

ESTATES & TRUSTS – winter 1989
ANSWERS

I.

(40 minutes)

will: demonstrative legacy

pay specific portion from specified source

pay remainder from general assets

abatement:

abate residual estate to trust by \$ 20,000

pour-over trust is valid:

- doesn't matter that inter vivos trust is a receptacle trust
 - testamentary formality is not required
 - provided trust is identified in will & existed on date of will execution

who are trust beneficiaries?

- must interpret meaning of "lineal descendants surviving" re Thomas, Sr.:
 - class gift
 - adopted child statute
- must determine who survived Thomas, Sr.:
 - posthumous child: presumption re gestation
 - child out-of-wedlock: elements for establishing paternity
 - step child not an heir
 - conclusion: there are "lineal descendants surviving"
 - operation of anti-lapse provision of trust
 - 120 hour survival statute doesn't apply to inter vivos trusts

II.

(55 minutes)

mental capacity

- contradictory evidence about mental awareness and personal hygiene
- evidence of will execution which might suggest mental dullness or apathy

undue influence

- relationship with beneficiaries
- unnatural disposition
- beneficiary giving lawyer the information about testator's wishes
- beneficiary bringing lawyer to testator
- possible failure of testator to check will
- beneficiary helping testator write signature

execution & attestation

- testator's initial confusion about where to sign
- assisted signature
- attorney's testimony re awareness of signing ceremony
- beneficiary witnessing will
 - purge-down statute
 - not needed: 3 witnesses

- but notary was one of witnesses (can't play both roles)
- attestation certificate executed later
 - but done by a witness (can't play both roles)
 - but attestation certification not required if witnesses are available (but Benson was dead)
- revocation of third will by physical destruction?
 - elements required: destruction, mutilation, etc.
 - not done here, although intent to destroy may be inferred
- dependent relative revocation
 - did testator intend to revoke 2d will only if 3d will is valid?
- exoneration? Mo. statutory presumption:
 - if mortgage executed before will, no exoneration
 - if mortgage executed after will, exoneration
 - facts do not state time relationship between mortgage and will

III (30 minutes)

- uniform simultaneous death act
 - each's property distributed as if he/she died last
 - applies to joint tenancy property as well as will distributions
 - insured presumed to survive beneficiary of life insurance policy
- Mo. intestacy distribution:
 - Henry's property to his heirs
 - includes 1/2 of house, antique cars, bank acct., 1/2 of cars, H's life ins. payout, 1/2 of stocks
 - = \$435,000
 - mother 1/3, sister 1/3, 2 nieces & nephews 1/6 each
 - Shelley's property to her heirs
 - includes 1/2 of house, quilts, bank acct., 1/2 of cars, S's life ins. payout, 1/2 of stocks
 - = \$255,000
 - daughter gets all
- probate & nonprobate property
 - life insurance, 2 cars & jt. stocks & bonds 1/2 to heirs of each
- no exemptions & allowances
 - no surviving spouse
 - no unmarried minor children
- abatement re Henry's \$ 25,000 unsecured debt
 - Henry's estate abated
 - = \$ 410,000 net
 - all of it is intestate property
 - abate personalty first? Mo. law unsettled

IV.
(30 minutes)

validity of trust

- elements: intent, terms, beneficiary, trust property
- no trustee named: not needed, court will appoint
- no delivery of trust corpus: not needed where settlor declares trust and is trustee
- no witnesses to declaration: not needed where settlor declares trust in writing
- trust is valid

validity of termination

- trust can be terminated if beneficiaries consent: Cotton did
- but trust cannot be terminated in spite of consent if trust purpose is not fulfilled: here it was, since \$ 15,000 had been paid
- settlor did not agree to termination: he doesn't need to if trust purpose has been

fulfilled

termination by merger

- Longworthy had a reversionary interest, as well as legal interest
- when Cotton's intervening equitable interest was terminated, trust terminates by merger

[it is crazy to suppose that settlor would intend double payment of \$15,000]

V
(25 minutes)

notice

- Mo. stat. requires newspaper notice, & mail notice to heirs
- but only to last known address
- that was complied with
- Tulsa case does not apply where mail notice was attempted & failed

expiration of 6 mos. time limit bars will contest

will execution

- were pages substituted? is a factual issue
 - discuss staple holes, preparation of new page (but not used), handwriting expert testimony
- if they were, then:
 - old pages revoked by disappearance
 - new pages are void for lack of attestation

dependent relative revocation issue re removed pages