

FINAL EXAMINATION
ESTATES & TRUSTS

P.N. Davis

Friday, May 4, 2012

1:30 AM - 4:30 Noon

THIS IS A THREE (3) HOUR EXAMINATION.

THIS EXAMINATION CONTAINS ELEVEN (11) PAGES.

THIS EXAMINATION CONTAINS SEVEN (7) QUESTIONS.

I = 45 min. II = 30 min. III = 15 min. IV = 15 min. V = 15 min. VI = 30 min. VII = 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 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)

John and Jason Lawson are the son and grandson of Syble Lawson, who died in December 2005 at age 73. Her June 2004 will left her entire estate to her other son, Christy Lawson; he was also named her executor. John and Jason Lawson filed an objection to the probate of this will as did Danny Newton, who lived with testator for the last ten years of her life. John and Jason Lawson asserted that the 2004 will was the product of undue influence. Newton petitioned the probate court to probate a document purporting to be testator's 2000 will, under which Newton was left a life estate in testator's realty and the remainder interest went to Jason Lawson, along with certain other bequests.

The evidence showed that Syble's son Christy visited her frequently in the two years before her death in 2005, playing cards, cooking some meals, and conversing extensively. He did not stay overnight, except very occasionally. Apparently he agreed with Syble on family matters more frequently than did her other son John, who visited about once a month. But, no one testified that they overheard Christy suggesting that Syble change her 2000 Will.

The evidence also showed that Newton met Syble in either 1995 or 1996 and subsequently moved into her home. Their relationship lasted until her death in 2005. Newton testified that in 1998 or thereafter Syble began indicating that she would leave him a life interest in her house (provided he did not remarry); income from her pine straw business; income from a rental trailer; the right to harvest timber, which he would share with Jason Lawson; and the right to receive certain personalty. In consideration for these promises, Newton agreed to care for Syble, to care for her dog and to perform upkeep and maintenance of the house and farm. Newton admitted at trial that Syble and he never signed a written contract memorializing this agreement.

Newton testified that in 2002 he gave up his job as a maintenance foreman at an apartment complex with a salary of \$500 per week to care for Syble after she was diagnosed with breast cancer. Newton stated that he cared for Syble until her death and continued to care for her dog following her death. He also remodeled Syble's rental trailer, added a room onto the house and cleaned and maintained the property. He contends that these actions were undertaken

pursuant to the agreement.

Newton asserts that the 2000 Will “essentially tracks” his agreement with Syble. That will left Newton a life estate in the house and the land “provided he lives alone,” with a remainder interest in Jason Lawson. Newton also received income from the trailer and pine straw business, and he shared the proceeds from any harvested timber with Jason Lawson. A Durable Power of Attorney for healthcare appointed Jason Lawson, Syble's neighbor, Corinne McMillian and Newton as her agents for making decisions about her health care. The Notes upon which Newton and the Lawsons rely are undated and unsigned but appear to be in Syble's handwriting. The Notes largely correspond with the terms of her 2000 Will with regard to the property left to Newton and Jason Lawson, but are not entirely consistent. For example, the Notes indicate that Newton should share the income from the pine straw with Jason Lawson, while the 2000 Will gives him all the income. The Notes also list various bequests of personal property that are not a part of the agreement and that differ somewhat from the 2000 Will. Although both the 2000 Will and the Notes indicate that Newton would care for the dog after her death, they do not address any obligations he had prior to her death. Newton did not see either the 2000 Will or the Notes until after Syble died.

Although Newton was not named in Syble's 2004 Will, evidence at trial demonstrated that he received a \$50,000 certificate of deposit (“CD”) made payable to him on her death independent of any will. This CD is not mentioned in the Notes, nor is it a part of the agreement. Moreover, Newton acknowledged that Syble paid his living expenses until her death and paid him \$100 per month out of the rental income from the trailer. Christy Lawson testified at trial that on several occasions Syble stated, in Newton's presence and hearing, that Christy would inherit the farm. On those occasions, Christy says that Newton never protested based upon the agreement.

(1) Should the probate court hold that Syble’s 2004 Will was void because it was the result of undue influence by Christy Lawson?

(2) Should the probate court hold that Syble entered into a valid contract to devise the property to Newton, as described above?

