

ET89W

FINAL EXAMINATION

ESTATES & TRUSTS I
P.N. Davis

Wednesday, April 26, 1989
1:00 - 4:00 PM

THIS IS A THREE (3) HOUR EXAMINATION.

THIS EXAMINATION CONSISTS OF TWELVE (12) PAGES.

THIS EXAMINATION CONTAINS FIVE (5) QUESTIONS.

I = 40 min. II = 55 min. III = 30 min. IV = 30 min. V = 25
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 Excerpts
2. Intestate Distribution Sheet
3. Family Protection & Augmented Problems (but not the answer 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.

(40 minutes)

Lloyd Hurley, domiciled in Missouri, executed a trust declaration on October 17, 1935, in which he established a trust in which he named the Second National Bank of Columbia (Missouri) as trustee. On that day he delivered the trust declaration to an officer of the Second National Bank together with a check for \$ 100 made out to the "Second National Bank, trustee".

Hurley executed his will on October 17, 1935. He died on February 15, 1939, and his will was admitted to probate 3 days later. In his will, he named the Second National Bank of Columbia (Missouri) as executor.

Terms of trust. The trustee was directed to pay the net income from the trust corpus to the testator's niece, Martha Hurley Cannon, during her lifetime. Upon her death, the trustee was directed to divide the trust corpus into 2 equal parts. One part was to be held in trust for Martha Hurley Cannon's son, Alfred Quincy Cannon. The income from that part was to be paid to him until he reached age 35, at which time that one-half part was to be delivered to him free of trust.

The second part was to be held in trust for Martha Cannon's daughter, Judith Cannon Cress, for the duration of her life, during which time the income from that part was to be paid to her. Upon her death, if she left "lineal descendents surviving", the trustee was to divide her one-half part of the trust corpus "into as many parts as there are children of the said Judith Cannon Cress surviving, the children of any previously deceased child taking in equal shares per stirpes the share to which their parent, if living, would have been entitled to receive". The trustee was to hold each such part in trust until the respective child reaches age 21, at which time it is to pay over that part to the child free of trust. If Judith Cannon Cress died without any "lineal descendents surviving", her one-half of the trust corpus was to be added to the one-half part given in trust to Martha Hurley Cannon's son, Alfred Quincy Cannon.

Terms of will. By his will, Hurley bequeathed \$ 20,000 to his church, to be paid if possible from his savings account at the Second National Bank of Columbia (Missouri). He devised and bequeathed all of the rest of his property to the Second National Bank as trustee of the trust described above. His property consisted principally of rental property, bank accounts, and stocks and bonds, with a total value of \$ 200,000. His property included a single savings account at the Second National Bank which contained \$ 10,000.

Family history. The first life tenant, Martha Hurley Cannon, lived until January 15,

1951. She was survived by her son, Alfred Quincy Cannon, and by her daughter, Judith Cannon Cress. At that time the trust was divided into 2 parts in accordance with the terms of the will. Since he was age 41 at the time, the one-half part was delivered free of trust to Alfred Quincy Cannon.

Judith Cannon Cress lived until September 10, 1983. During her life tenancy, she was paid the income from her one-half part of the trust. She was survived by a son, Thomas Leon Cress, who had been adopted by Mrs. Cress and her husband on February 8, 1940, about one year after the death of the testator. The adopted son married twice and left several surviving children before his own death on December 13, 1963, nearly 20 years before the death of his mother.

When Judith Cannon Cress died in 1983, she was survived by her brother, Alfred Quincy Cannon, and by her several "grandchildren", some of whom were the natural children of her adopted son, Thomas Leon Cress. Alfred Quincy Cannon contends that he is entitled to Judith Cannon Cress's one-half of the trust. The several "grandchildren" contend that they are entitled to it instead.

