

TRUSTS & ESTATES FALL 2001 EXAMINATION

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INSTRUCTIONS

Time Limit: The examination will last three hours.

Fact Situations and Points: There are nine pages and six 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 the points assigned to the fact situations 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. I cannot give you credit if I am unable to read your answer.

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, nor are there any debts or administrative expenses that have to be paid.. 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. (10 points) Paintbrush, a 37 year old single male living in Salt Lake City, Utah, has painted everything he could find for all of his adult life. Until recently, this joyous avocation has failed to make him any money. He has worked as a bar tender and security guard to earn a living. A frugal person, Paintbrush has acquired a good portfolio of stocks now managed by Prudential Securities. In 1997, Paintbrush had a short relationship with Artsy that resulted in a young daughter, Lovechild. Since her birth, Lovechild has lived with her mother. Artsy and Paintbrush can no longer stand each other; when Paintbrush wants information about Lovechild, he asks his friends to call Artsy.

Shortly after Lovechild's birth, Prudential Securities held a seminar on estate planning. In that seminar, Prudential recommended that their clients create an irrevocable trust for the benefit of their children as a way to minimize income and estate taxes. Paintbrush was sold on the idea, but was reluctant to part with his securities. Always the optimist, Paintbrush decided he would create a trust for Lovechild. Being both a free and frugal spirit, Paintbrush decided he would create the trust himself. Here is what he wrote:

I create this trust for my daughter Lovechild. When she is 21 years of age, make sure she is taken care of. I transfer to the trust all my future paintings. Dated this 15th day of September, 1998.

Paintbrush

In October 1998, Paintbrush began to study the work of Renoir. As his paintings began to reflect this study, Paintbrush's work was noticed by patrons of the art. In the last two years, Paintbrush has sold over \$2.0 million of paintings.

Yesterday, Paintbrush came to your law office to seek your advice. He has just been served with a lawsuit filed by Artsy on behalf of Lovechild. She claims that all of the paintings created since September 15, 1998 belong to the trust Paintbrush created. Her complaint demands the recovery of all paintings that have been created since September 15, 1998 and remain in Paintbrush's possession, the \$2.0 million received on sold paintings, and punitive damages. In addition, Artsy is asking the court to declare that all Paintbrush's future paintings will belong to the Trust. He wants to know if anything can be done to defeat Artsy's lawsuit. If fully litigated, how will the court rule? Explain your answer.

Fact Situation No. 2. (10 points) Your former law school class mate, Referrals, called you this morning. Referrals does plaintiff's personal injury work. He refers all of his estate planning clients to you. He tells you that he is going to represent the family of Battered, a 48 year old woman who was critically injured last night when a drunk UPS driver ran a stop light while making a delivery. He says

Battered needs an immediate will. She has children from a prior marriage from whom she is estranged. Referrals tells you she may die at any time but she is still cognizant of what is happening. He asks you to drop everything and head to the hospital.

Ever the good friend, you grab your laptop computer and your portable printer and head to the hospital. When you arrive at the hospital, you find Battered on a ventilator. She seems alert, but she cannot communicate because of the tube down her throat. Her nurse tells you that Battered may go at any time. You try to talk to Battered and quickly recognize that she can answer yes and no questions by shaking her head slightly. You ask her if she wants a will, yes, whether she wants to leave all of her assets to her husband, yes, to the exclusion of her children, yes, including those born to her former husband, yes, and those born in this marriage, yes, can she sign her name, yes. You ask her to answer a question about her family. She tries to write an answer, but after one sentence, it is too painful for Battered to continue. Because the family is too distraught to meet with you, you cannot ask her family any questions about her. You know nothing about Battered. You do not even know where she lives. You try to call your law firm mentor, your former professor, and even Referrals. No one is available. You have to decide what to do. What are you going to do? Explain fully why you made this decision.

Fact Situation No. 3. (25 points) Eccentric Testator decides to prepare his own will. He prepares the following document:

December 24, 2000.

I name my good friend Funny Days as the administrator of my estate. I want him to use his powers as administrator to give my collection of sea shells to any children who attend West Elementary School as he chooses.

I do not want my son, Worthless, to have any part of my estate.

I give my friend, Hopeful Nights, \$25,000 to start any business she chooses.

I want my daughter, Precious, to have my Ferrari and one half of my estate.

I give the rest of my property to the Society for the Prevention of Mosquito Bites to be used for its charitable purposes.

Eccentric Testator

ET's daughter, Precious, came last week to your office for advice on her rights under the Will. ET had just died and had been buried. She wanted to know who will receive ET's estate. And she specifically wanted to know if she could get the sea shell collection. She said it was priceless and that she had helped collect and categorize the shells. She expresses dismay at not being given that collection. She also tells you that she loves Worthless and wants him to get his share of the estate. The estate is worth \$5,000,000, not including the priceless collection of sea shells.

