Among the effects of a certain Justin (known to his friends as “The Martyr”), who has just died, is found the following document:

11/10/03

This is my last will and testament.

I leave $10,000 worth of my property to charity. I confer on my wife, Irene, discretion to decide which particular charitable entity or entities shall get this money.

I leave all of my stocks and bonds to my wife Irene and, if Irene should still have
any of them at the time of her death, that which she still has shall belong to my
daughter, Hilda.

I leave all of my corporeal moveable property to my grandchildren Greg, Chris, and
Augustine.

I leave my coin and stamp collections to my friend, Adam.

I leave all the rest of my property to my children, Hilda, Thomas, and Frank, to be
divided equally among them.

My wife Irene shall serve as executor without security.

The Martyr

Several persons are prepared to testify that the testament is entirely written, dated, and signed in
Justin’s handwriting and that they saw Justin write the testament on October 11, 2003. No one has
challenged the testament on grounds of fraud, duress, undue influence, or incapacity.

Justin’s death occurred on December 1, 2004. He was survived by his wife, Irene; his
legitimate sons, Thomas and Frank; his legitimate grandchildren, Basil (son of Hilda), Greg (son of
Thomas), Chris (another son of Thomas), and Augustine (son of Frank); and his friend (no relation),
Adam. He was predeceased by his legitimate daughter, Hilda, who dies intestate.

Unless you are told otherwise, assume that every successor asserts every right to which he’s
entitled. Just to make things simpler, you should also assume that all of the property of which Justin
attempted to dispose by testament was his “separate” property.

A

1 Suppose someone were to suggest that Justin’s testament is invalid for want of proper form in
that it lacks a proper date. What would you say to that? Why?

a yes, he’s right: the date is ambiguous, for one can’t tell whether it refers to November 10
or to October 11; such an ambiguity is always fatal, that is, it can never be resolved by
resort to parol evidence

b yes, he’s right: the date is ambiguous, for one can’t tell whether it refers to November 10
or to October 11; under the circumstances here, the ambiguity cannot be resolved by resort
to parol evidence

c no, he’s wrong: the date’s just fine as it is, even without resorting to parol evidence, for
it has all the essential ingredients – day, month, and year

d no, he’s wrong: though the date is, in fact, ambiguous, for the reason stated in a and b, the
ambiguity can, under the circumstances here, be resolved by resort to parol evidence

e none of the above

For the purposes of the rest of this Part I of the exam, assume that the correct answer to this question
is c or d, it matters not which, so that the date is not problematic.

2 Suppose someone were to suggest that Justin’s testament is invalid for want of proper form in
that it lacks a proper signature. What would you say to that? Why?

a yes, he’s right: to a testament of this kind, one must sign one’s full legal name

b yes, he’s right: though one need not sign one’s full legal name to a testament of this kind,
one must, at a minimum, sign both one’s surname (last name) and then some other name,
be it one’s given name or a nickname or first initial

c no, he’s wrong: a nickname is sufficient, provided it’s one that other people were generally
aware of

d no, he’s wrong: any written sign whereby the testator intends to identify himself is
sufficient

e none of the above
For the purposes of the rest of this Part I of the exam, assume that the correct answer to this question is c or d, it matters not which, so that the signature is not problematic.

3 Suppose that, just below Justin’s signature (“The Martyr”), there had appeared yet another disposition, one that reads – “I also give my books to my son, Frank.” – and that this other disposition neither had a date of its own nor was followed by another signature. Not only that, but the witnesses who are prepared to testify that the rest of the testament was written in Justin’s hand insist that this last disposition, by contrast, was not. What is the effect, if any, of this additional disposition written in an “alien” hand? Why?

a it has no effect: the disposition, because it is not written in Justin’s hand, will be treated as if it were not written
b its effect cannot yet be determined, for that effect will depend on whether Justin authorized the addition of the disposition: if he did, then the testament would be null, for it would then not have been written entirely in Justin’s hand; but if he did not, then the testament would stand, save for the additional disposition, which would be ignored
c it invalidates the testament: thanks to the presence of this “alien” handwriting on the testament, the testament is not written entirely in the testator’s hand
d its effect cannot yet be determined in full: where, as here, there’s a post-signature disposition, the part of the testament that precedes the signature is valid and, further, the court has discretion to give effect even to the post-signature disposition
e none of the above

For the purposes of the rest of this Part I of the exam, assume that the correct answer to this question is a, that is, the additional disposition has no effect.

4 Is the disposition of $10,000 cash to “charity,” the recipient(s) of which is (are) to be determined by Irene, valid? Why or why not?

a no: it is impermissible for a testator to delegate his dispositive power to another person
b no: though a testator can, in certain limited contexts, delegate his dispositive power to another person, this is not one of those contexts
c yes: a testator can, in certain limited contexts, delegate his dispositive power to another person and this is precisely one of those contexts
d yes: under current law, a testator can freely delegate his dispositive power to another person without restriction
e none of the above

5 Does the disposition in favor of Irene and Hilda (the stocks and bonds) entail a prohibited substitution? Why or why not? You should assume, of course, that the disposition did not create a “trust.”

a no: the institute (Irene) is not under a duty to preserve the thing and then render it to the substitute (Hilda)
b no: there’s no double disposition of the thing in full ownership first to Irene and then to
Hilda

c: no: there's no “successive order” as between Irene and Hilda

d: no: the rationales given in a, b, and c are all correct

e: yes: the institute (Irene) is under a duty to preserve the thing and then render it to the substitute (Hilda); there's a double disposition of the thing in full ownership first to Irene and then to Hilda; there is a “successive order” as between Irene and Hilda

For the purposes of the rest of this Part I of the exam, assume that the correct answer to this question is a, b, c, or d, it matters not which, so that the disposition first to Irene and then to Hilda is valid.

B

For the purposes of this Subpart I-B of the exam, assume that Justin’s testament is valid (save for the “additional disposition,” i.e., the gift of the books to Frank, which, as you were told before, you’re to assume is null.)

