

WILLS AND TRUSTS

Mid-Term Examination
Fall 2004

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 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.

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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Fall 2003

Professor Ford

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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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Mid-Term Examination
Fall 2002

Professor Ford

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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.

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2. You are the attorney who drafted T's will in the preceding question. You are not involved in the probate of T' estate; rather, Attorney X is handling it. When T's will is submitted to Probate Court for allowance, R comes to you with a copy of T's will with T's handwriting on it stating just above his signature: "Residuary clause: If any child of mine does not comply with my wishes as stated herein, I give his or her interest herein to my sister, R." R also shows you, from T's records, a copy of a letter from T to Attorney X, dated fourteen days before T's death, asking him to change T's will pursuant to the handwritten changes noted on the copy of the will enclosed with that letter. R states that T was always very fond and protective of her, and had assured her that he always wanted her to have any portion of his estate that did not go to his children.

How do you respond to R? Explain your answer.

3. T's will provides: "All my stock holdings that are contained on a list to be found in the top right-hand drawer of my desk in my study, I leave to The Poverty Project of 123 Main Street, Anytown, U.S.A. All the rest and residue of my estate I leave to my three children as follows: One-half to my daughter, A; one-quarter to my daughter, B; and, one-quarter to my son, C." The Poverty Project is a non-profit corporation of high repute engaged in numerous undertakings to help alleviate poverty. T executes his will at the offices of The Poverty Project in the presence of L, who is the husband of A and the salaried chief financial officer of The Poverty Project, plus two secretaries, G and H, in the office. T signed in the presence of L, G and H. L signed in the presence of T, G and H. During the signing by G, the telephone rang. It was answered by H who left the conference room where the signing was taking place to go to her desk to get a file. She picked up the phone there and spoke further, reading from the file. There is a clear line of sight from the conference room table to H's desk, though H did not look back when leaving the conference room nor look up when at her desk. The entire phone call interruption lasted no more than two minutes, when H returned to the conference room, and signed the will as a witness, in the presence of T, L and G, G having finished her signing prior to H's return.

A has two children, and B and C each have one. A predeceased T. B and C come to you upon T's death, complaining that the list of stock found in the top right-hand drawer of the desk in T's study (desk list) is not the list of which T had spoken to each of them. B and C present you with a list of stock, typed in the same fashion and apparently on the same typewriter as the list found in the drawer, each unsigned and undated. The list found in the drawer contains more stocks of greater value than those on the other list (file list) found in T's file cabinet among promotional and solicitational literature from The Poverty Project. The original of the file list is nowhere to be found. B and C point out that T was hospitalized during his final illness, and A had a key to T's home.

B and C claim that they are being cheated out of their fair share of T's estate, and want you to represent them. What arguments do you make in their behalf, and what prospect of success do you give them? Explain your answer.

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Mid-Term Examination

Fall 1992

Professor Ford

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Examination:

1. T and his wife have been life-long members and supporters of the Catholic Church in Ireland, following in the footsteps of T's now deceased parents. T and his wife, now live in Anystate, U.S.A., with their son, S, and daughter, D. S is married to M and they have one child, C, but S has been secretly seeing another woman, which liaison T has learned about and has been trying to encourage S to break off. D is unmarried and has been dating a Protestant man, which T has likewise been trying to encourage to be broken off. T, therefore, has duly executed his will which provides that all his estate shall go to his wife for life "with remainder to my son, S, and my daughter, D, to share equally; provided however, that S has not left his wife, M, and provided that D does not marry a man not of the Catholic faith." Subsequently, S leaves his wife and D marries a Protestant man.

T has one brother, B, with whom, as joint tenants, he owns investment real estate known as Blackacre. T and B were travelling separately to a business meeting. Each went by his own private plane, leaving at approximately the same time, but from different airports. Both were involved in accidents when their airplanes went down suddenly. When their bodies were discovered, both were dead. T was discovered at 2:30 p.m., and B at 3:00 p.m. on the same day. B was not married and had no children, but left a sister, R. Found among B's papers at home is a handwritten note reading: "If I do not return from my plane trip to my meeting with T, want my sister, R, to have my securities investments, bank accounts and all my other personal property. Signed, B."

How is T's estate to be distributed? How is B's estate to be distributed? Explain your answer.