

WILLS AND TRUSTS

Final Examination
Fall 2005

Professor Ford

Directions:

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You will have three hours to complete this exam.

QUESTION:

1. Mary Smith died leaving a valid will directing her entire net estate, after payment of debts, taxes and probate expenses, to Tom Trustee to pay all income to and among her only son, Sam, Sam's wife, Wendy, and their three children, Susie, Sally and Sarah, plus any children born to them within twenty (20) years of Mary's death, and to the survivors of them, until the death of the last to die, in such amounts, equal or not, and at such time or times throughout the term of the trust, as the trustee shall determine in the trustee's sole discretion. Distributions may be made from income or principal as the trustee deems appropriate.

What, if any, interest do the beneficiaries have under the trust?

2. Joe Johnson has four children, Anne, 50 years of age, Betty, who is 47, Carl who is 44, and Nathan who is 41. Anne has two children, Donna who is 25, and Edward who is 21. Betty has one child, Frank who is 22 years old, and Carl and Nathan have no children. Anne, Betty and Carl are all married. Nathan is not married. All of these facts are known to Joe at the time of making his will. Joe wrote a valid will one year ago. Joe was of sound mind at the time. The will leaves one-third of Joe's estate in trust for Anne for life, then for Anne's husband for life, then the remainder to her children equally; one-third in trust for Betty for life, then for Betty's husband for life, then remainder to her children, equally; and, one-third in trust for Carl for life, then for Carl's wife for life, then remainder to Carl's children, equally. Joe states in his will that he intentionally omits Nathan. The fact is that Nathan has a long history of drug abuse and criminal convictions. Joe has now died survived by all of the above named individuals. The trusts are established as indicated and life estates are being paid out. Carl and his wife and Betty and her husband are traveling together in an automobile. There is an accident and all four have died instantly. Carl still has no children. All others named above are still surviving.

What is to be done with the remainder interest in the trust for Carl and his wife?

3. George and Marcus are brothers. They inherit a small chain of auto parts stores. Together they grew the business to ownership of several stores. Incorporation had been established for conducting business. Shares of stock were divided equally between George and Marcus, fifty (50) each. George and Marcus set up a trust to hold their shares of stock. They were co-trustees with power to vote the shares at stockholder meetings and to buy and sell trust property.

The trust provided that upon the death of George, his beneficial interest would be held for his wife for life and remainder to his children, equally. Some while after George died, his wife, Eva, who was then experiencing significant short-term memory loss, problems with concentration, and possible depression, asked Marcus what should be done with the business, because she did not have an interest in being involved in running it. Marcus proposed selling some shares of stock to their respective children, five (5) shares to each side of the family, plus one (1) share each to two long-time employees, Jason and Julia. They both agreed. Marcus prepared the documents and he and Eva signed them and the sales were completed.

Later it was discovered that of the twelve (12) shares of stock sold, eight (8) came from George's family's portion and four (4) from Marcus' portion. The resulting breakdown of shares therefore is: Jason and Julia each one (1) share, George's family forty-seven (47) shares, and Marcus' family fifty-one (51) shares, which is a controlling portion. George's family claims to have been cheated out of their position in the company.

Advise them as to what their rights and claims are and advise what possible result or results can be anticipated.

4. Fred died on November 20, 2005 at the age of 55. He was divorced at the time of his death. He was survived by two children, an adult daughter, Donna, from his only marriage, and a minor child, Minnie, born on September 10, 1998, to the mother, Lisa, to whom he was not married. Prior to Fred's death, paternity was established, and on September 15, 2005, after a hearing, a judge in the Probate and Family Court ordered Fred to pay child support of \$400.00 a week to the mother, Lisa, the order to remain in effect "until the minor child attains the age of 18 years." A judge of the probate and family court has the power to order child support that survives an obligated parent's death and such order is a legally enforceable obligation that takes precedence over testamentary dispositions and must be satisfied prior to any distribution of assets under the will. Fred did pay the required child support until his death. His probate estate is insufficient to pay child support as ordered.

On June 3, 2005, Fred executed a will that disinherited his minor child, Minnie, leaving to her the amount of One (\$1.00) Dollar. He further directed that she "shall not be considered as an heir-at-law of mine" nor "a child of mine or issue of mine for any purpose under this will." The will provided that, after the payment of specific monetary bequests and disposition of certain tangible property, the remainder of the estate be devised and bequeathed to a trust that Fred had previously established on February 3, 1977. Also on June 3, 2005, Fred signed a final amendment to that trust that restated all of the trust terms, and Fred also transferred most of his property into the trust. The trust instrument directed the trustee on Fred's death to collect on various life insurance policies that named the trust as death beneficiary. The trust named Fred's daughter, Donna, as the sole beneficiary after Fred's death. The will noted that Fred did not provide equally for his daughter, Donna, and his minor child, Minnie. That "inequality" he said in the will "is my wish and not the result of any inadvertence or mistake."

According to the terms of the trust, as amended in 2004, during Fred's lifetime, Fred, as settlor, was named the sole beneficiary and was entitled to receive any or all of the income or principal at his request, or, without such request, all or part of the income or principal at the trustee's discretion. Pursuant to the terms of the trust, Fred specifically reserved for himself the right at any time to modify, alter, amend, or revoke the trust. Following Fred's death, the trustee was to pay income to Donna until her age of thirty-five (35) years, then terminate and pay out all of the trust property to her free of trust.

Lisa consults you as to what rights she has to collect on the outstanding child support order. How do you advise her? Explain your answer.

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ANSWER ALL QUESTIONS.

1. Ethel is widowed with a son, Sam and a daughter, Dina. She owns her own personal residence in her individual name. She wishes to arrange her affairs so that her personal residence does not have to go through probate upon her death, but will pass immediately to her two children, equally. However, she does not wish to give up all rights and interest in the property during her lifetime.

Identify three options that she has available to her and compare and contrast the pros and cons of each. [20% - 30 minutes]

2. John and Mary are married. John owns stock in a privately owned corporation, Abacus Corp. The stock has a valid restriction on transfer that states that a stockholder may not transfer his stock to another person without first offering the stock to the corporation at book value, which is usually less than fair market value, but title to the stock may pass to a deceased stockholder's legatee under his will or to his intestate heirs. John and Mary divorce. Their written divorce agreement provides that John will leave one-half of his Abacus stock by his last will to Mary. The divorce becomes final. John marries Susan. John executes a valid new will leaving one-half of his Abacus stock to Mary and the rest of his estate to Susan. John has no children. John runs into personal financial trouble with Dirtbag Company, to which he owes \$120,000.00. In full compliance with the stock transfer restriction, John sells all of his stock in Abacus Corp. at its fair market value of \$100,000.00 and pays that sum to Dirtbag Company. John still owes a balance of \$20,000.00 to Dirtbag Company. Six months later, the Abacus stock shoots up in value. John dies and at his death the original Abacus stock investment would have been worth \$120,000.00. John's entire estate available for distribution among all who have claim to it is worth \$60,000.00 at the time of his death. Mary, Susan and Dirtbag Company all assert claims to the estate.

