

ET89S

FINAL EXAMINATION
ESTATES & TRUSTS I
P.N. Davis
Tuesday, June 27, 1989
9:00 - 12:00 AM

THIS IS A THREE (3) HOUR EXAMINATION.

THIS EXAMINATION CONSISTS OF EIGHT (8) PAGES.

THIS EXAMINATION CONTAINS FIVE (5) QUESTIONS.

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

YOU MAY KEEP THE TEXT OF THIS EXAMINATION.

FILL IN YOUR EXAMINATION NUMBER ON THE BLUEBOOK STICKER.

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THIS IS A PARTIALLY OPEN BOOK EXAMINATION. YOU MAY BRING IN:

1. Missouri Probate Code & Trust Statute Excerpts
2. Intestate Distribution Sheet
3. Family Protection & Augmented Problems (but not the answer sheet).

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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.

(30 minutes)

Comment [1]: This was Font/Pitch 8,10 - Off.

Comment [2]: This was Font/Pitch 8,10 - On.

Margaret Powell's executed her will in 1960. A resident of Missouri, she died on April 27, 1971. The residuary clause of her will created a trust for the support of her daughter, Lois Powell for the duration of her life. The trustee was directed to pay the income from the trust estate to Lois on a monthly basis and authorized the trustee to invade the trust corpus as necessary to properly maintain, support and educate Lois. The trust was to terminate upon her death. The trust estate, and any undistributed income, was to be distributed according to the following paragraph of the will:

This trust shall terminate upon the death of my daughter Lois Powell. At such time, my Trustee is directed to pay over all of the remaining corpus of the trust, together with any undistributed income, to the child or children of my said daughter, if she dies with children surviving her, to be divided among her said children in equal shares per stirpes and not per capita. In the event that my said daughter dies without children surviving her, I give, devise, and bequeath all of the remaining corpus and undistributed income to my sisters, Jessie Powell Malon and Dorothy Powell Edwards, in equal shares. In the event that my sister, Jessie Powell Malon, predeceases me, I desire that her share go to my other sister, Dorothy Powell Edwards. In the event that the said Dorothy Powell Edwards predeceases me, I give, devise, and bequeath her share to her granddaughters, Carol Jane Edwards, Kathy Margaret Edwards, and Judith Dorothy Edwards, or to their survivor, in equal shares. [underlining of "me" added by editor]

Testatrix's parents and grandparents predeceased her. Testatrix's daughter, Lois Powell, died intestate on February 9, 1986, leaving no spouse or children surviving. Testatrix's sister, Jessie Powell Malon, died intestate on January 27, 1972, leaving no spouse or children surviving. Her sister, Dorothy Powell Edwards, died intestate on July 21, 1984, leaving no spouse surviving. Dorothy was survived by her unmarried son, Mason Edwards, and by four unmarried grandchildren, Carol Jane Edwards, Kathy Margaret Edwards, Judith Dorothy Edwards, and Frederick Edwards, Jr. Those four grandchildren were the children of Dorothy Powell Edward's son, Frederick Edwards, Sr., who died simultaneously with Dorothy in an automobile accident. Frederick Edwards, Sr., also was survived by his wife, Emily Turner Edwards.

A.

Under the laws of Missouri, who are the heirs of Lois Powell? What shares do each receive?

B.

Jefferson State Bank, as trustee of a testamentary trust established under the will of Margaret Powell, brought an action to construe a will and obtain court direction as to the proper distribution of the trust estate upon termination of the trust.

Respondents, Carol Jane Edwards, Kathy Margaret Edwards, and Judith Dorothy Edwards, moved for summary judgment in their favor, arguing that the will was clear and unambiguous on its face. Respondents, Mason Edwards and Frederick Edwards, Jr., moved for summary judgment for a distribution including them, making the following argument. They had evidence (the will drafting attorney's notes taken during his conference with testatrix in 1960) that testatrix had intended that the word "her" or "Lois" should have been used in the will instead of the word "me". [At the two locations where "me" is underlined in the will excerpt, above.] They also had deposition testimony of that attorney in which he stated that testatrix had read the final draft of the will (contained the word "me") before signing it.

To whom should the court award the trust corpus? What shares should each person take? Discuss all relevant legal issues. State a result.

II.

(30 minutes)

Mitchell Mason, a resident of Missouri, died testate in 1986. His will provided in part:

I hereby give, devise, and bequeath all of my property, real and personal, to my six children, viz: Herman, Dewey, Ruby, Lester, Carl, and Cecil, and their heirs, share and share alike

Five of the six named children were alive when Mitchell executed his will. Mitchell was predeceased by his son Herman, whose daughters Nadine and Dora Jean survived Mitchell. Mitchell's other children alive at will execution survived Mitchell. Mitchell had a seventh child, Angie, who died before will execution, but who had a son, George, who survived Mitchell. Mitchell also had an eighth child, Lula, who was born 2 years after will execution and who survived Mitchell.

In a will contest, the probate court ruled that Nadine, Dora Jean, George, and Lula were entitled to nothing under the quoted provision in the will. They appeal.

Are Nadine, Dora Jean, George, and Lula, or any of them, entitled to share under the will. Specify what share each of the following are entitled to under the will: each of the six named children (Herman, Dewey, Ruby, Lester, Carl, and Cecil), the grandchildren Nadine, Dora Jean, and George, and the child Lula. Discuss all relevant legal issues. State a result as to each of the persons named above.

III.

