

# READ CAREFULLY

Name (Please Print) \_\_\_\_\_

**DO NOT WRITE YOUR EXAMINATION NUMBER ON THIS PAGE.**

## DECEDENTS' ESTATES & TRUSTS

Final Examination

December 9, 1994

Professor Claxton

This examination is composed of six sections. It has an overall time limit of three 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.

I suggest that you quickly scan the entire examination before you begin writing. Particularly read the notice on Page A1. That notice was distributed to you on November 28. You must be in compliance with the terms of the notice. Also, note that a copy of the Table of Consanguinity is included with this examination as Page A2. It is up to each student to decide whether he or she will make reference to the Table.



I

A constructive trust is a common remedial measure in one of the four situations set forth below. Describe the nature of a constructive trust, indicate in which one of the four situations a constructive trust is likely to be used as a remedial device, and explain in detail how the constructive trust concept would be applied in that situation.

- (A) The violation of a pretermitted heir statute.
- (B) The murder of one spouse by the other.
- (C) Intestacy resulting from testamentary incapacity.
- (D) Intestacy resulting from an improperly executed will.

II

Set forth below is a copy of a card that was sent to members of the State Bar of Georgia in 1993.

Dear, Member State Bar of Georgia

I am in search of the Attorney or Law Firm who prepared the last Will and Testament of my deceased father:

**Mr. O.G. Moore**  
(Oscar Gammy Moore Sr.)

If you or your firm prepared this document or have any knowledge which may help in this matter please contact me as soon as possible.

Donald Bruce Moore  
3744 Old Atlanta Road  
Suwanee, Georgia 30174  
Phone 404-889-8893  
Digital Pager 404-703-8806  
Fax 404-887-9607

Using your general understanding of the law of wills, examine each of the following hypothetical situations and indicate (in each situation) whether Mr. O.G. Moore died testate or intestate. *Explain your answers.*

A. The original, properly executed version of Mr. Moore's will was in his possession when he died and now is in the possession of his executor. It is known that Mr. Moore also had kept a xeroxed copy of his will in his possession, however, and that copy cannot be found.

B. Mr. Moore's will is an ordinary attested will. It ultimately was located in a secret compartment of his desk. In the same compartment, however, was a letter bearing the address "To Whom It May Concern." The letter states, in part, that "I [Mr. Moore] do not like my will. From this day forward I am going to think of it as totally revoked and will begin making plans to execute a new one." A handwriting expert has determined that Mr. Moore wrote and signed the letter in his own hand.

C. Mr. Moore left the original of his will in the hands of his favorite brother, Loyal Moore. A few months before Mr. O.G. Moore died he sent a letter to Loyal Moore which indicated that O.G. Moore wanted to revoke his will and instructing Loyal Moore to burn the will in order to accomplish that revocation. O.G. Moore's letter was witnessed by two friends of his. Loyal Moore, upon receiving the letter, promptly burned O.G. Moore's will in the presence of two of his (Loyal's) daughters. O.G. Moore's attorney eventually was located, and he had a xeroxed copy of Mr. Moore's will in his possession.

D. Mr. O.G. Moore was known to keep his will in his possession. Following his death the will could not be found. There were no copies. Mr. Moore had shown the will to a number of friends and family members, however, and several of those individuals had been permitted to read the will in detail. Everyone who read the will now agrees on the substantive contents of the will.

E. Mr. O.G. Moore burned his will in the presence of several friends at 9:00 a.m. on April 1. He stated that he was revoking his will, but only because he was going to an attorney's office later that day to execute a new will. Mr. Moore died suddenly later that morning before executing a new will.

F. Assume the same facts as in Section II-E (above), except that Mr. Moore revoked his will at 9:00 a.m. by executing a document that itself was styled as a will and was executed in the same manner and with the same formality as an ordinary attested will. The "9:00 a.m. will" contained only one provision. That provision purported to revoke all prior wills.

G. Mr. Moore had repeatedly and with great emphasis and detail orally described his desired disposition of his estate to several friends of his. In each conversation he would say something to the effect that "I want things done this way" and "I don't need to put anything in writing because I have made my desires crystal clear." He did tell one person that he had executed an ordinary attested will, but that will cannot be found.

H. Mr. Moore executed a holographic will. No ordinary attested will can be found.

I. Mr. Moore's will purported to be an ordinary attested will. Nevertheless, he never signed it as the testator and the witnesses never attested to it as witnesses. Mr. Moore and the witnesses did sign a self-proving affidavit that was affixed to the purported will, however.

