

FINAL EXAMINATION
ESTATES & TRUSTS

P.N. Davis

Friday, May 15, 2001

8:30 AM - 12:00 N

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

THIS EXAMINATION CONTAINS EIGHT (8) PAGES (not including this page).

THIS EXAMINATION CONTAINS SIX (6) QUESTIONS.

I = 50 min. II = 30 min. III = 60 min. IV = 20 min. V = 15 min. VI = 35
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

(50 minutes)

Carl Brown died in Missouri on October 3, 1999. His wife Jane predeceased him in 1998, but he was survived by 5 children: Margaret Daniel (born 1957), Wanetta Townsend (born 1960), Wayne Brown (born 1969), and James Brown (born 1971). Margaret had been adopted by Carl and his wife in 1957. One of his children, Leland Brown (born 1966), died in 1995. Leland's wife remarried in 1997, and her new husband adopted Leland's and her two children, Audrey and Richard. Another of his children, Norma Hudson (born 1963), died on October 5, 1999, in childbirth. She was survived by 4 children: John Hudson, Thomas Hudson, Sheila Hudson and the newborn Rebecca Hudson.

Carl Brown's will, dated July 5, 1970, devised and bequeathed his property "to my wife Jane and to my children, Margaret, Waneeta, Norma, Leland, and Wayne."

To whom and in what shares should the probate court give Carl Brown's estate? Discuss all relevant legal issues. State a result.

II.

(30 minutes)

Jennie Johnson died in Missouri in 2000. She had executed two instruments, both of which proclaim to be her last will and testament. One was executed in 1987, the other in 1999. Original copies of both wills were submitted for probate by their respective executors.

The 1987 will, named Gertrude Johnson, Jennie's elder daughter, as executor and devised all her property her husband Herman Johnson, remainder to "my heirs *per stirpes*." Herman died in 1995 from cancer. The 1999 will named Helen Johnson, Jennie's other daughter, as executor, devised \$1000.00 to Gertrude and devised all her remaining property to Helen.

The 1987 will was signed by testator before either attesting witness entered the room. Testator told the attesting witnesses that the signature was hers; they then signed the will in her presence. A self-proving will affidavit was appended to the 1987 will, signed by testator, the two attesting witnesses and a notary public..

The 1999 will contains the testator's proxy signature, the signatures of two attesting witnesses, and a self-proving will affidavit with testator's proxy signature, the signatures of the two attesting witnesses and a notary public. Testator's proxy signature was signed by testator's attorney, Vance Lodge, in testator's and attesting witnesses' presence and at testator's direction. Vance Lodge was Helen's fiancé.

During Jennie's husband Herman's last illness, throat cancer, conflicts developed in the family. Jennie decided against having Herman undergo a surgical procedure that would enable feeding directly into his stomach. Gertrude engaged in extensive arguments with Jennie about this as well as with her sister Helen. Also, she accused Helen of not taking proper care of their parents' home. After Herman's death, the two sisters disagreed vociferously over the choice of casket, where Herman should be buried, and whether the funeral should be open or closed casket. After the funeral, Gertrude had no further contact with her mother Jennie and her sister Helen. Jennie and Helen had several conversations both during Herman's illness and after his death about Gertrude's hurtful actions and disrespect for Jennie's decisions. Vance Lodge was present during many of these conversations and generally agreed with Helen's positions. Eventually,

Jennie asked Vance to draft a new will for her, which he did. At the probate proceeding, Vance testified that Jennie had directed him to disinherit Gertrude in her new will, and that he had advised her to give Gertrude a token bequest of \$1000.00 in order to avoid an argument that she had inadvertently left Gertrude out of the will. Asked whether he reminded Jennie of all the love and care Gertrude had given prior to their recent arguments, he stated that he had not because it seemed that Jennie had made up her mind.

Should the probate court probate either the 1987 will or the 1999 will? Discuss all relevant legal issues. State a result.

III.

(60 minutes)

In February 1980, Leo and Marie Frazer built a large house on the Lake of the Ozarks for \$200,000. They titled the property in their joint names. Leo Frazer died in Missouri in 1986. His will devised all his realty to his son by a prior marriage George Frazer. He left his personalty to his wife Marie, as well as a \$500,000 life insurance policy payable to Marie upon his death.

Disconsolate about Leo's death, Marie decided to retreat from the world by entering a convent (although not becoming a nun). Before she left, she talked with her stepson George and daughter Helga, asking him to take care of the house while she was in the convent by moving into it with his wife Barbara. She said that she could revoke the arrangement later if she changed her mind about it. George said he would do as she requested, but suggested that for tax and management purposes, it would be a good idea for her to transfer title to the house to him. She executed a deed granting title to "George and Barbara Frazer." They had the deed recorded. Also, she asked him to manage her money for her while she was in the convent and to pay the convent \$20,000 a year. He agreed to do that as well. She transferred title to her bank accounts and stocks & bonds to "George Frazer." Marie then moved to the convent and cut off all contact with George & Barbara and Helga except for annual phone calls at Christmastime.

George and Barbara moved into the house a couple of months after Marie entered the convent. George reinvested all the money Marie had transferred to him in .com stocks. Although they paid no dividends, they did multiply in value from about \$500,000 to \$5,000,000 during the 1990's. George liquidated a small amount of the .com stocks each year to pay the \$20,000 to the convent. Also, he liquidated about \$150,000 of the .com stocks to build an addition on the house. Each year Marie asked him during the annual phone call how the house was, and he replied that it was fine. He also assured her that he had paid the annual \$20,000 "donation" to the convent.