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

END OF QUESTION I.

II.

(30 minutes)

On August 10, 2010, Jim Hodges executed a will which stated, “I give everything I own to my wife Martha”. Jim’s assets included the family home in Columbia, Missouri, a vacation cottage in the Wisconsin North Woods, about one million dollars in stocks, bonds and bank accounts, the contents of the residence and cottage, two automobiles, and various other items of personal property. The will did not specifically indicate what was to be done with the property bequeathed to Martha in the event that Jim survived Martha. Also, the will did not contain a residuary clause.

On September 3, 2010, Jim and Martha Hodges were shot and killed by Thomas Hodges, Jim’s adopted son from a prior marriage. Both died as a result of gunshot wounds to the head. The coroner was unable to determine which spouse predeceased the other.

Jim Hodges was survived by his adopted son, Thomas Hodges, his brother, Peter Hodges, and no one else. Martha Hodges was survived by her daughter by a prior marriage, Elizabeth Major, a sister Jane Williams, and no one else. (Martha died without a will.)

Jim Hodges’s will was tendered into probate in Boone County, Missouri.

Who should succeed to Jim Hodges property? Assume that Jim’s will was properly executed. Discuss all relevant legal issues. State a result.

END OF QUESTION II.

III.

(15 min.)

In addition to daughters Lisa and Beth, Charles R. Norton had two sons, Charles N. Norton (“Nick”) and Samuel P. Norton (“Samuel”). Charles died on July 21, 2009. Under a will he executed on May 27, 2008, Charles devised a house in Columbia, Missouri, to Lisa, a separate house in Columbia to Beth. A farm in Boone County, Missouri, was to be equally divided between Nick and Samuel; any vehicle he owned at the time of death, as well as all fishing tackle and firearms, was left to a named grandson, funds in his checking account were to be divided between his three grandchildren (all three were Samuel’s children). and the residue of his property was to be divided equally between his four children.

Samuel was named as the executor under Charles's will, and he offered it for probate. Beth and Lisa filed a will contest. They contend that the will was the product of undue influence by Samuel.

On May 13, 2008, Charles met with the attorney who was to draft the will. Charles was alone, and explained to the attorney how he wanted his property disposed of upon his death; the attorney made an appointment for Charles to return to the office on May 27, 2008, and prepared the will as requested. There is no evidence Samuel communicated with Charles near the time of the May 13, 2008 meeting; Samuel lived in Springfield, Missouri, a considerable distance from Charles's home at his Boone county farm. On May 27, 2008, Samuel was visiting Charles when Charles told Samuel that they were going for a drive, and Samuel drove Charles to the attorney's office; Samuel did not know where they were going before getting into the vehicle. When they arrived at the attorney's office, Samuel went inside to greet the attorney and then waited in the vehicle; after Charles executed the will, Samuel was given a copy and told he had been named as the executor of Charles's estate.

Beth and Lisa produced evidence that Charles, at various times before executing his will, expressed the intent to leave all of his property, including the farm, to his four children in equal shares. They contend that undue influence is shown by evidence that, in 2009, Samuel, operating under a power of attorney also executed on May 27, 2008, placed Charles in health

care facilities closer to Samuel's own home than to Charles's, and also that at some time after the will was executed, Charles changed the listed beneficiaries of bank certificates of deposit from his four children to only Samuel.

There was testimony introduced that a week after executing the will, Charles told a farm employee of the will's disposition of his real property, and said that his reasons for leaving the family farm to Samuel and Nick were to keep it in the Norton family, and to provide his grandson Ethan Norton with a place to hunt.

Should the court find that Samuel exercised undue influence over Charles in the drafting and execution of his will? Discuss all relevant legal issues. State a result.

END OF QUESTION III.

IV.

(15 min.)

Paul Geenen died on January 28, 2010, leaving an estate of approximately \$1.7 million. His estate included over one thousand first-edition railroad books, a couple hundred railroad poster advertisements, and a couple hundred railroad lanterns, with a total appraised value of about \$500,000. His two-page will named his wife Marianne Geenan as his executor.

In Article SECOND, the will made a specific bequest of tangibles to Marianne, and in Article THIRD, it bequeathed his “collections” to his son John.

