

## TRUSTS & ESTATES FALL 2007 FINAL EXAMINATION

Professor Bennett

Wednesday, December 12, 2007, 1:00 p.m.

### INSTRUCTIONS

**Time Limit:** The examination will last three hours.

**Fact Situations and Points:** There will be 6 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 consider the points assigned to the fact situations in answering the questions. The next page has a breakdown of the points for each fact situation.** At the front of each fact situation, the points are also listed.

**Open Book:** The examination is an open book exam.

**Plan of Attack:** I recommend you first take time to read all 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. When answering the questions use the number of the question given. For example, the questions in Fact Situation 1 are Question 1.1, 1.2, 1.3 etc.

**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. I want to see your analysis of the law and the facts in reaching that conclusion. You may miss the “right” answer and still receive full credit because of the reasoning used in reaching that conclusion.

**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 by the case’s name or to the section of the Uniform Probate Code or the Utah Uniform Probate Code that applies to the point you are making. Every question calls for an explanation of your reasoning. Again, I recommend you think before you write. There are lots of situations in life where “less is more.” If you think carefully and then write succinctly, this will be one of those situations.

**Grammar and mathematical skills are not being tested.** I can understand statements such as: “Will invalid where T comatose.” I use names for the persons in the questions and answers. However, you will see that I use the first letter “H” for husbands, and “W” for wives. If there is only one son or daughter, I use “S” for a son and “D” for a daughter. I use “F” for a father and

“M” for a mother. If you need to differentiate different persons in a class, I give each person a different starting letter. Thus, you can use initials to shorten your answers. However, be careful not to lose sight of the person in using the initials. Thinking carefully before writing will help you to keep your facts and initials straight.

With regard to math, there are questions that require the ability to multiply, divide, or both. If you are required to divide \$85,000 by 7, feel free to give an approximation of the answer, either “\$12,000+” or, for the truly challenged, “\$10,000+”. If you then use that number in further calculations, I can make the adjustments.

**Write legibly.** I cannot give you credit if I am unable to read your answer.

**Using Diagrams.** In answering these questions, you may find it helpful to prepare a hand written diagram to show your work and reasoning. If so, please note that you are using a diagram in your typed or blue book answer and attach the diagram to your answers. Because the questions asked require you to “explain” your answer, if you diagram your answer, you will need to explain your answer on the diagram or in the body of your typed or blue book answer. If your answer is not connected to your diagram, I will probably find it. However, keeping the two together is a wise precaution.

“**Uniform Probate Code State**” and variations of those words mean a state that has adopted the current version of the Uniform Probate Code without any amendments.

**Assumed Facts:**

1. Where the Uniform Probate Code applies to a question, assume that any bracketed number (*e.g.* [\$50,000] regarding the supplemental elective share) is the number that has been adopted in the Uniform Probate Code State.
2. For purposes of the family allowance, assume the court awards \$12,000.
3. Absent an express statement to the contrary, assume that there are no estate, gift, inheritance, or income taxes applicable to the questions, nor are there any debts or administrative expenses that have to be paid.

**Missing Facts:** If you believe that there are missing or contradictory facts, please tell the monitor. However, first, I would carefully reread the facts. In only one year was there a problem with the question. Every other inquiry was based on a misreading to the question.

**Good luck.** Remember everyone in the class is feeling stressed, some less stressed and some more stressed than what you are feeling, but everyone is stressed.

## **FACT SITUATIONS AND POINTS**

Here is summary of the points at stake in each fact situation. While you will want to spend the majority of your time on the Fact Situations with the highest points (4 through 6), I think it is never a good plan to do that to the exclusion of one or more other questions.

<b>Fact Situation No.</b>	<b>Points</b>
<b>1</b>	<b>10</b>
<b>2</b>	<b>10</b>
<b>3</b>	<b>10</b>
<b>4</b>	<b>15</b>
<b>5</b>	<b>15</b>
<b>6</b>	<b>40</b>
	<b>Total</b>
	<b>100</b>

TRUSTS & ESTATES 2007 FINAL EXAMINATION

December 2007

Fact Situation No. 1.