Identify all possible claims of Mary, Susan and Dirtbag Company. Who is entitled to what amount out of the estate, and why? [20% - minutes]

3. In 1975 Tom died, leaving his wife, Wanda, and his three children, Alice, Betty and Carl. Alice has a four year-old child, Grumpy. Tom has no other grandchildren. Tom left a will that was valid, signed one year before he died, and admitted to probate. The will left various bequests and then stated: "I leave all the rest and residue of my estate to my sister, Sue, in trust to pay all income to my wife, Wanda, for her life, then to pay all income equally to my children for their respective lifetimes, and upon the death of the last of my children, to pay the remainder in equal shares to such of my grandchildren who attain the age of twenty-five (25) years as my brother, Brad, shall designate in his last will."

In 1976, Betty has a child, Dopey. In 1978, Carl has a child, Sneezy.

In April of 2002, Brad duly signs a valid will that provides: "My brother, Tom, has established a trust that provides that I shall designate who as among his grandchildren is to receive the remainder interest of that trust. Tom's two grandchildren, Grumpy and Dopey, are fine children, so they shall share equally in the remainder interest in the trust."

In May, 2002, while trying to get a better look at the Grand Canyon, Alice, Betty and Carl simultaneously fall over the guard rail and plunge to their deaths. In September, 2002, Wanda dies (of natural causes). In October, 2002, Grumpy demands of Sue that she turn over the entire remainder interest in the trust to him as the rightful taker. Immediately thereafter, Dopey claims that one-half of the trust's remainder interest belongs to him and he demands payment of same. Immediately thereafter, Sneazy claims that one-third of the trust remainder interest belongs to him and he makes demand for same. In 2003, Brad dashes across a busy highway to save a ninety year old woman who wandered from a local nursing home. Unfortunately, in the process, Brad is struck by a speeding dump truck, knocked across the highway divider and run over by a garbage truck. Brad dies, but the old woman is fine.

It is now 2004, and the three claims are before you. You are the judge. Who is entitled to what share and why? [30% - 45 minutes]

4. Sandra Settlor asks Larry Lawyer to draft a trust for her. The trust is to make investments, paying the income to the income beneficiaries and upon termination of the trust to pay the principal to the remaindermen beneficiaries. Larry draws up the trust to carry out the above stated wishes of the Settlor and it further provides that: "A Trustee shall not be liable for any error of judgment nor for any loss arising out of any act or omission in the execution of the trust so long as the Trustee acts in good faith, but shall be responsible only for his or her own willful breach of trust."

Sandra asks Larry to serve as trustee and he accepts. Larry has no investment experience so he turns to and hires an investment advisor, Ned, who devises an investment strategy, reviews the same with Larry and obtains Larry's direction to proceed. Ned makes various investment purchases and from time to time he sells different investments and makes other investments.

Ned sends a quarterly report to Larry setting forth what investments have been purchased and what have been sold during that quarter. Ned is the nephew of Larry.

For his services, Ned receives a commission on purchases and sales of investments and he also charges and receives a fee on related services such as preparing special reports and preparing tax returns for the trust. The amounts of the fees and commissions charged by Ned are commensurate with what is charged by other investment advisors in the area.

Larry gives to the beneficiaries of the trust regular annual accountings and the beneficiaries have always signified their approval and acceptance of those accountings in writing. Over the years, the trust has realized some significant losses due to some ill-chosen investments. At one point, Ned invested 20% of the trust portfolio in the stock of Zippo Corporation which Ned believed was an undervalued stock. Shortly after that investment, the stock began to rise as Ned had expected, but yet a while later, Zippo suffered a substantial loss of business due to a faulty product that it produced and its stock dropped rapidly. Ned feared a wipeout as to that investment and so he sold all of the Zippo stock, resulting in a loss of 50% of the original investment in Zippo stock. The investment and loss on sale were all fully disclosed on his accountings to Larry and on Larry's accountings to the beneficiaries. As with the other accountings, the beneficiaries signed off on these accountings as well.

Yet another six months later, Zippo Corporation begins to recover and it comes out with a new product that is a big hit and its stock value skyrockets. The trust now terminates by its own terms. A final accounting is sent out to the beneficiaries asking them to give their assent so that final distribution of the remainder interest in the trust may be made. It is at this point that the beneficiaries first learn that Ned is the nephew of Larry. At this point also, the Zippo stock is worth one and one-half (1½) times the value that it had when Ned first invested in it.

The remaindermen beneficiaries are upset, feeling that their remainder interest should be higher than it is. They come to you to seek your advice. Advise them fully. Explain your answer. [30 % - 45 minutes]

BEST WISHES FOR THE HOLIDAYS AND NEW YEAR

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Fall 2004

Professor Ford

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You will have forty (40) minutes to complete this exam. The exam will be worth one-sixth (1/6) of your final grade.

QUESTION:

1. Martha is the elderly mother of two children, Sarah and Sam. Sam is married with children. He visits mother often, takes her shopping and to doctor's appointments, helps her with her bills and her finances and is otherwise a dutifully devoted son. Sarah, on the other hand, has for years been fighting a drug addiction. She has been in and out of rehab. She is not married. She was pregnant once, but had an abortion.

Mother wishes to provide for her children in her will, but she does not wish to support any drug habit. Sam suggests to mother that she leave a gift in her will for Sarah, provided Sarah demonstrates that she is drug free for a continuous period of five years beginning with the date of mother's will. When Sarah is told of this suggestion, she protests saying that it is unfair

because it is so hard to kick the habit. Nonetheless, mother adopts Sam's suggestion and instructs her attorney accordingly.

A short while later, mother signs her will, revoking all prior wills and codicils. The will provides: "After payment of all my just debts that are due and payable, I leave my entire estate as follows: One-half to my son, Sam, and the other half to my daughter, Sarah, provided she demonstrates that she is free of all illicit drugs for a period of five years, beginning with the date of this will." Mother signs the will in her lawyer's office before two disinterested secretaries as witnesses who sign in mother's presence and in the presence of each other, and the lawyer notarizes all signatures. One year later to the day, mother passes away.

From the date of mother's will until the date of mother's death, Sarah has been free of all illicit drugs. She continues her struggle and manages to remain clean for another two years. At that time, Sarah learns that her best friend, Paula, has died of a drug overdose, leaving behind her fourteen year-old daughter, Linda, who has started experimenting with drugs. Linda's father is deceased.