The Article SECOND specific bequest reads as follows:

“All household furniture and furnishings, books, pictures, jewelry and other article of personal or household use including automobiles, which I may own at the time of my death, I bequeath to my wife, MARIANNE C. GEENEN, if she survives me.”

In her capacity as executor, Marianne filed a proposed distribution that specifically designated the railroad books”, valued at \$300,000, which she has deemed included in the specific bequest to her. John questions whether they were or were not included in that specific bequest.

At a hearing on that question, the following undisputed evidence was presented:

- (1) for several years, Marianne helped Paul inventory the railroad books, advertisements, and lanterns;
- (2) Paul told John several times that “he [John] would enjoy the books, advertisements, and lanterns once he [Paul] was gone”;
- (3) Paul also told John and Marianne that they would be “quite valuable” some day;
- (4) both Paul and John had an avid interest in railroad history;
- (5) Paul was a professor of history at the University and taught a well-regarded course on railroad history; and
- (6) Paul used his railroad books and advertisements as reference materials for his academic publications.

Who should get the railroad book collection, advertisement poster collection, and lantern collection? Discuss all relevant legal issues. State a result.

END OF QUESTION IV.

V.
(15 min.)

On April 6, 2000, Shirley McCoy, the debtor's mother, executed the McCoy Living Trust ("McCoy Trust" or "Trust.") The debtor, Julie McCoy, is a beneficiary of this Trust, and Kevin McCoy, one of the debtor's sons, is the sole trustee of this Trust.

The relevant language of the Trust is:

Article 13, Section 2. Beneficiary's Right to Direct Retention of Distributions in Trust

Whenever a distribution is authorized or required to be made by a provision of this Article to a beneficiary, then the beneficiary may direct the Trustee in writing to retain such distribution in trust as follows:

a. The Beneficiary's Right to Income

The Trustee, during the life time of the beneficiary, shall pay to or apply for the benefit of the beneficiary from time to time and at the beneficiary's written direction all of the net income from this trust.

b. The Beneficiary's Right to Withdraw Principal

The Trustee shall pay to or apply for the benefit of the beneficiary such amounts from the principal as the beneficiary may at any time request in writing. No limitation shall be placed on the beneficiary as to either the amount of or reason for such invasion of principal.

Article 13, Section 3. Disposition of Trust Property

All trust property not previously distributed under the terms of this trust shall be maintained in trust for a period not to exceed twenty years after the date of my death and distributed only according to the directions found in this section.

a. Division Into Separate Trusts

The Trustee shall divide the balance of trust property into equal trusts, with one separate trust for each of my children named in this Article.

g. Administration of the Trust share for Julie McCoy

1. Annual Pecuniary Distribution Free of Trust

Beginning the First January 1st after the date of my death, the Trustee shall distribute \$20,000.00 to my daughter, Julie McCoy annually free of trust.

Shirley McCoy amended the trust on September 6, 2002, as follows:

SECOND AMENDMENT TO THE SHIRLEY J McCOY LIVING TRUST

This amendment dated September 6, 2002

According to the terms of my living trust dated April 6, 2000, I amend the Agreement as follows: ...

I amend Article 13, to include a new Section 4, which shall read:

Section 4. Creditor Protection.

All payments of income and principal, including withdrawal rights, shall be privileged and may be exercised only by the Trustee at its sole discretion. Distributions under this Article shall not be subject to the claims of any creditor or to legal process and may not be voluntarily or involuntarily alienated or encumbered, except by specific Order by a Court of competent jurisdiction for reasons allowed by law. Any such Order shall cite this Section and the law specifically or the Trustee shall deny such forced distribution.

On November 10, 2009, Shirley McCoy died. Pursuant to the terms of the Trust, on January 1, 2010, the debtor, Julie McCoy, received a distribution in the amount of \$20,000.00 “free of trust.” Later that year, on October 27, 2010, she filed a voluntary petition under chapter 7 of the Bankruptcy Act. The debtor disclosed her interest in the trust on the bankruptcy schedules as a contingent interest valued at \$0. On December 21, 2010, the bankruptcy trustee demanded that the debtor turn over the trust distribution that was available to her as of January 1, 2011. The debtor informed the bankruptcy trustee that she would not be turning over any trust distributions because Kevin McCoy would be exercising his discretion as trustee to withhold trust distributions from her.

