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FINAL EXAMINATION

TRUSTS AND ESTATES
May, 1971

T. H. Jolls

I.

15 Points

Discuss the validity and effect of the following, each extracted from a separate will:

1. "After all debts have been paid and specific bequests provided for, Henry Jones, my executor, is directed to distribute outright the residue of my estate to such persons or for such objects as he in his sole discretion shall determine."
2. "I leave \$50,000 to A as trustee, to deal with in accordance with instructions I shall give him." A testifies that testator told him, six months after execution of the will, that he should buy U.S. government bonds with the money, pay the income to C for life, and on her death turn over the bonds to such charitable institution as A may select. A is willing to carry out this arrangement.
3. "My executor shall distribute my 18th century furniture in accordance with a list of distributees I will sign for identification and which will be in my safe deposit box." A signed list was found in the box.

II.

30 Points

S created a trust with X Bank, in which were deposited (a) \$100,000 in securities and (b) a \$150,000 insurance policy on the life of S, with the beneficial interest duly assigned to the Trustee on forms accepted by the Insurer. The trust agreement provided that S should continue to pay premiums on the policy; that the trustee should pay the net income from the securities to S during his lifetime; that S reserved the right to change the beneficiary of the insurance and the right to revoke or amend the trust; that upon S's death the trustee should collect and pay over all the trust assets one-half to his brother B outright and one-half to the trustee named in S's last will and testament, to be held upon the trusts specified in said last will and testament.

Shortly thereafter S received from his lawyer a carefully drafted will setting up a testamentary trust for the wife with a remainder to their only child. At S's death, this will form was found in his safe deposit box, unexecuted, bearing various notations by S of changes and questions. His sole heirs are the wife and child. As administratrix of his estate the wife brings action to require X Bank to turn over to her all securities and insurance proceeds, cutting off all rights of B. She makes the following contentions:

- (1) S retained such dominion over the property that the trust was a sham and had no legal affect.
- (2) The trust was Testamentary in nature and not witnessed per the Statute of Wills.
- (3) There was no beneficiary in existence apart from S himself, and B.
- (4) The trust was illusory as in contravention of her statutory forced share of 1/2 of his estate.

With each of these contentions it is asserted that the trust was void ab initio throwing the entire corpus into the intestate estate. Discuss and decide the merits of each.

III.

22 Points

T, a bachelor, had few relatives and was completely out of touch with them. A year before his death he was visited by his nephew A, son of T's deceased brother K. T talked freely to A about his will, and asked A about his brothers and sisters and other relatives; A replied "there is nobody left in the whole family but Brother B and myself". This was a deliberate lie, there being two sisters also living.

T is now dead and unfortunately there is no evidence of the lie except for an admission made by A, while more or less intoxicated, to one of the sisters. A now denies the lie and the admission of it.

T's will, typewritten, duly executed and witnessed, was found in his safe deposit box. It said:

I leave the following:

1. To the Middletown Old Peoples Home my collection of rare stamps, valued at \$1000.
2. To my good friends Charles, David and Edward Jones, the sum of \$6000 to be divided equally between them.
3. To my nephews A and B, the only surviving children of my brother K, all the rest and residue of my property.

I appoint A executor.

Paragraph 1 of the will was completely lined out in pen; in paragraph 2 the name "Charles", was marked out in pen. In the margin opposite these paragraphs there was written "Cancellations made by me 2/10/71" and initialled by T. The will itself was dated 1/9/71. The state statute permits total or partial revocation by burning, tearing, cancelling or obliterating.

A now petitions for probate. Discuss the following problems in the order stated, giving your answer to each, based strictly on the facts stated:

- (1) Effectiveness of cancellation of clause 1; if effective where does the property go?
- (2) Effectiveness of cancellation in clause 2; if effective where does the \$2000 go?
- (3) Possible theories on which the sisters could share in the estate, through decision in the Probate Court or some other court.
- (4) Assume for the purpose of this clause (4) only that paragraphs (1) and (2) of the will are in their original form unaltered. If the estate total is only \$3000 net, what will be allotted to paragraphs 1, 2, and 3?

IV.

15 Points

This question arises in the State of Euphoria, whose revocation statute provides "No will shall be revoked, unless by a subsequent will or codicil, or by the testator cancelling or destroying the same, with the intent to revoke." Euphoria has by decision adopted the general rule (similar to Virginia's) that where a new will by its terms revokes a prior will, the revocation, like the instrument, is ambulatory and has no legal effect unless and until T dies and the new will becomes admitted to probate as his last will.

T's will No. 1 left all his property to his nephew N, son of a deceased brother. His second will, No. 2, by its terms revoked No. 1 and left all his property to his two sisters. Still later he revoked #2 by destruction, in the presence of witnesses, to whom T said "My first will is dead because I revoked it by signing #2, which can be proved; now I am getting rid of No. 2 by tearing it up--I want my property to go by intestacy so I have no will at all". As T knew, both wills had been witnessed by T's lawyer and his secretary; they have the signed copy of No. 1 and can testify as to No. 2 from an unsigned file copy. Common Law rules of proof for lost or destroyed wills are applicable.

Discuss the alternatives of (1) Probate No. 1, (2) probate No. 2, or (3) intestacy, and decide which will prevail.

V.

18 Points

The will of T, now in effect, provides that $\frac{1}{3}$ of his \$600,000 estate is to be held in trust by X. During the lifetime of T's son S, income is to be paid to him from time to time in such amounts as X in his sole and unlimited discretion may determine; otherwise to be accumulated for S; any accumulations on hand and the principal to be distributed to S's children on his death.

The will states that while T has the utmost confidence in S, and he wants S to succeed by his own efforts, he also wants S to have throughout his lifetime the assurance that separate assets will always be in existence whereby X will be in a position to help him if X deems it necessary.

Mortgage payments on S's house are in default and have been reduced to judgment; he is in default on alimony growing out of his divorce; the creditor and his wife seek to attach \$6000 income now in the hands of X.

- (a) What result and why?
- (b) Is there any possibility of either of them attaching principal?
- (c) Suppose S now decides he wants to get rid of his debts by terminating the trust, his two children are now of age and will consent to termination. Can X be forced by court proceedings to turn over the assets to S and these remaindermen? Discuss.