EXAM NO. __________

GIFTS WILLS & TRUSTS

REYNOLDS T. CAFFERATA                SPRING 2010

May 10, 2010
2:00PM

3 HOURS
OPEN BOOK

PLEASE INDICATE ON YOUR EXAM IF YOU ARE TAKING CLASS CR/D/F.

THE QUESTION SHOULD TAKE 1.5 HOURS. THE QUESTION IS WORTH 1/2 OF THE TOTAL GRADE. IDENTIFY THE LEGAL ISSUES PRESENTED BY EACH FACT PATTERN AND STATE HOW EACH ISSUE MIGHT BE RESOLVED. YOU MAY OUTLINE YOUR ANSWER.

YOU MUST STOP WRITING WHEN INSTRUCTED TO DO SO BY THE PROCTOR. FAILURE TO DO SO WILL BE CONSIDERED A BREACH OF ACADEMIC DUTY AND WILL BE REPORTED TO THE DEAN’S OFFICE BY THE PROCTOR.

DO NOT LIFT THIS COVERSHEET UNTIL INSTRUCTED TO DO SO BY THE PROCTOR.
Hank was a 72 year old man who was recently widowed by his wife of 45 years, Francis. Hank and Francis had one son, Stanley. Forbes recently ran a story on Hank calling him the “King of Pets”. He had built a $1 billion fortune that started with a single pet shop in Little Rock, Arkansas, that had grown to a chain of more than a thousand pet stores, a wholesale veterinary supply operation and chain of over 100 veterinary hospitals. Hank was walking around the national pet supply convention known in the trade as Petcon when he came across a company with an innovated kitty litter scooper. A beautiful young lady named Wanda was holding one of the scoops, and Hank was so struck by the ingenious scoop and Wanda’s beauty that as he walked up he did not realize that Wanda was in the middle of a live demonstration. Wanda was about to demonstrate how effective the scoop was with even the freshest deposits when Hank stepped squarely on the sample with his black Bruno Magli shoe. After a moment of wondering why Wanda had gasped and everybody else watching the demonstration was staring at him dumb founded, Hank realized his error. Wanda quickly recovered and demonstrated that not only was the scooper effective at removing cat poop in the box, but it also was effective at scraping it off the bottom of a person’s shoe. Afterwards, Wanda and Hank struck up a conversation in which Hank learned that Wanda was the inventor of the innovative scoop and owner of the company. They also found that not only did they share a love for pets but a common fondness for polka music on bagpipe. Petcon was in Las Vegas that year, and Hank and Wanda were so taken by each other that they decided to get married the next day at the Star Trek Adventure Wedding Chapel. Stanley who worked for his father’s pet business was also at the convention staffing the company’s booth. Since Stanley protested his father’s decision to
marry Wanda, his father made him wear a red shirt during the wedding ceremony so that he would have to lay face down and pretend to be dead during half of the ceremony after the klingon who officiated shot him with a water gun phaser.

Hank and Wanda lived in marital bliss, and the union of their businesses was a success as well. Access to Hank’s network of stores dramatically increased sales for Wanda’s products, and her products ended up being very popular items at the stores. Forbes listed Hank’s fortune as being worth $1.5 billion. Wanda’s company had grown in value from $10 million to $100 million.

After a year of marriage, Hank and Wanda went to see an attorney about their estate planning. Wanda didn’t have any estate planning documents, and Hank had an old will from when Francis was still alive. Under that will, he had left everything to Francis had she survived him. If Francis predeceased Hank, the Will provided everything would pass to Stanley. Francis had executed an identical will. Hank decided at his death to leave Stanley $5 million outright and leave everything else in a trust that would provide income to Wanda for her life, and after her death half of everything remaining would go to Stanley or his children, and half would go to the Red Cross. Wanda left her estate after her death to her friend a bagpipe player who was also her company’s engineer, Montgomery Scott, in trust for aged and infirm bagpipe players. Wanda’s documents said that it was her desire that the funds be used for bagpipe players who focused on polka music. Wanda included a $100,000 gift to her closest relative, her cousin Clark.

The attorney recommended Hank and Wanda use revocable trusts for their planning. Hank and Wanda each were trustees of their own trusts. The attorney who drafted the trusts listed both of their company’s names on the schedules of the assets of the respective trusts and
had Hank and Wanda sign their trusts. The attorney was company counsel for Hank’s companies and issued new stock certificates in the name of Hank’s trust. Wanda’s company counsel never reissued the shares even though she had sent him a copy of the trust asking him to do so.

When the attorney sent a copy of Hank’s trust to the corporate headquarters for Hank, it was mistakenly delivered to Stanley. Stanley saw what his father had done, and he was enraged. Stanley took the trust down to his father’s office and confronted him. Hank was incensed that Stanley had opened his mail and fired him immediately.

About a month later, Wanda was working late at her company and walked into her darkened office. She didn’t realize that Maverick, the company cat was sleeping right inside her doorway. Mavrick was so startled by her bright red pumps that he leapt straight onto the shelves next to her knocking down a giant brass kitty litter scoop trophy that Wanda had won for an innovative design. The trophy hit Wanda on the head leaving her in a coma. Hank visited Wanda daily in the hospital in hopes that she would recover, but eventually the stress on him was too great. Hank had a stroke that left his right side paralyzed. He had trouble writing, and sometimes he would set about doing tasks like cooking or paying bills and forget in the middle of the task what he was doing, leaving the task uncompleted. Hank reluctantly agreed that Stanley could act as trustee of his trust because Wanda was still in the coma.

For another couple of months, Hank still visited Wanda in the hospital in hopes that she would recover. Then Hank had another stroke that seemed to affect his memory a little bit more and left him unable to walk. Stanley didn’t like to have to take Hank to the hospital to see Wanda. Stanley noticed that if he waited long enough after Hank asked to go see her, most of the time Hank would forget that he had made the request. Stanley also started talking to Hank about the trust and telling him that he should revoke the trust. Hank generally resisted the idea,
but Stanley persisted. During this time, a retail conglomerate offered to purchase Hank’s company for $1.5 billion. Stanley did not tell Hank about the offer and rejected the offer expecting that he would convince Hank to terminate the trust.

Not long after Stanley rejected the purchase offer, he told Hank that he, Stanley, was no longer willing to act as trustee or care for Hank if Hank did not revoke the trust. Hank tore the trust in half and signed a power of attorney that Stanley had prepared.

A few months later Hank’s company was hit with a large class-action lawsuit by owners of self-cleaning cat boxes whose pets had been trapped inside the boxes. Before the incidents, the boxes had been a very popular item, and as a result in the lawsuit, Forbes listed Hank’s net worth at $700 million.

Hank’s health took a turn for the worse, and he was hospitalized. Stanley had Hank taken to a hospital other than the one treating Wanda. At the hospital Hank took some of the hospital stationary that included the hospital’s name and logo and wrote “Dear Wanda, I don’t think I’ll live to see you recover. I want you to have everything in the Trust just as we had set it up. I hope you can make this happen. Love forever, Hank.” Hank gave the document to a nurse and asked her to make sure it got to Wanda. That night Hank died. Almost as if she were awaken by Hank’s departing soul, at the same moment that Hank passed away, Wanda came out of her coma. Wanda returned to her work but in a bizarre twist of events exactly nine months after Hank passed away, Wanda again startled Maverick with her bright red pumps. Maverick again knocked down the brass cat scoop trophy which hit Wanda, but this time the angle of impact was such that it killed her instantly.

Who is entitled to Hank’s property? Who is entitled to Wanda’s property?