

TRUSTS & ESTATES FALL 2000 EXAMINATION

Charles M. Bennett

Final Examination

Monday December 11, 2000, 8:30 p.m.

INSTRUCTIONS

Time Limit: The examination will last four hours.

Fact Situations and Points: There are 8 Fact Situations with questions. Each Fact Situation has a specific number of points assigned to that Fact Situation. The total number of points is 100. Please take that into account in answering the questions.

Open Book: The examination is an open book exam.

Plan of Attack: I recommend you first take time to read the Fact Situations *carefully*, make notes, plan your answers, and *avoid* writing your answers. You may address the Fact Situations in any order you choose; just be sure to identify the Fact Situation you are answering by number.

Answer the Question: You can explain one or more ways to resolve the issue presented, but if you do not answer the question asked, I will deduct points. For example, when a question asks what advice you would give, I want to see your advice in the answer. Clients, judges, and your professor hate unresolved possibilities; take a stand.

Be succinct. If you add information that is irrelevant to the answer and you get that information right, you will not get any additional credit; however, if you add information that is irrelevant and that information is wrong, I will deduct points. For example, if the question states that a “valid will” is executed, any information you provide regarding what constitutes a valid will (witnesses etc.) is irrelevant. You can shorten your answers by referring to the holding of a case we studied or to the subsection of the UPC or the UUPC that applies to the point you are making.

Write legibly. Given the number of exams I will be grading, please write legibly.

Assumed Facts: Where the Uniform Probate Code applies to a question, assume that any bracketed number (*e.g.* [\$15,000]) is the number that has been adopted in that Uniform Probate Code jurisdiction. For purposes of the family allowance, assume the court awards \$6,000. Assume that there are no estate, gift, inheritance, or income taxes applicable to the questions. With these assumptions, you can answer all questions from the facts given.

Handwriting/Typewriting: *This type font represents handwriting.* Anything else represents typewriting.

Good luck.

Fact Situation No. 1.

15 Points

Albert and Betty Jones, husband and wife, had one son Claude in 1942. In 1959, they had a second son, Edward. In 1960, Albert and Betty divorced, and Albert was awarded custody of Edward. Betty died in 1965.

In 1962, Albert married Sally. Shortly thereafter Sally adopted Edward. In 1963, Albert and Sally had twins, a son, Fred, and a daughter Mary.

In 1973, Albert died. He devised 20,000 shares of IBM stock to Edward and 20,000 shares of IBM stock to Fred.

In 1978, Edward executed the following document:

Last Will and Testament

I, Edward Jones, being of sound mind, hereby give my assets as follows:

½ of my IBM stock to my mother, Sally Jones.

½ of my IBM stock to my brother, Fred Jones.

July 1, 1978

Edward Jones

Edward never married. Fred married Dorothy in 1982, and they had two children, Greta and Howard. Mary married Roger Storm in 1983, and they had one child, Paul.

In November 1981, Fred was in financial trouble. Edward agreed to give his brother 5,000 shares of the 20,000 shares of IBM stock Edward owned. However, Edward stated that this gift would count against the stock that Fred otherwise would receive under Edward's will.

In 1989, Mary died, survived by Roger and Paul.

In 1990, Sally, Edward, and Fred were killed in a plane crash. The personal representative of Edward's estate discovered the following document in Edward's papers.

**Edward Jones
222 Provincial Drive
Salt Lake City, Utah**

March 3, 1989

This is to memorialize that back in November, 1981, I gave 5,000 shares of my 20,000 shares of IBM stock to my brother Fred. I meant this gift to count against the shares of IBM stock that my brother would otherwise take from my estate.

Edward Jones

Edward's estate holds 15,000 shares of IBM stock and \$1,000,000 in a savings account. There are no debts and no administrative expenses to consider.

Question: Assuming Utah law applies, how should Edward's estate be distributed and why should it be distributed that way?

Fact Situation No. 2.

