

**Administration of Estates**  
**Final Examination**  
Spring 2005  
Professor Ford

**Directions:**

Please write on only one side of a page in the answer booklet. Skipping lines may be beneficial for you should you decide to make a change in your answer and need space to insert writing between lines. You are cautioned to read all questions fully before beginning. Thereafter, you should approach each question by making an outline of your answer so as to best organize your response. You may write your outline in a separate booklet. The outline is for your purposes and will not be considered any part of the examination answer. Pass in every booklet in which you write plus the exam sheets, inserting booklets one inside the other, after having written your student identification number, as well as the course title, on the front of each booklet.

Issue identification and discussion are most important. You are cautioned to follow an orderly, step-by-step pattern of analysis in noting the issues you identify. This will help keep you on track and better allow me to understand your analysis and answer.

If you find an issue of law that you have previously identified and explained, do not repeat your discussion of law on that issue, but rather simply note the issue and proceed immediately to apply the law previously discussed to the new set of facts. E.g., when you spot an issue, explain the applicable law (elements a, b, c, and d). Then apply the law to the facts. When you spot the same issue again, do not repeat your explanation of elements a, b, c and d, but rather proceed immediately to apply the law to the facts.

**ANSWER ALL QUESTIONS.**

1. [15% - approximately 25-30 minutes]

Answer each of the following short-answer questions:

a. The probate inventory has been filed. Additional personal property has been discovered by the Executrix. What does she do?

b. The probate inventory has been filed. Real estate in the jurisdiction in which probate has been taken out has been newly discovered by the Executrix. What does she do?

c. List the following obligations in the order of priority of payment from highest priority to lowest, if the probate estate is insufficient to pay all. List by reference number; there is no need to write out each obligation.

1. Court judgment for money damages
2. Reimbursement to Executrix for loan to estate to pay court filing fees and attorney fees until estate property is liquidated
3. Division of Medical Assistance for Medicaid benefits while in a nursing home.
4. Ongoing child support.
5. Hospital bill for care of last two weeks of life
6. Portion of nursing home charges due and owing from patient/decedent.

d. At the time of her appointment as Executrix, Susan had three months' probation time remaining on a shoplifting conviction of over \$250.00, a fact which the court did not know at the time. It is now six months after appointment. Based upon these facts, are there grounds for removal? Explain.

2. [10% - approximately 15-20 minutes]

Upon petitions for administration of an intestate's estate, one by the decedent's husband and the other by a woman who designated herself in her petition as the daughter of the decedent, but who was listed by the husband in his petition as a sister of the decedent, you, as Probate Court judge, found that the woman petitioner was the decedent's daughter, born out of wedlock, that she was brought up as a sister of the decedent and was uninformed of her true parentage until after the decedent's death, and that she informed the decedent's husband shortly before he filed his petition that the decedent was her mother. Decedent's probate estate includes a store that was owned and operated by the decedent alone, plus a personal residence that is occupied by the husband.

Do you, as judge, do anything regarding estate pending outcome of hearing on question of relationship of woman petitioner to decedent? If not, why not? If so, what do you do and why? Whom do you appoint as permanent personal representative of the estate, and why?

3. [15% - approximately 25-30 minutes]

Decedent's will leaves gifts to surviving spouse, decedent's children (of which there were two) and decedent's niece. Decedent is survived by the spouse, one child, a grandchild (the child of the predeceasing child) and the niece. Assume there is no assent to the probate of the estate.

Name five documents to be filed in court and which are prerequisites to allowance of the will. Explain all procedural steps necessary to satisfy notice requirements before the will can be allowed.

4. [25% - approximately 45 minutes]

Decedent died five months ago. Will has been allowed and executrix has been appointed. Executrix and family wish to sell personal residence of decedent. No one is living in property. Favorable buyer has been found. What steps do you advise be taken to sell real estate. Explain your answer.

5. [35% - approximately 60-65 minutes]

Mary signed a typewritten will bearing signed names of two elderly neighbors. No signatures were notarized. The will was signed about six months before Mary died. The will left

