

FINAL EXAMINATION
ESTATES & TRUSTS

P.N. Davis

Monday, May 1, 2000

8:30 AM - 12:00 N

THIS IS A THREE AND ONE-HALF (3½) HOUR EXAMINATION.

THIS EXAMINATION CONTAINS SEVEN (7) PAGES (not including this page).

THIS EXAMINATION CONTAINS FIVE (5) QUESTIONS.

I = 45 min. II = 60 min. III = 45 min. IV = 30 min. V = 30 min.

FILL IN YOUR EXAMINATION NUMBER ON THE BLUEBOOK STICKER.

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YOU MAY BRING IN YOUR STATUTORY SUPPLEMENTS, BUT NOTHING ELSE. You may write in the margins and on the blank pages of the supplement.

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Instructions:

1. These questions will be graded on the basis of the times indicated with each questions. The indicated time for the questions total 3½ hours. You will be given 3½ hours to write the examination. Budget your time carefully or you may not finish.
2. Be sure to state a result whenever a question asks for one. Merely stating the arguments on both sides of a legal issue will result in only partial credit because you will not have completed the analysis required by that type of question.
3. If you find it necessary to make factual assumptions in order to answer a question, be sure to state the assumption.
4. Do not assume additional facts for the purpose of avoiding a legal issue or making its resolution easier.
5. Comment briefly on each legal issue reasonably raised by the questions and on each reason for your answer, even when you decide that one legal issue or reason controls the result.
6. The difference between triumph and disaster may lie in a **careful** reading of the questions.

I.

(45 minutes)

On April 2, 1982, in Tennessee, Holly Tandy executed a formal will. She devised her cottage in the Great Smoky Mountains (which she had inherited from her father) to her sister, Clara Burton, and her collection of Easter Bunny figures & dolls to her sister-in-law, Elaine Tandy (wife of her husband's brother, Robert Tandy). She left her residual estate (which included substantial realty and personalty) to her husband, James Tandy, upon the contingency that he survive her. The will did not specify the distribution of the residual estate in case her husband predeceased her. The will was attested to by her sister Clara and her husband James.

In 1988, Holly and James Tandy moved to Missouri. James died in 1990. Holly Tandy died in 1994.

James Tandy was survived by his brother and sister, Robert Tandy and Georgina Reed. His brother William Tandy died in 1988, survived by a daughter, Sally Tandy.

Holly Tandy was survived by two of her three sisters, Cecilia Clark and Rona Clark, and her sister-in-law, Elaine Tandy. Her third sister, Clara Burton, died in 1992, survived by a son, Richard Burton. James's two siblings, Robert and Georgina, and his niece, Sally, were alive at Holly's death.

Should the court admit Holly Tandy's formal will to probate? To whom should the realty and personalty be distributed? Assume that the rules for executing a formal will in Tennessee are the same as in Missouri. Discuss all relevant issues. Identify any missing facts necessary to determine the result. State a result for each devise and bequest and for the residual estate.

END OF QUESTION I.

II.

(60 minutes)

Two days after executing her formal will in 1982, described in Question I, Holly executed (by signing) a holographic codicil in Tennessee (which is valid in that state), which reads as follows:

Should my husband predecease me, I hereby declare that his last Will and Testament upon his death is our agreement heretofore made between us about my residual property, with the exception that Mr. Tandy or I can elect to make any changes as we desire depending on which one predeceases the other. If no changes are made by either of us this will be our last will and testament.

At the time the codicil was executed, James Tandy had not yet executed a will.

Six months prior to his death in 1990, James Tandy executed his formal will in Missouri creating a Trust for Holly Tandy, devising all his property to the Trust, directing that Holly should receive income from the trust for her lifetime, and directing that upon her death the trust property be distributed to his brothers and sister, Robert Tandy, William Tandy, and Georgina Reed.

Testimony indicates that Holly Tandy was not close to her family, once describing her sisters as “greedy,” and “a bunch of barracudas.” Frequently she told members of her husband’s family that she loved her husband dearly and that “whatever Jimmy wants is what I want.”

The following facts (in small type) are repeated from Question I:

In 1988, Holly and James Tandy moved to Missouri. James died in 1990. Holly Tandy died in 1994.

James Tandy was survived by his brother and sister, Robert Tandy and Georgina Reed. His brother William Tandy died in 1988, survived by a daughter, Sally Tandy.

Holly Tandy was survived by two of her three sisters, Cecilia Clark and Rona Clark, and her sister-in-law, Elaine Tandy. Her third sister, Clara Burton, died in 1992, survived by a son,

Richard Burton. James’s two siblings, Robert and Georgina, and his niece, Sally, were alive at Holly’s death.

A.