6 Suppose someone were to suggest that Justin’s disposition of “all the rest of my property” in favor of Hilda, Thomas, and Frank is a “universal legacy.” What would you say? Why?

a: no way: because it’s a legacy of the residuum that follows a general legacy (namely, the gift of “corporeal moveables” to Greg, Chris, and Augustine), it, by definition, can’t be a universal legacy, but can only be a general legacy

b: no way: by virtue of the mere fact that it’s a legacy in favor of more than one person, it’s not one legacy, but rather “is” multiple “separate” legacies; and because they are separate, this disposition can’t possibly be a universal legacy, but can only be a general legacy

c: no way: because it’s a legacy in favor of more than one person and because Justin assigned shares to each of these persons (the language “to be divided equally among them” raises a presumption of “separateness,” a presumption that is not rebutted here on these facts), it’s not one “joint” legacy, but rather “is” multiple “separate” legacies; and because they are separate, the disposition can’t possibly be a universal legacy, but can only be a general legacy

d: yes way: what a says is wrong, because the gift of the corporeal moveables to Greg, Chris, and Augustine is a particular, not a general, legacy; and though, as c correctly states, the language “to be divided equally among them” raises a presumption of “separateness,” that presumption is, in fact, rebutted here on these facts, with the result that the legacy is joint

e: none of the above

7 Recall that Hilda predeceased Justin. Who now receives the part of the legacy of the residuum that, but for her untimely death, would have fallen to Hilda? Why? For the purposes of this question only, you’re to assume that this legacy of the residuum was joint and universal.

a: her 1/3 share falls to her son, Basil: when a legacy made to a child lapses due to the predecease of the legatee, the object of that legacy accretes to those of the child’s children who were in existence when the testator died

b: her 1/3 share falls, in equal portions, to Hilda’s co-universal legatees, Thomas and Frank, each of whom now receives ½ of the residuum: when a legacy to joint legatees lapses as to one of them, accretion takes place ratably in favor of the other joint legatees

c: her 1/3 share falls, in equal portions, to Justin’s intestate heirs, Thomas, Frank, Basil, the first two of whom come to Justin’s succession in their own right, and the last of whom comes to Justin’s succession by way of representation of his mother: any lapsed legacy that is not “caught” by some other legacy falls intestate

d: none of the above
8 In answering the last question, you were told to assume that the legacy of the residuum was joint and universal. But what if it were separate and general? Would your answer to the last question then be any different? Why or why not?

a no different: regardless whether a legacy is joint or separate, if it is made to a child of the testator, then the legacy, if it should lapse due to the predecease of the legatee, accretes to those of the child’s children who were in existence when the testator died

b different: the legacy goes to _______________; and this is why: _______________

9 Suppose that Adam (father of Cain and Seth, his legitimate children) were to renounce his legacy (the coin and stamp collections). To whom would the objects of that legacy fall? Why?
For the purposes of this question 9 and the next question 10 only, you’re to assume that the legacy of the residuum would fall, in its entirety, to Thomas and Frank, to the exclusion of all others.

a Cain and Seth: when a legacy lapses, the object of that legacy accretes to those of the legatee’s descendants who were in existence when the testator died

b Greg, Chris, and Augustine: absent circumstances not present here, when a non-joint legacy lapses, the object of that legacy accretes to whomever would have taken it if that legacy had not been made; here, that’s the legatees of the legacy of the “corporeal movables”

c Thomas and Frank: absent circumstances not present here, when a non-joint legacy lapses, the object of that legacy accretes to whomever would have taken it if that legacy had not been made; here, that’s the legatees of the legacy of the residuum

d Thomas, Frank, and Basil: absent circumstances not present here, when a non-joint legacy lapses, the object of that legacy accretes to whomever would have taken it if that legacy had not been made; here, that’s the intestate heirs, who come to the succession in the manner described in answer c to question 7

e none of the above

10 Suppose that Greg, too, had predeceased Justin and that Chris had renounced his interest in the legacy of the corporeal movables. Who, then, would receive the corporeal movables? Why?

a Thomas, Frank, and Basil: absent circumstances not present here, when a joint legacy lapses, the object of that legacy accretes to whomever would have taken it if that legacy had not been made; here, that’s the intestate heirs, who come to the succession in the manner described in answer c to question 7

b Thomas and Frank: absent circumstances not present here, when a joint legacy lapses, the object of that legacy accretes to whomever would have taken it if that legacy had not been made; here, that’s the legatees of the legacy of the residuum

c Augustine: absent circumstances not present here, when a legacy to joint legatees lapses as to one of them, accretion takes place ratably in favor of the other joint legatees

1 If you select this answer, circle “b” on your scantron sheet and then, in the spaces provided, identify to whom the lapsed legacy accretes and why it does so.
Note that Hilda accepts her share of the legacy of the residuum.

For the purposes of this Subpart I-C of the exam, assume, again, that Justin’s testament is valid (save for the “additional disposition,” i.e., the gift of the books to Frank, which, as you were told before, you’re to assume is null.) Suppose, now, that all of the legatees named in this testament survive Justin (including Hilda) and, further, that all of them accept Justin’s succession, except that Hilda renounces her interest in the legacy of the stocks and bonds (so that Irene, alone, takes it). Further, suppose that the values of the respective legacies are as follows: (1) legacy of cash to the charity(ies): $10,000; (2) legacy of stocks and bonds to Irene and Hilda: $10,000; (3) legacy of corporeal movables to Greg, Chris, and Augustine: $10,000; (4) legacy of coin and stamp collections to Adam: $10,000; and (5) legacy of the residuum to Hilda, Thomas, and Frank: $60,000. Finally, suppose that Justin left only one debt, in the amount of $9,000, which he had incurred in order to purchase the coin and stamp collections that he left to Adam. Justin’s succession is not placed under administration.

Among Justin’s successors, who is personally liable for his $9,000 debt? In what proportions? Why?

a Adam, 100%: estate debts that are attributable to identifiable property are “charged” to the property
b Hilda, Thomas, and Frank, by 1/3s (so that each is personally liable for $3,000): universal successors are liable to creditors for the payment of the estate debts in proportion to the part which each has in the estate assets; here, Hilda, Thomas, and Frank are the only universal successors, and they took equal parts of the estate assets
c all of the successors, the charity(ies) 10%; Irene 10%; Greg, Chris, and Augustine, 10% collectively (so that each owes 3.33%); Adam, 10%; and Hilda, Thomas, and Frank, 60% collectively (so that each owes 20%): successors are liable to creditors for the payment of the estate debts in proportion to the part which each has in the estate assets
d none of the successors: under current law, the successors are not personally liable for the de cujus’ debts; if they have any liability at all, it’s only in rem liability, meaning that the only action that the de cujus’ creditors can take against them is to execute against (foreclose on) those estate assets that they have happened to receive from the estate
e none of the above

Forget Subparts I-A, -B, and -C of this exam and now consider these additional facts. It turns out that what one might call Justin’s “testamentary situation” was rather more complicated than the narrative at the beginning of this Part I of the exam may have suggested.

First, there was the “split.” About nine months before his death, Justin moved out of the “matrimonial domicile” he’d shared with Irene and took an apartment. Six months later, Justin obtained a valid and final divorce from Irene.

