INSTRUCTIONS

1. This is something between a closed-book and an open-book exam. Aside from the test packet itself, you may consult only your Civil Code (or Civil Code Excerpts), Statutory Update, and Distribution Worksheet. You may, of course, use “scratch” paper.

2. Before you begin reading this portion of the exam, make sure you have all of the pages. There are 24 pages in all.

3. Do not sign your paper. Identify your paper using only your secret identification number. If you have a pre-printed exam number tag, use it. If not, just write the number out on the first page of the test packet.

4. You have a total of 255 minutes (4 hours, 15 minutes) to complete the exam. To assist you in budgeting your time, I have indicated the amount of time that I think you should spend on each Part of the exam. This time is also indicative of the weight I will assign to each Part for grading purposes.

    You may, of course, allocate your time as you wish. But be careful not to get behind. If you do, chances are you will never catch up.

5. In answering the “subjective” questions, be sure to justify every proposition that you assert. One of the major objectives of this exam is to test your ability to identify the applicable provisions of law, to resolve conflicts between them, and to apply them to the facts.

6. If you should encounter what you consider to be some anomaly, inconsistency, or contradiction in one of the narratives, DON’T JUST SIT THERE PUZZLED. Instead, come find me and ask me for a clarification.

   If, for some reason, you think that you need additional information in order to answer a question, DON’T assume ANYTHING! Instead, come find me and ask me for clarification.

During the exam period, I will come down to the lobby outside the examination rooms every hour on the hour (i.e., at 9:00, 10:00, 11:00, etc.) and will remain there for fifteen minutes at a time. At all other times, I will be in my office (Room 328).

7. You should answer all questions, even those set in the past or the future, on the basis of the current law only.

8. Record your answers to the “objective” questions on your Scantron sheet and your answers to the “subjective” questions in the space provided therefor in this test packet. DO NOT EXCEED THE SPACE PROVIDED.

Part I

(80 minutes [1 hr, 20 min] for 19 questions)

A

George dies intestate. His assets include (i) a guitar, which had been given to him, before his marriage, by his paternal grandmother, Ethyl, who had paid for it with her own separate property; (ii) an office building, which had been given to him individually (the authentic act of donation named George alone as the donee), during the marriage, by his maternal grandfather, Frank, who had paid for it with his own separate property; and (iii) a house and lot that he and Olivia, his wife, had purchased, during their marriage, with money he’d earned, while married, as a musician.

1

George is survived by his wife, Olivia; his legitimate sons by Olivia, Dhani and Bapu; another reputed son, Yogi, whom his high school sweetheart, Lama, had conceived while George and she
were dating and whom George had informally acknowledged as his own; his grandson, Delhi, by Dhani; his older brothers, Paul and Ringo; his nephews Sean and Julian, sons of his predeceased older brother, John; his niece, Star, daughter of his older brother, Ringo; his father, Dylan; his mother, Janice; his paternal uncles, Elvis and Roy; his maternal uncle, Buddy; his paternal cousin, Elton; his paternal grandmother, Ethyl; and his maternal grandparents, Frank and Judy. He was predeceased by his brother, John; and his paternal grandfather, Nat. All died intestate.

Unless you are told otherwise, assume that every successor asserts every right to which he’s entitled.

1 "George's interest in the guitar is separate property." This statement is--
   a true
   b false

For the rest of Part I, assume that the answer to Question 1 is "true."

2 "George's interest in the office building is community property." This statement is--
   a true
   b false

For the rest of Part I, assume that the answer to Question 2 is "false."

3 "George's interest in the house and lot is community property." This statement is--
   a true
   b false

For the rest of Part I, assume that the answer to Question 3 is "true."

