

Total time for exam completion three (3) working hours.

Examination

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 thereof 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 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.
9. Please do not view the Exam as a "call to martyrdom."

QUESTION NO. 1

Yvette has become affluent by her "prudent" legal marriage to her late husband, Henry and her astute judgment in legally surviving Henry. As the sole beneficiary of the Will of Henry, Yvette received six million dollars from the estate of Henry income tax-exempt per Section 102 of the Internal Revenue Code.

Henry's Will was duly executed and properly admitted to probate in conformity with the law of the state of his at Henry's death.

Henry's Will was duly executed on October 10, 1987 and Henry died in January, 1988. The separate Will of Yvette which has precipitated the spirited litigation in this question No. 1 was also duly executed on October 10, 1987. Yvette died in December, 1990 and her Will executed on October 10, 1987 has been properly admitted to probate as required by the law of her domicile at her death. The Will of Yvette was drafted by her esteemed attorney, Elmer Wump.

Yvette has an irrepressible penchant for frugality. Hence, despite her vast wealth received as the sole beneficiary of Henry's will, Yvette felt that it would be profligate for her to pay an attorney additional money to draft and execute a Will other than the Will of Yvette duly executed on October 10, 1987.

As here pertinent the Will of Yvette provided:

"I grant, devise and bequeath all of my property and estate to my beloved husband, Henry as his sole and absolute property. In the event my husband, Henry and I are killed as the result of a common disaster or accident or in the event neither of us shall survive the other for a period of thirty calendar days, then I direct that my estate be distributed to my long-time friend, Marsha Winsome as her sole and absolute property."

Both Henry and Yvette died of natural causes from lingering illnesses. Marsha Winsome, the long-time friend of Yvette legally survived Yvette.

Yvette had one child, a son Tim, who was her son by her prior marriage to Oscar. The marriage of Henry and Yvette produced no children. Tim claims the estate of his mother, Yvette, because Tim contends that Yvette died intestate and that Tim is the sole heir of Yvette. Tim legally survived Yvette and is alive when this litigation is concluded.

Tim has one legal child, Helen, who legally survived Yvette. Helen is alive when this litigation is concluded. Helen also contends that Yvette died intestate and Helen further contends that she is also an heir to the claimed intestate estate of Yvette.

If Yvette died intestate and not testate, then the applicable portion of the intestate statute of the state where Yvette died domiciled provides that the estate of the intestate shall be distributed in the following course:

"If there is no surviving spouse, to the children of the intestate or their lineal descendants, per stripes." An additional provision of the Will of Yvette stated:

"For reasons I do not care to disclose, it is my express desire that my son, Tim, or granddaughter, Helen, receive nothing from my probate estate."

Who is legally entitled to the probate estate of Yvette and what are the respective legal rights of Marsha Winsome, Tim and Helen?

QUESTION NO. 2

Zelda duly and legally executed her Will in 1988. Zelda died in 1990 and the 1988 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 1988 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). Lena, 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 claimants 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 1988 legally executed Will of Zelda.

The statute of descent and distribution in the state where the 1988 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 "Immoral 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 1988 duly executed Will was admitted to probate affirm or reverse the trial court?

QUESTION NO. 3

On June 11, 1990, Betty and her husband, Clyde, were killed when their automobile was struck by a train on a railroad crossing, the circumstances affording no evidence that either survived the other.

Betty died testate and her Will was legally executed and admitted to probate. Betty made numerous valid gifts to churches and individuals and the residuary clause of such Will provided:

"All the rest or residue of my estate, I give, devise and bequeath to my dear husband, Clyde, in fee simple absolutely, if he shall survive me by more than thirty (30) days."

Betty's Will contained no provision with respect to the disposition to be made of her residuary estate in the event Clyde did not survive Betty.

Betty left no children, but her husband, Clyde, is survived by a son, Ted, who was legally adopted during a prior marriage of Clyde. Ted legally survived Betty, the testator.