Second, there were the marks on Justin’s testament (the one he’d made on “11/10/03”). Through the legacy of the “coin and stamp collections” to Adam was drawn a blue line, next to which were written these words, in Justin’s handwriting: “Revoked. The Martyr.” This notation was

\[^2\] Note that Hilda accepts her share of the legacy of the residuum.
Third, there was the new testament. The circumstances that led to its confection were as follows. Not long after Justin moved into his apartment, his new next-door neighbor, Anna, a cocktail waitress aged twenty-three (23) years, began to “help out” around Justin’s place. Justin, who was really too old and frail to look after himself, welcomed the help. As time went by and the two got to know each other better, Justin gradually turned over to Anna much of the responsibility for the management of his financial affairs, e.g., he let her file his tax returns, let her handle all of his many health-insurance claims, and even named her as “co-depositor” on his checking account, so that she could write checks on it to pay his bills. Before long Anna, at first subtly but then more directly, insisted that Justin ought to “repay” her for her kindnesses by “leaving me a little something in your will.” At first, Justin resisted. But when Anna told him, “Well, maybe I should just take my help somewhere else to someone who’ll appreciate it,” he finally gave in. The preparation and execution of the testament were handled by Bruce, a used-car salesman and notary public, who happened to be Anna’s boyfriend. When Justin, with Anna at his side, arrived at Bruce’s office, they were ushered to a table on which had been placed two “originals” of a document entitled “Last Will and Testament of Justin.” The testament was type-written; bore the date “November 29, 2004” (type-written); had a signature line on every page and at the end; included a general “revocation clause” (“I hereby revoke all my prior testaments”); set out a few trifling particular legacies to various friends (other than Adam), followed by a legacy of the residuum in favor of Anna; and concluded with an “attestation clause,” complete with a signature line for Bruce and two “witnesses,” that read as follows: “In our presence the testator has signed this testament at the end and on every other separate page, and in the presence of the testator and each other we have hereunto subscribed our names this 29th day of November 2004.” Once Justin was seated, Bruce led the two witnesses into the room. Bruce then said to Justin, “Sign here, and here, and here,” indicating where Justin was to sign. Justin, without reading the document and without saying a word, complied (i.e., he signed on every signature line). Then Bruce and the witnesses signed it. One original Bruce gave to Justin to take with him; the other, Bruce kept in his safe at his used car sales office.

Fourth, there was the “destruction” of the new testament. The night before he died (the evening of the day after he’d made his new testament), Justin (deliberately) burned his “original” of the new testament to a crisp. Justin was aware that Bruce still had the duplicate “original” of the new testament.

(i)

i Was Justin’s new testament clothed in proper form? Why or why not?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

ii Leaving aside the possibility of “duress,” can you think of any other basis (“other” than defective form) upon which it might be argued that Justin’s new testament is null? What is it? Who would bear the burden of proof in the nullification action, and what standard of proof would he have to meet? Why? Without expressing any opinion regarding whether such a challenge might succeed, identify all of the facts in the narrative that would tend to support such a challenge. (Note: If you think this question’s about “revocation”, you need to think again. It’s most definitely not!)
12 If Justin had not burned his new testament, what effect, if any, would that testament have had upon his old testament? Why? For the purposes of this question, assume that the new testament was not in proper testamentary form.

a none at all: because it lacked proper testamentary form, the new testament accomplished neither an express nor a tacit revocation of the old testament

b it would have expressly revoked the old testament, thanks to its revocatory clause: though the new testament was not in the form required for an effective testament, it was in the form required for an effective express revocation (the requirements for the latter are relatively relaxed)

c it would have tacitly revoked the old testament, thanks to the incompatibility between the provisions of the two testaments

d none of the above

13 Did Justin, by burning his new testament, effectively revoke it? Why or why not?

a yes: revocation of a testament occurs when the testator physically destroys it; here, Justin did just that, period, end of story

b no: though the principle stated in answer a is correct, Justin did not, in fact, “physically destroy” the new testament; where, as here, the testament is executed in multiple originals, “physical destruction” of the testament requires the physical destruction of all of the originals

c maybe: though the principle stated in answer a is correct, its application is complicated where, as here, the testament is executed in multiple originals; in such a case, physical destruction of one of those originals gives rise to a presumption that the testator intended to revoke the testament; here, we don’t know enough of the pertinent facts to be able to make a judgment regarding whether the presumption stands

d no: though the principle stated in answer a is correct, its application is complicated where, as here, the testament is executed in multiple originals; in such a case, physical destruction of one of those originals gives rise to a presumption that the testator intended to revoke the testament; here, that presumption clearly is rebutted

e yes: though the principle stated in answer a is correct, its application is complicated where, as here, the testament is executed in multiple originals; in such a case, physical destruction of one of those originals gives rise to a presumption that the testator intended to revoke the testament; here, that presumption clearly is not rebutted

14 Assume that the correct answer to the last question is a or e, it matters not which. What effect, if any, did Justin’s act of burning his new testament have upon the effectivity of his old testament? Why?

a it saved the old testament from revocation, at least according to the Civil Code: with certain exceptions not applicable here, the revocation of a testament is not effective if the
revocation is itself revoked prior to the testator’s death
b it would not have saved the old testament from revocation, at least according to the Civil Code: here we have some of the “exceptional” circumstances in which the revocation of a revocation does not strip the latter of its revocatory effect
c none at all, at least according to French doctrine: it is simply illogical to infer from the revocation of the revocation of a testament that the testator wishes to “revive” the revoked testament
d the effect is not clear, at least according to French doctrine: where, as here, the revocation of the original testament is accomplished by means of a revocatory clause that is part of a larger, new testament, whether the revocation of this new testament imports an intent to “revive” the original testament depends on the circumstances of the case; here, we don’t know enough about the pertinent circumstances to be able to make a judgment
e two or more of the above: ____________________

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

(3)

Assume, for the moment, that the new testament, together with its revocation clause, was null, so that the new testament had no revocatory effect.

iii Is the legacy of the stocks and bonds that Justin made to his wife Irene in the old testament still effective? Why or why not?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

15 Is the legacy of the coin and stamp collections that Justin made to his friend Adam in the old testament still effective? Why or why not?

a no: Justin expressly revoked this legacy by drawing a line through it, writing “revoked” beside it, and signing this notation
b no: though Justin’s actions as described in answer a were not sufficient to accomplish an express revocation, they were sufficient to accomplish a tacit revocation, for they constituted “some act which supposes a change of will”
c yes: Justin’s actions as described in answer a were not sufficient to accomplish either an express or a tacit revocation and the legacy was not otherwise revoked
d none of the above

______________________________________________________________________________
______________________________________________________________________________

II

(80 mins [1 hr, 20 mins] for 17 questions)

A

During his lifetime, Max enjoys “liaisons” with two (2) women: Susan, his wife, and Olivia, his mistress. During his marriage to Susan, she bears him two children – Alicia and Blake –, both

3 If you select answer “e,” then circle “e” on your scantron sheet and write the letters of the correct answers in the space provided.
of whom are now over twenty-three (23) years old and in good health. During his liaison with Olivia, she bears one child – Clyde –, who is likewise now over twenty-three (23) years old and in good health. Throughout Max’s lifetime, Susan maintains that Alicia and Blake are “Max’s children,” though, in fact, Blake is the child of Poco, an itinerant musician with whom Susan had once had an affair. Throughout Max’s lifetime, Olivia maintains that Clyde is “Max’s child,” though she never takes any action to have this contention recognized in any juridical act or in any court judgment. For his part, Max makes out a valid authentic act that states in part, “I acknowledge Clyde as my own son.”

