Final Examination Spring 2012

Professor Ford

Instructions:

This is an open book exam. 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. Write your student identification number, my name and the course title, on the front of each booklet. Insert booklets one inside the other, in order, when you pass in your exam.

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. Answer only the specific questions that are asked.

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.

If you feel you do not have all the facts necessary to resolve a pertinent issue, note what additional information is needed and state conclusion in the alternative.

All questions are of equal weight.

You have three hours to complete this exam.

Fred has a small business of buying run down homes, fixing them up and reselling. He has been in the business for the past eighteen years. Over those years, Fred has used the services of a few different lawyers to handle the legal aspects of the purchases and sales. Attorney Planner has been one of those lawyers from time to time, although his services have not been used by Fred for over five years. Last week, Fred set up an appointment for his Dad, John, to meet with Planner to discuss some estate planning and asset protection matters.

At the meeting, John relates to Planner that he has two daughters, Deborah and Danielle, and son, Fred. He explains that Deborah is busy with three children and a husband, plus a part-time job to supplement household income. Danielle has been in and out of trouble with police due to illicit drug use and some criminal conduct engaged in to support her drug habit. John states that he loves all three of his children, but is unable to rely upon either of his daughters to look out for him. Fred is smart and a good businessman, but he has been sued once for questionable business practices. Fred came out on the prevailing side of that lawsuit, but John says that he still has some question himself about some of Fred's conduct.

John's estate currently consists of a residential condominium worth \$250,000, \$150,000 in an IRA, \$40,000 in the bank, plus a 2005 automobile. He wishes to have prepared for him a durable power of attorney, health care proxy and a will. He wants to name his son, Fred, his agent under the power of attorney, as well as on his health care proxy instrument. He intends to name Fred executor of his estate. As for disposition of his estate upon his death, he states that one quarter is to go to Deborah. One quarter is to go to Fred in trust for Danielle for her care and support. She is to successfully remain off drugs to be entitled to any benefits from the trust. Fred is to evaluate whether she is complying or not. If she spends more than three months at any one stretch using drugs, or if she relapses into drug use more than two times following his death, then the trust is to terminate, and all trust property is to go to Fred. The rest of his estate is to go to Fred outright.

What are the issues for Planner to consider in going forward with John's estate planning? Discuss and decide how he should handle them. Explain your answer.

Ethel is 83 years old. She lives alone. She sold her home seven years ago and rents an apartment in a city project. You represented her on that sale. She has about \$150,000 in a savings account in a bank close to her home. The savings account is her only asset, other than her apartment furnishings and clothing. Each month, she receives Social Security which is direct deposited into her savings account. Her Social Security is equal to her monthly rent.

Every Thursday, Ethel phones the local grocery store with her shopping list, and the grocery store delivers the groceries to her. She pays in cash upon delivery. On the 27th of each month, Ethel goes to her bank and withdraws cash in the amount of her rent and delivers it immediately to the superintendent in her apartment building. He gives her a receipt. Rent includes water, sewer, heat and light. Each month, on the day that she receives her phone bill, Ethel goes to her bank and secures a money order payable to the phone company, and she mails it to the phone company in the mail box just outside the bank.

Ethel loves cats. She had a cat when she moved into the apartment. One cat is allowed per her rental agreement. Over time, Ethel found one, then a second, and then a third stray cat, which she has brought back to her apartment and cared for. At first, the super turned his head the other way, but when she got the third cat, the super told her to get rid of two of them. When she did not, he filed a legal action in court to have her ordered to comply with the apartment rental agreement. You represented her at the time. She was given time to find new owners for the excess cats, or give them up to the local animal shelter. Ethel surrendered the cats to the shelter. The same scenario has played out three times.

