

READ CAREFULLY

Name (Please Print) _____

DO NOT WRITE YOUR EXAMINATION NUMBER ON THIS PAGE

DECEDENTS' ESTATES AND TRUSTS

Final Examination

May 14, 1992

Professor Claxton

This examination is composed of twelve parts. It has an overall time limit of four hours. YOU MUST NOT EXCEED THE OVERALL TIME LIMIT. When you complete the examination, PLEASE HAND IN YOUR ANSWERS AND THE COVER SHEET (PAGE A) THAT NOW IS IN FRONT OF YOU. The cover sheet is to be placed in a separate box from the box in which you will place your answers. Your name should be printed on the cover sheet. Your examination number should appear only on your answers.

It is important that you follow these instructions carefully. TO REPEAT:

1. You are to return the cover sheet that now is before you.
2. Your name should be printed on the cover sheet (Page A).
3. The cover sheet is to be placed in a separate box from the box in which your answers will be placed.
4. DO put your examination number on your answers, but DO NOT put your examination number on the cover sheet.

Finally, please note that you are to write each answer ONLY on the front of the two pages that are provided for each response. For example, Part 1 is to be answered only on the front of pages 1 and 2, Part 2 on the front of pages 3 and 4, etc.

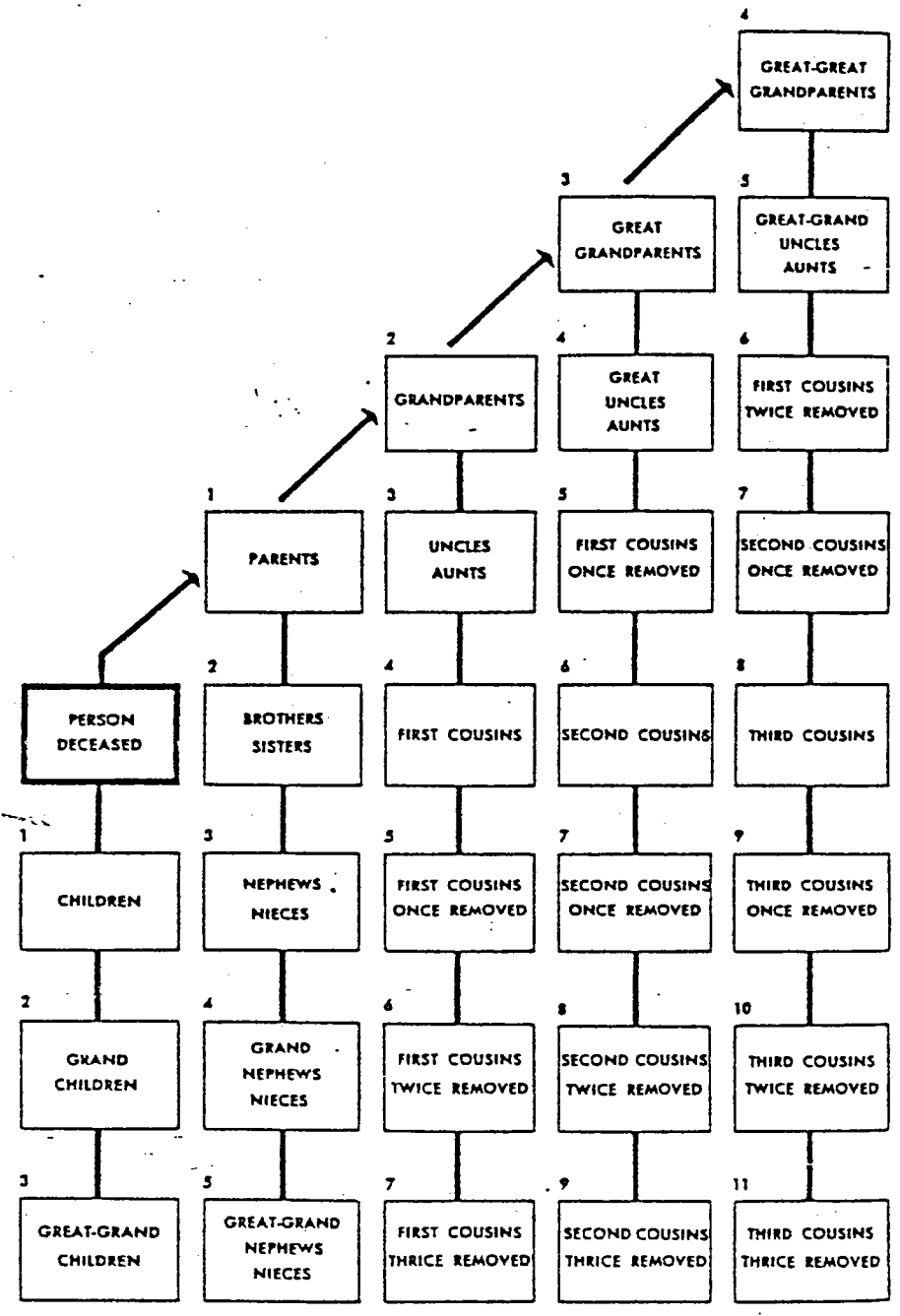
I suggest that you quickly scan the entire examination before you begin writing. Particularly note page B, dealing with your use of the statutory supplement. Also, note that a copy of the Table of Consanguinity is on page C. It is up to each student to decide whether he or she needs to make reference to the Table.

