

TRUSTS & ESTATES CORNERSTONE FALL 1999 EXAMINATION

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Final Examination

Monday December 13, 1999, 1:00 p.m.

INSTRUCTIONS

Time Limit: The examination will last four hours.

Fact Situations and Weight: There are 5 Fact Situations with questions. Each fact has a specific amount of weight towards your final exam grade. 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 don't 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.

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. If you believe the family allowance needs to be considered as part of the question, assume that the court awards the amount set forth in the UPC and the Utah UPC (\$18,000). 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. (50% of the grade)

Yesterday, Marla Marvelous came to your law office seeking your advice. After accepting her offer of a \$10,000 retainer against fees, you learn the following about Marla and her recently deceased husband, OK Marvelous.

Marla and OK were married in the summer of 1984 in Park City, Utah. They have remained Utah residents ever since. They had no children together. For Marla it was her first marriage. OK had been married before and had two sons, both adults, both of whom are now living. Since their marriage, Marla and OK have lived, in Marla's tear-filled words, "happily ever after — or at least until he (sob) died ten days ago."

Marla brings you the original of a will her husband's lawyer, P.S. Hemlock, prepared for OK in January of 1999. She tells you that she learned her husband was preparing a will when he invited her into his study on February 2, 1999 and explained Hemlock was bringing a new will to the house to be signed. Before that meeting, he had never shared anything about his assets or his estate planning with Marla. In fact, although after this meeting OK was pretty open with Marla about his estate planning and somewhat about his assets, Marla doesn't think he ever talked to any friends or family, even his sons, about his assets or his estate planning. During the meeting, Marla learned for the first time that OK had prepared and signed his first will in 1980, before he had met Marla. In that first will, OK left ½ of his estate to his children in equal shares and the other ½ of the estate to the United Way. He told Marla that he had known for years he needed to change that old will, but he had just not gotten around to doing so. OK told Marla that in his new will he was going to leave her 75% of his estate and the balance to his two children equally. She says it was a tender time as he expressed his love and appreciation for her.

When Hemlock arrived, he reviewed the new 1999 will with OK as Marla listened. Hemlock's explanation of the will was the same as OK's explanation to Marla. After that, OK again expressed his love for Marla and said he wanted to execute the will. OK also asked Hemlock if Marla could be a witness. Hemlock said that would be fine, and Marla watched OK as he wrote on the will. OK then turned the will to the next page where the witnesses' attestation clauses were, he handed the will to Marla, and she signed it. Then Marla gave the will to Hemlock, and he signed it. Hemlock then sealed the original will in a gold embossed envelope and gave it to OK. OK gave it to Marla and told her to make sure it was kept in a safe place because "you never know what my sons might do after I am gone." OK then gave the original of his 1980 Will to Hemlock with the comment "I won't be needing this anymore." Hemlock placed the 1980 will in his briefcase and told OK that he would "take care of this old thing" when he got back to the office. After that, OK suggested Marla take the new will to her bank and put it in her safe deposit box. Marla left that minute and did what OK suggested. She was the only signatory on the safe deposit box. The will remained in the box until yesterday morning when Marla picked it up on the way to your office.

When you open the envelope, you find the original will. As promised, OK devised 75% of his estate to Marla and 25% to his children in equal shares. However, when you look at the testator's signature page, only the date has been filled in. The signature line is blank. Marla stares at the will in disbelief. She babbles about "how could that possibly be" given all the times OK told her that he had "taken care of you, sweetie; 75% of my estate is a **LOT** of money."

After a "composure" break, you ask Marla about OK's assets. She says that his records show that when she married OK he had \$3.0 Million in assets. His business was managing those assets. \$2.5 million was in a stock account at Dean Witter. Although OK and Marla used the earnings from that account to live on, the records show that OK never invested in any other assets outside that account. The Dean Witter account is now worth \$15.0 Million. OK also had a home when they were married worth \$250,000 and bank accounts and CD's worth another \$250,000. Marla tells you that the home (now worth \$750,000) and those accounts (still worth \$250,000) were in joint tenancy between OK and Marla.

