

ET87S

FINAL EXAMINATION

ESTATES & TRUSTS I

P.N. Davis

Monday, July 6, 1987  
9:00 - 12:00 AM

THIS IS A THREE (3) HOUR EXAMINATION.

THIS EXAMINATION CONSISTS OF ELEVEN (11) PAGES.

THIS EXAMINATION CONTAINS FOUR (4) QUESTIONS.

I = 30 min.    II = 90 min.    III = 45 min.    IV = 15 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 Supplement
2. Probate Process Flow Sheet.

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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.

(30 minutes)

In 1971, William and Lilly Jones executed a will containing three alternative dispositions of their estate. The first two dispositions were to operate in the event one spouse survived the other and devised the entirety of the deceased's estate to the survivor. The third disposition provided as follows:

In the event that both of us, the said Testators, shall die at the same time or as the result of a common accident or catastrophe, then in that event we give, devise and bequeath unto our children of this marriage, all of our property and estates, of every nature and description, real, personal, and mixed, and wherever situated, in fee simple, as follows:

TO DONALD E. JONES 28 1/3 acres on the east end of our 95 acre tract, to MARVIN N. JONES the center 33 1/3 acre tract with all improvements; and to WILLIAM ALFRED JONES the west 33 1/3 acres. Our will is that the land be divided equally between our three sons after deducting five acres heretofore given to DONALD E. JONES.

In 1977 the Joneses died within four (4) days of each other from independent natural causes. Lilly died first. They were survived by two of their three natural sons, Donald and Marvin, and by an adopted daughter Georganne. The third natural son, William, predeceased the testators and was survived by a wife Donna and two daughters, Aline and Betty. Georganne had been adopted by the Joneses in 1969 after the death of her parents, who were the sister and brother-in-law of Lilly Jones.

Unbeknownst to Lilly, William wrote another will in 1972 with the same provisions as the 1971 will, but adding a clause giving Georganne \$1.00 and otherwise expressly disinheriting her. The probate court held that Georganne should take nothing from the estate, that the 95 acre tract should be divided equally between the surviving sons Donald and Marvin, and that the granddaughters Aline and Betty should take nothing from the estate. Georganne, Aline and Betty appeal. Should the appellate court grant any portion of the 95 acre tract to any of the appellants? Discuss all relevant issues. State a result.

END OF QUESTION I.

## II.

(90 minutes)

The history of Great Lakes shipping is punctuated with frightful storms, shipwrecks, and ship disappearances. For example, at least twice in the past 35 years large ore boats (750 feet long or longer) have broken in half during such storms and have sunk without a trace within 30 seconds to one minute. One occurred during a convey on Lake Superior near Sault Ste. Marie, Michigan; the boat literally disappeared from the radar screen of an accompanying boat. Another occurred on a run up Lake Michigan to winter port near Traverse City, Michigan. In both cases, all hands were lost, since there was no time to deploy lifeboats and the water temperature was near freezing. [Note: all vessels on the Great Lakes, regardless of size, are called "boats", not "ships" as in salt water parlance.]

Let us suppose that it happened again on "Black Wednesday", December 2, 1987. The ore carrier S.S. Oscar Patterson broke in half off Sturgeon Bay, Wisconsin, during a fierce early winter storm while on her last run of the season from Chicago to her winter port of Bay City, Michigan, a distance of over 800 miles. On board was a guest of the captain, a Missouri resident named Hamilton Pusey. The boat was lost without a trace with all hands.

Five months later some children found a sealed bottle on a beach near Escanaba, Michigan, which contained a letter addressed to "Ray Smith, Attorney-at-law, Columbia MO". The childrens' father enclosed the letter in an envelope with a note to Smith stating, "My children found this letter today in a bottled washed up on the beach near here", and mailed it to Smith. Ray Smith, who is Hamilton Pusey's lawyer, received the letter on May 10, 1988. The envelope and its contents were in Hamilton Pusey's handwriting. The letter, which was written on "S.S. Oscar Patterson" letterhead, stated:

12-2-87

### Last Will and Testament of Hamilton Pusey

We are in a fierce storm on Lake Michigan and I fear we will not make it to port. Captain Bruno says he's never seen such a storm before. The boat is making terrible groaning noises. In case I don't make it, I want my property to go to the following people:

My home to my sister Jane.  
My car to my son John.  
My collection of model ships to the Great Lakes Maritime Museum in  
Chicago. Also my collection of books on shipping.  
My stocks and bonds to my dear friend Esther Wheaton.  
The less said about my former wife the better.

/s/ Hamilton Pusey

Ray Smith submitted this document for probate on May 20, 1988.