Twenty minutes ago, you received a phone call from the apartment building super informing you that Ethel once again has four cats and is refusing to voluntarily give up the excess. You put down the phone and it rings again. It is the manager at Ethel's bank. Ethel had previously told him that you handled the sale of her home, and you drafted her Last Will, which is in a safe deposit box that Ethel rents at the bank. Payment for that is by automatic bank deduction from her account by written agreement. The bank manager informs you that Ethel has been making increasingly larger and more frequent withdrawals from her bank account over the past six months. Those withdrawals have run about \$15,000 above Ethel's previous average. When he asked her about it, she replied that she is helping the animal shelter which, she read in the newspaper at the library, is experiencing a shortage of funds to care for all the strays being brought there. You hang up and Ethel calls.

In response to your questioning, Ethel confirms what the apartment super and bank manager have told you. She wants you to again represent her on the "cat eviction" matter. Also, she wants to change her will to leave all of her estate at death to the animal shelter. You make an appointment for her to come into your office to talk. You next check out, and confirm, that her donations to the animal shelter have been made anonymously. No one at the shelter knows Ethel and no one there has approached her for donations.

Putting aside for the moment the "cat eviction" and new will matters, what do you do? What are the issues for you? Discuss and explain the options in relation to the facts given.

Mary Irvine was 78 years old and living by herself as of two and one-half years ago. She had been having difficulties, and her daughter, Julie, moved in with her. From the time that Julie moved into her mother's house, she had to help her mother with feeding, getting in and out of a chair, walking and toileting. On March 5th, Mary became ill and was hospitalized for seven days. On March 12th, she was discharged to a nursing facility for rehabilitation, which lasted until March 24th, the day before she was to be discharged home. At that time, Mary had a relapse of her illness and was again hospitalized. This time she was in the hospital until March 30th, and was again discharged to a nursing facility for rehabilitation originally for eighteen days. She has lived continuously in the nursing home since that time to date.

Over a year before her initial hospitalization, Mary was consulting with a contractor to perform jobs around the house, including new roof, garage door, slider, decking, gutters and the insulation of the walls and attic. Due to unavailability of the contractor, the work was not commenced until April 1of this year. On May 1 and May 7, two checks were issued from the appellant's checking account, check #6782 in the amount of \$20,150.00 and check #6787 in the amount of \$12,000.00 for a total of \$32,150.00. On May 10th, the appellant transferred her home to her son for nominal consideration.

Mary has a letter from her physician dated May 10th, stating that Mary has suffered a dramatic decline in cognitive and functional status since the end of 2009. Mary's daughter, Julie, has lived with Mary, and were it not for the care she provided, Mary would have been admitted to a nursing facility as early as two and a half years prior to her actual date of admission.

Julie informs you that her mother has only \$15,000 left in her bank account and no other assets. She will therefore be in need very shortly of applying for Medicaid benefits to pay for her nursing home care. She asks your advice as to whether her mother will be eligible for Medicaid benefits when her mother's bank account is spent down.

How do you respond? Will Mary be eligible for Medicaid when her bank account is spent down? Explain.

Louis and Lucy are husband and wife. On May 15, 2007, they placed their son, Sam's name on their bank savings account, which at the time had \$45,000 in it. On May 17, 2007, Louis and Lucy placed their daughter, Debby's name on their mutual fund account, which at the time had \$120,000 in it. On June 1, 2009, Louis and Lucy transferred to their daughter, Carla, all of their savings bonds, worth, at the time, \$50,000. On Monday of last week, Carla returned to her parents \$35,000 worth of savings bonds. At the same time, Louis transferred to Lucy, for nominal consideration, his half interest in their jointly owned home, having a total value of \$300,000, and his solely owned automobile, having a value of \$4,000. No further transfers or name changes to accounts were made. Louis and Lucy have received fair value for all money spent otherwise.

Louis has just entered a nursing home for long term care. As of the date of admission, there is \$30,000 in the savings account, \$45,000 in the mutual fund account, and the bonds they received from Carla are worth \$15,000.

Without any further spend down, is Louis eligible for Medicaid long term care benefits today, May 16, 2012? Explain your answer.