When you ask Marla about her assets, she tells you she has nothing (other than the joint tenancy assets she received when OK died). You ask what she did for a living, and she tells you that she had once been a nurse, but with OK being so rich, and given her desire to help those who were terminally ill, she had worked as a full-time volunteer for Hospice of Utah since her marriage. She loves that work and plans to continue although she expresses grave concern about the fact that OK's will was not signed.

While Marla is with you, you call Hemlock and ask about the 1980 Will. Hemlock tells you that when he returned to his office on February 2, 1999, he wrote "REVOKED" in black magic marker on each page of the will and then put it in his file, where it remains today. When you tell Hemlock that the 1999 Will is unsigned, he chuckles and tells you that reminds him of something OK did 20 years ago. Hemlock had negotiated a contract and at the signing ceremony OK pretended to sign the agreement. In that case, the other side caught OK and made him sign the agreement. Hemlock wonders "if that son-of-a-gun tried that stunt again?"

Question A. Marla wants your advice. What do you recommend she do to maximize the amount of assets that she receives from the estate. Explain why you recommend what you do and explain what other options or results there are and why they are unavailable or not as helpful.

Question B. After listening carefully to your recommendation, Marla wants you to tell her what you think the judge will do if her stepsons contest the course of action you recommend and make the best arguments available to them. Explain what you think is the probable outcome and why you think the Judge will rule that way.

Question C. Assume that Utah adopted the Uniform Probate Code effective July 1, 1999. Would that fact change your answer to Question A? Explain how **and** why it would change your answer or why it would not change your answer.

Question D. Make the same assumption about the UPC as in Question C. Would that fact change your answer to Question B? Explain how **and** why it would change your answer or why it would not change your answer.

Fact Situation No. 2. (15% of the grade)

In 1990, Lavinia, a Utah resident, executed a valid will that devised her estate as follows:

1. I devise my apartment house in downtown Boston to my nephew Robert;
2. I devise the balance of my estate in equal shares to my nieces Sylvia and Tess.
3. I direct that all of my expenses, estate and inheritance taxes, and debts be paid from the residue of my estate.
4. I nominate Robert to be the personal representative of my estate.

Lavinia died on January 1, 1999 survived by Robert, Sylvia and Tess. Her housekeeper produced a handwritten will that left Lavinia's entire estate to the housekeeper. Robert retained you as his attorney in his capacity as the nominated personal representative of Lavinia's 1990 will and as a beneficiary under that will. On Robert's behalf, you contested the handwritten will on the basis of undue influence and lack of competency. On November 1, 1999, the Salt Lake Third District Court ruled the handwritten will invalid on both grounds and admitted Lavinia's 1990 will to probate. The housekeeper did not appeal that decision. The estate paid you \$75,000 to contest the handwritten will.

At Lavinia's death the apartment house was worth \$2.0 million and the balance of Lavinia's estate, which was composed entirely of interest bearing savings accounts at First Security Bank, was worth \$4.0 million.

The apartment house is a phenomenal property, with an average income of 15+% each year. The bank accounts have earned about 5+% since Lavinia's death. Thus, to date, the estate has earned income of \$300,000 on the apartments and \$200,000 on the bank accounts.

Yesterday, you met with Robert and the accountant he hired to prepare the estate's income tax return, its federal estate tax return, and its Utah state inheritance tax return. Robert gives you a copy of the federal estate tax return and the Utah state inheritance tax return, and he tells you he has just filed both returns. The total combined tax bill is \$2.7 million. As you review the estate tax return and the inheritance tax return, you notice that Robert has not deducted the \$75,000 he paid you to contest the will as an administrative expense. If Robert had deducted your fees, the total tax would have been \$41,250 lower. Robert's accountant correctly advises you that under federal and Utah tax law, Robert can deduct the expenses for either estate and inheritance tax purposes *or* income tax purposes. The accountant further tells you that Robert is going to deduct the \$75,000 for income tax purposes. By deducting the fees for income tax purposes, Robert will save the estate \$21,000 in income taxes.

