

Empire College School of Law
Professor DeMeo
Wills & Trusts – Fall Final
Wednesday, December 14, 2011

ESSAY QUESTION 1 – ONE HOUR

Aunt Mabel executed a valid will in 2000 leaving all of her estate as follows:

“I will all the rest and residue of my estate, both real and personal, including any property over which I have a power of appointment, to my nieces and nephews who survive me. In the event that no nieces or nephews survive me, my estate shall be distributed to the Society for Advancement of Space Exploration, a non-profit subsidiary of NASA.”

Aunt Mabel has three nieces, Nancy, Jamie and Tracy.

During the Winter Holidays in 2005, Aunt Mabel was having tea with Nancy. She told Nancy, “You are my favorite. Your Holiday gift this year is my promise to leave 75% of my estate to you when I die. I would like you to help me out once in a while.” Nancy was overwhelmed with joy. Thereafter, until Aunt Mabel’s death, Nancy was very helpful to Aunt Mabel. She drove Aunt Mabel everywhere she needed to be. Nancy reduced her own work hours to part-time to help Aunt Mabel with daily chores and appointments. As Aunt Mabel began to decline in health, Nancy helped her with her medications, fed and bathed her. Aunt Mabel died in June of 2010. In March of 2010, Aunt Mabel was diagnosed with mild dementia, with recurring hallucinations that Uncle Joe, long deceased, was proposing to marry her in May 2010.

A formally executed will dated December 24, 2009, was found among Aunt Mabel’s important papers. The 2009 will leaves 75% of her estate to Jamie, and contains no revocation clause. Nancy does not recall taking Aunt Mabel to a lawyer to review her estate plan. The lawyer who drafted the will and supervised its execution is a friend of Jamie’s.

Who gets what? Use sound legal analysis in responding to this exam question. Do not discuss powers of appointment in responding to this question.

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ESSAY QUESTION 2 – ONE HOUR

Uncle Joe has lots of relatives, but no children. He has never been married or in a domestic partnership. He executed an *inter vivos* trust in 1998. He died in 2008.

The trust, in relevant part, reads:

“I leave 50% of my trust estate to United Way to be used for their Environmental Fund for the protection of the endangered Eskimo Curlew, my favorite song bird, which always visited the trees of Golden Gate Park each year on their migration south. The balance of the estate shall be left to my co-workers at Sam’s Machine Shop surviving at my death.”

The Eskimo Curlew went extinct in 1975. The United Way does not have an environmental fund. The United Bird Way, a non-profit entity, does have an environmental fund for the protection of all varieties of Curlews (some varieties still exist), and other songbirds. Uncle Joe donated \$500 each year to the United Way.

During the year after Uncle Joe died, the trustee sold all assets and put the proceeds in a bank account, with assets from another trust, earning 1% interest.

The United Bird Way asks you for advice on whether they should pursue a claim to Uncle Joe’s estate. What is your advice? Use sound legal analysis in responding to this exam question.

ESSAY QUESTION 3 – ONE HOUR

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Aunt Tess was a billionaire in her own right. She collected lots of art during her lifetime with a value of \$100 million at the time of her death. The total value of the trust estate at her death was \$1.2 billion.

Her trust, in relevant part, recited:

“Upon my death all of my trust estate shall be held in trust for the benefit of my good friend Mabel for her lifetime. Upon Mabel’s death, the rest, residue and remainder of the trust estate shall be held in trust for the benefit of my nieces and nephews who survive me. Upon each niece and nephew attaining the age of 30 years, the trustee shall distribute one equal share of the trust corpus to such niece or nephew, free of trust. I want my art collection to be left in my home for 100 years after my death, then to be donated, one-piece each, to museums throughout the world as my trustee(s) shall select.”

On her death Tess was survived by 20 nieces and nephews ranging from age 4 to 24. Two years after Tess’s death, a nephew age 7 dies. Mabel lived three years after Tess died. The trustee paid all of the income from the trust to Mabel, plus 10% of the trust corpus each December 31st that she survived Tess.

The Co-Trustees were Big Bank and Uncle Joe. The Trustees sold many of Tess’s good stock investments, and her personal business, and placed 25% of the proceeds into Big Bank’s regular savings accounts earning 1% interest, and 25% in several of Big Bank’s investment mutual funds. The balance was invested in individual growth stocks, none of which earned dividends or interest. At the end of Mabel’s life, the trust estate was worth \$1 Billion.

The executor of the deceased nephew’s estate asks you for advice. She tells you she has not received any information about Tess’s trust estate since the original notification that Tess died. What advice do you give her? Use sound legal analysis in responding to this exam question.