

WILLS AND TRUSTS

Final Examination
Spring 2019

Professor Ford

Instructions:

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BEST WISHES AND HAVE A NICE SUMMER

QUESTION 1

Helen has always been a resident of Massachusetts. She executed a valid last will in 2015. Under that valid will, she left her home to her son, Charles, a Bridgewater Savings bank account to her daughter, Alice, the sum of \$120,000 to her daughter, Betty, and the sum of \$5,000 to each of her grandchildren and great-grandchildren. In 2018, Helen made handwritten changes on her 2015 will. She left alone the provisions regarding the house to Charles and the \$120,000 to Betty. She crossed out the words “Bridgewater Savings” and its account number, and replaced them with the name “Rockland Trust” and the account number for her account at that bank. She also crossed out “and great-grandchildren” from the \$5,000 bequests. Helen initialed each place where she crossed out or wrote something onto the will document. She then put a notation on the signature page of the will identifying the changes she had made and signed and dated that notation.

Helen died owning her home, an account with a \$100,00.00 balance at Bridgewater Savings under the account number that was contained in the 2015 will and crossed out, and an account with a \$200,000.00 balance at Rockland Trust under the account number that she wrote into the will in place of the Bridgewater Savings account number that she crossed out.

Helen was survived by all her children, Charles, Alice and Betty, six grandchildren and twelve great-grandchildren.

How is Helen’s estate to be distributed? Explain your answer.

QUESTION 2

Tess died on December 3, 2018. She was survived by six children and eight grandchildren. Tess did not have a surviving spouse.

On November 22, 2013, Tess had signed a three-page paper entitled “My Last Will & Testament.” The paper is in the form of a letter and is addressed “To all my children.” Tess signed the letter at her kitchen table while she and her two friends, Maggie and Bess, were sitting there having morning coffee together. The first sentence of the document reads as follows: “In the event that I don’t make it back from my safari trip to Africa in January, I wish to bequeath you all of the property & personal belongings divided equally to the six of you & to the seven grandchildren.” Tess did, in fact, survive the safari trip and lived for five more years before her death in 2018.

In November, 2013, when Tess signed her letter, she had six children and seven grandchildren. In 2015, Tess’s son, Daniel, died, and an eighth grandchild to Tess, Elliot, was born to Daniel’s wife eight months after Daniel’s death. In 2016, Raymond, one of Tess’s grandchildren living at the time of the signing of the letter, died, and a ninth grandchild, Frances, was born. Tess therefore had six children and seven grandchildren living at the time her letter was signed, and at the time of her death, she had five living children and eight living grandchildren, albeit not including all of the seven grandchildren alive at the time of the signing of the letter.

Last week, Tess’s daughter, Sara, duly executed and delivered to the personal representative of Tess’s estate, a disclaimer of her interest in her mother’s estate. Sara is the mother of three of the surviving grandchildren.

Describe the possibilities as to how Tess’s estate might be distributed based upon the above facts. Think of the issues and the possible ways they can go. Consider what arguments might be raised, and by whom, to sway the final outcome in his, her or their favor? Explain your answer.

QUESTION 3

A.

Rose leased land to David and Jean. Section 3 of the lease agreement states that, at Rose's death, Rose's adopted daughter, Emily, shall step into her, Rose's, shoes as landlord and have all Rose's rights and obligations under the lease, including the right to receive lease payments. Emily was not party to the lease.

Rose has died, leaving a valid will which devises all her property to her significant other, Thomas.

Following Rose's death, Thomas and Emily both have claimed ownership of Rose's rights and obligations under the lease.

What are the respective arguments of Emily and Thomas? Explain.

B.

Would it matter if Rose had given in her will a power of appointment to Emily, exercisable in favor of any one or more of Rose's heirs at law?

Explain how and why.

QUESTION 4

Quentin has just died. He had previously established a revocable trust, naming himself sole beneficiary for his lifetime, and naming “my wife, Julie,” successor life beneficiary, and his children, Luke, Mike and Nina, by his previous marriage to Mary, and Julie’s children, Jane and Jacob, by her previous marriage, equal remainder beneficiaries. The trust was funded by Quentin with the personal residence in which he and Julie lived. Quentin also had at the time of his death a 401k retirement account on which he had placed a death beneficiary designation naming “my wife, Julie” 100% beneficiary. Lastly, Quentin had an old life insurance policy from 20 years ago with a death beneficiary designation naming “my wife, Mary” as 100% beneficiary. Quentin’s only probate property at his death was his personal property that was worth no more than \$5,000.00.

Quentin and Julie divorced, signing a separation agreement containing a provision stating that they each waive any and all interest in any property or property rights of the other. Quentin did not change his trust or the death beneficiary designation on either his 401k retirement account or his life insurance policy before he died.

Quentin had no children by Julie. Quentin was survived by all his children, Mary, Julie and both of Julie’s children.

Quentin died in an auto accident in which he was at fault. Julie was a passenger in his vehicle. She was severely injured with permanent disability requiring expensive care for the rest of her life. Her insurance will pay for only a portion of the cost and only for a limited period of time, leaving Julie personally liable for a significant portion of the cost.

What rights in or claims against Quentin’s trust property, 401k retirement account and life insurance death proceeds does each survivor of Quentin have? Explain your answer.

QUESTION 5

George and Ethel were married with three children, Xena, Yogi and Zen. It is a first marriage for each and neither had any other children. Ethel died four years ago, survived by George and the three children.

At her death, Ethel left a trust, funded at the time of her death, that provides that the trustee shall pay at least quarterly all net income, after administrative expenses chargeable to income, to George for the remainder of his lifetime, and the trustee shall also have discretion to pay to George principal in such amount or amounts from time to time as the trustee shall deem appropriate to provide for the comfortable support of George for the remainder of his life. Further, the trust gave to George a general power of appointment exercisable in his last will to appoint the remainder of the trust at his death. Xena is trustee of the trust.

George and Xena had always had a difficult relationship, that only got worse after Ethel died. Xena was a “free spirit” who was too “free” for George’s liking. When Xena was in her late teens and twenties, she experimented with drugs and it got out of control such that she landed in rehab a number of times, but she was always the apple of Ethel’s eye and she has been clean for the past twenty years. George was still not fully comfortable that Xena had settled down and was on the straight and narrow. George went to his lawyer and had a new will drafted leaving his entire estate in three equal shares, the shares for Yogi and Zen to go to them outright and free of trust, but directing Xena’s share into a trust to be administered by her cousin, Fred, who is a lawyer. Fred and Xena get along well enough, but Xena was not happy with this turn of events when she happened to stumble upon a copy of George’s new will.

When Xena learned of George’s will, she went to her own lawyer to have a new trust drawn up into which she decanted the property from her mother’s trust. The new trust was the same as Ethel’s trust, except it did not contain the power of appointment to George and it directed distribution in equal shares to the three children free of trust upon George’s death.

George has just died and his last will mentioned above has been admitted into probate. The personal representative of George’s probate estate is Fred who is insisting that Xena’s share of her mother’s trust remainder be delivered to him as trustee for Xena. Xena insists that George did not have a power of appointment at his death because of the decanting, and even if he did, he did not exercise it.

- A. Did George exercise the power of appointment given to him by Ethel? Explain.
- B. Was the decanting by Xena valid? Explain.
- C. Based upon your answers to A and B, how is Xena’s share of her mother’s trust to be handled?

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BEST WISHES AND HAVE A NICE SUMMER

Question 1. Three men, Huey, Dewey and Louie, enter a bar. They order drinks, and after having had a few, Huey says that he was recently told by his doctor that he has incurable cancer and only a few days, at best, to live. He says that he has appreciated all that Dewey and Louie have done for him, giving him moral and financial support when he had run into hard times, always being there for him through thick and thin, helping him and his children when his wife ran off to Hollywood leaving him with two young children. Now he wanted to show his appreciation. He ordered another round of drinks for the three of them, the best Scotch in the house, and gave a toast to his two best friends. They drained their glasses. Then Huey took a cocktail napkin, and borrowing a pen from the bartender, he wrote the following on the napkin:

“Knowing that my time in this life is very short, and desiring to repay the two best men in the world for the kind generosity and support that they have shown to me and my family, I hereby give to Dewey and Louie my investment accounts with Trusty Investments, my IRA in the First National Bank, my Dodge Dart automobile and all my other tangible personal property, as little as that may be. I do this freely of my own accord.”

Huey then ordered a second round of the best Scotch, toasted his friends again and they all drained their glasses.

Huey then turned to the patron sitting next to him at the bar and asked him to witness his signature to what he had written on the napkin. Huey signed and the patron signed his name as witness. Then Huey got up from his bar stool, and walked to a table of patrons sitting nearby, staggering a bit as he did so, and stated to patron number two seated there that he wished to repay his two best friends for their kindness and generosity, and that he had signed his name freely and voluntarily. Patron number 2 then signed on the napkin, writing “witness” beneath his signature. Huey thanked patron number two and returned to his friends at the bar. Huey stood between them as they sat on their respective stools. They embraced as Huey said: “I love you guys”. As they released their embrace, Huey slipped to the floor dead.

At the time of entering the bar, Huey did not have a will and his property consisted of his investment accounts at Trusty Investments, his IRA at First National Bank, his Dodge Dart, various items of other tangible personal property, and a savings account at Second Bank.

Discuss all claims to ownership of the property listed in the preceding paragraph that can be raised, who can raise those claims, and the basis for such claims. Do you have all the information you need? If not, what is needed? How might that information affect your answer? Explain, explain, explain.

Question 2. Professor Wonderful, unmarried and without children, was greatly admired by all his students. They looked up to him for his keen legal mind, witty sense of humor and inspiration to all who were around him. Professor Wonderful was nearing the end of his illustrious teaching career and wanted to provide one final inspiration to his students. So, he drafted his last will which was duly executed. At his death, his estate was of sufficient size to be able to pay all bequests.

A. The will provides: “I leave the sum of \$10,000 to each student in my Wills and Trust class this coming semester who attains a final grade of B or better.” When the semester began, Professor Wonderful announced to his students what he had written in his last will. All semester, the students studied wills and trusts very diligently while images of \$10,000 danced in their heads each night as they slept. Finally, the semester came to a close and Professor Wonderful graded the exams. A quarter of the students received grades of a B or better. That night, Professor Wonderful lay in bed before falling asleep, musing to himself that he was not really being cruel to his students. No, no. Rather, he was teaching them an important lesson that hard work is its own reward. Professor Wonderful went peacefully to sleep that night, but he never awoke. His will was admitted to probate without contest. The students who received a grade of B or better claimed their \$10,000 each from the Professor’s estate.

Did Professor Wonderful teach one final lesson to his students, or was the joke of him? Are they entitled to \$10,000 each? Why, why not? What are the arguments for and against? Explain.

B. Professor Wonderful’s last will contained a further provision as follows: “I leave \$50,000 for my neighbor, Johnny, who has faithfully mowed my lawn and shoveled my walk for the past four years, to be used for his higher education, now that he is a senior in high school.” Johnny graduated from high school and was accepted to college, but he died three days after Professor Wonderful. Johnny was 18 when he died, and he left a will stating: “I leave all my property and all interests in property to which I am entitled to my little brother, Tiny Tim, to be used to pay for the operation he needs so he will be able to walk.”

What disposition is to be made of the above \$50,000? Take it step by step from Professor Wonderful’s estate. Consider competing claims. Explain.

C. The final paragraph to Professor Wonderful’s will states: “I leave all the rest and remainder of my estate to the Animal Rescue League of Essex County and my housekeeper, Mabel, share and share alike.” However, there is no organization by the name of Animal Rescue League of Essex County.

What happens to the rest and remainder of Professor Wonderful’s estate? Consider who might have a claim and the basis of any such claim. Explain your answer.

Question 3. Jason and Vickie are married and florists. They have always been intrigued by the subtle scents of various flowers and how they could be melded together to create still new scents. Often, after they closed their florist shop for the day, they would spend hours in their shop smelling different combinations of flowers. They pressed flower petals together, mixing their oils and comparing the different scents. In time, their older daughter, Liza, joined them, and together they developed formulas for different perfumes. Liza then suggested that they develop scents for soaps and skin lotions. The three formed a company, Sweet Scents, Inc. (SSI), to market their products. Soon, those products gained prominent position in the scented products market. Jason and Vickie's other two children, Martin and Mary, do not work in the business. Each Jason, Vickie and Liza own one-third of the company's shares. Over the years, Jason and Vickie declined numerous offers to buy the company. Liza wanted to sell her shares, but buyers insisted on receiving a majority share. Jason and Vickie believed that their success was in their personal attention to every detail of research and production. They also were very frugal, preferring to keep the company's profits within the company for reinvestment. As a consequence, the company has almost no debt. An appraiser recently valued the company at \$100 million.

A. Suppose Jason dies intestate. Describe the likely distribution of his estate. Explain why.

B. How would your answer to Question A change, if at all, if in return for Liza's drawing a minimal salary, Jason and Vickie had promised her that they each would leave her one-half of their shares in the Company. Explain.

Regardless of your answer to Questions A and B, for the remaining questions assume the following additional facts. When Jason and Vickie decided to retire, they made Liza the CEO of SSI. Shortly thereafter they signed an irrevocable trust agreement naming themselves as co-trustees, the survivor as sole successor trustee, and their lawyer, Fred, as the next successor trustee. Fred drafted the trust instrument. They funded the trust with their shares in SSI. At the same time, they duly executed mirror-image wills in which they each left all their property to the then acting trustee of the irrevocable trust. The trust instrument provides that, "during the life of the settlors, or their survivor, the trustee may distribute so much of the income and principle to either settlor as the trustee determines is in the best interests of the settlors." The trust instrument further provides that, on the death of both settlors, the net income is to be paid quarterly to Liza, Martin, and Mary in equal shares, and that the trustee "shall have sole and absolute discretion to distribute principal to such of our children as the trustee determines is necessary for the child's health, education, support or maintenance." The trust has a spendthrift clause and provides that "no trustee shall be liable except for bad faith." The trust also states that "the prudent investor rule shall not apply to this trust. We strongly urge (but do not require) the trustees to retain any shares of Sweet Scents, Inc., that are received from us."

C. Suppose that, a week after Jason and Vickie established the trust, Jason hit a pedestrian, Paula, with his car, seriously injuring her. Jason was at fault. Discuss what rights and remedies, if any, that Paula might have against Jason's interest in the trust. Explain.

D. Suppose Jason and Vickie both die two weeks after establishing the trust. What happens with the trust property now and going forward to eventual trust termination? Explain.

Question 4. Refer back to the facts in the preceding Question. Regardless of your answers in that Question, for purposes of this Question, assume that Jason and Vickie are dead, that the trust is valid, and that it was funded with all of Jason and Vickie's stock in SSI.

A. Suppose Fred asked for your advice about his fiduciary obligations with respect to the management of the trust property. What would you tell him? Explain.

B. How would your answer to Question A change, if at all, if Liza located a buyer for SSI and a reputable investment bank had opined that the price, to be paid in cash, was fair? Explain.

C. How would your answer to Questions A and B change, if at all, if the trust instrument provided that "we direct that no trustee shall ever divest the trust's shares in SSI. No court shall ever allow deviation from this direction." Explain.

D. Suppose that, as trustee, Fred continued to vote the trust's shares in SSI in favor of keeping Liza as CEO. In that capacity, Liza continued the practice of her parents of keeping company profits within the company. At the same time, Fred refused Martin and Mary's requests for a distribution of principal. Discuss what rights and remedies, if any, that Martin and Mary might have against Fred. Explain.

E. How would your answer to Question D change, if at all, if at the relevant time Fred was also the primary outside counsel for SSI? Explain.