Wishing to help Linda, and hoping it will be a help to herself, Sarah adopts Linda. Together, they stay straight for about another year and one-half, which is now four and one-half years after the mother's will was signed. At that time, Sarah is unable to overcome temptation, and she again uses illicit drugs. Sam, who has already received his one-half share from his mother's estate, now claims that Sarah has forfeited the bequest left to her in their mother's will, and Sam claims that remaining share of mother's estate. Sarah comes to you for assistance saying she really needs her mother's bequest to help support not only herself, but Linda too.

Given the facts as stated, discuss the issues you need to consider for Sarah. What are the possible ways the testamentary bequest for Sarah may be distributed?

Explain your answer.

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ANSWER ALL QUESTIONS.

1. Harry and Wanda are married and have a child, Matt. They jointly own a personal residence and a checking account. Harry has long owned a life insurance policy on his own life. Wanda has been named the beneficiary. Harry now changes the beneficiary designation to name his brother, Ben. Harry telephones Ben to tell him of this beneficiary change and ask him to take the death proceeds upon Harry's death and use them to pay for Matt's college education and upon Matt's graduation to turn over the balance of the insurance proceeds to Matt. Ben agrees to do so. Harry owns in his own name an apartment building. Harry writes to his old school friend, Alice, telling her that he is transferring title to the apartment building to her to hold to pay the net income for the support and comfort of Matt as his needs may require until he attains the age of 45 years and then to turn the property over to Matt. Harry signs the deed at the same time as

writing the letter to Alice. Harry mails the letter to Alice, but does not enclose the deed because he wanted to show it to his lawyer to be certain it was in proper form. It turns out the deed was proper to convey title to Alice. Alice received and read the letter, but did not immediately respond because she was too busy getting ready to leave on a business trip. The next day Harry takes the deed to Alice's home, but because she is not there, he leaves the deed with her husband. Harry goes to his lawyer and together they draw up, and Harry duly signs, a valid will stating that Harry's entire estate is to go to his twenty year-old son, Matt. The will further states "Matt, remember what I told you about your cousin, Betty. She needs your financial help for her support when I am gone. Do not forget her." Alice returns from her business trip, late at night, two days later and her husband hands her the deed to the apartment building. She reads the deed and goes to bed. Early the next morning, Alice is awakened when the telephone rings. It is Wanda advising that Harry has just died.

Who is entitled to what interest out of the personal residence, bank account, insurance proceeds and apartment building? Explain your answer. [35 points]

2. Annie has just died leaving a ten year-old valid will that leaves her personal effects to her two children, equally. The will leaves all of the rest and remainder of her estate, after all debts and expenses are settled, to pay for the children's college education, with the remainder to then be placed in her husband, Jake's, revocable trust which Jake had set up prior to the execution of the wife's will. At the time of Annie's execution of her will, her husband, Jake's, revocable trust provided that upon his death, the trust was to terminate, and the remainder interest be divided equally between the two children; however, since the execution of the will, the husband has amended his trust, providing that 60% is to go to the daughter, Mary, and 40% to the daughter, Lisa. At the time of Annie's death, the children had already finished their college education. Jake dies owing a \$100,000.00 to a judgment creditor who now seeks recovery for the debt owed to him. Jake's probate estate is \$60,000.00 after all costs of administration of the estate. There are no other creditors of the husband. The husband's trust corpus is \$100,000.00, of which \$30,000.00 was placed in trust by Jake, and \$70,000.00 is from Annie's probate estate.

Who gets what portion from the husband's trust? Explain your answer. [30 points]

3. Ethel and George have one child, Marie, three years old. Ethel and George transfer property into trust reserving to themselves, or to the survivor of them, the power to amend who shall be the remaindermen beneficiaries, but not to revoke the trust. At age 22, Marie has her first child, Alice. At age 25, Marie has her second child, Betty. At age 28, Marie has her third child, Carol. At that same time, George dies. Two years later, Ethel dies. Marie lives to age 95, when she finally dies, survived by Betty and Carol, and Douglas and Daryl, who are Alice's husband and son. Ethel and George did not name remainderman beneficiaries.

Who is entitled to what interest in the trust when?

[15 points]

4. Owen, a widower, has two children, Reggie and Jaimie. Jaimie dies, survived by one child, Todd. Then Owen dies without a will. Reggie has four children, Blitzen, Comet, Donna and Rudolph. Reggie timely and properly disclaims all interest in her father's estate.

What are the distribution possibilities of Owen's estate?

Which would you grant and why?

[10 points]

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You will have the remainder of the class period to complete this exam. The exam will be worth ten (10%) percent of your final grade.

QUESTION:

1. Harry and Wendy are husband and wife and they have one child, Chris, of their marriage. Harry was previously married and from that marriage he has a daughter, Donna. Harry was widowed when Donna was quite young and therefore Donna grew up in the home of Harry and Wendy.

Harry and Wendy long ago duly executed reciprocal wills. Harry died a few years ago and all of his estate went to Wendy. Wendy's will recites that her estate is to go to Harry if he survives her, otherwise, "to my children."

Over the years, as Chris grew up, including as a young adult, he had various financial problems and Harry and Wendy repeatedly bailed him out by giving him money. Wendy is now elderly and requires care which is being furnished by a personal care attendant on a full time basis, and by Donna on a part-time basis. Recently, Wendy duly executed another will leaving three-quarters (3/4) of her estate to Donna and one-quarter (1/4) of her estate to Chris. Until very recently, Chris had been among the missing, but he has now returned.

Chris has been paying a great deal of attention to his mother, to whom he has suggested that she clean out her old personal papers so that all of her affairs will be in order. Chris has offered to help. One by one, Chris has gone through his mother's personal papers handing them in turn to his mother with a comment to the effect either that she should hold onto the paper or she should dispose of it. As Mother has taken each paper from Chris, she has looked at it for a moment or two and then handed it to her caretaker saying to either put it aside for safe-keeping or to destroy it. The caretaker, therefore, placed on the table in front of Mother the documents that Mother said to keep and she placed into the burning fireplace in front of Mother the documents that Mother said to destroy. About a month later, Mother died.

Until her death, Mother had been in possession of both of her wills. However, now, as Donna goes through Mother's papers, she is able to locate only the first will, but not the second. The caretaker relates to Donna what transpired with regard to Chris and Mother going through Mother's personal papers. Donna immediately procures from Mother's attorney a copy of Mother's signed will from the attorney's file and presents that copy of Mother's signed second will to the probate court for allowance as Mother's Last Will and Testament. Chris files with the probate court an objection to the allowance of the photo copy of the second will.

