

DECEDENTS' ESTATES

FINAL EXAMINATION

Professor Dewey

Fall, 1990

Total time for exam completion three (3) working hours
Examination Procedures

1. Please write every other line in the blue books It facilitates effective communication.
2. Please respond to the questions in the order set forth in the exam to avoid the omission of a question or a part there of by inadvertence. The questions are of equal weight in grading process.
3. Three (3) working hours will be allowed for exam completion.
4. Please do not strive to make your exam response a triumph of Biology brevity. Discuss the issues fully – the idea in this exam is to reveal and not to conceal your conceptual depth.
5. Please respond to the issues of the precise question. Do not respond with mere legal-surfing abstractions.
6. Please express rationale for concepts discussed, judicial views expressed as applicable to the question and for arguments presented as an advocate.
7. Please complete cover page of each blue book used.
8. Please do well on the exam. Have a restful Holiday Season.

QUESTION NO. 1

Ted Affable and his wife, Helen, duly executed a document entitled “Mutual Will of Ted Affable and Helen Affable” on January 21, 1981. Ted had two children, Joan and Carol by his previous marriage to Clara who predeceased Ted. Joan and Carol are the plaintiffs in the legal action here in issue. Helen Affable had only one child (Betty) by her previous marriage to Elmer who predeceased Helen. Betty is the defendant in this litigation.

Ted Affable died July 19, 1987. Helen legally survived Ted. Helen died on July 24, 1988. Ted and Helen died from cancer.

It is conceded that at the death of Ted his intestate heirs would be his two daughters, Joan and Carol and his wife Helen. It is further conceded that at the death of Helen her sole intestate heir would be her daughter Betty.

On November 22, 1988 the “Mutual Will” of Ted and Helen was properly and legally admitted to probate in the proper court of competent jurisdiction.

Plaintiffs, Joan and Carol, contend that they are each entitled to a one-third share of the estates of Ted and Helen by virtue of the “Mutual Will” of Ted and Helen.

The portions of the “Mutual Will” of Ted and Helen as here germane provided as follows:

- (a) The “Mutual Will” stated that Ted and Helen “desirous of disposing of our property, real and personal, after our deaths, respectively, do hereby Make, ordain, Publish and Declare this to be our, and each of our joint and reciprocal Last Will and Testament.”
- (b) The second provision of the Will declared that the survivor between Ted and Helen was to

take the real and personal property possessed by the other, “at the time of our deaths, respectively, to be his or her sole and absolute property forever.”

- (c) The third paragraph of the “Mutual Will” provided that: “In the event that we meet our death in a common accident or disaster and under such circumstances that there is no presumption, in law, of survivorship, then and in that event, we hereby give, devise and bequeath all of our property of which we die seized or possessed to our beloved children, Joan, Carol and Betty, to share equally.”

It is the conceded fact that Helen did not execute any Will other than the “Mutual Will” which she and Ted duly executed and hence Helen failed to revoke the said 1981 “Mutual Will.”

The 1981 “Mutual Will” of Ted and Helen was prepared by their long-time attorney, Clyde Casual.

Did Ted and Helen Affable die testate or intestate? Discuss fully the legal rights, legal interests and possible legal remedies of Joan, Carol and Betty.

QUESTION NO. 2

Ted, the duly appointed executor of the probate estate of Ray Smiles has properly filed an action for declaratory judgment in the appropriate probate court where the will of Ray has been duly admitted to probate.

Ted seeks the court’s construction of the following item of the will of Ray:

“I grant, bequeath and devise all of my estate and property to Marvin Affable, a nephew of my deceased wife, Agnes Smiles.”

Ray’s will did not contain any alternate disposition clause or any residuary clause which would have distributed Ray’s estate to other persons or organizations in the event Marvin Affable did not survive Ray.

Ray Smiles died in December, 1989. Marvin Affable died in November, 1988. In the state where Ray’s will was properly admitted to probate, the state antilapse statute which was in effect at the time of the death of Ray provided as follows:

“Unless a contrary intent is indicated by the will, if provision in the will is made for any relative of the testator and the relative dies before the testator and leaves children who survive the testator, then the children as represent the deceased relative are substituted for such deceased relative under the will and take the same interest as the deceased relative would have taken had such relative survived the testator.”

Marvin Affable was not a blood relative of the Testator, Ray Smiles. Marvin Affable was a nephew of the predeceased wife of the Testator, Ray, and therefore a relative by marriage.

It is conceded that Marvin Affable had a legal child, Zeb, who had been legally adopted by Marvin and that Zeb legally survived the Testator, Ray Smiles. Zeb contends that he is legally entitled to the estate of Ray Smiles by operation of the above quoted antilapse statute.

However, three nieces of Ray Smiles contend that Ray died intestate and that they are his intestate heirs. Ray Smiles had two brothers Max and Wilbur. Both Max and Wilbur predeceased Ray Smiles. Max had one daughter, Ruth, and Wilbur had two daughters, Mary

and Wylma. Ruth, Mary and Wylma all legally survived Ray Smiles.

Ruth claims that Ray Smiles died intestate and that Ruth is legally entitled to one-half of his estate, per stirpes. Mary and Wylma also contend that Ray's estate should pass equally - per capita, to Ruth, Mary and Wylma.

It is further conceded that if Ray Smiles died intestate, then the three nieces - Ruth, Mary and Wylma are his intestate heirs under the statute of descent and distribution in the state where Ray Smiles died and his estate is being administered in the proper probate court.

Who is legally entitled to the probate estate of Ray Smiles?

