

Decedents' Estates and Trusts

Final Examination

Professor Claxton

July 17, 1989

This examination is composed of five parts, most of which have sub-parts. A recommended time period has been provided for each of the five parts. The total of the recommended time periods is 3 1/2 hours. An additional 15 minutes of unallocated time has been added, bringing the overall time limit for this examination to 3 hours and 45 minutes. I urge you to use the unallocated 15 minutes for a quick preliminary reading of the entire examination before you begin work on Part I. To repeat, the overall time limit for this examination is 3 hours and 45 minutes.

My notes indicate that in early June I promised the class that a copy of the table of consanguinity showing degrees of family relationships would be made available to you for use in connection with the final examination. In fulfillment of that promise, you will find a copy of the table attached to the end of this examination. The fact that you have been given a copy of the table does not necessarily mean that you will have any need for it in responding to the various parts of the examination. The table simply is available if you conclude that, for some reason, it might be useful to you.

I

(10 minutes)

John D. Bockefeller, multi-millionaire philanthropist and sportsman, wishes to execute a will that will establish a testamentary trust containing the following key elements:

Income to my wife, Ima Bockefeller, for life;
then the income to my three sons, Duke,
Vanderbilt, and Stanford, for their lives;
then the income to my grandchildren for their
lives; and upon the death of the last of my
grandchildren the principal to be
distributed to my great-grandchildren.

As Mr. Bockefeller's attorney, what advice would you give him? Explain your advice.

II

(45 minutes)

SPECIAL NOTE: In Part II-A, the decedent (Albert B. Barker) should be treated as having died intestate. In Part II-B and Part II-B(1) the same decedent should be treated as having died testate.

A. Albert B. ("Big Al") Barker was known far and wide as the Taxidermy King of America. A self-taught taxidermist, he was an artist in his field. Beginning with a very small business in a cabin in the mountains of the state of Slobovia, he eventually owned a chain of "taxidermy emporiums" (Big Al's term) that spread across all fifty states. His advertising slogan ("Come to Big Al's Place -- We Gut 'Em and Stuff 'Em") earned a permanent place in the annals of American advertising lore and legend.

Big Al liked a good game of poker, but he enjoyed playing the stock market even more. As he put it, "Any man who likes to gamble at cards would love the stock market. It's more unpredictable than poker and not as messy as Russian roulette."

Big Al's closest friend and best poker buddy was Ricardo Williams, who was the first person Big Al hired to assist him in his taxidermy business. Between 1978 and 1980 Big Al made four large purchases of stock in Megaworld, Inc. He treated these purchases differently than any of his other stock purchases. In connection with all four of the purchases in question, Big Al executed a written declaration of trust. The four written instruments were identical except for the dates. The terms of the instruments provided that Big Al would retain the following rights and powers in connection with the stock:

1. The right to receive all cash dividends.
2. The right to sell or otherwise deal with the stock. Upon any sale, the trust which contained that particular stock would be terminated as to the stock that was sold.
3. The right to receive the proceeds of the sale of any stock.
4. The right to change the identity of the person who would become the beneficiary of the trusts at the time of Big Al's death. Such a change would be accomplished by a written notice to Megaworld, Inc. on a company form. There was no provision for a change of beneficiary by will.
5. The power to revoke the four trusts.

All the instruments further provided that the person who would become the sole beneficiary of the trusts upon Big Al's death (and be entitled to take the corpus of each trust) was Ricardo Williams. If Williams died before Big Al, the trusts would be revoked.

Big Al died intestate in 1988, leaving chaos in the wake of his funeral procession. The administrator of his estate has brought an action to have the four trusts declared invalid. What result and why? If the trusts are declared invalid, what will be the consequences?

B. Big Al Barker died survived by one daughter, Alice ("Little Al") Barker. Little Al likes to refer to herself as "one wild and crazy lady." She never had much respect for Big Al's chosen profession, but from the time that she first learned to recognize the sound of a cash register she made profligate use of Big Al's money. In comparing herself to her father, Little Al was wonderfully descriptive. "My daddy," Little Al would say, "likes dead animals from the woods. I like live animals from Manhattan."

