

approval of the spendthrift trust. (Page limit: one side of a page, writing on every other line)

3. Bonus question

-What is a conformed will? (Page limit: one half of one side of a page, writing on every other line)

Part B - Essay

(2 questions, 30-40 minutes each. Page limit for each question is in parentheses at the beginning of each question. For both questions, assume that the events occur in the hypothetical state of Happiness. If you do not know what the law of Happiness dictates about a situation, then discuss all possibilities.)

1. (Page limit is 5 sides of a page, writing on every other line.)

Your client, Earl Executor, seeks your advice about an estate. He shows you a will, dated May 1, 1985. The will is on a printed will form, and is signed by Terry Testator, but is not witnessed. There is a handwritten portion on the bottom of the will, signed by Terry, and dated May 1, 1990. It says "I hereby change the executor of my will, dated May 1, 1985 to Earl Executor." The May 1, 1985 document named Emma as executor. Emma is a childhood friend of Terry's. Underneath the change of executor, Testator wrote "I hereby cancel the will dated May 1, 1985 because my beloved Lonnie Lover is dead." This is also signed by Testator and dated May 1, 1994.

Other provisions of the May 1, 1985 document include :

A gift of "\$100,000 to each of my children, Connie and Caleb."

(A line is drawn through the 100,000 and the number 200,000 is written in. In the margin are the initials TT.)

A gift of "everything in my safety deposit box to my cat, Clarence."

A gift of "my Picasso paintings to my friend Ann Artist"

The rest of the estate is given to "my faithful friend, lover, and companion, Lonnie Lover."

There is also an *in terrorem* clause.

Earl also tells you that:

The safety deposit box contained a letter, addressed to Emma, asking her to take care of the cat. The box also contained stock certificates worth \$10,000.

The Picasso paintings were stolen and Terry purchased paintings by Mark Rothko.

Caleb ran over Terry with his car, and Terry was killed, after a fight about money on May 1, 1995. Caleb claims it was an accident.

Lonnie is not dead. Lonnie lived with Terry for 5 years, but disappeared in early 1994. Lonnie returned after Terry's death. Lonnie and Terry had a sexual relationship, and Lonnie controlled all of Terry's business arrangements during the time they were together. Lonnie promised to stay with Terry and to care for Terry.

Terry was married and never divorced. The spouse, "Spunky" has turned up and wants to share in the estate.

The value of the estate is \$5 million.

Emma and Connie are unhappy that the estate may go to Lonnie. Earl is uncertain about what to do. Advise Earl.

2. (Page limit is 3 sides of a page, writing on every other line.)

Stan Settlor established two trusts in his will, and named Ted, Tony and Trustpro as trustees of both trusts.

The first trust was called the "Wanda Support Trust" and provided that the income from the trust was payable for the support of Stan's wife, Wanda for her lifetime, with the remainder to be distributed to Stan's "relatives" at Wanda's death. The trust was funded with assets from Stan's estate, including Trustpro stock and a controlling ownership interest in S-Mart, the business that Stan established during his lifetime. The trustees were authorized to hold the Trustpro stock and were directed not to sell the S-Mart stock.

Stan's will also stated, "I hereby exercise my power of appointment over the principal of a trust established by my mother, Martha, in favor of my daughter Dora. She has promised to transfer the principal to the "Wanda Support Trust." Stan held a special testamentary power to appoint to the descendants of Martha.

The trustees did continue to hold the Trustpro stock, but the value of the stock is falling, and some of Stan's relatives are concerned. The value of the S-Mart stock is increasing, but the stock is not generating much income, and Wanda is claiming that she cannot maintain her luxurious lifestyle.

Exam continued on next page.

The second trust is the "Alien Life Form Trust" and directs the trustees to give the income to some organization that searches for alien life forms. Stan was convinced that he had seen and talked with visitors from other planets during his lifetime. This trust was to be funded with the profits from Stan's new business, "Stan's," which was established shortly before his death. Ted and Tony are the President and Chairman of the Board of "Stan's."

The trustees are concerned about the issues raised under the trusts. Discuss the issues.

End of exam.

WILLS, ESTATES AND TRUST
Answer Notes
Spring 1995

Short Answer

1. Changes
Wills and Estates:
UPC augmented estate/sliding scale dispensing power

Move to avoid probate
inter-vivos trusts
family wealth transfers - education
will substitutes

USRAP

Living wills/Durable powers

People live longer - pensions
Trusts:
Portfolio Theory - management

Pension funds growth
Social investing

Use of inter-vivos trusts
2. Spendthrift trust - disabling restraint

Pro Protect beneficiaries from creditors
Protect family wealth

Con Restraint on alienation
Preserves status quo of wealthy family
Allows avoid debt

Unless exceptions - violates public policy re: child support, alimony
3. Conformed will -
A will that is a copy with signature by someone other than the original signatories
including witnesses

Essay

1. 1985 document
Not holograph - part written, part printed unless can remove the written words and get a will

Does jurisdiction allow holographs? If not, pass by intestacy

Incorporation by reference - an republication by holographic codicil of 1990 and 1994.
We have reference to the document in existence at the time and intent to incorporate.

1994 holographic codicil - Dependent

Relative Revocation - mistake recited on the face of the document - may treat as not revoked

Alos - is the revocation effective? physical? holograph?

- C&C issue-partial physical revocaiton allowed? if so is the 200,000 plus initials a holographic codicil? No date, no language of transfer

- Cat- everthing in safety deposit box is fact doctrine - issue whether testamentry by nature

gift to cat void

is letter to Emma in box a gift and an honorary trust?

also, if honorary trust, RAP problem - cat life is not good

Artist - paintings

ademption by extinction

intent theory - Rothko paintings maybe

identity theory - nothing

- Caleb- Murder decedent - gets nothing or constructive trust

Accident or manslaughter - unclear

- Lonnie
- Undue influence
 - Susceptible Testator
 - Procuring cause of will
 - Unnatural disposition
 - not natural objects
 - Motive
 - Opportunity
 - Fiduciary Relationship
 - Fraud
 - Misrepresentation
 - Material fact

Justifiable reliance
Detriment

Breach of contract

Insane delusion

Spunky- Elect to take against will
Spousal share
Where does it come from --
pro rata
or -- community property

Challenge Will - Emma and Connie --
How effective is in terrorem clause? --
What will they lose?
Emma - standing as executor - previous will

2. Power - fraud on the power - invalid
semi-secret trust - invalid

Wanda Support -
Ok to retain Trustpro with authority but falling creates conflict issues and maybe
10b-5

S-mart -- problem typical should be able to pass some value to W.

Also -- duty to make a reasonable return on the investment

Administrative deviation
- invade corpus
- sell some stock

"Relatives" - is that a clear beneficiary for remainder

Aliens - insane delusion - make invalid, mental state of Stan. Is this possible, are
there any organizations? Can we do Cypres? Charitable? only if consider
scientific/educational RAP problem
Is there a residual corpus
Profits from future

Conflict with Ted and Tony

Also, where does remainder go--resulting trust problem