QUESTION NO. 3

Ed Sly and Yvette Sly had a marriage of ten years that was the quintessence of bliss. During those halcyon years of marriage, Ed and Yvette acquired title in 1985 to valuable real estate, the "Golden Pond Farm (hereinafter referred to as the "Farm"), in valid statutory joint tenancy. The deed whereby Ed and Yvette acquired title to the "Farm" as grantees conformed fully to the statutory requisites for a valid joint tenancy and properly stated that the spouses took title "as joint tenants with right of survivorship and not as tenants in common."

Matrimonial ecstasy for Ed and Yvette was replaced by acrimony by the following undisputed factual scenario:

- (a) Ed had two daughters, Jane and Mimi, who are the children of Ed's prior marriage to Maud who predeceased Ed by 11 years. Yvette has expressed disapproval of the lifestyle of Jane and Mimi by characterizing her two step-daughters as "unrelenting bohemians." Jane and Mimi regard Yvette as an updated "Jezebel."
- (b) Ed resented the enmity which Yvette held for Ed's two daughters, Jane and Mimi. Ed concluded that Yvette direly needed a salutary learning experience because of her truculent attitude toward Ed's two daughters.
- (c) Ed, then, by his last Will and Testament, (which Will was properly executed per the applicable statutory requisites and was duly admitted to the proper probate court in the state where Ed was domiciled), purported to bequeath and devise in fee simple all of his property including the "Farm" to his two daughters, Jane and Mimi.
- (d) To further implement his pique with Yvette, Ed in his properly executed Will provided in a separate paragraph thereof: "By this Will, I hereby name my daughter, Mimi, to be the beneficiary of my life insurance policy issued to me by the Serene Insurance Company and I hereby revoke the prior designation of my wife, Yvette, as the beneficiary of such policy."

In 1986, when Ed procured the life insurance policy with the Serene Insurance Company, Ted designated his wife, Yvette, as the beneficiary of said policy on the proper form supplied by the Serene Insurance Company. Ed did not communicate with the Serene Insurance Company relative to the purported change in the policy beneficiary in the Will of Ed.

Ed died in 1987. Jane, Mimi and Yvette all legally survived Ed. Jane and Mimi were celibate at the death of Ed and thus did not have any children.

The will of Ed was drafted and prepared by Ed's attorney Clyde Wump. It is the proven fact that prior to preparing Ed's Will, the attorney Clyde Wump did not examine the valid joint tenancy deed by which Ed and Yvette acquired by purchase in 1985 the real estate referred to herein as the "Farm."

Discuss fully the legal rights, legal interests and legal remedies of Yvette, Jane and Mimi.

QUESTION NO. 4

Zelda duly and legally executed her Will in 1984. Zelda died in 1988 and the 1984 Will was properly admitted to probate in the proper court in Zelda's state of domicile.

Zelda was celibate and was never married.

Zelda's 1984 Will bequeathed, gave and devised all of her vast estate to:

"My beloved boyfriend, Edward Galant, or his heirs per stripes.

Edward was a dedicated celibate and was never married.

Edward legally predeceased his beloved girlfriend Zelda, the testator. The father and mother of Edward both legally predeceased Edward.

The aggressive persons claiming to be the beneficiaries of the estate of Zelda by virtue of their contention that they are the heirs of Edward are:

- (a). Grace, sister of Edward.
- (b). Lana, sister of Edward.
- (c). Helen, sister of Edward.
- (d). Zeb, the duly and legally adopted son of Helen.
- (e). Clyde, son of Zeb and grandson of Helen.
- (f). Marsha, daughter of Agnes who (Agnes) was the predeceased sister of Edward.
- (g). Elmer, the surviving spouse of Agnes. Agnes did not legally survive Elmer or Edward.

All of the above aggressive claimants to the estate of Zelda who contend in this litigation that as the heirs of Edward they are thus legally entitled to be the distributees of the vast wealth of Zelda at her death legally survived the testator, Zelda.

Assume that all of the above claimants to the estate of Zelda are alive and well and legally survived Zelda when this litigation is concluded by the court of proper jurisdiction.

The trial court rejected the contentions of the above claimants and held that Zelda died intestate and that her vast estate was inherited by the only intestate heir of Zelda, her brother, Wilbur, who legally survived Zelda.

In reaching its decision, the trial court admitted into evidence and relied upon certain testimony of the attorney who drafted and attended to the execution of the Will of Zelda. The attorney's testimony was that Zelda had expressed to him an intense dislike of all of the above claimant's to her estate and that Zelda did not want any of these persons to have any of her estate in the event that her boyfriend, Edward did not legally survive her. This attorney who so testified was one of the requisite witnesses to the 1984 legally executed Will of Zelda.

The statute of descent and distribution in the state where the 1984 Will of Zelda was properly

admitted to probate provides as here germane that the estate of an intestate decedent shall be distributed as follows:

“If there is no surviving spouse of the intestate decedent, no children or their lineal descendants, and no parent surviving, then to the brother and sisters of the intestate, or their lineal descendants, per stripes.

In another provision in her will, Zelda stated that she considered her brother, Wilbur, to be a “moral leper” and “for other reasons she did not care to disclose” Zelda expressly declared that she did not want her brother, Wilbur to have any of her estate under any circumstances.

Assume that the claimants with proper legal standing have timely and properly perfected an appeal as of right to the state supreme court (highest state judicial tribunal) for a decision on the merits. Will the Supreme Court of this state where Zelda’s 1984 duly executed Will was admitted to probate affirm or reverse the trial court?