10 POINTS

Fred, a widower, died last week in town survived by his only two children, Sam and Doris. Fred, Sam, Doris and you all live in this state, a jurisdiction that follows the Uniform Probate Code and common law.

Following the funeral, Sam brings you a copy of Fred’s valid, typewritten will that Fred executed in 2003. As he hands you the will, he tells you that Fred was always right to the point. Here is a copy of the Will.

September 23, 2003

I, Fred, sign this document as my last will and testament. I revoke

all prior wills. I am a widower, and I have two children, Sam and

*Amended*

*Sam*

8/27/07

Doris. I name ~~Doris~~ as my personal representative. I leave my

*Amended*

*Sam*

*Revoked*

8/27/07

estate in equal shares to ~~Doris~~ and to the ~~Utah Golf Foundation~~.

8/27/07

*Fred*

*/s/ Witness One*

*/s/ WITNESS TWO*

Sam tells you that the handwriting is Fred’s except for the witnesses who Sam tells you are Fred’s next door neighbors. You recognize the Utah Golf Foundation as a IRS approved public charity.

Sam advises you that in 2003, he was doing very well financially as a developer and had asked his father to change his prior will. That will had left the estate in three equal shares to Sam, Doris, and the UGF.

Sam then tells you that in late 2006, one of his estimators made a \$25,000,000 error in estimating a new project. He became immediately embroiled in litigation. By the summer, facing

injunctions, foreclosures, garnishments, and attachments, Sam declared bankruptcy. When Fred learned of Sam's plight in August, Fred called Sam and told Sam that he (Fred) was changing his will. Sam never saw the will before Fred died. He does not know if Doris has seen the will.

Because of the way Doris gloated as Sam's financial problems worsened this past year, Sam has decided he wants to keep his father's estate for himself. He estimates its value at \$1.5 million. Sam asks for your advice.

**Question 1.1:** How will Fred's estate be distributed?

Please explain the legal and factual basis for your answer.

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### **Fact Situation No. 2**

#### **10 POINTS**

Boyd died intestate, survived by his only brother, Herman. Boyd was unmarried and had no children.

Herman is in a nursing home when Boyd dies. Three months later, having never left the nursing home, Herman dies.

Herman's will left all of his assets to his wife, Wonder, and appointed her personal representative.

Herman inherited \$100,000.000 from Boyd, but Herman's own assets had been totally depleted by the time of his death in paying the nursing home bills. At Herman's death, the nursing home is owed \$75,000.

After Herman's death, Wonder was appointed as the personal representative of Boyd's estate. Because the nursing home threatened to sue her, garnish her wages, and cause havoc with her financial life, she agreed to make an interim payment of \$5,000.00 to the nursing home. Having paid the \$5,000 and being angry and upset over the actions of the nursing home, Wonder has come to you for advice.

**Question 2.1:** Assume the Unif. Probate Code governed, what would you advise Wonder to do?

**Question 2.2:** Assume Utah law governed, what would you advise Wonder to do?

Please explain the legal and factual basis for your answers.

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### Fact Situation No. 3

#### 10 POINTS

In 2000, Teresa, a resident of Salt Lake City, Utah, handwrote the following:

*When I die, I leave my home to my son, Simon. I leave  
the rest of my property to the SJ Quinney College of Law.  
Dated Jan 2, 2000. Teresa*

Later, in 2002, Teresa handwrote the following:

*When I die, I leave my home to my daughter, Denise. I  
leave the rest of my property to the SJ Quinney College of  
Law.  
Dated April 2, 2002. Teresa*

Then, in 2004, Teresa tears up the 2002 document into little pieces and lets those pieces scatter to the wind.

**Question 3.1:** How will Teresa's estate be distributed when she dies?

Please explain the legal and factual basis for your answer.

Assume that Teresa did not write the 2002 document shown above. Instead, assume Teresa handwrote the following:

*When I die, I leave my home to my daughter, Denise.  
Dated April 2, 2002. Teresa*

Then, in 2004, Teresa tears up this 2002 document into little pieces and lets those pieces scatter to the wind.