You made an appointment to meet with her later today. Since your first meeting you have discovered that there was a Society for the Prevention of Mosquito Bites at one time, but it is now defunct. Its charitable mission was to develop a spray that individuals that would repel mosquitoes from humans and animals. While it made some promising progress toward that goal, it ran out of money. When it closed its doors, it gave its few remaining assets to the Museum of Natural History.

A curator at a local museum who was familiar with ET's sea shell collection has suggested the collection may be worth several hundred thousand dollars.

- a. What are you going to tell ET's daughter will happen to the sea shell collection?
- b. What are you going to tell ET's daughter will happen to the devise to the Society for the Prevention of Mosquito Bites?
- c. Is there any way that Worthless can receive part of the estate without ET's daughter, Precious, making a gift to him?¹
- d. Can Hopeful Nights use her devise to take an around-the-world cruise?

Explain fully your answers.

Fact Situation No. 4. (30 points) Wilma Clinton, a resident of Nirvana, a Uniform Probate Code jurisdiction, came to your office this morning and tells you that her husband, Herman, died on

¹ Precious doesn't want to make a gift to Worthless because she would have to pay the federal gift taxes on the gift and those taxes would be substantial.

November 12, 2001. She is confused and upset and wants to know what her rights are in Herman's estate.

Herman was a widower before he married Wilma. He and his deceased wife, Dorothy, raised two children, Dependable, who had been Dorothy's child by a prior marriage, and their child, Abuser. Dependable was never been adopted by Herman. Dependable, born in 1972, has always used the name "Clinton" as his last name. Abuser was born in January 1973.

Although Wilma and Herman had been close friends and companions since 1982 (Dorothy died in 1981), they did not marry until October 14, 1987. Dependable is a sophomore at Harvard. He began his own computer business when he was 18 and that company is now worth \$3,500,000. Wilma tells you that Herman had and she has a great relationship with Dependable.

On the other hand, Herman and Wilma never could understand Abuser. He was totally unlike Herman, Wilma and Dependable. When Abuser was 12, he started using illegal drugs. He dropped out of school at 16 and moved out of his parents' home. He has never had a job. He has been arrested for various property crimes and has one conviction on his record. In order to get a reduced sentence, he agreed to move into the Salt Lake Drug Rehabilitation Center. This is his present home. Herman paid for Abuser's attorneys, fines, and some living expenses. But by the time of his death, Herman was fed up. The state is now paying for Abuser's care at the Salt Lake Drug Rehabilitation Center.

Herman and Wilma had no children. Wilma has three children by her first marriage.

Although Herman had used lawyers in his business, he privately told Wilma he just could not trust them. As a result, after Herman's death, Wilma discovered the following document in Herman's desk drawer. Wilma confirms that the handwriting is Herman's.

April 25, 1985

I, Herman Clinton, write this, my Last Will and Testament.

I love my dear friend and companion, Wilma. Since we began seeing each other three years ago she has brought me joy and happiness.

However, I have felt during our relationship that she has not been entirely truthful regarding the assets she owns. While she has told me that she only owns her \$100,000 house in West City Creek, I know she owns stocks

and bonds, and I believe they are worth several million dollars. Since Wilma has never told me the truth about this matter, I might be wrong as to the value of the stocks and bonds. But I hope Wilma understands that if I am mistaken as to the value, it is only because she has not told me about these assets.

I leave 10% of my estate to the United Way for its charitable work.

I leave 50% of my estate to Dependable. Having raised Dependable since he was one year old, I love him like my own son. He reminds me so much of his deceased mother, Dorothy.

I know that I am the father of Abuser, but his drug problems and his relationship with me leaves me cold and angry. Thus, I leave him only 40% of my estate in trust. I name First National Bank the trustee of the trust to use these assets for Abuser's best interests, keeping in mind that I do not want him to have direct access to the property. When Abuser dies, the trustee shall distribute the money to Abuser's descendants by representation.

My love to all.

Herman Clinton

Wilma tells you that she never owned anything other than the West City Creek house, and she gave that to her children in 1991 or 1992. She estimates its value today at \$200,000.00. You ultimately confirm that Wilma is telling you the truth.

Wilma has gone over Herman's papers and discovered that he owned the following assets

Asset	Value	Owners
Home in East Creek	\$ 400,000.00	Herman
First National Bank Accounts	\$ 100,000.00	Jointly by Herman and Wilma
Stocks at Morgan Stanley	\$ 2,950,000.00	Herman
Personal Property (jewelry, cars, etc.)	\$ 50,000.00	Herman

a. Wilma wants to know what her rights are in Herman's estate. Please advise her of every right she has and its value to her. Explain your answer.

b. After listening to your explanation, Wilma directs you to try to get her the most money she possibly can. Explain what you are going to do for Wilma and why.

c. Wilma also wants to know what Dependable, Abuser and the United Way will receive if you are successful in the actions you take in your answer to b above. Explain your answer.

d. Would your answer be different if Wilma and Herman were residents of Utah and Utah law applied. Explain why or why not.