The bankruptcy trustee commenced this adversary proceeding on March 3, 2011. In her Motion for Summary Judgment, she argues that she is entitled to an order directing the turnover of the debtor, Julie McCoy's, share of the trust “as trust payments have become due and payable to the debtor pursuant to the terms of the trust.” The McCoy Trust has a net worth of \$1,669,712.00.

Should the court grant or deny the bankruptcy trustee's motion to divert the annual payments to Julie McCoy. (*Note:* in this question, there are two trustees, the trustee of the McCoy Trust, Kevin McCoy, and the bankruptcy trustee who administers the bankrupt's property.) Discuss all relevant legal issues. State a result.

END OF QUESTION V.

VI.
(30 minutes)

SHORT ANSWER QUESTIONS

A. (10 min.)

William Schmidt bequeathed his *Titanic* memorabilia collection to his brother and fellow collector of maritime memorabilia, Keith Schmidt. Also, he bequeathed his plastic model of the *Titanic* to Keith's 12-year old son, Robert. The memorabilia collection is worth \$10,000 and the ship model is worth \$50. William died on July 10, 2012, while Keith died on February 29, 2012; Robert survives. (William and Keith were, and Robert is, residents of Boone County, Missouri.)

The executor requests instructions from the probate court whether the memorabilia collection should pass to Robert or to William's surviving sister, Amanda Schmidt Forman. Discuss all relevant legal issues. State a result.

B. (10 min.)

On October 15, 2011, Lena Greene died. (She was a resident of Boone County, Missouri.) Her will was tendered for probate on November 1, 2011, by the designated executor, Portia Kresge. Kurt Greene and Karen Hinton, two of Lena's children, were named as devisees of 90 percent of her estate; Kevin Greene, her other child, was devised 10 percent of her estate. The will was witnessed by two people. Both signed the will. However, will execution was not supervised by an attorney.

Kurt and Karen testified that Kurt assisted his mother in signing the will after she told them that she wanted to sign the will. Karen testified that she was present during the will signing. There is no evidence about who drafted the will.

Kevin objected to the validity of the will. Kevin was not present at the will signing. He submitted uncontroverted medical and documentary evidence concerning the decedent's physical inability to execute documents before and following the date the decedent allegedly executed the will.

Should the probate court declare the will to be valid? Discuss all relevant legal issues. State a result.

C. (10 min.)

Darlene Patterson created the Darlene Patterson Family Protection Trust in 1999. The Trust property was to be used for Darlene's benefit during her lifetime. Upon her death, Darlene's three children each were to receive an equal portion of any remaining Trust property. The Trust was a "living" or "inter vivos" trust, in which Darlene "reserve[d] the right to amend, modify, or revoke the Trust in whole or in part, including the principal, and the present or past undisbursed income from such principal." The document states that "revocation or amendment ... may be in whole or in part by written instrument." And the Trust provides that "[t]he interests of the beneficiaries are presently vested interests subject to divestment which shall continue until this Trust is revoked or terminated other than by death."

In 2006, Darlene executed an Amendment. The purpose of the Amendment was to remove Darlene's son Ron as a beneficiary of the Trust. The Amendment stated, "I have intentionally not provided anything for my son Ronald S. Patterson (or his descendants) since I have already properly provided for this son during his lifetime as I felt was appropriate." Eleven months after executing the Amendment, Darlene died.

Shortly after his mother died, Ron filed a lawsuit against the Trust and Darlene's estate in which he sought a declaration that the Amendment was void because it violated the terms of the Trust.

Should the court declare that the Amendment is valid or invalid? Discuss all relevant legal issues. State a result.

END OF QUESTION VI.

VII.
(30 minutes)

Briefly define the following terms:

- (1) Rule in Wild's Case
- (2) spendthrift trust
- (3) interested witness
- (4) overall portfolio rule
- (5) exemptions and allowances
- (6) acts of independent significance
- (7) cy pres
- (8) pretermitted child
- (9) joint will
- (10) latent ambiguity

END OF QUESTION VII.