

FINAL EXAMINATION
ESTATES & TRUSTS I

P.N. Davis

Friday, May 15, 1992

8:30 - 11:30 AM

THIS IS A THREE (3) HOUR EXAMINATION.

THIS EXAMINATION CONSISTS OF SEVEN (7) PAGES.

THIS EXAMINATION CONTAINS FIVE (5) QUESTIONS.

I = 25 min.

II = 40 min.

III = 40 min.

IV = 25 min.

V = 20 min.

FILL IN YOUR EXAMINATION NUMBER ON THE BLUEBOOK STICKER.

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YOU MAY BRING IN YOUR STATUTORY SUPPLEMENT, BUT NOTHING ELSE. You may write in the margins and on the blank pages of the statutory supplement.

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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.

(25 minutes)

Some of the assets of the decedent, Hiawatha [Hi] Longfellow, were locked in a safe deposit box rented by her and her sister, Pocohantas [Poco] Williams; both were the daughters of Minnehaha [Minne] Longfellow. Poco Williams claims ownership of the contents by right of survivorship in possession of the safe deposit box and as donee.

In 1975, Minne Longfellow suffered an incapacitating stroke. After her stroke, Hi Longfellow, her unmarried daughter, moved in with her mother and cared for her. Upon her death in 1982, Minne Longfellow left all of her property by will to Hi Longfellow, with the exception of \$ 10.00 which she bequeathed to Poco Williams. Hi Longfellow used the funds from Minne's bequest to buy bearer bonds. [Bearer bonds are payable to the "holder"; they are not registered in nor do they bear the name of the owner. Analogously, U.S. currency are bearer notes.] The bonds were placed in the jointly rented safe deposit box. The sisters Hi and Poco met quarterly to clip the coupons from the bonds, to prepare deposit slips, and to place the coupon interest into Hi's personal bank account.

In late 1988, Hi Longfellow died intestate. She had no natural children or surviving parents. Her only surviving relatives were Poco Williams, her sister, and an adopted son, Powhatan Longfellow; she had adopted him as an adult (when he was 25 and she was 60) in 1986. The administrator of Hi Longfellow's estate sued to recover the bearer bonds from Poco Williams.

Poco testified that Hi Longfellow had told her in 1983 that virtually all of her property would go to Poco upon Hi's death. Poco also testified that in late 1987, at a coupon clipping session at the bank, Hi had handed the bearer bonds to her, saying, "They are yours; hang on to them". Then Poco put them back into their jointly rented safe deposit box. Nevertheless, Hi continued to receive interest from the clipped bond coupons as before until her death. Also, in early 1988, during a period of mild illness, Hi instructed Poco to sell some of the bearer bonds and to buy other ones, which Poco placed in the safe deposit box. In her financial journal, Hi had estimated future income from the bonds. Also, she continued to reflect the bonds in her property inventory and

made no entry indicating transfer of title, although she had done so for other property in the past. Poco removed the bonds from the box while Hi was on her deathbed at the hospital, along with other some other property undisputedly belonging to Poco.

Other testimony indicated that Poco Williams had resented her mother's leaving virtually all of her property to her sister Hi Longfellow and that the sisters frequently argued about financial matters. Also, Poco was married to a millionaire and Hi had little savings and a modest income prior to Minne Longfellow's death.

These events occurred in Missouri. Should the probate court grant Hi Longfellow's administrator's request to include the bearer bonds in Hi's estate and to recover them from Poco Williams? Discuss all relevant legal issues. State a result.

II.

(40 minutes)

Lucy Brown died testate on October 11, 1988. Item I of her will provides for payments of her debts out of the estate. Item II of her will gives special bequests of \$ 20,000 each to her husband (Charles Brown), her brother (George Snodgrass) and her friend (Helen Peterson), and \$ 30,000 to her church (First Baptist). Item III of her will names the Boone Bank as trustee of a trust for Brown's sister, Maud Snodgrass. Item III, after deducting the payments directed in Items I and II, is comprised of "a sum of money equal to two-thirds (2/3) of the balance of the value of my estate". The trust would terminate at the death of Maud Snodgrass. The trustee then was directed to deliver the corpus of the trust to certain named charities. Item IV of her will bequeathed "all the remainder of my property, real, personal, or mixed ..." to the University of Missouri. Maud Snodgrass died one month after Lucy Brown's death. Lucy's husband, Charles Brown, decided to take an elective share rather than the \$ 10,000.00 left to him in Item II.

Charles and Lucy Brown lived in a \$ 200,000 house in Columbia, Missouri; its deed was titled in "Charles and Lucy Brown, husband and wife". The house was paid for entirely by Lucy. Lucy Brown's estate consisted of \$ 530,000 of assets, including a vacation home at Sister Bay, in Door County, Wisconsin; it was inherited by Lucy from her parents and was titled in her name alone. Included in her estate also were 2 cars each worth \$ 10,000 and furniture and household effects worth \$12,500. There were no outstanding debts. She had purchased a life insurance policy for \$ 100,000 payable on her death to her husband Charles. Her husband Charles was a lawyer with an annual income of \$ 100,000.

At her death, Lucy Brown was survived by her husband Charles and her sister Maud Snodgrass. She had no children. Her brother George Snodgrass had already died, survived by a son, George, Jr. Also, Helen Peterson, her friend, had already died, survived by a husband William and a daughter Helga.

Lucy Brown had her home with husband Charles in Columbia, Missouri. They had a vacation home in Door County, Wisconsin. Who takes portions of Lucy's estate and how much is each entitled to?

