

ESTATE PLANNING

Professor Gerry W. Beyer

*Governor Preston E. Smith Regents Professor of Law
Texas Tech University School of Law*

INTESTACY, WILLS, AND TRUSTS PROBLEMS

200 points

Due September 13, 2007 at 10:00 a.m.

Before completing this assignment, read pages 22-74 of the casebook.

Answer the questions in this booklet under the law of your state. All relevant events and facts are governed by the law of your state unless the question expressly provides otherwise. You may select any state to use as “your state” in completing this assignment. I recommend that you select the state in which you intend to practice.

The point value for each question is indicated in brackets at the end of the question.

Extensions of the due date and time will *not* be granted. A penalty will be imposed of *4 points per hour* (or fraction thereof) that the assignment is late, not to exceed 40 points per 24 hour period.

Authority for Answers: If a box labeled “authority” appears in the question, you must fill-in the box with a citation to the case or statutory authority supporting your answer. If you are answering under Texas law, you may use short forms such as “Probate Code” or “Trust Code.” If you select another state, attach copies of the relevant authority on which you have clearly marked (e.g., by highlighting or underlining) the applicable language.

Collaboration on this (or any) assignment is strictly prohibited. You may not communicate with any person about the assignment in person, by phone, e-mail, text-messaging, instant messaging, radio or subspace transmissions, etc. You may, however, consult any written or electronic materials you wish.

Warning: Each incorrect answer on this assignment is the equivalent of malpractice and could subject you to personal liability as well as professional embarrassment.

INTESTATE SUCCESSION

Fact Pattern A.

Harold is married to Wilma and they have four children, Charles, Doris, Elvis, and Fergie. Neither Harold nor Wilma have children by other partners. Harold died intestate on August 15, 2007.

1. Harold owned a ranch inherited from his father. To how much of this ranch is Wilma entitled? Describe Wilma's interest fully. [3]

2. Harold owned 600 shares of stock in Megalon Corporation which he inherited from his aunt. To how many shares is Wilma entitled? State the number of shares. [3]

3. Wilma deposited her entire August 2007 paycheck for \$6,000 into a bank account solely in her name. Wilma has not spent any of this money and it has not earned any interest. To how much of this money is Wilma entitled? State the amount in dollars. [3]

Fact Pattern B.

Harold and Wilma were married. Neither Harold nor Wilma had any children. Both of Harold's parents are living. Harold died intestate on August 15, 2007.

4. Harold deposited his entire August 2007 paycheck for \$6,000 into a bank account solely in his name. Harold has not spent any of this money and it has not earned any interest. To how much of this money is Wilma entitled? State the amount in dollars. [3]

5. Harold had inherited a ranch from his uncle. To how much (if any) of this ranch is Harold's mother entitled? State the amount as a fraction or percentage. [3]

6. Harold had inherited a stamp collection from his grandfather. To how much of this collection is Wilma entitled? State the amount as a fraction or percentage. [3]

7. Harold owned a vacation home in Iceland which he inherited from his grandfather. The ownership of this home would be determined by what jurisdiction's law? [3]

8. Harold owned an iPod which he received as a gift from his grandmother which he kept in his vacation home in Tahiti. The ownership of the iPod would be determined by what jurisdiction's law? [3]

Fact Pattern C.

Harold is married to Wilma and they have four children, Laa-Laa, Po, Tinky-Winky, and Dipsy. Harold has a son, Wilbur, by a different partner. Wilma does not have a child by another partner. Harold died intestate on August 15, 2007. Wilma deposited her entire July 2007 paycheck for \$10,000 into a bank account solely in her name. Wilma has not spent any of this money and it has not earned any interest.

9. To how much of this paycheck is Wilma entitled? State the amount in dollars. [3]

10. To how much of the paycheck is Dipsy entitled? State the amount in dollars. [3]

11. To how much of the paycheck is Wilbur entitled? State the amount in dollars. [3]

Fact Pattern D.

