

# TRUSTS & ESTATES CORNERSTONE SPRING 1999 EXAMINATION

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Final Examination

Tuesday May 4<sup>th</sup>, 1999, 8:30 a.m.

## INSTRUCTIONS

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

**Fact Situations and Weight:** There are 6 fact situations with questions. Each fact situation has equal weight. As you will recall, this examination will make up 60% of your grade.

**Closed Book:** The examination is closed book.

**Plan of Attack:** I recommend you take the first 30 minutes 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 (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.

**Terms:** UPC means the current version of the Uniform Probate Code. Utah UPC means the current version of the Utah Uniform Probate Code.

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

**Good luck.**

### Fact Situation No. 1

On January 7, 1997, Henry Harrison, a multi-millionaire Utah resident and widower with no children, executes a valid will. He leaves everything he owns to the United Way. On March 31, 1999, Henry marries Wilma, a Utah resident. While traveling in Europe on his honeymoon, Henry dies of a massive heart attack on April 14, 1999. He is survived by Wilma and three first cousins.

After Henry's death, Wilma finds a copy of the following letter. She confirms with Henry's lawyer, Mr. Luter, and President Paul of the United Way that Henry sent the letter, that Mr. Luter received the original letter, and that Mr. Paul received a copy of the letter. The letter provided:

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March 31, 1999.

Dear Mr. Luter:

Now that I am married, I am hereby including Wilma in my will to receive 60% with the rest going to the United Way. I am sending a copy of this letter to my good friend President Paul of the United Way so that he knows what I am doing. If you think I should do anything further on this matter, I will be returning from my honeymoon on April 20<sup>th</sup>, and I could see you then. Please let me know.

Sincerely,

*Henry Harrison*

cc: President Paul

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Wilma, having heard of your superior skills in trusts & estates, comes to you for advice on May 4, 1999. (In answering these questions ignore Wilma's rights to a homestead allowance, an exempt property allowance, or a family allowance.)

1. What possible rights can Wilma assert that would allow her to share in Henry's estate? Explain.
2. Assuming Wilma wants as much of Henry's estate as possible, what advice would you give Wilma? Explain.
3. If you were the judge, how much, if anything, would you give Wilma? Explain your decision.

## **Fact Situation No. 2**

Tom leaves a valid will that states as follows:

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I dearly love my second cousin, Corbin. If Corbin survives me, I leave him my collection of clocks. I leave my collection of books to my brother, Bill, if he survives me. Bill never did very well in school and I hope that he will read these books and finally gain some education. I leave the residue of my estate to my good friend, Frank.

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Corbin dies before Tom. Corbin is survived by his only child, a son named Steve. Bill also dies before Tom. He is survived by his only child, a daughter named Darla.

When Tom dies, he has never married and has no surviving lineal descendants or ancestors.

1. Under the UPC, who receives the collection of clocks and the collection of books? Explain.
2. Under the Utah UPC who receives the collection of clocks and the collection of books? Explain.

With regard to the above facts, assume that Corbin and Bill both survive Tom by 120 hours. After he signs his will, and two years before his death, Tom gives his collection of books to the University of Utah Marriott Library and takes a tax deduction on his income tax return. After Tom dies, Frank searches the house and cannot find any sign of the clock collection. Frank, Corbin, Bill and several of Tom's neighbors testify at the probate hearing that they saw the clock collection in Tom's home, but no one knows what happened to it.

3. Under the Utah UPC, what, if anything, will Bill receive from Tom's estate? Explain.
4. Under the Utah UPC, what, if anything, will Corbin receive from Tom's estate? Explain.

## **Fact Situation No. 3**

In early 1998, Mary Mann, a Utah resident and a very private person, learns from her doctor she has a terminal brain tumor that will shortly destroy all of her cognitive abilities, but it may take years for her to die. That evening she writes her doctor the following letter:

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*Dear Dr. Darger,*

*As you can imagine, the news you gave me today is absolutely appalling. I cannot face the possibility of lingering here, unable to communicate and understand what is happening. I don't want my husband and children to even see me like that, much less have to care for me. As a result, I am hereby instructing you to remove all feeding devices, keep all water from me, and to take no heroic measures to keep me alive at the earliest possible date after I enter the hospital. You have been a good doctor. Please, for God's sake, do this for me.*

*Sincerely,*

*Mary Mann*

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One week later, Mary enters the hospital and within 12 hours can no longer communicate with her family and friends. Dr. Darger shows the letter to Mary's husband, Henry, and her two children by a prior marriage, both adults, Connie and Chuck. When that happens, Henry, Connie, and Chuck immediately begin arguing over whether to honor Mary's wishes with Henry wanting to do so and Connie and Chuck demanding that no action be taken. Dr. Darger is appalled by the scene he witnesses, but he is concerned with what he should do. He seeks your advice. He tells you that Mary's condition is incurable, and she will never regain her cognitive functions. She may linger for several years before dying.

1. Can Dr. Darger act on Mary's letter? Explain.
2. Assume that Mary, instead of sending Dr. Darger a letter, had told him orally at the time she learned of the brain tumor what she wanted to do. Assume the rest of the facts are identical. Dr. Darger seeks your advice. What, if anything, can be done to fulfill Mary's request? Explain.

### Fact Situation No. 4

After Terry's death, Terry's son Sam finds the following original document:

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#### Last Will and Testament

I, Terry Thomas, execute this Last Will and Testament and revoke all prior wills.

*Void as to Sam* First, I name my son, Sam, my Personal Representative. If he cannot serve, I name my daughter, Donna, as my Personal Representative. *1/2/98 TT*

*Ditto* Second, I leave all of my Utah real property to my son, Sam.