Suppose that Max now dies. He is survived by Alicia, Blake, and Clyde. He is predeceased by Susan and Olivia. Who is entitled to inherit Max’s property? Why?

a Alicia and Clyde, but not Blake; among heirs, separate property falls, first of all, to the de cujus’ descendants, with those closer in degree excluding those farther in degree (absent representation); Alicia and Clyde are Max’s only properly-filiated children (Blake is the child of another man); both are in the first degree; no representation occurs

b Alicia and Blake, but not Clyde: among heirs, separate property falls, first of all, to the de cujus’ descendants, with those closer in degree excluding those farther in degree (absent representation); Alicia and Blake are Max’s only properly-filiated children (Clyde has not been properly filiated); both are in the first degree; no representation occurs

c Alicia, but neither Blake nor Clyde; among heirs, separate property falls, first of all, to the de cujus’ descendants, with those closer in degree excluding those farther in degree (absent representation); Alicia is Max’s only properly-filiated child (Clyde has not been properly filiated and Blake is the child of another man); she is in the first degree; representation does not occur

d Alicia, Blake, and Clyde; among heirs, separate property falls, first of all, to the de cujus’ descendants, with those closer in degree excluding those farther in degree (absent representation); Alicia, Blake, and Clyde are all properly-filiated children of Max; they are in the first degree; no representation occurs

e It’s too soon to say: depending on how certain contingencies play out, the answer might be any one of the above; those contingencies are two – (1) whether Alicia brings a successful “disavowal” action on Max’s behalf against Blake and (2) whether Clyde brings a successful “filiation” action against Max; if the former contingency comes to pass, then Blake will not share in Max’s estate; if the latter contingency comes to pass, then Clyde will be able to share in Max’s estate

For the purposes of the rest of this Part II of the exam, assume that the correct answer to this question is d and, further, that Max’s estate is divided among his three (3) children equally.

Suppose, now, that Max lives but that Clyde dies. Though Clyde is survived by Max, he is predeceased by his mother, Olivia, and his son, Garth. Does Max inherit anything from him? Why or why not? (Note: This question is not about what kind of interest or how much of that interest Max might be able to inherit; rather, it’s only about whether he can inherit anything at all in any amount whatsoever.)

a Yes: if the deceased leaves no descendants, then his separate property falls to his privileged ascendants and / or privileged collaterals, as the case may be; Max can claim intestate succession rights as one of Clyde’s privileged ascendants, specifically, as one of his
b no: though it is true (as answer a states) that “if the deceased leaves no descendants, then his separate property falls to his privileged ascendants and / or privileged collaterals, as the case may be”, Max cannot claim intestate successions rights as one of Clyde’s privileged ascendants, specifically, as one of his parents

c neither of the above

(2)

Suppose, once again, that Max dies. This time, however, Susan, his wife, also survives him, as do his children Alicia, Blake, and Clyde and his grandchildren from them – Dennis, Elton, Fred, and Garth. Among Max’s assets are (1) a watch that he had inherited from his grandfather, Zeus (separate property) and (2) a ½ undivided interest in a boat that he had purchased with community funds during his marriage to Susan (community property).

18 What effect, if any, does Susan’s having survived Max have upon the devolution of this property? Does it devolve differently now than it did in the scenario laid out in question 16 above? Why or why not? If so, how? (Don’t forget the assumption you were told to make immediately after question 16 and immediately before question 17.)

a there’s no difference: both things devolve upon the three (3) children, in full ownership; among heirs, all property falls, first of all, to the *de cujus*’ descendants

b it’s totally different: both things now devolve upon Susan, in full ownership; when the deceased is survived by a spouse, the deceased’s property devolves upon that surviving spouse in preference to the deceased’s descendants

c it’s partly different: whereas his watch devolves upon the three (3) children, in full ownership, his interest in the boat devolves upon Susan in full ownership; among heirs, separate property falls, first of all, to the *de cujus*’ descendants; when the deceased is survived by a spouse, the deceased’s *community* property devolves upon that surviving spouse in preference to the deceased’s descendants

d it’s partly different: whereas his watch devolves upon the three (3) children, in full ownership, his interest in the boat devolves upon Susan in usufruct and upon the three (3) children in naked ownership; among heirs, separate property falls, first of all, to the *de cujus*’ descendants; when the deceased is survived by a spouse and descendants, the deceased’s *community* property devolves upon that surviving spouse in usufruct and upon his descendants in naked ownership

e d is, in the main, correct, except that (1) Susan’s usufruct extends only over the naked ownership shares of her own children, Alicia and Blake, in Max’s interest in the boat, (2) so that Clyde, who is not her child, gets his share of Max’s interest in the boat in full ownership

19 Assume that the answer to the last question is a, c, d, or e, it matters not which. Suppose, now, that Alicia, Blake, and Clyde validly “renounce” Max’s succession. To whom do the shares of the watch that, but for the renunciation, would have belonged to them now accrete? (Don’t worry about “why?”)

a the shares accrete to Susan

b the shares accrete to the respective descendants of Alicia, Blake, and Clyde (that is, Alicia’s share accretes to Dennis; Blake’s share, to Elton and Fred; and Clyde’s share, to Garth)

c it’s tough to say for sure, though a is probably the better answer: though the plain meaning of the revised Civil Code articles tends to support the grandchildren, the pre-revision
jurisprudence, which has never been overruled by the courts and which is not expressly repudiated in the comments to the revised Civil Code articles, supports the surviving spouse
d it’s tough to say for sure, though b is probably the better answer: though the pre-revision jurisprudence, which has never been overruled by the courts and which is not expressly repudiated in the comments to the revised Civil Code articles, supports the surviving spouse, that jurisprudence was probably wrong when it was decided and, in any event, the plain meaning of the revised articles, which ought to prevail over the pre-revision jurisprudence, clearly supports the grandchildren
e none of the above

(3)

Forget the last two questions, but suppose, once again, that Max dies. This time, however, his sons Blake and Clyde, as well as Susan and Olivia, predecease him. Then, on her way to Max’s funeral, Alicia is killed in an automobile accident. Max is survived by his four (4) grandchildren – Dennis, son of Alicia; Elton and Fred, sons of Blake; and Garth, son of Clyde.

