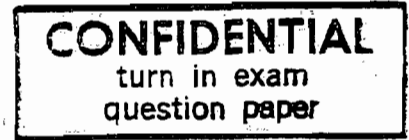


QUEEN'S UNIVERSITY  
FACULTY OF LAW  
**LAW 462 (WILLS & ESTATES)**  
FINAL EXAMINATION  
APRIL 2012  
PROF CD FREEDMAN



INSTRUCTIONS: This examination is THREE (3) HOURS in length.

There are TWO (2) parts in this examination.

Part A consists of ONE (1) question and is worth 2/3 of the total marks available.

Part B consists of FIVE (5) questions together worth 1/3 of the total marks available. All five questions are of equal value.

Please answer all questions in the answer booklets provided. Please write legibly.

Put your student number on the front page of all answer booklets. Please number the booklets in their correct order.

GOOD LUCK!

Special Aids:

**This is an open-book examination.**

**PLEASE NOTE:**

**“Proctors are unable to respond to queries about the interpretation of exam questions. Do your best to answer exam questions as written.”**

This material is copyrighted and is for the sole use of students registered in Law 462 and writing this exam. This material shall not be distributed or disseminated. Failure to abide by these conditions is a breach of copyright and may also constitute a breach of academic integrity under the University Senate's Academic Integrity Policy Statement.

---

**Part A: 2/3 TOTAL MARKS**

**Suggested Time Allocation: 120 Minutes**

Albert Albertson died last month. He was survived by his ex-wife Bernice, his daughter Carla (age 36), his son Edwin (age 19), and his mother (Francine, age 97). Edwin was adopted by Albert and Bernice at birth. Carla's twin (Dorothea) died 2 years ago; she never married or had children.

Albert did well for himself financially. At his death, Albert owned and operated a business ('AG Sales') together with his business partner, George Georgeson. AG Sales was started in 1990. Based on the recommendation of the lawyer (Larry Lawyer) that advised Albert and George, Albert made a will shortly after the business started operations (see **Document 1 below**).

AG Sales did well and the partners made good money from it. Success allowed Albert took good care of his mother - he gave her \$2000 every month since 1995, and had been paying the costs of the nursing home in which she has been living since 2007. As a result, Francine has been able to save her pension income which she told her family would go to Albert's children after she died.

The success of AG Sales had its dark side too. Flush with cash, Albert developed a taste for cocaine and gambling. In fact, at one point these habits almost caused AG Sales to fall apart. In 2005, Albert needed a lot of cash to pay off his drug and gambling debts which he spiralled out of control and he took \$100,000 out of the AG Sales' bank account without George's approval or authorization. When he found out about Albert's behaviour, George was livid. He threatened to report Albert to the police and have him charged with theft and sent to jail. Albert and Bernice begged George not to go to the police. They said that both Albert and George would both be worse off. George agreed not to go to the police on four conditions. First, Albert had to pay the money back to the business (which he did over the next two years). Second, Albert had to obtain medical help for his drug and gambling problems (which he did). Third, Albert had to promise not to sell his share of the business during his lifetime (Albert abided by this condition as well). Fourth, on Albert's death (which George was sure would occur before his own), George would be given the option of purchasing Albert's share of the business for its fair market value less \$200,000. Albert accepted this too and the partners agreed that Albert would modify his will accordingly and provide George with a copy of the will. Albert sent Larry Lawyer an email setting out the changes that he wanted to make to his will. Larry agreed to change the will and delegated the work to his secretary given the simple nature of the task. Albert attended at the lawyer's office, met with the secretary, signed the document prepared for him, and instructed the secretary to send George a copy of the will (see **Document 2 below**).

Albert retired from the business in 2010 for health reasons. Unfortunately he fell back into some bad habits and began using cocaine regularly. He fretted about his life. He argued with Bernice and she left him; they were divorced in 2011 (all legal issues between them were resolved). Bernice was saddened by the divorce and worried for Albert. Some months before his death, Bernice told Edwin and Carla that that their father's drug abuse had obviously affected his personality. She said that Albert told her that he thought that his neighbours had wiretapped his house and were plotting to kill him. Bernice knew the neighbours well and said that they obviously bore no ill will

---

towards Albert. No amount of trying to get him to recognize reality would help, said Bernice. Albert simply refused to budge from his beliefs.

