

FINAL EXAMINATION  
**ESTATES & TRUSTS I**

P.N. Davis

Monday, December 5, 1994

8:30 AM - 12:00 N

THIS IS A THREE AND ONE-HALF (3½) HOUR EXAMINATION.

THIS EXAMINATION CONSISTS OF EIGHT (8) PAGES.

THIS EXAMINATION CONTAINS FIVE (5) QUESTIONS.

I = 15 min.            II = 30 min.            III = 60 min.  
IV = 60 min.            V = 45 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 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 3½ hours. You will be given 3½ 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.

(15 minutes)

Mary Grant died on February 26, 1989. Her daughter, Judy Grant Hay, proffered 4 instruments as parts of a single last will: (1) a 2-page handwritten note dated June 1986, (2) a typewritten will dated July 2, 1986, (3) a typewritten codicil dated November 21, 1986, and (4) a 2-page handwritten note dated January 1988.

Item 2, the typewritten will provides in part:

Having survived my husband, Joe Grant, Sr., and being mindful of his desires, it is my intention herein to equally divided our properties which passed to me at his death in equal shares to our beloved children.

First, I direct my executor hereinafter appointed to carry out the provisions of the handwritten bequest, which I have attached hereto and which was prepared by me in June of 1986, relative to items of personal property, which I want each of the children to receive.

Second, I give, devise and bequeath all of the rest, residue and remainder on my estate, whether real, personal or mixed to my said children, Judy Grant Hay, Joe Grant, Jr., Jim Grant, and Jean Sharp, share and share alike. If either of them, however, shall predecease me, then the share herein devised to them shall go to their children and likewise in equal shares.

This will was introduced by a provision revoking "all wills and codicils heretofore made by me at any time".

Item 3, the codicil, executed about 5 months later, adds a paragraph 1A, containing 3 specific bequests: \$ 5,000 to Mary Grant's former daughter-in-law, \$ 2,000 to her church, and \$ 2,000 to the University of Missouri.

Item 1, the June 1986 note, is marked pages 1 and 2, and contains a list of various items of personalty, mostly household and personal effects, and the names of the persons who were to receive them. Item 4, the January 1988 note, is marked pages 3 and 4, and contains a similar list of different items of personalty and legatees. Neither note was inconsistent with each other or with the typewritten will and codicil. Both notes are in Mary Grant's handwriting and are dated. Each concludes with her signature. Both were stapled to Item 2, the typewritten will.

Should the probate court accept for probate all four items as parts of a single will?

Discuss all relevant issues. State a result.

## II.

(30 minutes)

The following facts are mentioned above. Mary Grant had four children alive when she executed her will, Judy, Joe, Jr., Jim, and Jean. Mary died on February 26, 1989. Consider the following additional facts. Mary had a fifth child Jane who died before Mary executed her will, leaving her husband Bill, but no children. Judy is still alive. Joe, Jr., predeceased Mary, leaving two children, Carl and Dorothy; his wife Francis predeceased him. Jim died in a car accident 3 days after Mary died, leaving a wife Georgeanne and one child Eleonor. Jean had a serious falling out with her family when she was 15, moved in with another family in town, and was adopted by them with Mary and Joe, Sr.'s, consent.

Who is entitled to take under Mary's will and what shares will each receive? Discuss all relevant legal issues. State a result.

### III.

(60 minutes)

In 1959, Jennie Hancock, a widow, lived in St. Louis. She bought a house in outstate Missouri in February 1959; she had purchased it for retirement purposes. She arranged with her sister, Laura Vernon, to exchange deeds to the home in which Jennie owned for unexplained business reasons. Jennie was to convey the realty to Laura, who was unmarried, and Laura was to convey it back to Jennie. Jennie did convey it to Laura by quitclaim deed on April 10, 1959, but Laura failed to reconvey it to Jennie. Laura recorded the deed shortly after receiving it in 1959. She paid no portion of the purchase price and did not contribute to the operating costs of the house. Nor did she share in any rents received.

Jennie moved from St. Louis to the house in 1969 and occupied it thereafter without interruption until her death in 1988.

In 1980, Jennie Hancock went to an attorney and had a trust instrument and deed prepared. The trust instrument named Jennie as settlor and trustee. It stated that settlor, "simultaneously with the execution of this agreement, has by deed conveyed to Jennie Hancock, Trustee, under this declaration of trust", the her home. The realty referred to was the same property which was the subject of the 1959 quitclaim deed to Laura Vernon. The trust instrument stated that Jennie would hold the property for the purposes set forth in the trust instrument, *to wit*, for the use and benefit of Jennie Hancock until her death. Upon her death, the successor trustee, who was not named, was immediately to terminate the trust and to convey title to the property to Carolyn Newman. Carolyn Newman was a long-time friend of Jennie Hancock.

Jennie as settlor reserved the right to revoke or amend the trust without the consent of any beneficiary, to mortgage or otherwise encumber the trust, to lease the realty and collect rents for her own personal use, and to pay any other income from the property to herself for her personal use.

Jennie executed the trust instrument, signing twice, once as settlor and once as trustee. She mailed the executed trust instrument to Carolyn Newman. For some reason she did not execute the deed conveying the property to herself as trustee.