Is the photo copy of the signed second will admissible. If so, on what grounds? If the signed copy of the second will is not admissible, how should Mother's estate be distributed after payment of costs of administration and death? Explain your answer.

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ANSWER ALL QUESTIONS.

1. The real estate in question had been the family home for years, and was devised to the testatrix by her late husband, Joseph Gordon, who died in 1993. At the time of executing her will in 1996 and at the testatrix's death in 1998, four of the children, Sadye, Lillian, Sarah and May, were married, but the remaining two, Minerva and Harold, were not. Harold married in 1999, but Minerva, a practicing physician, who at times used a portion of the house as an office, is unmarried. When the testatrix died, Minerva and Harold were living in the house. Harold ceased to live in it in the spring of 1999. Minerva has not lived there since September, 2000, but intended to return until July, 2001. Thereafter she decided that she wanted the place sold. Harold never made such a decision, and would like to have the house for a future residence. No child has lived there since the fall of 2000.

Until after the death of the testatrix there was a strong feeling of family solidarity. The married daughters returned to the house on visits, and May lived in it for a time. After the death of the testatrix disputes arose over the administration of her estate and in connection with the business in which all six children were interested under the will of Joseph Gordon and in which Harold is engaged. At a family meeting in June, 1999, there began a sharp cleavage Sadye, Minerva, Lillian and May on one side and Sarah and Harold on the other, which continues with much bitterness.

Paragraph 8 of the will reads: "It is my wish that my home in Attleboro remain intact and that any of my children be allowed to stay there whenever they wish and for this reason I devise said property and bequeath the entire contents of the house, except for the specific bequests herein mentioned, to my daughter, Minerva Gordon, and my son, Harold B. Gordon. If at any time said Minerva Gordon and Harold B. Gordon shall decide to sell the home and live elsewhere, the home shall be sold and the proceeds divided equally among my children, in accordance with the terms of the residuary clause of this will. In such event, the executors of my will are to divide the household effects among my children as equally as possible."

The residuary clause of the will is in paragraph 9, and reads: "All the rest and residue of my estate of whatsoever nature and wherever located to which I am or will be legally or equitably entitled or over which I have or will have any power of appointment is to be divided equally among my children, Sadye G. Freedman, Minerva Gordon, Lillian Silverman, Sarah Lewitsky, May C. Pite, and Harold B. Gordon."

What is to happen now to the house? Explain your answer.

2. Bill executed a last will and testament. It made two bequests, as follows: \$10,000 to my son, Jim, and all the rest of my estate to my daughter, Beth. The will also expressly revoked a prior valid will which expressly disinherited Jim and left everything to Beth. Bill was survived by his two children, Jim and Beth, and his parents. Assuming there are grounds to contest Bill's second will, who may do so? Explain your answer.

3. In 1979, Antonia Quevillon consulted attorney Carl Baylis regarding the disposition of the eight apartment buildings she owned and operated. At that time, she was seventy years old and in poor health. She had had no prior relationship with Baylis. Baylis drafted a valid trust into which she transferred her eight properties. After the death of the settlor, the trust provided that the trustee "shall distribute all income annually to my children equally for a period of twenty years at which point the trust shall terminate, and the trust property shall be divided equally among the children of my son, Marcel Quevillon.

Baylis and Estelle Ballard, daughter of the settlor and one of the income beneficiaries, were appointed cotrustees. Ballard agreed to manage the property for \$50 per week. Baylis did not discuss any management fees with the settlor. The trustees had discretion to retain or sell the trust property. The trust also contained clause which stated that "[e]ach trustee shall be liable only for his own willful misconduct or omissions in bad faith."

After the settlor's death in 1982, the trust property was managed almost exclusively by Ballard until 2000, with Baylis taking little interest. Two properties were sold between 1982 and 1997, and the remaining six properties appreciated substantially in value from \$250,000 to \$1.25 million during that time period, and those six properties generated income paid to the income beneficiaries at an investment return rate of about 1% per year during that period. In 2001, the income beneficiaries met with the cotrustees to discuss the level of income from the trust property. At that meeting, knowing that property values had "peaked" and were not likely to continue rising as they had before, Baylis urged that the properties be sold and invested in government bonds. The income beneficiaries agreed to this proposal, and the trustees began accepting offers on the properties. Pam Purchase offered \$200,000 for two of the properties, and

Bill Buyer offered, subject to the availability financing, \$1.4 million for the remaining four properties. Those six properties were appraised at that time for a total of only \$1.3 million. Bill Buyer eventually obtained financing and was ready, willing, and able to buy.

Ballard, however, desired to own the properties herself, to keep them in the family, she said. Baylis, knowing this, presented the offers to her and gave her an opportunity to match them, but she could not finance the purchase. She then refused to sell any of the six remaining properties and later stated that she had not given consideration to either the income beneficiaries or the remaindermen in making that decision. The trustees, however, had already sold two properties to outsiders, and Ballard never offered the properties to any other family member to keep them in the family. Baylis asserts that, even if Ballard violated her fiduciary duty, he acted in favor of the sale of the properties.

Even though Ballard refused to sell the remaining six properties, Baylis prepared purchase and sale agreements, signed them as trustee/seller and forwarded them, without Ballard's signature, to the prospective buyers. The buyers signed the agreements and put down deposits toward the purchase price. Ballard continued to refuse to sell the property. Baylis responded by proposing that Ballard could purchase the two properties for which \$200,000 had been offered, and the remaining four properties would proceed to sale with Bill Buyer. Ballard agreed to this proposal. Baylis prepared and filed a petition in Probate Court for a license to sell the four properties and terminate the trust in December, 1997 [[this is proper procedure and not an issue]], but Ballard withdrew her support of the sale. Baylis tried to convince her to proceed with the sale by pointing out that she would end up with two of the properties, plus they (Baylis and Ballard) as trustees, would receive large commissions on the sale of the other four properties. Ballard was unmoved, at which point Baylis informed her that he was ready to resign as trustee.

Before Baylis could resign, Pam Purchase, the prospective buyer of the properties which were then going to be sold to Ballard, sued the trustees, both individually and in their capacity as trustees. The trust settled the case with Pam Purchase, paying her \$20,000.00 damages for breach of contract plus expenses associated with the suit.

The income beneficiaries then filed suit against the trustees. The trust subsequently terminated later this year, and the property was transferred to the remaindermen. At that time, the estimated value of the six properties was approximately \$1 million.

What claim(s) do the income beneficiaries have?

What defense(s) and claim(s) does each trustee have to counter or offset the claim(s) of the income beneficiaries?

How are these claims and defenses to be decided?