F. How would your answer to Questions D and E change, if at all, if Martin was in severe financial distress and about to go bankrupt? Explain.

Question 5. Herb and Wanda were married. It was a second marriage for each of them. They each have children of their respective first marriages. Neither of them has had any child since. Herb died fifteen years ago, survived by his wife, Wanda, and three children, Andy, Bandy and Candy. He left a valid will that was probated. Herb's will reads in part:

"I leave my interest in my personal residence at 123 Main St., Andover, MA, that I own as tenants by the entirety with my beloved wife, Wanda, to my children, Andy, Bandy and Candy, if they survive me, or to their respective children by right of representation. I leave my solely owned oceanfront home in Palm Beach, FL, to my said wife, Wanda, for life, remainder to such of my children as my wife, Wanda, shall appoint in her last will making specific reference to this power of appointment, and provided her said will shall have been admitted to probate no later than six months after her death, or otherwise to my children equally, or to their respective children by right of representation."

Wanda died seven years ago, leaving a last will which was admitted to probate four months after her death. Wanda was survived by her two children, Donna and Elsa. Wanda's will provides in part:

"I hereby exercise that certain power of appointment given to me by my late husband Herb's last will over his oceanfront home in Palm Beach, FL, in favor of my step-son, Andy, for his life, remainder to such of my issue as he shall appoint by deed or will. I leave all the rest and remainder of my property to my children by right of representation."

Andy died five months ago, leaving a last will which was admitted to probate last week. He was survived by his children, Xavier, Yolanda and Zeke, and by Bandy, Candy, Donna, Elsa and Donna's daughter, Flo. His will reads in part:

"I leave all the rest and remainder of my estate, wherever situated and including all interests and partial interests in property to which I am entitled, to my step-mother Wanda's granddaughter, Flo."

- A. Who holds, or has a viable claim to, what interest in, or power over, each of the MA and FL properties at Herb's death?
- B. Who holds, or has a viable claim to, what interest in, or power over, each of the MA and FL properties at Wanda's death?
- C. Who holds, or has a viable claim to, what interest in, or power over, each of the MA and FL properties at Andy's death?

Caution: What additional information do you need? Present arguments in the alternative as needed. Explain, explain, explain.

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QUESTION 1

Fred never married, he had no children or siblings, and his parents were both deceased. However, during his seventy-four years he formed many close friendships with various colleagues and their families, as well as with brothers Bill and John, long-time patients he had treated since childhood.

In April, 2017, Fred's health was deteriorating due to a terminal illness. He had surgery to remove a metastasized tumor. He was immediately transferred to a rehab hospital. He died ten days later on April 21, 2017.

Fred and Bill shared an especially close relationship. Fred was very active in guiding Bill's education, assisted in finding him employment, sometimes supplemented his income, and often traveled with him, especially to Anguilla; Bill resided with Fred at certain times, drove Fred to doctor visits, regularly visited with him during the early stages of his illness in 2016 and 2017, brought Fred his mail while he was convalescing at a friend's home, and was very involved in the planning, design, and building of Fred's Anguilla home. However, between February 26, 2017, and April 18, 2017, the final months of Fred's illness, Bill neither telephoned nor visited Fred after a disagreement between the two men in February, 2017, regarding Bill's dire financial situation. In March, 2017, Fred expressed to his Attorney that he felt that Bill was not capable of handling the caretaking of his (Fred's) Anguilla property and wanted to place the property in a trust.

On March 12, 2017, Attorney met Fred at the rehab hospital to discuss placing the Anguilla property into a trust, removing Bill as a beneficiary of the tangible items listed in his will, and nominating his colleague, Rachelle, as personal representative of his estate. Fred met again with Attorney at the rehab hospital on April 9, 2017, to discuss and execute the newly drafted codicil to Fred's October 21, 2014, will, and a new health care proxy. Fred's signature on each instrument was witnessed by two staff members of the rehab hospital.

On April 12, 2017, Attorney returned to the rehab hospital with two of his employees to witness Fred's signing, which they did. Fred acknowledged and signed the trust and deed into trust; he next signed his revised will and then signed the beneficiary designation form for his IRA, changing the beneficiary from Bill to the daughters of a colleague. Fred had had a long history of interest and devotion to these sisters and provided them past financial gifts, provided advice on their educational choices, and attended school graduations. Fred named them beneficiaries of his trust. However, Fred declined, upon Attorney inquiry, to remove Bill and John as residuary beneficiaries under the will. Fred was gaunt and appeared to be in periodic pain during the signing process, but he appeared to follow the discussion in a manner consistent with prior meetings, making regular eye contact and appropriate responses to questions. Fred's medical records show some "instances of confusion" in the days leading up to, and following, the execution of his will and change in beneficiary designation.

Bill is challenging the validity of Fred's April 12, 2017, will, trust and death beneficiary designation on grounds of capacity.

Discuss applicable test(s) of capacity and burden of proof. What is your assessment as to validity of each legal instrument in question? Explain your answer.

QUESTION 2

Eva was 87 years old when she died. She had practiced bankruptcy law for 54 years. Although her body was weakening with age, she was still mentally acute to the end and she knew what she wanted. When she died, she was sitting upright propped up with pillows on her bed, laptop computer on the bed beside her with printer on her bedside stand within arm's reach of the bed. In one hand was a pen and in the other was a document that was printed and read as follows:

"Today is May 1, 2017. I am dying. My end is imminent. This is what I want. I give all my non-retirement investments and bank accounts and certificates of deposit to my dear son, Todd, to provide for his little nieces, my grandchildren, the daughters of my own sweet daughter, Deborah, who, with her devoted husband, was abruptly taken from us by that horrible car accident last week, that he, Tom, may have the financial ability to care for those sweet little girls in his home which has been a place of such sadness since Tom's loss of his job and his girlfriend who ran away with his dog. All the rest and remainder of my property I leave as I have previously arranged."

This paper has a signature line at the end. The word "Eva" is very unevenly but legibly written at somewhat of an angle down to the right from the signature line. There is a further mark on the page, but it is illegible, with just a line running down off the page.

Eva left a valid will that was dated in 2014, previous to the document in her hand at death. Her computer indicates that the document in her hand was last saved just minutes before her death. The earlier will leaves all Eva's estate to the Animal Rescue League of Massachusetts. It was written in a happier time, when Tom was a successful salesman for a pharmaceutical company and Deborah was a leading bankruptcy lawyer in her own right.

Until she prepared the May 1, 2017, document, Eva owned investment accounts, bank accounts and certificates of deposit, all in her individual name alone and without any death beneficiary designation. She owned a life estate in her condominium home and her son and daughter owned the remainder interest which they held as joint tenants. Eva also owned a retirement account that named her son and daughter as equal tenants in common beneficiaries. Lastly, Eva was receiving Social Security retirement benefits.

The Animal Rescue League of Massachusetts has offered the 2014 will into probate and there is no basis to challenge its admission into probate, unless there is a subsequent will. Tom asks you whether the document found clutched in his mother's dead hand is a valid will.

What can he do? Is there any way to fulfill Eva's dying wish for her sweet little grandchildren? Explain your answer.

QUESTION 3

Priscilla died intestate in 2014; her husband, James Cotgedge (James), had predeceased her. Priscilla and James had two children during their marriage: a daughter, Jamie, who enjoyed a close relationship with Priscilla, and a son, Michael. Edward was Priscilla's stepson, and except for a few short visits and a summer spent living with her and James in Marblehead, Edward lived across the country and was generally uninvolved in the family affairs.

Prior to her death, Priscilla established a valid trust with Bank of America as trustee. Priscilla established the trust in November, 2007, by signing a trust agreement and schedule of beneficiaries with Bank of America. The parties stipulated that while Priscilla had signed the trust agreement, the handwriting on the Bank of America account funding the trust was not hers. The trust's schedule of beneficiaries named her husband, James, as the sole primary beneficiary, and named two people as contingent beneficiaries: "James Cotgedge, Jr." was to receive a sixty-six percent share, and "J. Edward Cotyup" was to receive the other thirty-four percent share. Each was identified as Priscilla's "son," but no Social Security number or date of birth was entered for either of them. In addition, Priscilla's Social Security number was incorrectly recorded on the schedule which showed her as the income beneficiary for her lifetime. The parties stipulated that "J. Edward Cotyup" was a reference to Edward. No person with the name "James Cotgedge, Jr." exists in either Priscilla's or James's families.

In October, 2016, two years after Priscilla's death, Bank of America notified Edward that he was entitled to both shares of the trust and that it intended to pay him the full account balance. Jamie, as Personal Representative of Priscilla's estate, then sought to prevent Bank of America from distributing the sixty-six percent share to Edward, claiming in a letter that she believed that share "must be made payable to the estate of Priscilla." In December, Bank of America agreed to refrain from distributing the trust property pending the filing of a complaint for instructions and a subsequent court order. Bank of America took no position on the question of who was entitled to the share, stating only that it would pay it to whomever the court determined was the proper beneficiary. Subsequently, on May 5, 2017, Jamie filed a complaint for instructions in the Probate and Family Court. While Jamie initially asked for a declaratory judgment that Bank of America pay the share into Priscilla's estate, she subsequently abandoned that strategy, intervened in her individual capacity, and sought payment of the share directly to herself instead of to her mother's estate.

The parties agreed that Edward was entitled to the thirty-four percent share; however, Jamie and Edward each testified at trial to his or her belief that he or she was the person incorrectly recorded as "James, Jr." Following trial, the judge found that Jamie had not proved that the trust beneficiary form did not reflect Priscilla's intent. The judge found "no evidence to prove that the beneficiaries on the form were not as Priscilla intended or that Priscilla intended to distribute any of the trust funds to Jamie." Priscilla was a legal secretary and the wife of a local attorney.

How is the 66% share to be distributed? Explain your answer.

QUESTION 4

Harry is widowed and has one son, Jacob. Harry is financially secure, but his health is declining and he is contemplating his death. Harry therefore has his attorney prepare and Harry signs the following writing:

"I hereby transfer my entire stock portfolio to Federal Trust Company in trust for my son, Jacob. All income shall be payable to Jacob during his lifetime and the remainder shall be payable to Harry's grandchildren who survive him. Also, during his lifetime, Jacob shall have the right to withdraw up to 5% of the then principal balance of the trust. However, no beneficiary under this trust shall have the right to transfer or alienate his or her interest in the trust prior to actual receipt or distribution from the trust, and no beneficial interest shall be subject to claims of any creditor of a beneficiary. Settlor hereby reserves the right to revoke this trust in writing delivered to the trustee."

Subsequently, Jacob married Lisa and they had a daughter, Emily. Jacob and Lisa then divorced and Lisa was awarded alimony and child support for Emily. Jacob has no assets and his only income is what he receives from his father's trust. Jacob therefore depends upon the trust income for his own support. He is, however, willing to resolve his support obligations through a lump sum payment to Lisa if he can receive the full proceeds from the trust.

Lisa is willing to accept a lump sum payment, or otherwise she is looking for the income and any portion of principal that she can secure from the trust through Jacob. The trust income is insufficient to meet Jacob's obligation to Lisa, and so Lisa is demanding all of the income from the trust directly from the trustee and she is insisting that Jacob exercise his right of withdrawal from the trust to the full extent needed to fulfill the support obligations that are due to her.

When Harry learns of Jacob's situation, he immediately telephones Federal Trust Company and informs them: "My trust is hereby revoked." Harry then immediately sat down and wrote out a confirmatory letter to Federal Trust Company, but the stress of the situation was too much for him: he had a heart attack and died immediately. The letter to Federal Trust Company was found clutched in his hands when his body was discovered on the floor. Harry died intestate.

Not certain of the legal ramifications of all that has transpired, Jacob prepared and delivered to Federal Trust Company a written notice signed by him in his behalf, and signed by him and Lisa in behalf of Emily, stating that the trust is terminated.

Federal Trust Company, as trustee, Jacob on his own behalf, and Lisa in behalf of Emily have presented a joint petition to the probate court for a determination as to the status of the trust property and rights therein.

Who has what rights to the property? Explain your answer.

QUESTION 5

In 1994, Beth duly executed her will devising "All my property, and all property over which I hold a power of appointment, to Charlie".

In 1996, Tess duly executed her will devising her residuary estate "to such person or persons as my sister, Beth, shall by her last will appoint."

In 1998, Beth died.

In 2000, Tess died.

Charlie claims the residue of Tess' estate.

Is he entitled to it? How would you argue for him; what legal theory or theories would you argue? Why?

WILLS AND TRUSTS

Final Examination
Spring 2016

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 your conclusion in the alternative.

All questions are of equal weight.

You have **three hours** to complete this exam, unless you specifically are otherwise directed.

BEST WISHES AND HAVE A NICE SUMMER

Question 1

J.R. and Sue Ellen were married, with a son, John Ross III. J.R. and Sue Ellen had separate, valid wills which state: "I leave all my property to my spouse if my spouse survives me. If my spouse does not survive me, I leave all to our son, John Ross III."

J.R. was diagnosed with cancer and he underwent chemo and radiation treatment. Treatment did not go well, and J.R.'s health started failing rapidly. Doctors told him he had only weeks to live. J.R. decided to make the most of what time he had left. By that, he meant fun.

He had been having an on-and-off affair with his secretary, Mary Louise. Sue Ellen had previously suspected the affair, but J.R. denied it. Believing he was dying, J.R. decided to have one final rendezvous with Mary Louise. Sue Ellen found out and went to confront them at the hotel she was told they had gone to the night before. When Sue Ellen found J.R. and Mary Louise in the hotel restaurant eating breakfast, she approached them, screaming at J.R., "How could you?" Sue Ellen saw a steak knife on the table and picked it up and held it out pointed at J.R. Mary Louise reached into her handbag and took out a gun. She ordered Sue Ellen to drop the knife. Sue Ellen looked at her, Sue Ellen's face filled with rage, and then she suddenly lunged at J.R. with the steak knife stabbing him in the neck, severing his carotid artery. J.R. died in minutes. At the same time, Mary Louise fired her handgun twice, two bullets striking Sue Ellen, who died a week later. Just before he gasped his last breath, J.R. held out his arm toward Mary Louise saying, "I want you to have this watch." It was a brand new gold Rolex.

Nine months later, Mary Louise gave birth to a girl, Cheryl, J.R.'s daughter. John Ross survived both his parents.

J.R. and Sue Ellen's property on that fateful morning consisted of the following:

- A. their home, held as tenants by the entirety;
- B. J.R.'s IRA naming Sue Ellen as primary beneficiary and John Ross as secondary beneficiary;
- C. an automobile title to which was in J.R.'s name alone;
- D. a checking account in J.R.'s name alone;
- E. a checking account in the joint names of J.R. and Sue Ellen;
- F. a trust of which J.R. was grantor funded with various stocks naming J.R. as beneficiary for his life and John Ross remainder beneficiary; and,
- G. J.R.'s Rolex watch.

How is each item of the above property to be distributed, tracing it to its final disposition to a living taker? Explain your answer.

Question 2

Jack died in Massachusetts a resident of Andover, Massachusetts. He left a valid will held by his attorney for safe keeping. The will states that he leaves all his property to his second wife, Judy, trusting she will treat his children properly in her last will. This will is dated May 19, 2008.

Found among Jack's papers in his desk at his Andover home, following his death, is a form will from the internet, preprinted with blanks filled in in Jack's handwriting, as follows:

"I leave my home to *my wife, Judy, so that she may appoint it to or among any of my children as she shall deem best*. I leave all my other possessions to *my children* to share and share alike."

There is no attestation language or notary acknowledgement on the document. Jack signed the document at the end. Opposite Jack's signature is the date July 1, 2010.

Both wills were made while Jack was a resident of Montana, a holographic will jurisdiction.