30 Points

In 1997, Frank started Dot-Com. The business was an overnight success. Yesterday, his wife of 14 years, Sorrowful, came to in to see you. She tells you that Frank died on August 20th of this year, that she and Frank had no children, and that Frank had two sons from a prior marriage, Henry and Homer, both of whom are adults. She also tells you that she has discovered the following facts concerning her recently deceased husband.

Frank had borrowed \$1,500,000 from National Bank. The loan is now due. (Although the bank is charging interest on the loan, ignore that in answering the questions below.) Because of the success of Dot-Com, the bank did not require security on the loan.

Frank established a valid revocable trust in 1999. He transferred all of his Dot-Com stock to the Trust. That stock is now worth \$20,000,000. The Trust provides that upon Frank's death, Henry and Homer are to be the Trustees of the Trust. The Trust directs Henry and Homer to use their discretion in distributing income and principal to or for the benefit of Sorrowful, Henry and Homer. However, the Trust states that Frank's primary desire is to preserve his Dot-Com stock for the benefit of Henry and Homer. Frank also executed a valid will at that time naming

Sorrowful as the personal representative and directing that all of his assets be distributed to the revocable trust.

Sorrowful tells you that she and Frank had the following assets:

Their home, worth \$550,000, in joint tenancy.

A joint checking account at First National, funded solely by Frank's salary at Dot-Com, with a balance of \$150,000 on Frank's date of death.

A bank account in Frank's name payable to Sorrowful as the POD beneficiary in the amount of \$1,000,000.

A stock portfolio in Frank's name in the amount of \$500,000.

The revocable trust with \$20,000,000 in Dot-Com stock.

Sorrowful has no assets of her own.

Question A. National Bank's president has called Sorrowful twice this past week wanting to know when the bank can expect payment on its loan. The president has advised Sorrowful that she must pay the bank as soon as possible or it will sue her to collect the loan. Sorrowful seeks your advice. Assuming Utah law applies, what do you recommend she do? Explain your advice and tell Sorrowful what will happen if she follows your advice.

Question B. Sorrowful is angry that Frank would leave her subject to the whims of his sons. She wants to know if there is anything she can do about it. As a Utah attorney, what do you recommend she do? Explain your advice and tell Sorrowful what her interests in the assets will be if she follows your advice.

Question C. Answer the same question as B, but do so as an attorney practicing in a Uniform Probate Code jurisdiction.

Fact Situation No. 3.

5 Points

Over the past 5 years, you have been representing National Bank, as Trustee of the Worthy Trust, with assets of \$1,500,000. At the time that you accepted this engagement, you did not use engagement letters.

This irrevocable trust authorizes discretionary payments of income and principal to Madame Worthy and her 4 children. During the five year period of your engagement, you have often met with Ms. Worthy, her children, and Robert Trusty, the trust officer in charge of the Worthy Trust. In these meetings you have recommended solutions to various problems and

issues that have arisen, including issues regarding how much of the income and principal should be distributed to Ms. Worthy and her brood.

Yesterday, Mr. Trusty came to see you. He advised you that he had just discovered that he had failed to follow a direction of the investment committee made approximately 1 year ago to sell all of the Worthy Trust's Albertson stock. Since that direction was made the Albertson stock had sharply declined. Mr. Trusty estimates that the total loss is over \$400,000. He cannot understand how he failed to follow the recommendation to sell Albertson stock. Mr. Trusty tells you that he has just completed the quarterly report for the Worthy family. Mr. Trusty explains that he has found an honest way to keep the Worthy family from discovering what has happened. He gives you a copy of the quarterly report. It shows all of the Trust's assets at their inventory value (the value of the asset when it was received in or purchased by the trust). Mr. Trusty explains that he normally shows the assets at their fair market value on the date of the report.

Question: Mr. Trusty gives you the report and asks you to send it to the Worthy family. Explain how you would respond to this request and why you would respond that way?

Fact Situation No. 4.