After Big Al's death, Little Al was outraged to learn that under her father's will everything that she received was incorporated into what the lawyers informed her was a Claflin trust. (Little Al's retort: "I don't know anybody named Claflin.") She will receive a significant annual income from the trust, but the corpus of the trust cannot be touched by her until she is 30 years old. Little Al currently is 22.

Little Al is extremely anxious to participate in what she considers to be some outstanding business opportunities presented to her by a very suave and gentlemanly investment analyst, Mr. Peter Orchid. Mr. Orchid has made substantial investments in the Cincinnati, Ohio, area and in the New York City borough of Staten Island. Mr. Orchid has assured Little Al that the odds for success on the investment opportunities which he has presented to her are excellent. "Honey," said Mr. Orchid, "I would not want you to put your money anywhere that I wouldn't put mine. These investments are a sure thing. I believe in them so much that I just sold my last Rolls Royce so that I could get a little more cash down on the action."

Little Al has brought suit against the trustee seeking immediate termination of the trust and asking that the corpus be turned over to her. What result and why?

B(1). Assume that the trust of which Little Al is the beneficiary contains a spendthrift clause that applies to the annual income she will receive from the trust between now and the time she reaches the age of 30. Would this fact affect your response to Part II-B? Explain.

III
(35 minutes)

A. Aaron makes the following conveyance of Blackacre:

To Bruce for life and if Bruce is survived by his wife, Claudia, and Claudia shall not have remarried in the five years after Bruce's death, then at the end of those five years to Claudia and her heirs.

What interest in Blackacre, if any, is held by Aaron? By Bruce? By Claudia? Explain your response to the extent you consider appropriate.

B. Aaron makes the following conveyance of Blackacre:

To Bruce for life, remainder to Claudia and her heirs if, but only if, Claudia attains the age of 21 years.

What interest in Blackacre, if any, is held by Aaron? By Bruce? By Claudia? Explain your response to the extent you consider appropriate.

C. Aaron makes the following conveyance of Blackacre:

To Bruce for life, remainder to Claudia and her heirs, but if Claudia dies before Bruce then to Dawn and her heirs.

What interest in Blackacre, if any, is held by Aaron? By Bruce? By Claudia? By Dawn? Explain your response to the extent you consider appropriate.

D. Aaron makes the following conveyance of Blackacre:

To Bruce for life, remainder to Claudia and her heirs, but the conveyance is upon the express condition that if Blackacre is used for the sale of intoxicating liquors, then Aaron automatically shall have the power to repossess his former estate.

What interest in Blackacre, if any, is held by Aaron? By Bruce? By Claudia? Explain your response to the extent you consider appropriate.

E. Aaron makes the following conveyance of Blackacre:

To Bruce and his heirs twenty years from the date of this deed.

What interest in Blackacre, if any, is held by Aaron? By Bruce? Explain your response to the extent you consider appropriate.

M E M O R A N D U M

TO: Very Junior Associate
FROM: Extremely Senior Partner
SUBJECT: Estate of Mrs. Annie Mae Oakley

Mrs. Annie Mae Oakley, the only child of the world-famous Colonel W. W. ("Wild Will") Hickock, died earlier this year at the age of 94. Mrs. Oakley's father, Wild Will, parlayed his fame as the leader of the charge up San Carlos Hill during the Spanish-American War into a fabulous career in politics and finance. He served two terms as the governor of the state of Slobovia, but declined the pleas of his party to run for president of the United States in order to devote himself to a variety of business and investment enterprises. By 1920, Wild Will's net worth, by conservative estimates, was five hundred million dollars (and that was real money in those days).