Jack is survived by his wife, Judy, and his children Abby, Betty and Charley.

Following Jack's death, Judy lived in the Andover home for the remainder of her life without interference from Jack's children, and she has just died, leaving a valid will which reads in its entirety as follows:

"After payment of my just debts, I leave all my property to my daughter, Debby."

Prior to her death, Judy had run up a large credit card debt. Judy had had difficulty trying to pay it down, and so her daughter, Debby, had assisted her with payments. Nonetheless, Judy left a balance of \$100,000 in credit card debt, even after exhausting her probate estate. The credit card company sued and obtained judgment against Judy before she died. Now they are suing Judy's estate and Debby to recover the Andover home for Judy's estate so it can be applied to the debt.

Who has what claim to the Andover home? Explain.

Question 3

Frank and Gert are married. Each has a valid will. Frank's will recites that he leaves all his property in trust to be established by the personal representative of his estate, as trustee, for the benefit of all their children. Gert's will leaves all her property to "whatever trust is established under the last will of my husband, Frank."

Frank and Gert have 3 children, Helen, 14 years old, Iris, 12 years old, and John, 10 years old. Neither Frank nor Gert has any other child.

Frank, Gert and John have been in an auto accident. Frank was pronounced dead at the scene. Gert survived and was transported to the hospital where she was pronounced dead one week later. John survived, but is permanently disabled.

Frank and Gert's assets consist of their home, nonretirement investments, a bank account, CD's, and two automobiles. All property is jointly held. They had no debts.

John is eligible for public benefits. The guardian of the children wants to maximize resources for all the children. If John takes from his parents, he will lose his public benefits, and there will be fewer resources for the other children. The guardian, in John's behalf, is not agreeable to reformation of the trust to remove John as beneficiary so as to free up funds for spending on the other children. John's public benefits will be sufficient to provide for John's care, without reliance upon trust money.

Questions:

What is disposition of Frank's property on his death?

What is disposition of Gert's property on her death?

Is there a valid trust for the children?

If so, may the trust be reformed?

Does it need to be reformed?

Explain, explain, explain.

Question 4

Tom is 83 years old and he has two children, Sandy and Donna. Sandy is married with children. Donna is single with no children. Sandy visits Tom frequently and on a regular basis, taking him to doctor's appointments, for visits with her family, and just out and about spending time with him. She helps him with his bills and his finances. Donna, on the other hand, has for years been fighting an opioid addiction that she developed as a result of prescription pain killers following a serious injury. She has been in and out of rehab. She has dated many men, never finding "Mr. Right". She lived with a man for a while and got pregnant, but she had an abortion. She has also been arrested once for drug possession, but was placed on probation because it was her first offense. Tom does not wish to give her means to access illegal drugs.

Tom desires to do the right thing, but he is concerned about Donna's drug habit. Sandy suggests to her Dad that he leave a gift in trust for Donna, provided Donna demonstrates that she is drug free for a continuous period of five years beginning with the date of the trust. When Donna learns of this suggestion, she protests saying that it is unfair because it is so hard to kick the habit. Nonetheless, Tom likes Sandy's suggestion and goes to his attorney. The trust states:

"The trustee shall manage and distribute the trust's property for my benefit for my lifetime, and upon my death, my trustee shall distribute one-half to my daughter, Sandy, or her heirs by right of representation, and the other half shall be retained in trust for my daughter, Donna, or for her heirs by right of representation, provided, however, that this share is given on the condition that no distribution shall be made to a rightful beneficiary unless and until he or she demonstrates that he or she has been free of all illicit drugs for a continuous period of five years from this date forward. My trustee shall have full discretion as to when, to whom and in what amounts distributions shall be made on the aforesaid condition."

Tom signs and funds the trust. The trustee signs and accepts the funding. Tom passes away immediately.

For two years after the date of Tom's signing of his trust, Donna has been free of all illicit drugs. At that time, which is after Tom's death, Donna 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, Donna legally adopts Linda. Together, they stay straight for about another year and one-half, which is now four and one-half years after Tom signed his trust. At that time, Donna is unable to overcome temptation, and she again uses illicit drugs. Sandy, who has already received her one-half share from the trust, now claims that Donna has forfeited the bequest left to her in the trust, and Sandy claims that remaining trust share. Donna comes to you for assistance saying she really needs her mother's bequest to help support not only herself, but Linda too.

Who has what rights under the trust? What is the duty of the trustee under the terms of the trust? Explain your answer.

Question 5

Tyler Tycoon had Anna Attorney draft for him a trust to be funded with \$500,000.00. The trust was to provide for his niece and nephew, paying them the income for life, and upon the death of the second of them to die, the trust was to terminate and pay the principal to their children equally. Anna drew up the trust as stated above, and it further provided 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 administrations 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."

Tyler asked Anna to serve as trustee and she accepted. Anna had no investment experience so she hired an investment advisor, Sid, who devised an investment strategy, reviewed the same with Anna and obtained Anna's direction to proceed. Anna delegated to him authority to change investments as he deemed proper from time to time. Sid made various investment purchases and changed them from time to time. In accordance with the terms of the trust, Sid has been sending annual accountings to Anna, and in her behalf, to Tyler's niece and nephew, fully setting forth all trust transactions and all distributions to the income beneficiaries.

For his services, Sid has been receiving a commission on purchases and sales of investments and also a fee for related services such as preparing special reports and tax returns for the trust. The amounts of the fees and commissions charged by Sid are commensurate with what is charged by other investment advisors in the area. Sid has generally been considered for many years by the investment advisor world to be a competent and ethical investment advisor and money manager.

The income beneficiaries have always signified in writing their approval and acceptance of trust accountings. Over the years, the trust has realized some significant losses due to some ill-chosen investments. At one point, Sid invested 20% of the trust portfolio in the stock of Flash Corporation which Sid believed was an undervalued stock. Shortly after that investment, the stock began to rise as Sid had expected, but yet a while later, Flash suffered a substantial loss of business due to a faulty product and its stock dropped rapidly. Sid feared a wipeout as to that investment and so he sold all of the Flash stock, resulting in a loss of 50% of the original investment in Flash stock. The investment and loss on sale were all fully disclosed on his accountings to Anna and the income beneficiaries. As with the other accountings, the beneficiaries signed off on these accountings as well. Yet another six months later, Flash Corporation began to recover and when it came out with a new product, it was a big hit and its stock value skyrocketed. At this time, Tyler's niece and nephew were killed in a car accident.

Now with the deaths of Tyler's niece and nephew, the trust is to terminate. A final accounting is sent out to the remaindermen beneficiaries asking them to give their assent so that final distribution of the remainder interest in the trust may be made to them. It is at this point that the remaindermen beneficiaries first learn that Sid is the son of Anna. The Flash stock is now worth one and one-half (1½) times the value that it had when Sid first invested in it.

The remaindermen beneficiaries are upset, feeling that their remainder interest should be higher than it is. They come to you for advice. Advise them fully. Explain your answer.

F

WILLS AND TRUSTS
Final Examination
Fall 2013

Professor Ford

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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

In 2002, Ray validly executed a will which devised his entire estate to "my wife, Abby and our children, Sally and Bert, in equal shares." The will named Ray's friend, Walter, as Personal Representative of his estate. Bert's wife, Abby, subsequently died in early 2008.

In late 2008 Ray validly executed a revocable declaration of trust. It provided that Ray would be the initial trustee and sole beneficiary of the trust during his lifetime and, upon his death, the assets of the trust were to be distributed in equal shares "to my children, Sally and Bert". The trust instrument also provided as follows: "This trust may be revoked at any time by a written instrument signed by me." The trust instrument also provided that upon the death, incapacity, resignation or removal of the initial trustee, Walter would become the successor trustee. The inventory of the trust declaration included a full and complete description of all of Ray's assets except for 10,000 shares of Zenith Corporation which were held in his name, individually, and not as trustee.

In 2010, Ray wrote and signed the following letter to Walter:
"Dear Walter: As you know, I have designated you as the person to become the successor trustee after me of the trust that I created in 2008. I am writing this letter to advise you of some very important information that I ask you to keep confidential until after my death. During the time of youthful indiscretion, I carried on an affair with the wife of my close friend, Joe, and the wife became pregnant. Because Joe and his wife were living together during the entire time of that affair, Joe thought that he was the father of that child who was born of that pregnancy and who was named Kenneth. When that child was about five years old, he was diagnosed with a rare form of a heart defect that both my father and I also had, and I came to believe that I could very well be the father of that child. However, I could not bring myself to tell anyone and I have kept this matter secret for all of these years. As you may have heard, both Joe and his wife are now dead, but until I die, I do not want anyone else but you to know what I am telling you. Promise me that after my death Kenneth will receive an equal share of my trust along with Sally and Bert."

Walter, in the following week wrote a reply letter to Ray and promised that he would carry out Ray's wishes after his death.

In January of this year, Ray suffered a massive stroke and was no longer able to manage his finances. Walter became the successor trustee of Ray's trust. Ray subsequently died in May of this year. In June, his will of 2002, was admitted to probate and Walter was appointed Personal Representative of Ray's estate.

- A. Who is entitled to receive the assets that are described in the Inventory of the Declaration of Trust? Explain your answer.
- B. Who is entitled to receive the 10,000 shares of Zenith Corporation? Explain your answer.

Question 2

Sam, a divorcee, married Maria in 2008. It was Sam's second marriage and Maria's first. Sam had two children by his prior marriage, Aaron, then age 20, and Ben, then age 15, who lived with their mother. Maria had no children and the couple had no children during their marriage. Sam died in 2011. His will left his \$1.5M (\$1,500,000) stock portfolio in trust to his wife for life or until she remarried. On her death or remarriage the trust corpus was to be distributed to Sam's children. Sam's good friend and attorney Jake was named trustee. The trust provided that all of the income from the trust was to be paid annually to Maria for her support. If trust income proved insufficient to comfortably support Maria, the trustee was given the discretion and direction to invade the trust corpus and make distributions to Maria for her support, after taking into account Maria's other sources of income.

Shortly after Sam's death, Jake met with Maria, Aaron and Ben, and it was determined that Maria needed \$90,000 per year to meet her support needs. Since Maria was gainfully employed earning \$70,000 per year, Jake began distributing the trust income of \$40,000 to her. Maria was not happy with this distribution and, in 2012, said that unless Jake increased the distribution to her she would quit her job. Jake did not want Maria to leave her job because, if she did, he would feel obligated to distribute to her a total of \$90,000 per year - \$40,000 of trust income and \$50,000 from trust corpus. Consequently, even though Maria remained employed, thereafter Jake annually distributed to Maria all of the trust income (\$40,000) and \$30,000 of corpus. Maria seemed satisfied with this distribution and Jake informed Aaron and Ben of what he was doing and why he was doing it. Maria now wants to marry an impoverished artist. She does not want to lose her interest under the trust and believes that if she marries she will need more money to support herself and her new spouse.

- A. What rights and claims, if any, do Aaron and Ben have under the trust, and vis-a-vis Jake and Maria, and how might they go about enforcing those rights and claims? Explain.
- B. What are Maria's rights and what legal arguments might she make? Explain.
- C. What argument(s), if any, might Jake have in his own defense? Explain.

Question 3

Charles and his first wife had a son Forrest. Charles and his second wife Susan had a daughter Caroline. When Charles died in 1972, he was survived by Forrest, Susan and Caroline. Charles left a valid will.

In his will, Charles created two trusts, one for Forrest's benefit and the other for the benefit of Susan and Caroline. He funded each trust with shares of stock of a company he owned. The will provided for different dispositions of the two trusts. With regard to the trust created for Forrest, the will provided that Forrest will receive the dividends on the stock in his trust during his lifetime and, if Forrest dies leaving issue, the trust will continue until the youngest of Forrest's issue reaches 21 years of age, at which time the trust assets will be distributed to Forrest's issue. The will also provided that:

"In the event of the death of my son Forrest without leaving issue, the said stock shall be transferred to and become part of the 'Susan R. Berg and Caroline Berg Trust.'"

With respect to the trust created for Susan and Caroline, Susan and Caroline were to receive the income from the trust during their joint lifetime. The trust provided that if Susan dies before Caroline, the trust will continue for Caroline's life and then for the benefit of her surviving issue until the youngest of her issue reaches 21 years of age, at which time the assets in the trust will be distributed to Caroline's issue. The will also provided for the disposition of the trust assets if Caroline died without issue before Susan. The will states:

"If my said daughter shall die without leaving issue, and my wife shall be alive at such time, all of the trust fund shall be the property of my wife, and at her death said trust shall terminate and the fund shall go to those persons designated in my wife's validly executed last will and testament."

Caroline died in 1997. She predeceased Susan and left no issue to survive her. Susan passed away in 2004, leaving a valid last will and testament that validly exercised the power of appointment given to her. The "Susan and Caroline Berg Trust" was terminated and the assets of the trust distributed to the two charities that were named as appointees under Susan's will.

In 2008, Forrest died without issue. At that point litigation ensued over the proper distribution of the "Forrest Berg Trust." The trial court ruled that the "Susan R. Berg and Caroline Berg Trust" had to be in existence when Forrest died without issue in order to receive distribution from the "Forrest Berg Trust". Utilizing this line of reasoning, the trial court held that the stock in Forrest's trust reverted to Charles' estate by means of a resulting trust and passed under the residuary clause of Charles' will. The trial court's decision has been appealed.

How should the appellate court rule? Explain.

Question 4

In 2005, Elizabeth, a highly paid executive officer of a Massachusetts Corporation, established an irrevocable trust naming her nephew Daniel as the beneficiary. She funded trust with investments she owned at the time. Elizabeth named herself as trustee of the trust. The trust document does not provide for a successor trustee.

The trust provides an annual distribution to Daniel of all income, net of trust expenses, for a 20-year term. At the end of the 20- year term of the trust, the corpus of the trust is to be transferred to Daniel, free of the trust, and the trust then terminates. The trust also contains the following provision: "The beneficiary of this trust is hereby restrained from anticipating, encumbering, alienating, or in any other manner assigning or disposing of his interest in either the corpus or income of the trust estate, and is without power to do so."

Earlier this year, a judgment was entered against Daniel in a breach of contract suit. Cameo, Inc. ("Cameo"), the judgment creditor, threatened Daniel that, unless Daniel signed an irrevocable assignment to Cameo of the undistributed trust income for the next five years, it would obtain a writ of execution and levy on the trust corpus to satisfy the judgment. Daniel is seriously considering signing the assignment for fear that, if he does not, Cameo will levy on and deplete the corpus of the trust.

A few months ago, Elizabeth was involved in a serious accident, became completely incapacitated, lost all her earning capacity, and was unable to carry out her duties as trustee. Graham was appointed by the Court to be her guardian. Graham notified Daniel that, in light of Elizabeth's condition, and her need for funds for her own support, he was terminating the trust and taking back the investments in the trust, and that Daniel will no longer receive income payments or distribution of trust corpus as originally called for in the trust instrument.

- A. Assuming the trust is not terminated at this time, may Daniel assign to Cameo the trust income it has requested in full or partial satisfaction of the judgment against him? Explain.
- B. Assuming the trust is not terminated at this time, and assuming Daniel does not assign his income to Cameo as requested, may Cameo reach the trust corpus to satisfy its judgment? Explain.
- C. What is the status of the trust given Elizabeth's condition? If the trust is still in effect, may Graham effect termination of it, and if so, how? Explain.

Question 5

At the age of 80, Bill died suddenly of a heart attack. Susie thought Bill had a Will that left everything to her but she could not find it. She even recalls Bill's friend, Ted, having signed the Will as a witness.