Since your meeting you have been pondering what you were told. Do you see any ethical problems that you are facing as a result of Robert's actions? Why or why not? If there are ethical problems, what should you do?

Fact Situation No. 3. (10% of the grade)

Dan died in a car accident on January 1, 1999; he died intestate. His wife predeceased him, and Dan had no children. Dan's only surviving relatives are:

Teresa, Dan's wife's daughter;

Cathy, Dan's wife's mother;

Robert, Dan's uncle on his father's side of the family;

Will, Robert's son;

Sylvia, Robert's daughter;

Elizabeth, Sylvia's daughter;

Powell, Dan's second cousin on his father's side of the family;

Bill, Dan's first cousin on his mother's side of the family;

Mary, the daughter of Bill's deceased sister, Sara;

Henry, the son of Bill's deceased sister, Sara;

John, the son of Bill's deceased sister, Sara;

Victor, the son of Bill's deceased sister Amanda;

Ben, Dan's second cousin on his mother's side of the family; and

John was in the car accident that took Dan's life, and he lingered in a coma for three days and then died on January 3, 1999. The other relatives are all living today.

Note: A copy of this question is attached as the last page of the exam and can be removed and placed in your bluebook or with your computer disk.

Question A. What fraction of the estate will each of Dan’s relatives receive under the Utah Uniform Probate Code.

- Teresa _____
- Cathy _____
- Robert _____
- Will _____
- Sylvia _____
- Elizabeth _____
- Powell _____
- Bill _____
- Mary _____
- Henry _____
- John _____
- Victor _____
- Ben _____

Question B. Explain how you decided each person’s share of the estate (you can use a diagram to illustrate your answer).

Fact Situation No. 4. (10% of the grade)

Headstrong and Speechless, both residents of Utah, decide to cohabit beginning on June 1, 1999, and they set up their home in Salt Lake City. They immediately establish a non-interest bearing joint bank account at First National Bank. Over the next 6 months, they make the following deposits and withdrawals from the account:

| Date | Person Acting | Deposit | Withdraw | Balance | Explanation |
|------|---------------|---------|----------|---------|-------------|
|------|---------------|---------|----------|---------|-------------|

| | | | | | |
|-------|------------|--------------|-------------|--------------|--|
| 6/1 | Headstrong | \$ 10,000.00 | | \$ 10,000.00 | His initial deposit |
| 6/1 | Speechless | \$ 5,000.00 | | \$ 15,000.00 | Her initial deposit |
| 6/15 | Headstrong | | \$ 5,000.00 | \$ 10,000.00 | To invest in a mutual fund in his name |
| 6/20 | Speechless | | \$ 1,000.00 | \$ 9,000.00 | To purchase groceries and household supplies |
| 7/2 | Headstrong | \$ 1,000.00 | | \$ 10,000.00 | His semi-annual bonus |
| 7/15 | Speechless | \$ 5,000.00 | | \$ 15,000.00 | a gift from her mother |
| 8/2 | Headstrong | | \$ 3,000.00 | \$ 12,000.00 | a computer system for his home based business |
| 8/12 | Speechless | | \$ 1,000.00 | \$ 11,000.00 | To purchase groceries and household supplies |
| 9/12 | Speechless | | \$ 1,000.00 | \$ 10,000.00 | Cosmetics and her personal clothing |
| 10/12 | Headstrong | \$ 3,000.00 | | \$ 13,000.00 | From his personal savings account |
| 11/1 | Speechless | | \$ 500.00 | \$ 12,500.00 | To purchase groceries and household supplies |
| 11/30 | Headstrong | | \$ 2,500.00 | \$ 10,000.00 | To invest in two equal CD's, one Headstrong and one for Speechless |
| 12/5 | Speechless | | \$10,000.00 | \$ 0.00 | To her personal bank account |

On December 5, 1999, Speechless departs the home and leaves a note saying the relationship is over. Headstrong comes to your office. He tells you that Speechless withdrew all the money from First National Bank on the day she left. He wants to know whether Speechless had the right to take all of the money in the account. He also wants to know what rights, if any, he has in the money Speechless took from the account.

