

## WILLS and TRUSTS

Final Examination  
Spring 2024

Professor Ford

### Instructions

This is a closed book exam. It is my understanding that there is a place on the exam screen where you can write notes or outlines of your answers separate from the answers themselves. I am also told that those notes are not sent to me. Whether sent or not, they will not be considered in connection with grading. In addition, you will be given a blue book in which you may write your notes, outlines, etc. Please write on the blue book cover your student number and: Wills and Trusts, Prof. Ford, 2024 Spring. Blue book notes will not be factored in the grading.

You are cautioned to read all questions fully before beginning. Thereafter, it is recommended that you approach each question by making an outline of your answer so as to best organize your response.

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 specific questions that are asked.

If you find an issue of law that you have identified and explained in an earlier question, 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, in a subsequent question, do not repeat your explanation of elements a, b, c and d, but rather state that you discussed this point already and proceed immediately to apply the law to the facts.

If you feel you do not have all the facts necessary to resolve a particular issue, note what additional information is needed and state your conclusion in the alternative. A legal document is valid if so stated in the facts, or if there are no facts to suggest otherwise. In that case, do not discuss elements of validity. All facts stated in a fact pattern are to be taken at face value and dealt with to the extent needed to answer the specific question(s) you are called upon to address.

**Answer all questions. All questions are of equal weight.**

## Question 1

Pamela Parent gave birth to a baby boy 28 years ago when she was 17 years old. She gave the baby up for adoption and he was adopted by Allen and Amy Adoptors who named him Andrew Adoptors. They raised the boy and saw that he got an education. Pamela never had another child. After college, Andrew accidentally discovered that his biological mother was Pamela and he contacted her. They met briefly a few times, but then Andrew lost track of Pamela. Shortly after their last visit, Pamela's health began to decline, and doctors did not know the cause. Pamela went to live with a friend of hers, Frances Friend. Clara and her husband, Carl Caretaker, took care of Paula, and they were helped by Harriet and Herman Helper (Clara's sister and brother-in-law). Finally, Pamela was diagnosed with a serious medical condition that required surgery. Pamela called a lawyer who prepared a last will for her. The will read in part:

### “SECTION 1

I further state and declare that I am a widow; that my husband, Peter Parent, has predeceased me; that I have no children. I further state that I have numerous other living relatives and that it is my specific intention that they or their heirs receive absolutely nothing from my estate, except as stated hereinafter. Any legatee or devisee hereinafter named in this Will shall not be deemed to have survived me if he or she dies within sixty (60) days of my death.

### “SECTION VII

All the rest, residue and remainder of my property, of every nature and description, and of every kind and wheresoever situated, whether acquired before or after the execution of this my last Will and Testament, I give, devise, and bequeath to the following persons in equal shares, share and share alike: Clara and Carl Caretaker and Harriet and Herman Helper, all of Worcester, MA”

The will was not ready for signing until the day after Pamela's surgery. Pamela drove by the lawyer's office the day after surgery and picked it up. She had been under anesthesia for the surgery. Thereafter, she was taking Xanax and oxycodone. She immediately went home, and while in bed, before two disinterested witnesses, she signed her will. The witnesses did not know of the surgery, nor the anesthesia or medications that Pamela was taking. To them, Pamela appeared to be of sound mind. Pamela died two weeks later.

Paula's sister, Sarah, is contesting the will, claiming that the will was procured by undue influence by Clara and Carl Caretaker and Harriet and Herman Helper.

Randall wants to know what claim he has to his birth mother's estate. Does he have to worry about (1) the claim of Sarah alleging undue influence and (2) the language of the will leaving all to Clara, Carl, Harriet and Herman? Explain your answer.

## **Question 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 from income \$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 of income per month to Betty, but nothing more. Likewise, Alan, since becoming trustee, has been making distributions of \$1,000.00 of income 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 arthritis 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.

### **Question 3**

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 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 1995, Charles died, 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, 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 2011, leaving two children, Helga and Harold. Marcia died in 2016, 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.

**HAVE A NICE SUMMER !!**

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If you feel you do not have all the facts necessary to resolve a particular issue, note what additional information is needed and state your conclusion in the alternative. A last will or trust is valid if so stated in the facts, or if there are no facts to suggest otherwise. In that case, do not discuss elements of validity. All facts stated in a fact pattern are to be taken at face value and dealt with.

All questions are of equal weight.

BEST WISHES

### **Question 1**

Alice has come to you for advice and relates the following facts. Ten years ago, Jessica, Alice's 68 year old mother, asked Alice 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 Alice. As soon thereafter as Alice 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 Alice 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, Alice, 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 Alice asks whether she can take more than her intestate share of Jessica's estate.

What are Alice'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 2

In 2007, David executed the David Revocable Trust. In 2009, he executed his last will, and nominated his sister, Deborah, as the personal representative. The will bequeathed all of his property to the trustee of the David Revocable Trust. The decedent expressly omitted from his will his son from his first marriage, his first wife, and his adoptive mother, Joan, who had adopted him in 2001 when he was thirty-four years old. Also in 2009, David amended his trust to name as sole beneficiary his biological mother, Elaine. David expressly excluded from his trust his son, former wife and adoptive mother as beneficiaries, and appointed Deborah as trustee.