After Bill's Estate was administered, Mary, the eldest of Bill and Mary's three daughters, thought it would be a good idea for Susie to get a Will after what happened with Bill's estate. Mary called around and found a reputable estate planning attorney for her mother; she drove her mother to the appointment with the lawyer; sat in on the meetings; led the discussion while Susie sat patiently and listened to the meeting; and provided the lawyer with all of Susie's asset and beneficiary information.

Susie, who was still struggling with her husband's sudden death, was so grateful for Mary's help that she decided to leave her entire estate to Mary. Susie, with Mary present, executed the Will leaving her entire estate to Mary, and Susie's lawyer and his secretary acting as witnesses.

Six months later, after never really recovering from the loss of her husband of 60 years, Susie passed away.

How should Susie's estate be distributed? Explain your answer.

Good Tidings to all, and to all a Good Night!

WILLS AND TRUSTS
Final Examination
Fall 2012

Professor Ford

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All questions are of equal weight.

You have three hours to complete this exam.

BEST WISHES AND HAPPY HOLIDAYS

Question 1

Tess just died four days ago. Tess was unmarried, she had no children, and her parents are deceased. She does have, surviving her, a brother, Steve, and a sister, Dora. Steve has a son, Tom, 19, and Dora has a daughter, Suzy, 7.

Tess left a valid will, which provides for her estate to be held by her personal representative and to be used to pay income to her brother and sister equally during their joint lifetime, then all income to the survivor of them for the remainder of his or her lifetime, remainder to Tess's heirs equally, to be held for each until age of thirty years, then distributed free of trust.

The day after Tess's death, Steve's wife, Wendy, gave birth to their second child, Ted. Upon leaving the cemetery after Tess's burial today, Steve and Dora are killed in an auto accident.

Steve left a valid will leaving his estate to his wife, Wendy, who is still alive. Dora left a valid will leaving her estate to her husband, Howard, who is still alive.

Who is to receive the estate of Tess? Explain your answer.

Question 2

Evelyn and Irwin married ten years ago. Evelyn had been married before and had a daughter, Carole, from that marriage. Irwin had been married before, and he had three children from that marriage. Irwin died five years ago leaving an estate in trust for Evelyn for life, and a provision directing that the remainder be divided into two equal shares at the time of Evelyn's death, one share to go outright to his children, and the other share to go to whomever Evelyn designated in her last will making specific reference to this provision in Irwin's trust. The trust also stated that if Evelyn did not direct the disposition of one half of the trust corpus, then it was to be distributed to Irwin's three children equally. Carole and Irwin's three children all survived Evelyn.

A year after Irwin's death, in 2008, Evelyn had her attorney prepare for her a will which left to her daughter Carole all her estate, including one-half of the estate in trust that her late husband, Irwin, had established for her benefit making specific reference to Irwin's trust. This designation as to disposition of one-half of Irwin's trust is Article 8 of Evelyn's 2008 will. The 2008 will was valid when signed by Evelyn. Subsequently, Evelyn moved, and after that she remarried (third husband). A year ago, 2011, Evelyn went to a new attorney to prepare a new will for her. Evelyn and the attorney discussed what changes Evelyn wished to have made in her new will. The attorney drafted documents and sent them to Evelyn to review. Evelyn got back to the attorney to state that she had changed her mind with regard to the naming of the personal representative (executor) of her estate. The lawyer made the change and resent the corrected will to Evelyn to review. Evelyn then came into the lawyer's office and signed the new (2011) will before two witnesses. The 2011 will was valid when executed by Evelyn. The new will expressly states that it revokes all prior wills. It then states that Evelyn leaves one-half of all her estate, real, personal and mixed, tangible and intangible, and wherever situated, to her daughter, Carole, and one-half to her grandchildren, the children of Carole.

Evelyn has just died. Carole has petitioned the court to admit into probate as Evelyn's last will her 2011 will and Article 8 of her 2008 will. The children of Irwin object and insist that only the 2011 will should be admitted. They petition the court accordingly.

Who is entitled to what share of Irwin's trust? Explain your answer.

Question 3

Ben is elderly and contemplating his demise, and so he prepares and writes the following:

"Agreement of Trust of the Ben Family Trust: I am unmarried and without children. My parents and siblings are all deceased. In my lifetime I have been blessed with good fortune and have managed to accumulate a comfortable estate, and I intend to do something good with it. It is my intent, therefore, to provide for my more needy nieces and nephews so that they may not suffer from deprivation. And so I hereby create this trust with my nephew Ned as trustee for the benefit of all my nieces and nephews who are unable to properly provide for themselves, and I direct the trustee to use his best judgment as to when and in what amounts to provide for those needy nieces and nephews of mine out of trust income, and if necessary, trust principal, until the trust fund is exhausted."

Ben took the writing, along with a check in the amount of \$500,000, to Ned and asked Ned to serve as trustee. Ned agreed, and both Ben, as grantor, and Ned, as trustee, signed the writing, and Ben handed to Ned the bank check, which was made payable to "Ned, Trustee of the Ben Family Trust". Ned is financially independent and the wealthiest of the nieces and nephews of Ben.

Ned deposited the check into a new bank account that he established where he did his own personal banking, but under the name of the Ben Family Trust. Ned then withdrew money from the trust bank account and made conservative investments in some CD's and in mutual funds that invest in government bonds. Ned has siblings who are of moderate means and capable of supporting themselves, and, from time to time, he distributed money out of trust to each of them, as well as to himself. Ned also made some small distributions to some of his cousins who are struggling financially. Ned continued this pattern over the next three years until just recently.

Just recently, Carol, Deb and Elle, sisters, and nieces of Ben, learned of the trust. They are among the poorest of the nieces and nephews of Ben. They have received nothing from the trust. They now bring suit against Ned seeking, in Count I, a court order for Ben to replace the money he gave to himself and his siblings and then make distribution out of trust to them, or, in Count II, a court order to replace the money he gave to himself and his siblings and then turn all the money over to the estate of Ben, who has just recently died intestate.

Do Carol, Deb and Elle have a good case against Ned? Can they succeed on either or both counts of their complaint? Distinguish the two Counts. Explain your answer.

Question 4

Mary is widowed and has three children, Alice, Betty and Charlie. Mother retained Larry Lawyer several years ago to prepare her estate plan, consisting of a Last Will, Durable Power of Attorney (DPOA) and Health Care Proxy (HCP). Mary discussed her wishes with Larry Lawyer. Larry drafted Mary's documents and sent them to her to review. They talked again to make some adjustments to the initial draft, and Larry made those adjustments to the documents. Mary then went to Larry's office to sign. Mary was accompanied by her children.

Since Larry was a solo practitioner, without a secretary, he asked the three children to witness their mother's signing of her documents. Mary signed the Will, DPOA and HCP, and the three children signed as witnesses to all three documents. Larry notarized all signatures.

The Will names Alice as personal representative (formerly known as "executor") of Mary's estate. The DPOA names Betty as agent (attorney-in-fact) for Mary. The HCP names Charlie as health care agent. The Will leaves Mary's personal residence to Alice, her investment account to Betty, and her bank account to Charlie. There is no other provision in the Will for distribution of her estate.

A couple years ago, Mary needed to move out of her home and into an assisted living facility (ALF). To pay for the ALF, Betty, pursuant to authority in Mary's DPOA to use her property for her care and maintenance, used the funds in the bank account. In time it was clear that Mary would not be able to return to her home, and she went into a nursing home. With the personal residence vacant, Betty, again using the DPOA, sold the home and placed the funds in a separate account and used those funds to pay for the nursing home. Mary has just died. The original bank account has \$4,000 in it. The bank account holding the home sale proceeds has \$5,000 in it. The investment account has \$150,000 in it.

Betty has secured possession of Mary's Will, which was at Mary's home when she moved out. Betty has filed the Will in Probate Court, along with a petition for its allowance, seeking distribution of Mary's estate in accordance with its provisions. Alice and Charlie have only just discovered how their mother's assets have been handled by Betty, and come to you for advice.

What should be the distribution of Mary's probate estate? Explain your answer.

Question 5

Bob Cratchet has been a long-time paralegal employed at the firm of Marley & Scrooge. Bob is married and has three children, the youngest, Timothy, has a serious birth defect that has stunted his growth and threatens to end his life prematurely. There is a surgical procedure that can greatly improve the condition of Tiny Tim, as his family fondly calls him, but, alas, the Cratchets cannot afford the cost of the surgery. Marley and Scrooge have been tough-minded and demanding employers and lawyers, but Marley was always sympathetic of the plight of Tiny Tim. Also, Marley appeared to have softened somewhat in recent months, letting slip on occasion in conversation that he had been visited by a certain ghost. Mr. Marley has just died, leaving a trust that he had established years earlier.

Marley had transferred his apartment building into that trust when it was established, naming himself sole trustee and sole beneficiary during his lifetime. Upon his death the trust instrument provided that Bob Cratchet would become sole trustee and sole beneficiary for his lifetime, remainder to such of Cratchet's children as Cratchet shall appoint by a writing delivered to the trustee or by his last will. Following the death of Marley, and until Cratchet appointed remainder beneficiaries, Cratchet had the right to amend the trust, or to terminate it vesting title to the trust property in himself individually. Just as Bob and Mrs. Cratchet thought that their prayers had finally been answered, Ebenezer Scrooge reared his [ugly] head.

Despite the long hours and excellent work of Bob Cratchet at Marley & Scrooge, Bob Cratchet was not well paid and so the Cratchets had difficulty making ends meet, and Bob turned more than once to Mr. Scrooge for a loan. Scrooge exacted the full legal rate of interest, and the Cratchets fell farther and farther behind in debt to Scrooge. Scrooge saw the trust as being the avenue by which he would finally be able to collect from Cratchet. Scrooge demanded that Cratchet terminate the trust immediately, vesting title to the apartment building in Bob Cratchet individually, and then sell the building and pay off his debt. In an unusual display of inner strength, Bob Cratchet refused, while at the same time pleading that the money from a sale of the building was needed to pay for Tiny Tim's operation. Scrooge responded with a law suit seeking a mandatory injunction that Bob Cratchet exercise his right to take the property, then sell it and pay off his debt. The Cratchets have come to you for help.

Will Tiny Tim get the operation that he needs? Can you devise a strategy that will accomplish that end? All the Cratchets are counting on you.

Identify and explain the arguments that will be raised by Ebenezer Scrooge, identify and explain the counterarguments to defend in behalf of Bob Cratchet, and explain your strategy to get the property to Tiny Tim.

Merry Christmas to all [including Tiny Tim?], and to all a Good Night!

WILLS AND TRUSTS
Final Examination
Fall 2011

Professor Ford

Instructions:

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All questions are of equal weight.

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

BEST WISHES AND HAPPY HOLIDAYS

Question 1

Ted is divorced with a daughter, Donna, from his first marriage. Ted remarried to Wendy. Before their wedding, Ted and Wendy entered into a valid and enforceable prenuptial agreement pursuant to which they each waived any and all claims to the other's estate. Ted and Wendy have a son, Sonny. The marriage of Ted and Wendy has been on the rocks for some time. Ted is a very successful businessman, and also a very controlling individual. He does not allow Wendy to work outside of the house, nor even to have friends unless he approves of them first. One Friday, Wendy was driving Ted in her car to a business appointment. As her car approached an intersection, she saw a large dump truck approaching the intersection from the right. Wendy sped up and entered the intersection at the same moment as the dump truck. The dump truck struck Wendy's car on the passenger side causing Ted serious injury which resulted a few days later in his death. Wendy was cited at the scene for speeding and running a red light by a police officer who witnessed the crash.

Ted is survived by Wendy, Donna and Sonny. His probate estate consists of business investments and multiple real estate properties, including Blackacre. Ted left a will which stated:

"I leave to my daughter, Donna, all of my business investments. I leave to my son, Sonny, all of my real estate, except Blackacre. I leave nothing to my wife per our prenuptial agreement. I leave all the rest of my estate to whomever my wife, Wendy, designates in a signed writing delivered to the duly appointed executor of my estate within ninety days of my death. I nominate my brother, Ben, to be executor of my estate"

Ted's will is admitted into probate and Ben is appointed executor of Ted's estate by the Probate Court. Immediately thereafter, within ninety days of Ted's death, Wendy delivered to Ben her signed writing stating: "I hereby direct that Blackacre be given to me." On the way home, Wendy dies of a heart attack. Sonny, as executor of his mother's estate, claims Blackacre for her estate. Donna protests.

Does Donna have standing to protest in court? Explain.
Who is entitled to Blackacre? Explain.

Question 2

Thomas Dolan is a lawyer. He drafted a trust for brothers Paul, Richard, Vincent and Walter Burke on January 26, 2000, naming Dolan Trustee. The Trust was established to provide income for the support of the Burke brothers' mother, Helen, for her lifetime. Its dispositive terms provide: "Upon the death of Helen, this trust shall terminate and the principal of the trust shall be distributed to the Grantors in proportion to their contribution to this trust." The corpus of the Trust consists of County Bank stock, which was contributed 25% by each grantor brother.

The Trust also provides that the trustee "may act freely under all or any of the powers of this Agreement given to him concerning this trust . . . notwithstanding that he may also be acting as agent for other persons interested in the same matters . . .", that "it is understood that the Trustee may continue to hold the County Bank stock, if he deems it to be in the best interest of the parties hereto", and that Dolan as trustee "shall only be liable for his own willful default and not for honest errors of judgment."

Dolan also drafted and the brothers signed on January 26, 2000, the so-called "Equalization Agreement" which was intended to resolve a long-standing dispute among the brothers concerning the respective value of various properties transferred to them by their father in the years prior to his death.

The Equalization Agreement provides that: "The distribution of all assets from the parents shall be equalized among the sons at the death of Helen through adjustment of the distribution scheme for the assets remaining in the trust for Helen at her death." Walter claims that his brothers received a greater share of gifts from their father than he did.

Helen died on March 5, 2011. On March 13, Dolan was requested by Paul, Richard and Vincent to make a distribution in kind of their 75% of the corpus of the Trust. Had distribution been made in accordance with the Trust at that time, total stock valued at \$500,000.00 would have been distributed to the four brothers (\$125,000 each). Before distribution could be made, Walter telephoned Dolan and asked that he hold up distribution until equalization had been achieved.

Following unsuccessful attempts to resolve the dispute between the brothers, in August, 2011, Dolan filed a "Petition for Instructions" in court, asking the court to determine how he should distribute the stock among the grantor/beneficiary brothers in view of the inconsistent provisions of the Equalization Agreement and the Trust, and the beneficiaries' threat of suit if he made distribution in accordance with either document. Finally, in September, the brothers agreed to arbitration, and, in October, the arbitrator decided the stock should be distributed in accordance with the dispositive provision of the Trust. Due to the precipitous decline in value of the stock in the interim, however, stock valued at only \$50,000 was distributed to each brother.

Paul, Richard and Vincent filed a breach of fiduciary duty and negligence action against the trustee, alleging that his failure to promptly distribute the trust corpus upon termination of the trust caused the value of the corpus to be dissipated before its conveyance to the beneficiaries.

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

Question 3

In 2003, after his first wife died, Roland asked Gail, an attorney, to help him with an estate plan. Gail drafted for Roland a will and a revocable inter vivos trust (hereinafter "ROLAND REVOCABLE INTER VIVOS TRUST." or "the trust"). The will and trust are valid. The will named Roland's sister, Emma, the executor of Roland's estate.

By Article IV of his will, Roland left his fine china and silverware that had been his mother's to Emma. He also left to Emma his deceased mother's diamond ring. By Article V of the will, Roland left all the rest and residue of his property to Gail, as Trustee of the ROLAND REVOCABLE INTER VIVOS TRUST. "This property is to be added to the rest of my trust and used in accordance with the terms of that trust," the will stated.