Tommy never really liked to play sports, and he was not good at any. About the age of 12 years old he became even more quiet and despondent than usual. Through middle school, he had no real friends. He let his hair grow long. His features were soft and a bit effeminate. Other kids started to notice, and they teased him. The teasing increased as Tommy went through middle school. Tommy would come home from school crying many times. His parents tried to encourage him to ignore what the "bullys" said and be confident that he was a good, respectful and bright young man who had much to offer in life. It did not help.

As high school progressed, Tommy would get picked on more and more, and other kids would push him around. Sometimes he tried to fight back, but always lost and got hurt. During the summer following junior year, Tommy met a new boy in town. His name was Eric. They had much in common and they became friends. Then it was time to return to high school.

Tommy and Eric spent all of their time together. They signed up for the same classes. They both enjoyed the same music and books, and spent many hours outside of school in each other's company. The other kids took note, and the bullying intensified for both boys. And then came the tipping point.

There was a quarry in town where the kids always went for a cool dip in the clear water when it was hot out. It was spring of senior year and May was unusually hot. All the kids were at the quarry. One end of the quarry allowed safe and easy access to the water. Tommy and Eric were not comfortable there with the other kids. They went to the far end where the rocks at water's edge were high and jagged. The boys started to climb down the rocks as they could not jump because there were rocks just below the water's surface at that point. Eric's foot slipped on wet moss and he fell. Tommy was able to catch hold of his arm, but it was sweaty and slid right through his hand. Eric went all the way down, and without hesitation, Tommy leaped to the water below to help his friend. The other kids heard the screams of the two boys and came over.

Both boys were taken to the local hospital. Eric had struck his head and was pronounced dead. Tommy was seriously cut and scraped by the rocks, but otherwise ok, until a rash soon appeared at his cuts. They had been infected by a substance in the algae on the rocks. The infection was treatable, but, if left untreated, would be toxic. When the doctor finished explaining this to Tommy and his parents, Tommy closed his eyes. A tear trickled out of the corner of one eye. Tommy opened his eyes and looked staring at his mother. It seemed an eternity, but then he spoke: "I don't want the medicine." Tommy turned eighteen today. Tommy's parents are frantic. They want Tommy to take the medicine.

Does Tommy have to take the medicine? Explain your answer.

Final Examination Sring 2004

Professor Ford

Directions:

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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. Lydia is an 85 year old widow with two sons. She lives alone in her own home. She has investments in bank accounts totaling \$150,000.00. In the past few years, she has become more and more forgetful of things that she has been told. You have handled different legal matters for her over several years. She asks you at this point to prepare a will for her.

You meet and she states her desire to leave the bulk of her estate to her children with small gifts to her church and her grandchildren. She has difficulty deciding amounts or percentages of her estate for those gifts, but she finally does decide and she signs her will. Next she asks for a durable power of attorney.

In a meeting with you, she names her children to be her agent to act together. She expresses concern about her right to remain in her own home for as long as she is able to do so. She labors over the wording in the durable power of attorney as to the authority granted to her agent.

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You notice throughout the process with the will and the power of attorney, she is fretful and forgetful. After you spend much time painstakingly explaining various provisions to her, including how her agent must act according to her wishes, she phones the next morning to your office at 6:30 a.m. leaving a thirty minute message saying she is making a big mistake and does not wish to give her house to her children who are trying to take the house away from her. Again, you explain that she is not giving her children anything at this time. Finally, she says she understands and she signs the power of attorney. Next, she expresses a desire to protect her house against the cost of long term care.

In a meeting with you, she expresses her desire to pass her house on to her children. You explain an irrevocable trust to hold title but subject to her life estate. The children can serve as trustees for her. She says she understands, but the next day she again leaves a lengthy telephone message early in the morning saying she has been misled and she does not wish to give the house to the children now. You meet with her again, explaining how she controls the use of the house during her lifetime. She says that is exactly what she wants and now she understands. She signs the trust and the deed transferring title into the trust. She pays you the fee for recording the documents at the Registry of Deeds. You do not get a chance to send the documents out that day, and again, early in the morning, the following day, she leaves another telephone message saying she has made a terrible mistake. She has been misled. She does not want her children to be in charge of her house. She wants to undo the trust.

