

## ESTATES & TRUSTS

### ANSWER SHEET

#### I. (120 min.)

##### A. Letters testamentary. Issue is whether will is prima facie valid.

- execution procedure
  - statute requires signatures of testator & witnesses “in the presence of each other”
    - will is signed by testator & by 2 attesting witnesses.
    - knowledge of witnesses that instrument is a will?
  - mark is valid alternative to signature
  - absence of self-proving will affidavit does not affect validity
    - witnesses must testify as to apparent mental capacity and fact that testator & they duly signed will in each others’ presence
    - they could so testify
- *result*: will is *prima facie* valid, and should be admitted into probate

##### B. Validity of second will.

- will contests can be filed within 6-month nonclaim period
- undue influence
  - 4 elements: susceptibility, opportunity, disposition, unnatural will
    - discuss (inc. abnormal 2d will, disfavoring Bob & Don)
  - family controversy, followed by nonreconciliation
    - controversy not entirely between children of 1st husband & of 2d

husband

- abnormal second will, disfavoring Bob & Don
- *result*: discuss

##### C. Disposition under second will.

- Tina gets exemptions & allowances, because she is an unmarried minor child.
- abatement *re* \$20,000 claims.
  - order of abatement to provide for claims and/or omitted child share:
    - intestacy property, residuary property, general devises, specific devises
  - there is no partial intestacy property
  - \$1000 each to Bob and Don are general devises
  - heirlooms & guns are specific devises
    - stocks & bonds devised by list are ineffective
  - everything else falls into the residuary devise
- *bonus*: ademption of Standard Oil stock [irrelevant because list cannot devise stock]
  - specific items of property devised in will are adeemed if absent from estate
- is list is part of second will? No!
  - list is authorized by statute
  - elements: referred to in will, signed or handwritten, dated, describes dispositions

- list not mentioned in 2d will
- death of Ed and his daughter Sharon (death of devisee)
  - 120 hour survival statute applies
    - Ed died 2 days after testator
  - common law treats residuary legatees as a class, with share of predeceased class member going to surviving members of class
  - but antilapse statute applies
    - does apply to class gifts
    - applies where devisees are relatives of testator
      - applies to Ed
    - goes to surviving descendents, not spouse
      - bequest goes to Ed's children (Ed, Jr. & Sharon)
  - Uniform Simultaneous Death Act applies
    - applies when relative times of death cannot be determined
    - presumes devisee dies before testator
    - presumes heir dies before decedent
    - hence, Sharon is presumed to die before Ed
    - hence, Junior is only descendent
  - Ed's devise goes to Junior.
- pretermitted child statute
  - child must be born after will execution
    - must not be omitted intentionally
    - does not apply if omitted child is:
      - provided for significantly outside of will, or
      - bulk of estate goes to omitted child's surviving parent
    - omitted child gets an intestate share
  - does not apply, since Wilma's will was executed after the adoption
- *bonus*: life insurance policy is a nonprobate disposition.
  - §§ 461.42, .45 -- 120 hour survival & antilapse provisions applying to nonprobate transfers
- *bonus*: gift of guns
  - elements (intent, transfer of possession, acceptance)
    - no transfer of possession by donor John (dead) to donees
    - possession asserted by Wilma, *per* personal property list
      - Wilma is heir of husband John
  - no facts whether John gave guns to Bob & Don or whether they elected thereafter to store guns at parents' house
- *result*:
  - Tina gets exemptions & allowances
  - Bob & Don get \$1000 each.
  - the other 4 natural children take residual property in equal shares, subject to usual abatement scheme.
  - since they are not mentioned in her will, Wilma's two adopted children get nothing

- Junior takes Ed's share.

D. Disposition under first will. [Most disposition issues are the same.]

- personal property list
  - can be dated after will
    - but will must reference it
      - 1st will does
  - must not be inconsistent with will
  - will must not devise specific items on list
    - 1<sup>st</sup> will does not
    - a residuary clause covering items on the list is deemed not to include those items
  - limited to tangible personal property
    - heirlooms dispositions are effective
    - stock & bond dispositions ineffective
- pretermitted child statute,
  - children born or adopted after will execution get an intestate share
    - subject to exceptions discussed above
    - 1/8th
- abatement for omitted children's share
  - abated under the usual abatement scheme, discussed above
- *result*:
  - Tina gets exemptions & allowances, discussed above
  - tangible property on list goes to named distributees
    - stocks & bonds are intangible property and become part of residuary.
  - 2 adopted children get omitted child intestate share
  - six natural children take net residuary property (after abatement) in equal shares
    - 1/6th of abated estate (which is 1/8th of original estate)