The trust named Gail as Trustee and stated that "the trustee is to pay to my children, Beth and Bart, so much of the income of the trust as the trustee deems appropriate in the trustee's absolute discretion." The trust further provided that, upon the death of Roland's children, the trustee shall distribute the remaining trust assets to the Animal Rescue League of Massachusetts. Beth and Bart are Roland's children from his first marriage. Shortly after the execution of the 2003 will and trust, Roland transferred \$100,000 to the trust.

Roland owned the home that he lived in, as well as three commercial properties that he rented out.

In 2006, Roland married Mary, giving her "mother's wedding ring." In 2007, their child, Janet, was born. Soon after Janet's birth, Roland signed the following document that he prepared:

"I hereby declare this to be my last will and testament and hereby revoke all prior wills. I leave all of my property to my wife, Mary. Dated: 5/1/2007. [signed] Roland," The will was signed in the presence of two witnesses who signed in Roland's presence.

In 2010, Mary and Roland divorced. Roland has just died.

How is Roland's property to be distributed?

Question 4

In 2009, Jason created a valid irrevocable trust naming his daughter, Julie, both trustee and life income beneficiary. The trust instrument provides that on Julie's death, the successor trustee shall distribute the trust corpus outright to the then surviving issue of Jason's predeceased daughter, Debora. The trust contained a standard clause regarding trustee's powers, including the power to "sell, invest, and manage" the trust property.

Common shares of Growth, Inc., a well-established and successful manufacturing company, made up 30% of the original trust corpus. For years, Growth has regularly paid generous cash dividends. Julie, as trustee, allocated to income the cash dividends she received on the stock. In 2010, instead of paying a cash dividend, Growth distributed a dividend of its own stock, which Julie also allocated to income.

In September, 2011, Innovation Corporation, a newly formed company, made an initial public offering of its common stock. The prospectus stated that Innovation had created a new material similar to aluminum, but which experimental testing had shown to be even lighter and stronger. The prospectus further disclosed the company's intent to distribute most of its earnings as dividends. After reading the Innovation prospectus in October, 2010, Julie sold the trust's Growth stock to her husband at its current fair market value. The sale of stock produced a profit for the trust, and Julie allocated the capital gain portion to the income account. She used the balance of the proceeds to purchase Innovation stock for the trust. Growth, Inc. continued to prosper and its stock continued to appreciate. Innovation's product failed and, in November, 2011, Innovation went bankrupt and its stock became worthless.

Has Julie breached her duties as trustee? Discuss.

Question 5

Matilda Mason was the fifth of the five children of her parents. She was the only daughter. She graduated from Hope College for Women, and was a strong advocate for women's education and women in leadership roles. She was a doer, proactive and assertive. By the time of the death of both of her parents, she was the undisputed head of the Mason family. She always pushed her daughters and granddaughters to be proactive and assertive in all aspects of their lives.

Matilda has just died in an auto accident at the age of 62 years. She is survived by her daughters, Jenny and Paula, and their respective husbands Joe and Pete, as well as Jenny's children, Jane, Judy and Jack, and Paula's children, Pam and Petula. Jenny and Paula have always been close, and they consult each other frequently on family matters.

At her death, Matilda left a valid will which provides:

"I leave one half of my estate to whoever is the head of the Mason family at the time of my death, to hold and manage in trust for the benefit of my granddaughters for their university education, to be allocated among my granddaughters so as to best provide for them all, but my trustee's decision in this matter shall be final. Notwithstanding the foregoing, no granddaughter shall be entitled to any distribution from this trust after her thirtieth birthday, and, if the trustee, during the term of this trust, should become widowed or divorced from her current husband, then the entire remaining trust corpus shall be subject distribution to the trustee free of trust, if trustee so decides. Otherwise, whatever shall remain in my trust when the last of my granddaughters shall have attained the age of thirty years shall be distributed to the scholarship program of my college alma mater, Hope College for Women, to be managed under the rules of that program. If original trustee ceases to serve, then I hereby appoint as successor trustee the next head of the Mason family.

"All the rest and remainder of my estate, I leave to the Homeless Children's Orphanage, of Boston, Massachusetts."

Is the trust valid?

Is (are) the gift(s) to the beneficiaries valid?

Is validity of either affected by provision regarding divorce of trustee or death of trustee's husband?

WILLS AND TRUSTS
Final Examination
Fall 2010

Professor Ford

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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.

WILLS AND TRUSTS
Final Examination
Fall 2009

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

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 2008

Professor Ford

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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 2007

Professor Ford

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All questions are of equal weight.

Question 1 --

Maude Murphy was the librarian in town. She never married and retired several years ago. She owned her own house and savings account in the local bank. By early 2005, Maude was elderly and frail. Helen Helper has been a neighbor of Maude's for many years. She is currently in her late 60's. Her children are grown and off on their own and her husband is deceased. Helen had been visiting Maude often for many years, initially just on a social basis, and as a friend, and later helping Maude with household chores, shopping, cooking, and the like.

In mid-2005, Maude retained Larry Lawyer to draw up her will. The will was executed and is valid. The will leaves Maude's savings account to the local library and leaves Maude's house, along with its furnishings and Maude's personal effects, to Helen out of gratitude for Helen's friendship and assistance. The will names Helen to be executor of the estate. By early 2006, Maude was in need of help with the basic tasks of dressing, bathing and toileting. She was in need of someone to stay with her overnight. Helen was unable to render that service. Maude's niece, Nancy Niece, then in her mid-20's, was Maude's only living blood relative. Nancy came to town in early 2006. She found Maude, moved in with her and agreed to look after Maude overnight. Helen continued her regular visits during the day, but as time went on, she was unable to maintain the frequency of those visits and Nancy started helping with some of the daytime chores.

Occasionally, when Helen did visit Maude, Nancy would tell Helen that Maude was sleeping and to come back another time. More and more frequently, when Helen did visit with Maude, Nancy would stay in the room with them. Beginning at this time, Maude was having difficulty remembering things and Helen had the sense of a change in Maude, as if she were fretful. Helen has stated that Maude would look at Nancy before offering any answer to Helen's questions. At times, Nancy would offer an answer in Maude's place.

Maude has just died. Helen offers the 2005 will prepared by Larry Lawyer for probate. Nancy files an opposition to that petition, and she files her own petition for probate of a will dated in mid-2007. The 2007 will was drawn up by Arthur Attorney, witnessed by a secretary and a paralegal from Attorney's office. The 2007 will states that it revokes all prior wills and codicils and it leaves one-half of Maude's savings to the local library and the other half to Helen, and leaves the house, furnishings and personal effects of Maude to Nancy.

At the time of Nancy's arrival in town in early 2006, the savings account had \$100,000.00 in it. It is now spent down to \$20,000.00. Nancy says that all money was spent on maintaining the house, buying food and supplies for the house and otherwise it was all spent for Maude. Nancy says that she has kept no receipts. A check at the bank reveals that all withdrawals from the bank account were by withdrawal slips signed by Maude, although the banker states that Maude's signature became shakier as time went on. There is no question of foul play or poor care in Maude's death.

Which will should be admitted to probate and why?

Question 2 --

Mickey and Belle Bluestone are the parents of Edward and Sumner. Edward is the father of Ruth and Michael.

In 1959, Belle executed and funded a valid, inter vivos, irrevocable trust, the Ruth Bluestone Trust. At the same time, Belle executed a valid will which provided that Edward is the residuary beneficiary.

Belle is the settlor of the Ruth Bluestone Trust and Ruth is its primary beneficiary. The trustee is empowered to advance or delay distribution of all or part of the trust estate under certain conditions. Otherwise, the trust provides that one-half of the accumulated income and principal is to be paid to Ruth at her age of 30 years, and the remainder paid to her at her age of 35 years, and the trust is to then terminate. The trust further provides that if Ruth dies before full distribution and if Ruth leaves issue, the trust is to be divided into equal shares, one for each issue, and the trustee is given discretion to distribute to each issue out of his or her separate share for his or health, education, support and maintenance. The trust provides for termination 20 years after the death of Ruth, at which time the balance in each trust share is to be paid to its respective beneficiary. If an issue of Ruth does not survive to final distribution, the remainder in that deceased issue's share is to be divided equally among the remaining trust shares, or outright to any issue whose individual share had already been fully distributed.

On the other hand, the trust provides that if Ruth dies before full distribution and does not leave issue, the trust is to terminate at Ruth's death and the remainder is to be paid over to a similar trust that Belle set up for Michael back in 1959, or otherwise to be paid directly to Michael if his trust has already been fully distributed by that time. If, however, Michael is deceased when Ruth dies leaving no issue, and Michael has left no issue, then distribution is to be made pursuant to Ruth's last will, or if Ruth dies intestate, to her heirs.

Ruth died intestate in 1992, at the age of 33. Ruth left one child, Adam, age 3 years at that time. Edward and his wife took Adam into their household to raise. Fifteen years later, in 2002, at Adam's age of 18 years, Edward and his wife adopted Adam. Adam has just died. The trustee never made distribution to Ruth at her age of 30 years.

Both Edward and Michael claim the remaining trust estate. Make an argument for each, explaining the grounds for each. Which argument should prevail and why?

Question 3 --

Thomas Proctor, Sr. died a widower in 1924. He left two sons, Thomas, Jr. and John, and one daughter, Elizabeth. Thomas, Sr. left a valid will which gave to Thomas, Jr. a general power of appointment exercisable by deed or by will to direct where Thomas, Sr.'s property shall go. Thomas, Jr. died in 1949, unmarried and without issue. He left a valid will by which he left the residuary of his estate in trust, and by that residuary provision, he also validly exercised the general power of appointment under his father's will, directing the father's estate into the testamentary trust established by Thomas, Jr.

Thomas Jr.'s testamentary trust provides for a life estate for his brother, John, and then a successive life estate to John's children to share on a pro-rata basis, per capita, until the death of the last of them to die. John received the trust income from Thomas' death until his own death in 1970. John died a widower leaving just one child, a daughter, Mattina. Mattina was not alive at Thomas, Sr.'s death. Upon her father's death, Mattina started, and has continued to date, to receive the trust income.

Thomas Sr.'s daughter, Elizabeth, died in 1986, exactly 21 years ago. Elizabeth was the last surviving descendant of Thomas Sr. who was alive at Thomas, Sr.'s death. Elizabeth left a son, Robert Proctor Harrington, who was not alive at Thomas, Sr.'s death. The trust established by Thomas Jr.'s will provides for its own termination upon the expiration of 21 years from the date of death of the last survivor of the descendants of Thomas, Sr. living at his (Thomas Sr.'s) death. At that time, the remainder interest in the trust is to be divided in equal shares to and among the then living male descendants of Thomas, Sr. having a last name of Proctor.

Mattina is the sole surviving descendant of Thomas, Sr., bearing the last name of Proctor. Robert Proctor Harrington is the only male descendant of Thomas, Sr. now living and bearing the Proctor name, but as a middle name.

What is to happen to the trust property now? Consider all possible claims that can be raised at this time. Evaluate them and decide what is to be done with the trust now. Explain your answer.

Question 4 --

Annette has come to you for advice and relates the following facts. Ten years ago, Jessica, Annette's 68 year old mother, asked Annette and her husband to live in Jessica's home and look after her when she was plagued by illness and loneliness. In return, Jessica promised orally to leave her house and at least half of the rest of her estate to Annette. As soon thereafter as Annette and her husband could terminate the lease on their apartment, they moved into Jessica's home. They resided with Jessica until she died two months ago, and they cared for her through this difficult period at considerable inconvenience to themselves. Just after Annette and her husband moved into Jessica's house, Jessica executed a will that read in relevant part: "As an expression of gratitude to my daughter, Annette, I leave her my home and personal effects and one-half of the rest of my property. The rest I leave equally to my other children, Alice, Betty and Charles." For about the last year of Jessica's life, she was irritable and felt that because she was deaf and unable to get around well, she was neither needed nor appreciated by her children. When she died, the only traces of her will were the torn pieces of it in her desk drawer, with a notation on one piece reading "cancelled". No one questions Jessica's mental capacity to revoke or to make a will right up to the date of her death, but Annette asks whether she can take more than her intestate share of Jessica's estate.

What are Annette's rights? How should she proceed? Would her case be different if she had not been related to Jessica? Would it matter if, instead of the above promise, Jessica had merely said: "I shall reward you in my will?"

Question 5--

Wilma, a widow, died intestate, leaving a modest estate. She did, however, have two large life insurance policies, each payable primarily to her husband, if he survived her (which he did not). As to secondary beneficiaries, one policy was payable "to my children equally" and the other was payable "in equal shares to my children who survive me". Many years after this "estate planning" was completed by her life insurance agent, Wilma's two grandchildren were born to her son, Sam, who died some years later in an automobile accident. Wilma has just died, survived by two daughters and the grandchildren. On behalf of the grandchildren, and at the suggestion of Wilma's insurance agent, Sam's widow has come to you in the hope that the grandchildren are entitled to some portion of Wilma's probate estate and her insurance proceeds.

Advise the widow fully as to the rights of the grandchildren. Explain your answer.

Happy holidays to all, and to all a good night!

WILLS AND TRUSTS

Final Examination
Fall 2005

Professor Ford

Directions:

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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.

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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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WILLS AND TRUSTS

Final Examination
Fall 2004

Professor Ford

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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, Sneezy 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

WILLS AND TRUSTS

Final Examination
Fall 2003

Professor Ford

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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]

BEST WISHES FOR THE HOLIDAYS AND NEW YEAR

Final Examination
Fall 2002

Professor Ford

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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

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.

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.

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 !!!

W&T.ExamFinal.'01F.122001

WILLS AND TRUSTS

Final Examination

Fall 1998

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.

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ANSWER ALL QUESTIONS.

1. Jean has come to your office to seek your advice with regard to some estate planning. She informs you that she is a widow with two children, a son Sam and a daughter Donna. She says she wants all of her property to go to her two children equally at the time of her death and wants to know whether she needs to do anything to accomplish that end. You correctly inform her that the laws of intestacy provide for such a result if she should die intestate. She thanks you and leaves.

The years go by and her son who is now in the military is assigned to duty in the Persian Gulf. War breaks out and Jane receives notice from the military that her son has been killed in the line of duty. She now returns to your office relating these new facts. She directs you to draw up a will for her to read as follows:

"Since my son Sam is gone, I leave one-third of my estate to my sister Sally and my brother Ben to share equally, and the remainder of my estate I leave to my daughter Donna. If I should make any gifts during my lifetime to my sister or brother, those gifts should be taken into consideration in computing their combined share and their respective shares in my estate. An accounting of any gifts I give to them during my lifetime will be found together with my will at the time of my death."

Subsequently, Jane made a gift of \$10,000.00 to her sister and \$15,000.00 to her brother. However, Jane inadvertently recorded the gifts incorrectly, when she wrote on a separate piece of paper left with her will:

"Today I gave to my sister Sally \$15,000 and \$10,000 to my brother Ben."

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Several months later, the military sent a letter to Jane informing her that their earlier report of Sam's death was erroneous and that he apparently was being held as a prisoner of war. Efforts were being made to verify this and to secure his release. At the time, Donna was living at home with Jane. She saw the letter and concealed it from her mother.

Jane has just died, leaving a net estate of \$300,000 ready for distribution. Sam has just been released and returned home. He has seen his mother's will and now comes to see you.

Sam wants to know exactly what can be done about the events that have taken place in his absence and what claims he has to what property.

How do you advise him? Explain.

How should the estate of Jane be distributed? Explain.