J. Two separate wills, both properly executed by Mr. Moore, eventually were found. The two documents each disposed of part, but not all, of Moore's estate.

### III

A statute in your state requires that the witnesses to a will must sign the will "in the presence of the testator." You have been asked to explain and analyze this requirement for a group of law students. Please proceed.

#### IV

Even when a decedent has a valid will, problems with the distribution of his or her estate still can arise. The fact pattern set below illustrates a situation in which one very significant type of problem should be readily apparent. Using the fact pattern as your reference point, explain the nature of the problem and the approaches that might be taken to resolve it. Your analysis will provide the framework for your state legislature when it adopts a statute that will guide courts in the resolution of this type of matter.

#### FACT PATTERN

In her will, the decedent [D] bequeathed her estate in equal portions to her three brothers, [A], [B], and [C]. Unknown to [D], [B] was already dead at the time the will was executed. [B] was survived by children. (The number of those children is not relevant to this matter.) After the will was executed, but before [D] died, [A] died. [A] was survived by a spouse and children. (Again, the number of those children is not relevant to this matter.) [C] survived [D].

#### V

Two law partners, Steve and Anne, have the following brief conversation late one afternoon while sitting in Anne's spacious corner office overlooking the beautiful Cowpath River.

**Steve:** I have a client by the name of Horatio Warbucks. He's only in his early fifties, but he is killing himself smoking. He's been completely overtaken by cancer. He's going to die soon and he knows it. Warbucks wants to execute a new will that will include a trust for the benefit of Dr. Jack Kevorkian, to help Kevorkian carry on his assisted suicide efforts. Warbucks thinks Dr. Kevorkian is a real angel of mercy.

**Anne:** You are kidding! Has Warbucks lost it mentally?

**Steve:** No. I think that despite his illness he's as rational as anyone I know. He just admires Kevorkian - - and his estate will be so large that he can create the trust very easily without hurting his family financially.

**Anne:** Is Warbucks under the influence of Kevorkian? Is he arranging an assisted suicide with Kevorkian's help?

**Steve:** No. In fact, Warbucks does not even know Kevorkian. Anyway, he has said to me more than once that he doesn't need Kevorkian as long as he's got Browning.\* I hope he's joking.

**Anne:** Ugh.

**Steve:** Yeah.

**Anne:** So you wonder if a trust like this one would be legal?

**Steve:** Right. I know that Warbucks' family is going to raise hell about this thing after he dies and they find out about the trust, and I can't say that I'll blame 'em. I can cover all the bases in the drafting of the trust without any problem, even though I don't have much experience in the area of trusts. But I don't know - - there's just something about this whole thing that bothers me. A trust for the benefit of the Michigan suicide doctor to help that character further his crusade - - I just can't seem to come to terms with that idea. To me, Kevorkian seems almost like a murderer. Yet Warbucks is my client and I want to help him. My personal hang-ups are not relevant.

**Anne:** So basically you want my analysis of whether a trust like this one will stand up if the family challenges it?

**Steve:** Absolutely. I always want to know what you think, and especially on this one.

Anne: Riight.

Steve: No, honestly, I'd really appreciate your advice.

Anne: We were married for five years and you surely didn't want my advice then.

Steve: Aw, Anne, gimme a break. I need some help on this one.

Anne: O.K., O.K. My daddy always said you shouldn't beat a whipped dog. I don't know what the outcome of this situation will be, but I know that you've only got one basic problem and I'm going to explain it to you.

Steve: Thank you, thank you, thank you.

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You are Anne. Please proceed.

\*Browning is a well-known manufacturer of shotguns and rifles.

## VI

(a) The decedent, [D], died intestate. She had two daughters, [A] and [B]. [A] survived [D], but [B] predeceased [D]. [A] has two children, [X] and [Y]. [B] is survived by one child, [Z]. Acting in a timely manner, [A] disclaimed all interest in the estate of [D].

Assume that the governing law is the Uniform Probate Code. On a percentage basis, how should [D's] estate be distributed? *Explain* your answer thoroughly.

(b) Assume the same facts as those in part (a), except that [A], like [B], predeceased [D]. No disclaimer ever occurred. Would the result under the Uniform Probate Code be altered in any way? Again, be sure to explain your answer thoroughly.