

ESTATES & TRUST – Fall 1991
ANSWERS

I. (90 min.)

testamentary capacity:	def.: testator must show normal behavior and use of mental faculties yes: normal behavior in MO no: abnormal behavior in OH
execution:	rough draft, not final copy, executed (testamentary intent?) lawyer helped with J.H.'s signature acknowledgment of testator's signature by lawyer (+J.H.'s head nodding)
attestation:	2 witness signatures required no mention of notarized self-proving affidavit here; testimony of 1 witness only required (§ 473.053(2)); done
interlineation:	dictated by testator & written by 2d wife (not an oral will!) placement of interlineation below signature & witness lines (OK) done before execution (OK)
undue influence:	def.: substitution of will of 3d person for that of testator short duration relationship with second wife disparity of ages of testator & second wife long accumulation of assets with first wife children can be & were disinherited will drafted by 2d wife's lawyer; execution in her presence
child <i>in utero</i> :	entitled to intestate share under pretermitted child statute (A) is heir under intestacy <i>issue</i> : is child fathered by J.H. (no facts)? consider that 75 year old men have fathered children
distribution:	wife gets everything except RR books & photos (Donald), silver & china, bric-a-brac (Beatrice)
insurance:	goes to Beatrice & Donald
intestacy:	wife gets 1/2 (but not \$ 20000) [children of other marriage survive] posthumous child? period of gestation; presumption of legitimacy 1 living child gets 1/6 + 2 grandchildren get 1/12 + unborn child get 1/6
exemptions:	wife also gets exemptions & allowances; calculate!
election against will:	wife gets 1/3 of augmented estate; calculate!
notice of election:	within 10 days after expiration of 6 mos. nonclaim period; date?

II. (25 min.)

notice:

§ 473.033 requires will contest to be filed within 6 mos. of granting of letters testamentary & newspaper notice publication date
church filed beyond 6 mos. date
church did not receive mail notice
S.Ct. held in *Pope* that mail notice must be given, unless reasonable efforts didn't provide name or address of potential parties
here, L.B. was obligated to send mail notice once letter had been

tendered;
didn't

letter:

hence, § 473.070 S/L applies: 1 year from death
is holographic
has testamentary intent
MO doesn't recognize holographic wills/codicils
letter not probatable
notice issue moot

insurance:

issues not graded:

beneficiary can be changed by beneficiary form, or by express provision in will
incorporation by reference (no cross references in documents)
list of bequests of personalty

III. (25 min.)

physical destruction:

revocation by physical destruction is authorized
must be done by testator or at his direction
must be done by a third party in presence of testator
destruction by direction over phone held not in presence
revocation ineffective

dependent relative revocation:

applies only if will is held revoked
where testator destroys/revokes will in anticipation of a new one,
the revocation may be conditioned on execution of the
new will
was revocation conditional here? discuss!

IV. (40 min.)

validity of trust: intent? yes! expressed in trust declaration
trust corpus? yes! stocks, bank account
delivery? not needed; written declaration is enough + segregation of
corpus (no witnesses required, except for oral declarations)
acceptance? not needed; written declaration is enough
retention of right to revoke, appointment of self as trustee do not invalidate trust
revocability: trustee is liable for all disbursements not made for trust purposes
accounting: did settlor divert funds for personal use?
expenses from personal funds arguably in fulfillment of parental
obligations; compare personal disbursements with transfers from trust
no requirement that disbursements be made directly from trust, rather than via
personal account (but records are required)
support trust: discretionary or support trust? definitions
"all care" clause
trustee must pay for necessities (here, institutional care)
funds beyond "care" can be accumulated or spent for benefit of Joey
are toys, trips, etc., appropriate expenses?
does obligation for future "care" preclude spending money for toys, trips, etc.?
[can trustee consume corpus for permitted purposes?]