

FINAL EXAMINATION
ESTATES & TRUSTS I

P.N. Davis

Thursday, December 9, 1993

8:30 AM - 12:00 N

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

THIS EXAMINATION CONSISTS OF NINE (9) PAGES.

THIS EXAMINATION CONTAINS FOUR (4) QUESTIONS.

I = 90 min.

II = 45 min.

III = 45 min.

IV = 30 min.

FILL IN YOUR EXAMINATION NUMBER ON THE BLUEBOOK STICKER.

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YOU MAY BRING IN YOUR SYLLABUS AND STATUTORY SUPPLEMENT, BUT NOTHING ELSE.

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

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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.

6 SHORT ANSWER QUESTIONS

(total: 90 minutes)

A. (15 minutes)

John Henry, a railroad worker, had his attorney prepare his will in July 1985. He executed it on August 4, 1985; it was attested to by 2 witnesses and was rendered self-proving by the proper notarial certificate. He put the will in his safe deposit box. In October 1992, he removed several expired insurance policies from his safe deposit box and gave them to the attending bank officer for shredding. The next month he noticed that his will was missing from his safe deposit box. He told his friend, Timothy Baker, that night that he apparently had destroyed his will by accident and that he would have to prepare a new one. In November 1992, he was diagnosed as having terminal cancer. He elected to die at home. On December 10, 1992, he told another friend, Harold Jefferson, that he wished his 1985 will was around, because he didn't want to be bothered with preparing a new will because the old one expressed his wishes. On December 11, 1992, he conferred with his attorney (the same one who prepared his 1985 will), asking him to prepare a new will like the old one. His attorney indicated that he would return the next day with the new will and it could be executed then. However, that night John Henry took a turn for the worse and died before the new will could be executed.

Is the old will probatable? Assume the law of Missouri applies. Discuss all relevant issues. State a result.

B. (15 minutes)

Edna Horton's will bequeathed her residuary estate to the Northminster Methodist Church, the one she attended for many years. Her will provided for the disposition of her personal effects, as follows:

IV.

I have not made a devise or bequest to any of my relatives in this will because they are all financially secure in their own right and do not need any little thing I have to offer They now have and always had my love, concern and best wishes throughout my life with many gifts at times during my days of living, so I wish them each and everyone the very best throughout their lives.

V.

I direct that my Executor shall allow the members of my family to select such item or items from my clothing, jewelry, household goods, personal effects and all other tangible personal property not otherwise specifically bequeathed, except securities and cash on hand or on deposit, as each of them may desire or want for their use and possession. ... In the event there is any of said personal property remaining, my Executor is directed to sell the remaining property at public or private sale, ... and the

proceeds therefrom shall be paid to the Northminster Methodist Church

The will did not contain a residuary clause.

Among her personalty was a certificate of deposit (CD) with a face value of \$ 100,000. Both the heirs of Edna Horton and the Church filed claims with the Executor for the CD. The CD was not specifically bequeathed in the will to anyone.

To who should the probate court rule is entitled to the CD? Assume the law of Missouri applies. Discuss all relevant issues. State a result.

C. (15 minutes)

Settlor, George Kain, established a testamentary trust to provide income to his wife, Emily Kain, for the duration of her life, and upon her death the trust corpus was to be paid in equal shares to settlor's 6 nieces and nephews "as they reach age 25". The named remainder beneficiaries are James, John, Anne, Minkie, Minerva and Mary. George Kain executed the will establishing this trust in 1965. In 1970, nephew John died at age 30, survived by 3 children. George Kain, settlor, died in 1975. In 1987, niece Minerva died at age 24, survived by a daughter. Life beneficiary, Emily Kain, died in 1992.

The trustee, Second National Bank, brought suit against the 5 surviving nieces and nephews, the 3 children of John, and the daughter of Minerva, seeking a declaration about who is entitled to share in the distribution of the trust corpus. The 5 surviving nieces and nephews claim they alone are entitled; all are older than age 25. John's 3 children and Minerva's daughter all assert rights to share in the distribution.

Who is entitled to share in the distribution of the trust corpus, and in what shares? Assume that the law of Missouri applies. Discuss all relevant issues. State a result.

D. (15 minutes)

Gina Shafer's will was offered for probate by the person named as executor under the will. It was not a self-proving will. Four witnesses testified about the testator's signature. The first witness testified that he signed as an attesting witness and that he recognized the signature on the will as the testator's. The second witness, also an attesting witness, did not recognize the testator's purported signature, and testified that she had no recollection of the will or of the events surrounding it; she acknowledged that her purported witness signature looked like hers. The third witness, who was not an attesting witness and who was sole beneficiary under the will, testified that the signature on the will was the testator's; he was not an heir of Gina Shafer. The fourth witness, an expert at authenticating signatures and documents, testified that she had compared the signature on the will with other authenticated examples of Gina Shafer's signature (one was on a bank deposit signature card) and that she was of the professional opinion that the signature on the will was that of Gina Shafer.

