

TRUSTS AND ESTATES

Professor Terry S. Kogan

SAMPLE FINAL EXAMINATION

Examination No: _____

This examination consists of fourteen questions, each of which has equal weight.

This examination is entirely open book. You may use your casebook, the Uniform Probate Code, your notes, outlines, and/or any other materials. The use of other human beings is not permitted. You are permitted to use a calculator.

The answers to all questions should be written directly in the spaces provided on the examination.

You have **three hours** to complete this examination.

Please put your examination number in the space provided above. In addition to turning in this exam, you must turn in any **scrap paper** on which you have taken notes.

Do not write your name anywhere on this examination.

IMPORTANT: Assume that the Uniform Probate Code applies to all questions on this examination, WITH THE FOLLOWING EXCEPTION:

Where applicable, Utah UPC §§ 75-2-104, 75-2-603, 75-2-702, 75-2-706, 75-2-707, and 75-2-801 apply INSTEAD of the parallel sections of the Uniform Probate Code. The pertinent portions of these Utah statutes are set forth in the Examination Statutory Supplement handed out with this exam. Please hand in the Supplement with the Examination.

For purposes of all questions on this examination, **assume that taxes, debts, costs of administration, and the allowances under the Uniform Probate Code §§2-401 et seq. have already been taken care of.**

For purposes of this exam, this font represents printed (word-processed) text.

For purposes of this exam, this font represents handwriting.

Most questions have two parts, (a) and (b). Part “(a)” requires a brief answer, e.g., monetary amounts or a person’s name. When asked in part “(b)” to **“Please explain,”** a

complete answer requires that you set forth briefly the reasoning behind your answer to part “(a)” and, **in addition**, that you indicate the pertinent case or section(s) of the Uniform Probate Code or Utah UPC (**indicating subsections and/or sub-subsections**) upon which you rely. If you need additional space, feel free to write on the reverse side of the page.

Question 1

In 1970 Abel married Bella, and they had two children, Cathy and Doug. Cathy died in a tragic accident in 1995, survived by her husband, Gabe, and her son Harry. At the time of her death Cathy owed Abel \$100,000, which she borrowed to buy a home and never repaid.

Abel and Bella divorced in 1998.

In 2000, Abel married Mary, and they had a child, Nellie.

In 2004, Abel dies intestate. His net probate estate is worth \$1,000,000.

(a) How much does each of the following receive from the net probate estate?

Bella	Doug	Gabe	Harry	Mary	Nellie

(b) Please explain.

Question 2

In 1995, Mary Miser transferred \$1 million into an irrevocable trust for the benefit of her son, Michael Miser, which contained the following provisions:

The Michael Miser Irrevocable Trust

....

7. It is a goal of this Trust that Michael Miser [hereinafter the “beneficiary”] be provided with reasonable maintenance, comfort and support for the rest of his life. Accordingly, after considering the various available sources of support for the beneficiary, the Trustee shall distribute annually to the beneficiary such portion of the income from this Trust necessary for his reasonable maintenance, comfort and support.
8. In addition to distributions made pursuant to ¶7 above, the Trustee may, if he deems it necessary or desirable from time to time, in his sole and uncontrolled discretion, pay over to the beneficiary for his direct or indirect benefit such amounts of the principal as the Trustee shall deem advisable.
9. The beneficiary hereunder is hereby restrained from alienating, anticipating, encumbering, or in any manner assigning his interest or estate, either in principal or income, and is without power so to do, nor shall such interest or estate be subject to his liabilities or obligations nor to judgment or other legal process, bankruptcy proceedings or claims of creditors or others.

....

In 2000, Michael Miser divorced his wife, Sarah. The divorce decree required that he pay Sarah alimony of \$2,000/month. Michael has failed to make any such payments. Sarah goes to court to request that the assets of the trust be attached to meet the deficient alimony payments.

Should the court grant her request? If so, why, and if not, why not?

Question 3

In January 2002, Carl Carlson handwrote the following document:

Last Will and Testament

I, Carl Carlson, hereby declare this to be my Last Will and Testament.