Annie Mae married Charles H. ("Chuckie") Oakley in 1918. Chuckie's primary talents were alcohol consumption and big-game hunting, and the marriage was not a happy one. It did produce three sons, however. Their names were William Hickock ("Little Will") Oakley, Horace Charles Oakley, and Herbert Hoover Oakley. (Herbert Hoover was a close friend of the Oakleys. He was serving as Secretary of Commerce at the time of the birth of Herbert Hoover Oakley.) More will be heard of the three sons of Annie Mae Oakley later in this memorandum.

Chuckie Oakley died in a hunting accident while on safari in Africa in 1932. Having drunk copious quantities of whiskey throughout a hot afternoon, he was unprepared for the sudden charge of an enraged bull elephant. He fired six shots from his rifle at the elephant at point-blank range, but the only thing he hit was a passing zebra. Chuckie was trampled to death. He died intestate, which made no difference in his case since even his most personal possessions actually were the property of Annie Mae. Colonel Hickock, unable to tolerate the shock of Franklin Roosevelt's third successful campaign for the presidency, died of heart failure in November of 1940. With the exception of three charities, Annie Mae was the sole beneficiary named in his will. At the age of 45, Annie Mae Oakley became one of the foremost financial and political power brokers in America.

Much of the last half of Annie Mae's life was devoted to the fervent support of the political career of Richard M. Nixon. Disappointed at the playboy lifestyles of her own three children, she came to view Nixon as a surrogate son. In private, she often said that Nixon was a bit of a twerp, but she admired him because in certain important aspects of his personality he reminded her of her fabled father, Wild Will. "My daddy," said Annie Mae, "knew when to lie and he knew when to kick rear ends, and he wasn't afraid to do either one. My boy Dick is exactly the same way."

President Nixon's fall from power in 1974 crushed Annie Mae's spirit, and she never fully recovered. During the last fifteen years of her life she became increasingly obsessed with the disposition of her estate, which by the time of her death was valued at no less than two billion dollars. For legal advice Annie Mae came to rely totally on an attorney named R. Bertram Beaumont, an elderly gentleman whose principal qualification was that as a young man he had served as a flunky for Colonel Hickock. By 1979 the only person with whom Annie Mae had more contact than with attorney Beaumont was a live-in nurse, one

Lucretia Borgiala. From 1979 until Annie Mae died this year, Lucretia attended to Annie Mae's every need (including providing Annie Mae with her daily ration of gin). Annie Mae's sons visited her very infrequently, and the visits tended to be strained. Annie Mae gave each of them a large annual allowance, and she never let them forget that they were financially dependent on her. Annie Mae referred to her three sons in their presence as "chips off the old Chuckie."

Beginning in 1979, Annie Mae executed a series of wills. All but one of these wills were ordinary attested wills, prepared with the assistance of Bertram Beaumont. The first will (the 1979 will) contained small bequests to assorted relatives, and divided the very large residue of her estate equally among the three sons. There is no dispute that the 1979 will was executed properly. In 1981 Annie executed another will. The 1981 will purported to revoke all prior wills. It entirely omitted any reference to Annie Mae's oldest son, William Hickock Oakley. The two witnesses to the 1981 will observed Annie Mae as she signed the will while she was sitting up in her bed. The witnesses then moved across Annie Mae's very large bedroom to a desk in a small alcove in one corner of the room. The desk was partially obscured from Annie Mae's view. With their backs to Annie Mae, the witnesses placed their signatures on the will. Bertram Beaumont was sitting at the table as they signed. In 1983 Annie Mae wrote the words "This will is no good" across every page of the 1981 will. She then asked that Bertram Beaumont immediately present himself at her home, where she executed a third will (the 1983 will) which contained modest bequests to all three sons but made Lucretia Borgiala the principal beneficiary of Annie Mae's estate. The 1983 will purported to revoke all prior wills and contained a "no contest" clause which stated that any beneficiary who sought to contest the will automatically would forfeit all rights under it. Shortly after the 1983 will was executed, Bertram Beaumont and Lucretia Borgiala were married. Lucretia, however, continued to live in Annie Mae's home and to provide around-the-clock care to her employer.