Should the court admit Gina Shafer's will to probate? Assume the law of Missouri applies. Discuss all relevant issues. State a result.

E. (15 minutes)

Mary Griffin died on February 24, 1992. Her daughter, Julia Griffin, proffered 4 instruments as Mary's last will and testament: (1) a 2-page handwritten note dated January 1980, (2) a typewritten will dated July 2, 1986, and (3) a typewritten codicil dated November 21, 1986, and (4) a 1-page handwritten note dated June 1987. The four instruments were stapled together and were contained in a sealed envelope; testator's signature was written across the edge of the envelope flap onto the back of the envelope. The will and codicil (items # 2 and 3) each were properly signed by the testator and two attesting witnesses. The handwritten notes were signed only by the testator. There is no legal question about the authenticity of any of the instruments.

The will and codicil make several devises of realty and bequests of substantial sums of money. The residuary clause of the will gives the balance of the estate to testator's daughter, Julia.

The 1986 will (item # 2) provides in part:

I direct my Executor to carry out the provisions of the handwritten bequest, which I have attached hereto and which was prepared by me in June of 1986, relative to items of personal property, which I want each of the children to receive.

The handwritten notes purport to dispose of items of tangible personal property, mostly household items and personal effects. The 1987 note specifically refers to "my earlier list of 1986" and states that it supplements and amends the 1986 note. The 1987 list purports to dispose of a boat, a washer and dryer, a painting, and a Certificate of Deposit (CD), all of which were acquired after the 1986 note was prepared.

Julia Griffin, the residuary legatee, asserts that the dispositions under the 1986 and 1987 handwritten notes are ineffective and that, therefore, those items of personalty should go to her. How should the probate court rule on her claims that the 1986 and 1987 notes are ineffective? Assume that the law of Missouri applies. Discuss all relevant issues. State a result.

F. (15 minutes)

Richard Hogan, 89 year old father of Bill Hogan, provided all the funds for a \$ 50,000 certificate of deposit (CD) purchased in July 1989. Richard caused it to be titled jointly in his own and Bill's names. He placed the CD in a safe deposit box rented jointly by him and Bill. On January 15, 1992, Bill Hogan presented the CD to the bank and redeemed it for a check made payable to himself. Richard learned of this action when he went to the bank to renew the CD on February 8, 1992.

Richard Hogan then brought suit against Bill Hogan to recover the \$ 50,000. Bill moved for summary judgment on the ground that any joint tenant may redeem a jointly owned CD for the entire face amount. Richard testified that he had placed the CD in joint ownership to avoid probate. Should the court rule that Bill can keep the \$ 50,000 or that he must return it to Richard? Assume that the law of Missouri applies. Discuss all relevant issues. State a result.

II.

(45 minutes)

Orville and Oneta Harrison were husband and wife who lived in Columbia, Missouri. They had no natural or adopted children. Orville and Oneta ran a large asphalt paving business and amassed an estate of about \$ 1,000,000. In October 1974, Orville and Oneta executed nearly identical wills. They were signed and witnessed on the same day by third-party witnesses; the witnesses were the same on both wills. Both were self-proving wills.

Orville's will provided that if he died before Oneta, he gave Oneta all his property. If Oneta predeceased him, he gave one-half of his property in equal shares to his two sisters, Oona and Orlene, and the other half of his property to Oneta's "heirs". Oneta's will provided that if she died before Orville, she gave Orville all her property. If Orville predeceased her, she gave one-half of her property to her "heirs" and the other half of her property to Orville's two sisters in equal shares.

Orville died on August 23, 1984. At the time of his death, his will could not be found. His property passed to Oneta by intestate succession.

Oneta died on September 15, 1985, in a car crash which also killed her brother Richard Hoyt. Both died upon impact. She left a handwritten will dated September 27, 1984, which left all of her property to her "heirs". This will was executed in another state recognizing holographic wills and was witnessed by Oneta's secretary, Joan Henderson, and by, Alex Rains, the adopted son of her deceased sister, Margaret Rains. She was survived by her niece Beth Hanning (only child of her brother Richard), her brother Tom Hoyt and his children Robin and Rick Hoyt, and her nephew Alex Rains (adopted son of her deceased sister Margaret Rains). Ruth Hopkins, Oneta's accountant, was named as her executor. During the collection of Oneta's assets and of her business records, Hopkins found Orville's unprobated 1974 will.

Orville's two sisters then brought suit against Oneta's estate seeking one-half of Oneta's assets under her 1974 will, arguing that Oneta could not revoke its terms as she purported to do in her 1984 will.