Julie is unmarried and childless. Her Mother is still alive but her Father has already died. Mother and Father had three other children, Sister One, Sister Two, and Sister Three (funny names, eh?). Father had two children, Sam and Teresa, from a prior relationship. Julie dies intestate on August 15, 2007 with an estate worth \$800,000.

12. To how much of Julie's estate is Mother entitled? State the amount in dollars. [3]

13. To how much of Julie's estate is Sister One entitled? State the amount in dollars. [3]

14. To how much of Julie's estate is Sam entitled? State the amount in dollars. [3]

WILLS

15. Do the following clients have the legal capacity to execute a will? [10]

Bambi, a 17 year old unmarried woman who has had her disabilities of minority removed by a court of proper jurisdiction.

_____ Yes _____ No

Rambo, a 17 year old unmarried man who is currently serving in the Marines.

_____ Yes _____ No

Hannibal, a 30 year old unmarried man currently serving a life sentence in a maximum security prison.

_____ Yes _____ No

Brittany, a 17 year old woman who is legally married.

_____ Yes _____ No

Kevin, a 17 year old man who was married but who is currently divorced.

_____ Yes _____ No

Authority for all answers in this question: _____

16. Kevin Little is both physically and educationally able to sign his name to his will. Instead, being some eccentric, he signs his will with the following mark, “☞☞☞.” Is the will validly signed? [2]

17. How many witnesses are needed for a valid typewritten will? [2]

18. How many witnesses are needed for a valid will which is entirely written in the testator’s own handwriting? [2]

19. What is the minimum age to be a witness on a typewritten will? [2]

20. The testatrix does not tell the witnesses to her will that they are attesting to a will. Instead, she tells them that the document is a contract. Is the will validity attested? Briefly explain your answer. [3]

21. With regard to an otherwise valid will, Witness A attested on May 1, 2007 in Dallas and Witness B attested on August 1, 2007 in Lubbock. The witnesses have never met each other. Is the will validly attested? Briefly explain why or why not? [2]

22. With regard to an otherwise valid will, Testatrix signed the will on May 1, 2006 and the two witnesses attested on September 1, 2007 while Testatrix watched. The witnesses were not present when Testatrix signed the will. Is the will validly attested? Briefly explain why or why not? [2]

23. With regard to an otherwise valid will, Testatrix signed the will on May 1, 2007 while the witnesses watched in the office of Testatrix's attorney. Testatrix left to attend her son's soccer game. The witnesses attested a few minutes after Testatrix left. Is the will validly attested? Briefly explain why or why not? [2]

24. Absent other evidence or other facts, what is the impact of a witness to a will also being a beneficiary of that same will? [2]

Authority: _____

25. If no survival period is stated in the will, by how long must a beneficiary outlive the testator to be eligible to receive the property? State the time period and indicate whether the time period is in hours, days, months, or years. [2]

Authority: _____

26. In what statutory provision is the form for a self-proving affidavit found? [2]

Authority: _____

27. Attached to a properly executed and attested will, is a self-proving affidavit in the wrong form, improperly notarized, and forged. What are the consequences of the this botched affidavit? [3]

28. How quickly must a will beneficiary disclaim if the beneficiary does not want the decedent's property? State the time period, indicate whether the time period is in hours, days, or months, and state the time from which it begins to run. [2]

Authority: _____

Fact Pattern E.

Martha and Frank have three children, Art, Bill, and Charles. After Martha executed a valid will, Martha and Frank had twins, Doris and Elvis. Martha died with a

distributable probate estate worth \$500,000. The will contains no provision relevant to the questions asked below.

29. If Martha's will leaves her entire estate to Frank, to how much of Martha's estate is Elvis entitled? State the amount in dollars. [3]

30. If Martha's will leaves her entire estate to Lorraine, her best friend, to how much of Martha's estate is Elvis entitled? State the amount in dollars. [3]

31. If Martha's will leaves \$75,000 to Art and \$425,000 to Lorraine, her best friend, to how much of Martha's estate is Elvis entitled? State the amount in dollars. [3]

Fact Pattern F.