Hamilton Pusey had been estranged and separated from his wife Judith Anne for nearly five (5) years. He had filed for divorce in September 1987, but since a property division was being negotiated, neither party had sought to complete the divorce proceedings.

He was survived by his sons Nathan and John, his daughter by a prior marriage Ellen, and his unmarried sister Jane. His parents and grandparents were dead.

Major items of his property consists of:

his house in Columbia MO, which is titled in "Hamilton & Judith Anne Pusey" --  
purchased in 1980 -- value \$150000

his 1987 Chrysler automobile, which is titled in his name alone -- value \$11000  
household furnishings -- value \$15000

his collection of model ships -- value \$10000

his collection of books on Great Lakes shipping -- value \$5000

\$150000 worth of stocks and bonds, all registered in his name alone

another \$100000 worth of stock and bonds, registered in the joint names of  
himself and Judith Anne Pusey

a sailboat on the Lake of the Ozarks, located at a marina near Osage Beach MO,  
which is titled in his name alone -- value \$25000

a \$250000 life insurance policy, with the beneficiary designated as "my wife if  
she survives me, otherwise my children"

bank and savings accounts totalling \$5000, which are titled in the joint names of  
himself and Judith Anne Pusey

bank and savings accounts totalling \$25000, which are titled in his name alone

He also had some outstanding debts. They are:

\$80000 mortgage on the house; note signed by Hamilton and Judith Anne Pusey  
\$5000 chattel mortgage on automobile; note signed by Hamilton Pusey  
\$15000 chattel mortgage on sailboat; note signed by Hamilton Pusey  
\$10000 unsecured personal note, signed by Hamilton Pusey

Hamilton Pusey lived on the income from his investments. During their separation, he had been paying voluntarily to his wife \$2500 per month.

After Hamilton Pusey had presumably gone down with the boat, his wife Judith Anne submitted a will to probate on December 12, 1987. The text of the will was a carbon copy of a typewritten original. The original could not be located, although a notation in Hamilton Pusey's lawyer's file indicated the original was located in Hamilton Pusey's safe deposit box. The original will had been attested to by two witnesses, Dorothy Heller and Richard Desmond, at the direction or and in the presence of Hamilton Pusey. The will did not contain a notarial certificate. The will provided:

April 4, 1965.

#### LAST WILL AND TESTAMENT

In as much as I have recently married Judith Anne Exner, I hereby declare my intent to leave all my worldly property, real and personal, to my beloved wife Judith Anne.

/s/ \_\_\_\_\_  
(Hamilton Pusey)

/s/ \_\_\_\_\_  
(Dorothy Heller)

/s/ \_\_\_\_\_  
(Richard Desmond)

On the envelope containing the copy of the will, Hamilton Pusey had written in his own handwriting:

As I have recently become separated from my wife Judith Anne, I hereby revoke this will.

/s/ Hamilton Pusey

3 January 1983

That notation on the envelope was not witnessed. The copy of the will within the envelope was not altered. About two years after will execution, Dorothy Heller died.

When she learned that her father had been lost with the boat, Hamilton Pusey's daughter

Ellen by his former marriage (with Esther Pusey -- who had died in 1959) also submitted a will to probate. It provided:

July 5, 1952

I hereby devise and bequeath all my property, both real and personal, to my wife Esther, provided she survives me.

/s/ Hamilton Pusey

This will had been attested to by three (3) witnesses in the State of Alabama at the direction of and in the presence of Hamilton Pusey. Their signatures had been notarized according to the laws of Alabama in force at the time.

On April 10, 1988, Esther Wheaton filed on behalf of her son Richard Wheaton (age 2) a claim that Richard was the son of Hamilton Pusey and seeking a share in the estate. In support of that claim, she filed an affidavit that Hamilton Pusey had visited her at least once a week for the past 3 1/2 years and a letter (dated June 20, 1987) which included the passage, "I so enjoy seeing how our son Dick is blossoming into a toddler."

A.

Determine the validity of each of the three wills. Which, if any, should the probate court declare to be valid as Hamilton Pusey's last will and testament? Discuss all relevant legal and factual issues. State a result about the validity of each will, and state which one, if any, will control the disposition of Hamilton Pusey's estate.

B.

In light of your conclusions in part A, how should the court distribute Hamilton Pusey's assets?

C.

Assume that the wills of July 5, 1952, and April 4, 1965, are void, and that the will of December 2, 1987, is valid. Should Judith Anne Pusey elect against that will? Compare what she would receive from Hamilton Pusey's estate under the December 2, 1987, will against what she would receive if she elected against it. Make the necessary calculations. State whether it would be in her best interest to elect against the will.

END OF QUESTION II.

III.