Thomas Leon Cress first married Verna Betty Jones on June 10, 1958, when he was 18 years old. She had been married previously, and had a child by the previous marriage, Sarah Betty Jones. They had a natural daughter, Betty Jean Cress, on July 5, 1959. They were divorced after 2 years of marriage, on September 13, 1960. Although she had not remarried then, Verna Betty Jones gave birth to a son on November 25, 1961, whom she named Thomas Leon Cress, Jr. Although he obtained visitation rights to and agreed to pay child support for Betty Jean Cress and Sarah Betty Jones, he refused to have anything to do with Thomas Leon Cress, Jr., or to pay any child support for him. Thomas Leon Cress subsequently married Helen Martin Brown on May 24, 1961. They had 2 children, William Leon Cress, born December 3, 1961, and Jennifer Brown Cress, born February 4, 1963. Helen Martin Brown gave birth to a third child, named Leon Brown Cress, 10 months after Thomas Leon Cress's death, on October 15, 1964.

Until her death on September 10, 1983, their "grandmother", Judith Cannon Cress, maintained an ongoing relationship with Thomas Leon Cress's wives and their six children and treated them all equally, remembering their birthdays, giving them Christmas presents, visiting

them and being visited by them, and the like.

William Leon Cress, son of Thomas Leon Cress and Helen Martin Brown, was married in 1981 and his wife, Hazel Wendy Williams, bore them identical twins, Ralph Leon Cress and Richard Williams Cress, on August 23, 1982. On September 13, 1983, William Leon Cress was killed in an automobile accident.

Final settlement. After Hurley's death in 1939, what portion of Hurley's property should the executor of his will have transferred to Hurley's church? What portion should he have transferred to the trust? Discuss all relevant legal issues. State a result.

Trustee's lawsuit. After Judith Cannon Cross's death on September 10, 1983, the trustee brought suit in Missouri against all of the putative "descendents", seeking a declaration directing whether the "second" one-half part of the trust should be paid to Alfred Quincy Cannon or to the several "grandchildren". The several "grandchildren" dispute how the one-half part should be divided among them. So the trustee's suit also sought a declaration determining which "grandchildren" are entitled to a share and what each's share should be. How should the court rule on those questions? Discuss all relevant legal issues. State a result.

II.

(55 minutes)

The three wills. Pinkerton Bowles died on November 7, 1983, of pneumonia. His third will, executed in Columbia, Missouri, on April 19, 1983, revoked all prior wills, gave his cottage on the Lake of the Ozarks to his nieces and nephews as tenants in common, and gave \$ 1000 to each of his nieces and nephews, \$ 50,000 to Helen James, and one-half of the residue each to John R. Hart and Dr. James B. Terrell. The will named Terrell as executor.

Pinkerton Bowles's second will, executed in Columbia, Missouri, on January 14, 1982, revoked all prior wills, gave his cottage on the Lake of the Ozarks to his nieces and nephews as tenants in common, and gave \$ 25,000 each to Hart, Terrell, and James, and divided the residue equally among his nieces and nephews. The will named his nephew Robert Bowles as executor.

Pinkerton Bowles's first will, executed in Columbia, Missouri, on July 6, 1945, gave all of his property to his sister, Mary Bowles. The will named Mary Bowles as executor.

Pinkerton Bowles was the last survivor of seven brothers and sisters. He and his unmarried sister, Mary Bowles, had lived together in the family home at the edge of Columbia, Missouri, until she died in May 1981. The house had been a home to many generations of the Bowles family. Pinkerton continued to live in the house until his last illness a week before his death, when he went to the hospital.

The estate was valued at \$ 500,000, of which the cottage was worth \$ 100,000. The cottage was subject to an installment mortgage (secured by the cottage and lot), of which \$ 50,000 remained unpaid.

Because they were dissatisfied with the circumstances under which the third will had been executed, Pinkerton's nieces and nephews filed an action in probate court challenging the validity of his April 10 will. They sought probate of the second will.