In 1985, Jennie Hancock executed a will leaving all of her property to Robert Winslow. He had moved into the house with her in 1969, and remained there for the remainder of her life. They never married. Robert testified that beginning about 1982, Jennie began telling him that he would get the house when she died and that she would remember him in her will. Some mutual friends testified that they heard her say that to Robert on a few occasions.

Jennie Hancock died in 1988. Throughout her life, she remained in contact with Carolyn Newman, writing and phoning her frequently. They visited each other about every year. After 1980, Jennie never mentioned the trust to Carolyn or suggest that the house would be Carolyn's after Jennie's death.

In probate following Jennie Hancock's death, Laura Vernon, Carolyn Newman and Robert Winslow each claimed the house. Who is entitled to the house? Discuss all relevant legal issues. State a result.

IV.

(60 minutes)

SHORT ANSWER QUESTIONS

(about 6½ minutes each)

*Note:* In each of the following questions, assume the law of Missouri applies, unless the question states otherwise.

A. Testator left his Picasso painting "to my wife Ann for life, then to my cousin Will, but if he dies without surviving issue, then to my cousin Charlene". His residual legatee was the University of Missouri. Testator died in 1980. Wife Ann died in 1992. However, cousin Will died in 1988. He was survived by his daughter Helen and his wife Beverly. Helen had been born in 1982 and died in 1993. Testator's cousin Charlene and Will's wife Beverly are still alive. Who gets the Picasso painting, Beverly, Charlene, or the University of Missouri? Why?

B. Testator left his estate to his "children". At the time of will execution, he and his wife had two natural children, A and B. After he executed his will, he and his wife adopted another child, C. Ten months after he died, his wife gave birth to a child, D. Do A, B, C, and D each take under the will? Of those who take, how much does each get? Why?

C. Suppose in Question B, above, testator gave his estate "to A"; his will did not mention B. Would A, B, C, and D share in the estate? Of those who take, how much does each get? Why?

D. Testator/settlor in his will established a testamentary trust. He named his wife as trustee. He named his son as income beneficiary until he reached 21; his son was to receive the principal upon reaching 21. Settlor's wife predeceased him. Testator/settlor died a month later, when his son was 9. His son died at age 20. His son was survived by a wife, whom he had married 6 months previously. Is the trust valid? If valid, who takes when the son dies? Why?

E. At a party, X declares before witnesses that he is holding his late wife's diamond ring for his daughter Y, and that she will get it when she reaches 21. Meanwhile, he said he would keep the ring in a safe place. His daughter was not present at the party, nor did he tell her later about his statement at the party. He put the ring in his safe deposit box. When she was 20, she noticed that her father was wearing a new ruby ring. When she inquired about where he got it, he told her that he sold "her mother's diamond ring" so he could buy the ruby ring. When she told her aunt about this, her aunt told her about her father's statement at the party. When she reached 21, she sued her father for conversion. Should the court give her a judgment for the value of the diamond ring?

F. Andrew and Evelyn Wilson were in an automobile accident. Both were dead when rescue workers arrived. Their marriage had been a second marriage for each; during their marriage they had a child D. Andrew had two children by his prior marriage, A and B. Evelyn had one child by a prior marriage, C. In his will, Andrew gave his property to Evelyn, and if she predeceased him, to his children. In her will, Evelyn gave her property to Andrew, and if he predeceased her, to her children. At their parents' deaths, B, C and D survived, but A predeceased. A was survived by two children X and Y. Who takes, and how much? Why?

G. In his will testator gave his son \$ 50,000 and his daughter \$ 50,000. Before his died, he gave his son \$ 20,000 for a trip to the South Pole. When he died, his estate contained \$ 50,000. What shares do testator's son and daughter take of his \$ 50,000 estate? Why?

H. Testator granted to his daughter D a life income interest in a bank account containing \$ 200,000 and the power to determine which of his nieces and nephews would take shares in that account upon her death and what proportions those she selected should take. She was to exercise this power by her will. In her will, D failed to expressly exercise this power, but she did in the residuary clause in her will leave all her property to N, one of her cousins who was also a niece of testator. Who is entitled to share in the \$ 200,000 bank account? Why.

I. Testator executed a will by identifying the document as his will to 2 witnesses who were present and then asking and having his lawyer help him write his signature before them. One of the witnesses was a minor legatee in his will. Before anyone left the room, the 2 witnesses signed the document. Several days later, testator indicated to a third witness that the document was his will, that his lawyer had helped him write his signature on it, and that the 2 witnesses had signed the document after they had watched the execution process. The third witness then signed the document. After testator died, the executor of the will had each of the three witnesses testify at the hearing held to determine whether the will should be admitted to probate. Should the court admit the will to probate and issue letters testamentary to the executor appointed by it? Why?

V.  
(45 minutes)

Briefly define the following terms:

- (1) Rule in Wild's Case
- (2) homestead exemption
- (3) "no further inquiry" rule
- (4) support trust
- (5) Refusal of Letters
- (6) *cy pres* doctrine
- (7) rule of convenience
- (8) plain meaning rule
- (9) rule of early vesting
- (10) insane delusion
- (11) advancement
- (12) line of sight rule
- (13) omitted spouse
- (14) ademption
- (15) semi-secret trust