

# READ CAREFULLY

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

DO NOT WRITE YOUR EXAMINATION NUMBER ON THIS PAGE.

DECEDENTS' ESTATES & TRUSTS

FINAL EXAMINATION

May 14, 1999

Professor Claxton

This examination is composed of six main sections, some of which have subsections. 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 THIS 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.

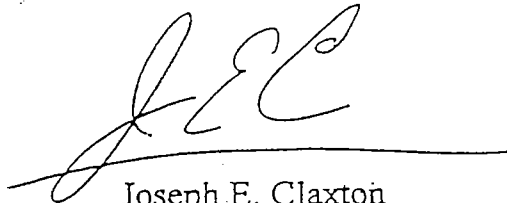
I suggest that you quickly scan the entire examination before you begin writing. Particularly note that a copy of the Table of Consanguinity is included with this examination as page A1. It is up to each student to decide whether he or she will make reference to the Table. In addition, read page A2.

May 9, 1999

A2

D. E. & T. Examination

You are authorized to bring your casebook to the final examination. In preparation for the examination you are free to write *anything* from *any* source in the casebook, as long as what you write is written *in your own handwriting*. (If you have an old book containing a previous owner's handwritten notes, that is O.K.) Typed materials are not permitted. If you have any questions about this notice, please see me as soon as possible. Do not wait until the day of the examination or even the day before! This policy is the same as announced earlier during the semester -- and it really does mean what it says.

A handwritten signature in black ink, consisting of stylized initials 'JEC' with a horizontal line underneath.