It is conceded by all parties that all of the property in the estate of Betty and Clyde at their deaths was held as the result of Betty and Clyde during their lifetimes taking and retaining title to such property as valid statutory joint tenancies with right of survivorship and not as tenants in common.

Ted claims the residuary estate under Betty's Will by virtue of the antilapse statute in the state where Betty died domiciled and her estate is being probated.

This antilapse statute provides:

"Whenever the devisee or legatee to whom, a devise or bequest is made by Will, dies before the testator, or does not survive the testator by more than 30 days, leaving issue which survive the testator, said issue shall take the estate or interest devised or bequeathed which the devisee or legatee as the case may be, would have taken, had he survived the testator, unless a different disposition thereof is made or required by the Will."

Ted in asserting that he is entitled to the residuary estate under the Will of Betty, relies upon the following provisions of the UNIFORM SIMULTANEOUS DEATH ACT which has been adopted in the state in which Betty's estate is being probated and in which Ted seeks a proper declaratory judgment that he is entitled to the residuary estate of Betty.

Ted relies on the following provisions of the UNIFORM SIMULTANEOUS DEATH ACT:

(1) Where the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise in this chapter.

(2) Where there is no sufficient evidence that two joint tenants or tenants by the entirety have died otherwise than simultaneously, the property so held shall be distributed one half (1/2) as if one had survived and one half (1/2) as if the other had survived. If there are more than two (2) joint tenants and all of them have so died, the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants."

The person opposing the claim of Ted is the sole surviving heir of Betty who is Betty's brother, John. It is the contention of John that the residuary estate of Betty passes to John by intestate succession as the conceded sole intestate heir of Betty. John legally survived Betty.

John further contends that the interest of Betty in the valid statutory-joint tenancies with right of survivorship property here in issue cannot be passed by the Will of Betty.

Assume that the declaratory judgment action by Ted is before the proper court for a decision of the merits. Who is legally entitled to the residuary estate of Betty, Ted or John?

QUESTION NO. 4

Ed's family consisted of Ed, his wife, Clara and their minor daughter, Tina, age nine.

The family was on a vacation trip in 1990 and while traveling in Oregon were killed in a head-on automobile collision. Clara, the driver was killed instantly, the husband Ed survived Clara by 105 minutes and the daughter, Tina, died one (1) hour after the death of her father, Ed, after Tina has been admitted to a hospital.

Both Ed and Clara died intestate. All of the property owned by Ed and Clara was held in valid statutory joint tenancy with right of survivorship and not as tenants in common.

The probate court where Ed and Clara's intestate estates were being administered in the proper Oregon court which was the state of their legal domicile held that the valid joint tenancy property of Ed and Clara became legally vested in Ed at the moment of death of his wife, Clara.

The Oregon statutes that require a Will beneficiary or an intestate heir to survive the decedent for a specified time apply only to the probate estate of the decedent.

The only Oregon survival statute germane to this Question No. 4 provides:

"Any person who fails to survive the decedent by five (5) days is considered to have predeceased the decedent for all purposes of intestate succession, and the heirs of the decedent are determined accordingly.

Zelda, the mother of Clara, contends that id did not legally survive Clara since it is conceded that Ed died 105 minutes after Clara expired. Zelda contends that this brief survival period of 105 minutes is not "meaningful survival" by Ed and hence, Zelda, further urges that the intestate estate of Clara should legally pass to Zelda, the mother of Clara. In this context, Zelda further contends that the daughter Tina, is not entitled to inherit the intestate estate of her mother, Clara, since it is the

conceded fact that Tina did not survive her mother by five (5) days. It is the conceded fact that Zelda would be the sole intestate heir of Clara if Ed or Tina are not legally entitled to inherit the intestate estate of Clara.

The other player is Clyde, the brother of Ed. Clyde contends that the intestate estate of Ed legally belongs to Clyde because the parties concede that Clyde is the sole intestate heir of Ed if the wife Clara or the daughter, Tina, are not legally entitled to the intestate estate of Ed.

Zelda and Clyde legally survived Ed, Clara and Tina.

Who is legally entitled to the intestate estates of Ed and Clara?