Execution of third will. On April 19, 1983, Terrell brought Steven Cassidy, Esq., to Pinkerton's home to discuss preparation of his will. Cassidy brought his paralegal assistant, Lucille Benson, with him. Terrell testified that Pinkerton had expressed a desire several times before April 19, 1983, that he wanted to write a new will and that he (Terrell) brought Cassidy that day so that Pinkerton could do so.

Cassidy testified that he then said, "Mr. Bowles, I have here the will Mr. Terrell said you

wanted drafted, and I hope it complies with your wishes. I have put in it everything Mr. Terrell said you wanted included." Handing Pinkerton the will, he concluded, "Please look it over and tell me if anything needs changing." Pinkerton apparently spent about 15 seconds glancing at the 2-page will, but didn't say anything.

Cassidy then asked, "Does the will express your wishes."

Pinkerton answered, "It's okay."

Cassidy then suggested that Pinkerton sign it, to which Pinkerton responded, "Okay."

Pinkerton sat down and placed the will on the end table beside him. Then he took out his pen and wrote a very shaky signature on the bottom of the first page. Cassidy said, "No, that's in the wrong place."

Terrell moved to Pinkerton's side and said, "It's supposed to be signed on the line near the bottom of the second page. Let me help you." He turned the will to the second page, placed his hand over Pinkerton's and guided Pinkerton's hand in writing his signature and the date on the testator's signature line on the second page of the will. Pinkerton said nothing during this time.

Cassidy then said that witnesses must sign the will. Although there were two lines for witnesses' signatures, Cassidy, Terrell, and Benson signed and dated the will. Later at the office, Benson, a notary public, executed the statutory attestation certificate. Thereafter, Cassidy mailed the will to Pinkerton. Cassidy testified to these events, since Benson had died 2 months before the will contest was filed.

Cassidy testified that in his opinion Pinkerton knew to whom he wanted to leave his property, what the nature of that property was, and the effect of signing his name to the document. He did not note anything unusual about Pinkerton's dress or personal hygiene.

Discovery of wills. After Pinkerton's death, Cassidy went to Pinkerton's house to make sure everything was all right and to search for the will. He found two wills. First, he found the second will in Pinkerton's desk. Next, he found the third will in a tied-up trash sack which apparently had been prepared for trash collection. That will was in the envelope, slit open, in which Cassidy had mailed it to Pinkerton after execution. The discovery of both wills was witnessed by Terrell and by Robert Bowles, one of Pinkerton's nephews.

Proponent's evidence. The executor and proponents of the will introduced evidence as follows. Hart and Terrell had been card playing and drinking friends of Pinkerton for at least 40

years. Terrell was a physician who had admitting Pinkerton to the hospital in August 1983, although he did not treat him thereafter. Hart testified that he regularly accompanied Pinkerton on errands, driving him to church, and out for entertainment. Pinkerton, Hart, and Terrell had played cards together almost every week during their 40 year friendship, alternating between their respective residences. Pinkerton prepared his own meals, read the newspaper daily, and played gin rummy well. Darlene McGeorge, a bartender of a bar that Pinkerton, Hart and Terrell visited once or twice a week, testified that Pinkerton was courteous, well-dressed, and had a good memory. Helen James, Pinkerton's housekeeper, had worked for the family for 30 years and had never observed any change in Pinkerton's personality.

Contestant's evidence. Various witnesses for the nieces and nephews testified as follows. Pinkerton's nieces and nephews considered him as a favorite uncle. In their childhood their parents had held him up to be a model of impeccable manners and fastidious dress. Although he had no children of his own, he was a good listener, was sensitive to their needs as children, and, as they grew up, remained interested in their accomplishments and careers. His affection was demonstrated in letters and generous gifts to his relatives. He often attended the frequent family picnics and other Bowles family gatherings.