2. Mary is 21 years of age, unmarried and without children. Nonetheless, she has her lawyer prepare a trust instrument which Mary signs and in which Mary declares herself trustee of a bank account of hers containing \$100,000 for the benefit of herself for life, then for her children for life, then for her grandchildren for life, then the remainder to go free of trust to such of her great-grandchildren who attain the age of 21 years. Each life estate holder is entitled to a portion of the income at the discretion of the trustee, but only for his/her health, education, support and maintenance. In the trust, Mary reserves the right to amend or revoke the trust.

At the age of 24, Mary marries and at the age of 25, she has twins, Alan and Betty. Shortly following the births, Mary amends the trust to add Alan and Betty as present life estate holders with herself.

Several years pass and Alan has a son, Charlie, and Betty has a daughter Debbie. Mary is by this time getting along in years and she resigns as trustee, appointing Alan as the new trustee.

Charlie has two children Evan and Frank and Debbie has two children, Gloria and Harriet. At this point in time, Betty dies.

As trustee, Alan makes distributions from the trust to himself. Each month, for several years now, he has been paying himself \$800.00 per month which he applies towards his rent and \$200.00 per month which he applies towards his medical insurance policy. In addition, each year for the past three years, he has been making a distribution from principal in the amount of \$5,000.00 to himself and uses the monies to take a trip to the Caribbean. Alan has a very lucrative job and is very well situated financially, and not in need of distribution from the trust for his support.

While Betty was alive, and Alan was trustee, Alan was making distributions of \$1,000.00 per month to Betty, but nothing more. Likewise, Alan, since becoming trustee, has been making distributions of \$1,000.00 per month to Mary.

For the past several years, shortly after her resignation as trustee, Mary has been of questionable competency, but has not been declared incompetent by a court of law.

Evan goes to Alan and asks him to stop making the \$5,000 per year distributions to himself, claiming that such distributions are inappropriate. Alan counters by saying that he needs to make the trip to the Caribbean each year for relief from his arthrits during the cold New England winters. A fight ensues and as a result Alan dies. Later that same day, when the news reaches Mary, she has a heart attack and dies.

The trust bank account now consists of \$120,000.00.

Who is entitled to what? Explain.

3. Linda Jones goes to her attorney who prepares for her the following document according to her instructions:

"I, Linda Jones, being a widow, leave my estate as follows: I give my cousin Kathy, one-half and I give my niece, my cousin Kathy's daughter, Tina, the other one-half. I intentionally make no provision for any other heir of mine."

When Linda went to her lawyer's office, she told the lawyer she wanted to think further about the will and she took it with her. A few weeks later, while at a New Year's Eve party, Linda took the document prepared by her lawyer from her pocketbook. Although she was a little intoxicated from the celebration, Linda none the less stated that she wanted to execute her will. She signed and dated the document in the presence of several guests at the party, including Linda's cousin Kathy. Then, Kathy and two other party guests, who were standing nearby when Kathy signed, also signed as witnesses.

A few weeks later, Linda went back to her lawyer and told her that she wanted a new will prepared, revoking everything in the original document and leaving her entire estate to the Animal Rescue League. While Linda waited in the office, the lawyer prepared and her secretary typed up a memorandum, correctly setting forth Linda's request. Linda reviewed that memorandum, signed it before her lawyer and secretary stating "This is the way I want it."

As Linda got up to leave the lawyer's office, she had a heart attack and died immediately. Whereupon, the lawyer immediately signed her name at the bottom of the memorandum beneath Linda's signature, writing "witness" under her own signature. She then instructed her secretary to do the same and she did.

Upon a subsequent search through the personal papers of Linda, the original document prepared by the lawyer and signed at the New Year's Eve party was found. On the first page of that document, in Linda's handwriting was written the following notation: "This will is hereby cancelled. I have made a new one. Linda Jones"

At her death, Linda left a son Jim, her cousin Kathy and Kathy's two daughters Dina and Nancy. Kathy never had a daughter named Tina.

How should Linda's estate be distributed? Explain.

WILLS AND TRUSTS

Final Examination: Multiple-Choice Portion
Fall 1995

Professor Ford

Directions: Please place your Social Security Number on the front of your booklets. No other means of identification should be shown. Number all booklets showing number of each booklet out of total number, e.g., "1 of 3", "2 of 3", etc. Use the first page of booklet one to write your answers to the multiple choice questions. You may write any notes, diagrams, etc. in the booklet, preferably a separate "Scrap" booklet. The notes are for your purposes and will not be considered any part of the examination answer. Turn in every booklet in which you write anything. Forty-five minutes are allotted for this portion of the examination. The multiple choice portion will count for 25% of the grade. Answer all questions. Best wishes.

MULTIPLE CHOICE QUESTIONS:

Answer all questions in order and number all answers. Select the best answer where there may be more than one possible answer. Use each line on the page to record your answers; do not skip lines. Use one line per answer.

1. The testator is writing his Will and making provision for a testamentary gift to his son. Which of the following provisions is least likely to be enforced:

- A. Provided that by the time of my death he has completed his studies at the seminary and become a priest.
- B. Provided that by the time of my death he has attained the level of bishop in the Catholic Church.
- C. Provided at the time of my death he is a member in good standing in the Catholic Church.
- D. Provided at the time of my death he is faithful to the Catholic faith.

2. Joe's Uncle Sam executed a valid Will leaving his residuary estate to Mercy Hospital. Joe thereafter executed his own valid Will providing for a gift of \$100,000.00 to the residuary legatee under his Uncle Sam's Last Will. Subsequent to that, Uncle Sam changed his Will, leaving his residuary estate to Greenpeace. Subsequently, Uncle Sam died and Greenpeace received his residuary estate. Some while later, Joe died, survived by his wife, Laura, and his children, John and Joyce, all three of whom were provided for in Joe's Will. Also pursuant to Joe's Will, his residuary estate was left to the local art museum. Who receives the \$100,000.00 bequest from Joe's estate?

- A. Mercy Hospital.
- B. Greenpeace.
- C. Laura, John and Joyce by intestacy.
- D. Local art museum.

3. Donna executes a valid Will consisting solely of the following sentence: "I leave \$10,000.00 to Mary and the remainder of my estate to Mark." Thereafter, Donna executes another valid Will consisting solely of the following sentence: "I leave \$5,000.00 to Mary and my personal residence to Tom." Later, Donna destroys the second Will document and thereafter dies, owning a personal residence and \$10,000.00. She is survived by her ex-husband, her two children, her mother, and Mary, Mark and Tom. Who receives Donna's personal residence?

- A. Mark, by Donna's first Will.
- B. Tom, by Donna's second Will.
- C. Donna's children by intestacy.
- D. Ben, one-third, by spousal forced share; and Donna's children, two-thirds, by intestacy.

4. Fred executed a valid Will leaving his mutual fund investment, worth at the time \$200,000.00, to his son, Bill, and the sum of \$200,000.00 in bank accounts to his daughter, Danielle. All the rest and remainder of his estate was left to Bill and Danielle equally. Thereafter, Fred withdrew \$100,000.00 of his monies from the bank and invested it all in his mutual fund. Fred has died, survived only by Bill and Danielle. Fred's estate consists of the mutual fund now worth \$300,000.00 and cash in the bank in the amount of \$100,000.00. How is Fred's estate distributed?

- A. Mutual fund to Bill and \$100,000.00 to Danielle.
- B. The mutual fund to Bill and Danielle equally and \$100,000.00 to Danielle.
- C. All to Bill and Danielle equally.
- D. Two thirds of the mutual fund to Bill and one third of the mutual fund plus \$100,000.00 to Danielle.

5. Before one witness, Jack executed his Will, leaving his sports car to Ned, his piano to Brenda, and the remainder of his estate to his mother. Thereafter, Jack executed a second testamentary instrument before two witnesses. That instrument provided that his sports car was to go to Mike and that his prior Will was, otherwise, to remain in full force and effect. Jack died, survived by Ned, Brenda, his mother and Mike. Who receives the piano?

- A. Brenda, by the second instrument republishing the first.
- B. Brenda, by the second instrument incorporating by reference the first.
- C. Mother, as residuary beneficiary under the first Will.
- D. Mother, by intestacy.

6. Seven years ago Walt executed a valid Will leaving all of his property to his mother. Walt and Wendy have been dating steadily for the past five years. Wendy has just discovered that she is pregnant, and she brings a paternity action against Walt. By clear and convincing evidence, the Court declares Walt to be the father of the now born child, Cory. Walt still insists that Cory is not his child, but he does pay the court-ordered support. Walt has died, survived by his mother, Wendy and Cory. How is Walt's estate distributed?

- A. All to Walt's mother by Will.
- B. All to Walt's mother by Intestacy.
- C. An intestate share to Cory as an omitted child, and the remainder to Walt's mother by Will.
- D. An intestate share to Cory as an omitted child, and the remainder to Walt's mother by intestacy.

7. Adam and Eve were married, and they had two children, Cain and Abel. Eve died and Adam remarried to Harriet. Adam and Harriet had two children, Matthew and Mark. ~~Matthew~~ died, and then ~~Adam~~ died intestate. All others survived Adam. How is Adam's estate to be distributed?

- A. To Cain, Abel and Mark equally.
- B. All to Mark.
- C. To Harriet and Mark equally.
- D. One half to Harriet and one sixth each to Mark, Cain and Abel.

8. Alice is widowed with three children: Betty, Cathy and Donna. Betty dies leaving her husband, Isaac, and no children. Cathy dies testate leaving no husband, but two children, Ethel and Francis. Donna has a husband, Jacob, and two children, Geraldine and Harriet. Alice dies intestate. How is her estate distributed?

- A. One third to Isaac as surviving spouse of Betty; one sixth each to Ethel and Francis by representation; and one third to Donna.
- B. One quarter each to Ethel and Francis by anti-lapse statute, and one half to Donna.
- C. One quarter each to Ethel and Francis per stirpes and one half to Donna.
- D. One half as provided in Cathy's Will and one half to Donna.

9. Ken died intestate, survived by the following people:

- (1) His brother's son's son, Larry;
- (2) His uncle's son, Manny;
- (3) His father's father's father, Ned; and
- (4) His ex-wife, Olivia.

To whom is his estate distributed?

- A. Larry.
- B. Manny.
- C. Ned.
- D. Olivia.

10. Sarah has no husband and no children. She executes a valid Will, leaving all of her estate to "my niece, Beverly's, children." At the time of execution of the Will, Beverly has no children. Sarah dies, and Beverly still has no children. Thereafter, Beverly has four children, Bart, Bert, Brett and Bob. Sarah is survived by her brother, Paul. How is Sarah's estate distributed?

- A. To Paul.
- B. To Beverly.
- C. To Bart, Bert, Brett and Bob at Beverly's death.
- D. To Bart as Beverly's first-born child.

11. John asked his long-time attorney, Mary, to prepare a Will for him and to include in the Will a testamentary gift of \$5,000.00 to Mary. Since she was to receive a bequest under the Will, Mary referred John to an associate attorney in her office who prepared and oversaw the execution of the Will in accordance with John's instructions. When John died and his Will was offered to probate, John's wife, Linda, who was to receive one half of John's estate pursuant to the Will, contests the Will. How should she argue?

- A. Violation of the applicable rule of professional conduct?
- B. Undue influence.
- C. Lack of testamentary capacity.
- D. Fraud.

12. Roland's Will provides as follows:

"I leave all the remainder of my estate to whomever my nephew, Ben, shall designate, either during his lifetime or by his Will. If Ben makes no such designation, then at his death, the remainder of my estate shall be distributed among my heirs at law."

Roland dies, and thereafter, Ben dies also. Ben's Will is found and it states as follows:

"I leave to my wife, Abigail, my entire stock portfolio and real estate investment properties, and all the remainder of my estate, I give to my mother."

How is the property in the residuary clause of Roland's Will to be distributed?

- A. To Roland's heirs at law.
- B. To Ben's wife, Abigail, by Ben's Will.
- C. To Ben's mother.
- D. To Ben's wife, Abigail, by intestacy.

13. Ted executes a Will devising his residuary estate "to such person or persons as my brother, Rick, shall, by his Last Will, appoint." Two years later, Rick dies, leaving a Will executed prior to Ted's Will. Rick's Will states "all my property, and all property over which I hold a power of appointment, to Clara." Thereafter, Ted dies. Clara claims the residue of Ted's estate. On what basis might Clara be entitled to that residue?

- A. As Rick's appointee.
- B. Under the theory of incorporation by reference.

- C. Under the theory of independent significance.
- D. None of the above.

14. Oscar conveys a fund in trust "for Dan for life, then to Dan's children, but if at Dan's death, Dan is not survived by any children, then to Harry." At the time the trust is created, Dan has no children. Identify the classification of interest in Dan's children.

- A. Shifting executory interest.
- B. Contingent remainder.
- C. Springing executory interest.
- D. Vested interest subject to divestment.

15. Oscar conveys Blackacre to Jane for life, then to the children of Sue. At the time of the conveyance, Sue has no children. Thereafter, Sue has a child, Eric. Eric dies when he is one month old, leaving Sue as his only heir. What is Sue's interest?

- A. Vested remainder subject to open.
- B. Vested remainder.
- C. Contingent remainder.
- D. Sue has no interest.

16. Ed bequeaths \$50,000.00 "to the children of Michael who reach age 21." At Ed's death, Michael has two children, Chris (age 7) and Doug (age 4). Three years later, Ethel is born to Michael. Thereafter, Chris reaches the age of 21. One year thereafter, Frank is born to Michael, and Doug dies at the age of 20. What, if any, distribution is made at this time?

- A. None.
- B. One half to Chris.
- C. One third to Chris.
- D. One sixth to Chris.

17. Pam transfers property to Wes in trust to pay the income annually during Nathan's lifetime "to Nathan personally, to be for Nathan's support," and on Nathan's death, to pay the principal to Beth. One year later, Nathan gratuitously writes, signs and delivers to Denise the following memorandum: "I hereby assign to Denise all my right to receive future income for my lifetime from the trust," identifying the above trust in the memorandum. Wes, who has no notice of the assignment, pays the next annual installment of income to Nathan, who, having meanwhile become angry with Denise, refuses to pay this sum over to her. Does Denise have a claim against Nathan?

- A. Denise has no claim because the trust is a support trust.
- B. Denise has no claim because the trust is a spendthrift trust.
- C. Denise has a claim pursuant to the written memorandum given to her by Nathan.

- D. Denise is entitled to have a constructive trust imposed upon Nathan to the extent of the amount of the installment made to him.

18. In a common law jurisdiction, Jim conveys Blackacre to Peter effective when Blackacre shall be used as a farm. One year later, Jim uses Blackacre as a farm. Then, Jim conveys all his right, title and interest in and to Blackacre to Tom. What is Tom's interest?

- A. Reversion.
- B. Possibility of reverter.
- C. No interest.
- D. Present interest in fee simple absolute.

19. Donald bequeaths a fund in trust to pay the income "to my son, Sam, for life; then to my son's widow, if any, for life; then to pay the principal to my son's children, but if no child of my son is alive at the death of the survivor of my son and his widow, then to pay the principal to my niece, Brenda. Based on the foregoing, which of the following choices is not true?

- A. Sam has a life estate which is a present interest.
- B. Sam's widow has a contingent remainder for life which will vest, if at all, at Sam's death.
- C. Sam's children have contingent remainders which will not vest until Sam's widow dies, and therefore, their interest violates the Rule Against Perpetuities under the Unborn Widow Rule.
- D. Brenda has a contingent remainder which will not vest until Sam's widow dies, and therefore, her interest violates the Rule Against Perpetuities under the Unborn Widow Rule.

20. Doris executed a valid Will expressly disinheriting her son, Arthur, and leaving her entire estate to her daughter, Lisa. Subsequently, Doris executed a second Will leaving \$10,000.00 to her son, Arthur, and all the remainder of her estate to her daughter, Lisa. Doris is survived by Lisa, Arthur and Doris' sister, Liz. If there are any grounds for opposing the probate of Doris' second Will, who has standing to do so?

