

QUEEN'S UNIVERSITY
FACULTY OF LAW

CONFIDENTIAL

Turn in exam question paper

LAW 462 – WILLS & ESTATES
PROF C.D. FREEDMAN

FINAL EXAMINATION
April, 2015

INSTRUCTIONS:

1. This examination is **three (3) hours** in duration.
2. 100 marks are available.
3. There are three questions on this examination:
 - (a) Question 1 is worth 60 marks.
 - (b) Question 2 is worth 20 marks.
 - (c) Question 3 is worth 20 marks

ANSWER ALL THREE QUESTIONS

4. Please put your student number on the front of all answer booklets. **Please write legibly.**

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.

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QUESTION 1: 60 MARKS

Endosulfan is a chlorinated organic compound used as an insecticide to control a broad range of insect and arthropod pests on crops. It is also highly toxic and combustible. As a result, Environment Canada has terminated licenses to sell and use *Endosulfan*, and its use should be completely phased out by 2016. Unfortunately, some farmers have stock-piled *Endosulfan* as they are afraid that the pesticides that will be available after 2016 will be more expensive and not be as effective. One such farm is in nearby Yarker, a small town north of Kingston; the farm (“Ramshackle Farm”) has been in the Bennett family for generations. Ramshackle Farm is actually composed of two adjoining parcels of land, Parcel No. 1000/1 and Parcel No. 1000/2. Both parcels of land were inherited by **Brendan Bennett** from his parents many years ago.

Brendan was married to Caroline Bennett, who died in 2011. Brendan & Caroline had sons, **Duncan Bennett** and **Ewan Bennett**. Brendan lived his whole life on Parcel No. 1000/1. Duncan Bennett lived on Parcel No. 1000/2 together with his wife **Gail Bennett**. Their daughter **Helen Bennett** lived on the farm until about eleven years ago. Ewan Bennett never took to farming and lives in Toronto. Brendan and Duncan ran Ramshackle Farm together.

Last summer a plastic container containing *Endosulfan* which was stored in a shed on Ramshackle Farm deteriorated due to the way Brendan and Duncan had improperly stored it. The insecticide became exposed. On August 2, 2014 Brendan and Duncan were working in that same shed. They had brought a plasma arc welding kit into the shed to cut a metal bar on a machine stored beside the container containing *Endosulfan*. When they started the welding machine it emitting a small jet of plasma at about 28,000°C – it caused the *Endosulfan* to combust killing Brendan instantly. Duncan was injured and died the next day. Duncan’s wife Gail was walking through the shed at the same time of the accident and was exposed to the *Endosulfan* fumes as well as suffering burns from the flash fire. She died two days later. At their deaths, Brendan was age 78; Duncan was age 54; and Gail was age 55.

Brendan, Duncan and Gail each left Wills. All these Wills had been drafted by a Yarker lawyer, **Alfred Abner**, who was the “family solicitor” (having taken over his father’s law practice, who had served the earlier generations of Bennetts). Alfred’s long-time law clerk is Gail’s sister, **Isabel Carmichael**. All of these Wills were drafted by Alfred from the precedents the firm had developed over time. All of the Wills were executed under the supervision of Isabel. This was in accordance with their long-standing office practice in relation to estate planning files - Isabel would work with the clients to get the necessary information, Alfred was responsible for drafting the Wills, and Isabel would proof-read and correct the Wills and then supervise their execution by clients.

Helen and Ewan have retained your firm to advise them what to do about the Estates of Brendan, Duncan, and Gail, who will inherit their various assets, and what personal rights each enjoys in respect of the Estates. They have provided copies of the Wills made by Brendan, Duncan, and Gail supplied to them by Alfred. They also advise your firm of the following information:

- Helen is 29 years old and the biological child of Duncan and Gail.
- Ewan is 52 years old.
- Neither Helen nor Ewan was receiving support from Brendan, Duncan or Gail.
- An insurance agent was in touch with Alfred after the police and coroner finished their investigations after the fatal farm accident. The insurance on the farm paid for its clean-up. The insurance agent also said that both Brendan and Duncan owned life insurance policies. The beneficiaries of Brendan's \$100,000 policy were Duncan and Ewan equally. The beneficiary of Duncan's \$100,000 policy was designated as Gail Bennett.
- The two farm lots are roughly worth the same; a real estate agent estimates that each is worth around \$250,000.
- Brendan died with assets comprised of: the two parcels of land, farming equipment (estimated value: \$25,000), a truck (estimated value: \$10,000), a boat (estimated value: \$45,000), and a collection of antique shotguns (estimated value: \$20,000). He had debts of about \$30,000. His accountant thinks that he owed taxes at his death of about \$50,000.
- Duncan died with assets comprised of: personal property (estimated value: \$10,000); farming machinery (estimated value: \$40,000); a truck (estimated value: \$10,000); and a personal bank account with \$75,000 on deposit. He had credit card debts of about \$20,000 and owed taxes at his death of about \$15,000.
- Duncan and Gail had a joint investment bank account worth approximately \$160,000 on deposit according to the bank.
- Gail died with assets comprised of: jewellery (estimated value: \$10,000); a car (estimated value: \$10,000); antique furniture (estimated value: \$15,000); and a personal bank account with \$15,000 on deposit. She had no debts and her accountant thinks that she owed no taxes.

Advise Helen and Ewan. Ignore issues respecting any sort of tax liability. State assumptions and/or need for further information. The Wills of Brendan, Duncan and Gail are found on the next three pages.

THE LAST WILL & TESTAMENT OF:

Brendan Bennett

THIS IS THE LAST WILL of me, BRENDAN BENNETT, of the Hamlet of Yarker, Frontenac County, in the Province of Ontario.

1. I revoke all former wills and testamentary dispositions made by me.
2. I appoint my wife, CAROLINE BENNETT, to be the Executor and Trustee of this my Will, or, should Caroline Bennett predecease me or be unable or unwilling to act, then I appoint in her stead my two sons, DUNCAN BENNETT and EWAN BENNETT, to be the Executor(s) and Trustee(s) of this my Will.
3. I instruct my Executor(s) and Trustee(s) to pay out of and charge to the capital of my general estate my just debts, taxes, and funeral and testamentary expenses.
4. I give all real property which I own at my death to my dear wife, Caroline Bennett, for life, with full power to encroach on same.

IN WITNESS WHEREOF I have to this my Last Will and Testament subscribed my name this 2nd day of February, 1986.

SIGNED by Brendan Bennett in the presence)
of us, both present at the same time, who) **Brendan Bennett**
at his request, in his presence and in the)
presence of each other have hereunto)
subscribed our names as witnesses.)

WITNESS:
Alfred Abner Sr.

WITNESS:
Katherine Martin

THE LAST WILL & TESTAMENT OF:

DUNCAN BENNETT

THIS IS THE LAST WILL of me, Duncan Bennett, of the Hamlet of Yarker, Frontenac County, in the Province of Ontario.

1. I revoke all former wills and testamentary dispositions made by me.
2. I appoint my wife GAIL BENNETT to be the Estate Trustee, Executor and Trustee of this my Will, or, should Gail Bennett predecease me or be unable or unwilling to act, then I appoint in her stead my brother, EWAN BENNETT to be the Estate Trustee, Executor and Trustee of this my Will .
3. I instruct my Estate Trustee, Executor and Trustee as follows:
 - (a) To pay out of and charge to the capital of my general estate my just debts, taxes, and funeral and testamentary expenses;
 - (b) To give the entirety of my Estate to my wife, Gail Bennett, but if Gail should not survive me, to do as follows:
 - (i) To give \$50,000 to my daughter Helen Bennett provided that she is unmarried at my death or within three years of my death;
 - (ii) To give the house to Isabel Carmichael;
 - (iii) To give the residue of my Estate to my brother, Ewan Bennett.

IN WITNESS WHEREOF I have to this my Last Will and Testament subscribed my name this 31 day of March, 2006.

SIGNED by the testator, Brendan Bennett, as his) last Will, in the presence of us, both present at the) same time, who at his request, in his presence and in) the presence of each other have hereunto subscribed) our names as witnesses.)

Duncan Bennett

WITNESS :

WITNESS :

Chris Shibley

THE LAST WILL & TESTAMENT OF:

GAIL BENNETT

THIS IS THE LAST WILL of me, GAIL BENNETT, of the Hamlet of Yarker, Frontenac County, in the Province of Ontario.