In 1978 it was noticed that Pinkerton was atypically disinterested in the visit of an architectural historian to the family home. In the years that followed, he became a recluse, avoiding family reunions and remaining in his room. At Mary's funeral in November 1982, he was no longer the "Esquire fashionplate" in the white suit and spats his nephews remembered, but resembled a "war prisoner from Auschwitz", as one nephew put it. Because of his inattention to his business affairs and his abrupt outbursts of rage against other family members, accusing them of "trying to steal my money", nephew Robert Bowles found it prudent in March 1983 to seek Pinkerton's removal as executor of Mary's estate; the probate court granted that relief. Also beginning early in that year, Pinkerton sometimes failed to recognize his nieces and nephews.

In August 1983, Pinkerton Bowles injured his leg and refused to seek medical attention. Shortly thereafter, one of his nephews on a visit to Columbia called on his uncle and found him in bed wrapped only in a filthy sheet. He had a puss-filled gangrenous wound on his leg. At the hospital, the leg could not be saved and was amputated.

An autopsy performed after Pinkerton's death revealed some signs of brain atrophy. The pathologist who performed the autopsy testified that such atrophy was consistent with mental disorientation, but was not sufficiently progressed to conclusively establish mental incapacity.

Will contest. In this will contest, should the court probate any of the three wills? If so, should it probate the first, second, or third will? (Assume that there are no further facts raising any legal issues concerning the first and second wills.) Discuss all relevant legal issues. State a result.

Also, the nieces and nephews assert that the estate should pay the balance due on the cottage mortgage. Should the court so decree? Discuss all relevant legal issues. State a result.

III.

(30 minutes)

Henry Greer, 87, and Shelley Hope Perkins Greer, 83, died intestate on April 26, 1989, when an airplane crashed into their house while they were asleep. The house was located in Missouri. It was the second marriage for each of them. Henry was survived by a sister, Emily Greer Bledsoe, by his brother Frank's 2 children, Billy Greer and Betsy Greer Jones, and by his mother Wilma Greer, age 101. He had had no children by either marriage. Shelley was survived by her daughter of her first marriage, Shirley Perkins, by her sister, Penelope Hope, and her brother's son, Thomas Hope.

Henry's estate consisted of (1) his interest in their house, held by tenancy by the entireties, (2) his collection of antique automobiles (value \$ 200,000), (3) bank accounts in his own name (value \$ 25,000), (4) his interest in the 2 family automobiles (value \$ 20,000), held in joint tenancy, (5) a life insurance policy payable to his wife (benefit \$ 50,000), and (6) his interest in stocks and bonds (value \$ 150,000), held in joint tenancy.

Shelley's estate consisted of (1) her interest in their house, held by tenancy by the entireties, (2) her collection of quilts (value \$ 20,000), (3) bank accounts in her own name (value \$ 25,000), (4) her interest in the 2 family automobiles (value \$ 20,000), held in joint tenancy, (5) a life insurance policy payable to her husband (benefit \$ 50,000), and (6) her interest in stocks and bonds (value \$ 150,000), held in joint tenancy.

Although the house and its contents were utterly destroyed by fire following the airplane crash, the land and the fire insurance payable to Henry and Shelley as joint tenants had a total value of \$ 150,000. The detached garage and the 2 family automobiles in it were not destroyed by the fire. Shelley's quilt collection happened to be at a show at the time, and thereby were not destroyed. Henry's antique cars were stored off premises. Henry had a personal signature loan of \$ 25,000 outstanding; he had used the proceeds to purchase one of the antique automobiles; that loan was not secured. There were no other debts outstanding.

The county administrator applied to the probate court for letters of administration. No one opposed his petition. After a year, he proposes to tender a final settlement. To whom should he propose to distribute Henry and Shelley's estates? How much should he propose to

transfer to each distributee? What should be done about the \$ 25,000 unsecured debt? Discuss all relevant legal issues. State a result.

IV.