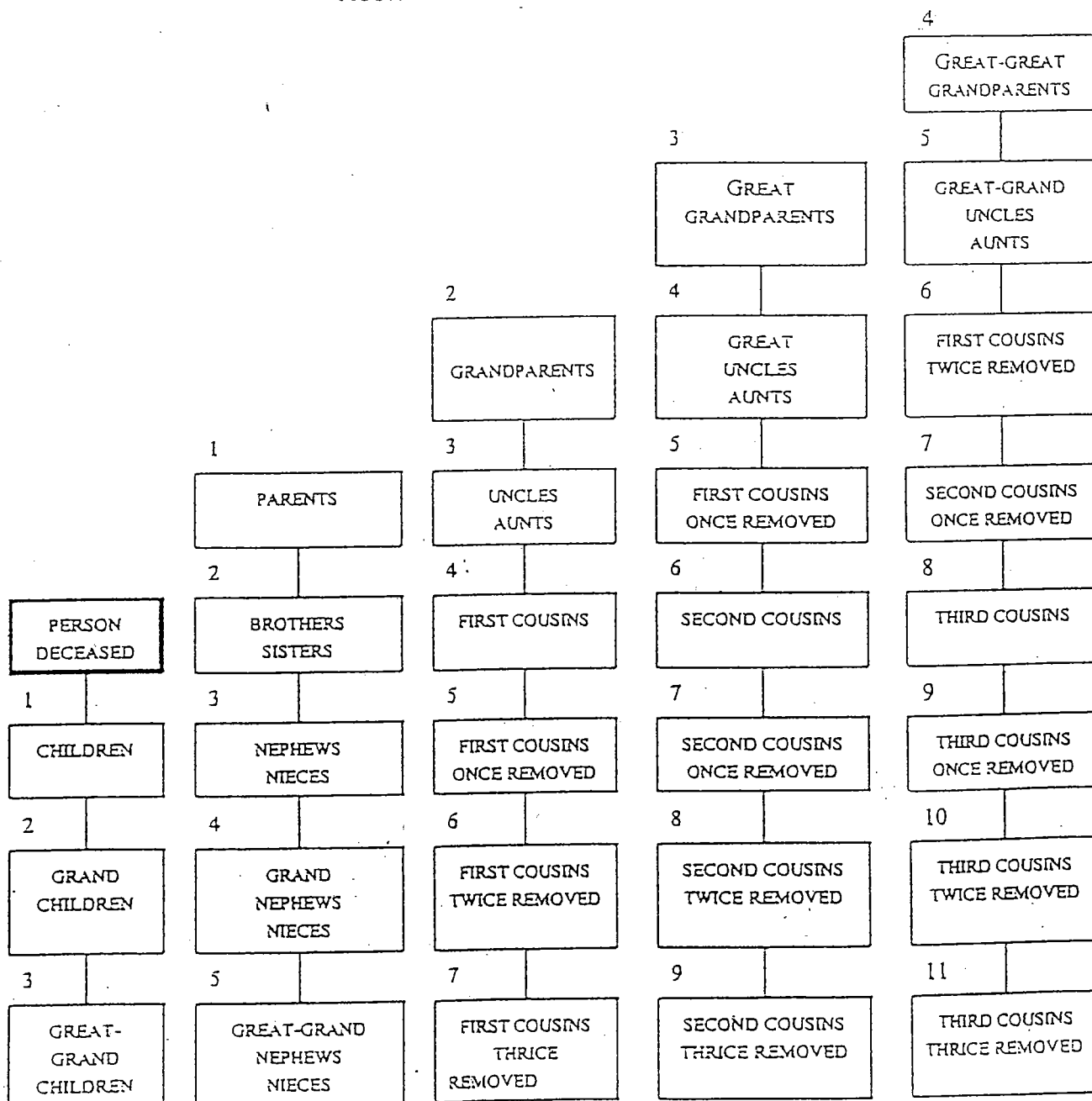
Joseph E. Claxton  
Professor of Law

cc: Dean Sabbath  
Dean Donovan

# TABLE OF CONSANGUINITY

Showing Degrees of Relationship

FIGURES SHOW DEGREE OF RELATIONSHIP

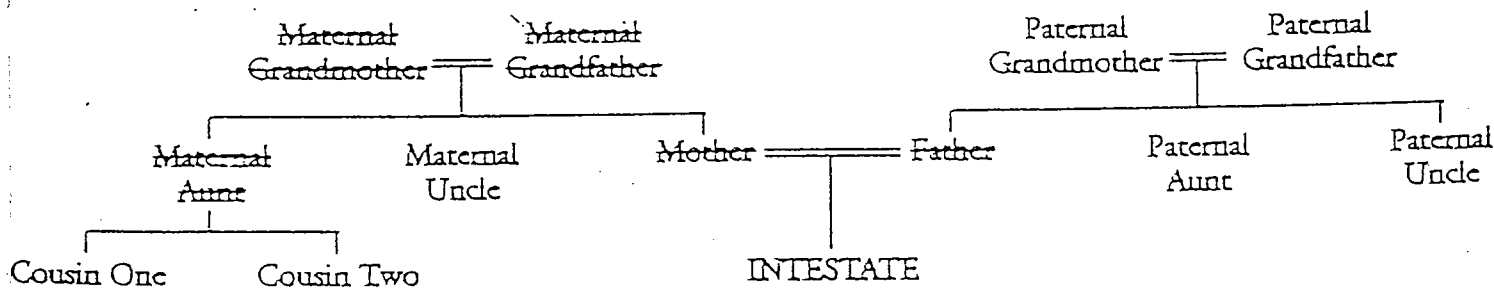


I

- A. Will Two purported to revoke Will One. Will Two, however, was invalid under state law. Does the doctrine of dependent relative revocation have any relevance to this situation? Explain your response.
  
- B. Donor gave Donee a general power of appointment over Donor's vacation home. The instrument that created the power provided that the power was to be exercised by will. Donee died with a valid will that did not make specific reference either to the power of appointment or the underlying property. The will did contain a residuary clause leaving the remainder of Donee's estate to George. Donor's heirs at law were three nieces, Larrice, Moelette, and Curlette. Identify the person or persons who will take title to the vacation home. Explain your response.

II

Based on the familial chart set forth below, how should Intestate's estate be divided if the Uniform Probate Code is in effect? Explain your response thoroughly. (Note that a line drawn through the identity of a family member of Intestate indicates that the particular family member predeceased Intestate.)



### III

The fact statements set forth below are the sort of "thin" fact statements that law firm partners all too often present to young associates. The associates are then confronted with the necessity of responding quickly, concisely, thoroughly, and (above all) accurately. You have the same responsibility.