- A. Lisa only.
- B. Arthur only.
- C. Lisa and Arthur.
- D. Lisa, Arthur and Doris' sister, Liz.

CRS01-142

WILLS AND TRUSTS

Final Examination: Essay Portion
Fall 1995

Professor Ford

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ESSAYS:

1. Lou and Linda are married with two children, Timmy and Tammy. They executed mutual Wills 15 years ago as prepared by Attorney Adams. Each Lou and Linda provided in his and her separate Will as follows:

After payment of my just debts and funeral costs, I leave, first, those personal items set forth in a separate list of items to be distributed at the time of my death, to those individuals who shall be designated thereon, said list to be found at the time of my death in my top bureau drawer. All the rest of my estate I leave to my spouse so long as he/she shall survive me. In lieu thereof, I leave my spouse's share of my estate to my two children, Timmy and Tammy, share and share alike.

Since the execution of those mutual Wills, Lou and Linda have had an additional child, Larry.

Lou now goes to Attorney Adams informing him that he wishes to prepare a new estate plan. Lou and Linda own the following properties jointly: Their personal residence, an account at First American Bank, and shares of Enterprise Mutual Fund. Lou wishes the home and bank account to remain as is. As for the mutual fund, Lou informs Attorney Adams that he is taking one half of the shares out of the joint account and putting them into a new account that he is setting up jointly with Hildy Homewrecker, a model at Lou's modeling agency.

Lou owns the Tootsie Modeling Agency with his partner, Peter. Lou and Peter have a buy-out agreement between them, calling for the surviving partner to buy out the interest of a deceased partner by payment of \$250,000 to the deceased partner's spouse, or if there is none, then to the deceased partner's children equally.

Lou owns, individually, 1,000 shares of GE stock, which he sells and uses the proceeds to buy out Peter's interest in the modeling agency, leaving Lou the sole owner of the agency.

cc

Lou owns individually, a life insurance policy on his own life. He informs Attorney Adams that he wishes the beneficiary designee to be changed from his wife, Linda, as follows: "50% to Hildy Homewrecker and 50% equally to the children of the insured, Lou."

Lou owns, individually, a money market account. He instructs Attorney Adams to set up an inter vivos irrevocable trust to be funded by the money market account and naming Lou's cousin, Carl, as trustee. During his lifetime, Lou is to receive all income annually from the trust, and in addition, Carl, as trustee, is to have discretion to invade principal for the benefit of Lou during his lifetime for his health, care and welfare. The trust is to further provide that, upon Lou's death, : " any speedboat that shall be in trust, either during my lifetime or which shall be conveyed to the trustee pursuant to my Will, I leave to Hildy Homewrecker, and all the rest and remainder of the trust property shall go one half to Hildy Homewrecker and one half equally to Timmy, Tammy and Larry."

Finally, the Will is to provide:

"To my wife, Linda, I leave 100 shares of GE stock and whatever automobile I may own at the time of my death.

"To the trustee of my inter vivos irrevocable trust, I leave my speedboat."

Lastly, Lou instructed Attorney Adams not to inform Linda about any of this transaction.

Attorney Adams drafted the Will and inter vivos irrevocable trust per Lou's instructions. Upon Lou's arrival at Attorney Adams' office, Attorney Adams calls his secretary, Susan, into the office, whereupon Lou acknowledges the Will to be his Last Will and Testament and signs the same before Attorney Adams and Susan. Susan signs as a witness, and Attorney Adams notarizes the signatures of Lou and Susan. Lou also executes the trust instrument. Lou then takes all of the paperwork and delivers the trust instrument to Carl. Lou then returns to his own office where he again acknowledges his signature on his Will before his own secretary, Terry, who then signs the Will as a witness. Once that is done, he instructs Terry to remove his previous Will from the office safe and mark it cancelled. Lou immediately leaves the office and arranges for and accomplishes the transfer of shares of mutual fund and the entire money market account as provided above. In addition, Lou arranges with his insurance agent who completes the change in beneficiary on Lou's life insurance policy. Meanwhile, Terry removes Lou's prior Will from the office safe and, in large, bold letters from corner to opposite corner of each page of the Will, writes the word "Cancelled".

Giving Linda yet another excuse as to why he must work late, Lou rendezvous with Hildy for a night out on the town. While driving out on Route 93, they are hit head on by a speeding dump truck that has crossed the median strip, killing both Lou and Hildy on impact. Hildy is survived by her daughter, Angelica.

Linda retains you to pursue whatever rights she has in any and all of the above-referenced property. How do you advise her? Explain your answer.

2. In 1965, Peter died testate. His Will provided that his entire estate be left in trust to his brother, Tom, to provide one half of all the income therefrom to Peter's wife, Paula, to be paid at least annually during her lifetime, and the other one half of all income being left to the sole discretion of the trustee, whether or not to make distribution to Peter and Paula's children, Alice and Betty, for their comfortable support, maintenance and education. The testamentary trust further provided that the children's interest in the trust was to be free of all claims of their creditors, including those of a divorcing spouse. Finally, the testamentary trust provided that the principal of the trust was to be distributed upon Paula's death in accordance with her Last Will and Testament.

In 1970, Paula married Peter's brother, Tom, and together they had a child named Charlie who was born in 1971. Paula died in 1985 and, in her Will, provided that the remaining principal in Peter's testamentary trust shall remain in Peter's trust subject to the same terms and conditions as provided therein, with income payable to Paula's children for their lives, remainder to be paid to their children.

During the administration of the trust, Tom invested a portion of the trust's principal in some moderate-risk stock mutual funds during a rapid climb in stock market values. Unfortunately, like most inexperienced investors like himself, Tom did not see the sudden bust coming, and the trust lost \$50,000.00 in principal, representing approximately 5% of the trust principal. The rest of the principal in the trust was invested very conservatively, and that principal is safe. Also during the administration of the trust, Tom has, at different times, distributed some income to Alice and Betty during their lifetimes and to Charlie prior to his accident.

Alice died in 1990. Betty died in 1991. Neither Alice nor Betty left any children or spouse. In 1992, Charlie had a child, Chad, by his girlfriend, Gail, who is now looking for support for both herself and Chad out of Charlie's interest in the trust. In 1995, Charlie was in an accident and now lies in an irreversible coma. Tom has been appointed Charlie's guardian.

As guardian, Tom petitions the probate court to terminate the trust and to pay all funds therein to him as guardian for Charlie, as Charlie is the sole income beneficiary. [As guardian, Tom has standing to bring this petition. Standing is not an issue for discussion.] Tom wishes to declare a new trust for Charlie that will not only protect the trust funds from Charlie's creditors, but also allow Charlie to receive public benefits, e.g., Medicaid, without having to first spend down the principal of the trust.

You represent Tom. Discuss all issues that he must consider before acting.

HAPPY HOLIDAYS AND TO ALL A GOOD NIGHT!!!

CRS01-142

WILLS AND TRUSTS

Final Examination
Fall 1998

Professor Ford

Directions: Please place your Social Security Number on the front of your booklets. No other means of identification should be shown. 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 the entire examination fully before beginning. Thereafter, you should approach each essay question by making an outline of your answer so as to best organize your response. You may write your outline in the booklet. The outline is for your purposes and will not be considered any part of the examination answer. Issue identification and discussion is most important. You are cautioned to follow an orderly pattern of analysis in noting the issues you identify. Three hours are allotted for this examination. The multiple choice portion will count for 20% of the grade. Twenty percent of three hours is 36 minutes. Answer all questions. Use your own judgment as to how you allot your time. Best wishes.

ESSAYS:

1. Dad is elderly and in very poor health when he calls his lawyer, Perry, to his hospital room and directs Perry to draw up an estate plan that leaves nothing to Dad's wife, Wilda, from whom he has been living apart for the past eight years, leaves his GM stock to his older son, Steve, leaves his AT&T stock to his younger son, Tim, leaves his home to his daughter, Diane, leaves his life insurance proceeds to his niece, Nina, and leaves his automobile and bank account to his wife's nephew, Fred. The stock is currently held in Dad's name alone. The home is held in Dad's revocable, inter vivos Greenacre Trust, under which Dad is the trustee and life beneficiary, and Dad's three children are equal remaindermen. Dad is owner of the life insurance policy and his estate is named as beneficiary, the auto is in Dad's name alone, and the bank account is in the joint names of Dad and Steve, Steve's name having been added so as to allow him to help Dad manage his money and pay his bills.

Perry returns to his office and draws up a will stating: "I leave to my wife nothing. I leave to my older son, Tim, my GM stock, to my younger son, Steve, my AT&T stock, to my daughter, Diane, my home, to my niece, Nina, my life insurance proceeds, to my wife's nephew, Fred, my automobile and bank account." Perry also prepares appropriate paperwork to change the life insurance beneficiary to read: "Insured's niece, Nina." Perry tells his secretary, Della, who is a notary, to take the will and insurance papers to Dad in the hospital to review and sign. When Della arrives in the hospital with the documents, Dad is in critical condition, under medication and fading in and out of consciousness. Della calls two on-duty nurses into Dad's room to witness the signing. Della asks Dad if he can read the documents, to which Dad responds: "No." Della asks Dad if he wants her to read the documents to him, to which Dad replies: "Not enough time. I trust Perry has everything in order. Let's sign."

Pursuant to Della's instructions, Dad signs the life insurance paperwork, and then proceeds to initial each page of the will. Upon completion of that task, the pen slips from Dad's hand, his eyes blink, and he emits gasping sounds. The nurses rush

to Dad to keep his air passages clear and check his pulse. Della pulls one nurse away, and, pointing to the witness line of the will, shouts: "SIGN!" The nurse complies and then turns back around to resume tending to Dad. Immediately, Della repeats the pulling and shout with the other nurse, who likewise complies, and then turns back around to resume tending Dad.

Della scoops the papers and darts out of the room, stuffing the insurance papers into the envelope that she previously had stamped and addressed to the insurance company. Furiously she races down the hospital corridor, dodging doddering patients and hurdling at least one gurney. Through the hospital doors she bursts out into the street. Without breaking stride, she casts about and spies a passing mail truck which she readily overtakes waiving the insurance envelope. As she is about to place the envelope in the postal worker's hand, Dad dies. The insurance paperwork is thereafter delivered to the insurance company in due course of the mail.

Meanwhile, in another part of town and simultaneously with Della's marathon race from Dad's hospital room, Steve and his drug addicted son, Attila, have an altercation over Attila's bad attitude, which altercation ends in Attila's pulling a knife, and stabbing and killing his father. Steve predeceases his Dad and leaves his wife, Karen, and his son, Attila, and no will.

When Dad dies, his GM stock is worth \$100,000 and his AT&T stock is worth \$80,000.

- A. What rights and claims, if any, does Wilda have on the above facts? What opposition might she encounter?
- B. What rights and claims, if any, does Diane have on the above facts? What opposition might she encounter?
- C. What rights and claims, if any, does Attila have on the above facts? What opposition might he encounter?

N.B.: If some point of law or issue arises more than once, identify and discuss it the first time, and the second time, just identify and state that it has already been discussed. Then move on.

2. Sophie is elderly and widowed. Her son, Wilbur, is a lawyer. Sophie tells Wilbur that she wishes to put aside some money now for her grandchildren's education and future. In addition to Wilbur, Sophie has a daughter, Zelda, who has two children, Alice 3, and Bianca, 1. Wilbur has an adopted child, Charlie, 7.

Sophie says that she wants City Bank & Trust Company to serve as trustee of the funds. Wilbur advises her of the anticipated added costs of having an institutional trustee, and suggests Zelda and himself to serve as trustees. Sophie insists upon City Bank.

Strictly following Sophie's instructions, Wilbur drafts the trust as follows:

"... \$500,000 to City Bank & Trust Company as trustee for the grandchildren of the Settlor, Sophie, for their college education, and thereafter all income is to be paid in equal shares to them annually, and after the last of them is deceased, all income is to be paid annually and in equal shares to Settlor's grandchildren's children for a period of twenty-one years. Thereafter, all principal is to be divided and distributed equally out of trust to the then remaining income beneficiaries or their children by representation."

Sophie and City Bank sign the trust agreement and Sophie delivers the \$500,000 to City Bank.

Sophie dies, leaving a will that pours over her entire \$1M estate into the trust. Then Zelda has another daughter, Danielle, and Wilbur adopts Ethan, Frank, Gary, Herb and Jack. All grandchildren complete their college education. Alice, Bianca, Charlie and Ethan each has one child, all minors at present. There remains in the trust a principal amount of \$1.2M. Zelda and Wilbur go to City Bank saying they want the trust terminated and all principal distributed to them or to their children. Wilbur wants distribution to be per capita, while Zelda wants distribution to be 50% to her children equally, and 50% to Wilbur's children equally. City Bank refuses to terminate the trust.

Wilbur and Zelda go to court. What result? Discuss all issues and arguments, for and against, confronting the court.

MULTIPLE CHOICE QUESTIONS:-

Answer all questions in order and number all answers. Select the best answer where there may be more than one possible answer. Use each line on the page to record your answers; do not skip lines. Use one line per answer.

1. Tom died intestate, survived by his grand nephew, Ned, his first cousin, Chris, and his great aunt Agatha. Who takes Tom's estate in a degree-of-relationship jurisdiction?

- A. Ned.
- B. Chris.
- C. Agatha.
- D. Chris and Agatha.

2. Sue married Ed in 1980. They had a child, Mary. They adopted a child, Henry. Sue executed a valid will leaving her estate "one-half to my husband and one-half to be divided equally between my children." Sue and Ed subsequently divorced. Sue married Larry who had a child, Emma, by his first wife from whom he was divorced. Sue legally adopted Emma. Sue died. Who takes her estate under her will?

- A. Ed takes one-half and Mary and Henry share remainder equally.
- B. Larry takes one-half and Mary, Henry and Emma share remainder equally.
- C. Mary, Henry and Emma take one-third each.
- D. Mary takes all.

3. Betty executed a valid will leaving the residuary of her estate to the Mercy Hospital, "for the fine care it provided to my late husband." She showed her will to her son, Dick, who said, "That is what I shall do also." Dick executed a valid will leaving the residuary of his estate "to the residuary beneficiary under my mother's will." Betty validly revoked her will without Dick's knowledge. Dick died, survived by his wife and one child, both of whom are provided for specifically in his will. Who gets the residuary of Dick's estate after the specific bequests to his wife and child are satisfied?

- A. To Dick's wife and child under the laws of intestacy.
- B. All to Dick's wife.
- C. All to Mercy Hospital.
- D. Equally among those who would have been Betty's heirs at law had she died when Dick died.

4. Ted, a devout Catholic, executed a valid will leaving his estate to his son, Sam. Ted subsequently had a fight with Sam and executed a new valid will leaving his estate to his niece, Nancy, "who has won my favor by her engagement to marry a most devout and upright Catholic man." A week later, Nancy broke the engagement and married an Orthodox Jewish man. Ted was outraged and executed a third valid will which left all his estate to the local animal rescue league. The animal rescue league was cited for animal abuse and Ted and Sam made up. Whereupon, before witnesses, Ted tore up his third will stating that he can now die in peace, having done the right thing with his son. Ted dies leaving his son, Sam, and no spouse. The first and second wills are found among Ted's papers after his death. Who gets Ted's estate?

- A. Sam takes all under first will.
- B. Nancy takes all under second will.
- C. Local animal rescue league takes all under third will.
- D. Sam takes all under law of intestacy.