10 Points

On October 1, 2000, Bill Smith killed Dan Smith, his first cousin. Both Bill and Dan were Utah residents. Bill and Dan had started arguing over whether BYU law students deserved jobs in Utah. Eventually the argument led to a fist fight. Groggy from the beating he was taken from Dan, Bill pulled a knife and stabbed Dan in the heart. Bill later claimed that he saw Dan take an object from his pocket that looked like a gun and he was just defending himself. The investigating officers reported that they saw nothing that looked like a gun at the scene. Bill has been charged with murder. Bill has pled not guilty.

Until September 5, 2000, Dan had been married to Sylvia Henderson; on that date, the Third District Court for Salt Lake County granted Dan and Sylvia a decree of divorce. They had no children, although Sylvia's son Opie lived with them. At the time of his death, Dan was living alone.

Dan had no children or other issue, and his parents and grandparents predeceased him. Dan had no uncles or aunts that survived him. He had three first cousins living at the time of his death: Mary Stewart, who is Dan's mother's niece, and Robert and Bill Smith (the same Bill Smith who killed Dan), who were Dan's father's nephews. Mary Stewart has one child, Quinton. Robert and Bill had two siblings who predeceased Dan, Henry and Elizabeth. Robert has two children, Issac and Joan. Henry had three children, Penny, Rex, and Tim. Elizabeth had 1 child, Walter. Bill has one child, Venus.

Dan was also survived by two second cousins, Art and Charles, who were related to Dan through his mother's line.

Question: Dan died without a will. Identify the beneficiaries of Dan's estate and how much (stated as a fraction or a percentage) each will receive and explain how you arrived at your conclusion.

Note: The last page of the examination contains a list of all the persons described in the Fact Situation with a blank in which you can place the fraction or percentage. You are not required to use that page, but if you do, make sure you detach it from the exam and put it with your answers!

Fact Situation No. 5.

10 Points

Sarah Sadly visits you after the death of her husband, Rich Sadly. She tells you that she and her husband had been married for 20 years when he died suddenly in late November. Their entire marriage they lived in Salt Lake City, Utah. While she and Rich had no children, Rich had an adult son, Seymour, by a prior marriage.

Rich had told Sarah that he was leaving his entire estate to her. After he died, Sarah found the following document in his desk drawer.

March 12, 1995

I, Rich Sadly, being of sound and disposing mind, out of my love and appreciation, leave my entire estate to my devoted wife, Sarah. I have left nothing for my son, Seymour because, during his life, he has vexed me greatly. I have taught him well, and that teaching is all I am leaving him.

When she shows you the document, she tells you that after Rich's death, Seymour asked to meet with her. Seymour asked her if his father had left a will. Sarah told him that the only will she

had found was the one that she found in the desk. When she showed it to Seymour, he at first seemed angry. Then he laughed heartily and threw the document towards Sarah and said the document wasn't valid as a will. Sarah immediately made her appointment to see you.

Sarah tells you that Rich had \$2,000,000 in Treasury Bills and that was his only asset (they rented their living quarters). Sarah has no assets of her own. When she married Rich, they were penniless students. Through hard work, they had saved the \$2,000,000.

Question: She wants to know what her rights are and what she can do. Advise Sarah of all possible outcomes and tell her what you think is the most likely outcome if she and Seymour go to court to fight over Rich's estate.

Fact Situation No. 6.

15 Points

Bob Brotherly visited your office this morning. He asked if he had any rights with regard to the estate of his recently deceased brother, Hateful Brotherly. Bob is Hateful's only living relative. He tells you that Hateful has been mentally ill throughout his life. Hateful has never kept a job and suffers from delusions. He thinks that cats and dogs are government spies. When he sees a cat or a dog, he often runs away from it.

Over the years his delusions have grown broader. In the last years of his life, Hateful accused Bob of stealing from him. Bob tells you that 10 years ago, he took Hateful to dinner, and when they left, Bob accidentally took Hateful's coat (and Hateful took Bob's coat). When Hateful realized he had Bob's coat, he called Bob and accused him of stealing his coat. Bob thinks that Hateful, to his dying day, falsely claimed Bob stole from him and used the coat incident to prove his claim.