Walter F. George School Of Law
Faculty Offices

MEMORANDUM TO: All Members of the D.E. & T. Class
FROM: Joseph E. Claxton
DATE: May 4, 1992
SUBJECT: Use of Your Statutory Supplement
During the Examination

1. You are free to bring your statutory supplement to the examination.
2. You are free to write anything from any source in the supplement, as long as you write the material in your own hand. I assume that no one is likely to find this instruction unclear, but if you do see me.
3. Only medical reasons will be a justification for a deviation from item 2 (above). In the event of such a problem, see me.

IF THE CONDITION OF YOUR SUPPLEMENT IS NOT IN COMPLIANCE WITH THE TERMS OF THIS MEMORANDUM, PLEASE PUT YOUR SUPPLEMENT ON THE DESK AT THE FRONT OF THE ROOM AND CONTINUE WORKING ON YOUR EXAMINATION. YOU CAN PICK UP YOUR SUPPLEMENT WHEN YOU COMPLETE THE EXAMINATION.



Part 1

[A] is a recent graduate of the Harvard Law School and a newly-hired associate in the nationally-known law firm of Prince and Appalling. [A] is the beneficiary of a Claflin trust, and is quite irritated by the standard restriction inherent in such a trust. [A] has decided to use her own legal talents to "break" the Claflin trust. She will rely on the cy pres doctrine, which she plans to research thoroughly as soon as possible. Discuss [A's] chances of success in her effort to break the trust.

Part 2

In the problem set forth below, circle the letter (A, B, C, D, or E) next to the answer that you consider to be the most correct. Then explain your choice of an answer.

An anti-lapse statute

- A. Governs the treatment of a check written by an individual who dies before the check is deposited by the payee.
- B. Limits the application of generation-skipping tax treatments to specific categories of lineal and collateral relatives.
- C. Insures that collaterals to the fifth degree may inherit pursuant to the standard tests of intestate succession.
- D. Insures that there will be no time gap between the occurrence of the event causing a contingent remainder to vest and the actual vesting of the remainder.
- E. Provides for the distribution of property designated for will beneficiaries who are within certain categories of relationships to the testator and who die prior to the death of the testator.

Part 3

A potential new client, [A], tells you the following story:

My father died last month. He had no will. In 1986 he gave my brother, [B], a 40-acre portion of land with a small house on it. This portion of land is known in the family as Northfork. I believe that my father surely must have intended for Northfork to be part of [B's] inheritance, but now [B] is saying that he is entitled to half of everything that Dad owned when he died. That just isn't fair. [B] should not get Northfork plus half of everything else, too. Can you help me?

How would you respond to your potential new client, [A]?

