

ET87F

FINAL EXAMINATION

ESTATES & TRUSTS I
P.N. Davis

Friday, December 18, 1987
8:30 - 11:30 AM

THIS IS A THREE (3) HOUR EXAMINATION.

THIS EXAMINATION CONSISTS OF TWELVE (12) PAGES.

THIS EXAMINATION CONTAINS THREE (3) QUESTIONS.

I = 60 min. II = 60 min. III = 60 min.

YOU MAY KEEP THE TEXT OF THIS EXAMINATION.

FILL IN YOUR EXAMINATION NUMBER ON THE BLUEBOOK STICKER.

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THIS IS A PARTIALLY OPEN BOOK EXAMINATION. YOU MAY BRING IN:

1. Missouri Probate Code & Trust Statute Supplements
2. Intestate Distribution Sheet
2. Probate Process Flow Sheet
3. Family Protection & Augmented Problems

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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 3 hours. You will be given 3 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)

Herman Harrison died on December 18, 1986. He was 47 years old.

Will. In his safe deposit box was found a writing purporting to be his will. It was dated December 30, 1985, and provides:

I, Herman Harrison, being of sound mind and body, do give, devise and bequeath my property as follows:

- (1) to my wife, Hilda Harrison, my savings account at Farm & Home Savings Association in Columbia, Missouri. Her name has been placed on this account.
- (2) to my son John, 50 shares of Union Pacific Railroad stock and 25 shares of Norfolk Southern Railway stock, and my car.
- (3) to my daughter Mary, my 1980 GMC van.
- (4) to my son Richard, who always disagrees with me, I leave nothing.
- (5) \$5,000 to each of my children.
- (6) all residual personal property to my wife, Hilda Harrison.

/s/ Herman Harrison

Attested to:

/s/ Margaret Jones

/s/ Willis Smith

This will was signed by Herman Harrison in the presence of George Smith, Herman's lawyer, and Margaret Jones, Smith's secretary. Willis Smith, George's brother, entered the office after they had signed and was asked by Herman and by George to sign the will. Willis asked Herman whether this was his will, and George interrupted by saying, "Yes". As Willis was getting out his pen, Herman "went down the hall" to the bathroom. When Herman returned, he asked Willis whether he had signed, and Willis said, "Yes". George Smith then took the will from them as they left the office, and had the will signatures notarized later in the day.

Survivors. Herman is survived by his wife, Hilda Harrison (age 45), his married daughter Mary H. Morley (age 25), and his unmarried son Richard (age 17). A daughter, Sarah, was born to Hilda on February 14, 1987.

Herman's unmarried son John (age 20) died in a tragic automobile accident on the way to his wedding on November 28, 1986. A son, Ellis Harrison, was born to John's fiancée', Sandra

Stanford, on September 2, 1986. Herman & Hilda Harrison acknowledged Ellis as their grandson, and had financially supported and housed Sandra during her pregnancy.

Herman was survived also by his brother Harry Harrison, his half-sister Martha Morrison (by his father's first wife), and his niece Nancy Harrison. His parents and stepmother predeceased.

Property. The following property was found to be owned by Herman at his death:

1. House, at 680 S. Greenwood Ave., Columbia, Missouri, titled in "Herman & Hilda Harrison, husband & wife" -- value: \$150,000.
The house was purchased in July 1975. It is subject to an installment mortgage in favor of the Boone County National Bank, Columbia, Missouri -- balance of principal: \$75,000.
2. Cottage, at Lake Ozark, Missouri, titled in "Herman Harrison" -- value \$80,000.
The cottage was purchased in June 1986. It is subject to an installment mortgage in favor of the Lake Ozark Savings & Loan Association, Lake Ozark, Missouri -- balance of principal: \$40,000.
3. 1985 Buick "Electra" automobile, titled in "Herman Harrison" -- value: \$10,000.
The car is subject to an installment chattel mortgage in favor of the General Motors Acceptance Corporation -- balance of principal: \$8,000.
4. 1986 Safari minivan, titled in "Herman & Hilda Harrison, husband & wife" -- value: \$13,000.
The minivan is subject to an installment chattel mortgage in favor of the General Motors Acceptance Corporation -- balance of principal: \$8,000.
This minivan was purchased in February 1986 to replace Herman's 1980 GMC van, which he traded in.
5. checking account, at Boone County National Bank, Columbia, Missouri, titled in "Herman & Hilda Harrison, husband & wife" -- balance: \$2,500.
6. savings account, at Farm & Home Savings Association, Columbia, Missouri, titled in "Herman & Hilda Harrison, husband & wife" -- balance: \$15,000.
7. savings account, at Farm & Home Savings Association, Columbia, Missouri, titled in "Herman Harrison" -- balance: \$10,000.
8. certificate of deposit, at Farm & Home Savings Association, Columbia, Missouri, titled in "Herman Harrison, in trust for my daughter Mary" -- face value: \$12,000.
9. certificate of deposit, at Boone County National Bank, Columbia, Missouri, titled in