About 8 years before Hateful died, Bob finally got tired of Hateful's attitude and quit calling or seeing him.

At Hateful's funeral, Bob met Hateful's lawyer, Lucille Scholarly. When Bob asked the lawyer if Hateful had left a will, Ms. Scholarly said Hateful had but stated that Bob would not like it. Ms. Scholarly then sent Bob a copy of the will. Bob gives you the following document.

Last Will and Testament

I, Hateful Brotherly, being of sound mind, make this my Last Will and Testament. I know that I have a brother, Bob, and I am expressly excluding him from this Will and any right to inherit from me as my brother. He has stolen from me in the past and now never calls or comes to see me. I hate him with all the hate a man can feel. I hope he rots in hell.

The only person who has ever loved me and cared for me is my dear friend, Lucille Scholarly. Having never had a daughter, I have loved her like a daughter. In fact, I would have adopted Lucille but our ages are too close together and so Utah law would not allow me to adopt Lucille. Otherwise, I would not just be talking about her as “like my daughter”, she would be my daughter!

When I asked Lucille to prepare this will, she advised me to obtain independent advice. I went to the Utah College of Law and met with one of the professors there. I told her what I planned to do. She said I could go ahead and do it. So I told Lucille, “draw up the will.”

I therefore leave everything I own (the \$1,500,000 in Microsoft stock I inherited from Aunt Mae) to my true daughter, Lucille Scholarly, provided she never has anything to do with cats and dogs. May she live long and prosper.

May 15, 1997.

Hateful Brotherly
Hateful Brotherly

Attest:

Penny Pocketless
Witness

Lucille Scholarly
Witness

When you ask Bob how much his unemployed, delusional brother had in assets, he confirms that Hateful only had the \$1,500,000 in Microsoft stock Hateful’s Aunt Mae left him.

Question: Bob wants to know if he has any basis for contesting Hateful’s will. Assuming Utah law applies, advise Bob as to each claim he might make, state your opinion as to whether the claim would be successful, and explain why you feel the way you do. As part of your answer, state who will be the recipient(s) of Hateful’s estate.

Fact Situation No. 7.

10 Points

In 1999, John and Mary Builder, husband and wife, and Mary’s brother, Frank Finley built a home together. They took title to the home as joint tenants. In order to pay the building

and other expenses they incurred, John, Mary, and Frank opened a multiple party, survivorship account at National Bank. John deposited \$3,000 to the account, Mary deposited \$1,000 to the account, and Frank deposited \$1,000 to the account.

In January 2000, Mary executed a valid will. In that will she provided:

SEVENTH: I leave my interest in the account I have at National Bank with John and Frank to the American Red Cross.

In November, Mary died survived by John and Frank. John comes to you and wants to know what will happen to the National Bank account.

Question A. Assume that the Uniform Probate Code governs. Tell John who has an interest in the account, what each person's interest is, and explain your answer.

Question B. Assume that the Utah Uniform Probate Code governs. Tell John who has an interest in the account, what each person's interest is, and explain your answer.

Fact Situation No. 8

5 points

Yesterday, Darcy, a distraught 16 year old teenager from Sandy, Utah, came to your office and related the following sad tale.

Her mom and dad were killed last week when returning from dinner when their car slid off the road and into a tree. Her father was a heart surgeon and her mother was a renown geneticist. She tells you that she knows she is going to inherit a large estate from her parents. She further tells you that she has one brother, Caine, age 25, whom she detests. He sexually assaulted her when she was 13. Darcy tells you that her parents left all of their assets to her because they were so angry at her brother. She wants to make sure that none of her inheritance and none of her own assets go to Caine. Rather, she tells you she wants to leave all of these assets to the United Way for the assistance of abused children. She is concerned about this issue because she has just been diagnosed with ovarian cancer.

Question: What is your advice to Darcy?