Explain your answer.

BEST WISHES FOR THE HOLIDAYS AND NEW YEAR

WILLS AND TRUSTS

Mid-Term Examination
Fall 2002

Professor Ford

Directions:

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, inserting booklets one inside the other, after having written your student identification number, as well as the course title, on the front of each booklet.

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.

If you find an issue of law that you have 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.

QUESTION:

1. In 1995, Frank provided in his duly executed and valid will for the following disposition of his property:

"I leave my AT&T stock to my son, Sam, and all the rest and remainder of my stocks and bonds, my personal effects and household furniture and furnishings, my bank accounts and my automobile to my daughter, Dina.

I name my daughter, Dina, to be executrix of my estate. If, for any reason, she is unable or unwilling to serve, then I appoint my son, Sam."

In 2000, Frank became incapacitated and Dina was appointed his guardian. As guardian, and after checking over her father's personal papers and making an inventory of his property, Dina sold Frank's entire 800 shares of AT&T stock and purchased Intel stock with the proceeds.

In June of this year, Frank's only sibling, Dina and Sam's Aunt Matilda, passed away. Matilda and Frank's parents had long ago passed away. Matilda was never married and she had no children. She did leave, however, three first cousins (the children of her father's brother) in addition to Frank, Dina and Sam.

Matilda's probate estate consists of 500 shares of Intel stock, 500 shares of AT&T stock and a bank account. Matilda had had her attorney draft a will for her, providing for her estate to be distributed as follows:

"I leave all of my Intel stock to my brother, Frank. I leave all of my AT&T stock to my three cousins, share and share alike. I leave my bank account to the American Heart Association."

Before Matilda could arrange to go to her attorney's office to sign her will, she had to be rushed to the hospital. She took with her the draft of the will that was prepared by her attorney at her direction. As she was lying in bed, fearing the worst, namely that she would not make it through the night to speak with her attorney, she pulled out the document and stated to nurse Alice, who was in the room: "This is my last will and I am signing it of my own free act and deed with full knowledge of its contents. Please sign as my witness." Matilda then signed the will as did nurse, Alice. At that point, with her voice failing, Matilda said: "I need a second witness." Nurse Alice said: "Just a minute." and ran out of the room. Alice found nurse, Betty, down the hall and the two started back toward Matilda's room. As they walked hurriedly, Alice repeated to Betty what Matilda had told her and stated also that she and Matilda had signed the will and now a second witness signature was needed.

Upon entering Matilda's room, the two nurses saw Matilda fading fast. Knowing the story from Alice, Betty spoke directly into Matilda's ear saying: "Do you wish me to sign your will as a witness?" Matilda, unable to speak at this point, simply nodded her head, yes. Betty signed the will and Matilda expired.

Frank died in July of this year. His will has been admitted to probate and Dina has been appointed executrix of the estate. She has paid all Frank's debts and filed final tax returns. She is now ready to distribute the property remaining in Frank's probate estate.

How is each item of Frank's probate estate to be distributed? Explain your answer.

WILLS AND TRUSTS

Final Examination
Fall 2001

Professor Ford

Directions:

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, inserting booklets one inside the other, after having written your student identification number, as well as the course title, on the front of each booklet.

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ANSWER ALL QUESTIONS.

1. Theresa is 80 years old and has three children, Andy, Betty, and Cathy. Theresa and Cathy had a falling out. During the period of their estrangement, Theresa had prepared and duly executed the following will:

"I leave all of my property to my children Andy and Betty equally. For reasons that shall remain private, I make no other disposition of my property."

Subsequently, Theresa and Cathy reconciled their differences, but Theresa and Betty have a falling out. During the period of that estrangement, Theresa calls her lawyer and directs her to prepare a new will for her. Pursuant to Theresa's instructions, the new will is prepared and reads as follows:

"I leave all my property to my children, Andy and Cathy equally. For reasons that shall remain private, I make no other disposition of my property."

This will is duly executed.

Subsequently, Theresa and Betty reconcile their differences, and Theresa calls her attorney again to prepare a third will which, pursuant to her instructions, reads as follows:

"I leave ten (10%) percent of my property to the American Cancer Society, and ninety (90%) percent to my children Andy, Betty and Cathy equally."

After giving the above instructions to her lawyer to prepare a third will, Theresa hangs up the phone and picks up a pencil that was nearby and writes in large bold letters diagonally across the face of the first page of Will #2:

"I revoke this entire will."

Theresa then signs and dates the above statement. She then heads out to her lawyer's office to sign Will #3; however, Theresa is involved in a fatal accident along the way.

The children, being children, cannot arrive at an amicable resolution for the disposition of their mother's estate, and therefore, each one claims the maximum amount to which he or she is entitled. What are their arguments and counter arguments, and what is the correct distribution of Theresa's estate? Explain your answer.

Question 1 shall count for 20% of exam grade.

2. Eva Evans, widowed mother of Alice and Ben, wished to marry Tom Terrific; but, Tom was not willing to do so unless she agreed to leave him Blackacre upon her death (so much for love!). At Eva's direction, Larry Lawyer drafted document number one entitled "Last Will of Eva Evans". Before Jane and Sally, two secretaries in Larry's office, neither of whom is named in any capacity in the document other than as witness, Eva declared document number one her last will and signed at the bottom, and Jane and Sally signed as witnesses in her presence. Document one provides that all of Eva's estate at her death shall go to Tom. That evening, Eva showed the executed document one to Tom. Three weeks later, Eva and Tom married.

A week after the wedding, Eva went to Larry Lawyer's office to draft a new will document leaving all her estate to Alice and Ben, and nothing to Tom. Eva declared document number two to be her last will and signed it before Jane and Sally as witnesses. Jane signed as witness. Just as Sally got half way through signing as witness, Eva gasped a frightening breath, clutched her chest, and dropped to the floor with what later was determined to have been a serious heart attack. With full focus on her business, Sally signed while Jane performed CPR on

Eva. Meanwhile, Larry Lawyer called for an ambulance which rushed Eva to the hospital where she died a half hour after arrival.

Alice and Ben have now presented document two to Probate Court for allowance as the last will of Eva Evans. Tom has filed his opposition to their petition and filed his own petition for allowance of document one as Eva's last will. Alice and Ben have filed their opposition to Tom's petition, along with an affidavit by Jane stating that document one was executed to induce Tom to marry Eva.

You are the judge. How do you rule on the petitions? Consider all available arguments on both sides of each petition before ruling on each petition. Explain rulings. Who gets Blackacre? Why?

Question 2 shall count for 30% of exam grade.