- "Herman Harrison, in trust for my son John" -- face value: \$12,000.
10. 5 original paintings -- value: \$25,000.
 11. furnishings in house -- value: \$10,000
 12. furnishings in cottage -- value: \$5,000.
 13. stocks, titled in "Herman & Hilda Harrison, joint tenants" -- value: \$15,500.
 14. stocks, titled in "Herman Harrison" -- value: \$10,000. Included in this group of stocks is a block of 100 shares of Union Pacific Railroad stock, currently valued at \$5,000 (at \$50 per share), which resulted from a 2 for 1 stock split in February 1986.
 15. cabin cruiser, titled in "Herman Harrison" -- value: \$20,000.
 16. rowboat & outboard motor -- value: \$3,000.
 17. power tools [for hobby use] -- value: \$3,000.
 18. life insurance policy, payable to "Hilda Harrison", contingent beneficiaries: "children" -- insured amount: \$250,000
 19. books -- value: \$7,500.

The estate did not include any shares of Norfolk Southern Railway stock (cost: \$50 per share).

Family Income. Herman Harrison was an architect who earned about \$80,000 per year. Hilda Harrison was an elementary school principal who earns \$30,000 per year. Daughter Mary H. Morley is married and lives with her husband Sam Morley. Son Richard left home at 16 and lives off of his wages as a automobile mechanic.

Secured Debts: See mortgages and chattel mortgages listed under property items 1, 2, 3 and 4, above.

Unsecured Debts: Herman Harrison had 2 unsecured installment loans:

1. from Boone County National Bank, Columbia, Missouri -- unpaid balance: \$2,500.
2. from First National Bank, Columbia, Missouri -- unpaid balance: \$4,000.

Recent Transactions. In the two years before his death, Herman and Hilda Harrison took a three-week trip to Australia and New Zealand, which cost \$4,000, of which one-half was air fare. While in Australia, Herman purchased an opal ring for Hilda, which cost \$1,000 (in addition to the other trip expenses).

In August 1982, Herman loaned his daughter Mary \$5,000 for graduation school

expenses. The note she signed indicated that she could pay the money back at any time in the future "when [she] was financially able to do so".

Questions

1. Is Herman's will valid?

2. What property passes under Herman's will? What property passes outside his will?

Prepare a list which shows whether each item of property passes under Herman's will, or outside his will. For each item of property, explain the reason for your classification.

3. Who takes what from Herman's estate and nonprobate property? List the items of property each would receive. For each item of property, explain the reason for your distribution.

4. Should Hilda elect against Herman's will? Make the calculations necessary to answer this question. List what items of property Hilda would receive if she elects against the will and if she elects to take under the will.

Discuss each legal issue and explain your conclusions.

END OF QUESTION I.

QUESTION II.

(60 minutes)

"Crazy Jon" Jonathan Z. Smithers lived in a furnished cave in the Ozark Mountains, near Eminence, Missouri. He owned 2,500 acres of scrub forest land there, which he had inherited years ago from a rich uncle. He made a good living as an artist, painting wildlife and bird pictures for manufacturers of decorative dinner plates, and for book publishers. For entertainment, he would appear in nearby campgrounds near dusk as "Mountain Jon", a full-bearded buckskin-clothed teller of tall tales and Ozark Mountain lore.