1. I revoke all former wills and testamentary dispositions made by me.
2. I appoint my husband DUNCAN BENNETT to be the Estate Trustee, Executor and Trustee of this my Will, or, should Duncan Bennett predecease me or be unable or unwilling to act, then I appoint in his stead my sister, ISABEL CARMICHAEL, to be the Estate Trustee, Executor and Trustee of this my Will .
3. I instruct my Estate Trustee, Executor and Trustee as follows:
 - (a) To pay out of and charge to the capital of my general estate my just debts, taxes, and funeral and testamentary expenses;
 - (b) To give the entirety of my Estate to my husband, Duncan Bennett, but if Duncan should not survive me, to do as follows:
 - (i) To give \$50,000 to my daughter Helen Bennett, provided that she is unmarried at my death or within three years of my death;
 - (ii) To give my jewellery to my grandchildren;
 - (iii) To give the house to Ewan Bennett;
 - (iv) To give the residue of my Estate to my sister, Isabel Carmichael.

IN WITNESS WHEREOF I have to this my Last Will and Testament subscribed my name this 31 day of March, 2006.

SIGNED by the testator, Gail Bennett, as her last Will, in the presence of us, both present at the same time, who at his request, in his presence and in the presence of each other have hereunto subscribed our names as witnesses.

Gail Bennett

WITNESS:

Chris Shibley

WITNESS:

Isabel Carmichael

QUESTION 2: 20 MARKS

The testator died leaving a Will and Codicil, each of which was properly made and admitted to probate.

The Will provided for a number of specific gifts and contained the following language respecting the disposition of residue:

8. I direct my Trustees to sell, call in and convert into money all the rest and residue of my estate and to divide the said residue between my three children, share and share alike.

9. I further direct that should any of my said children predecease my dear wife or before receiving his or her distributive share herein set out, the said share shall be distributed to the respective issue of my said child or children alive at my death *per stirpes* respectively.

A single Codicil to the Will provides as follows:

WHEREAS at the time of the execution of my Will I made no specific provision with respect to the adjoining properties which I own at 3664 Princess Street and 3668 Princess Street, in the City of Kingston, in the County of Frontenac.

NOW I HEREBY GIVE the net income from the above mentioned properties to my dear wife, ABIGAIL, during her lifetime.

Upon the death of my dear wife, ABIGAIL, **I DIRECT** my Executors to convey the property known as 3664 Princess Street, in the City of Kingston, to my dear son, BILLY, subject to the payment of an annuity to my daughter, CARLA, of three thousand dollars (\$3,000.00) a year during her lifetime and said annuity shall be a charge against the real estate.

I FURTHER DIRECT my Executors to convey the property known as 3668 Princess Street, to my dear son, DANIEL, subject to the payment of an annuity to my daughter, CARLA, of three thousand dollars (\$3,000.00) a year during her lifetime and said annuity shall be a charge against the real estate.

At the time of the testator's death, he owned 3664 Princess Street and 3668 Princess Street. He was survived by his wife and all three of his children. At the time of his wife's death earlier this year, Billy and Daniel were both dead (each leaving a spouse and children) but Carla was alive.

Advise the Estate Trustee respecting the disposition of the two Princess Street properties.

QUESTION 3: 20 MARKS

A client, age 70, retains your firm to help her plan her estate and draft her Will. She explains that her husband died a few years ago and that she is not married or in any common law relationship now. She has three adult children, none of which live with her or that she supports. One child is estranged from her and his siblings. During this estranged child's teenage years he had a number of problems which involved his use and sale of drugs. The client and her husband enrolled him in a boarding school but he ran away and lived with various friends for a time. While his parents were on a vacation, he and his friends broke into his parents' house, stole and then sold his father's war medals and his mother's jewellery, and had a week-long party that made a huge mess in the house that required costly repairs. The client advises that her husband was devastated by this incident and never got over it. In the ensuing years this same son was arrested for drug use and selling drugs several times. His parents hired lawyers to defend him. The client said her son crashed 6 cars in a relatively short amount of time, and she suspects that he was on drugs each time. The client and her husband paid the child's tuition for a business course at a local college – he took 10 years to do a 2-year course. She is adamant that her estranged son get nothing from her estate and that everything she owns should go to her other two children equally – she insists that her estate be distributed on this basis. She's afraid that her no-good son will make trouble and contest her Will after she dies. Her assets are a house in which she lives (mortgage free, worth \$200,000) and \$300,000 in investments.

Advise the client respecting her estate plan.