3. In 1990, Dan went into business for himself as a wholesale supplier. In 1995, he entered into a contract with Woburn Widget Co. to be its exclusive supplier of nuts and bolts. In 1997, Dan was unable to fulfill the needs of Woburn Widget Co., and he stood in default of the contract.

Woburn Widget Co. sued Dan and obtained a judgment against him for Five Hundred Thousand (\$500,000.00) Dollars in 1999. When Woburn Widget Co. went to make demand on the judgment, it found that Dan had disappeared. The following year, in 2000, Woburn Widget Co. learned that Dan was the beneficiary of a trust created by his mother, Sarah. Woburn Widget made demand upon the trustee of Sarah's trust to satisfy its outstanding judgment against Dan. The trustee refused, informing Woburn Widget Co. that the trust says that distribution is to be made to Dan, said distributions to be for his care and maintenance. Woburn Widget Co. thereupon brought suit against the trustee at the end of 2000.

During the course of discovery in the lawsuit, during 2001, Woburn Widget learned that Sarah had established in 1988 an irrevocable trust with One Million (\$1,000,000.00) Dollars. The trust provides that: "... income to be distributed to my only child, Dan, to be used for his care and maintenance, and upon Dan's death, any undistributed income and the principal, to be distributed to my grandchildren equally." In 1988, at the creation of the trust, Sarah had one grandchild, Helen, the daughter of Dan. It was further learned through discovery that the trustee had been making distributions of income to Dan every couple of months until 1997 when Dan defaulted on the contract. At that point, all distributions stopped, and income has been accumulating in the trust ever since.

Finally, Woburn Widget has learned through discovery that Sarah died intestate in 1990, Helen died intestate in 1999, leaving a son, Sam, then seven (7) years old, and Dan died in the year 2000.

Sam, through his father and next friend, [the appropriate way to proceed and not an issue here] demands all of the trust property claiming it has a remainder due him pursuant to the terms

of the trust and the anti-lapse statute. Woburn Widget Co. demands all income accrued in the trust from 1997 to the date of demand upon the trustee by Sam, Two Hundred Thousand (\$200,000) Dollars), or in the alternative, full payment on his judgment on the grounds that the trust provision for Helen violates the Rule Against Perpetuities and, therefore, all of the trust property (\$1M) belongs to Dan. You are in a jurisdiction that follows the common law Rule Against Perpetuities.

You are the judge. Who is entitled to what portion of the property that currently stands (at least in name) in the trust? Explain your answer.

Question 3 shall count for 50% of exam grade.

Happy Holidays and Best Wishes for the New Year !!!

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WILLS AND TRUSTS
Final Examination
Fall 2008

Professor Ford

Instructions:

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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.

BEST WISHES AND HAPPY HOLIDAYS

Question 1

For many years, Albert, Betty and Charlie, siblings, have owned Blackacre equally in tenancy in common. They obtained title from their parents. In 2005, Albert executed a valid will leaving his share in Blackacre to his son, Edward, and a mutual fund to his daughter, Diane. They are his only children. These are all his assets and he was widowed at the time. A few months ago, Albert was speaking with Betty and Charlie, who expressed their preference that Blackacre go to Diane when they all pass away, as they felt that she was more likely to keep Blackacre in the family than was Edward. Because Betty and Charlie were getting along in years and experiencing poor health, and because they wished to ensure that Blackacre would go to Diane, they decided that they would sell their interests in Blackacre to Albert at a price he could afford to pay at the time, namely at a 25% discount off fair market value, on Albert's promise that he would leave Blackacre to Diane when he died. Albert then wrote a letter to his children, Edward and Diane, explaining his discussion with Betty and Charlie, and stating that he is leaving all interest in Blackacre to Diane. He also explained that Betty and Charlie were signing this letter along with him as evidence of their understanding and agreement with this arrangement. Albert immediately mailed the letter to Betty and Charlie. He then changed title to his mutual funds to a joint tenancy between himself and Edward. Transfer of Blackacre to Albert was completed and he paid Betty and Charlie in full. Upon leaving the registry of deeds after recording the deed of Blackacre to him, Albert was struck and killed by a bus.

Edward promptly lays claim to the mutual fund as surviving joint owner and petitions the probate court for allowance of Albert's 2005 will.

Diane, Betty and Charlie come to see you. They tell you of the agreement among Albert, Betty and Charlie and they show you the letter that was sent to Edward and Diane. They ask what can be done to get title to Blackacre into Diane.

Give two arguments to effectuate that result, noting any pitfalls, if any, in each. Explain your answer.

Question 2

Mary, a resident of Massachusetts, is dying in a hospital in Massachusetts. She is widowed. She has three children, Nancy, Nina and Naomi, all living at present. She has no prior will. She wishes to leave her bank account to her children and her diamond ring to her niece, Sue. She relates these facts to the patient in the next bed. After some thinking, Mary takes a sheet of paper and writes on it: "I leave my bank account to my children per capita and not per stirpes, and I leave my diamond ring to my niece Sue." On the next line, Mary signs her name and hands the paper to the patient in the next bed asking her to sign also. She does so on the line beneath Mary's signature, and hands the paper back to Mary. Mary then takes a second piece of paper and writes on it: "I declare myself trustee of my bank account and my diamond ring, all of which is to be held for my use for the rest of my life, and upon my death, my bank account is to be distributed in equal shares to my children, and my diamond ring is to be delivered to my niece, Sue." The diamond ring is in Mary's ring box on her dresser at home, where her daughter Nina also lives. It is late, and Mary drifts off to sleep, content with what she has accomplished. She does not awake. Unbeknownst to Mary, as she was closing her eyes for the final time, Nina was involved in an auto accident and died instantly, leaving a baby girl, Charity.

Who gets the bank account and in what shares, and who gets the diamond ring? Explain your answer.

Question 3

In 1998, at the age of fifty-five years, Wendy, widow and mother of two children, Sam and Donna, signed a written trust instrument prepared by her lawyer, and established a money market account in her name as trustee, depositing into the account \$1M. By its terms, the trust was made irrevocable.

The trust provides for all trust property to be held and administered as a single fund, and for income to be paid out of it "to the settlor for her life, and then equally to her children for their respective lives, and upon the death of each, to his or her issue by right of representation, for the term of the trust." At time of creation of the trust, Sam had one child, Steve, and Donna had one child, Deborah. The trust provides for its termination upon the death of the last to die of the settlor and the settlor's children. Upon termination, distribution is to be made to whoever is then entitled to income.

The settlor has just died. She left a will, properly made and executed, which makes distribution of various items of her property (personal effects, small stock portfolio, automobile) to various nieces and nephews, and leaves the remainder of her probate estate to Sam and Donna.

At the time of Wendy's death, who holds what interest in the trust, and who is entitled to what property from the probate estate?