Who inherits Max’s estate now and in what proportions? Why?

a Dennis, Elton, Fred, and Garth, 1/4 to each: among heirs, separate property falls, first of all, to the de cujus’ descendants, with those closer in degree excluding those farther in degree (absent representation), and those closer in degree taking by heads; here, the four (4) grandchildren are closest in degree and in the same degree, and representation does not occur

b 1/3 to Dennis, 1/6 each to Elton and Fred, and 1/3 to Garth: among heirs, separate property falls, first of all, to the de cujus’ descendants, with those closer in degree excluding those farther in degree (absent representation); where representation occurs, the property is partitioned, first, by roots and, then, if one root has produced several branches, by roots in each branch and, finally, by heads; here, Dennis represents Alicia, Elton and Fred represent Blake, and Garth represents Clyde

c 1/3 to Dennis, 1/6 each to Elton and Fred, and 1/3 to Garth: among heirs, separate property falls, first of all, to the de cujus’ descendants, with those closer in degree excluding those farther in degree (absent representation); where representation occurs, the property is partitioned, first, by roots and, then, if one root has produced several branches, by roots in each branch and, finally, by heads; here, Elton and Fred represent Blake and Garth represents Clyde; by transmission, Dennis takes the share that fell to Alicia in her on right

d none of the above

B

Suppose, now, that Alicia dies. She is survived by her husband, Zeb; her mother, Susan; her full brother, Blake; her nephews (by Blake), Elton and Fred. She is predeceased by her son, Dennis; her father, Max; her half-brother, Clyde; and her half-nephew, Garth. At the moment of her death, Alicia has two (2) assets: (1) her ½ interest in a house and lot that she and Zeb purchased during their marriage (a community asset) and (2) a painting that she had purchased long before she and Zeb were wed (separate property).

<table>
<thead>
<tr>
<th>Jacob</th>
<th>Rachel</th>
<th>Susan</th>
<th>Max</th>
<th>Olivia</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Olivia</td>
</tr>
<tr>
<td>Levi</td>
<td>Symeon</td>
<td>Zeb</td>
<td>Alicia</td>
<td>Blake</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(dc)</td>
<td>Clyde</td>
</tr>
</tbody>
</table>
21 Who inherits Alicia’s interest in the house and lot? Why? (*Note:* This question is only about who inherits; it’s not about what interest – e.g., full ownership versus something less – or how much – e.g., 100% versus 50% – that this “who” inherits. Thus, as long as a person inherits some amount of some interest, the property “falls to” him.)

a. Zeb: if the deceased leaves no descendants but does leave a spouse, the deceased’s share of the community property falls to that surviving spouse
b. Susan: if the deceased leaves no descendants, the deceased’s property falls to his privileged ascendants
c. Blake: if the deceased leaves no descendants, the deceased’s property falls to his privileged collaterals
d. Susan and Blake: if the deceased leaves no descendants, the deceased’s property falls to his privileged ascendants and privileged collaterals together
e. none of the above

22 Who inherits Alicia’s painting? Why? (*Note:* This question is only about who inherits; it’s not about what interest – e.g., full ownership versus something less – or how much – e.g., 100% versus 50% – that this “who” inherits. *Those* issues form the subject matter of the next question. Thus, as long as a person inherits some amount of some interest, the property “falls to” him.)

a. Zeb: if the deceased leaves no descendants but does leave a spouse, the deceased’s property falls to that surviving spouse
b. Susan: if the deceased leaves no descendants, the deceased’s separate property falls to his privileged ascendants
c. Blake: if the deceased leaves no descendants, the deceased’s separate property falls to his privileged collaterals
d. Susan and Blake: if the deceased leaves no descendants, the deceased’s separate property falls to his privileged ascendants and privileged collaterals together
e. none of the above

23 Assume that the correct answer to the last question is d. What, precisely, does each of the successors – Susan and Blake – inherit? (*Note:* Don’t worry about “why?”)

a. ½ to each in full ownership
b. Susan gets a usufruct and Blake, naked ownership
c. Susan gets naked ownership and Blake, a usufruct
d. none of the above
Forget the last three (3) questions, but suppose, still, that Alicia dies. Suppose, further, that she is now survived by her full brother, Blake, and her half-brother, Clyde, as well as her full nephews (by Blake), Elton and Fred, and her half-nephew (by Clyde), Garth. Finally, suppose also that she is predeceased by her husband, Zeb; her son, Dennis; and her parents, Max and Susan.

24 Who inherits Alicia’s property now and in what proportions? Why?

- a ½ to Blake and ½ to Clyde: if the deceased leaves neither descendants nor privileged ascendants, then his privileged collaterals succeed to his separate property; among privileged collaterals of the second degree (siblings), this property is split by heads
- b Blake inherits it all, in full ownership, to the exclusion of Clyde: if the deceased leaves neither descendants nor privileged ascendants, his privileged collaterals succeed to his separate property; among privileged collaterals of the second degree (siblings), if they are born of the same parents, then they divide this property equally, but if they are born of different unions, then the full siblings take to the exclusion of half siblings
- c 2/3 to Blake, 1/3 to Clyde: if the deceased leaves neither descendants nor privileged ascendants, his privileged collaterals succeed to his separate property; among privileged collaterals of the second degree (siblings), if they are born of the same parents, they divide this property equally, but if they are born of different unions, then this property is equally divided between the paternal and maternal lines, with the full siblings taking in both lines and the half siblings taking each in his own line
- d 3/4 to Blake, 1/4 to Clyde: if the deceased leaves neither descendants nor privileged ascendants, his privileged collaterals succeed to his separate property; among privileged collaterals of the second degree (siblings), if they are born of the same parents, then they divide this property equally, but if they are born of different unions, then this property is equally divided between the paternal and maternal lines, with the full siblings taking in both lines and the half siblings taking each in his own line
- e none of the above

Alicia is still dead. Suppose, now, that she was predeceased by not only her husband, Zeb; her son, Dennis; and her parents, Max and Susan, but also her full brother, Blake. Suppose, further, that she is survived by her half-brother, Clyde; her full nephews (by Blake), Elton and Fred, and her half-nephew (by Clyde), Garth.