*Ditto* Third, I leave the residue of my estate in equal shares to my son, Sam, and my daughter, Donna. If either fails to survive me, I leave his or her share to my surviving child. If both fail to survive me, I leave the residue of my estate to the United Way.

Dated January 11, 1997.

*Terry Thomas*

We, the witnesses, certify that Terry Thomas signed this document as his last will and testament in our presence, that we signed in the presence of Terry Thomas and each other, and that Terry Thomas appeared to be 18 years of age or older, of sound mind, and under no constraint or undue influence.

*Wally Witness*

*Wilma Witness*

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Terry died suddenly on February 28, 1999. In April, Sam and Donna meet with you to discuss their father's will. They tell you Terry's wife, their mother, died in 1995, they are Terry's only children, and Terry had excellent physical and mental health throughout his life. Sam advises you that he remembers having an argument with his father on New Years Day 1998 over a referee's call in one of the football games, but he remembers his father apologizing before

dinner, and the matter being dropped. He cannot believe his father would have cut him out of the will because of the argument. Donna remembers the argument and her father's apology, and she agrees that it seemed very minor. Sam and Donna confirm that the handwriting in the margin is Terry's, but neither recalls Terry using the initials "TT" in any of his personal or business correspondence. They want to know what their respective rights are in Terry's estate. Terry was a Utah resident; Sam and Donna are Utah residents.

1. Under what circumstances, if any, can you represent both Sam and Donna? Explain.
2. What is the legal effect of Terry's will with his handwritten changes? Explain.

#### **Fact Situation No. 5**

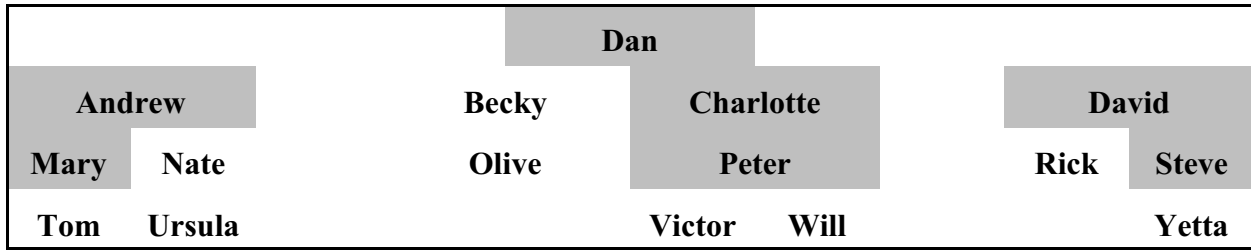
Dan sets up a joint account at First National Bank and deposits \$25,000 to the account. He asks the Bank to put his wife, Wilma, and his son, Stan, on the account. Pursuant to Dan's instructions, the Bank official checks the box on the account card that grants each party to the account survivorship rights in the account. Dan signs the original account statement. The Bank official gives Dan a copy of the account card for Dan to take to his wife and son to have them sign. Dan thinks no more about the matter and does not get the signature of his wife and son. No one makes any further deposits to the account, and no one makes any withdrawals from the account. Both Wilma and Stan survive Dan by 120 hours.

1. Assuming the UPC applies, when Dan dies, what percentage of the account, if any, does Wilma own based on her rights under the Multiple Person Account provisions of the UPC? What percentage, if any, does Stan own under those same provisions? What percentage, if any, does Dan's estate own under those same provisions? Explain.
2. Assuming the Utah UPC applies, when Dan dies, what percentage of the account, if any, does Wilma own under the Multiple Party Account provisions of the Utah UPC? What percentage, if any, does Stan own under those same provisions? What percentage, if any, does Dan's estate own under those same provisions? Explain.

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

Dan died intestate in 1999, a resident of the state of Utah. Dan had no surviving wife or ancestors. Dan's family tree, showing his living and deceased lineal descendants, is as follows:

### Dan's Family Tree



Deceased persons are those with their names in shadows. Dan's children are Andrew, Becky, Charlotte, and David. His grandchildren are Mary, Nate, Olive, Peter, Rick, and Steve. His great grandchildren are Tom, Ursula, Victor, Will, and Yetta. All of those living at Dan's death, survived him by 120 hours.

1. What fractional share of Dan's estate will go to each of his living descendants under the UPC?

Becky	Nate	Olive	Rick	Tom	Ursula	Victor	Will	Yetta

2. What fractional share of Dan's estate will go to each of his living descendants under the Utah UPC?

Becky	Nate	Olive	Rick	Tom	Ursula	Victor	Will	Yetta

3. What fractional share of Dan's estate will go to each of his living descendants under a state that follows classic per stirpes?

Becky	Nate	Olive	Rick	Tom	Ursula	Victor	Will	Yetta

The next page contains a copy of these three questions. Please detach that page, answer the question in the boxes given, and turn that page in with your exam. Make sure you put your exam number on the page.

**Student Examination No.** \_\_\_\_\_

1. What fractional share of Dan's estate will go to each of his living descendants under the UPC?

Becky	Nate	Olive	Rick	Tom	Ursula	Victor	Will	Yetta

2. What fractional share of Dan's estate will go to each of his living descendants under the Utah UPC?

Becky	Nate	Olive	Rick	Tom	Ursula	Victor	Will	Yetta

3. What fractional share of Dan's estate will go to each of his living descendants under a state that follows classic per stirpes?

Becky	Nate	Olive	Rick	Tom	Ursula	Victor	Will	Yetta