- A. Harvey Smedley died yesterday. The old fool never did execute a will. He is survived by three adult sons and those boys hate each other. What a mess that estate is going to be! By the way, about five years ago Harvey transferred the title to ten acres of very valuable land to his oldest son. Find out whether that transfer might have any implications for the settlement of the estate and get back to me right after lunch.
- B. We have an elderly client named Della Alley. She executed a will about ten years ago but now she says she wants to revoke it and replace it with a new will. Della's financial affairs have been handled for her by a guardian for over a year, but the guardianship order does not expressly indicate that Della is no longer legally entitled to make a will. Frankly, sometimes the old girl seems really out of it, but at other times she is as sharp as a tack. I've never dealt with someone who was the ward in a guardianship but who wanted to execute a will. Find out what the law is on that situation and get back to me after I return from my workout.
- C. I have a letter here from a client named Frank Villanova. I prepared the will that Frank requested but last night the randy old goat died suddenly in a suite at the Hilton. He was on a so-called date with a twenty-year-old starlet. The letter sets out the new provisions that Frank wanted in his new will. Look at this thing and give me your thoughts about whether Frank's letter itself might constitute a codicil to his original will. Wills law has become so much more flexible that I am hoping we can carry out old Frank's intentions.

The relevant language is as follows:

I have been sick and unable to come to your office. I would like to make the following changes to my will. I no longer want to leave my car to my son, Sam. Instead, I want my daughter, Dawn, to receive it. In addition, I no longer want to leave \$20,000 to Yvette Marcus. Please leave this sum to Henry Perez.

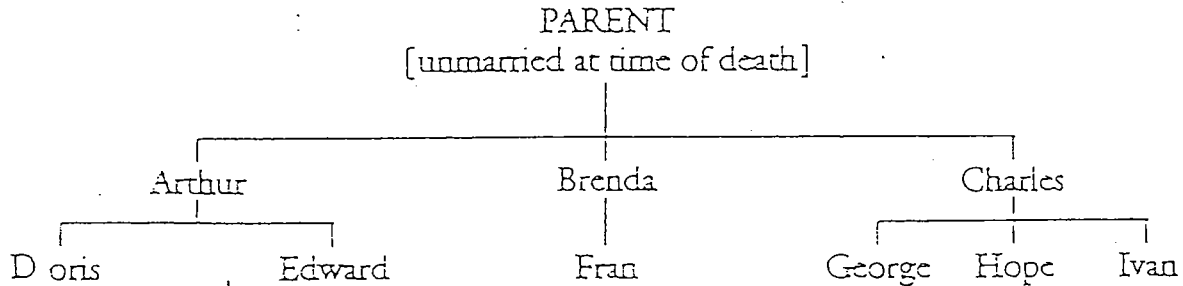
- D. I swore that I never would get involved in a wills case when I went into practice and I have kept that promise to myself for twenty-five years. Now, though, one of my

best business clients is demanding that I handle a challenge to his mother's will for him. He is very upset because his sister gets more money under the will than he does. My client says that his mother did not actually sign her will. He says that she was embarrassed by her shaky handwriting in her later years and that she asked her lawyer to sign the will for her. The lawyer did so in the presence of the old woman. It sounds to me as if my client's mother did not execute her will in a proper manner. Frankly, I think my client is being a bit greedy, but if his mother did not sign her will I guess that my client and his sister will share equally under the intestacy statutes. Check on this matter and get back to me by the end of the day.

- E. A new client of mine was supposed to get a vacation condominium under the terms of her aunt's will, but the aunt sold the condominium before her death. My client does not take anything else under the will. Do a little research and see if there is anything we can do for her.
- F. Our client is slated to receive a valuable diamond ring under the terms of her late uncle's will. A huge majority of the old gentleman's estate is supposed to go to a charity under the residuary clause of the will, but it appears that before any distributions are made the executor will have to satisfy some rather large creditor claims. Our client wants to know what her actual chances are of getting the ring. Give me a short memo on that point.
- G. Here is a problem I want you to consider. You may remember reading just recently that a country singer named Jerry Lee Throttlebottom died in the rear seat of his Lincoln Navigator after drinking an entire bottle of vodka in less than five minutes on a bet with his road manager. (By the way, Jerry Lee's last words were "I win.") His will contained a legacy of \$100,000 for his favorite uncle, Morton Horton. Unfortunately, Uncle Morty predeceased Jerry Lee by two months. Morton was survived by two adult sons, Mason and Jason, and they have come to our firm and asked us for our help in getting the money. Look into this matter and tell me what you think.