4 Who is entitled to George's interest in the guitar? Why? (Assume Yogi that he has not yet and cannot now obtain a judgment of filiation vis-à-vis George under CC art. 209.)
   a Dhani and Bapu, by halves: among heirs, descendants are first in line to inherit separate property; Dhani and Bapu are George's only descendants and are in the same degree; the guitar is separate property
   b Dhani, Bapu, and Yogi, by thirds; among heirs, descendants are first in line to inherit separate property; Dhani, Bapu, and Yogi are all George's descendants and, further, are all in the same degree; the guitar is separate property
   c Dhani and Bapu, by halves, in naked ownership, Olivia in usufruct; among heirs, descendants and the surviving spouse not judicially separated are first in line to inherit separate property, with the former getting the naked ownership and the latter, a usufruct; Dhani and Bapu are George's only descendants and are in the same degree; the guitar is separate property
   d Dhani, Bapu, and Yogi, by thirds, in naked co-ownership, Olivia in usufruct; among heirs, descendants and the surviving spouse not judicially separated are first in line to inherit separate property, with the former getting the naked ownership and the latter, a usufruct; Dhani, Bapu, and Yogi are all George's descendants and, further, are all in the same degree; the guitar is separate property
   e Ethyl: she can reclaim it by virtue of the right of retour successorale

5 Is the result any different for the office building? Why or why not?
For purposes of the rest of Subpart A, all of Subpart B, all of Subpart C, all of Subpart D, assume that Yogi is George's legitimate descendant (suppose, for example, that George and Lama had been married when Yogi was conceived and born).

6 Who is entitled to George's interest in the house and lot? Why?

a Dhani, Bapu, and Yogi, by thirds; among heirs, descendants are first in line to inherit community property; Dhani, Bapu, and Yogi are all George's descendants and, further, are all in the same degree; the house and lot are community property.

b Dhani and Bapu, by halves; among heirs, community property falls, first of all, to those descendants who were born of the marriage during which that property was acquired; Dhani and Bapu are George's descendants, are progeny of his marriage, and are both in the same degree; the house and lot are community property.

c Dhani, Bapu, and Yogi, by thirds, in naked co-ownership, and Olivia in usufruct; among heirs, descendants and the surviving spouse not judicially separated are first in line to inherit community property, with the former getting the naked ownership and the latter, a usufruct; Dhani, Bapu, and Yogi are all George's descendants and, further, are all in the same degree; the house and lot are community property.

d Dhani and Bapu, by halves, in naked ownership, and Olivia in usufruct; among heirs, community property falls, first of all, to those descendants who were born of the marriage during which that property was acquired and the surviving spouse not judicially separated, with the former getting the naked ownership and the latter, usufruct; Dhani and Bapu are George's descendants, are progeny of his marriage, and are both in the same degree; the house and lot are community property.

e none of the above

2 Now George is survived by his older brothers, Paul and Ringo; his nephews Sean and Julian, sons of his predeceased older brother, John; his niece, Star, daughter of his older brother, Ringo; his mother, Janice; his paternal uncles, Elvis and Roy; his maternal uncle, Buddy; his paternal cousin, Elton; his paternal grandmother, Ethyl; and his maternal grandparents, Frank and Judy. He was predeceased by his wife, Olivia; his legitimate sons by Olivia, Dhani and Bapu; another illegitimate, but filiated son, Yogi, by Lama, his high school sweetheart, Lama; his grandson, Delhi, by Dhani; his father, Dylan; his brother, John; and his paternal grandfather, Nat. All died intestate.

Unless you are told otherwise, assume that every successor asserts every right to which he's entitled.

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Nat+++++Ethyl Frank+++++Judy

Elvis    Roy  Dylan+++++Janice Buddy

Elton John Paul Ringo Lama***George++++Olivia

Julian Sean Starr Yogi Dhani Bapu Delhi
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7 Who is entitled to George's house and lot now? Why? (You should assume, as would be correct under the facts given here, that George owned the house and lot outright, i.e., had full ownership of 100%, when he died.)

a Paul and Ringo, by halves; if the de cujus leaves no descendants, then his estate falls to his privileged collaterals; as among privileged collaterals, those closer in degree exclude those farther in degree; here, Paul and Ringo are George's closest privileged collaterals.

b Paul, 1/3; Ringo, 1/3; Julian, 1/6; and Sean, 1/6; if the de cujus leaves no descendants, then his estate falls to his privileged collaterals; as among privileged collaterals, those closer in degree exclude those farther in degree, save for when representation takes place; where representation occurs, the estate is divided by roots and, within each root,
by branches; here, Julian and Sean represent John and, in so doing, assume his "degree," which is identical to that of Paul and Ringo, who come in their own right; they split John's "root" between them