- 1. In the top, left-hand drawer of my desk, you will find a list relevant to this will.*
- 2. I leave my vintage 1958 Thunderbird to my friend, Penelope.*
- 3. The rest and residue of my estate shall be given to the American Red Cross.*

Carl Carlson, January 1, 2002

Carl died in 2005. After his death, the following document was found in the top, left-hand drawer of Carl’s desk:

List

After my death, I would like my friends, Sonny, Penelope, and Nephi, to receive the following items from my estate:

- 1. To my friend, Sonny, I leave my vintage 1958 Thunderbird.*
- 2. To my friend, Penelope, I leave my IBM stock.*
- 3. To my friend, Nephi, I leave the money in my savings account at First Security Bank.*

Carl Carlson, April 10, 2004

Carl’s probate estate consisted of a 1958 Thunderbird, 1000 shares of IBM stock, and a savings account at First Security Bank containing \$15,000.

(a) Who receives what from Carl’s estate?

Sonny	Penelope	Nephi	Red Cross

[Continued on next page]

(b) Please explain.

Question 4

In 2000, William Wills married Yenta Yellow. At the time of their marriage, William had a son by a former marriage, Michael, and Yenta had a daughter by a former marriage, Natalie.

William was very close to his only niece, Harriet Harris, who had a daughter, Illeana Harris.

In 2001, William executed a valid will containing the following provisions:

....

- 1. To my wife, Yenta Yellow, I leave \$1,000,000.**
- 2. To my son, Michael Wills, I leave \$500,000.**
- 3. To my niece, Harriet Harris, I leave \$100,000.**
- 4. I leave the rest and residue of my estate to the University of Utah College of Law.**

....

On April 15, 2003, William Wills, Yenta Yellow, and Harriet Harris were driving to Las Vegas when their car veered off the road into an embankment. William died instantly. Yenta and Harriet were rushed to a nearby hospital, where Yenta died the next day. Harriet remained in a coma for a month, and then died.

William's net probate estate is worth \$1 million.

a. Who receives what from William Will's estate?

b. Please explain.

Question 5

On May 15, 1990, Bill Brock executed a valid will containing the following provisions:

-
1. **To my son, Charles Brock, I leave \$800,000.**
 2. **To my brother, Darren Brock, I leave \$300,000, to be paid from my Fidelity Money Market Account.**
 3. **To my sister, Ethel Brock, I leave 500 shares of IBM stock.**
 4. **To my niece, Fatima Brock, I leave my Honda.**
 5. **To my nephew, Gary Brock, I leave my Rothko painting.**
 6. **I leave the residue of my estate to the American Red Cross.**
-

In January 2002, Bill sold his Honda and purchased a new Mercedes.

In August 2002, IBM declared a stock split, and thereafter Bill owned 1000 shares of IBM stock. In February 2003, Bill decided to purchase an additional 1000 shares of IBM stock.

That same year, Bill decided that he was tired of his Rothko painting and donated it to the local museum, taking a charitable deduction of \$500,000 for its value on his tax return.

Bill died in July 2004. His net probate estate consisted of the following assets:

1. 2000 shares of IBM stock, selling at \$100 per share;
2. A Fidelity Money Market Account worth \$100,000; and
3. A 2002 Mercedes, worth \$25,000.

(a) What does each of the following receive from Bill's estate:

Charles	Darren	Ethel	Fatima	Gary	Red Cross

(b) Please explain.

Question 6

(a) In 1990, Susan married John. At the time of their marriage, Susan had two daughters, Crystal and Drucilla, by a former marriage, and John had a son, Brett, by a former marriage.

In 2000, Susan executed a valid will, leaving $\frac{1}{2}$ of her estate to John, $\frac{1}{6}$ of her estate to Brett, $\frac{1}{6}$ of her estate to Crystal, and $\frac{1}{6}$ of her estate to Drucilla.

In 2002, Susan and John had a child, Earl. Though Susan intended to amend her will to provide for Earl, she kept putting it off. Unfortunately, prior to amending her will, Susan died in a tragic fire in 2004.

(a) What fractional share of Susan's estate should each of the following receive?

John	Brett	Crystal	Drucilla	Earl

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(b) Please explain:

Question 7

In 1975, Tom Testator married Miranda Marple. Miranda had a son, Newton Marple, by a previous marriage. Together Tom and Miranda had two children, Abel and Beatrice.

