

EXAM _____

WILLS, TRUSTS & ESTATES, IRWIN, FALL 2009

MIDTERM EXAMINATION

FRIDAY, October 16, 2009, 1:00 – 2:30

**STUDENTS MAY USE THEIR CASEBOOKS AND ANY MATERIALS AND NOTES THEY THEMSELVES
PREPARED.**

Wills, Trusts & Estates, Irwin, Fall 2009

Midterm Examination

Terry Testator died at the age of 85 in the State of Fictitious. A week prior to her death, she was in her hospital room recovering from heart surgery when her brother, Timothy, came to visit her. The nurse explained to Timothy that Terry was heavily medicated, so Timothy was neither surprised nor excessively worried when Terry failed to recognize him. Terry's sole concern was finding a pen and some paper to make a will. "I must write my will this instant," she demanded, "or I will miss my chance!" Timothy retrieved a pen and some paper from the nurses' desk down the hall and gave them to Terry. In a very shaky hand, Terry wrote the following:

"When I die, my property should go as follows:

My house and surrounding land, located in the State of Makebelieve, to Amy, my only daughter from my marriage to my dear Harry (rest in peace).

\$100,000 each to Bob and Charlie, my sons with that jerk Tony (though I haven't seen Bob in quite some time; perhaps he has left this world; if so, all to Charlie).

\$1 to my daughter with Tony, whose name I have thankfully blocked.

\$10,000 to each of my grandchildren: Debbie, Edward, and Fred, adopted children of my departed son, Luke (rest in peace); and Gwen, daughter of Charlie.

Anything that is left to my brother, Timothy, wherever he is these days (if he is alive)."

Terry asked Timothy to sign the will as a witness, but Timothy pointed out that Terry had not yet signed the will herself. Terry replied that she could worry about that later; for now, she just needed his signature as a witness. Timothy asked if she would like his help signing and she replied: "Look, I only just met you and you are being awfully pushy. But fine; be that way; sign for me." Timothy signed Terry's name and wrote the date below it. He then signed his own name as a witness.

Terry died the following morning. At her death, everyone mentioned in the will was living, with the following exceptions:

Her husband, Harry, and her son, Luke, had both predeceased her;

The unnamed daughter had never existed; and

Her son, Bob, had died three months prior.

Bob's wife, Wendy was six months pregnant with Bob's child. Tony was Terry's first husband. He was still alive, but they had been divorced for over 20 years.

With the following exceptions, both the State of Fictitious and the State of Makebelieve follow the UPC in all material respects:

The State of Makebelieve has not adopted UPC §2-106. Instead, it follows an English per stirpes approach. Neither jurisdiction has adopted UPC §2-503.

Questions:

1. Who takes Terry's estate and why? In answering this question, be sure to address the following issues: mental capacity to execute a will, will execution formalities, posthumous children, adopted children, distribution of real and personal property, and systems of representation. **(70 points)**
2. Would this be a good case for application of either the substantial compliance doctrine or the harmless error rule? **(15 points)**
3. Choose one UPC provision that applies in this fact-pattern. Describe why you favor the UPC's approach over other possible approaches or why you would favor a different approach. **(15 points)**