**Question 3.2:** How will Teresa's estate be distributed when she dies under these facts?

Please explain the legal and factual basis for your answer.

### Fact Situation No. 4

#### 15 POINTS

Handel and Wanda, husband and wife, were killed as a result of an automobile accident. Handel was pronounced dead at the scene, but Wanda, conscious and talking to her rescuers, made it to the hospital. Unfortunately, when the emergency room personnel began to treat her injuries, a blood clot from her injuries caused a massive heart attack and her immediate death.

Handel is survived by his two children by his first wife, Simon and Tammie, and by his mother, Mary. Wanda is survived by her three children by her first husband, Donna, Eddie, and Frank. Handel and Wanda had no children together, and they both died intestate.

Handel and Wanda's owned the following assets:

Owner	Asset	Net Value
Handel	Securities	\$100,000.00
Handel	Home	\$250,000.00
Wanda	Home	\$400,000.00
Handel and Wanda as joint owners	Bank Account	\$10,000.00
Wanda	POD Bank account for Donna	\$30,000.00
Handel	POD Bank account for Simon	\$5,000.00
Handel	POD Bank account for Tammie	\$15,000.00

**Question 4.1:** Under the Uniform Probate Code, who will inherit Handel and Wanda's individual and jointly owned assets.

**Question 4.2:** Under Utah law, who will inherit Handel and Wanda's individual and jointly owned assets.

Please explain the legal and factual basis for your answers.

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### Fact Situation No. 5

#### 15 Points

Your best law school friend, Dora, took a job as a litigator after law school. She recently called you because you specialize in estate work. Her "Mom," Molly, died recently. Although Dora called Molly her "Mom," they were actually third cousins once removed. After Dora's parents died in an airplane accident when Dora was 7 years old, Molly raised Dora as her "precious daughter." Dora's only brother died in the same accident. When Dora was ten, Molly

divorced her first husband. When Dora was 13, Molly married Homer. Molly and Homer split two years ago, but since they kept their assets and earnings separate during the marriage, neither has sought a divorce. Molly made gifts to Dora to help Dora pay for her legal education.

Dora tells you that, because of Molly's problems with depression and because both of her husbands objected, Molly never adopted Dora, although they talked about it often. Molly has one child, a down syndrome son named Stevie. Dora and Stevie are the same age. Throughout her life, Molly referred to Stevie as her brother. Dora helped care for Stevie and will be his only family now that Molly has died.

Dora is distraught because she just received a letter from the Utah Bar. It states that a complaint has been filed alleging that Dora violated Utah Rule of Professional Conduct Rule 1.8(c). That rule states:

(c) A lawyer shall not prepare an instrument giving the lawyer or a person related to the lawyer as parent, child, sibling or spouse any substantial gift from a client, including a testamentary gift, except where the client is related to the donee.

Dora tells you that, two months ago, Molly was in a severe car accident. Although cogent, Molly had so many injuries, the doctors thought she would die. As soon as Molly saw Dora, she instructed Dora to prepare a will leaving all of Molly's assets to Dora. Because Stevie has state supported education, housing, and maintenance, he had no support needs. Molly asked Dora to provide "extras" for him.

Dora prepared the Will, and the will was duly executed by Molly and two of her neighbors as witnesses. Two days later, Molly went into a coma and died four days later.

The Bar also sent Dora a copy of a letter it received from Homer. He wrote:

Dora is a distant relative of my wife's. She is **NOT** Molly's daughter, like Dora always told everyone. Dora was just a conniving, busy-body. Molly was nothing more than a foster parent to Dora. Molly, sweetheart that she was, took Dora into our house. In return, Dora poisoned Molly's feelings towards me, caused my wife and my breakup, and then took advantage of Molly's impending death and Dora's high and mighty position as a new lawyer and got Molly to change her will. Molly's only son, Stevie, who is retarded, was a beneficiary of the old will. I think what Dora has done stinks to high heaven! Dora is unethical and immoral. I think the Bar should revoke her license and void the will she drafted. I am sure that is what Molly would want.