E. Validity of first will.

- lost will:
  - will which cannot be found is presumed revoked
    - existence of copy is irrelevant
- implied revocation by later will?
  - later will acts as implied revocation of earlier will to extent of inconsistency
    - here, 2d will entirely displaces 1<sup>st</sup> will
- revival of 1<sup>st</sup> will by dependent relative revocation?
  - do circumstances suggest revocation was absolute, rather than conditional?
  - discuss family dispute
- *result*: discuss

F. Disposition by inheritance.

- Tina gets exemptions & allowances
  - exemptions & allowances are granted for both intestate & testate estates

- *bonus*: personal property list is irrelevant since there is no underlying will
- heirs are 6 children and 2 adopted children
  - adopted children take same share as natural children
  - children & descendants take ahead of parents, siblings, and collaterals
  - as modified above by death of Ed and Sharon, discussed in part above
    - 120 hour survival statute, Uniform Simultaneous Death Act, taking by representation
  - they take in equal shares

## II. (60 min.)

### A. Validity of trust.

- 3 elements: intent, delivery, acceptance
  - intent exists, hotel deed was delivered, trustees took deed & assumed control
- Statute of Frauds / invalid oral trust of land
  - written agreement was not signed
  - signing letters & checks “trustee” not a sufficient writing, since there is no written reference to trust terms
  - constructive trust in favor of settlor is result in largest group of states
    - no Missouri law
  - but part performance? trustees assumed control.
  - when trust corpus was converted to personalty, did valid trust arise by continued assumption of trust duties? (a ratification?)
- effect of reservation of substantial powers by settlor; sham trust *ab initio*?
  - generally held OK, both *re* individual reserved powers, and cumulatively
  - subsequent behavior theoretically irrelevant; but often used by courts to infer initial intent

### B. Rule of Convenience, Rule of Early Vesting, “To A & children of B” problem.

- “children of Virginia” encompasses all her children from all 3 marriages
- Dan, Danielle, and Virginia’s children are members of single class; share equally.
- class closes when eldest of Virginia’s children reaches 21 or when ancestor of class dies, whichever happens first.
  - Rule of Convenience closes class when any remainderman first is entitled to possession.
    - Adam (born 1968) reached 21 in 1989. Can anyone be added to class thereafter? (Joan was born thereafter. All her other children had been added to class by then.)
    - but no child is entitled to possession until Virginia dies in 1994; so class closes then.
  - Rule of Early Vesting closes class when ancestor of class dies.
    - Virginia died in 1994. All her children had been born by then.
- Dan, Danielle & Adam take 1/7th immediately in 1994; Geraldine, Gerald, Virgil & Joan take 1/7th respectively upon their 21st birthdays.
  - if any die before reaching 21, his/her share goes to the others pro rata

### C. Breach of trust.

- trustees have fiduciary obligation to both income and remainder beneficiaries; must balance interests of both groups in managing trust corpus
- Virginia’s estate: improper exercise of trustee discretion *re* amount of income payments
  - supplemental support is standard
  - trustees failed to maintain level of trust income in managing hotel and by obtaining below market interest rate on loans

- trustees did pay out most of trust income to Virginia
- remainder beneficiaries: self-dealing by trustees, investment in possible failing investments
  - prudent investor standard
  - obligation of trustee to sell failing investments (hotel with declining income)
- breach of cotrustee obligation not to delegate discretionary decisions to one of them
- breach of trustee obligation not to commingle funds and to earmark trust property
  - because income payments to Virginia were paid personally by them
  - this means that interest payments on notes were not placed in a trust account
- sale of hotel was authorized by trust agreement (and by c. 456)
  - that transaction and investment in real estate developments not protected by statute authorizing reliance on professional advice, for 2 reasons:
    - (1) real estate developers are not professionals within purview of statute
    - (2) these were personal investments, not trust investments
      - trust invested in Dan & Danielle's promissory notes, not in the real estate they purchased
- liable for all losses occurring from breaches of trust
  - whether or not breach is cause of loss (query?)

### III. (30 min.)

Define the following terms [all terms are on overheads]:

1. Rule in Wild's Case ["to A & A's children"].
2. definite failure of issue ["to A for life, then to B if C dies without issue"].
3. "parents, brothers and sisters, and their descendants" {Mo. intestacy statute}
4. latent ambiguity
5. joint will
6. nuncupative will
7. conscious presence test
8. advancement [inter vivos gift to heir]
9. insane delusion
10. satisfaction [inter vivos gift to child/legatee of testator]