25 Who inherits Alicia’s property now? Why?

- a Clyde gets it all: if the deceased leaves neither descendants nor privileged ascendants, then his privileged collaterals succeed to his separate property; among privileged collaterals, those closer in degree exclude those farther in degree; Clyde is closer in degree than are Elton and Fred
- b Clyde, Elton, and Fred each gets 1/3: if the deceased leaves neither descendants nor privileged ascendants, then his privileged collaterals succeed to his separate property; among privileged collaterals, this property is divided by heads
- c Clyde gets, in his own right, what he got in the scenario described in the last question; Elton and Fred get, by representation, what Blake got in that hypothetical, which they split between themselves by heads
- d Clyde gets ½, whereas Elton and Fred each gets 1/4: if the deceased leaves neither descendants nor privileged ascendants, then his privileged collaterals succeed to his separate property; among privileged collaterals, this property is divided by heads, except where representation occurs; where representation occurs, the property is divided, first, by roots and, then, within each root by branches and, finally, by heads; here Clyde takes in his own right whereas Elton and Fred take by representation of Blake
- e none of the above
Suppose, now, that Dennis dies. He is survived by his paternal grandparents, Jacob and Rachel; his maternal grandfather, Max; his paternal uncle, Levi; his maternal uncles, Blake and Clyde; his paternal first cousin, Moses; his maternal “full” first cousins, Elton and Fred; and his maternal “half” first cousin, Garth. Dennis is predeceased by his parents, Zeb and Alicia; by his maternal grandmother, Susan; by his paternal uncle, Symeon. He leaves two (2) assets at his death: (1) 100 shares of Olympus, Inc. stock and (2) a claim for the still unpaid price of a timber estate (the standing timber on a tract of land) that Dennis, after having received it from Jacob as a gift, had sold, on credit, to Johnnie-Beth.

26 Onto whom does the stock devolve? Why? (Note: You’re not being asked – not yet, anyway – about the proportions of the stock that the successors take. That’s addressed in the next question.)

a onto Dennis’s surviving grandparents, Jacob, Rachel, and Max: if the deceased leaves neither descendants nor privileged ascendants or privileged collaterals nor a surviving spouse, then his other ascendants succeed to his separate property

b onto Dennis’s surviving grandparents, Jacob, Rachel, and Max, and also onto Blake as representative of Dennis’s predeceased grandparent (i.e., Susan): the rationale given in answer a is good as far as it goes, but it overlooks the possibility of representation in the ascending line

c onto Dennis’s surviving aunts and uncles, Levi, Blake, and Clyde: if the deceased leaves neither descendants nor privileged ascendants or privileged collaterals nor a surviving spouse, then his other collaterals succeed to his separate property

d none of the above

27 Assume that the correct answer to the previous question is a. In what proportions does the stock devolve upon Dennis’s surviving grandparents?

a 1/3 to Jacob, 1/3 to Rachel, and 1/3 to Max: among the other ascendants of the closest degree, the separate property is divided by heads

b 1/4 to Jacob, 1/4 to Rachel, and ½ to Max: if the other ascendants in the paternal and maternal lines are in the same degree, the separate property is divided into two equal shares, one of which goes to the other ascendants on the paternal side and the other of which goes to the other ascendants on the maternal side; on each side, the division is by heads

c neither of the above

28 Assume that the correct answer to the question before last (question 26) is c. In what
You may or not find the following CC articles useful: 462 ("Tracts of land, with their component parts, are immovables."); 463 ("Buildings, other constructions permanently attached to the ground, standing timber, and unharvested crops or ungathered fruits of trees, are component parts of the tract of land when they belong to the owner of the ground."); 464 ("Buildings and standing timber are separate immovables when they belong to a person other than the owner of the ground."); 474 ("Unharvested crops and ungathered fruits of trees are movables by anticipation when they belong to a person other than the landowner.")

proportions does the stock devolve upon Dennis’s surviving aunts and uncles?

a 1/3 to Levi, 1/3 to Blake, and 1/3 to Clyde: among the other collaterals of the closest degree, the separate property is divided by heads
b ½ to Levi, 1/4 to Blake, and 1/4 to Clyde: if the other collaterals in the paternal and maternal lines are in the same degree, the separate property is divided into two equal shares, one of which goes to the other collaterals on the paternal side and the other of which goes to the other collaterals on the maternal side; on each side, the division is by heads
c ½ to Levi, 3/8 to Blake, and 1/8 to Clyde: the rationale given in answer b is substantially correct, but it overlooks the fact that Clyde, unlike Blake, is a mere “half-collateral”; where there are full and half collaterals, the separate property must, first, be divided between the paternal and maternal lines, after which the full collaterals take in both lines while the half-collaterals take each in his own line only
d none of the above

29 How would your answer to the last question have been different if Levi, too, had predeceased Dennis? (Don’t worry about “why?”)

a the answer’d have been the same, except that Moses, as Levi’s descendant, would have inherited what Levi would have inherited had Levi not died
b the answer’d have been rather different, for then Blake and Clyde, as Dennis’ closest surviving other collaterals, would have inherited the stock, ½ to each
c neither of the above

d none of the above

iv Does Dennis’s “credit right” against Johnnie-Beth to the still-unpaid purchase price for the timber estate (‘standing timber”) devolve any differently from Dennis’s stock? Why or why not?

D

At long last, we shift our attention to Jacob and his family. During the last three (3) years of his life, Jacob bestowed a number of gifts on his children and grandchildren. To Levi, he gave a mineral servitude (an incorporeal immovable) worth $30,000; to Zeb, fifty (50) shares of stock worth $7,000; and to Moses, Levi’s son, both (1) a collection of antique guns worth $5,000 (given by Jacob

4 You may or my not find the following CC articles useful: 462 (“Tracts of land, with their component parts, are immovables.”); 463 (“Buildings, other constructions permanently attached to the ground, standing timber, and unharvested crops or ungathered fruits of trees, are component parts of the tract of land when they belong to the owner of the ground.”); 464 (“Buildings and standing timber are separate immovables when they belong to a person other than the owner of the ground.”); 474 (“Unharvested crops and ungathered fruits of trees are movables by anticipation when they belong to a person other than the landowner.”)

-16-
to Moses when Levi was still alive) and (2) $5,000 cash (given by Jacob to Moses after Levi had died). Then Jacob died. Jacob was survived by his second son, Symeon (then aged twenty-six (26) years); his youngest son, Zeb (then aged twenty-two (22) years); and his grandsons, Moses (then aged twelve (12) years) and Dennis (then aged two (2) years). Jacob was predeceased by his wife, Rachel, and his eldest son, Levi (who, had he lived, would have been thirty (30) when Jacob died).