IV

All three parts (A-C) of this problem are based on the chart of familial relationships set forth below. Explain all of your responses thoroughly.



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PART A

Assume that Arthur predeceases Parent. Brenda and Charles survive parent. Is there any scheme of intestate succession in which Doris and Edward each would receive a portion of Parent's estate equal to more than one-sixth or less than one-sixth? Explain your response.

PART B

Arthur and Brenda predecease Parent. Charles survives Parent. Doris and Edward hire Attorney Jones to represent them in a legal battle over the distribution of Parent's estate. What argument(s) should Attorney Jones make in order to maximize the shares of Parent's estate that will be taken by Doris and Edward? Explain your response.

PART C

Arthur, Brenda, and Charles predecease Parent. Fran hires Attorney Hastings to represent her in a legal battle over the distribution of Parent's estate. What argument(s) should Attorney Hastings make in order to maximize the share of Parent's estate that will be taken by Fran? Explain your response.

## V

The great Broadway entertainer, George M. Cohan, died testate. His will provided that each of his four children and his wife, Agnes, would take five percent of his very substantial estate outright. It also provided that the four children and Agnes would share equally as beneficiaries of a trust containing the remaining seventy-five percent of the estate. The will contained the following statement aimed directly at Agnes:

Because of my beloved wife having registered in our joint names with the right of survivorship, a substantial amount of my securities which will become her property in the event of my dying before her, I respectfully request that she accept the provisions that I herein make for her in lieu of her right to elect her statutory rights against the provisions of this will.

What is the meaning of this language? What was Cohan attempting to accomplish by including this language? Explain your responses.

## VI

Sally Sue Radiker, who was born in Macon, Georgia, was one of the great country music stars of the past twenty years. She wrote and sang such chart-busters as *I Lost My Heart at the Bovine Ball*, *Last Train from Hahira*, *That Handsome Man Was a No-Good Man to Me*, *A Broken Heart Is All I Had for Lunch*, and that stirring anthem of the Persian Gulf War, *When You Rest Your Head on Your Duffel Bag Just Pretend It's Me*. No song that Sally Sue ever wrote, however, was as big a hit as *Daddy, Don't Let Your Daughters Grow Up to Be Lawyers* (referred to hereafter as *Lawyers*). Unfortunately, Sally Sue did not live to enjoy the huge success of *Lawyers*. One week before its release, she slipped on a banana peel while peering over the edge of the Grand Canyon and fell hundreds of feet to her death. (Sally Sue's good friend, Billy Ray Cyrus, promptly wrote a song entitled *A Banana Stole My Peach Away From Me* in tribute to Sally Sue's memory. It was of the same quality as the rest of his songs.)

Shortly before she wrote and recorded *Lawyers*, Sally Sue signed a document prepared by her attorney which stated in part:

I promise to hold in trust all the royalties from my next top-twenty hit for the benefit of my dear old friend Barf Brooks.

As insiders in the music business knew, Brooks had been the inspiration for Sally Sue's very first successful recording, *One-Night Stand in Tulsa*.

Sally Sue's next big hit after she signed the document, of course, was *Lawyers*. It topped both the country and pop music charts for twenty-six consecutive weeks. It also provided both the inspiration and the theme song for a soon-to-be-released movie starring Julia Roberts as a tough, hard-driving young lawyer engaged in estate planning, Dolly Parton as her distinctly non-traditional mother (the proprietor of a self-defense school called Mama's Karate Chop Shop), and Burt Reynolds as her baffled and balding father.

The only beneficiary in Sally Sue's will (as well as her nearest relative) was her brother, Henry Williams Radiker. Henry has brought a legal challenge to Barf Brooks' claim to the royalties from *Lawyers*. Henry argues that he is entitled to those royalties. What result and why?