Your firm has been retained by Edwin. He advises that his father had few debts at death (under \$1000). His father's assets at death were as follows:

- One-half of AG Sales. The business has been independently valued at about \$1,000,000.
- A house worth about \$400,000.
- A bank account in Albert's name with a balance of about \$200,000.
- Personal property worth about \$100,000.

Edwin also advises that he went through his father's safe deposit box and has found three life insurance policies (all premiums were fully paid):

- one policy pays \$20,000 and designates Bernice as beneficiary.
- one policy pays \$50,000 and designates Francine as beneficiary.
- one policy pays \$300,000 and designates 'Albert's personal representative' as beneficiary.

Edwin also advises that Albert had a joint bank account with Francine (into which she had been depositing her pension benefits for a number of years). There is about \$200,000 on deposit in that account. It doesn't appear that Albert himself made deposits into the account.

Edwin has also supplied a letter sent to him by Albert about two months before his father's death (see Document 3 below).

**Advise Edwin respecting the administration of the Estate of Albert Albertson, likely legal issues that may arise and their resolution, and distribution of assets. Indicate what other information, if any, you require.**

**Ignore the impact of tax liability (income tax, capital gains tax, Estate Administration tax, etc.) on the administration of the Estate and distribution of its assets.**





Document 3

January 15, 2012

Dear Edwin,

So much has happened to me in the last while. I have many regrets and fear that my time on earth is short (I don't trust the people next door - they are definitely up to something and will certainly do me in if they can I think). I want to put my affairs in order as they say.

I want you to deal with things after I pass away. I trust you and know that you will do a good job. Basically, I want things to be shared equally between you and your sister. I think that the house should go to your poor mother, who deserves it. I don't think she really got what she deserved from the divorce. As for George, well, I suppose what's done is done.

Dad

**PART B: 1/3 TOTAL MARKS**

**Suggested Time Allocation: 60 Minutes**

**Answer all 5 questions. Each is of equal value.**

1. The testator's will provides as follows: 'My estate trustee shall give one thousand common shares of RIM Corp. – which I regard as an excellent investment in a Canadian company - to each of my son, my daughter, and my nephew.' At the testator's death, the son and the nephew are alive; the daughter was dead, survived by her husband and son. The testator owned no shares in RIM Corp. at his death and neither does it appear that there is such a company in existence. There is a company called Research In Motion Limited widely known as RIM which is a successful Canadian company whose shares can be purchased for approximately \$14.00 each. The estate is solvent and has funds to purchase shares in Research In Motion Limited. **Advise the estate trustee.**
2. The testatrix died and is survived by a son and a daughter. Each was indebted to her through a promissory note in the amount of \$50,000. The will provides: 'I forgive my son all debts that he owes to me and discharge him in respect of any promissory note issued.' The daughter seeks your advice and produces a postcard that she says that her mother sent to her some months before her death. It reads in part, 'rest assured that I told my lawyer that I want to treat your brother and you equally in my will. That's what I want and that's what I did.' **Advise the testatrix's daughter.**
3. The estate trustee wants to take his compensation. The estate has been under his administration for two years. Assets received by the estate trustee were worth about \$1,000,000; from that amount, about \$200,000 have been paid out to creditors and the rest remains in the bank but for one transaction. The estate trustee advises that he wrote a cheque payable to himself for \$5,000 so that he could employ an accountant to do some bookkeeping (for the estate) when the need arises. **Advise the estate trustee.**
4. The testator's will provides: 'All the rest and residue of my property of whatsoever nature and kind and wheresoever situate, I give, devise and bequeath to my niece Rena, my niece Doris, my nephew James, my nephew Ronald, my nephew Roger, my niece Mary, and my niece, Barbara in equal shares, share and share alike.' Rena died before the testatrix made her will (but the testatrix was unaware of her death). Roger died after the testatrix made her will. Everyone else was alive when the testatrix died. **Who inherits the residue of the estate?**
5. The deceased died this year. She was survived by three of her four children. Her husband predeceased her. The three children advise that the original will can't be found. The children advise that they did find a photocopy of an executed will in their mother's safe deposit box. It was dated ten years ago; in it, the testatrix left her entire estate to her husband and children in equal shares. **Advise the children.**