In 2000, George sold all his .com stocks for \$5,000,000 (just before the .com stock values crashed) and reinvested the money in U.S. government bonds. During the next year, they

appreciated about 5 percent in value as interest rates dropped. In late 2000, he and Barbara sold the house to Edgar Fudd for \$500,000. They executed a deed to Edgar as “George and Barbara Frazer, husband and wife, grantors.” They mentioned that Leo and Marie, his father and stepmother, built the house in 1980. They used the house sale proceeds partly to buy a new house for cash on Mark Twain Lake and partly to buy “blue chip” stocks.

In 2001, Marie decided to leave the convent and to return to the world. She asked George and Barbara for the house back, and they told her they sold it. She also asked for her money and the house sale proceeds. They told her she had given it to them when she decided to go to the convent and refused to turn the money over. They denied they had agreed to return either the house or the money if she ever left the convent.

Marie then sent a letter to George revoking the house and money arrangements and demanded the return of both. When they refused, she sued George and Barbara for an accounting of her money and sued Edgar Fudd for return of the house. George defended, arguing (1) that he had been given house title under his father’s will, (2) if Marie did acquire title upon Leo’s death, that Marie had given him the house outright, and (3) if she had not done so, that he and Barbara had acquired title by adverse possession (under Missouri’s 10-year statute of limitations). Edgar defended, arguing that he was a purchaser without notice of any encumbrance on George and Barbara’s title.

Are George and Barbara obligated to return the house and money, or their value, to Marie? Do George and Barbara have any valid defenses which would allow them to keep all or part of the money and keep the proceeds from the house sale? Does Edgar have any valid defenses which would allow him to keep the house? Discuss all relevant legal issues. State a result.

IV.

(20 minutes)

Betty Ludwig died in Missouri in on November 9, 2000. John Young, appointed as executor in her January 15, 1990, will, applied for letters testamentary. Margaret White, her live-in care-giver, filed an opposition to probate of the 1990 will and filed a holographic instrument dated March 13, 1998, asserting this to be a subsequent will.

The 1990 will was drafted by Betty's attorney and signed by her in cursive. This will gave half of her estate to her two brothers, Toby Ludwig and Clemence Ludwig, and her sister Mary Butler. It divided the other half to the Library of the University of Missouri and her church. The will was signed in cursive by testator; it was signed also by 2 witnesses. A self-proving will affidavit was attached, signed in cursive by testator, by the two attesting witnesses and by a notary public.

The 1998 holographic instrument was hand-printed and was signed "Betty Ludwig" in hand-printing, not cursive. The entire holographic instrument provides:

To Mary Butler one hundred thousand dollars (\$100,000)
To Toby Ludwig one hundred thousand dollars (\$100,000)
To Clement Ludwig ten thousand dollars (\$10,000)
To Margaret White one hundred thousand dollars (\$100,000)
To University of Missouri ten thousand dollars (\$10,000)
To my church ten thousand dollars (\$10,000)
Residue of estate to remain invested and be administered by
Margaret White, trustee, to maintain my house in Columbia,
Missouri, as a home and care of my Siamese cat Sweetie for his
lifetime. No major construction change shall occur to house and
yard. When Sweetie dies, the residue of my estate is to go to the
Library of the University of Missouri.
Executor of my will shall be Margaret White.
Betty Ludwig
March 13, 1998

At her death, the estate of Betty Ludwig consisted of her house in Columbia, Missouri, and \$500,000 in investments.

Should the probate court admit the 1990 will into probate? Should it admit the holographic instrument into probate? Discuss all relevant legal issues. State a result.

V.

(15 minutes)

In 1984, Theodore Haag open an account at the Tiger Savings Bank in Columbia, Missouri, as specified on his account signature card, under the name “Theodore Haag as trustee for Eric Haag” Eric was Theodore’s son, age 5. Theodore was told at the time that only he had access to the account and that Eric could not withdraw any money.

In 1996, Tiger Saving Bank went into receivership. Its assets were purchased by the Missouri National Bank. All of Tiger’s Bank computerized records were converted to Missouri’s computer data system. Missouri’s computerized records showed Theodore’s account to be a custodial account under the Uniform Transfer to Minors Act and showed both Theodore and Eric as account owners.

When Theodore received his February 2001 bank statement, it showed a withdrawal of all funds from the account in January 2001. The bank statements sent by Missouri to Theodore since 1996 show the names “Eric Haag or Theodore Haag.” On questioning bank officials, he learned the Eric had withdrawn the money. They told him that since it was a joint account, Eric was entitled to withdraw the money.

Theodore asks you as his lawyer whether the bank can be required to restore the money to the account because it allowed an unlawful withdrawal. The bank found the original account signature card in its archives. What is your conclusion? Discuss all relevant legal issues.

VI.

(35 minutes)

Briefly define the following terms:

- (1) draw down rule
- (2) acts of independent significance
- (3) rule of convenience
- (4) ademption
- (5) satisfaction
- (6) exempt property
- (7) spendthrift trust
- (8) insane delusion
- (9) cy pres doctrine
- (10) latent ambiguity
- (11) mutual wills
- (12) abatement