As it happened, about one year before his death, the American Mining Company purchased 2,000 acres of "Crazy Jon's" land for \$1,000 per acre because it had found a rich lode of lead ore there. All of a sudden, he was worth \$2,000,000. He invested that money in American Mining Company stock, seeking to reap further benefit from increases in value which he was sure that stock would yield.

Alas, "Crazy Jon" suffered a tragic accident a year later, on September 10, 1986. He was cutting wood when his axe slipped and cut off his foot instead. He bled to death before he was found.

Wills. "Crazy Jon" was not so crazy after all; he had written a will, all by himself in his own handwriting, on July 4, 1986. After he wrote it and signed it, he took it with him to the campground he visited that night. He told tales to some campers and had two of them sign it after he told them it was his will. They did but did not write their addresses, or give them to Jon. Later that night "Crazy Jon" put his will under his mattress in his cave home. It was found there after his death.

This July 4 will provided:

I want to give all my property at my death, half to my brother Elrod, the other half to the people whose names I put in a letter included in the envelope with this will.

/s/ Jon Z. Smithers

/s/ Roland Jones

/s/ Esther Jones

In the envelope with the will, "Crazy Jon" put a letter, dated August 10, 1986, which stated:

To Whoever is Interested:

My will of July 4, signed by me and witnessed by Roland & Esther Jones, gives half of all my property to my brother Elrod. I want half of my stock to go to the American Wildlife Federation.

/s/ Jon Z. Smithers

By late August, "Crazy Jon" had a change of heart. This he went to see a lady friend, Betty Lou St. John, a former secretary to a lawyer, to find out how he should change his will. She didn't know, she told him, but did suggest strongly that he be sure to have two witnesses sign the will and to have it notarized by her, since she had a notary public commission. So "Crazy Jon" went home to his cave and wrote another will, which he then took to his lady friend. Two of her neighbors signed it and she notarized it, attesting that the signatures were those of Jon and the two neighbors. The August 20 will provided:

I don't like the will I wrote last month. Instead, I would like to give all my property to my "partner" Jane Conway.

/s/ Jon Z. Smithers

/s/ Mary Anne Barlow

/s/ Nancy Cross

[attestation of signature provision here]

/s/ Betty Lou St. John

"Crazy Jon" put this will in his desk. The July 4 will could not be found, but he apparently forgot to throw away the August 10 letter, since it was found on the floor under "Crazy Jon's" bed.

Survivors. "Crazy Jon" was survived by his father John X. Smithers, his brother Elrod Smithers, and his sister Ellen Wheatley. "Crazy Jon" was the son of John X.

Smithers and Maria Dusenberry Smithers and was born in 1935. After their divorce in 1945, father John married Georgette Merton. Also after the divorce, mother Maria married Zebulon Taylor; sister Ellen, born in 1955, was their daughter. Ellen married James Wheatley in 1978.

"Crazy Jon's" father died in 1975. The spouses of their second marriages, Georgette Merton and Zebulon Taylor, survived "Crazy Jon". "Crazy Jon's" wife Wilma died in 1974; "Crazy Jon" and Wilma had no children. His brother Elrod, born in 1940, never married.

"Crazy Jon" also was survived by his friend Jane Conway (a.k.a. "Calamity Jane"), a woman of his age and style of dress who accompanied him on his forays to the campgrounds and sang folk songs to the accompaniment of her harmonica. She began accompanying him toward the end of July 1986; at least, no one remembers seeing her before. Her origins are unknown. "Calamity Jane" subsequently died on September 14, 1986, by accidently falling into a sinkhole at night.

Property. "Crazy Jon" had the following property at his death:

- (1) 500 acres of scrub forest, which included his cave.
- (2) \$2,000,000 worth of stock in American Mining Company.
- (3) \$100 cash.
- (4) his cave furnishings, all in unsaleable condition.

Questions

1. Assuming the August 20 will is valid, who takes what from "Crazy Jon's" estate?
2. Assuming the August 20 will is invalid and the July 4 will is valid, who takes what from "Crazy Jon's" estate?
3. Are either of "Crazy Jon's" wills valid, and if so, which one? Assume that the witnesses to the July 4 will cannot be found, but that the witnesses to the August 20 will are available.

Discuss each legal issue and explain your conclusions.