Jacob

| dc | Rachel Susan Max Olivia
|----|------------------------|
| Levi Symeon Zeb Alicia Blake Clyde
|------------------------|
| Moses Dennis Elton Fred Garth

30 Which of Jacob’s survivors – Symeon, Zeb, Moses, Dennis – may demand that at least one of the others “collate” something that was given to one of the others or, in Moses’s case, to his father, Levi? (Don’t worry about “why?”).

a every single one of them can demand collation
b though Symeon, Zeb, and Moses can demand collation – Symeon and Zeb in their own right and Moses by way of representation of Levi –, Dennis cannot
c though Symeon and Zeb can demand collation, Moses and Dennis cannot
d Zeb alone can demand collation
e none of the above

31 Assume that the correct answer to the last question is a. Can Zeb and/or Moses be compelled to “collate” something that was given to him or, in Moses’s case, to his father, Levi? (Don’t worry about “why?”)

a Zeb can be compelled to collate the stock; Moses can be compelled to collate the servitude that his father, Levi, received from Jacob, but not the guns or the cash that he himself received from Jacob
b Zeb can be compelled to collate the stock; Moses can be compelled to collate the guns and the cash that he himself received from Jacob, but not the servitude that his father, Levi, received from Jacob
c Zeb can be compelled to collate the stock; Moses can be compelled to collate the cash that he himself received from Jacob as well as the servitude that his father, Levi, received from Jacob, but not the guns that he himself received from Jacob
d Zeb can be compelled to collate the stock; Moses can be compelled to collate the guns that he himself received from Jacob as well as the servitude that his father, Levi, received from Jacob, but not the cash that he himself received from Jacob
e none of the above

Josh died on December 1, 2004. During his lifetime Josh, a recent widower, produced three children (in this order): Ann (born May 1, 1976), Ben (born May 1, 1977), and Charlotte (born May 1, 1985). Only Ann survived him; in other words, both Ben and Charlotte predeceased him (Ben died on October 1, 2003; Charlotte, on October 1, 2004). Josh was survived not only by his daughter, Ann, but also by two grandchildren, Eli (son of Ben) and Flo (daughter of Charlotte). Though Ann and Flo were both in good health, Eli was not. Eli suffered from “HTBC,” a
Thus, the total value of Mary’s estate was $390,000.

At the time of his death, Josh had a good bit of “stuff.” His “in hand” assets included a house and lot worth $120,000; an investment portfolio (stocks and bonds) worth $10,000; and $5,000 in various checking and savings accounts. He also was a pensioner under his employer’s retirement plan, the payoff value of which was $20,000 (as to which he had named Eli as beneficiary). All of these assets, interests, and rights were his separate property.

There were also several debts associated with Josh in one way or another. They included his home mortgage loan, the balance on which stood at $100,000 when he died; “credit card” debt of $30,000; and unpaid property and income taxes (going back several years) of $20,000. All of these debts were his separate property. Then there was the “funeral debt,” incurred by Ann to buy Josh a funeral, which came to $10,000.

Josh’s shaky financial situation was, in large part, the result of his own excessive largesse. During the last years of his life, he gave away much of his wealth, which, at one time, had been substantial. Here’s a list of his gifts and other favors (in chronological order):

<table>
<thead>
<tr>
<th>Date</th>
<th>Recipient</th>
<th>Description</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 1, 2000</td>
<td>To Ann:</td>
<td>Josh gave Ann a “timber estate” (tract of land with standing timber) worth $100,000. The act of donation, which was made before a notary and two witnesses, was signed by Josh, but not by Ann. Though Ann never signed any sort of “act of acceptance,” she did take control of the timber estate and did use it regularly. The act of donation was filed into the appropriate public records.</td>
<td></td>
</tr>
<tr>
<td>February 1, 2001</td>
<td>To Ann:</td>
<td>On the occasion of Ann’s marriage to Kevin, Josh gave Ann $10,000 cash, on the condition that she “never divorce Kevin.” Josh, a devout and ultra-conservative Roman Catholic, looked on divorce as a “mortal sin.” The donation was not commemorated by any writing; Josh just “handed over” the money to Ann.</td>
<td></td>
</tr>
<tr>
<td>March 1, 2002</td>
<td>To Ben:</td>
<td>Josh sold Ben a “mineral servitude” over a tract of land that Josh then owned (but later sold). Josh set the price at $4,000, even though he knew that the servitude was worth $10,000. Though the gift was evidenced in a writing, which both Josh and Ben signed, it was neither notarized nor witnessed. A copy of the writing was promptly filed into the public records.</td>
<td></td>
</tr>
<tr>
<td>May 1, 2002</td>
<td>To Eli:</td>
<td>Josh gave Eli an Arabian race horse worth $20,000 on the occasion of his (Eli’s) birthday. The horse was hand-delivered; there was no instrument.</td>
<td></td>
</tr>
<tr>
<td>June 1, 2003</td>
<td>To Sarah: When Josh’s mother, Mary, died intestate, survived by her three children – Josh; his younger sister, Sarah; and his younger brother, Ted – Josh “renounced” Mary’s succession “in favor of Sarah.” The value of Josh’s portion of Mary’s estate was $130,000. Josh made the renunciation in writing; though he signed it, it was neither notarized nor witnessed. For her part, Sarah did not sign it, but she did accept Mary’s succession.</td>
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<td></td>
</tr>
<tr>
<td>July 1, 2003</td>
<td>To Ben:</td>
<td>Josh paid off a tort judgment that had been entered against Ben (arising out of a traffic accident) in the amount of $40,000. Josh paid the accident victim directly, so that Ben never even saw, much less touched, the money.</td>
<td></td>
</tr>
<tr>
<td>August 1, 2003</td>
<td>To Ron:</td>
<td>Josh gave to his friend and next-door neighbor, Ron, a predial servitude of passage across his lot (something that Ron had long coveted), on the condition that Ron “take care of my yard for the rest of my life.” Though the contract was memorialized in writing and was signed by both Josh and Ron, it was neither notarized nor witnessed. A copy of it was</td>
<td></td>
</tr>
</tbody>
</table>

5 Thus, the total value of Mary’s estate was $390,000.
You should assume that this contribution was lawful.

September 1, 2004

To St. Michael the Archangel: Josh wrote a check for $10,000 to his church, St. Michael the Archangel Roman Catholic Church, in support of its new building campaign. The church treasurer, however, did not get around to cashing the check until a week after Josh died. (Though the bank had been advised of Josh’s death, it inadvertently paid the check anyway.)

November 1, 2004

To David: Josh handed David Vetter, recent candidate for U.S. Senator from Louisiana, a “campaign contribution” of $5,000 cash, which Mr. Vetter then spent on TV ads.\(^6\)

Here’s some miscellaneous additional information that you may or may not find useful. (1) On August 1, 2004, Josh made out a testament, in proper form, in which he left “all of my property” to his daughter Ann. (2) On September 1, 2004, Eli, after a heated argument with Josh over Eli’s use of tobacco, called him a “sorry-assed bastard,” spat in his face, and sabotaged his car by putting sugar in the gas tank. (3) On October 1, 2004, just two (2) months before Josh died, Josh, at Ann’s initiative, was “fully” interdicted. (4) All of Josh’s successors accept his succession, and everyone asserts every right he or she has (save for collation rights!). (5) The values of all of Josh’s present and former assets have remained stable through time. (6) Josh and his predeceased wife had a “separate property” regime. (7) Josh’s succession was placed under administration.

A

Preliminaries

1

Forced Heirs

You should assume, for the moment (that is, in this Subsubpart III-A-1 of the exam)), that there’s some sort of impingement on the legitimes of those children (or grandchildren) who have them. Later on, in Subpart III(B) of the exam, you’ll have to determine whether that’s true.