In 2000, Tom Testator executed the following document:

Last Will and Testament

I, Tom Testator, being of sound mind, hereby declare this to be my last will and testament:

1. To my wife, Miranda, I leave the family home in Logan, Utah.
2. To my son, Abel, I leave the family business, Testator Trinkets.
3. To my daughter, Beatrice, I leave the vacation cottage in Heber, Utah.
4. To my stepson, Newton, I leave \$100,000.
5. The rest and residue of my estate I leave to the American Red Cross.

Tom Testator, June 1, 2000

Attested to:

Abel Testator, June 1, 2000
Beatrice Testator, June 1, 2000

In 2001, Tom Testator and his daughter, Beatrice, had a falling out. Accordingly, on May 1, 2001, Tom Testator executed the following document:

Last Will and Testament

I, Tom Testator, being of sound mind, hereby leave the vacation cottage in Heber, Utah to my son, Abel. I am intentionally disinheriting my daughter Beatrice.

Tom Testator, May 1, 2001

In 2002, Tom Testator divorced Miranda Marple. Shortly thereafter, he made up with his daughter, Beatrice, and executed the following document:

Last Will and Testament

I, Tom Testator, being of sound mind, hereby revoke my Last Will and Testament dated May 1, 2001.

Tom Testator, December 2, 2002

Tom dies in 2004. His net probate estate consists of a home in Logan, Utah; his business, Testator Trinkets; a vacation cottage in Heber, Utah; and a savings account worth \$100,000.

(a) Who takes what from Tom's net probate estate?

Miranda	Abel	Beatrice	Newton	Red Cross

(b) Please explain.

Question 8

In 1980, Sam transferred \$1 million into an irrevocable trust "to my Mother, Mildred, for life, then to my sister, Wilma."

Wilma died in 1999, leaving a valid will that provided in pertinent part:

"Because I have taken care of the needs of my children, Charles and Dianne, by a trust outside of this will, I leave my entire estate to the American Red Cross."

Sam died intestate in 2001, survived by his son, Harry. Sam's mother, Mildred, died in 2003.

Wilma's children, Charles and Dianne, survived both Wilma and Sam.

(a) Who takes the remainder interest in the 1980 irrevocable trust created by Sam?

(b) Please explain.

Question 9

James Jones had a son, Kirk, by his first marriage which ended in divorce.

In January 1999, James met Darla Darling, a successful concert pianist. Darla had a son, Elmer, by a prior marriage.

In May 2000, James transferred \$1 million into an irrevocable trust for the benefit of his son, Kirk.

James and Darla married in June 2000.

In July 2000, James purchased a life insurance policy on his life naming Darla as beneficiary. The death payment under the policy was \$250,000.

In December 2000, Darla transferred \$100,000 into a revocable trust for the benefit of her son, Elmer.

On January 15, 2002, Darla made a gift of \$60,000 to the Julliard School of Music, from which she had graduated.

James Jones died of a heart attack in April 2002. A valid will found in his safe stated in pertinent part: "I leave my entire estate to my son, Kirk Jones."

James Jones' net probate estate was worth \$20 million. At the time of James' death, Darla Darling had personal assets worth \$100,000.

(a) If Darla opts to take her elective share, how much will she actually receive from James' net probate estate?

\$ _____

(b) Please explain, showing your calculations.

Question 10

Cary Carob had four children, Delilah, Efrem, and Fred, and Gertrude.

Delilah married Martin Masters; Efrem married Nellie Nogood; Fred married Oprah Orton, and Gertrude married Peter Paston.

Delilah and Martin had one child, Sally Masters.

In 2000, Sally Masters executed the following will:

Last Will and Testament

I, Sally Masters, being of sound mind, hereby declare this to be my last will and testament:

- 1. To my parents I leave one-half of my estate.**
- 2. I leave one-quarter of my estate to be divided equally among my aunts and uncles.**
- 3. I leave the rest and residue of my estate to the American Red Cross.**

Sally Masters, February 1, 2000

Attested to:

Will Farrell, February 1, 2000

Miles Davis, February 1, 2000

Sally's father, Martin Masters, died in 2001. Efrem Carob died childless in 2002.

Sally died in 2003 with a net probate estate of \$1 million.

