

FINAL EXAMINATION  
**ESTATES & TRUSTS**

P.N. Davis

Tuesday, December 4, 2012

8:30 AM -11:30 AM

THIS IS A THREE (3) HOUR EXAMINATION.

THIS EXAMINATION CONTAINS FIVE (5) PAGES.

THIS EXAMINATION CONTAINS FIVE (5) QUESTIONS.

I = 70 min. II = 20 min. III = 20 ~~30~~ 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 supplements.

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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 3 hours. You will be given 3 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.

(70 minutes)

Richard Williams signed a will dated October 18, 1988. It contained an appropriate statement of testamentary intent. Because he had multiple bee stings on his hands, Richard asked his wife Rachael to sign his name for him, which she did in his presence (her son Bruce had not yet arrived when she did this). Also, he asked his wife Rachael and her son Bruce (by a prior marriage) to sign their own names as witnesses. Richard told Bruce that Rachael had signed his name at his request. They then signed in his presence.

Richard's will devised his entire estate to his wife Rachael and "her children who reach age 21." Besides Bruce, Rachael had another child by the same prior marriage, Beverly Jensen. In 1995, Richard and Rachael had a child, Roger Williams. Richard died April 1, 2001, age 66.

At the time of his death, Rachael's son Bruce was age 30, her daughter Beverly was age 28, and their son Roger was age 6. At the time Richard died, Rachael was pregnant, and gave birth to Resa six months after his death.

Prior to his marriage to Rachael in mid-1988, Richard had a daughter Greta as a result of a romantic relationship. He was not aware of her existence, but she made her existence known at the time Richard's will was presented for probate..

- A. Assume the will is valid. Who gets what shares of Richard's estate?
- B. Assume the will is invalid. Who gets what shares of Richard's estate?
- C. Is the will valid and probatable?

Discuss all relevant legal issues. State a result for each question.

END OF QUESTION I.

## II.

(20 minutes)

Settlor, Katie Jones, executed a written revocable trust naming her husband, Sam Jones, as trustee. Later she executed a written trust modification and durable power of attorney naming her husband as her agent and giving him power to transfer property into her revocable trust. She named as beneficiaries the couple's three children and her two children by a previous marriage.

Two years later, her husband executed a written modification to the trust that removed certain property from the trust, which he then transferred to the couple's three children. There is no evidence that settlor suggested or ratified the property's removal from the trust and transfer to the couple's three children. After settlor's death, her two children by a previous marriage sued to set aside the trust modification executed by settlor's husband.

Should the court find that the trust modification and distribution to the couple's three children to be in breach of trust? (Assume that these events all occurred in Missouri.) If so, what remedy should the court impose? Discuss all relevant legal issues. State a result.

END OF QUESTION II.

### III.

(20 30 minutes)

Grandfather Herman created a trust under which income was to be accumulated until he and his widow Dorothy both died; then the trust principal was to be distributed equally among “all” his “grandchildren.” Grandfather had two children, Franklin and Richard.

Three years after the trust was executed, Franklin and his wife adopted a child, Susan. Thereafter, he had two children born to his wife, Henry and Martha.

Richard’s wife Julia had two miscarriages. Since Richard then was diagnosed with cancer, he had his semen harvested before chemotherapy treatment (which rendered him infertile). His semen was stored at a fertility clinic. Richard later died of his cancer. Julia 3½ and 5½ years after Richard’s death had two children conceived by artificial insemination using Richard’s stored semen, Barbara and Milton.

Dorothy then died in a car accident. Should the trustee include or exclude Susan, Barbara, and Milton from the distribution of the trust principal to Herman’s “grandchildren”? If the trustee seeks court instruction, how should the court rule? Discuss all relevant legal issues. State a result.

END OF QUESTION III.

#### IV.

(30 minutes)

Susannah Warner organized a no-kill dog rescue shelter for cocker spaniels. To hold donated funds and pay shelter expenses, she opened a bank account styled “Susannah York in trust for Cocker Spaniel Shelter.” She told several friends about (1) the no-kill shelter she opened for orphaned cocker spaniels, and (2) the bank trust account she opened for donations. They gave her money to take care of her shelter dogs; she deposited that money in that account. She accepted custody of several cocker spaniels and began looking for adoptees of the dogs.

(1) Can Susannah use funds in that account to pay for food for her own two dogs (poodles)?

(2) Susannah became in arrears on her installment car loan. Can her loan creditor levy against that account to pay off the loan arrearage?

(3) Suppose Susannah found running the shelter too time-consuming and decided to close it. After she arranged for the shelter dogs to be adopted out, there was a balance in the bank account. Can she donate that bank balance to: (a) a no-kill cat shelter, (b) the Humane Society (which does euthanize unadopted animals), (c) the local historical society museum, or (d) keep it for her personal use.

Discuss all relevant legal issues. State a result for each question.

END OF QUESTION IV.

V.

(30 minutes)

Briefly define the following terms:

- (1) Rule of Convenience
- (2) support trust
- (3) per stirpes
- (4) duty of loyalty
- (5) homestead exemption
- (6) line of sight test
- (7) lost will doctrine
- (8) posthumous child
- (9) mutual wills
- (10) plain meaning rule

END OF QUESTION V.