Question A. Did Speechless have the right to take all the monies in the account? Explain why or why not.

Question B. Does Headstrong have any rights to the money Speechless took? If so, explain the amount to which he has any right. Explain why Headstrong has this right or why he has no rights.

Question C. If Headstrong and Speechless were married, if they were residents of a uniform probate code jurisdiction when the account was established, and if they remained married and residents of the UPC jurisdiction until the present day, would those facts change your answers to questions 1 and 2 above? Explain why or why not.

Fact Situation No. 5 (15% of the grade)

On November 30, 1999, Francois LeBlue died. After his death, Lucille, his wife of 10 years, breaks into his locked desk (she couldn't find her husband's key) and finds an envelope in the desk. On the outside of the envelope is written:

May 25, 1997

Inside is my will.

Francois LeBlue

Lucille opens the envelope and finds a 3.5 inch floppy disk. She puts the disk in her computer and discovers a file called "mywill.doc". When she opens that file on the computer she discovers that the file was last opened on May 30, 1997. After opening the file, Lucille prints out the document that was contained in that file. It provides:

This is my last will and testament.

I appoint Lucille LeBlue as the personal representative of my estate. If she can't serve, I appoint my son Francois LeBlue, Jr. to this position.

I love Lucille LeBlue dearly, but I am worried about her ability to handle money. Accordingly, I direct that my _____ assets be placed in trust with First National Bank as trustee for Lucille's benefit. It shall have the discretion to pay Lucille part, all or none of the principal and income of the trust as it determines in its discretion is in Lucille's best interests. I direct my trustee to be careful in making distributions. The trustees should provide the least amount of money necessary to accomplish the goal the trustee has.

I leave the balance of my estate to my dear mother, Bridgette.

Dated this 25th day of May, 1997.

Francois LeBlue

Yesterday, Lucille came to your office and requested your advice. Lucille, Francois, and you are all residents of the state of Pacific, a uniform probate code jurisdiction. Lucille tells you Francois had no children. Bridgette is alive, but she is expected to die shortly. Francois had no other wills before or after the documents Lucille gave you. Francois owned \$600,000 worth of assets at his death, including a home worth \$200,000 and stocks and bonds worth \$400,000. Francois owned all of these assets when he married Lucille although they were worth only \$100,000 and \$200,000 when they married. At his death, Lucille owned \$200,000 of assets on her own. She owned these assets at the time of the marriage, and they were worth \$150,000 at that time. Both Francois and Lucille have kept their assets separate throughout the marriage.

Lucille tells you that she had a number of discussions with her husband about his will, although she never saw it. She remembers on a couple of occasions Francois Sr. told her she would be the beneficiary of a trust and the trust would have about \$450,000 in assets. She wants to know what is going to happen.

Question Advise Lucille who are the beneficiaries of the estate, how much each beneficiary will receive, and explain how you reached that conclusion.

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Fact Situation No. 3 (10% of the grade)

Question A. What fraction of the estate will each of Dan's relatives receive under the Utah Uniform Probate Code.

| | | | |
|-----------|-------|--------|-------|
| Teresa | _____ | Powell | _____ |
| Cathy | _____ | Bill | _____ |
| Robert | _____ | Mary | _____ |
| Will | _____ | Henry | _____ |
| Sylvia | _____ | John | _____ |
| Elizabeth | _____ | Victor | _____ |
| | | Ben | _____ |

Question B. Explain how you decided each person's share of the estate (you can use a diagram to illustrate your answer).