

## WILLS QUESTION

In 1990, Jane married Jim when she was 25, and he was 27. They had no children together, believing that the world was a miserable place, and they were determined not to add to the world's problems. (Jim did have a child he did not know about, a boy named Roger, the result of a college dalliance). They did have a pet bulldog, Archie. Both Jim and Jane had large extended families, and both of their parents were (and are) still alive. Jim and Jane liked to go hiking, but one day in 1992, they were set upon by some crazed, moonshine-drinking, no-teeth hillbillies, and they were lucky to escape with their lives (they did, however, sacrifice much of their dignity in the ordeal).

So, when they recovered, Jane went to their lawyer, who drafted her will. Jane's will read in pertinent part as follows.

1. I leave half of my estate to my husband, Jim. If he fails to survive me, then this share shall go to his brother, Tom.
2. I leave the other half of my estate to my sister, Janice, and if she fails to survive me, then to her kids, Tina and Tony.

Jane signed the will in her lawyer's office, and the will was witnessed and signed by Janice's daughter Tina and by the lawyer who drafted the will, Rickey Rouse (Tina worked as a paralegal in Mickey's office, if that's important to your understanding of the story line). Attorney Rouse had prepared another will, in 1988, for Janice, which was duly executed and provided that everything would go to her brother, Todd.

Two years after Jane's will was signed, Jane and Jim had a big fight (it was all a misunderstanding, as you will see), and got divorced.

They both dated other people after the divorce, but happened upon each other by chance in the cookie aisle at the Market Basket in Andover, got to talking, hashed things out, and were remarried two months later.

Jim was in Arizona on a business trip in late 2003, and got bored while sitting on the tarmac in Phoenix. So, since he had wireless access, he downloaded a form will and typed in provisions leaving \$20 to his wife, \$5,000 to the first child of Tom to reach the age of 25, and everything else to the American Red Cross. He was able to print it right on the plane. And then he signed it and put it in his briefcase.

Nine months to the day of their remarriage, they were blessed with a child they named Joey. To celebrate, they decided to go camping in the Arizona desert, leaving little Joey with Auntie Janice. The hillbillies found them again, and this time, Jane and Jim were not so lucky. They were found two weeks later, both of them having expired due to hypothermia (it does get cold in the desert at night, you know). Outside of a few belongings, the only thing found on Jane was a little piece of paper, handwritten in what appeared to be blood, which said, "I want 1988 to stand, because of DRR!" It had her signature.

There are three essay questions on the examination. Allocate your time between the three questions equally. Grading will be weighted accordingly. This is a closed book exam.

I

1. In 1985, Ann, an elderly widow and a resident of the State of Panic, duly executed a will having the following dispositive provisions:

1. I direct that the person serving as my nurse at the time of my death have free use and occupancy of my residential premises for two years following the date of my death.
2. I give and bequeath all my jewelry to my daughters, Amy and Wendy, to be divided in accordance with a letter I have written and filed in my top dresser drawer with such jewelry.
3. I give and bequeath the residue of my estate to be divided of as follows: one-third to my daughter, Amy, one-third to my daughter, Wendy, and one-third to my son, Tom. If any of my children shall fail to survive me, such child's share shall pass to such child's issue, by right of representation.
4. I give and bequeath \$10,000 to my friend Joe, knowing that he will use it in trust to care for my dog, Velveeta.

Shortly before her death, Ann duly executed a codicil having the following relevant provision:

I hereby revoke the one-third share of my daughter, Wendy, granted to her by paragraph 3 of my Last Will.

Ann has recently died. While the codicil and Will have been found, no letter regarding her jewelry has been found.

At the probate hearing, the following claims are made:

1. The nurse caring for Ann at her death wishes to remain in the house for two years as specified in the will. The children want the house sold immediately and the proceeds added to the residue.
2. Tom claims that he is entitled to one-third of the jewelry, but Amy and Wendy have agreed on a plan of distribution between the two of them and are resisting Tom's claim.