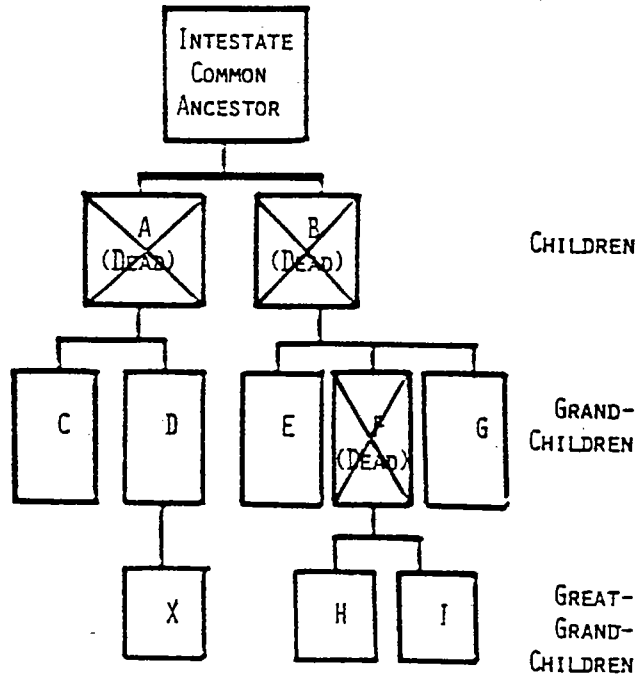
Part 4

[A] signed his will in his attorney's office. Before signing, [A] insisted that the two witnesses sit behind him on the far side of the conference room while he signed. He said that it made him very nervous to sign documents with people "hovering around." [A's] attorney was young and inexperienced, and was fearful of losing [A] as a client if he did not abide by [A's] wishes. The attorney sent the witnesses to the far side of the conference room, where they sat almost directly behind [A] while he signed his will. The two witnesses then added their signatures.

[A] died six months after executing his will. [A's] heirs have contested the will. They argue that [A's] will was improperly executed and that he died intestate. On the question of the validity of [A's] will, what result and why?

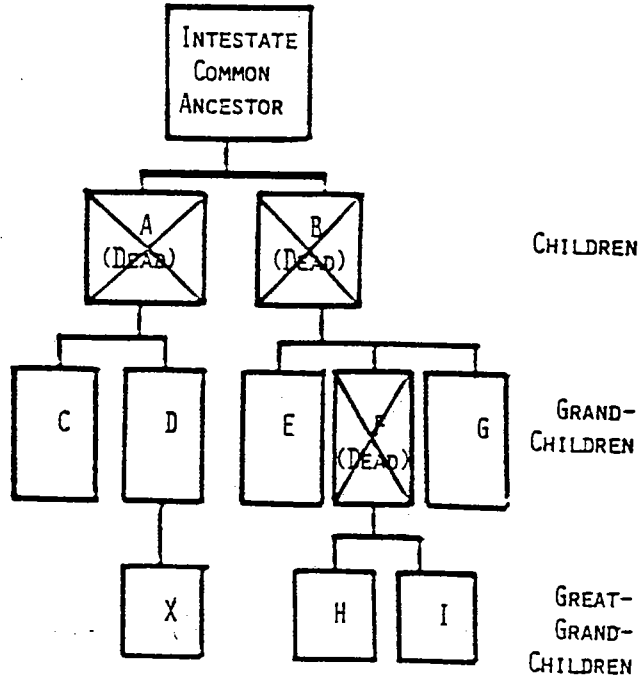
Part 5

What are the various ways that the estate of the intestate common ancestor (the decedent) might be distributed in the family pattern set forth below? Explain your answer.