III.

(40 minutes)

Robert Thorne was terminally ill and very near death when he made his will. After his death, his three children by his first wife contested the will.

Contestants were the three adult children of testator by his first wife, Jane. He disinherited them in favor of his second wife, Martha. Contestants argued that his molestation of two of them 22 years before the will was executed established continuing incapacity. After they sided with their mother in a divorce action concluded 6 months prior to will execution, their father had a nervous breakdown. Thorne met his second wife during rehabilitation and married her one month before will execution and after discharge from the mental hospital, which was two months prior to will execution. One week before he died, testator suffered a stroke which left him partially paralysed, but did not render him speechless.

Testimony indicated that Thorne's attorney arranged the will execution ceremony to take place in Thorne's hospital room. Present were Thorne, the attorney, 2 witnesses, and Thorne's second wife, Martha. Thorne's attorney indicated to all present that the document on the bed next to Thorne was Thorne's will. Thorne then attempted to sign the will, but the pen slipped from his hand at least five times. Then Diana Smith, one of the two attesting witnesses present, held Robert's hand to steady it and helped him sign the will. Testator had not said anything previously, except "Damn!", but thanked Ms. Smith afterwards. Then Ms. Smith signed the will as a witness. Since the other witness, Joy Luckey, had burned her fingers cooking the night before and had difficulty writing, she wrote an "X" as a witness, and Thorne's attorney wrote after the mark "(mark of Joy Luckey)". Then they noticed that Thorne apparently had fallen asleep. He never reawakened, so they could not execute the self-proving will affidavit. Thorne died the next day. By the time of the will contest, Ms. Smith had moved away and could not be located. Ms. Luckey and Martha Thorne testified about the events at the will execution ceremony.

Eight months later, Martha Thorne bore a daughter, Millie Thorne.

Three questions arise. (1) Who takes if the will is valid? (2) Who takes if the will is invalid? (3) Is the will valid? Discuss all relevant legal issues. State a result for

each of the three questions.

IV.

(25 minutes)

In 1957, George Andrews died leaving 12 surviving children. His will created a testamentary trust, naming his son Clyde Andrews as trustee of the 150-acre family farm. The pertinent sections of the will provide:

ITEM III: I give, devise and bequeath all the real estate of which I die seized and possessed unto my son, Clyde Andrews, as Trustee, for the following uses and purposes, *to-wit*:

My Trustee shall take charge of my real estate and shall keep the taxes and insurance paid and the property in repair and he is authorized to rent or lease said real estate to any person satisfactory to him, either a stranger or one or more of my children, and from the rental he will pay out any debts that I may owe which have not been satisfied out of the personal property and any expenses necessary in the way of upkeep, insurance and taxes, and when the proceeds from said rentals amount to as much as \$500.00, then he will divide said amount among my heirs at law. **My said Trustee is given the fullest and broadest powers in the management and control of my real estate and his judgment and decision shall be final in all matters.**

My said Trustee shall not have the right to sell said real estate to a stranger in blood, but **he shall have the right to sell my said real estate to any one or more of my children for such price and upon such terms as he thinks best** and he is authorized to execute and deliver to such purchaser or purchasers a good and sufficient deed, and **he will thereupon divide the proceeds of such sale among my heirs at law.**

If a sale is not made as above authorized, my said real estate shall be kept intact under Trusteeship so long as any of my children live, and upon the death of my last surviving child, then said property shall pass in fee simple to my heirs at law as of that date.

ITEM IV: I hereby nominate and appoint my son, Clyde Andrews, as Executor of this my last will and testament . . . and confirm his appointment as Trustee In the event he predeceases me, then my next oldest child shall act as Executor and Trustee . . . , and **if my said son, Clyde Andrews, predeceases me or dies before the trust herein created has been wound up, then my next oldest child shall succeed him as Trustee . . .** with all the powers herein conferred upon him, and thereafter my oldest child shall succeed to the place as Executor and Trustee made vacant by death or resignation **[Emphasis supplied.]**

Clyde Andrews did not take any action with respect to the family farm. He moved to

Idaho in 1975 and died there in 1978. Two of the other brothers ran cattle on the farm for several years thereafter and rented it out to deer hunters. Those two brothers died in 1988 leaving Dimple Coffee as the next oldest child of George Andrews and she was appointed trustee of the trust by the probate court.

In August 1989, Dimple Coffee offered to sell the farm to Alma Nelson, the only other surviving child of George Andrews, for \$22,000 and to divide the proceeds among George Andrews's heirs. Alma Nelson paid the \$22,000 to Dimple Coffee, who retained one-third of it, rebated one-third of it to Alma Nelson, and tendered one-ninth of it to each of George Andrews's three grandchildren, the only other surviving heirs besides Dimple Coffee and Alma Nelson. Two grandchildren were the children of Clyde Andrews and the other grandchild was the child of Elijah Andrews, deceased brother of Clyde. The grandchildren refused to accept the tendered proceeds and filed a lawsuit to set aside the deed to Alma Nelson. The value of the farm was found to be \$48,000 by an appraiser hired by the grandchildren.

The farm was located in Boone County, Missouri. Should the court grant the petition of the grandchildren to set aside the sale of the farm? Discuss all relevant legal issues. State a result.

V.
(20 minutes)

Define the following terms:

1. spendthrift trust
2. acts of independent significance
3. pour-over trust
4. dependent relative revocation
5. exoneration
6. satisfaction