(25 minutes)

On June 10, 1977, William Longworthy executed a written document subjecting specified real estate to a trust. The trust declaration provided that, if the real estate were sold, William Longworthy would pay \$ 15,000 to Bruce Cotton from the proceeds, or if Cotton predeceased Longworthy the \$ 15,000 would be paid to Cotton's estate. The declaration also provided that "in the event that no sale is made within the lifetime of Longworthy, then said \$ 15,000 would be due on Longworthy's death". The trust declaration did not specify a trustee. It was signed only by Longworthy.

About one year later, on February 7, 1978, Longworthy announced plans to sell some real estate not subject to the trust and paid Cotton the sum of \$ 15,000. Cotton acknowledged payment of the \$ 15,000 by writing on the face of the trust declaration the following: "I have received in full my \$ 15,000 and this agreement is void", followed by his signature. Longworthy did not sign this acknowledgment.

Almost seven years later, on January 1, 1985, William Longworthy died and the real estate subject to the trust was listed as an asset of his estate. Cotton filed a petition with the probate court for payment of the \$ 15,000 under the terms of the trust. The estate counterpetitioned for a declaration that the real estate was free of the trust.

The trust declaration, as annotated by Cotton, had been found in Longworthy's safe deposit box.

How should the court rule? Discuss all relevant legal issues. State a result.

V.

(25 minutes)

Before his death on December 4, 1985, Leo Mann prepared and executed a document purporting to be his last will. Among other things, it purports to disinherit his closet heir, his niece Dolores Dane. He placed his signature at the bottom of each page of the document as well as on the signatory page. Two witnesses signed the document as did a notary public. The will was executed on May 21, 1985.

Letters testamentary. Bessie Bell, who is the designated executor, offered a will for probate purporting to be the will executed on May 21, 1985. Letters testamentary were granted to Bell on January 5, 1986. She caused to be published the newspaper legal notices in proper statutory form giving notice that she had been appointed executor, and that all claimants and persons contesting the will should file notice with the court within 6 months. In addition, mail notice was sent to all known distributees and heirs of Leo Mann, with the exception of Dolores Dane, niece of Leo Mann. She was not sent mail notice because she was on an extended trip around the world and had given no forwarding addresses. Mail notice was sent to her address in England (she had been attending Oxford University just prior to her trip), but it was returned by the Post Office stamped "Gone Away".

Will contest filed. Upon her return to this country, Dolores Dane learned of these events. Within 5 days of her return, that is, on August 10, 1986, she filed a will contest. Her suit asserted that the probated will was not the same will executed on May 21, 1985, because typewritten changes subsequently had been made without attestation.

The will. The document offered for probate has 7 typewritten and stapled pages. Each page is typed on the same kind of bond paper by the same typewriter and is signed by testator at the bottom. The document offered for probate has various pages with different numbers of staple holes, with the greatest number of such holes appearing on the signature page. A fewer number of staple holes appears on the page disinheriting Dolores Dane.

No duplicate copy of the will could be found.

Testimony on will execution. Testimony at the will contest hearing revealed that Leo Mann showed the will to Bessie Bell in early June 1985 and it named her as executor. Jo Ann Dyer, another niece, testified that in July 1985 Leo Mann asked her to be executor and to prepare

a new page for the will with that change. She did so, typing it on Leo Mann's own typewriter so its words corresponded with the beginning and ending phrases and words of the page it was intended to replace. That changed page was not signed in Jo Ann Dyer's presence. Bessie Bell testified that the will tendered for probate was no different than the one she saw in early June 1985.

A handwriting expert testified that the signatures at the bottom of each page appeared to be made at the same time with the same pen. But on cross-examination he conceded that each page of the purported will was typed on the same paper by the same typewriter and that, although the same pen was used for each signature, he could not tell whether Leo Mann had signed all the pages on May 21 or had signed some of them at a later date.

Will contest. In Dolores Dane's will contest, should the court hold that Leo Mann's will of May 21, 1985, is valid or invalid? Discuss all relevant legal issues. State a result.