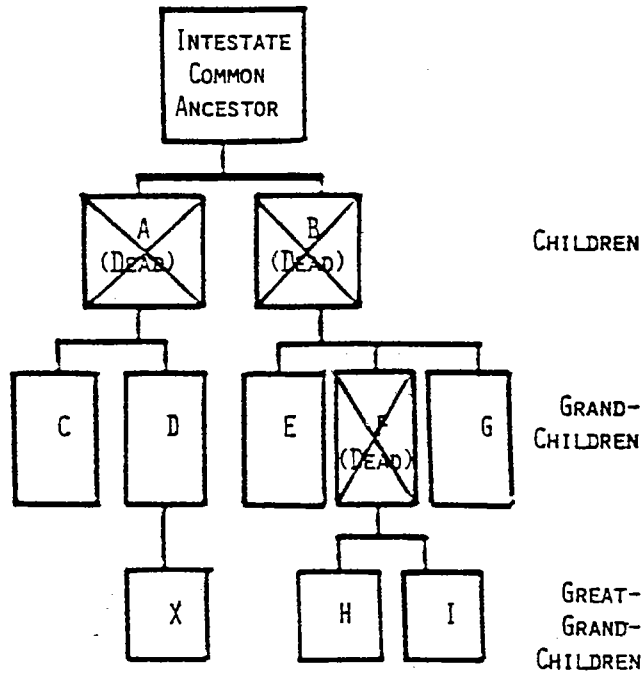
Part 6

Using the same general family pattern set forth in Part 5, assume that [D] predeceased the intestate common ancestor. [D] is survived by [X]. In what ways, if any, would the death of [D] change the various distribution schemes discussed by you in your response to Part 5? Explain your answer. (For your convenience, the "Part 5 family pattern" is displayed again below.)



Part 7

Refer to the family pattern set forth in Part 5. Assume that [G], like [F], has predeceased the intestate common ancestor. Also assume that [X], [H], and [I] do not exist (and never did). What are the various ways that the estate of the intestate common ancestor might be distributed? Explain your answer. (For your convenience, the "Part 5 family pattern" is displayed again below.)



Part 8

[A] executed a revocable declaration of trust that referred to a ranch, Westfork. The declaration of trust stated that Westfork was to be held by [A] in trust for the benefit of himself for life, remainder to his children by his first marriage and to his niece. On the date the trust instrument was executed, [A] did not actually own Westfork. Five days later, however, [A] concluded the purchase of Westfork. The seller of Westfork conveyed the ranch to "[A], trustee for [A]."

When [A] died a few years later, his second wife, [B], challenged the validity of the "Westfork trust." What result and why?

Part 9

Dan D. Lyons was an elderly but very active and alert person. Throughout his adult life he had resisted executing a will because of his belief that to do so would hasten his death. Finally, upon the urging of a friend who was a law professor, Mr. Lyons agreed to make a will. When the will was ready he appeared in his lawyer's office and signed it. Two employees of the law firm then signed the will as witnesses. Mr. Lyons and the two witnesses then prepared to execute a self-proving affidavit. Just as Mr. Lyons was about to sign the affidavit he fell dead. Based on these facts, did Mr. Lyons execute a valid will? Explain your answer.

Part 10

Assume the same facts as set forth in Part 9, except that Mr. Lyons fell dead while actually signing the will itself. He had not written the middle initial "D" when he died. The two shocked witnesses never signed the will. Did Mr. Lyons execute a valid will? Explain your answer.

Part 11

[A] was [B's] barber for over thirty years. When [B] died his only surviving relatives were two nephews. [B] often referred to his nephews by the names "Useless" and "More Useless." To [A's] astonishment, [B's] will contained the following language:

I give and bequeath to my friend and barber, [A], the sum of \$50,000. The residue of my estate I leave in trust to [A] for him to use as he may see fit for the betterment of mankind.

The residue of [B's] estate was valued at one million dollars. [B] often indicated to [A] that he felt great sympathy for victims of AIDS, and for that reason [A] has decided that the one million dollars should be used as a source of income to purchase expensive and much-needed drugs for AIDS patients undergoing treatment at Emory University Hospital in Atlanta, Georgia.

Useless and More Useless have challenged the residuary provision, arguing that the one million dollars should go to them. [A] argues that the money should go into a trust for the benefit of Emory AIDS patients, or in the alternative that it should go to him in fee simple. He says that if the one million dollars goes to him in fee simple he then immediately will donate it to Emory as a trust fund to be named in memory of [B].

On these facts, what result and why?

Part 12

The testatrix, [A], had one son, [B], and one daughter, [C]. [A] executed a will in which [B] was the sole beneficiary. The will also specifically stated that [C] was to take nothing. You may assume that the pretermitted heir statute in [A's] state of residence does not affect this testamentary scheme.

[A] eventually decided that she had made a terrible mistake in excluding [C] from receiving any portion of her estate. In fact, she made it quite clear to several friends that she had concluded that [C] should take the entire estate and that [B] should take nothing. For that reason, [A] revoked her will. She did so with the intention of executing a replacement will that would have designated [C] as [A's] sole beneficiary. [A] was hit by a truck and killed before she could execute a new will. On the question of how [A's] estate should be distributed, what result and why?