Question 4

George and Theresa married in 1975. It was a second marriage for each. In 1987, George executed a valid will that left his entire estate to Theresa outright, if she survived him, and if not, to be divided equally among all the children of George's and Theresa's first marriages. During George and Theresa's marriage, George generally handled their finances. Following George's retirement in 1998, George and Theresa began spending time each year in Florida; while they were in Florida, Alan, husband of Paula, Theresa's daughter of her first marriage, paid their household expenses using blank checks George had signed and left with him before departing for Florida. George did not have a close relationship with his own biological children, but was very close to Theresa's children. Alan and Paula were generous to George and Theresa, and made various substantial gifts to them over the years.

In May 2008, George was diagnosed with a deadly form of lung cancer that can be caused by exposure to asbestos. After receiving that diagnosis, George hired an attorney whom Alan introduced to him to initiate a lawsuit for his injuries from asbestos exposure. The attorney informed him that the suit could yield a significant settlement or judgment, possibly exceeding one million dollars. George discussed with Alan his wish to direct the proceeds of any such settlement or judgment to a trust for the benefit of Theresa during her life, with any trust assets remaining upon her death to be distributed in equal amounts of up to \$10,000 to each of Alan and Paula's four children, and any amount remaining after those distributions to be divided between Paula (sixty-five percent) and her brother Anthony (thirty-five percent). Paula was to be named as trustee of the trust. George's other assets were to pass in equal shares to Theresa's three children, including Paula. George's four children from his previous marriage were to take nothing under the new will and trust. At George's request, Alan contacted an Attorney Hart whose firm had previously represented Alan and Paula in a variety of personal and business matters, to prepare an estate plan with provisions for the anticipated proceeds from the lawsuit. Alan conducted all communications with Attorney Hart concerning George's estate plan.

During the early morning hours of November 12, 2008, George became extremely short of breath and was taken to the hospital by ambulance. He was stabilized with oxygen, morphine, steroids, and antibiotics. Between 10:00 and 11:00 that morning, Attorney Hart arrived at the emergency room with the completed estate planning documents. Hart had neither met nor spoken with George or Theresa before arriving at the hospital on that occasion. After Hart explained the documents to George and Theresa, they signed them, in the presence of two witnesses from Hart's law office. George died just over two weeks later, on November 28, 2008. Paula filed for probate of George's 2008 will.

Theresa has come to you asking what her rights are and how to protect them. Advise her fully, explaining your advice.

Question 5

Dave and Susan were married in 1965. They had three children, Xerxes, now 25, Yolanda, now 23, and Zena, now 21. In 1990, Dave established a valid irrevocable trust. Susan is named trustee, and she has formally accepted that position.

Article 3 of the trust directs the trustee to "pay all net income, after expenses of administration, to or for the benefit of my children, Xerxes, Yolanda and Zena, in equal shares, until the last of them attains the age of 35 years, and then, at that point, to wind up the affairs of the trust, and distribute all remaining property free of trust to said children equally."

Article 7 of the trust provides for a power of appointment reserved to the settlor "to appoint, by deed or last will with reference to this trust instrument, such portion, including all, of income and principal, to or for the benefit of my wife, Susan."

Article 11 of the trust provides for "a power in each of my children named in this instrument, beginning on the eighteenth birthday of the youngest child, to withdraw from the trust, on an annual basis, the sum of \$5,000.00 or 5% of his or her $\frac{1}{3}$ share, whichever shall be the larger.

Xerxes and Yolanda were in a business venture together over the past couple of years, and things went sour and they were sued. Big Corp. has recently been awarded a judgment against them for \$1M.

Dave died a year ago, leaving a last will. Pursuant to the will, Susan has been appointed executrix of Dave's estate by the probate court. Dave's will provides: "I leave all my property, real, personal and mixed, tangible and intangible, including all property over which I hold a power of appointment, to my wife, Susan, if she survives me, and otherwise to my children, equally."

Susan, in wrapping up the probate proceedings, has put together an accounting of the administration of Dave's estate. The accounting shows, in addition to payment of all proper expenses of administration, distribution of all remaining probate property to herself. In addition, Susan has prepared an accounting for the trust. That accounting shows, after payment of all proper expenses of administration of the trust, distribution of all remaining trust property to herself pursuant to direction in Dave's will. Susan has sent both accountings to each of the three children.

The children come to you asking your advice as to what they should do. How do you advise them? Explain your answer.

WILLS AND TRUSTS
Final Examination
Fall 2009

Professor Ford

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

BEST WISHES AND HAPPY HOLIDAYS

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.

“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.

“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)?

WILLS AND TRUSTS
Final Examination
Fall 2010

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.

BEST WISHES AND HAPPY HOLIDAYS

Question 1

Ten years ago, Ted, a widower, validly executed a formal, witnessed will (Will #1) which contained the following dispositive clauses:

"To my friend, Richard, \$25,000.00 to be used by him for the education of his daughter, Carrie;

The residue of my estate to my friend, Doris, Trustee, in trust, to pay the income for my daughter, Ethel, so long as Ethel may live, and upon Ethel's death, to distribute the trust property to my heirs; the trustee may invade the trust property for the proper care and maintenance of Ethel."

Three years ago, Ted signed a dated, typewritten document titled Last Will and Testament (Will#2). The document was identical to Will #1, except that the last clause of the residuary bequest, giving the trustee power to invade the trust property, was omitted. This will was attested by only one subscribing witness.

Ted recently died. Will #1 and Will #2 were found in Ted's safe deposit box. Stapled to Will #1 was the following note, in Ted's handwriting: "This will is hereby cancelled and revoked. I have made a new will." The note is signed by Ted. The note is dated one day after the date on Will #2.

Ted was survived by the following heirs and legatees:

- (a) his daughter, Ethel;
- (b) his friend, Richard, and Richard's 16 year old daughter, Carrie;
- (c) John and Gil, sons of his deceased sister, Ann;
- (d) Warren, grandson of his deceased sister, Betsy;
- (e) Doris, a friend;
- (f) Sandra, daughter's friend.

Ethel died after Ted, but before distribution of Ted's estate. By a valid will, Ethel left her entire estate to her friend, Sandra.

- a. Did Ted die testate or intestate? Explain your answer.
- b. Assuming Ted died testate, who is entitled to what share of Ted's estate? Explain your answer.
- c. Assuming Ted died intestate, who is entitled to what portion of Ted's estate? Explain your answer.