Explain the legal and ethical considerations involved here. What do you do? Why?

2. Max and Mary are husband and wife. They own their own personal residence as tenants by the entirety and the home is worth \$400,000.00. Max owns an automobile in his name alone worth \$6,000.00. Together the two have a joint checking account of \$15,000.00 and a joint savings account with \$65,000.00. The husband's pension is \$700.00 per month. It is not reducible to a lump sum payment. It will terminate upon his death. Max's social security is \$600.00 per month and Mary's social security is \$300.00 per month, based upon Max's benefits. Max has just gone into a nursing home and Mary is still in the personal residence. Mary's living expenses in the community are as follows. She has real estate taxes and insurance of \$460.00

per month, utilities and heat of \$300.00 per month and medical prescriptions for herself of \$800.00 per month. In addition, the Medex supplemental insurance for each Max and Mary is \$50.00 per month.

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Is Max presently eligible for Medicaid long-term care benefits in the nursing home? If not, why not? If Max is not presently eligible, what can you recommend to make him eligible or bring him as close as possible to eligibility? Explain your answer.

Mother has three children, Alice, Ben and Cathy. Mother has assets consisting 3. solely of four bank accounts, being accounts "A", "B" and "C", which are savings accounts and account D which is a checking account. Mother has also made a will leaving all of her property to her three children equally. In addition, Mother has signed a durable power of attorney naming Alice her attorney-in-fact, and giving her full power to deal with all of mother's property including her bank accounts, including the power to draw down on them, withdraw all of the money in the accounts, pay bills for mother, change accounts, change banks, and the like. In effect the attorney-in-fact is given full power to deal in and with Mother's property as if the attorney-in-fact were the sole owner of that property. Mother has advised Alice of the will, the power of attorney and the four accounts. Mother told Alice to use Account D first to pay Mother's bills because it is a checking account and it receives automatic deposit of Mother's social security check. Mother, on her own, and while competent, next establishes a payee on death designation on each of the three accounts as follows: Account "A" is to be paid to Alice, Account "B" to Ben, and Account "C" to Cathy. Mother told Cathy about these payee on death designations. Mother's health now worsens and Alice is her caretaker.

Alice draws down Account "D" for Mother's needs. Account "D" still receives automatic deposit of Mother's social security check, but that alone is not enough to cover Mother's expenses, so Alice checks the rates of return on the three other accounts. She finds that the lowest rate is on Account "A", then the next higher is on Account "B" and Account "C" pays the highest rate of interest. Therefore, Alice starts drawing down on Account "A" for Mother's needs and she tells Ben and Cathy what she is doing and why. Alice's workload in caring for Mother increases over time and one day Mother says to Alice, "I appreciate what you are doing,

and I want to pay you." Alice ignores Mother's comment at first, but as Alice's work increases and as account "A" is exhausted, Alice starts drawing down Account "B" for Mother's needs. Alice also pays herself a small weekly stipend of \$100.00. Alice tells Ben and Cathy that Account "A" is gone, and that she, Alice, is now using Account "B". That is all she relates to Ben and Cathy. In time, Account "B" is exhausted and Mother passes away. At that point in time, Alice and Ben learn about the payee on death designations and also that that information was known all of the time to Cathy who now claims full ownership to Account "C". Mother left no other estate.

To what is each Alice, Ben and Cathy now entitled, given all of the circumstances above? Consider who had what duty and what authority.

Have a nice summer!

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Final Examination Spring 2000

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.

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.

Address only issues encompassed by the assigned readings and class discussions, even if you think you spot an issues on another topic.

ANSWER ALL QUESTIONS.

