

FINAL EXAMINATION  
**ESTATES & TRUSTS**

P.N. Davis

Monday, December 4, 1995

8:30 AM - 12:00 N

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

THIS EXAMINATION CONSISTS OF:

- (1) A FIFTEEN (15) PAGE MULTIPLE-CHOICE QUESTION SECTION, AND
- (2) A SEVEN (7) PAGE ESSAY QUESTION SECTION.

THIS EXAMINATION CONTAINS FIVE (5) QUESTIONS.

I: Multiple Choice (30 questions) = 60 min.

II = 60 min.    III = 60 min.    IV = 15 min.    V = 15 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.

(60 minutes)

30 Multiple Choice questions are in a separate booklet.

You may do these questions at any time during the exam.

## II.

(60 minutes)

Decedent Henry Loeb is survived by his wife (Sally), by his and Sally's three children (Abner, Jessica, and Martha), by his two children from his prior marriage (Bettina and Frederick), one of whom was adopted (Frederick), by his mother (Lena), by his two siblings (Charlene and Nelson), by his half-brother (Thomas), by his mother's brother (Ernst), by his father's sister (Ursula), and by several grandchildren, nieces and nephews, and cousins. Abner and his wife had two children (Dorothy and Ichabod), one of whom died in infancy (Dorothy), and the other was born 8 months after Henry died (Ichabod). Jessica and her husband have one child (Karl). Charlene and her husband have three children (Oscar, Portia, and Valerie). Portia and her husband have one child (William). Ursula, a single person, adopted a daughter (Xavier). Ernst and his wife had two children (Youngman and Zachary).

### A.

- (1) If Henry died intestate, who inherits under Missouri law? What fraction of the estate does each take?
- (2) If Abner died from a common automobile accident two days after Henry, who inherits under Missouri law? What fraction of the estate does each take?
- (3) Under what circumstances can his child (George) by his mistress inherit?
- (4) If Henry died intestate and childless, but survived by all the other relatives mentioned above, who inherits under Missouri law? What fraction of the estate does each take?
- (5) If Henry died intestate and his children, wife, parents and siblings all predeceased him, but is survived by the other relatives mentioned above, who inherits under Missouri law? What fraction of the estate does each take?

### B.

Suppose that Henry executed his will leaving all of his property to his "daughters". He is survived by all the persons mentioned in question A, above. Assume that Frederick had a sex change operation (becoming Federicka) before Henry died, but after will execution.

- (1) Who takes under the will? What fraction of the estate does each take?

(2) Suppose Martha had driven the family car into the garage too fast and was unable to stop before hitting Henry, who was at his workbench at the end of the garage, crushing him to death. Would that affect the fractions of the estate each daughter would take?

(3) Suppose Henry had left all his property to his "sons" (instead of his "daughters"). If Abner died from a common automobile accident two days after Henry, what happens to the estate and what fraction of the estate does each take?

(4) Can Sally elect against the will? What fraction of the estate would she take? What happens to the legacies under the will?

(5) Suppose that Henry executed his will 20 years before his death and 5 years before his first wife divorced him. Would that alter the fraction of the estate Sally can elect?

Discuss all relevant legal issues. State a result for each question.

### III.

(60 minutes)

Thomas Hardy died in 1992 at age 89, leaving an estate worth over 4 million dollars. He had been married for 48 years to his first wife Cora, who died in 1980. They had 2 children, Jan Hardy Crowell and Pat Hardy. After Cora died, Thomas married Catherine Young in 1982. Catherine had a daughter Martha by a previous marriage. Martha had a son Martin.

Thomas's last will executed during his marriage to Cora was in 1975. It was properly executed and notarized. It left everything to his wife Cora, if she should survive him, otherwise to his two children, Jan and Pat.

While married to Catherine, Thomas executed 3 wills, as follows:

- (1) Will dated November 11, 1983.
- (2) Will dated February 10, 1987.
- (3) Will dated January 18, 1990.

