

ANSWERS

I. (60 min.)

Issues: A.

- Mo. inheritance scheme (3 situations)
- adopted child
- posthumous child
- 120 hour survival statute
- nonmarital child

B.

- distribution under will
- (adopted child)
- acts of independent significance
- killer of testator
- (posthumous child)
- lapse / anti-lapse statute
- elective share
- omitted spouse share

II. (60 min.)

1975 will:

- properly witnessed and executed

1983 will:

- no express revocation clause; impliedly revokes 1975 will by inconsistent provisions
- properly executed and witnessed; self-proving will affidavit not required for validity
- although only 1 of 3 witnesses is available to testify about *prima facie* validity, testimony of one is enough (since there was no self-proving will affidavit)
- no mention of facts suggesting mental incapacity

1987 will:

- discussed will provisions with lawyer while cogent; will is likely to represent his wishes
- executed while on pain-killing drugs; dozed off several times while "reading" will; but, did state voluntarily that will represented his wishes and that he wished to sign; significant issue whether testator had adequate mental capacity at that time
- had provision revoking prior wills & codicils; if testator validly executed will, prior wills are revoked
- self-proving will affidavit makes testimony of 2 witnesses unnecessary
- however, wife was one of witnesses; will beneficiary cannot be witness unless his/her share is purged down to an intestate share
  - wife's share is 1/2 (since there are children by a prior marriage)

revocation of 1987 will:

- will destroyed at instigation of testator's wife; testator not present when lawyer

destroyed will; hence, revocation by physical destruction is ineffective

1990 will:

- will provisions recited to lawyer by wife, not testator; raises significant probability that will does not represent testator's wishes
  - wife accompanied testator to will execution ceremony; that, coupled with above, suggests undue influence
  - testator stared at will, but did not appear to read it; testator repeated a statement about testamentary intent recited to him by his lawyer; significant issue whether testator had mental capacity either to ratify will's terms or to execute it
  - assisted signatures valid if assistance is requested by testator; here it was; fact that wife assisted does not of itself suggest undue influence
  - unavailability of both witnesses, and absence of self-proving will affidavit, will make it impossible to prove *prima facie* validity; testimony of at least one witness is required
- [check]**

1983 will should be probated: validly executed; implied revokes 1975 will

### III. (60 min.)

trust validity:

- trust in personalty can be made either by a writing or an oral declaration before witnesses; here there was a writing; perhaps there was an oral declaration to brother Doug, since the writing referenced it
- 3 elements of a valid trust: intent, transfer of corpus to trustee, acceptance by trustee
  - intent satisfied
  - no transfer of bank account, unless writing acts as a symbolic delivery; it should
  - if trustee does not accept, court will appoint another one