

WILLS & ESTATES

Spring 2006
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Sample Essay Questions

Question 1.

Dee C. Dent's valid will in relevant part reads as follows:

Disposition of Estate

- A. I leave my collection of empty sardine cans to my beloved husband, Herman. If Herman predeceases me, I leave the collection to the Sardine Association of America.
- B. I leave \$10,000 to my wonderful son, Oscar.
- C. I leave \$40,000 to my siblings, share and share alike.
- D. I leave \$150,000 to my best friend, Steve Austin.
- E. All the rest, residue, and remainder I leave to the Ground Zero Society.

Dee died on April 1, 2005 while giving birth to a second son, Felix. Herman had a heart attack and died about nine months earlier. The sardine can collection was sold by Dee six months before her death for \$50,000. Dee has four siblings when the will was executed but only Sarah survived Dee. All siblings were (are) married and have surviving children. After paying all debts and administration expenses, \$100,000 remains for distribution.

In an organized manner, fully discuss the issues raised by these facts and propose a detailed distribution plan for Dee's estate under Texas law. Explain who will receive what and why.

Question 2.

David executed a typewritten will on January 2, 2000. In the will he made several specific bequests and left \$20,000 outright to his wife. The rest of the estate was left to the trustee of an inter vivos trust. This trust was validly created in 1995 by David. His wife and daughter, Doris, were the beneficiaries. In 2003 David amended the trust removing his wife as a beneficiary

since she had just won a multi-million dollar lottery. David died on November 17, 2005 with a distributable estate of \$50,000.

What is the effect of the following under Texas law? Explain your answers fully. Each sub-question is independent, e.g., facts in A do not apply to B, etc.

A. On April 1, 2005 David divorced his wife.

B. The change of the trust's beneficiary in 2003.

C. In a drunken haze after learning of his 98 grade on the summer 2005 Texas Bar Exam, David roasted his will in the fireplace believing it to be a giant log.

D. One of the general bequests reads, "I leave \$1,000 to Professor Kingsfield." A heavy dark line is drawn through these words and the phrase "Get lost" is written next to it.

E. The will contained a self-proving affidavit which was properly signed by two witnesses and David. The will was only signed by David.

F. Doris has evidence which proves that David left the \$20,000 to his wife only because she threatened to withhold all affections and tell his boss he was a Iraqi spy.

Question 3.¹

In 1980, Simmons executed a typed and properly witnessed will leaving all of his estate, both real and personal, to his brother, John. In 1991, Simmons married Kathy and shortly thereafter prepared an unwitnessed holographic instrument saying in it that it was a codicil to his original 1980 will. In the 1991 instrument, Simmons left one-half of his property, both real and personal, to his wife Kathy. Kathy consults you and asks your advice as to whether the 1991 instrument is a valid codicil to Simmons's 1980 will. What advice would you give Kathy and why?

Question 4.

Rusty executed a valid will disposing of his entire estate to his mother. Subsequently, Rusty married Stella. He executed another valid will disposing of his entire estate to Stella and expressly revoking his prior will. A few months later, Stella left Rusty and ran away with her hairdresser. In a state of rage, Rusty scratched through his second will, balled it up and shoved it

¹ Questions 3-9 are based on previous Texas Bar Examination questions.

into his desk drawer in disgust. A few months later Stella returned to Rusty and begged for his forgiveness. He accepted her back. Several months later, Stella left Rusty again to rejoin her hairdresser. In a deep state of depression, Rusty walked into the sea and drowned.

Rusty is survived by Stella, his mother and father, as nearest of kin. His principal estate consists of \$600,000 in stocks and bonds he inherited from his great-uncle. How should Rusty's estate be distributed? Who gets what, and why?

Question 5.

Henry's will directs his executor to divide all monies standing on deposit in his name in any bank and to pay this equally to his two grandchildren. He bequeathed the residue of his estate to his church. Prior to his death Henry, fearing the fall of all banks and savings institutions, withdraws all his money from his bank accounts and buys \$200,000 worth of U.S. Treasury bonds. Upon Henry's death, who is entitled to the Treasury bonds? Give reasons.

