

ST. MARY'S UNIVERSITY SCHOOL OF LAW

TRUSTS (LW8329)
Professor Aloysius A. Leopold

FINAL EXAMINATION
Spring 1997

STUDENT EXAMINATION CONFIDENTIAL NUMBER _____

1. This examination consists of eight (8) pages, including this page as the first, 25 direct questions worth 50% of the examination and 2 essays together worth 50% of the examination.
2. You will have three (3) hours in which to complete the examination.
3. St. Mary's Law School prohibits the disclosure of information that might aid a professor in identifying the author of an examination. Any attempt by a student to identify himself or herself in an examination is a violation of this policy and of the Code of Student Conduct.
4. A student shall not remove the examination from the examination room during the exam time.
5. Answer the 25 direct questions on this examination in the space provided and the essays on the paper (bluebooks, etc.) provided. You may not have any other paper with you. This is a closed book exam. You may not have any study material with you in the examination room.
6. Turn in all papers including your written answers, all scratch and trashed paper AND THIS COMPLETE EXAMINATION with the pledge signed.
7. Answer the direct questions tersely, concisely, to the point and abstractly, that is not by example! Your answers on the essays will be considered complete if you delineate the specific legal issues including all reasonable legal alternatives raised by the facts, showing why each is a legal problem, stating the law applicable and applying the law to a conclusion. You must make reasonable assumptions of fact to explore reasonable alternatives if there are ambiguities or incomplete facts. You may mark up and make notes on the examination as you wish but you must turn it in as a part of your completed work. You may use a reasonable number of standard abbreviations if you let me know the first time what the abbreviation means.
8. After reading the oath, place your exam number in the space below. If you are prevented by the oath from placing your exam number in the space below, notify the student proctor of your reason when you turn in the examination.

I HAVE NEITHER GIVEN NOR RECEIVED AID IN TAKING THIS
EXAMINATION, NOR HAVE I SEEN ANYONE ELSE DO SO.

EXAM NUMBER

I.
(Value - 2% each [Total - 50%])

This part of the examination consists of 25 direct questions each worth 2% of the examination. See numbers 5 and 7 on page one for instructions.

1. What is required for a beneficiary to release a trustee of liability?

2. Under what circumstances may a third party dealing with a wrong-doing trustee be liable to beneficiaries?

3. Name three circumstances under which a beneficiary may be liable to a trust.

4. State two circumstances under which a trustee may be removed.

5. What is the effect of the legal and equitable titles in a spendthrift trust coming together in the beneficiary.

6. If the trust instrument does not mention trustee compensation, how and to what extent (if any) may the trustee be compensated?

7. In determining a proper course of conduct, name three general sources in order of priority to which the trustee may look.

8. What is the generic code definition for "income?"

9. Name two circumstances under which the personal liability of a trustee for a tort committed may be collected from trust property.

10. Under what circumstances may a corporate trustee deposit trust funds with itself pending a distribution of those funds?

11. From what two acts of general management may a settlor not relieve a corporate trustee?

12. Under what general rules is the amount of bond of a corporate trustee determined?
13. How may a successor trustee in a multiple trustee charitable trust be acquired?
14. Name two circumstances under which distribution from a corporation to a trust would be considered principal.
15. Name two circumstances under which a settlor may enforce a charitable trust.
16. Define a "spendthrift trust."
17. What is a "pour over" will?

18. When is consideration necessary for the creation of a trust?

19. In Texas, to what extent may a court invade a discretionary trust for child support?

20. Define "Relative" for trust purposes.

21. If property stands in the land records as belonging to "X, trustee," may a personal creditor of X levy on the land?

22. Name two circumstances under which additional property tendered to a trustee will not be added to the trust res.

23. What is the legal capacity required to be a trustee?

24. What is the legal effect of the creation of a "passive" trust?

25. How does property in a trust disclaimed by a beneficiary pass?

II.
(Value - 50%)

This part of the examination is two essay questions. Please refer to #7 on page 1 for guidance in formulating your discussion of these two essay questions.

1.

On January 1, 1996, T by written instrument stated that she was holding in an irrevocable trust to pay the income for life to her child, A, with remainder over in fee to such of A's heirs as A may appoint, the following property:

1. B/A
2. \$20,000 in an account in Z Bank
3. 200 shares AT&T stock (purchased in 1980 at \$20 per share but now worth \$50 per share)
4. 1996 Cadillac automobile.

On February 1, 1996, T told A: "I declare that I am holding \$12,000 in cash which is hidden in my mattress, in trust according to the terms of my trust instrument of January 1, 1996."

On October 1, 1996, T received from AT&T 100 shares as a stock dividend and \$1,000 cash dividends. She sold the stock on December 31, 1996 for \$30,000.

On January 1, 1997, T invested the \$30,000 received from the AT&T stock in 30,000 shares of Gold, Ltd. On April 1, 1997, the stock was worth 10 cents per share.

On December 1, 1996, T took the account in Z Bank, now worth \$25,000 and invested it in a \$20,000 face value corporate bond, paying 10 percent per year interest. The bond is redeemable on December 1, 1006. On December 31, 1996, T received \$2,000 interest.

On February 1, 1995, T had executed and delivered to L an Oil and Gas Lease covering B/A, in which T had reserved a 1/8th landowner's royalty. On February 1, 1996, T received \$5,000 in delay rentals. In March, 1996, a producing well was brought in by L. Since then, T has received \$100,000 in royalty.

At all times during the trust, A has lived on B/A, and continues to do so without paying rent.

On March 1, 1997, T took the \$12,000 from her mattress and loaned it to X&T company, a partnership, in which T was a full partner.

On April 2, 1997, A by written instrument appointed her grandchildren, under the trust power to the trust remainder.

On February 1, 1996, the car was rented to C for a three year term. After obtaining the car, C painted a large sign on each side of the car: "C's Taxi Service" and began to operate his business. Often T had reason to ride in C's cab, but never had money for the fare. C kept accounts and each month, with T's permission, simply subtracted the amount of unpaid fares from the monthly rental payment due the trust. A occasionally rode with C and noticed the arrangement, but said nothing. Subsequently, C sold the cab to P who knew nothing of the trust. T is personally insolvent.

Advise all parties of their rights and obligations with legal explanation.

2.

By intervivos instrument dated January 1, 1994, properly signed, acknowledged, delivered and recorded, Settlor, S, has transferred B/A to T and R as trustees to manage the trust property, and use the income to take care of her faithful horse, Dobbin, for its natural life. Dobbin was immediately delivered to the Boerne Horse Refuge. S also executed a will leaving a \$10,000 interest bearing certificate of deposit to this trust and the rest of her estate to her child and only heir, D. After the will was executed S amended the trust instrument to give a remainder interest in trust after the death of

Dobbin to the Boerne Horse Refuge forever but stated that this interest shall last only so long as the Refuge does not allow any jackasses to enter unto their premises. S died on April 1, 1995 and her will was immediately probated. On January 1, 1996, T died. On April 1, 1997, D came unto the Refuge to visit Dobbin riding her jackass named Reverter.

Advise all parties of their rights and obligation with legal explanation.