

ESTATES & TRUSTS – summer 1989
ANSWERS

I.
(30 minutes)

A.

intestate heirs of Lois:

no spouse; no descendants
parents are dead; no brothers or sisters
grandparents are dead
goes to aunts & uncles, and their descendants
aunts predeceased
descendants are Merrill & Frederick, Sr.; 1/2 each
Frederick, Sr., predeceased under USDA
his children take per stirpes (also under anti-lapse stat.)
4 grandchildren take 1/8 each

B.

if trust distribution lapses:

goes to Margaret's heirs
they are the same as Lois's heirs; same shares

C.

"me" vs. "her"/"Lois":

patent vs. latent ambiguity issue

patent here: no ambiguity on face of will

extrinsic evidence cannot be used to create an ambiguity

furthermore, a scrivener's error cannot be corrected

unless the face of the will indicates what the correct words should be

testatrix read will: presumed to ratify scrivener's error

II.

(30 minutes)

class gift, or individual gifts to named children

- discuss use of word "children", and fact that there were no other children existing at will execution
- if class gift, common law presumes a survival requirement and the predeceased children drop out
- but Mo. stat. applies anti-lapse stat. to class beneficiaries; descendants of predeceased class members take

- discuss elements of anti-lapse statute

- applies to child, descendant or relative of testator

- so, Nadine & Dora Jean take Herman's share

is child who died before will execution a member of the class?

- no! not mentioned; grandchild existed, but also was not mentioned; hence, intent is to exclude

is post-execution child a member of the class?

- depends on whether the legacy is treated as a class gift, in first instance

- next, it depends on whether testator intended class to be open or closed

- naming children suggests closed class; predicate of "children" suggests open class; decide

"and their heirs": words of limitation or substitution?

- presumed to mean fee simple, unless context suggests otherwise

shares:

if closed class: 1/6 to 5 surviving children; 1/12 to 2 grandchildren

if open class: 1/7 to 6 surviving children; 1/14 to grandchildren

III.

(30 minutes)

A.

identify probate & nonprobate property

identify heirs, since parents predeceased

B.

calculate exemptions & allowances

calculate wife's share under will

calculate omitted spouse share

- determine whether share includes first \$20,000, in light of pregnancy

- discuss whether provision of life insurance bars wife from asserting omitted spouse rights

calculate elective share of wife

- calculate augmented estate
- determine 1/3 or 1/2 share, in light of pregnancy
- calculate offsets and net share due

determine which is most advantageous

IV.

(60 minutes)

A.

Pope notice problem: 6 mos. from publication; 1 year from death.

B.

undue influence allegation:

- spouse abuse would constitute undue influence
- is spouse abuse allegation a "red herring"?
- no corroborating evidence of spouse abuse

is Nov. 25 affidavit a codicil?

- No! lacks attestation

C.

trust: intent, delivery, acceptance?

- delivery & acceptance not needed when trustee is settlor
- as here
- intent plus declaration is required
- satisfied here

sham trust? (re intent)

- theory requires that settlor/trustee intend to create trust ab initio
- courts look at subsequent behavior to determine whether intent was real
- here, settlor/trustee pledged a portion of trust assets.
- but, was for loan benefitting beneficiary
- and paid back out of nontrust assets

D.

oral trust valid?

- yes! oral inter vivos trust of personalty does not violate Statute of Frauds

premature termination of trust?

- no!
 - must have consent of all beneficiaries;
 - but William could have more children
 - hence, not possible to get consent of unborn children
 - there must be no residual trust purpose left unfulfilled
 - here the apparent purpose is support of all beneficiaries; would be frustrated

V.

(30 minutes)

definitions