Each successive will and codicil gave ever-increasing portions of decedent's estate to Catherine, at the expense of his natural children, Jan and Pat, and their descendants, as follows:

<u>Legatee</u>	<u>1983 Will</u>	<u>1987 Will</u>	<u>1990 Will</u>
Catherine	\$ 500,532	\$ 2,282,528	\$ 2,732,278
Pat & Jan (each)	1,083,339	518,218	384,224

The 1983 will was executed by Thomas at his lawyer's office in the presence of three witnesses, all employees of his lawyer. It was not notarized. It did not contain any reference to prior wills and codicils.

In 1987, Thomas developed cancer and underwent chemotherapy treatments. The treatments consisted of 6 hours' intravenous administration of a complex of drugs at the hospital's out-patient cancer clinic, followed by a month's recovery at home. The treatment causes nausea and lassitude (extreme fatigue) for about two weeks; during the second two weeks, the patient feels quite good, although not brimming with energy. About one week before the second treatment, Thomas phoned his lawyer and discussed the provisions for his new will. He commented that he wanted to change his will because Jan and Pat rarely visited him, and he

thought their antipathy to Catherine was unjustified. About one week after that treatment and while on powerful anti-nausea medication, Thomas's lawyer came to his home so Thomas could execute his will. The lawyer asked Thomas whether he felt well enough to read and execute his will; Thomas responded that he thought he could "handle it". Thomas then spent 15 minutes reading the will, dosing off from time to time, until he declared that he was satisfied and was ready to sign the will. A nurse at his home and his wife witnessed Thomas signing the will. His lawyer, who was a notary, executed the will execution affidavit. The 1987 will contained a provision revoking all prior wills and codicils.

In 1990, Catherine informed Thomas's lawyer that Thomas wished the 1987 will to be destroyed. His lawyer did destroy the original of Thomas's 1987 will in the presence of two employees of the law firm; he retained a photocopy of the will, marking it "void".

Shortly thereafter, Thomas came with Catherine to his lawyer's office to execute a new will. Catherine previously had told his lawyer over the phone what the provisions of the will were to be. At the office, Thomas looked at the front page of the will, and continued to look at it for several minutes without turning to succeeding pages. Then, in the presence of the same two witnesses, Thomas repeated the statement his lawyer recited to him that this will represented his intent, and when directed to do so, attempted to sign the will. He found he was too feeble to write, and asked Catherine to help him sign, which she did. The witnesses signed thereafter. The will was not notarized.

Thomas died in 1992. Catherine petitioned the court for letters testamentary, since she had been named executor in all three wills. Two of the three witnesses to the 1983 will had died, but the third was available. The nurse-witness to the 1987 will had moved away to an unknown location. The two witnesses to the 1990 will had moved to Australia and Alaska respectively, without known forwarding addresses. Jan and Pat petitioned for letters testamentary to probate the 1975 will and challenged the validity of the later wills.

Which will should be probated? Why? Discuss all relevant legal issues. State a result.

IV.

(15 minutes)

Jim Williams was found dead on September 15, 1991, in a motel of an overdose of sleeping pills. On the bed table was found the following handwriting:

Last Will and Testament  
of  
Jim Williams

I request my brother ... to be executor of my estate.

I have two bank accounts. ... I want my brother to pay my wife Sheila Jo Williams \$500.00 per month. When Jim Christopher Williams [decedent's son] reaches age 18 at that time cut that amount to Sheila in half and put the balance in a college fund for Jimmy and Kristy [decedent's daughter] to share equally. Also, if Sheila were to remarry these monies stop and are put in for the kids' college. ... Doug, I ask you to do this for me, and always act in a professional manner. I want no problems given to Sheila, or the kids. Like you promised me last week. A matter I overlooked is I want this account to help out the kids financially. Like down payment on a car for them, and a Christmas present each year.

I, the Undersigned  
James Williams  
September 12, 1991

Does this writing create a valid will, valid gift, or valid trust? Or do Sheila, Jimmy, and Kristy take as heirs? Discuss all relevant legal issues. State a result.

V.

(15 minutes)

Briefly define the following terms:

- (1) spendthrift trust
- (2) rule of convenience
- (3) Totten Trust
- (4) secret trust
- (5) exoneration