- 1. Mom is elderly and in the hospital, soon to be discharged. The hospital social worker is looking for a nursing home placement for mom. The adult children of mom come to you saying that mom wishes to be cared for at home. Mom's doctor has advised what services mom will require and that mom may be discharged home provided the services are in place. The children inform you that they are up to the task of securing appropriate services for mom, but they are concerned about how mom will pay for those services. They wish to know what is available to mom to help defray costs of her care. Mom has assets and income, but mom is not interested in disposing of any of her assets or doing any so called Medicaid planning. What else is available for mom? What information do you need and how do you advise the children to proceed?
- 2. Baker Company needed to cut costs and decided to target payroll. Baker therefore identified its five highest paid employees, aside from the owner. Those employees were all given two weeks notice, then laid off. All Baker Company employee pay is based solely upon years of service. If quality of work of an employee ever became an issue, that employee was dismissed for poor performance. Therefore, the highest paid employees were always the most

senior employees. All laid off employees were in the protected age group. All laid off employees have banded together and brought an age discrimination in employment claim.

- (a) You represent the employees. How do you argue their claims?
- (b) You represent Baker company. How do you defend?
- 3. National Bank telephones you at your office saying that Mrs. Green, an elderly widow, is there at the bank relating that her son and his girlfriend have been taking her money from her account at the bank without her permission, and that mom wishes to have an elder law attorney manage her bank account and pay her bills while National Bank prepares a financial plan for the management of her funds. Excited at the thought of having your first client, you leave your game of solitaire and rush to the bank. There you meet with the banker and Mrs. Green. The latter informs you that she has an account in the amount of \$600,000.00 at the bank. Some while ago, she had placed the name of her son, Eric, as joint tenant on the account so that he could assist her with her banking and bill paying. However, Mrs. Green feels that her son is much under the influence of his girlfriend, and, between the two of them, they have taken approximately \$40,000.00 from her account over the past four months without her permission. Mrs. Green states further that she has two daughters, but she does not wish either of them to handle her account. At the meeting at the bank, you notice that Mrs. Green has some memory lapses. At that point, Mrs. Green announces that she is already late for her Bingo at the Senior Center, and she asks you to call her at home in the morning.

Next morning, when you telephone Mrs. Green, she does not remember where she met you. You review with her what transpired at the bank the prior day, whereupon she recalls who you are. Mrs. Green asks that you come over to her house to discuss a plan of action for her just as soon as you are able. You tell her that you will be there right away.

As you hang up the telephone, two women and two men enter your office announcing that they are the daughters and sons-in-law of Mrs. Green. They immediately attack your motives for speaking with Mrs. Green and insist that you and National Bank not become involved. They inform you that Mrs. Green has dementia, and they, the daughters, are in charge. They know about their brother's taking of money from their mother, and they state that they are

taking steps to safe-guard mother's property. One of the daughters, Deborah, states that she has a power of attorney from her mother, at which point all four abruptly leave your office.

What do you do? Explain.

Ag&L.ExamFinal.'00S.051800

Final Examination Spring 1998

Professor Ford

Directions: Please place your <u>Social Security Number</u> on the front of your booklets. No other means of identification should be shown. 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 the entire examination fully before beginning. Thereafter, you should approach each question by making a simple outline of your answer so as to best organize your response. You may write your outline in the booklet. The outline is for your purposes and will not be considered any part of the examination answer. Issue identification is most important, followed by explanation of issue. You are cautioned to follow an orderly pattern of analysis in noting the issues you identify. Two hours are allotted for this examination. Suggested time guides are shown after each question. Use your own judgment as to how much time you require for each question. Answer all questions. Best wishes.

EXAMINATION:

1. At age 90, Sarah had been living alone in her own home since the death of her husband 12 years earlier. While at home, getting up from bed one morning, Sarah fell. She was hospitalized for serious bruises and a sprained right wrist. Following three days' hospitalization, Sarah went to Sunshine Nursing Home for rehabilitation for two to three weeks to strengthen her legs which were weak from lack of exercise. While at Sunshine Nursing Home, Sarah attempted getting out of bed one morning without the assistance of nursing home staff, and she fell again. This time, she fractured her right arm and injured her forehead over her right eye, requiring six stitches to close. After a brief hospitalization, Sarah returned to Sunshine Nursing Home. There, she continued to receive physical therapy for her legs. The therapist's reports indicate that therapy sessions were not always conducted due to "lack of patient cooperation." Nonetheless, Sarah progressed to the point where she succeeded in walking on her own, but accompanied by the physical therapist, a total of 300 feet in four separate sessions in one day.

