

FINAL EXAMINATION
ESTATES & TRUSTS I

P.N. Davis

Wednesday, December 16, 1992

8:30 AM - 12:00 N

THIS IS A THREE AND ONE-HALF (3½) HOUR EXAMINATION.

THIS EXAMINATION CONSISTS OF SEVEN (7) PAGES.

THIS EXAMINATION CONTAINS FOUR (4) QUESTIONS.

I = 45 min.

II = 75 min.

III = 60 min.

IV = 30 min.

FILL IN YOUR EXAMINATION NUMBER ON THE BLUEBOOK STICKER.

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YOU MAY BRING IN YOUR STATUTORY SUPPLEMENT, BUT NOTHING ELSE. You may write in the margins and on the blank pages of the statutory supplement.

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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.

(45 minutes)

On December 31, 1986, Victor Stanley visited the office of his lawyer, Bettina Williams; he was alone. There he properly executed his will and his lawyer provided 2 disinterested witnesses who properly attested it; together before a notary public they properly executed a RSMo § 474.337 affidavit. Victor took the will with him when he left. Victor took his will to his home. He showed it several times to his housekeeper, Roseanne Dudley, the last time being 2 days before his death. He died unexpectedly on January 9, 1987. Despite a diligent search by his presumed beneficiaries and by his heirs, the original will could not be found. None of them had access to his house prior to his death or prior to the search. A photocopy of the will was found in Ms. Williams's office. The will devised his home and contents to his niece Ella Stanley Ross and her husband Walter Ross for their joint lives, and then to the survivor as follows:

... absolutely and in fee simple all of the real estate of every character and description, and I do hereby devise unto the survivor of them all of said property; except ... Walter Ross shall not have the right during his lifetime to sell, encumber, or dispose of the real estate devised to him herein ...; but he may appoint in his will those persons among Ella Ross's heirs who shall take the real estate.

The will contained a clause devising all property, both real and personal, not otherwise disposed of to his brother, William Stanley.

Ella Ross predeceased Victor Stanley by 2 days; William Stanley predeceased him by 3 days. Victor was survived by William Stanley's wife Georgia Stanley (whom William had adopted as his child a month before his death), Victor's cousin Herbert Stanley, Walter Ross, Walter Ross's adopted daughter Helen, and Walter's cousin Bernard Ross. Walter Ross died intestate 4 days after Victor's death.

Walter's heirs tendered the copy of Victor's will and seek its admission to probate. Victor's heirs assert that the will should not be admitted. Both groups argue that, if the will is admitted to probate, they are the proper distributees under the will to the exclusion of the other group.

At the hearing, Ms. Dudley testified without contradiction that she had not taken the will or destroyed it. She also testified that the day before his death, Victor Stanley had gotten into a rage because he could not find his will in his desk where she had seen him put it the day before.

Should the court admit the will to probate? If the will is admitted to probate, who should be awarded Victor's estate? If it is not admitted, who should be awarded Victor's estate? Decide to whom the probate court should award the estate. Assume that these events occurred in Missouri. Discuss all relevant legal issues. State a result.

II.

(75 minutes)

On February 22, 1989, Carl Donnelly held a wedding anniversary party for his wife Betty and announced to those gathered there that he was "dedicating" the income from his substantial investment in *American European Express*, which operated a luxury passenger train service between Chicago and Washington DC,¹ to his wife for her lifetime and then she could designate the persons who would get it from among her "relatives". At that time he owned \$ 100,000 worth of stock in *AEE*; the next day he placed the stock in an envelope marked "for the benefit of my wife Betty" and put the envelope in his personal safe deposit box. He did not change the registration of the stock from his own name. Thereafter, when he received dividends checks, he endorsed them over to his wife, who cashed the checks and deposited the proceeds in her personal bank account.

Unfortunately, *AEE* was an idea whose time had not come. After an initial success in late 1989 and early 1990, the patronage on the twice-weekly train fell off to less than 20 per train, far less than necessary to pay expenses, even at the luxury fare of \$ 650.00 one-way (compared to the *Amtrak* sleeping car fare of \$ 200.00). The train stopped running in early 1991. Although, the value of the *AEE* stock began to fall, slowly at first, then precipitously, Carl did not sell the stock. Eventually, *AEE* filed for bankruptcy and the stock became worthless (the sale value of *AEE's* passenger cars would not quite pay its debts).

A.

About this time, Betty and Carl had a falling out, and they separated (but not divorced). She then sued him seeking replacement of the *AEE* stock with other assets valued at \$ 100,000, and demanding that those new assets be formally titled in her personal name.

Should the court grant Betty the relief she seeks? Assume that the parties do not dispute the facts above. Assume, also, that these events occurred in Missouri. Discuss all relevant legal issues. State a result.

B.

Later, Betty and Carl were reconciled and she withdrew her suit. In July 1992, Carl

¹ This service included dinner and breakfast cooked by a French chef, unlimited champagne and drinks, formal dress for dinner, and the like, similar to that provided on the luxury *Orient Express* service between London and Paris to Venice.

wrote a will in which he devised \$ 200,000 in cash and stock "to the trust I established for the benefit of my wife in February 1989". He had little other solely-owned property, since their home was owned jointly with his wife (the house was worth \$ 225,000). He gave all his residuary property to his sister Alice Donnelly. He died suddenly in October 1992.