3. Wendy's children are claiming Wendy's one-third share, as are Amy and Tom.
4. Everyone is claiming that the bequest to Joe invalid. Joe disagrees.

Discuss the theories upon which the various parties are making their claims and indicate how you believe each of the claims will be disposed of by the court.

## II

Tom Parsons is the star pitcher for a new baseball franchise, the Andover Allstars. The Allstars are in the National League and have just defeated the Los Angeles Dodgers in a playoff series, thereby earning the right to play the Boston Red Sox, the American League champions, in the World Series. It is known that because of the seating capacities of the Boston and Andover stadia and because of the price scale of the tickets, each player on the winning team will receive a bonus of \$20,000, and each player on the losing team will receive a bonus of \$10,000.

Two days before the World Series, Tom executed a document which read, in the relevant part, as follows:

I hereby declare myself Trustee over my World Series bonus, such trust to be for the benefit of my brother, Edward, until he reaches the age of twenty-five.

The successor Trustee named in the document was Tom's father, Charles Parsons.

Tom pitched brilliantly in the first game of the World Series, and Andover won the game, 1-0. However, the next day, Tom was tragically killed in an automobile accident. The dispositive provisions of Tom's fully executed will read as follows:

1. \$100,000 to my Trustees, hereinafter named, to be held as a special trust fund which cannot be alienated, for the benefit of my two sisters, Jane and Anna, because I want them to remain unmarried.
2. The rest and residue of my estate to my wife, Nancy Parsons.

The Allstars went on to win the Series, and players voted a full \$20,000 to Tom, posthumously. However, the management of the Allstars baseball team is holding the entire bonus in escrow, because it is faced with conflicting claims by Charles (as successor Trustee) and Nancy (as residuary legatee). In addition, Nancy also claims that the trust created by paragraph 1

of the will should fail, thereby causing the \$100,000 allocated thereto to become part of the residue. Jane and Anna, model citizens, have agreed among themselves to terminate the trust and split it 50-50.

How should these conflicting claims be decided? Discuss.

III

You are the newest associate in a medium sized law firm and have been asked to review the draft of a will prepared by J.J. Jones, a former associate, who left the firm under delicate circumstances. The client, Trump, is a 55 year old widower. You are asked to recommend any changes, additions or deletions that in your opinion are necessary or desirable. Your recommendation should spell out in some detail: a) what was wrong with the original draft, b) what the result would be if the error was not remedied and c) why your alteration solves the problems Trump's will follows:

Know you all by these presence that this is the Last Will and Testament of Tory Trump.

A. To my good friends Mike Snide, George Alter and J.J. Jones, I bequeath \$20,000 each.

B. To my sister Velma Trump Loren, I bequeath and devise my roll-top desk and its contents.

C. I bequeath and devise all my personal effects to my executor, J.J. Jones, to be distributed to the persons specified in a letter to him which will be found in the same envelope as this Last Will and Testament.

D. I bequeath and devise \$10,000 to my executor, J.J. Jones, in his discretion to distribute the same in such manner as shall best carry out the wishes I have expressed to him.

E. I bequeath and devise \$10,000 to my sister Imelda Trump Loren, to distribute among such of my friends as she chooses.

F. The rest residue and remainder of my estate I bequeath and devise to the Fidelity Trust Co. in trust, to pay the net income quarterly to my sister Imelda Trump Loren, and on her death to her children, said children to divide the principal if and when they reach age twenty-one.

G. I intentionally make no provision for my only child Terry Trump, as her sinful behavior has brought only shame to our family name.

H. In the event that anyone contests this will for any cause, I hereby direct that they receive nothing from my estate, whether under this will, or, if this will is declared invalid in part or in whole, under the laws of intestacy.

I. I hereby swear, under the pains and penalties of perjury, that this is my Last Will and Testament.

s/Tory Trump

S/Alice Andrews (witness)  
S/Bruce Blake (witness)  
S/Mike Snide (witness)

I, Tory Trump, name my friend J.J. Jones executor of my estate and direct that he serve without posting bond or sureties. further direct that he serve as attorney for estate.