The next day, at about 6:00 a.m., Sarah was assisted out of bed and into her wheel chair and pushed out to the hall by a nurse who told her to wait there while she (the nurse) got another patient out of bed. Sarah and a few other patients were accustomed to rising earlier than most other patients, and they would go to the dining room for tea and cookies before breakfast. The nurse went to the next room to get the other

patient out of bed, whereupon Sarah decided to, and did, get out of her chair and start walking down the hall towards the dining room which was about 75 feet away. About halfway to the dining room, Sarah fell, fracturing her pelvis.

The nursing home says it repeatedly told Sarah to not attempt to get up on her own. One evening shift nurse would routinely wheel Sarah to the nurses' station to keep an eye on her. The nursing home says it had no physician order for use of a restraint, it cannot give 24-hour-a-day supervision of each patient, and, unfortunately, accidents happen. Does Sarah have a claim? Explain.

- 2. Ellen is 52 years of age. She is a skilled worker, and her skills are integral to the projects being performed by her employer. One day, while working on a large project, Ellen's supervisor was hurrying her to complete a task. As a result of hurrying, Ellen's hand slipped on the machine on which she was working, and she was injured. Her doctor has informed her that she will be out of work for six weeks. Ellen immediately notified her employer. The project on which Ellen was working has a short deadline requiring the services of an employee with Ellen's skills. The employer dismissed Ellen and hired another worker, age 47 and possessing skills comparable to Ellen's, to fill her position. Ellen asks you if she has a case. How do you respond?
- 3. In the 1970's, Bill Gateway had a vision of writing computer software and thus began his bold adventure, a company named Minisoft. Bill worked hard and hit upon some bold new ideas to use developing technology. His company flourished. He literally became super rich overnight. Bill married, had a son and lived a storybook life. In time, Bill brought his son, Ben, into the company, and Ben started working his way up the ladder. But Ben was not pleased with the speed of his advancement, and he made no secret of it. Bill had stock control of the company, and everyone did what Bill said. But Bill was getting along in years, and some people, Ben included, felt Bill was losing his magic touch.

Some of Bill's ideas flopped, and the company starting losing some of its competitive edge, though it was still far and away the leader in its field. Ben had a bold new idea that he kept pressing on Bill, but Bill resisted. Then tragedy struck.

Bill and his wife were involved in an auto accident. His wife died, and Bill's legs were seriously injured. He required a walker or wheelchair to get about. He was, by this time, 68 years old. Bill became despondent, and the company's progress continued to decline. Ben became increasingly impatient as more time passed by.

A year after the auto accident, Bill was using his walker while accompanied by Ben, when suddenly, for no apparent reason, the walker slid out from under Bill who fell and broke his hip and suffered a concussion. Thereafter, Bill was confined to bed or a wheelchair. Before fully recovering from those injuries, Bill asked Ben to get him a cup of coffee. Bill had previously always enjoyed his coffee black, two sugars and piping

hot. He loved to take tiny slurps. Bill used to say that was the only way to drink coffee. Ben obliged, and as he raised the steaming cup to Bill's lips, Bill suddenly raised his hands to the cup. Ben says that Bill's sudden, unexpected movement caused the cup to tip. The result was a mouthful of scalding hot coffee pouring into Bill's mouth. Bill choked and swallowed. His mouth and larynx were severely burned, to the point where Bill could no longer speak. Three days later, Ben filed in Probate Court a petition to have Bill declared an "incapacitated person" under State Statute 123, which defines that term as meaning "a person who lacks the capacity to manage his property or to meet his essential health and safety requirements." Ben asks the Court to appoint him Bill's guardian. The Probate Judge has appointed you Guardian Ad Litem to represent the interests of Bill. What issues do you have to address? How do you deal with them?