Pedro's valid will executed in 2000 left his entire estate to his four children, Alice, Bess, Carrie, and Desiree. Carrie died in 2004 survived by her two children, Roberto and Sarita. Pedro died in 2007 survived by Alice, Bess, Desiree, Roberto, and Sarita. Pedro's estate consists of \$400,000. Pedro was not married at the time of his death. The will contains no provision relevant to the questions asked below.

32. To how much of Pedro's estate is Alice entitled? State the amount in dollars. [3]

33. To how much of Pedro's estate is Sarita entitled? State the amount in dollars. [3]

34. Testator's valid will is silent about the requirement of bond for the dependent executor. Does the executor have to post bond? [3]

Authority: _____

35. To better effectuate intent, the Texas Rules of Evidence and the Texas Probate Code permit a testatrix to testify during the probate of her will as to her testamentary intent. True or False? Explain your answer briefly. [4]

TRUSTS

36. *Must* a trust be in writing? [2]

Authority: _____

37. *Must* a trust be witnessed? [2]

Authority: _____

38. *Must* a trust be acknowledged? [2]

Authority: _____

39. *Should* a trust be acknowledged and why or why not? [3]

40. Settlor's valid trust is silent about the requirement of bond for the trustee, an individual named Sam Smith. Does Sam have to post bond? [2]

Authority: _____

41. Settlor's valid trust is silent about the requirement of bond for the trustee, Bank of America. Does Bank of America have to post bond? [2]

Authority: _____

42. Settlor's valid inter vivos trust does not contain a provision addressing whether Settlor may revoke the trust. May Settlor revoke the trust? [2]

Authority: _____

Fact Pattern G.

A valid trust provides that Ivan is to receive all trust income until he dies or 2025, whichever comes first. Thereafter, the settlor directed that all trust property be handed over to the American Red Cross. In 2006, the trustee purchased three items for the trust which, under the applicable standard of care, were proper investments: a parcel of real property for \$200,000, 10,000 shares of Mothra Corporation stock, and the copyright to a book. In July 2007, the trustee sold the real property for \$275,000,

received a \$2,000 cash dividend on the Mothra stock along with a stock dividend consisting of 100 shares, and received a \$6,000 royalty payment on the book. The trustee seeks your advice in determining the correct amount to distribute to Ivan.

43. To how much of the proceeds of the sale of real property is Ivan entitled? State the amount in dollars. [3]

Authority: _____

44. To how much of the cash dividend on the Mothra stock is Ivan entitled? State the amount in dollars. [3]

Authority: _____

45. To how much of the stock dividend on the Mothra stock is Ivan entitled? State the number of shares. [3]

Authority: _____

46. To how much of the book royalty payment is Ivan entitled? State the amount in dollars. [3]

Authority: _____

THE “NEW” LAWS¹

47. What is the new provision which provides a procedure for an unmarried sperm donor to be considered the father of a child born by artificial insemination with his sperm? State both the Code and the section number. [3]

48. What is the new provision which could be called the “bad parent disinheritance” provision which may prevent parents from inheriting from their children under certain circumstances. State both the Code and the section number. [3]

49. What type of will may a Texan no longer make on or after September 1, 2007? [3]

50. What section of the Probate Code was amended to prevent the so called “Nash-problem” from arising again? [3]

51. What obligation of a decedent now survives the decedent’s death that did not do so prior to September 1, 2007? [3]

52. In Wills & Trusts, you learned about the duty of a trustee to keep trust beneficiaries reasonably informed about the trust and its administration under the common law

¹ Most of the probate-related changes impact the administration of decedent’s estates. If you have already taken Texas Estate Administration, you should review the relevant changes.

and Trust Code § 113.060. Which of the following *best* describes the current status of this duty? Circle the best answer. [3]

- A. No change.
- B. The duty to keep the beneficiaries informed was repealed.
- C. The statutory duty to keep the beneficiaries was repealed but the common law duty remains.
- D. A mandatory 20 year prison term is imposed if a trustee does not send the beneficiaries an accounting at least once per year.