Mary's whole estate to her husband if he survived her. He did not, and he left no will. Mary's will stated that if her husband did not survive her, the home and bank account and one half of the mutual fund account were to go to Ellen, her primary care worker during the last two years of her life. The balance was left to Mary's niece, Nancy, with the proviso that Nancy's share was not, under any circumstances, to exceed the sum of \$25,000.00, and that if one half of the mutual fund account exceeded that amount, then Nancy would take only \$25,000.00 and the balance of the account was to go to Ellen. Ellen came to Mary's home daily to fix meals, set out her meds, do light housekeeping and deliver groceries that Ellen purchased (but for which Mary reimbursed her). Nancy called on the phone each week and spoke with Mary for varying lengths of time from five minutes up to an hour. Nancy visited about once a month plus occasionally on holidays. Nancy lived five blocks from Mary. At her death, Mary owned her home, worth \$250,000.00, a mutual fund account, worth \$10,000.00, and a bank account, worth \$50,000.00, all in her name alone. Following Mary's death, her will is found and it contains lines drawn through the figure "\$25,000.00" wherever it appeared in the will, and in each instance in its place was handwritten the amount "5,000.00." Next to each change appeared Mary's initials. In her final few months, Mary became more forgetful of events, she was unable to keep track of her bank and mutual fund accounts, and she slept a great deal due to her medications. There is no evidence that Mary or her husband had ever signed wills prior to the will of Mary that was found dated about six months before her death. Mary's bank and mutual fund statements show a transfer from the mutual fund to the bank account in the amount of \$40,000.00 fifteen days before Mary died. Mary's will names Ellen to be executrix of her estate.

Ellen comes to you for advice. She and Nancy never got along. She wishes to open probate but is afraid that Nancy may make trouble. How do you advise her? What issues does she need to address? How will you address them? How successful do you think she will be?

Question 1:

In 1993, Richard P. Desharnais, a member of the congregation of the Holy Cross Fathers, began to administer spiritually to Edith R. Hartnett who had been his longtime friend and benefactor. Thereafter, Desharnais established a relationship of trust with Hartnett, and he began to help her with her financial affairs. In 1996, Hartnett executed a will which provided that Desharnais receive a \$20,000 cash bequest and a one-twelfth share of the residue of the estate. At the same time, Hartnett gave to Desharnais a power of attorney, which had been prepared by Hartnett's attorney, Taylor, so that Desharnais could write checks for certain of Hartnett's bills. This power of attorney also gave Desharnais access to Hartnett's safe deposit box. At this time, Hartnett was eighty-three years old and in failing health. Desharnais was forty-three years old.

Between November, 1996, and the spring of 1997, title to certain of Hartnett's bank accounts was placed in the names of Hartnett and Desharnais as joint owners. This was done to facilitate Desharnais's management of Hartnett's financial affairs. Desharnais knew that he had no interest in the bank accounts even though they were held in joint names. Desharnais made withdrawals from the accounts as Hartnett requested.

About this time, Hartnett, Desharnais, and Taylor had discussions about shares of Gillette common stock which Hartnett owned individually. The three talked about a contemplated change in ownership of the stock to joint names. At a meeting, Taylor explained the legal significance of joint ownership, indicating that the signatures of both parties would be required to effect any future transfer of the stock. Title to the stock was changed to reflect the joint ownership of Hartnett and Desharnais. The new stock certificate was placed in Hartnett's safe deposit box where it remained until Hartnett's death. Desharnais was given a key to Hartnett's safe deposit box so that he could store or remove articles upon her request.

On August 28, 1998, Hartnett executed a new will in which Desharnais's bequest was reduced to \$3,000, but which still gave him a one-twelfth share of the residue of the estate.

Desharnais continued to assist Hartnett with her affairs until June, 1999, when, pursuant to a telephone request relayed to Desharnais by a friend, he returned to her two bank books along with a letter dated June 3, 1999. In that letter, Desharnais requested, in strong language, that Hartnett refrain from making contact with him. At the time of this letter, Hartnett, who had a heart ailment and poor vision, had annoyed Desharnais by her persistent telephone calls to him. The only other communication between the two thereafter was Hartnett's telephone call to Desharnais to extend Easter greetings in 2000. In that call there was no discussion of the stock. Hartnett died on September 2, 2001.

Desharnais claims that the stock is rightfully his.

Q.A: After relating the above story, Desharnais asks your help in securing the stock for him. What do you advise procedurally to assert a claim? Do you anticipate any procedural obstacles? If so, explain what they are and how you will attempt to counter them procedurally?

Q. B: What substantive arguments of law and fact can be raised in behalf of Desharnais? What opposing arguments can you anticipate?

Q. C: You are the judge. What is the disposition of the stock? Why?

Question 2:

Add to the above fact pattern, the following:

Desharnais continued to assist Hartnett with her affairs until June, 1999, when, pursuant to a telephone request relayed to Desharnais by a friend, he returned to her two bank books along with a letter dated June 3, 1999. In that letter, Desharnais requested, in strong language, that Hartnett refrain from making contact with him (as her last attempts to do so had caused him embarrassment), and that she "take [his] name off of [her] will and ... whatever other consideration [she] had in mind." Desharnais also stated that he had no interest in any of her funds and that he would communicate with Taylor to "confirm this observation and make it factual." Desharnais, however, did not make contact with Taylor concerning the matter during Hartnett's lifetime. Further, Desharnais stated that Hartnett was to consider his letter as "an absolutely final note" because he could not suffer the loss of peace of mind attendant to helping her. Some while earlier, Desharnais's father had become ill and required considerable care and attention from his son. Desharnais required psychological counseling because he was "not himself." Desharnais's counsellor identified Hartnett as the cause of the distress because she was an enormous worry to him. The counsellor advised Desharnais to have nothing more to do with her. Shortly thereafter, Desharnais called Hartnett to verify that she had received the bank books. Prior to this letter, Hartnett, who had a heart ailment and poor vision, had annoyed Desharnais by her persistent telephone calls to him. The only other communication between the two thereafter was Hartnett's telephone call to Desharnais to extend Easter greetings in 2000. In that call there was no discussion of the stock. Hartnett died on September 2, 2001.

Q.: Based upon these new facts, what new legal argument might be anticipated in opposition to Desharnais' claim? Will that argument succeed or fail? Why?

Examination  
Winter 2003

Professor Ford

Directions:

Please write on only one side of a page in the answer booklet. Skipping lines may be beneficial for you should you decide to make a change in your answer and need space to insert writing between lines. You are cautioned to read all questions fully before beginning. Thereafter, you should approach each question by making an outline of your answer so as to best organize your response. You may write your outline in a separate booklet. The outline is for your purposes and will not be considered any part of the examination answer. Pass in every booklet in which you write plus the exam sheets, inserting booklets one inside the other, after having written your student identification number, as well as the course title, on the front of each booklet.

Issue identification and discussion are most important. You are cautioned to follow an orderly, step-by-step pattern of analysis in noting the issues you identify. This will help keep you on track and better allow me to understand your analysis and answer.

If you find an issue of law that you have identified and explained, do not repeat your discussion of law on that issue, but rather simply note the issue and proceed immediately to apply the law previously discussed to the new set of facts. E.g., when you spot an issue, explain the applicable law (elements a, b, c, and d). Then apply the law to the facts. When you spot the same issue again, do not repeat your explanation of elements a, b, c and d, but rather proceed immediately to apply the law to the facts.

ANSWER ALL QUESTIONS.

John was an actor under contract to a Hollywood filming studio. He owned a home in California and a home on Martha's Vineyard in Massachusetts. John spent most of each year making films. Most scenes were shot in the Hollywood studios, but on occasion scenes would be shot on location in and around Los Angeles, San Francisco, New York City, Miami and Chicago. At times, a location shoot could extend upwards of six to twelve months.

When not filming, John spent his time at his Martha's Vineyard home. Time there would range anywhere from a weekend to one month, and sometimes upwards of three to five months at a stretch. John never spent any more than five months in any calendar year in the same location.

John has just recently died at his Martha's Vineyard home following a five month stay during an extended filming break. He has been buried in a Martha's Vineyard cemetery.

In addition to his California and Massachusetts homes, John owned retirement accounts managed by Fidelity in Boston totaling \$5,000,000.00; policies of insurance on his life, all with Massachusetts Mutual Insurance Company, totaling \$2,000,000.00; joint bank accounts with his daughter Denise, all in Fleet Bank, which accounts were opened at Fleet's Martha's Vineyard

branch, and total \$900,000.00; joint bank accounts with his son, Steve, in the Hollywood National Bank in California, totaling \$100,000.00; and an investment account with Bay State Investments of Boston totaling \$28,000,000.00.

At his death, John left his son and daughter and an ex-wife entitled to alimony under a divorce judgment entered ten years ago. The judgment provides for alimony payment of \$150,000.00 per year for fifteen years to be paid by John to his ex-wife.

At his death, John left a will giving his daughter \$6,000,000.00 worth of estate assets and his son all the rest and remainder, all to be paid out of his probate estate, to be paid in cash or in kind in the sole discretion of the executor. The will nominates John's son, Steve, to be executor. Steve lives on Martha's Vineyard and Denise lives in Maine.

John was a known drug user. He had been hospitalized three times in the past for drug overdoses. His last such hospitalization was only one month before his death. It was during that hospitalization that John signed his will.

Denise is saying that she feels hurt by her father who she believed favored Steve. She also says that she does not trust Steve whom she suspects of instigating a rift between Denise and her father. Denise says that she will contest the will if offered to probate and she says that she is entitled to one-half of her father's probate estate as an intestate share, in addition to the \$900,000.00 in the account she held jointly with her father in the Fleet Bank.

Respond to the following questions:

1. Is probate necessary? If not, why? If yes, what needs to be probated and where?

Explain your response

2. If probate is necessary, explain how process is started.
3. Who have claims to distribution (not creditor claims) from the probate estate? To what may they lay claim for distribution and why?
4. When and how must such claims be asserted?