His sister challenged his will provision devising the \$ 200,000 to the trust. Should the probate court declare that will provision invalid? Assume these events occurred in Missouri. Discuss all relevant legal issues. State a result.

C.

Suppose before he died, Carl placed \$ 100,000 worth of *Microsoft* stock in an envelope marked "part of the property being held by me for the benefit of my wife, to be added to the *AEE* stock", signed and dated the envelope, and placed it in his safe deposit box. As before, he did not change the stock registration. Then Carl died. Assume that no one challenged the validity of the trust or the distribution to it under Carl's will.

Betty died of pneumonia about 2 months after Carl died. Her will provided, "I give all my property to Joan Jones". Joan Jones is her illegitimate daughter from a relationship prior to her marriage to Carl. Betty and the putative father both had consented to Joan's adoption by Harry and Jean Jones. Carl was not aware of Joan's existence.

Betty's brother and sister challenged the disposition in Betty's will of the *AEE* and *Microsoft* stock to Joan Jones. Should the court declare that disposition ineffective? Assume these events occurred in Missouri. Discuss all legal issues. State a result.

III.

(60 minutes)

On May 14, 1988, Harold O'Connor phoned his lawyer, John Dunne, to make an appointment to prepare a will. The lawyer suggested that O'Connor write down his ideas for the will; then he (Dunne) would use the writing to draft a formal will. When O'Connor came for his appointment, he handed a handwritten piece of paper to Dunne, saying, "Here is the will you suggested I write." The handwritten "will" provided:

23 May 88

Chris \$2500
Andy "
Nelly K. "
Store inventory & receipts & property - Billy, Vic, Mother
Blue Lake property (acreage) - Pete & Clinton
House & 10 acres, \$50,000 - Mother
Billy executor

Last Will & Test.
/s/ Harold O'Connor

O'Connor mentioned that he "wrote this new will to settle some family disagreements". Dunne then prepared a typewritten will containing the same dispositions. O'Connor never executed it because he died suddenly a week after his visit to Dunne's office.

Back in 1979, Dunne had prepared a typewritten will for O'Connor which had been properly executed and attested to on October 9, 1979. Under this will, O'Connor devised and bequeathed all his property, real and personal, to his wife, "Jane". Dunne had kept the original copy of that will. During the May 14, 1988, phone call to Dunne, O'Connor instructed Dunne to tear up his 1979 will; Dunne tore it into two pieces pursuant to that instruction, placing the pieces in an envelope, noting on the outside, "will torn up *per* instructions of testator by phone, 5/14/88".

"Billy, Vic, Pete and Clinton" referred to in the 1988 writing apparently are William, Victor, Peter and Clinton O'Connor, all sons of Harold O'Connor born before 1979 and who survived him. Harold also had a daughter Colleen who was born in 1982 who survived him. Harold was survived also by Jane O'Connor (Harold's wife), and Rhonda O'Connor (his mother). "Chris, Andy, and Nelly K." referred to in the 1988 writing apparently are his brothers and sisters, all of whom survived Harold. Harold was on good terms with his wife, Jane.

Harold O'Connor's estate included the following items: his solely-owned model train store building, inventory, and net accounts receivable (gross accounts receivable less inventory purchase obligations) (total net worth: \$ 200,000); his solely-owned vacant tract at Blue Lake (worth: \$ 20,000); his solely-owned family home and contents (worth \$ 200,000); cash, solely-owned bank account and other solely-owned investments (totalling \$ 150,000); 1 solely owned car (worth \$ 10,000); 1 car owned jointly with his wife Jane (worth \$ 10,000); his \$250,000 life insurance policy payable to his wife Jane; and a \$ 10,000 bank account jointly owned with his wife, Jane.

William O'Connor (Harold's son), named as executor in the 1988 writing, filed the 1988 writing as his last will and applied for letters testamentary. Jane O'Connor (Harold's wife), as sole distributee under the 1979 will, filed the 1979 will for probate and applied for letters testamentary. Colleen O'Connor, Harold's daughter, filed through a *guardian ad litem* for a share of Harold's estate. Jane O'Connor, Harold's wife, seeks in the alternative, in addition to the disposition to her under the 1988 writing, exemptions and allowances including the contents of the house and Harold's solely-owned car.

Who is/are entitled to all or parts of Harold O'Connor's estate? Should Jane O'Connor elect against the 1988 writing (if the court decides to probate it)? Assume these events occurred in Missouri. Discuss all relevant legal issues. State a result.

IX.

(30 minutes)

Define briefly the following concepts:

- (1) line-of-sight test
- (2) ademption
- (3) satisfaction
- (4) spendthrift trust
- (5) semi-secret trust
- (6) exoneration
- (7) incorporation by reference
- (8) disclaimer
- (9) *Rule in Wild's Case*
- (10) *cy pres* doctrine