53. Is it correct that a settlor may not waive the duty against self-dealing if the trustee is a corporation? [3]

_____ Yes _____ No

54. A trustee may terminate a trust in certain circumstances if the trust property is valued below what dollar amount? [3]

55. What section of the Probate Code now allows a court to void a marriage even after one of the spouses is dead and thus prevent inheritance by the surviving spouse? [3]

WILL ANALYSIS

Carefully study the will reproduced on the next page and list the corrections, changes, additions, or deletions you would recommend. Accompany each item with a *brief* explanation supporting your recommendation. You may list up to 10 suggestions. Assume that the will is properly dated, signed, attested, and followed by a valid self-proving affidavit. If you have more than ten suggestions, you must prioritize and list the suggestions which are most important or significant. [24]

Last Will of Brenda Schneider

I, Brenda Schnieder, a resident of Lubbock, Texas, declare that this is my last will and I revoke all prior wills and codicils.

I am not married and I have never been married.

My parents are deceased and I have one brother, William Schnieder.

I currently have one child, Laura Schnieder who was born on April 1, 1985. The father of this child is Kevin Nader who is deceased.

I leave all my property to Laura Schnieder. If she dies before I die and she has at least one descendant who survives me, my property is to be divided among her descendants who survive me, per capita with representation.

If I have no surviving descendants, I leave my property as follows:

- My coin collection to my cousin, John, if he survives me by 60 days.
- My favorite painting to my niece, Carol Schnieder. If Carol does not survive me by 60 days, the ring goes to my friend, Teresa Martinez.
- My account at American State Bank #45-43948-3498 in the names of “Brenda Schnieder payable on death to Teresa Martinez” to my brother William Schnieder, if he survives me by 60 days.
- Five thousand dollars (\$500) to the Lubbock chapter of the American Heart Association.
- All my collections of comic books, stamps, baseball cards, and coins to my brother William Schnieder, if he survives me by 60 days.
- Five thousand dollars (\$5,000) to William Schnieder, if he survives me by 60 days, with the hope he will use the money for Carol Schnieder’s college education.

I name William Schnieder as the independent executor of this will. He is to serve without bond and without compensation. If he cannot serve, I name Nancy Hernandez as my independent executor.

A. _____

B. _____

C. _____

D. _____

E. _____

F. _____

G. _____

H. _____

I. _____

J. _____

56. Match the following will provisions with the appropriate description, explanation, or recommendation. **Each choice may be used only once.** [20]

- | | |
|---|---------------------------------------|
| _____ “This will is executed in duplicate originals.” | A. To prevent satisfaction. |
| _____ “If any beneficiary under this will contests this will in any manner, all benefits given to the contesting beneficiary are revoked and shall pass to George Smith.” | B. Express abatement order. |
| _____ “My executor is to pay any and all encumbrances on any property passing to beneficiaries of specific gifts.” | C. Unitrust provision. |
| _____ “No gift of any kind that I make under this will to any beneficiary shall be reduced, either fully or partially, by any inter vivos gift I have made or will make to that beneficiary.” | D. Create an election. |
| _____ “I give \$10,000 from my account number 5768-4832 at Enterprise Bank to Gregory Jenkins.” | E. <i>In terrorem</i> provision. |
| _____ “It is my intention to dispose of my entire interest in my separate property and also to dispose of the entire interest of both my Husband and myself in our community property.” | F. Exoneration. |
| _____ “I direct that my federal estate and gift taxes be paid from the following property of my estate in the following order: (1) accounts at Buffalo Bank, (2) real property, (3) personal property.” | G. Demonstrative legacy. |
| _____ “I direct that my debts be paid from the following property of my estate in the following order: (1) accounts at Citizens Bank, (2) real property, (3) personal property.” | H. Unwise practice. |
| _____ “I direct that there shall be no action in the probate court in the settlement of my estate other than the probating and recording of this will, and the return of an inventory, appraisalment and list of claims of the estate.” | I. Prevent apportionment. |
| _____ “The trustee shall distribute 5% of the value of the trust property to Janet Miller on January 10 th of each year. | J. Create independent administration. |

End of Intestacy, Wills, and Trusts Problems