Fact Situation No. 5. (15 points) Your neighbor, Will Money, needs your advice concerning his relative's, I.M. Codger's, estate. Codger died last week at the age of 95 years. He moved to Utah in 1970, but because he was a reclusive person, he thereafter had almost no contact with any family member, other than Will Money. Will has search Codger's home and papers and found no will.

From his search, Will learned that Codger had the following assets:

Asset	Value	Owners
Home	\$ 200,000.00	Codger
First National Bank Account	\$ 200,000.00	Jointly owned by Codger and Will
Second National Bank Account	\$ 100,000.00	Codger with Will Money named as a POD beneficiary
Merrill Lynch Account	\$ 200,000.00	Codger
Personal Property	\$ 0.00	Codger

Codger's personal property was worthless and was given to charity.

Codger's parents have been long deceased. He was never married and had no children. He died with the following relatives surviving him:

Name	Relationship
Allison	the granddaughter of Codger's mother's brother, Porter by his only son, Oscar. Porter and Oscar are both deceased.
Beulah	the granddaughter of Codger's mother's brother, Porter, by his only daughter, Olivia. Porter and Olivia are both deceased.
Dearborn	the son of Codger's mother's first cousin, Hilary. Hilary is deceased.
Chuck	the grandson of Codger's mother's sister, Penelope, by her only child, Gretta. Penelope and Gretta are both deceased.
Earl	the great grandson of Codger's father's brother, Hank, by Hank's daughter, Phyllis, and Phyllis' son, Robert. Hank, Phyllis, and Robert are all deceased.
Faustine	the son of Codger's father's first cousin, Jolene. Jolene is deceased.
Will Money	the grandson of Codger's father's brother, Hank, by Hank's daughter Phyllis. Hank and Phyllis are both deceased.
Mora Money	Will's daughter.
Gordon	the great grandson of Codger's father's brother, Hank, by Hank's daughter Phyllis, and Phyllis' son Robert. Hank, Phyllis, and Summer are all deceased.
Henrietta	the great granddaughter of Codger's father's brother, Hank, by Hank's daughter Phyllis, and Phyllis' daughter Summer. Hank, Phyllis, and Summer are all deceased.

There are no other surviving relatives.

Will tells you that he knew nothing about the Second National Bank account. However, Codger took Will to First National Bank in 1992 to set up that account. Codger told Will and the bank officer that he wanted Will on the account to take care of any bills he might have in the future. Will signed the signature card at that time, but he never used the account for any purpose, Codger always being able to handle his own business matters.

a. Will wants to know who will receive what. As to each of Codger's surviving relatives, identify what they will receive and explain how you calculated each person's share of Codger's assets.

b. Would your answer differ in any way if the Uniform Probate Code governed the administration of Codger's assets? Explain why or why not?

Fact Situation No. 6. (10 points) Fred Slow, a trust officer of Bullions Bank, is seeking your advice. For the past twelve years, Bullions has been acting as Trustee of a trust created by Myrna Miser, a Salt Lake City widow. The trust was prepared by Noble Lawless, senior partner at Salt Lake City's largest law firm, The Lawless Group. Myrna signed the Trust as Settlor and Fred signed the Trust for Bullions Bank as Trustee in Mr. Lawless' office and under his direction. The Trust directs the trustee to manage the trust for Miser's benefit during her life. After she dies, the Trust directs the Trustee to distribute the assets to the United Way. In addition, the Trust provides:

Revocation: Settlor reserves the right to amend, alter, or revoke this Trust in whole or in part. Settlor will notify the Trustee if she exercises this right.

Miser died 10 days ago. After Miser's death, her only daughter, Helpless, went to Miser's home. Helpless then came to see Fred Slow. She brought with her a copy of the Trust Agreement and a letter from Noble Lawless. The Trust Agreement had large "X's" drawn through pages 1-4. The balance of the Trust was torn in two. The provisions for Myrna's benefit are on pages 1-4. The provisions for the United Way are on pages 5 and 6. The letter from Mr. Lawless was a standard cover letter stating that the original trust agreement had been sent to Bullions Bank and a copy was enclosed for Miser. Helpless claimed that her mother had called her in 1998 and that Miser told Helpless that Miser was revoking the trust agreement. Although Fred Slow met with Miser once each year to discuss her investments, he tells you that nothing was ever said to him about any revocation. On the other hand, he candidly admits that since 1996, his visits have been purely social in nature. He brings the original Trust Agreement with him to your office.

The United Way has contacted Fred Slow wanting to know when to expect to receive the balance of the Trust. Helpless demands that the trust assets be delivered to her as Myrna's only living relative.

a. Fred wants to know what will happen if a lawsuit is filed in which Helpless and the United Way fight over the Trust assets. Explain what is each side's best argument, who will win, and why that side will win.

b. What would you advise Fred to do so that Bullions Bank will not have to spend any of its own, precious money in the resolution of this dispute. Explain your answer.