Dora tells you that Homer is angry and jealous. He has already demanded Dora give him Molly's estate in return for his dropping his bar complaint.

Dora tells you that, prior to receiving the letters from the Bar, she had filed a petition for probate of the will she wrote. She followed the probate court forms, and so she did not disclose that she wrote the will in her petition. Proper and legal notice of the hearing was given to Stevie, the state agency in charge of Stevie, and to Homer. That hearing is scheduled for next Wednesday. No one has contacted Dora with any objections to the petition.

Dora asks you the following questions:

**Question 5.1** Is the will Dora wrote valid?

**Question 5.2** Has Dora acted unethically?

**Question 5.3** What is your advice to Dora given the Bar Complaint and the pending hearing?

Please explain the legal and factual basis for your answers.

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### **Fact Situation No. 6**

#### **40 POINTS**

Winifred's husband, Harold recently passed away survived by Winifred, his three children by Winifred, Winifred's one child by her first husband, and his six brothers and sisters. Yesterday, to her shock and dismay, Winifred learned that her husband of twenty five years had executed a valid will that left all of his property to his brothers and sisters and not one cent to Winifred, Harold's children, or Winifred's child. Today, Winifred is in your office, angry and ready to pay you a hefty retainer to represent her.

She tells you the following facts:

Harold had a head injury two months before he died. Mostly, he seemed OK, but he would do odd things. One day he put the salt and pepper in the freezer. Another he put a magazine in the dishwasher. These instances occurred once or twice a week at first and then gradually increased until there was one almost every day. When corrected, Harold just laughed it off as being absent-minded. Harold's attitude toward Winifred also changed. He was still friendly, but he gradually had less and less interest in her as his wife. Winifred had asked him about this, and Harold said he was "just too busy" or he had "too much on his mind." Winifred had suggested Harold go to the doctor, but he refused, claiming to be "just too busy to worry about a minor lapse of memory."

Harold liked his brothers and sisters, but they were not that close. They saw each other at reunions, but otherwise, they did not see one another. However, one week before his death,

Harold had gone out to eat with the siblings, sort of a siblings' night-out. Harold had told Winifred he did not want to go, but he felt obligated. Winifred then shows you his will, and it is dated that same day. It is in someone's handwriting other than Harold's, but Winifred recognizes Harold's signature. There were two witnesses with their addresses, but Winifred does not recognize their names.

She asked the siblings if they knew anything about the will, and they told her their attorney had advised them not to say anything to Winifred. In response to your question regarding whether the siblings knew of Harold's head injury, Winifred tells you that she had called one of Harold's brothers, a medical doctor, after Harold's head injury to ask for advice regarding Harold's strange behavior.

Harold and Winifred owned the following assets at Harold's death:

Owner	Asset	Net Value
Harold	Securities	\$100,000.00
Harold	investment property	\$250,000.00
Harold	Solely owned business	\$1,000,000.00
Winifred	apartments	\$300,000.00
Winifred	Jewelry, furs, antiques, paintings, etc.	150,000.00
Harold & Winifred as joint owners	Home	\$450,000.00

Winifred wants your answers to the following questions:

**Question 6.1:** If Winifred directs you to contest the will, what legal theories would you assert? Based on the facts **as disclosed in the question**, what result would you expect the Court to reach?

**Question 6.2:** If the court denies probate to the will, under the Uniform Probate Code, who will receive Harold's estate and what will each beneficiary's share of the estate be?

**Question 6.3:** If the court denies probate to the will, under Utah law, who will receive Harold's estate and what will each beneficiary's share of the estate be?

**Question 6.4:** If the court admits the will to probate, what rights would Winifred have as Harold's surviving spouse under the Uniform Probate Code? Identify each right and its value to Winifred.

**Question 6.5:** If the court admits the will to probate, what rights would Winifred have as Harold's surviving spouse under Utah law?

Please explain the legal and factual basis for your answers.