Question 2

Al and Jake had been close friends and business partners for many years. Both were widowers and each had two children. In 1980, Al executed a will in which he bequeathed "\$100,000.00 to my close friend, Jake, if he survives me; otherwise to the natural persons who are beneficiaries of Jake's last will and testament, and if he dies intestate, to his next of kin." The residue of Al's estate was bequeathed "to my children, share and share alike." In early 2010, both of Al's children died, survived by issue. His son, Charles, left two sons, George and Fred. His daughter, Jane, left a daughter Alice.

Jake had drawn a will in 1981, leaving his entire estate: "one-half to my children and one-half to the State University." In 1982, thinking that his son, Bill, had failed to thank him for an expensive present, Jake drew a codicil providing: "I hereby delete from my will the devise given to my son, Bill. Because of his ingratitude, I leave him nothing." In fact, Bill had sent Jake a thank you letter. However, it had been lost in the mail.

Last week, Al and Jake were killed in an airplane crash while en route to a convention. Al's next of kin were his three grandchildren. Jake's next of kin were his two children, Bill and Mary. Al and Jake each left a net estate of \$500,000.00 in cash and marketable securities.

How should their estates be distributed? Explain your answer.

Question 3

In 1981, John duly executed his will. At that time, John was married to Mary. John had two children from a prior marriage, Robert and Monica. John's will devised all of his estate to his wife, Mary, and expressly excluded his two children. In 1984, John and Mary had a child, Jack. In 1989, John and Mary divorced. John and Mary's divorce judgment and property settlement included a provision creating a trust for Jack, which states that: "One-half of all assets, inheritance or disbursements of any kind, received by the husband from his mother's estate when she dies, shall be placed in trust for his son, Jack."

John's mother died four months ago, and her estate is being probated. John is a beneficiary of his mother's estate. John has just died without having changed his will. John was survived by Mary, Robert, Monica and Jack, each of whom claims to be entitled to a portion of John's estate.

Who is entitled to what share of John's probate estate? Explain your answer.

Question 4

In 1976, Edward and Renee, husband and wife, created a Family Trust. Their only child, Gwen, was named sole remainder beneficiary. Edward was named Trustee, with Renee, and then Gwen, successor Trustee. The trust provided that upon the death of the first of the Settlers to die, the Family Trust shall split into two newly created trusts: the *decedent's trust* and the *survivor's trust*.

When Edward became legally incapacitated in 1992, Renee was appointed his guardian and conservator. Renee subsequently retained Attorney Wissler to prepare papers for Renee to amend the Family Trust. The amendment stated: "The purpose of this Amendment is to eliminate all reference to Gwen and preclude her from being a Beneficiary or Trustee. The Settlers' granddaughter, ROBIN, is substituted in place of Gwen, and if ROBIN should predecease trust termination, then Settlers' granddaughter, PAMELA, shall succeed in place of ROBIN." Robin and Pamela are children of Gwen.

The Trust amendment reads: "The Settlers together may alter, amend, revoke or terminate this Family Trust, in whole or in part, by an instrument in writing signed by them and delivered to the Trustee. Upon the death of the first Settlor to die, the *decedent's trust* shall be irrevocable; the surviving Settlor may alter, amend, revoke or terminate the *survivor's trust* by a signed writing delivered to the Trustee during survivor's lifetime." Attorney Wissler prepared the amendment. Renee signed as settlor and successor trustee, and as Edward's guardian and conservator. Wissler notarized.

The Family Trust also provided: "During the survivor's lifetime, or upon his or her death, the principal of the *decedent's trust* shall be paid over to such of the Settlers' descendants as the survivor may direct by written instrument delivered to the Trustee."

Edward died in November 2010. Essentially one-half of Edward's property was transferred into the *survivor's trust*, and his remaining property was transferred into the *decedent's trust*. Renee died in December 2010. Pursuant to the residuary clause in her will, all her property was transferred to the Family Trust, "as amended." The Family Trust required the trustee, upon the survivor's death, to give the assets of the survivor's trust to "such person or persons, or to the estate of the Survivor, upon such terms and conditions as the Survivor appoints by the last unrevoked written instrument, other than a Will, executed by the Survivor and delivered to the Trustee." Based on the amendment that Renee had executed in 1994, Robin took possession and control of all trust assets in both the *survivor's* and *decedent's* trusts, prompting action by Gwen.

Gwen claims entitlement to all trust assets, asserting that the "amendment" to the trust is invalid to amend the Family Trust because Edward must sign personally, Robin is unjustly enriched if she receives all property from the two trusts, and Attorney Wissler committed breach of fiduciary duty.

What are Gwen's arguments? What are arguments against her? You decide. Explain your answer.

Question 5

Charles died in 1984, and he was survived by his wife, Alice, and four children by his prior marriage: George, Helen, Marcia and William.

The second paragraph of the will of Charles reads as follows: ‘Second: All of the shares of stock of X Corp., which I may own at the time of my death, I give to my son George, in trust, to manage, control and vote as he deems best; and from the net income from said stock to pay annually to my wife, Alice, during her lifetime, the sum of \$1500, and to pay the balance of said annual income to my children, Helen, Marcia, William and George. My Trustee shall have the power and authority to sell and dispose of the stock as he deems fit; and the proceeds shall be reinvested and held by him in trust during the lifetime of my wife. At the death of my wife, if the trust shall have been in operation for a period of 25 years, the Trust shall thereupon terminate and the principal shall be distributed in equal portions to my children, Helen, Marcia, William and George, issue of a deceased child to take its parent's share by right of representation, and the share of any deceased child who leaves no issue shall be divided equally among those who do take a share. But, if my wife shall die before the trust shall have been in operation for a period of 25 years, the trust shall continue until the said 25 years shall have elapsed, the amounts of income payable to my wife being thereafter divided equally among my children, Helen, Marcia, William and George; at the expiration of the said 25 years the trust shall terminate, and the principal of the trust shall be distributed in equal portions to my children, Helen, Marcia, William and George. But if my Trustee shall after the decease of my wife and prior to the expiration of the twenty-five year period, deems it advisable to sell and dispose of the said shares of stock, the trust shall immediately terminate and the proceeds shall be distributed to the said parties and in the said manner as hereinabove provided.’

The fourth paragraph reads as follows: ‘Fourth: All the remainder of my property I give to my son, George, for him to distribute among my children, Helen, Marcia, William and George in such amounts and proportions as he deems just and proper. His judgment as to the method and amount of said distribution shall be final and conclusive on all parties.’

Helen died in 2000, leaving two children, Helga and Harold. Marcia died in 2005, leaving one child, Mortimer. William has just died, leaving no issue.

- a. After the annual payment to Alice, who, and in what proportions, are entitled to receive the *net income* from and after the death of William? Explain your answer.
- b. Who, and in what proportions, are entitled to receive the *principal* from the trust upon the death of Alice? Explain your answer.