

FINAL EXAMINATION
ESTATES & TRUSTS

P.N. Davis

Friday, June 30, 2006

1:30 - 4:30 PM

THIS IS A THREE (3) HOUR EXAMINATION.

THIS EXAMINATION CONTAINS EIGHT (8) PAGES.

THIS EXAMINATION CONTAINS SIX (6) QUESTIONS.

I = 20 min. II = 15 min. III = 15 min. IV = 40 min. V = 60 min. VI = 30
min.

FILL IN YOUR EXAMINATION NUMBER ON THE BLUEBOOK STICKER.

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YOU MAY BRING IN YOUR STATUTORY SUPPLEMENTS, BUT NOTHING ELSE.

You may write in the margins and on the blank pages of the supplements.

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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.

(20 minutes)

A testamentary trust was created in 1991 under Robert Townsend's will. The assets of the trust were worth \$400,00 at the time of trust creation. The trust corpus was to be divided equally into the Betsy Trust and the Childrens' Trust. The corpus of the Betsy Trust was to be used to generate income for settlor/testator's daughter, Betsy Herman. When Betsy died, the principal of the Betsy Trust was to be added to the Childrens' Trust. The corpus of the Childrens' Trust was to generate income which was to be accumulated until Betsy died. Then the accumulated income and principal was to be distributed to her children as they each reached age 25. (These trust provisions are valid under the Rule Against Perpetuities.)

The Betsy Trust included the following two clauses:

[T]he Trustee shall have power in its discretion to encroach upon the principal of this trust estate during the life of beneficiary for her health, education, maintenance and support and such encroachments may be made from time to time and in such amounts as the Trustee may consider necessary or advisable under the circumstances.

Beneficiary is hereby restrained from alienating, anticipating, encumbering, or in any manner assigning her interest or estate, either in principal or income, and is without power so to do, nor shall such interest or estate be subject to her liabilities or obligations nor to judgment or other legal process, bankruptcy proceedings or claims of creditors or others.

The Trustee paid the income of the Betsy Trust to Betsy Herman quarterly as required by the terms of the trust. Income from the Betsy Trust was about \$ 12,000 annually. Betsy had multiple sclerosis since the 1980's; it became quite acute by 1998, when she was placed in a skilled-care nursing facility, where she continues to reside. As her medical and nursing facility bills mounted, the income from the Betsy Trust was insufficient to pay them and she developed an accumulating debt, over \$ 25,000 at the time of her lawsuit.

Therefore, in 1999, Betsy Herman requested that Trustee encroach upon the principal of the Betsy Trust, which was valued at over \$200,000, to pay her accumulated medical and nursing

home expenses. Trustee responded by asking Betsy to provide details of her financial resources before determining whether to encroach upon the principal. Betsy refused to provide that information. Among the items of information withheld was the fact that Betsy had inherited \$150,000 from her grandmother in 1997. Therefore, Trustee denied Betsy's request.

In 2000, Betsy Herman filed suit against Trustee for breach of trust and requested that the court order Trustee to encroach upon the corpus of the Betsy Trust to pay her medical bills without considering her other financial resources. Should the court grant or deny Betsy Herman's request? Discuss all relevant legal issues. State a result.

II.

(15 minutes)

Virginia Mott died in Missouri on June 15, 2005. She was survived by her first husband, Jack Blair, and their children Jack, Jr., and Jackie, and by her second “husband,” Richard Mott, and their children Rickie and Rachael, and their adopted daughter, Lillian. She also was survived by a brother, sister, and their spouses and children. Her parents and grandparents predeceased her.

Virginia married Jack in 1988. He moved to California in 1990 and did not return. He did not provide any support to Virginia or their children. However, he sent birthday cards and Christmas presents to the children, but not to Virginia. Jack and Virginia did not divorce.

Virginia “married” Richard in 1995 and was living with him and all her children when she died. They were all in their minority and unmarried.

Jack, Jr., died three days after Virginia in a car crash following Virginia’s funeral.

Who are Virginia’s heirs? Discuss all relevant legal issues. State a result.

III.

(15 minutes)

Ruth Longfellow executed her will on January 17, 2001. It provided in part: I devise and bequeath the real property located in Boone county, Missouri, one-half to my nephew Sylvan Longfellow and one-half to my niece Jeanne Longfellow Matthews, if either should survive me by 120 days. In the event only one or neither so survives me, the nonsurvivor's share shall be distributed to his or her issue, by right of representation.

After making several cash legacies, Ruth's will gives the residuary estate to the Columbia Area Foundation.

When Ruth died, she owned a 25 percent undivided interest in approximately 90 acres of land in south suburban Columbia. It was part of a 219 acre tract originally owned by her at the time she executed her will in 1995. Over the intervening six years, Ruth sold six subdivided tracts totaling 129 acres located within the original tract. For each of the six sales, she took from the purchasers promissory notes for 80 percent of the purchase prices, secured by deeds of trust (Missouri's form of mortgage). For the remaining 20 percent of the purchase prices she took cash, which she deposited in a bank account in her name, which she used as a "cash reserve" account.. As the purchasers made installment payments, she added them to the "cash reserve" account.