(a) How should Sally's estate be divided?

(b) Please explain.

Question 11

In 1968, Renata Rich transferred \$1 million into an irrevocable trust “to pay the income to my only child, Samuel Rich, for life, and to distribute the principal to such person or persons as Samuel Rich shall appoint either by deed during his lifetime or by will.” Renata Rich died intestate in 1980.

In 1990, Samuel Rich executed the following will:

Last Will and Testament

I, Samuel Rich, being of sound mind, hereby declare this to be my last will and testament:

- 1. To the University of Utah, I leave \$1 million.**
- 2. To the American Cancer Society, I leave \$1 million.**
- 3. The rest and residue of my estate I leave to my son, Thomas Rich.**

Samuel Rich, January 1, 1990

Attested to:

Deb Doran, January 1, 1990

Eli Elijah, January 1, 1990

Samuel Rich died in 2000, survived by his son Thomas Rich. During his lifetime, Samuel Rich never exercised the power of appointment given him by his mother's 1968 trust.

(a) Who receives the remainder interest in the 1968 trust established by Renata Rich?

(b) Please explain.

Question 12

In 1978, William Wolcott married Vanessa Vortex, who had a son, Virgil Vortex, by a former marriage.

In 1980, William Wolcott purchased a \$1 million life insurance policy on his life naming Virgil Vortex as beneficiary. The policy failed to name a contingent beneficiary.

Virgil Vortex died in 1990, survived by two daughters, Sunnie and Moonie.

William Wolcott died in 1995, leaving a validly executed will containing the following provisions:

....

1. To my wife, Vanessa Vortex, I leave \$2 million.

2. The rest and residue of my estate I leave to the American Red Cross.

....

(a) Who take the proceeds of William Wolcott's insurance policy.

(b) Please explain.

Question 13

In 1990, James Joyce purchased a pre-printed form will at a local stationery store, which he filled out as follows:

<p><u>Last Will and Testament</u></p> <p>I, <u>James Joyce</u>, being of sound mind, hereby declare this to be my last will and testament:</p> <p>1. To <u>my mother, Jill Joyce</u> _____ I leave: <i>Five million dollars</i></p> <p>2. To <u>my friend, Sam Beckett</u> _____ I leave: <i>My rare book collection</i></p> <p>3. To <u>my mentor, Walt Whitman</u> _____ I leave: <i>100 shares of IBM stock</i></p> <p>4. The rest and residue of my estate I leave to: <i>The American Red Cross.</i></p> <p style="text-align: right;">Signed: <u>James Joyce</u> Date: <u>September 1, 1990</u></p> <p>Attested to by the following witnesses: Signed: _____ Date: _____ Signed: _____ Date: _____</p>

James Joyce died in 2000. The following document was found in his wall safe:

Last Will and Testament

I, James Joyce, being of sound mind, hereby declare this to be my last will and testament:

1. To my mother, Jill Joyce _____ I leave:
~~Five million dollars.~~
Six 2/1/92 JJoyce
2. To my friend, Sam Beckett _____ I leave:
~~My rare book collection.~~
4/1/94 JJoyce
3. To my mentor, Walt Whitman _____ I leave:
~~100 shares of IBM stock.~~
5/4/96 JJoyce
All of my
4. The rest and residue of my estate I leave to:

The American Red Cross.

Signed: James Joyce
Date: September 1, 1990

Attested to by the following witnesses:

Signed: _____ Date: _____
Signed: _____ Date: _____

James Joyce's net probate estate consisted of the following:

A bank account worth \$8 million.

A rare book collection.

Five hundred shares of IBM stock.

(a) Who receives what from James Joyce's estate?

Jill Joyce	Sam Beckett	Walt Whitman	Red Cross

[Continued on next page]

(b) Please explain.

Question 14

Mitchell Myles has two children, Nan and Orson. Nan has three children, Peg, Quinton, and Robert. Orson has one child, Stephen.

In 2000, Mitchell Myles died intestate, with an estate of \$1 million. Nan files a timely disclaimer of her interest in her father's intestate estate.

(a) How much do each of the following receive from Mitchell Myles intestate estate?

Nan	Orson	Peg	Quinton	Robert	Stephen

(b) Please explain.