END OF QUESTION II.

QUESTION III.

(60 minutes)

The Great Boone County Brick Baron, Stanford Leland, executed the following instrument on September 5, 1985:

(1) I, Stanford Leland, declare my intention to purchase certain share of capital stock of Boone County Brick Company, direct that the certificate for said stock be issued in my name as trustee for the beneficiaries declared in paragraph (2), and Declare that the terms and conditions upon which I shall hold said stock in trust and any additional stock or other property conveyed or assigned, or bequeathed or devised to this trust are as follows:

(a) During my lifetime one-half of all cash dividends and interest are to be paid to me individually for my own personal account and use; provided, however, that any such additional stock or other property purchased under an authorized reinvestment of cash dividends shall become a part of and subject to this trust.

(b) During my lifetime the other one-half of all cash dividends and interest are to be devoted to the purposes of this trust, as described in paragraph (2).

(c) Upon my death the title to any stock or other property subject hereto and the right to any subsequent payments or distributions shall be subject to this trust for those periods of time specified with respect to each beneficiary, as described in paragraph (2).

(d) During my lifetime I reserve the right, as trustee, to vote, sell, redeem, exchange or otherwise deal in or with the stock subject to this trust, and to sell, convey or encumber the other property subject to this trust, but upon any such sale, redemption, conveyance or encumbrance of said stock or other property or any part thereof, the trust hereby declared shall terminate as to the stock or other property sold, redeemed, conveyed or encumbered, and I shall be entitled to retain the proceeds of sale, redemption, conveyance or encumbrance for my own personal account and use.

(e) I reserve the right at any time to change the beneficiary or revoke this trust. The decease of any beneficiary before my death shall operate as a revocation of this trust with respect to said beneficiary.

(f) In the event this trust shall be revoked or otherwise terminated, said stock and other property and all rights and privileges thereunder shall belong to and be exercised by me in my individual capacity to the extent of said revocation or termination.

(2) I declare that this trust shall be for the benefit of the following beneficiaries:

(a) A maximum of \$20,000 per year shall be devoted for high-quality

lifetime care of my peacock Bill and peahen Coo. This support shall include residence at my home during my lifetime and thereafter at a suitable facility at Leland College, which shall include a heated and air-conditioned birdhouse.

(b) The annual income from \$500,000 worth of trust assets shall be paid to the Rev. William Wriston, to be used for such purposes as he directs.

(c) The income from three-quarters of the balance of the trust assets shall be devoted in perpetuity to the establishment and maintenance of Leland College in Boone County.

(d) The income from the remaining one-quarter of the balance of the trust assets shall be devoted to the reasonable support of my godchildren Jerry Gerry and Ellen Allen until they each reach age 35. Said beneficiaries are hereby restrained from alienating, anticipating, encumbering, or in any manner assigning his or her interest or estate, either in principal or income, and are without power so to do, nor shall such interest or estate be subject to his or her liabilities or obligations nor to judgment or other legal process, bankruptcy proceedings or claims of creditors or others.

(3) This trust shall be known as "Stanford Leland Trust I".

On the date he established the trust, Stanford Leland purchased \$4,214,285 worth of stock of Boone County Brick Company and caused the stock certificate to be issued in the name of "Stanford Leland, trustee of Stanford Leland Trust I". [In late 1987, the income from that stock was \$295,000 per year (at 7.0% interest rate).]

At the time he established the trust, Leland arranged orally with the Rev. William Wriston that the income from the \$500,000 was to be used for the establishment of the Leland Home for the Homeless and Abused in Columbia, Missouri. Rev. Wriston so applied that income thereafter. [In late 1987, the income from that portion of the trust assets was \$35,000 per year, at a 7.0% interest rate.]

Throughout his life, Leland spent \$20,000 per year of trust income for the care of his peafowl, Bill and Coo. [Trust assets of \$285,714 were needed to generate that amount at an interest rate of 7.0%.] From the balance of the trust income after the payments for support of the peafowl and to Rev. Wriston, he paid \$88,000 annually to himself, and \$90,000 annually to the Trustees of Leland College. [Trust assets \$1,285,714 and \$1,000,000 respectively were required to generate those amounts at an interest rate of 7.0%].