Ag&L.ExamFinal, 98S

Final Examination Spring 1994

Professor Ford

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EXAMINATION:

1.Ruth Brown, a long-time friend and client of yours, is sitting in your office, emotionally upset over the following situation. She tells you that her mother, Ethel, who is 87 years old and had, until recently, been enjoying good health for her age, suddenly had a stroke and is now in the intensive care unit of City Hospital. The stroke has left her completely paralyzed on one side of her body and nearly paralyzed on the other. When she suffered the stroke, she fell, hitting her head, and she suffered a concussion as a result. Her condition is still not stable, she is under medication, and she drifts in and out of consciousness. Ruth states that during some moments of consciousness, her mother has responded with her eyes to both visual and verbal stimuli. She has followed faces and voices with her eyes, but she is unable to speak. Ruth is especially concerned as she anticipates a repetition on the part of her mother of her grandmother's experience.

Ethel's mother, Grace, lived until her early nineties, but her last few years were a living hell, says Ruth. Like Ethel, Grace enjoyed good heatlh into her late eighties, when she suffered a sudden, massive and unexpected stroke that rendered her paralyzed and placed her in a nursing home where she was totally dependent upon the care of others. Like Ethel's, Grace's body was paralyzed, but her mind was aware of her surroundings, but she was, nonetheless, unable to speak. Ethel visited her every day in the nursing home and repeatedly told Ruth that if she, Ethel, ever suffered a stroke so as to be in the same condition as Grace, she, Ethel, would not want any medical care so as to prolong her life. In fact, as you now recall, you, yourself, heard Ethel say the same thing on a number of occasions.

With tears in her eyes, Ruth informs you that the doctors have informed her that Ethel's capacity for breathing has been seriously compromised, and she will not be able to breathe on her own much longer. They want to hook her up to a respirator to

Aging and the Law - Spring 1994 Final Examination - Professor Ford - Page 2

assist her with her breathing. Ruth begs you to do something to allow her mother to not linger and suffer, but rather have a dignified death.

How do you advise Ruth? Explain your answer.

2. John Porter is a first-time client, and previously unknown to you. He informs you that his mother had become ill about six months ago and was facing the prospect of having to go into a nursing home. John wanted to insure that she got into the Pine Rest Nursing Home, which is close by John's residence, so that he would be able to visit his mother frequently. He knew that Pine Rest accepted as new residents only those individuals who could give assurance that they would be able to pay privately for at least two years, and preferably up to three years' time. John's mother had very little assets, which might pay only a few months' stay at Pine Rest, and therefore, John negotiated with Pine Rest to accept his mother in exchange for payment up front in one lump sum equal to the private-pay rate for a private room at Pine Rest for a period of eighteen months. The agreement was signed by John and Pine Rest, and John made the payment to Pine Rest. Mother then entered Pine Rest and was given a private room.

Mother has now been in Pine Rest for six months, and she has been complaining over the last few months of lack of care and responsiveness from the nursing staff, infrequent and sloppy housecleaning and laundry services, and poor quality of meals. John states that he has spoken several times with the nursing home which assures him that the nursing home is well run, but sometimes, needier patients can be quite demanding of the nursing staff time, and occasionally, some patients may have to wait a little while for a nurse's assistance. The nursing home also has told him that the food service director is a qualified nutritionist, and the cleaning and laundry people have been with the nursing home for several years, and the nursing home is quite satisfied with their performance. It is suggested by Pine Rest to John that perhaps Mother is simply unhappy about being in a nursing home. John insists, however, that his mother is not a complainer, never was, and did not start complaining until only the past three months.

Because of his mother's continuing complaints, John decided to visit the nursing home more frequently, including during non-regular visiting hours, including mealtimes. He states that he, himself, witnessed what seemed to him to be unusually long periods of time for residents to wait for nursing assistance after calling for same, and he stated, from his observation, meals were consistently primarily starches, with very little protein and vegetables, and he never saw any fresh fruit. Also, he stated that during the past few months, he has observed that the nursing home appeared less well maintained than he would like to see, and he has regularly detected various foul odors in the air, including, at times, a strong smell of urine.

John asks what he can do and what rights he has under the contract. Advise John fully as to his rights, explaining your answer.

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