William Hickock Oakley committed suicide in 1985. His death was followed a year later by the death of Horace Charles Oakley, who fell into the water while bass fishing, hit his head on a stump, and drowned. The fish got away.

Finally, in January of 1989, Annie Mae wrote a document in her own hand, the key portion of which is set forth below:

This document is my true last will and testament. All previous documents that I have signed as my will are to be treated as revoked. I am old and sick. I do not know who my real friends are, if any, and I know that none of my sons ever loved me. I am confused, and I do not know who should take my property when I die. Furthermore, I do not care. Through my talks with that leech, R. Bertram Beaumont, I understand the concept of intestate succession. I do hereby declare that my estate should be distributed according to the laws of intestate succession of the state of Slobovia. Perhaps this will mean that my third son, Herbert Hoover Oakley, will take everything, but I do not think so. In any case, whatever will be will be.

Annie Mae called two servants from the kitchen to her room, informed them that she wanted them to serve as witnesses to her will, and proceeded to sign the 1989 will in their presence. They then signed the will as witnesses in Annie Mae's presence. The servants watched as Annie Mae placed the will inside a

hidden compartment in one of the posts of her giant bed. Annie Mae then swore them to secrecy, without giving them any instructions regarding what to do with the 1989 will after she died.

Annie Mae died on March 1. On April 15 her only surviving son, Herbert Hoover Oakley, died suddenly during a visit to the Mustang Ranch in Nevada. His last words, spoken with passion, were "Happy at last." Three days after the death of Herbert Hoover Oakley, the two kitchen servants who had served as witnesses for Annie Mae's 1989 will retrieved the will from Annie Mae's bed and contacted a grandson of William Hickock Oakley, a young man named Wyatt Hickock Oakley who graduated from the United States Military Academy in 1988. He now is serving as a lieutenant in the U.S. Army at Fort Bliss, Texas. The servants had heard of Lieutenant Oakley through a casual remark made a couple of years earlier by Lucretia Borgiala Beaumont, to this effect: "Little Will's grandson is the only one in the whole family except the old lady who has any backbone, and the kid's mother never has let him get near the rest of those crazy Oakleys. The old lady has never even seen him, and probably has forgotten that he exists."

Lieutenant Wyatt Hickock Oakley is the only lineal descendant of William Hickock Oakley. Horace Charles Oakley had one son and one daughter. The son, Steven Charles Oakley, is still alive. He is "between jobs" in Columbia, South Carolina. Horace's daughter, Peggy Sue, got married, had two children in quick succession, and died young. Peggy Sue's two children, the only grandchildren of Horace Charles Oakley, were named Bobby Ray Plunkett and Sally Sue Plunkett. Sally Sue lives with her father and stepmother in a mobile home in northern Florida. Bobby Ray Plunkett died at the age of two when he fell into a well, a sad event that became the topic of a television special by Geraldo Rivera. Herbert Hoover Oakley left no lineal descendants.

William Hickock Oakley, Horace Charles Oakley, and Herbert Hoover Oakley all died intestate. William and Horace were divorced at the time of their deaths. Herbert never married.

Lieutenant Wyatt Hickock Oakley contacted this law firm pursuant to the recommendation of another officer who serves with Lieutenant Oakley at Fort Bliss. The information contained in this memorandum was gathered with the assistance of Lieutenant Oakley.

Your assignment is to prepare a memorandum analyzing all legal issues surrounding the disposition of the property composing the estate of Mrs. Annie Mae Oakley. You are to rely on general principles and concepts of the law of decedents' estates, rather than on any specific statutory framework. Your analysis will become the basis for the firm's decision regarding whether to accept Lieutenant Oakley as a client.

V
(25 minutes)

Please define and discuss (to the extent that you consider appropriate within the time period available) any five of the six terms that follow. Indicate specifically which term you intend to omit.

1. Ademption by Extinction
2. Cy Pres
3. Doctrine of Worthier Title
4. Nuncupative Will
5. Power of Appointment
6. Totten Trust