Question 6.

Robert Smith dies intestate in December 1989. He is survived by his wife, Phyllis; two granddaughters, Mary and Linda (the children of his deceased son Mark, from a prior marriage), and by a grandson, William (the child of Robert and Phyllis's deceased daughter, Brenda). Robert and Phyllis own community property worth \$200,000. Robert owned no separate property. How should the estate be distributed? Give reasons for your answer.

Question 7.

Using the facts from the question above, assume that Brenda actually survived. How should the estate be distributed?

Question 8.

Sam and his wife Mary had one child, James. Mary died in 1980. Sam married Veronica in 1982, and two years later they had twin boys, Tim and Bill. In 1985 they adopted a five-year-old girl, Sarah. In June 1990, Sam and Veronica died in an automobile accident. In November 1990, Tim died from cancer. Tim's estate consists of \$600,000 he received as settlement of a wrongful death claim from his parent's accident. How should Tim's estate be distributed?

Question 9.

Daisy, a widow, dies leaving a valid will that devises “all my property in equal shares to my son (Henry), my sister (Margaret), and my nephew (Sam).” All of the above parties survive Daisy. Daisy is also survived by Fred (Henry’s son and Daisy’s only grandchild). Three months after Daisy’s death, Henry files a written, signed, and notarized instrument with the probate court (with a copy delivered to Daisy’s independent executor) that states: “I hereby renounce and disclaim any interest passing to me under the will of my mother, Daisy Mae Franks.” Is Fred entitled to any of Daisy’s estate? Give reasons for your answer.

Question 10.²

Tess was a widow with two adult children: Sam, from whom Tess was estranged, and Donna, to whom Tess was devoted. In 1992, Tess validly executed a typewritten will containing the following provisions:

- A. My Bigco stock to my friend, Fred.
- B. The residue of my estate to my daughter, Donna.

During the next few years Tess and Sam reconciled. In 1995, Tess prepared another typewritten will containing the following provisions:

- A. I hereby revoke all prior wills.
- B. My Bigco stock to my son, Sam.
- C. The residue of my estate to my daughter, Donna.

Tess took this will to the house of Wit, a neighbor, declared to Wit that it was her will, and signed the will in Wit’s presence. Wit then signed the will as witness, although he did not know its contents.

Tess next took the will to the house of Ness, another neighbor, and asked Ness to “witness this paper.” Ness signed the will as witness, although he did not understand that it was a will.

After Tess’s death, both wills were found in her safe deposit box. The 1992 will had a large “X” drawn across all of its pages. The 1995 will was unmarred.

Tess is survived by Donna, Sam and Fred. Her net estate consisted of her Bigco, stock (worth \$400,000) and \$600,000 in cash.

² Adapted from California Bar Examination Question 6 (July 1996).

1. Is Tess's 1995 will valid? Discuss.
2. How should Tess's estate be distributed, assuming Tess's 1995 will is not valid? Discuss.

Question 11.³

In 1994, Testator (T), a widow with two adult children, executed a typewritten will providing:

1. \$100,000 to Son (S).
2. My farm to Friend One (F1) and Friend Two (F2), share and share alike.
3. The residue of my estate to Daughter (D).

T signed the will in the presence of S and Witness (W), each of whom, being present at the same time, witnessed the signing, understood the document was T's will, and signed as a witness. T had testamentary capacity and was not subject to duress, menace, fraud, undue influence, coercion, mistake or other pernicious influence.

In 1997, T and D were killed instantly in an automobile collision. T's will was found in her safe deposit box with a line drawn through part of paragraph 2, as follows:

2. My farm to Friend One (F1) ~~and Friend Two (F2) share and share alike.~~

D was survived by Husband (H) but no issue. She did not have a will. T's estate consisted of \$100,000 cash, her farm (worth \$50,000), and other property worth \$100,000.

1. Was T's will validly executed? Discuss.
2. Assume T's will was validly executed. How should T's estate be distributed? Discuss.

³ Adapted from California Bar Examination Question 6 (Feb. 1998).