5. Jane, the unmarried seventeen year old mother of Jessie, is facing life-threatening, but necessary, surgery. Therefore, she executes a will before two witnesses leaving her estate upon her death to her mother in trust for the benefit of Jessie until Jessie is twenty-three years old. Jane dies in surgery. Jane is survived by her mother, Jane's sister Abbie, Jessie and Jessie's father. Who takes Jane's estate?

- A. Mother in trust for Jessie pursuant to will.
- B. Mother outright.
- C. Jessie, through her father or some court appointed guardian since she is a minor.
- D. Jessie's father takes one-half and Jessie takes one-half through her father or some court appointed guardian since she is a minor.

6. Maude died leaving a valid will providing for the residuary of her estate, after various specific bequests, to go to her grandchildren equally. At the time of signing the will, Maude's daughter, Ellen, had one child, Sally, and Maude's son, Allen, had no children. Sally predeceased Maude. At the time of Maude's death, she was survived by Ellen, who was pregnant and subsequently gave birth to Bill, and by

Allen, whose wife became pregnant two weeks later and gave birth to Fred. No other grandchildren of Maude are born. Who is entitled to a share of Maude's residuary estate?

- A. Ellen, by right of representation through Sally.
- B. Ellen and Allen under law of intestacy.
- C. Bill.
- D. Bill and Fred.

7. Oscar transfers property to Alex in trust (Oscar Trust) to pay the income annually during Ann's lifetime "to Ann personally, to be for Ann's support," and on Ann's death, to pay the principal to Bob. A couple years later, Ann writes, signs and delivers to Max a paper stating: "I hereby assign to Max all my right to receive future income for my lifetime from the Oscar Trust," in exchange for valuable consideration from Max. Alex has no knowledge of this paper. Alex pays the next installment of income, \$4,000.00, to Ann, who refuses to turn over that money to Max. Is Max entitled to the \$4,000.00?

- A. Yes, because there was a valid assignment of the right to income.
- B. Yes, because Ann, who is now in possession of the money is bound by her contract.
- C. No, because Ann has no right to make the assignment due to the trust being a support/spendthrift trust.
- D. No, because Max failed to give proper notice of assignment to Alex.

8. Ethel died leaving a will placing all her estate in trust to pay for the college education of her son, Greg's, children, and thereafter to pay all income to Greg and his wife for life, remainder to Greg's children. The children have completed their college education and now wish to terminate the trust before the deaths of their parents as they wish to use the trust assets to establish themselves in business and/or purchase homes. Their parents are independently wealthy. Can they terminate the trust?

- A. Yes, if the parents agree.
- B. Yes, if the parents and the trustee agree.
- C. No, because the trust has as a material purpose the support of the parents.
- D. No, because the trust is a spendthrift trust.

9. Jean conveys to Hank and his heirs until Lois graduates from law school, then to Dan and his heirs. What is Hank's estate?

- A. Fee simple determinable.
- B. Fee simple subject to condition subsequent.
- C. Fee simple subject to executory limitation.
- D. Term of years.

WILLS AND TRUSTS

Final Examination
Fall 1993

Professor Ford

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EXAMINATION:

Henry and Winnie Winkle are married and have three children: Alice, a 26 year old secretary and daughter of Henry from a prior marriage, not adopted by Winnie; Brad, a 24 year old skydiving instructor; and, Carla, a 22 year old cocktail waitress. All three are high school graduates with no further formal education and no children. Henry is a high powered executive in an advertising agency, and Winnie holds a master's degree in art history and is curator of the local art museum. She is an ardent supporter of higher education.

Henry and Winnie own their personal residence as tenants by the entirety. They also have a joint bank account. Henry owns corporate stock of the advertising agency; an insurance policy on the life of Winnie, naming himself primary beneficiary and Alice, Brad and Carla secondary beneficiaries; and, a Jaguar automobile. Winnie owns bank CD's naming Henry as payee on death; a policy of insurance on the life of Henry, naming herself as beneficiary and Alice, Brad and Carla secondary beneficiaries; and, a Volvo sedan.

In March of this year, Winnie went to the family attorney, Perry Mason, to draft a will for her. On March 17, 1993, she duly executed, in conformity with statutory requirements for wills, the following document:

" I, Winnie Winkle, hereby revoke all prior wills and codicils made by me, and I leave my estate upon my death as follows: one-half outright to my loving husband, Henry, and one-half to my husband, Henry, in trust for our children, dear Alice, Brad and Carla. Said trust property shall be divided and held in separate, equal accounts for each child. Income shall accumulate in each account and each account shall be payable in full, together with principal, to each child upon his or her attainment of a college degree. Any child or grandchild of

any child of mine attaining a college degree before his or her parent or grandparent shall be entitled to the trust account set aside for that child of mine, and no one else in the line of descendants of that child of mine shall have any claim in this trust, it being my intent to encourage the pursuit of higher education in my family and to reward its attainment."

Winnie immediately showed the will to Henry and asked him to see Perry to have a similar will for himself drawn up and executed. Henry agreed to do so, and in fact did so, accomplishing the same in April of this year.

In early May, Georgie Gorgeous, a local college student, was discovered in the local soda parlor by a scout for Henry's ad agency. She was offered a modelling job, which she accepted part time so as to continue working on her college degree. Word about her spread rapidly, and it was love at first sight for Henry when he met her. At first they worked closely, then late at night..... (You know how it goes.) In any case, Henry asked Georgie to go away with him for a few days, to work on her career development. She accepted.

Henry ran to Attorney Matlock informing him about Georgie, and his desire to divorce Winnie and marry Georgie. In the meantime, he wanted to cut Winnie out of his estate and put Georgie in. Matlock recommended the following document, which Henry signed and Matlock notarized:

"I, Henry Winkle, declare myself trustee, under revocable trust, of all my property, real, personal and mixed, and wherever situated, for the benefit of myself for my life, and upon my death to be divided into two equal parts, one-half to go to Georgie Gorgeous, and the other one-half to go to the trust set forth in the will of Winnie Winkle dated March 17, 1993. Upon my death, Attorney Matlock shall become successor trustee in my place."

In mid-May, Henry told Winnie that he must go to Chicago for a few days on business. Suspicious, Winnie followed Henry to the airport, where she saw him, with Georgie, board a plane bound for Puerto Rico. Winnie proceeded immediately from the airport to the law offices of Beverly Barracuda. They filed for divorce that afternoon.

Upon arriving home, Winnie remembered her will. She pulled it out of the house safe and taking a black magic marker, she lined out as follows:

" I, Winnie Winkle, hereby revoke all prior wills and codicils made by me, and I leave my estate upon my death as follows:
~~one half outright to my loving husband, Henry, and one half to~~
~~my husband, Henry,~~ in trust for our children, dear ~~Alise~~, Brad and Carla. Said trust property shall be divided and held in separate, equal accounts for each child. Income shall accumulate in each account and each account shall be payable in full, together with principal, to each child upon his or

her attainment of a college degree. Any child or grandchild of any child of mine attaining a college degree before his or her parent or grandparent shall be entitled to the trust account set aside for that child of mine, and no one else in the line of descendants of that child of mine shall have any claim in this trust, it being my intent to encourage the pursuit of higher education in my family and to reward its attainment."

Winnie immediately sent the will to Attorney Mason to apprise him of what she had done.

Very distraught, Winnie decided to visit her sister for comfort. Tears welled up in her eyes as she drove. Suddenly she burst into uncontrollable crying. Her vision blinded, she drove off the road into a tree. Winnie was taken by ambulance to the hospital. Upon arriving in the emergency room, she had second thoughts about the arrangement she set up in her will for the children. Fortunately, she so happened to have a copy of her will in her handbag. She pulled it out and wrote on it:

"Attorney Perry Mason: Delete all provisions for a trust in this will. I leave everything outright to the children. 2:30 p.m., 5/22/93. Signed Winnie Winkle."

Two nurses witnessed her signing and signed the paper themselves in her presence. The paper was immediately dispatched to Perry Mason who lined out with pen as follows:

~~" I, Winnie Winkle, hereby revoke all prior wills and codicils made by me, and I leave my estate upon my death as follows: one half outright to my loving husband, Henry, and one half to my husband, Henry, in trust for our children, dear Allee, Brad and Carla. Said trust property shall be divided and held in separate, equal accounts for each child. Income shall accumulate in each account and each account shall be payable in full, together with principal, to each child upon his or her attainment of a college degree. Any child or grandchild of any child of mine attaining a college degree before his or her parent or grandparent shall be entitled to the trust account set aside for that child of mine, and no one else in the line of descendants of that child of mine shall have any claim in this trust, it being my intent to encourage the pursuit of higher education in my family and to reward its attainment."~~

Meanwhile, Winnie was taken into the operating room where an emergency caesarean was performed. (Did I forget to mention...?)

Meanwhile back in Puerto Rico, Georgie suggested to Henry that they go skydiving. Georgie, an ace skydiver, packed the chutes and up they went in the plane. At 10,000 feet, Henry and Georgie jumped. They smiled at each other

as they first sailed downward through the air. Then Georgie pulled her rip cord, and the chute billowed out. Then Henry pulled his cord, and...and... he pulled the cord again and... Oh dear, said Georgie, as she watch Henry plummet to his death at 3:15 p.m. on May 22, 1993.

Meanwhile back at the hospital, baby David was born to Winnie at 3:30 p.m. on May 22, 1993. David was fine. Winnie, however, did not make it and was pronounced dead at 3:30 p.m. on May 22, 1993.

Upon Georgie's return from Puerto Rico, she was met by Brad. After a brief interlude at the airport hotel, they proceeded to make the necessary arrangements for Henry and Winnie. After the services, Brad and Georgie appeared in Probate Court with Perry Mason on Brad's petition for the adoption of Georgie. Petition was allowed.

The next day, Georgie graduated from college.

QUESTION: What is the disposition of Henry's property? Identify all reasonable claims and state whether they will prevail or not, and why.

WILLS AND TRUSTS

Final Examination
Fall 1992

Professor Ford

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EXAMINATION:

1. Thomas Garland is married to Wilma, and they have children, Margaret, Edward, Catherine, Mary Jane and Lizzie. Thomas alone holds title to the family residence, along with an undeveloped lot of land. Edward wishes to build a home for himself and his wife Evelyn and asks his father for the vacant lot. Thomas conveys the lot to Edward who gives his father a receipt acknowledging the lot received by him "to be in full satisfaction of all my interest in the estate of my father, Thomas Garland." Mary Jane and Lizzie pass away, unmarried, without children and without wills. Edward thereafter dies with no will, but leaving one child, Edward, Jr. Thomas subsequently dies without a will. Margaret and her husband, wishing to raise money to buy their own home, execute a quitclaim deed to Edward's wife Evelyn and Catherine, conveying "all interest we now have or may hereafter acquire" in any lands owned by Thomas Garland at his death or by Wilma Garland (his widow) at the date of the quitclaim deed. Evelyn and Catherine paid money to Margaret and her husband for the deed. Thereafter, Margaret is killed in an automobile accident, leaving her husband and one child, Margot, and no will. Following her, Wilma dies without a will.

The surviving family members all come to you asking that you sort out their respective rights. Who is entitled to what portion of the family residence? Explain your answer.

(Suggested time: 30 minutes.)

2. Sally Smart, a favorite of Aunt Matilda Midas, has long battled to pursue her ultimate educational objective against many odds, family, financial and otherwise. Now she is in her final year of law school with only one remaining obstacle to graduation, passing her Wills & Trusts final exam. One day, Aunt Matilda, high powered CEO of Aggressive Acquisitions, Inc., and only 56 years of age, turns to her secretary, Mortimer Meek, and says: "I am so proud of Sally that I shall give her these securities that I have gift wrapped upon her graduation from law school next month. Place them in the wall safe until then." Mortimer complied. Matilda then proceeded to her attorney's office to sign her estate planning documents.

The first document was a trust instrument (Midas Trust) wherein Matilda declared herself trustee of her interest in her parents' (now several years deceased) homestead, Utopia Estates. It had been left by will of her father, first to his wife for life, and then to Matilda for life with remainder to those relatives of the father as Matilda shall designate in her will. Matilda here designated as beneficiaries of the trust, first herself for life, then all of the grandchildren of her father now living or hereafter born during Matilda's lifetime. The trust provided for its termination twenty-one years following Matilda's death. Matilda reserved the right to revise, revoke or amend the trust or any portion thereof. The trust named Sally Smart's younger brother, Sam, now a junior in high school and a robust athlete and top student like Sally, as successor trustee upon Matilda's death. Finally, the trust provided that no beneficiary may anticipate, convey, transfer or assign any interest he may have under the trust.

The next document was a will. It made no gift to Matilda's husband, Harry, as he was a terminal patient in a cancer ward with a life expectancy of no more than twelve months from that time. Matilda had no children. The will left to Matilda's sister, Cynthia, and brother, Bob, all Matilda's securities "except for those securities in my office wall safe which I have set aside as a graduation present for my niece, Sally Smart." The will then left all the rest and remainder of her estate to the aforementioned ~~Matilda~~ ^{Midas} Trust.

The ~~Matilda~~ ^{Midas} Trust was executed by Matilda in the presence of her attorney who is a notary public and who notarized same, and Matilda executed the will before the same attorney and his two secretaries who duly attested as disinterested witnesses, while the attorney notarized all signatures thereon.

Meanwhile, Cynthia's son, Attila, twenty-two years of age, had been up to his usual ways; he was caught terrorizing and vandalizing an elderly housing complex. As a result, he was sued and judgment was just entered against him for \$10,000.00. Upon receipt of this news, Cynthia has a stroke and dies. Upon learning of both the death of her sister and the court judgment, Matilda has a stroke and dies, just one week before Sally's graduation (she aced her exam).

The family is in a tizzy, and as always happens when events come to such a pass, they turn to you for sorting out. What is the disposition of Utopia

Estates, the securities and the rest of Matilda's estate? Address rights and reasonable claims of family members and the owners of the elderly housing project seeking to recover on the judgment against Attila. Who is entitled to what property? Explain your answer.

(Suggested time: One hour and forty-five minutes.)

3. Frank and Ethel Hall have a daughter, Suzie, who is disabled by a genetically transmitted disease and who lives at home with them. Frank and Ethel are getting along in years and wish to provide for Suzie when they themselves pass away. Their lawyer drafts a revocable trust declaring Frank and Ethel trustees of their Merrill Lynch mutual funds portfolio and the real estate located at 100 Main Street, South Andover, MA, consisting of land with an apartment building thereon, on which property Frank, as sole purchaser, is to close a purchase and sale agreement next month. The trust further declares Frank and Ethel's remaining children, John and Joseph, successor trustees upon the deaths of Frank and Ethel. The trust states that the trust property is to be held for the health, care, maintenance and support of Suzie for her life, and then to be distributed to the grandchildren then living of Frank and Ethel equally; but if any child or grandchild of theirs should, prior to Suzie's death, develop a similar disability as Suzie's, that child or grandchild shall also become a life beneficiary of the trust with Suzie, to share the same interest, and the remainder after the death of the last to die of the life beneficiaries shall pass in equal shares to those descendants of Frank and Ethel then living at time of termination of the trust in that degree of kindred one step more remote than the degree of kindred of the last to die of the life beneficiaries. The trust is duly executed. On the drive home, there is an auto accident and Frank is killed instantly. Ethel is fine. Frank's will left all his property, real and personal, to Ethel.

John thereafter has a son, Timmy, who, at age twelve, develops the same disease as Suzie's. Ethel thereafter passes away. Joseph then has a daughter, Donna. Timmy thereafter passes away. Later, Suzie passes away.

During the time period covered by the foregoing fact pattern, trace the rights and interests in the mutual fund and the real estate of the parties, explaining how you arrived at your conclusions.

(Suggested time: 45 minutes.)