What should happen to the trust income and trust property after James’s death? Discuss

all relevant issues. State a result.

B.

The beneficiaries under James Tandy's testamentary trust brought suit to enforce Holly Tandy's codicil. This action was opposed by Holly Tandy's heirs, who would take under the Missouri intestacy statute if her codicil were unenforceable.

Should the court distribute Holly Tandy's residual estate to the beneficiaries under James Tandy's testamentary trust or to Holly's heirs? Who are Holly's heirs? Discuss all relevant issues. [BUT, do not consider or discuss whether Holly Tandy's codicil creates a power of appointment. Do consider and discuss all other ways the codicil might be enforceable.] State a result.

END OF QUESTION II.

III.

(45 minutes)

Harvey Corbin executed a written *inter vivos* trust instrument on December 1, 1991. The property subject to the trust was 1000 shares of IBM stock, which Corbin placed in an envelope marked "Corbin Trust." He put the envelope and trust instrument in his safe deposit box. Corbin did not change the stock registration from its original registration, "Harvey Corbin." Corbin named himself trustee. He retained the powers to withdraw property from the trust, to substitute property subject to the trust, to modify the trust (including changing trust beneficiaries), and to revoke the trust.

The trust instrument provided:

The Trustee shall pay one-third of the net income to Elizabeth Corbin, James Corbin and John Corbin until each have completed their formal education or until they have each attained age 30, respectively, whichever first occurs. Any net income not payable to the beneficiaries shall be accumulated until none of the beneficiaries is entitled to any further payments. Thereafter, the Trustee shall deliver the entire remaining principal and accumulated income over to the Army of Mercy of Columbia, Missouri, for support of its homeless shelter.

The three named beneficiaries were settlor's children.

Over the years, Corbin deposited all dividend checks in a bank account designated, "Harry Corbin, Trustee." Each quarter of the year, after the quarterly dividend checks were received, Corbin sent a check drawn on the trust's bank account for one-third of the dividend amount to each of his three children.

When his youngest child, John, completed his law degree at age 25, none of his children were still in school. (At that time, Elizabeth was 31 and James was 28.) Up to that time, Corbin had continued to pay each one-third of trust income, even though Elizabeth and James had completed their formal education. Therefore, Corbin wrote to his children stating that he intended to pay the principal and accumulated income to Salvation Army for its homeless shelter, since the Army of Mercy had closed its homeless shelter and had directed its residents to go to

the Salvation Army shelter.

His children then sued Corbin seeking an injunction against transfer of the trust funds to the Salvation Army. Should the court grant or deny the request for an injunction? Must Corbin obtain a court order to pay the principal and accumulated income to the Salvation Army?

Discuss all relevant legal issues. State a result.

END OF QUESTION III.

IV.

(30 minutes)

Ira Hooper, a long-time bachelor, married Veronica Spencer in 1990. Veronica had an adopted daughter, Betsy Harvey. On February 2, 1992, Ira executed a will prepared for him by his attorney. The first page of this will, after providing for payment of his debts, left 25 percent of his estate to his wife, Veronica, and the remainder of his estate to the survivors of his four named siblings. A bank was named executor. The second page contained the signatures of testator and two attesting witnesses, and a self-proving will affidavit. The attorney retained an unexecuted copy of the will and Ira took the original executed copy of the will. The original was in an unsealed envelope provided by the attorney.

In 1997, in response to an inquiry whether he had a will, Ira gave Richard Goode, a nephew of Veronica, the envelope containing the original copy of his will. As Richard drove home with his wife, his wife read Ira's will to him. The first page of this will gave Ira's entire estate to his wife Veronica, and if she should predecease him, to her daughter, Betsy. Richard returned the will to Ira the next day. The second page was dated February 2, 1992, and was as described above with the same wording and signatures. The typefaces on both pages appeared to be identical. The paper on which the two pages of the will was printed had no distinguishing characteristics. The envelope appeared to be the same one provided by the attorney.

In 1998, Ira died. Two wills were tendered for probate. Ira's sister, Goldie Collier, submitted a copy of the February 2, 1992, will identical to the one in Ira's attorney's files. Ira's wife, Veronica, submitted the copy in the envelope which was read to Richard Goode in 1997 by his wife.

Should the probate court accept either version of Ira's will for probate? Or should it declare an intestacy? What portion of the estate is Veronica entitled to? Discuss all relevant legal issues. State a result.

V.
(30 minutes)

Briefly define the following terms:

- (1) Rule of Convenience
- (2) Ademption
- (3) Exempt Property
- (4) Pretermitted Child Share
- (5) Abatement
- (6) Insane Delusion
- (7) Nuncupative Will
- (8) Duty of Loyalty
- (9) Semi-Secret Trust
- (10) Rule of Early Vesting