In 2014, David and Mary entered into a premarital agreement that enumerated all separate property owned by each. David's list included his own trust and the Joan Trust, an irrevocable trust established and funded by Joan, and that named Joan as life beneficiary and David as remainder beneficiary. The trust was silent as to the disposition of the beneficial interest of David if he were to predecease Joan. The premarital agreement identified the value of the trust property as of the date of the premarital agreement, and noted that there would be no distribution of principal from the trust until the death of the trust grantor, Joan.

The premarital agreement provided in Paragraph 4 that "after the marriage, the parties shall retain all right and title to their separate property, which shall not be subject to any claims arising from the marriage, as if the marriage had never taken place."

David has just died, survived by his son, former wife, adoptive mother, biological mother and wife, Mary. David's will and trust are valid, as is Joan's trust.

What, if any, claim does each survivor of David have to his probate estate, the David Revocable Trust and the Joan Trust? If claims compete, who prevails? Explain your answer.

### **Question 3**

Fred is 79 years old with two children, Sally and Deborah. Sally is married and has children. Deborah is single with no children. Sally visits Fred frequently and on a regular basis, taking him to doctors appointments, for visits with her family, and just out and about spending time with him. She helps him with his bills and his finances. Deborah on the other hand has for years been fighting in opioid addiction that she developed as a result of prescription painkillers 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. Fred does not wish to give her means to access illegal drugs.

Fred desires to do the right thing, but he is concerned about Deborah’s drug habit. Each time that Sally visits Fred, she urges him to leave a gift in trust for Deborah provided Deborah demonstrates that she is drug-free for a continuous period of five years beginning with the date of the trust. When Deborah learns of this, she protests saying that is unfair because it is so hard to kick the habit. Nonetheless, Fred goes to his attorney to establish a trust which provides:

“The trustee shall manage and distribute the trust property for my benefit for my lifetime, and upon my death, my trustee shall distribute one half to my daughter, Sally, or her heirs by right of representation, and the other half shall be retained in trust for my daughter, Deborah, 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.”

Fred signs and funds the trust. The trustee signs and accepts the funding. Fred dies.

For two years after the date of Fred’s signing his trust, Deborah has been free of all illicit drugs. At that time, which is after Fred’s death, Deborah learns that her best friend, Paula, has died of a drug overdose, leaving behind her 14-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, Deborah legally adopts Linda. Together, they stay straight for about another 2 ½ years, which is now 4 ½ years after Fred signed his trust. At that time, Deborah is unable to overcome temptation, and she again uses illicit drugs. Sally, who has already received her one half share from the trust, now claims that Deborah has forfeited her beneficial interest under the trust. Sally claims that remaining trust share. Deborah comes to you for assistance saying she really needs her beneficial interest to help support not only herself, but Linda too.

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

#### **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."

Federal Trust Company accepted appointment as 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 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 1**

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 from income \$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 of income per month to Betty, but nothing more. Likewise, Alan, since becoming trustee, has been making distributions of \$1,000.00 of income 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 arthritis 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.

## Question 2

In 1995, Charles died, 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 2011, leaving two children, Helga and Harold. Marcia died in 2016, 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.

### **Question 3**

In 1992, 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 1995, John and Mary had a child, Jack. In 2000, 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**

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 Sam's widow fully as to the rights of the grandchildren. Explain your answer.

### **Question 5**

In 1990, 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 sub-trusts: the *decedent's trust* and the *survivor's trust*.

The Trust provides: "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."

When Edward became legally incapacitated in 2006, Renee was appointed his guardian and conservator. Renee, in 2007, retained Attorney Wissler to prepare papers for Renee for the purpose of amending the Family Trust. The amendment stated: "Gwen is hereby removed from this trust, meaning she henceforth is neither a Beneficiary nor Trustee of the trust. The Settlor's granddaughter, ROBIN, is substituted in place of Gwen as both a beneficiary and successor trustee, and if ROBIN should predecease trust termination, then Settlor's granddaughter, PAMELA, shall succeed to both positions in place of ROBIN." Robin and Pamela are children of Gwen.

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 Settlor's descendants as the survivor may direct by written instrument delivered to the Trustee."

Edward died in November 2020. 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 2020. 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 2007, 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.

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



## WILLS and TRUSTS

Final Examination  
Spring 2021

Professor Ford

### Instructions:

This is a closed book exam. I am told that there is a place on the exam screen where you can write notes or outlines of your answers separate from the answers themselves. I am also told that those notes are not sent to me. Whether sent or not, they will not be considered in connection with grading.

You are cautioned to read all questions fully before beginning. Thereafter, it is recommended that you approach each question by making an outline of your answer so as to best organize your response.

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 specific questions that are asked.

If you find an issue of law that you have identified and explained in an earlier question, 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, in a subsequent question, do not repeat your explanation of elements a, b, c and d, but rather state that you discussed this point already and proceed immediately to apply the law to the facts.

If you feel you do not have all the facts necessary to resolve a particular issue, note what additional information is needed and state your conclusion in the alternative. A last will or trust is valid if so stated in the facts, or if there are no facts to suggest otherwise. In that case, do not discuss elements of validity.

All questions are of equal weight.

BEST WISHES

### **Question 1 --**

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 2--**

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 Sam’s widow fully as to the rights of the grandchildren. Explain your answer.

**Question 3--**

In 1992, 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 1995, John and Mary had a child, Jack. In 2000, 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 1987, 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 2003, 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 2020. 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 2020. 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 1995, 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 2011, leaving two children, Helga and Harold. Marcia died in 2016, 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.