

ESTATES & TRUSTS – winter 1992
EXAM ANSWERS

I. (25 minutes)

ownership of contents of box by right of possession of box; implied gift of contents?
survivorship rights of joint tenant
express gift? donative intent, delivery, acceptance?
relevance of keeping interest, instructing Poco to exchange bonds, inventory records
Hi Longfellow's heirs? adopted son takes ahead of sibling
validity of adult adoption for inheritance purposes
credibility of testimony
[bonus: constructive trust imposed on Poco for benefit of Hi's estate]
result

II. (40 minutes)

application of anti-lapse stat. (relatives, not 3d parties)
surviving spouse elective share: 1/2 since there are no lineal descendents
abatement for elective share: Mo. case holds abatement across board, not according to stat.
abatement scheme
husband Charles: homestead - \$7500; personal property - \$22,500; maintenance allowance -
none; elective share - 1/2 of hotchpot (her estate + 1/2 of house + insurance) - 1/2 of
\$800,000 = \$400,000 less \$300,000 = \$100,000;
(bequest of \$20,000 lapses because of election)
abatement is 1/5 (\$100,000 of \$500,000 estate)
brother George: dead; anti-lapse stat. applies; son George, Jr., takes - \$20,000 less 1/5 =
\$16,000
friend Helen: dead; anti-lapse stat. doesn't apply (not a relative); lapses
1/5 = \$24,000
trust for sister Maud & charities: 2/3 of balance of estate = 2/3 of \$450,000 = \$300,000 less 1/5
(\$60,000) = \$240,000
residuary to MU: balance of estate = 1/3 of \$450,000 = \$150,000 less 1/5 (\$30,000) = \$120,000

III. (40 minutes)

posthumous child rule: child is presumed child of decedent; birth occurred during statutory period of gestation (10 months)

will valid: 2d wife Martha takes all, except Millie's pretermitted child's share (intestate share = 1/8; 3 prior children + Millie take 1/2 total)

will invalid: 2d wife Martha takes 1/2; 4 children each take 1/8 (difference is whether other 3 children share in estate)

validity issues:

mental capacity: abuse irrelevant, nervous breakdown cured, stroke apparently didn't affect mental abilities

undue influence: bequest in favor of new wife not considered unnatural or result of undue influence

will execution: signature help OK (not requested, but was ratified); "X" OK as substitute for signature; only 1 witness need testify if other is not available

signatures in presence of witnesses: will invalid if T fell asleep before 2d witness signed, but OK if he fell asleep afterwards (line of sight vs. conscious presence tests; no difference here)

IV. (25 minutes)

trustee discretion issue: can trustee granted unlimited discretion sell farm for 1/2 its appraised value?

No! that would defeat purpose of trust of preserving value of property for distribution to heirs share distribution to Dimple, Alma & grandchildren incorrect; should be *per stirpes* among them, since they are not in the first generation with living heirs; should be 1/4 each to Dimple, Alma & each parent of the grandchildren, and 1/4 to one grandchild and 1/8 each to other 2 grandchildren