder this Trust shall terminate. Upon the termination of this trust and distribution of property the Trustees hereunder shall be free of all trust."

Sidney has just died, survived by Marjorie, Stephen, James, Louise and Robin.

Marjorie has asked you to advise her as to her rights under the trust, how she can secure to herself support from the trust for the remainder of her life, and whether the interests for the children (or grandchildren) are secure. Advise her, explaining your answer.

Question 5

Pamela and Ron were married on April 15, 2005. It was Ron's second marriage. On October 17, 2005, Ron created an inter vivos revocable trust, of which Ron was sole trustee, and which provided that Pamela, as a remainder beneficiary, would receive 50% of the Trust principal outright upon Ron's death, and Ron's adult son, Sam, by his first wife, as a remainder beneficiary, would receive the other 50% outright.

In early 2008, Ron and Pamela were experiencing marital difficulties, and Ron would, occasionally at first, but more and more frequently as the year progressed, visit and stay with Sam at Sam's home. Ron was, at this time, experiencing headaches of unknown origin. In November 2008, the Trust was amended by Ron to provide that, on Ron's death, Pamela would receive 25% of the Trust outright, and Sam would receive the remaining 75% outright.

In January 2009, Ron was diagnosed with brain tumors and he began receiving chemotherapy and radiation treatment for cancer. On February 3, 2009, Ron learned from his attorney, that Pamela had consulted a lawyer with a view to instituting divorce proceedings. From that day forward, Ron and Pamela lived apart. Ron moved in with Sam.

On February 13, 2009, Ron executed the Second Amendment to the Trust which reduced the 25% outright share for Pamela to a life estate in 25% for Pamela, citing her "lack of concern for me in my illness as demonstrated by her proceeding to terminate our marriage at this time." All the rest and remainder of the Trust was left to Sam. On April 23, 2009, Ron executed the Third Amendment to the Trust which made the Trust irrevocable, named Sam co-trustee with Ron, and left the entire trust estate to Sam with nothing to go to Pamela. Ron died six days later. At the time of his death, Ron held no assets in his individual name. Pamela and Ron were never divorced.

What claim(s) to the trust estate can Pamela raise, and what are her arguments?

What are the counter-arguments to Pamela's claim(s)?