(30 minutes)

Gerald Breyer, a resident of Missouri, married late in life in 1984, after being a bachelor for 45 years. His wife, Francis, was considerably younger and became pregnant 3 months before Gerald's untimely death in 1987 when a tree fell on him while cutting wood in his woodlot.

Gerald's only will was written in 1980 and left all his property to his parents, both of whom were alive in 1980. His father died in 1983 of a heart attack. His mother died in 1986 of complications stemming from pneumonia. Besides his wife, Gerald was survived by his twin sister, Geraldine Breyer-Naught, and a nephew, Robert Breyer, who was the son of his brother George Breyer (who had died in 1978). Gerald had no other relatives surviving.

In 1985, Gerald purchased a life insurance policy with a face value of \$250,000 naming his wife as beneficiary.

Gerald's property consisted on a house (purchased in 1975) worth \$200,000 and titled in his own name, an automobile worth \$8,000 purchased in 1983 and titled in his name, a pickup truck worth \$8,000 purchased in 1985 and titled in the names of Gerald & Geraldine Breyer (joint tenants), household furnishings worth \$15,000 (of which \$5,000 worth had been purchased after the marriage), banks accounts in his own name aggregating \$25,000, a joint bank account with his wife containing \$20,000, and stocks & bonds worth \$150,000 inherited from his mother in 1986 and titled in his own name.

A.

If Gerald's will is probated without deviation from its terms, what property would be devised/bequeathed under it, and who would receive it? Discuss all relevant legal issues. State a result for each item of property.

B.

Is there anything Geraldine can do to enlarge the proportion of the Gerald's property she could receive? If she does those things, what property would she receive, and what property would the other people receive? Discuss all relevant legal issues. State a result for each item of property.

IV.

(60 minutes)

6 SHORT ANSWER QUESTIONS

(15 minutes each)

For each short question, write a one paragraph short answer identifying the legal issue(s) involved, the principle(s) of law to be applied to resolve that question, and what facts are relevant to applying the legal principle. At the end, state a result.

A.

On June 24, 1989, Helen Jones filed a petition in probate court for a determination of heirship of Edward Jones, a resident of Missouri. She was the sister and severed Siamese twin of decedent's daughter, Margaret Jones. (After severance of the Siamese twins at age 2 months, one of the twins, Helen Jones, was placed in foster care because of health problems related to the surgery. The Jones family moved away and lost track of Helen as she was moved to a series of rehabilitation facilities.) Edward Jones had died intestate in Missouri on June 10, 1988, and notice of letters of administration was published in the newspaper in compliance with the Missouri statute on July 15, 1988. No mail notice was sent to Helen Jones, because no one in the family knew where she was. The probate court issued an order listing the heirs of Edward Jones on February 17, 1989.

Is Helen Jones entitled to have the probate court reopen the question of who are the heirs of Edward Jones?

B.

Rosemary Sims, a resident of Missouri, wrote a will dated November 15, 1986, leaving all her property to her husband, Joseph Sims. He was named executor. The will contained a provision revoking all prior wills. The will was properly executed. Joseph was present when the will was executed.

Rosemary previously had written a will dated October 25, 1986, leaving all her property to her half-sister, Irene Plant. That will expressly disinherited her husband, Joseph. That will was properly executed.

On November 25, 1986, Rosemary Sims executed an affidavit, signed by her alone, in which she stated that she was a victim of spouse abuse and that her husband, Joseph, had coerced her to execute the November 15, 1986, will, and that she wanted the October 25, 1986, will to be her last will. There was no corroborating evidence about the alleged spouse abuse.

C.

In 1960, Henry Thomas, Sr., a resident of Missouri, bought \$50,000 worth of U.S. government bonds payable to "bearer". He placed these in his safe deposit box in an envelope on which he wrote "I, Henry Thomas, hold these bonds in trust for my son, Henry Thomas, Jr., for the duration of my life. As beneficial owner of these bonds, he is to receive them upon my death." Henry Thomas, Jr., was 2 years old at the time. In 1977, Henry Thomas, Sr., borrowed \$15,000 from the 1st National Bank, pledging \$15,000 worth of those bonds as collateral. He delivered those bonds to the bank, leaving the remaining \$35,000 worth of bonds in the envelope. The money was used to pay for Henry Thomas, Jr.'s, college education. Over the next 10 years, Henry Thomas, Sr., paid back the loan out of his own income, not with interest paid on the bonds. In 1987, when the loan was fully paid, Henry Thomas, Sr., received the bonds back from the bank and replaced them in the envelope. In 1988, he died. The envelope, with the \$50,000 worth of bonds, was found in his safe deposit box.

As it happened, Henry Thomas, Sr., was nearly insolvent. His creditors brought suit to declare the bonds to be part

of his estate. Should the court so rule? Discuss all relevant legal issues. State a result.

D.

Hazel Underwood, a resident of Missouri, delivered \$100,000 to the First National Bank with oral instructions to pay the income generated by the money to her son William Underwood for his life, then to pay the income to his children until they reach age 35. At this time, William was 55 years old, and his two children, Richard and Barbara, were 25 and 22 years old respectively.

Five years later, by which time Hazel had died, William, Richard, and Barbara petitioned the bank for a division of the money. Should the bank agree or refuse to do so. Discuss all relevant legal issues. State a result. [Ignore the Rule Against Perpetuities problem.]

V.
(30 minutes)

Define the following terms in one or two sentences each:

1. exoneration
2. ademption
3. spendthrift trust
4. dependent relative revocation
5. line of sight test
6. satisfaction
7. discretionary trust
8. pour over trust
9. refusal of letters
10. mutual will