32 Is / are Ann, Eli, and /or Flo in a position to assert forced heirship rights in Josh’s succession? Why or why not?

a “yes” as to all three: all are descendants of Josh

b “yes” as to Ann, “no” as to Eli and Flo: only first degree descendants who are “young” or permanently disabled can assert forced heirship rights; whereas Ann is in the first degree and “young,” Eli and Flo are in the second degree

c “yes” as to Eli, “no” as to Ann and Flo; because Eli is “permanently disabled,” as that term is now defined, he can “represent” Ben, even though he is in the second degree; however, Ann is too “old” and Flo can’t “represent” Charlotte because she’s not permanently disabled

d “yes” as to Flo, “no” as to Ann and Eli: because Charlotte, had she lived, would still have been “young” when Josh finally died, Flo can “represent” her, even though Flo is in the second degree; however, Ann is too “old” and Eli can’t represent Ben because Ben, had he lived, would have been too “old” when Josh finally died

e “yes” as to Eli and Flo, “no” as to Ann: because Eli is “permanently disabled,” as that term is now defined, he can “represent” Ben, even though he is in the second degree; because Charlotte, had she lived, would still have been “young” when Josh finally died, Flo can “represent” her, even though Flo is in the second degree; however, Ann is too “old”

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\(^6\) You should assume that this contribution was lawful.

\(^7\) This is my not-too-subtle way of telling you not to talk about actual collation here in this Part III of the exam.
For the purposes of the rest of this Part III of the exam (including A-2 & B below), assume that Eli and Flo can both assert forced heirship rights, but that Ann cannot.

2
Analysis of Debts

33 “Whose” debt is that which Ann incurred for Josh’s “funeral expenses”? 

a it’s Josh’s debt, one chargeable against his estate  
b it’s Ann’s debt, for which she is personally liable  
c it’s the debt of all of Josh’s successors, for which they are personally liable  
d none of the above

For the purposes of the rest of this Part III of the exam, assume that the correct answer to this question is a.

3
Analysis of Liberalities

Please tell me (1) which of the following things should be included among the assets that Josh actually had at death or that can be recovered, on the one hand, and those that may be “fictitiously” added back to his estate, on the other, and (2) why. (Note that I’m not asking you – not yet anyway – which of those that can be fictitiously added back can be imputed or reduced.)

a “timber estate” – $100,000 (given to Ann)

For the purposes of the rest of this Part III of the exam, assume that the “timber estate” (1) neither is among the assets (a) that Josh actually had at death or (b) that can be recovered (2) nor can be fictitiously added back to his estate.

b cash – $10,000 (given to Ann)

For the purposes of the rest of this Part III of the exam, assume that this cash is among the assets that Josh actually had at death.
c. mineral servitude – $10,000 (sold to Ben for $4,000)

For the purposes of the rest of this Part III of the exam, assume that the mineral servitude (1) neither is among the assets (a) that Josh actually had at death or (b) that can be recovered (2) nor can be fictitiously added back to his estate.

d. race horse – $20,000 (given to Eli)

For the purposes of the rest of this Part III of the exam, assume that the race horse is among Josh’s recoverable assets.

e. 1/3 share of Mary’s estate – $130,000 (renounced in favor of Sarah)

For the purposes of the rest of this Part III of the exam, assume that the renunciation of Josh’s 1/3 share of Mary’s estate was valid and that this share of that estate can be fictitiously added back to Josh’s estate.

f. cash – $40,000 (paid to the victim of Ben’s tort)
For the purposes of the rest of this Part III of the exam, assume that the gift of this cash was valid and that this cash can be fictitiously added back to Josh’s estate.

g  predial servitude – $15,000 (given to Ron in return for future services of $5,000)

For the purposes of the rest of this Part III of the exam, assume that the gift of the predial servitude was valid and that the predial servitude can, in part, be fictitiously added back to Josh’s estate.

h  check – $10,000 (given to St. Michael the Archangel)

For the purposes of the rest of this Part III of the exam, assume that the gift of this check was valid and that this check can be fictitiously added back to Josh’s estate.

I  cash – $5,000 (given to David Vetter)

For the purposes of the rest of this Part III of the exam, assume that this cash is among Josh’s recoverable assets.

j  pension plan payoff – $20,000 (paid to Eli)
For the purposes of the rest of this Part III of the exam, assume that these proceeds (1) neither are among the assets (a) that Josh actually had at death or (b) that can be recovered (2) nor can be fictitiously added back to his estate.

**B**  
The Real Deal: Satisfaction of the Forced Portion  
(Imputation, Reduction, etc.)

Now calculate the forced heirs’ legitimes and tell me precisely how and from what sources those legitimes will be satisfied. Explain yourself thoroughly.

Be sure not to forget the assumptions that you were told to make above, in Part III-A-1 and Part III-A-2 of the exam, respectively, about (1) who may and who may not assert forced heirship rights and (2) which assets were assets at death or recoverable assets, which should be fictitiously added back, and which were neither assets at death, recoverable assets, nor assets subject to fictitious adding back (i.e., non-assets). Those assumptions, once again, are as follows:

1. **Forced heirship rights:** assume (a) that Eli and Flo can both assert forced heirship rights and (b) that Ann cannot.

2. **Asset treatment:** assume that the assets should be treated as follows: (a) assets at death or recoverable assets: cash (given to Ann); race horse (given to Eli); cash (given to David Vetter); (β) assets fictitiously added back: renounced share of Mary’s estate (renounced in favor of Sarah); cash (paid to victim of Ben’s tort); part of predial servitude (given to Ron); check (given to St. Michael the Archangel); (γ) non-assets: “timber estate” (given to Ann); mineral servitude (sold to Ben); pension payoff (paid to Eli).

3. **Debt treatment:** assume that Josh’s debts included not only his home mortgage debt, credit card debt, and back-taxes debt, but also the debt for his funeral expenses.

Finally, make this one further assumption: that to the accounts of Eli and Flo must be “imputed” not only those imputable liberalities that they may have received from Josh personally, but also those imputable liberalities that would have been imputed to the accounts of their representees – Ben and Charlotte, respectively – if (1) those representees had lived and (2) if those representatives had themselves qualified as forced heirs. What that means is this. First, assume that Ben and Charlotte, had they lived, would have qualified as forced heirs. (Make this assumption even if you think it’s contrary to fact.) Then, impute to Eli’s account what, on this assumption, would have been imputable to Ben’s account, and impute to Flo’s account what, on this assumption, would have been imputable to Charlotte’s account. Thus, for example, you should impute to Eli’s account not only that which Josh gave Eli (assuming it was imputable to Eli), but also that which Josh gave Ben (assuming it would have been imputable to Ben if Ben, on the assumption that he would have been a forced heir had he lived, had lived).