Hoskins testified at trial that both Orville and Oneta had discussed their estate plan with her after executing their 1974 wills. They both told her that they had prepared their 1974 wills so that after both of them had died, Orville's two sisters would get half of their property and Oneta's "heirs" would get the other half. Orville's business partner, Bob Payne, testified that Orville told him that he and his wife planned to divide their property evenly between Orville's and Oneta's families. Orville and Oneta's secretary, Jane Seymour, testified that once they had told her that they "entrusted" each other to carry out the estate plan for the "benefit" of both families. Before his death, Orville made small gifts in about equal amounts to his relatives and to Oneta's relatives. Oneta, after Orville's death, at first continued that pattern of giving approximately equal gifts to Orville's family and her family, at a rate of about \$ 10,000 per year.

However, beginning about two years after Orville's death, his two sisters began to complain to Oneta about having to wait until her death before receiving the dining room furniture which had come from Orville's and their childhood home. Oneta and Orville had used that furniture during their entire

35-year marriage and she indicated she wished to continue using it for the remainder of her lifetime. Relations between Oneta and Orville's two sister deteriorated thereafter. Hoskins was told by Oneta shortly before her death that she was changing her will to disinherit Orville's two sisters because they had become "obnoxious" and "disrespectful" of her marriage relationship with Orville.

A.

Should the court probate Oneta's 1974 will or 1984 will? Assume that the law of Missouri applies. Discuss all relevant issues. State a result.

B.

Who are Oneta's "heirs"? What share would each "heir" receive. Assume that the law of Missouri applies. Discuss all relevant issues. State a result.

C.

Suppose Tom Hoyt disclaims. Then what share would each "heir" receive. Assume that the law of Missouri applies. Discuss all relevant issues. State a result.

III.

(45 minutes)

Mildred Redman created an *inter vivos* written trust on March 31, 1990, naming herself as trustee for as long as she lived and thereafter naming Martha Redman, her daughter, as trustee for her lifetime. Mildred placed (1) \$ 150,000 worth of stock into the trust, by having the registrations changed to the name of the trust, and (2) royalties from her future books [she was a prolific writer of children's books]. The trust instrument dedicated the income from \$ 100,000 in investments to Martha Redman (her daughter) for her life, then distributing one -half of the trust corpus and accumulated income to Martha's surviving spouse, if any, and the other half, or the whole if she has no surviving spouse, to "such of" her "first cousins" in such shares as Martha should designate by will. The trust declaration provided for revocation by settlor without the consent of or notification to any beneficiary. On April 1, 1990, Mildred Redman executed a will giving the residue of her estate to the "trust created by me on March 31, 1990".

On January 12, 1991, Mildred Redman revoked the March 31, 1986, trust and created a new one withdrawing the \$ 150,000 worth of stock and replacing that property with the royalties from a book to be published in March 1991 under a contract with the publisher executed in October 1990. The 1991 trust omitted the distribution to Martha Redman's surviving spouse, but otherwise made the same distributions as the 1990 trust. Her attorney also prepared a codicil to her April 1, 1990, will giving Mildred's residuary property to the 1991 trust and making other changes not relevant here. She suffered a stroke before she could execute the codicil and died a month later, on February 14, 1991, survived by all of her 3 brothers and sisters and 4 nieces and nephews (who are Martha's 4 first cousins), and many more remote relatives. The net result was a 1991 trust, but with a will that referred to the 1990 trust which had been revoked by the 1991 trust agreement.

Martha Redman died suddenly, unmarried and intestate, on April 14, 1991. She was survived by 4 first cousins.

On February 18, 1991, Mildred Redman's brother, George Henry, died of a heart attack while shovelling snow. On November 4, 1991, the wife of Mildred Redman's brother, George Henry, gave birth to a son, George Henry, Jr.

The executor under Mildred Redman's 1987 will brought a declaratory judgment action against the beneficiaries under the trust, and the devisees and heirs to determine what should be done with Mildred's residuary estate.

A.

If the property were to pass through the 1987 trust, who would take? Assume that the law of Missouri applies. Discuss all relevant issues. State a result.

B.

If the property were not to pass through the 1987 trust, who would take? Assume that the law of Missouri applies. Discuss all relevant issues. State a result.

C.

To whom should the court award the property passing under the residuary clause in Mildred Redman's will? Assume that the law of Missouri applies. Discuss all relevant issues. State a result.

IV.

(30 minutes)

Define the following terms:

- (1) exoneration
- (2) line-of-sight test
- (3) rule of repugnancy
- (4) refusal of letters
- (5) prudent investor standard
- (6) semi-secret trust
- (7) ademption
- (8) general power
- (9) *cy pres* doctrine
- (10) spendthrift trust