On February 14, 1986, Esther Allen became a third godchild of Stanford Leland at her christening ceremony conducted by the Rev. William Wriston in the latter's church.

During his last year of life, Leland paid \$500 per month each to Jerry Gerry, Ellen Allen, and the mother of Esther Allen for their respective living expenses. (This amounted to annual income of \$18,000 and required \$257,143 of trust assets to generate at a 7.0% interest rate.) Jerry Gerry and Ellen Allen both complained to Leland that \$500 per month was insufficient and should be increased. Each had monthly living expenses of about \$2,000 while in graduate school. That left assets of \$171,429 in the trust generating income \$12,000 of annual income [at an interest rate of 7.0%]. Leland accumulated that income as new principal to be added to the trust.

To summarize, Leland as trustee made the following payments:

<u>Item</u>	<u>Principal</u>	<u>Income (at 7%)</u>
Peafowl support	285,714	20,000
Rev. Wriston	500,000	35,000
<u>from balance:</u>		
1/2: self	1,714,285	120,000
<u>from other 1/2 of balance:</u>		
3/4: Leland College	1,285,714	90,000
<u>from remaining 1/4:</u>		
godchildren	257,143	18,000
accumulated	<u>171,429</u>	<u>12,000</u>
Totals	4,214,285	295,000

About October 21, 1986, Leland paid his godson Jerry Gerry the sum of \$125,000 from trust assets. (That amount would generate an income of \$729 per month, if invested at 7.0%.) Gerry acknowledged that payment by writing across the bottom of the last page of the trust instrument the following words in his own handwriting, "I have received my share of the trust assets, and this trust is void as to me." He placed his signature directly under those words.

On August 4, 1987, Stanford Leland died unexpectedly. He had continuously acted properly as trustee during his lifetime. His life insurance policy provided that the face value of \$10,000,000 was to be paid into the "Stanford Leland Trust I" upon his death. None of the trust beneficiaries knew about the existence of this policy prior to Leland's death. Thereafter, the trust contained assets of \$14,089,285 [\$4,214,285 worth of stock + \$10,000,000 life insurance benefit - \$125,000 settlement with Jerry Gerry], and generating an annual income of \$986,250 at an interest rate of 7.0%.

Thereafter, the trust was obligated to pay \$20,000 annually to Leland College for the care of the peafowl, and \$35,000 to Rev. William Wriston. The balance of the trust assets, after deduction of assets to generate those amounts, was \$13,303,571. The income from three-quarters of that amount, \$9,977,678, was \$698,437, which was paid to the Trustees of Leland College. The income from the remaining one-quarter of that amount, \$3,325,893, which generated an annual income of \$232,812 or \$19,401 per month, was available in the trustee's discretion for the support of the godchildren.

Questions.

1. State whether the trust is valid with respect to each beneficiary at the time of its creation? Discuss legal issues applying to the trust as a whole and also legal issues applying only with respect to individual beneficiaries.

2. State whether whether the trust is valid if validity were determined after Stanford Leland's death.

3. What is the potential maximum duration of the trust for each beneficiary?

4. On May 1, 1987, the creditors of Ellen Allen brought suit against Stanford Leland as trustee for Ellen Allen to garnish one-half of her monthly payments from the trust. She had defaulted on a personal signature installment loan of \$3,000 which she had used to pay for a trip to Europe in 1986. The creditors sought to recover the \$2,500 balance due by means of this garnishment. How should the court rule?

5. On July 7, 1987, Ellen Allen brought suit against Leland to increase her monthly payment to \$1,000 per month. Assuming the court ruled before Leland's death, how should the court rule?

6. Assuming that Ellen Allen's suit under (5) were brought after Leland's death, how should the court rule?

7 After Leland's death, on September 5, 1987, Jerry Gerry and Ellen Allen brought suit to declare the trust provisions in favor of the peacock/peahen, Rev. William Wriston, and Leland College null and void. Further, they sought a declaration that since they were over the age of majority, they were entitled to immediate payment of the trust

assets. In addition, they sought a declaration that the mother of Esther Allen was not entitled to any payment under the terms of the trust. Should the court rule in their favor on any of their contentions?

END OF QUESTION III.