

1963

## Trusts and Estates (January 23, 1963)

William & Mary Law School

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### Repository Citation

William & Mary Law School, "Trusts and Estates (January 23, 1963)" (1963). *Faculty Exams: 1944-1973*. 117.  
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Three hours - six questions or groups of questions. Watch your time, and do not spend too much on the early questions --- you may leave spaces anywhere to return to later if you have time. Give as many reasons as possible for all answers. If you are going to cover more than one point, make a check list so that you will not forget any, as I am convinced students often do. "General rule" will be interpreted to mean a settled rule to which there are exceptions. Do not use "majority" or other term to indicate that there is a conflict of authority unless there is. If there is a conflict, so state and make clear the various views, and the nature of the conflict, and, if not otherwise clear, the reasoning back of each view. If there is a conflict of authority, be sure to carry the problem through to a conclusion under each view, bearing in mind that a view taken under a conflict may lead into another conflict. If in doubt as to meaning of question or facts to be assumed, state your doubt and answer both ways, bearing in mind that facts may be stated so as to leave different possibilities as to other facts for you to consider. I shall return to the examination room at 10 and 11 to answer questions --- feel free to ask questions, as if there are any "bugs" in the exam I would like to get them cleared up.

## 1.

The following handwritten document is found in John Smith's safety deposit box after his death: "I, John Smith, leave everything that I have to be disposed of after my death by the trustees under my only trust in accordance with its terms and all amendments thereto." Assuming that declaration of trust and numerous amendments by him are found, all having been duly put into effect, and considering other ways that he might have referred to them, what will the probate court do?

## 2.

H and W, husband and wife, each properly execute the following will: "Each of us leaves all his or her property to the other." Thereafter H, while bedridden, blind and quite deaf, misunderstands what little he hears and believes that he has survived W. He therefore asks A, B and C to be witnesses to a new will, both will and attestation clause being properly prepared, leaving all his property to a hospital. He signs it before they come into his room, and they do not see his signature, but he states to them, "This is my will". A and B sign on a clipboard in their laps sitting beside his bed. C signs at a table at the foot of the bed with his back to H. W dies shortly after H, and no evidence is available as to any dealings between her and H. What will the probate court do?

## 3.

(a) X executes will in which he bequeaths \$10,000 each to A, B and C, and leaves the residue of his estate to D, E and F. Thereafter he gives A \$10,000, stating on the face of the check that it is the gift provided for in the will. Thereafter he executes a codicil devising his home to a hospital. Thereafter D predeceases X. What will the probate court do?

(b) X executes will providing that his estate shall go as Y's estate goes. Thereafter Y predeceases X, leaving a will. Thereafter X executes a new will giving 75% of his estate to trustees to educate his grandchildren and then pay the balance to them, the remaining 25% going to a charity at X's death. X then tears up the first will. What will the probate court do?

(c) X devises a farm to his brother Y, and leaves the balance of his estate in trust for his widow for life, with remainder to his descendants then surviving. The widow takes against the will, under the law of the state taking a one half interest in the farm and all the other property. What will the probate court do?

## 4.

X leaves the following will: "I bequeath and devise my entire estate to T as trustee to care for infirm retired employees of the Newport News Shipyard, to maintain the Victory Arch and other monuments in the City of Newport News, and for him and successor trustees to take care of the needs of himself and his children." Would it make any difference if he had allocated specific amounts to the various purposes, and in either event what will the probate court do?

## 5.

(a) S deeds land to B, X putting up the money for the purchase. At X's request B tells X at the time of the transaction that he will pay all net income for ten years to X's mother M, and then deed the land to X. Describe the legal situation.

(b) B, claiming to be beneficiary, makes demands on T, claiming that T is trustee for B of a res consisting of real and personal property. T denies that he is trustee. In the state the period of adverse possession as to real and personal property is ten years; as to all other matters the limitation period is five years. Eight years later B sues T, law and equity being administered by the same court. What will the court do?



(c) References to "child" and "children" refer to those living at time of deed.

X deeds land to T by deed not showing T to be trustee, under duly established inter vivos trust to use the income to educate X's children and grandchildren until 21 years after the death of his last surviving child, or until all his children then living have graduated from college, whichever is the shorter period, and then to convey to X's descendants then living per stirpes. 20 years later the last of X's children to graduate from college does so. A year later B, without knowledge of the trust, buys the land from T, and T absconds with the proceeds. Describe the legal situation, T having made no deed to the land, except to B..

6.

(a) X's automobile collides with another, and X is sued for damages. Shortly thereafter X conveys land to Y without consideration. Before the damage suit is tried X sues Y to compel return of the land. While X's suit against Y is pending, the damage suit is tried, and won by X. What decision in X's suit against Y?

(b) X duly declares himself trustee for B of \$10,000 on deposit in X's name in First Bank, the money to be paid to B when he becomes a student at the College of William and Mary. After B has learned of the trust, but before he has decided whether to attend William and Mary, B and X are killed in the same accident. Describe the legal situation.

(c) Six days before his death, while in full possession of his faculties, X, who leaves a widow and several children, delivers stocks and bonds to Y. What investigation will you make, and what will the probate court do?