The Columbia Area Foundation sought a declaration of the probate court that the promissory notes, deeds of trust and cash in the "cash reserve" bank account were part of Ruth's residuary estate. Sylvan and Jeanne objected, arguing that those were part of the real estate devised to them. They argued that extrinsic evidence would show that all of the tracts, sold and unsold, together with the promissory notes, deeds of trust, and cash, were part of a single real estate development project, which Ruth intended to devise to them.

Are the promissory notes, deeds of trust, and cash part of the real estate devise or the residuary estate? Discuss all relevant legal issues. State a result.

IV..

(40 minutes)

In his 1996 will, Lester Malloy left his property to his son Lonnie. In his 1997 and 1998 wills, he left his property equally to his son Lonnie and his daughter Linda. In his 1999 will, he left 80 percent of his property to Paul Sampson, who was his attorney, scrivener and designated executor, and 20 percent divided equally between his son Lonnie and daughter Linda.

Malloy had cardiac surgery in 1994 and a fractured hip in 1996. By 1999, he was looking for someone to help him take care of his business, see that he had proper nursing care, and make the funeral arrangements. Malloy's wife had died in 1990. Neither his children nor his other relatives were in a position to help him.

On September 6, 1999, Malloy executed a power of attorney naming Sampson his attorney-in-fact to handle his business affairs and assets as fully as Malloy could himself. On that date, Malloy executed the 1999 will mentioned above. Because he was physically feeble, Sampson, at Malloy's request, assisted Malloy to sign the will. The will was attested to by Sampson and a Mrs. King, who had lived with Malloy and his deceased wife for many years. Malloy, Sampson and King all were in the presence of each other as each signed the will. (Also, they all executed a self-proving will affidavit before a notary public.)

For several years, Malloy had maintained a joint bank account in his own name and the name of his son Lonnie. Malloy was the sole depositor and withdrawer of that account. On the same day that Malloy executed his will, at Malloy's request Sampson withdrew all the funds (\$20,000) from his bank account and transferred them in a joint account with Malloy and Sampson as owners. Because he was physically feeble, Sampson assisted Malloy to sign the joint account forms.

Malloy died on January 4, 2000, leaving an estate worth \$50,000.

Sampson tendered Malloy's 1999 will for probate in February 2000. Lonnie and Linda challenged the validity of that will in will contest action. Lonnie also sought a decree imposing a constructive trust on the balance of the Malloy/Sampson joint bank account. Should the court hold the will valid or invalid? Should it hold that the balance of the joint account belonged to

Sampson or Lonnie? Discuss all relevant legal issue. State a result for each question.
(Assume the power of attorney instrument was validly executed.)

V.

(60 minutes)

SHORT ANSWER QUESTIONS

A.

Testator validly executed her will in 2000, bequeathing all her estate to her mother. In 2002 she married her husband, whom she had first met in 2001. In 2003 and 2005 she bore two children. In 2006, testator died in a car accident without having changed her will. Her estate was worth \$150,000. When she married, she had purchased a \$250,000 life insurance policy which named her husband as sole beneficiary.

Are testator's husband or children entitled to any part of her estate? Discuss all relevant legal issues. State a result. (Assume that testator's will cannot be successfully contested.)

B.

Husband died in 2005. His will made a bequest of \$100,000 to "my children." At the time he died, husband and wife had two children. Three months after husband died, wife arranged to have their frozen embryo implanted. The child was born 12 months after husband died. Biological descent from husband was clear.

Does that child share the bequest with the other two children? Discuss all relevant legal issues. State a result.

C.

Testator validly executed his will in 2004. In it he directed executor to distribute items of personal property to persons in accordance with a list to be prepared by testator during his lifetime and "placed in the upper left-hand drawer of my desk at home." After testator died in 2006, such a list was found in the desk he had purchased in 2005, signed by testator, but not dated. Testator's new desk replaced the desk he had owned in 2004.

Are the persons named on the list entitled to the designated items of property? Discuss all relevant issues. State a result.

D.

Settlor established a written irrevocable trust with Trustee named as trustee. Income from the trust was to be paid equally to three Beneficiaries during Settlor's life; when Settlor died, the trust property was to be distributed equally to the same Beneficiaries. With Settlor's consent, Trustee borrowed \$100,000 from the trust at an interest rate 1 percent below market rate. When Beneficiaries learned of this, they sued Trustee for return of the loan and to surcharge Trustee for the loss of interest income to the trust because of the below market rate of interest.

Should the court grant this relief? Discuss all relevant legal issues. State a result.

E.

Testator, an elderly person, executed a valid will leaving all her property to her three children. Later, she purchased a certificate of deposit which she caused to be titled jointly in herself and one of the children. After testator's death, the other two children petitioned the court to include the certificate of deposit in the assets of testator's estate. The first child argued that it should not be included in the estate.

Should the court grant the requested relief? Discuss all relevant legal issues. State a result.

VI.
(30 minutes)

Define briefly the following terms:

- (1) exoneration
- (2) line of sight test
- (3) prudent investor rule
- (4) *per stirpes*
- (5) duty of impartiality
- (6) spendthrift trust
- (7) lapse
- (8) draw down rule
- (9) insane delusion
- (10) exempt property