

ESTATES & TRUSTS – Fall 1992  
ANSWERS

I (45 minutes)

lost will - presumed revoked (if so, Victor's heirs take)

evidence of inadvertent destruction?

if will is not intentionally destroyed, copy can be used to prove will contents

joint life tenancy - right of survivorship

do Victor's heirs take? (who are they?)

rule of repugnancy (what interest would Walter get? life estate + power, or fee simple?)

by residuary clause (or because will is presumed revoked)

lapse - anti-lapse statute (who takes as heir, since William predeceased?)

effect of adoption - adult spousal adoption

is Walter an heir (as husband of Victor's niece Ella)?

do Walter's heirs take? (who are they?)

power of appointment - not exercised (he died intestate)

120 hour survival statute (effect on Walter's fee, if that is what he got?)

lapse - anti-lapse statute (who takes fee in Walter's place, if Walter got fee?)

II (75 minutes)

A.

trust creation - oral declaration OK when corpus is personalty

here, there was written notation on envelope as well

was there a trust in the stock itself, as well as in dividends?

failure to reregister stock in name of trust does not invalidate trust

trustee management - duty to preserve corpus: sale of declining-value assets and reinvestment liability for loss

- traditional rule: strict liability for losses occurring during breach of trust:

- failure to register / commingling with trustee's personal assets?

- modern view: liability only for losses resulting from breach

- no disappearance of stock

there is liability for failure to sell stock & reinvest

B.

devise to trust:

"pour-over" trusts are valid: are not considered invalid testamentary dispositions

but "pour-over" trusts must be in writing *ab initio*; this one wasn't

hence, devise is invalid; property goes under residuary clause to sister

- since wife is getting more than 1/2 of hotchpot, she can't get \$200,000 by electing against will

C.

does a general devise exercise a power of appointment?

UPC (1980) & RSMo § 456.235 require that power be exercised expressly; it wasn't

even UPC (1991) requires special power (as here) to be exercised expressly  
but if property is expressly disposed of, it is an effective exercise (as here)  
is Joan Jones a "relative"  
children are relatives  
illegitimate children are children of mother (as here)  
but adopted-out children lose inheritance rights from natural parents (Mo. law)  
does that law apply also to definition of "relative" under power of appointment?  
law of class gifts applies; same law as inheritance applies (RSMo § 474.435)

### III (60 minutes)

holographic will - validity [1988 will]  
testamentary intent? - is handwritten instrument a will, or a memo to lawyer?  
plain meaning rule *re* "Mother"  
should personal usage exception be applied?  
revocation of prior will [1979 will]  
mutilation  
valid if done by proxy?  
dependent relative revocation  
omitted child share [for Colleen]?  
applies only *re* 1979 will, not 1988 will  
doesn't apply because her mother was given substantial portion of estate  
partial intestacy: cash, investments, 1 car  
who are heirs?  
spouse's elective share - should Jane elect against will?  
calculate elective share (including hotchpot & offsets)

### IX. (30 minutes)

definitions:

- (1) line-of-sight test
- (2) ademption
- (3) satisfaction
- (4) spendthrift trust
- (5) semi-secret trust
- (6) exoneration
- (7) incorporation by reference
- (8) disclaimer
- (9) *Rule in Wild's Case*
- (10) *cy pres* doctrine