(45 minutes)

Herman Hoover, an elderly bachelor living in Columbia MO, transferred \$250000 to George Epple, accompanied by the following instrument:

I transfer to my friend George Epple as trustee \$250000 in trust as follows:

I direct that one-half (1/2) of the income from the principal amount be paid to my sister LuAnn Jacobs for the duration of her life, and the other one-half (1/2) of the income during the same period be paid to the Mid-Missouri Bat Trust for the purchase and preservation of habitat in Missouri of endangered species of bats . Upon the death of my sister, the entire principal amount is to remain in trust in perpetuity and the income from such amount is to be paid to the Mid-Missouri Bat Trust as aforesaid.

I further direct and authorize my trustee, from time to time in the exercise of his sole discretion, to make disbursements from the principal amount to LuAnn Jacobs to supplement her own income and the income from this trust to provide her with an adequate standard of living.

LuAnn Jacobs hereunder is hereby restrained from alienating, anticipating, encumbering, or in any manner assigning her interest, 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.

I reserve the right at any time to change the beneficiary of, modify or revoke this trust.

/s/ Herman Hoover

The will of Herman Hoover contained a bequest of \$200000 to George Epple. It also contained other devises and legacies to various named relatives. It disinherited Hoover's brother John Edgar Hoover. Prior to his death, Hoover had told Epple that he would be remembered in his will and that the money was to be applied to the principal amount Epple was holding in trust

for his sister and the Bat Trust. Epple agreed orally to do so. After he received the bequest, Epple did as he had been directed to do and added the \$200000 to the \$250000 already held in the trust.

Testimony at the probate proceeding revealed that Hoover had dictated the terms of his will to his lawyer about two weeks before Hoover died. Before he could sign his will he suffered a massive stroke which left him paralysed from the neck down and also left him speechless. When the lawyer arrived at Hoover's hospital room for the will execution, the lawyer read the text of the will to Hoover and then asked him whether that text expressed his wishes. Hoover nodded his head up and down perceptibly. The lawyer then asked a nurse to hold Hoover's right hand and she marked the will signature line with an "X". The nurse then notated it with "signed at testator's request by Louise Jones, R.N.". Two other nurses observed the entire proceedings and then signed the attesting witness signature lines. The lawyer's secretary, who was a notary public and also was present, signed and notarized the attestation certificate. The various witness and notary signatures were affixed while the will rested on Hoover's bedside table. Each signatory indicated she was signing the will at the time she affixed her signature. During this procedure, Hoover's head had been turned toward the bedside table, but his eyes were closed and he made no noises. At the conclusion of the procedure, the lawyer told Hoover his will was now executed and was valid, and asked, "Do you want me to keep this will for safekeeping?" Hoover again nodded his head up and down perceptibly. This was the will Hoover's lawyer filed for probate after Hoover's death.

During probate, Hoover's heirs and residuary legatees learned of the ultimate disposition of the \$200000 bequest. The heirs contested the will altogether. The residuary legatees challenged the \$200000 bequest to Epple.

About the same time, LuAnn Jacobs financial difficulties became critical and her creditors sought involuntary bankruptcy. They brought suit against LuAnn Jacobs and George Epple seeking to attach her interest in the trust.

State a result in the above litigation with respect to each of the following matters:

1. suit by Hoover's heirs to declare the will invalid.
2. suit by Hoover's residuary legatees to declare the \$200000 bequest to the trust invalid.

3. suit by LuAnn Jacobs's creditors to attach her interest in the principal and income from the trust.

Discuss all relevant legal issues.

END OF QUESTION III.

IV.  
(15 minutes)

State who are the heirs of decedent among the following; state what fraction of decedent's estate goes to each heir:

Decedent's wife Wilma predeceased.

Decedent had no children.

Decedent's parents Fred and Mary predeceased.

Decedent's paternal grandparents George and Genevieve predeceased.

Decedent's maternal grandfather Gregory predeceased, but his maternal grandmother Gretchen survived.

Decedent was an only child.

Decedent's wife Wilma's child by a prior marriage Alice survived (not adopted by decedent).

Decedent's only uncle Uriah (by his paternal grandparents) predeceased. He was married to Adele, who survived.

Uriah and Adele's children Charles (unmarried) and Charlene survived. Their third child Curt predeceased.

Charlene is survived by her husband Henry and their children Stephen and Susan.

Curt is survived by his wife Wendy and their children Sam and Shirley.

Decedent's uncle Ursal (by his maternal grandparents) survived. He is a bachelor.

Decedent's aunt Amy (by his maternal grandparents) survived. She is married to Urban.

Amy and Urban's only child Chester survived.

END OF QUESTION IV.