Paul, Ringo, Julian, and Sean, by quarters, and Janice in usufruct; if the de cujus leaves no descendants, then his estate falls to his privileged collaterals, in naked ownership, and to his privileged ascendants, in usufruct; as among privileged collaterals, those closer in degree exclude those farther in degree, save for when representation takes place; where representation occurs, the estate is divided by heads among those who succeed in their own right and those who succeed by representation; here, Julian and Sean represent John and, in so doing, assume his "degree," which is identical to that of Paul and Ringo, who come in their own right; Janice is George's only privileged ascendant

Paul and Ringo, by halves, in naked ownership and Janice in usufruct; if the de cujus leaves no descendants, then his estate falls to his privileged collaterals, in naked ownership, and to his privileged ascendants, in usufruct; as among privileged collaterals, those closer in degree exclude those farther in degree; Paul and Ringo are George's closest privileged collaterals;

Paul, 1/3; Ringo, 1/3; Julian, 1/6; and Sean, 1/6, in naked ownership, and Janice in usufruct; if the de cujus leaves no descendants, then his estate falls to his privileged collaterals, in naked ownership, and to his privileged ascendants, in usufruct; as among privileged collaterals, those closer in degree exclude those farther in degree, save for when representation takes place; where representation occurs, the estate is divided by roots and, within each root, by branches; here, Julian and Sean represent John and, in so doing, assume his "degree," which is identical to that of Paul and Ringo, who come in their own right; they split John's "root" between them; Janice is his only privileged ascendant

Would the result be different for the guitar? Why or why not?

a different: Ethyl gets it: retour successorale

b no different: Ethyl has no retour successorale here

Would the result be different for the office building? Why or why not?

da different: Frank gets it: retour successorale

b no different: Frank has no retour successorale here

Suppose that Ringo renounces his interest in George's house and lot. Who gets that interest now? Why?

a Starr: when an heir renounces the succession, his share accretes as if he had predeceased the de cujus; had Ringo predeceased George, then Starr, by representing Ringo, would have taken his share

b Paul: when an heir successor renounces the succession, his share accretes as if he had predeceased the de cujus; had Ringo predeceased George, his share would have accreted to his co-heirs of the same rank and degree; here, that's Ringo

c Paul, Julian, and Sean, by thirds; when an heir renounces the succession, his share accretes as if he had predeceased the de cujus; had Ringo predeceased George, his share would have accreted to his co-heirs of the same rank and degree and/or to those of the same rank but next degree who, by representation, can assert the rights of one in that same degree; the accreted share is divided by heads among the heirs of the same degree and/or those who represent them; here, Ringo, Julian, and Sean are of the same rank, i.e., they are privileged collaterals; Ringo is in the same degree in his own right; Julian and Sean, by representation, can assert the rights of John, who was in the same degree

d Paul, ½; Julian, ¼; and Sean, ¼; when an heir renounces the succession, his share accretes as if he had predeceased the de cujus; had Ringo predeceased George, his share would have accreted to his co-heirs of the same rank and degree and/or to those of the same rank but next degree who, by representation, can assert the rights of one in that same degree; any such representatives divide the "root" of the one whom they represent; here, Ringo, Julian, and Sean are of the same rank, i.e., they are privileged collaterals; Ringo is in the same degree in his own right; Julian and Sean, by representation, can assert the rights of John, who was in the same degree, and so can split his ½

e none of the above

Suppose it turns out that Ringo was the efficient cause of George's death, specifically, that Ringo poisoned him. Would your answer to the last Question (#11) be any different now? Why or why not? If your answer is "different," tell me to whom Ringo's share would now
accrue. (Remember that everybody asserts every right he has.)

a.

no: between the last hypothetical and this one, there’s no material difference: in both cases, the share of the heir in question accrues as if he had predeceased the de cujus

b.

yes: Ringo’s share goes to ____________________; in a case such as this (unworthiness), the share of the heir in question accrues differently than it does when the heir in question renounces his share

c.

yes: Ringo: for better or for worse, there’s no basis here for depriving Ringo of his share

2

Now George is survived by his paternal uncles, Elvis and Roy; his maternal uncle, Buddy; his paternal cousin, Elton; his paternal grandmother, Ethyl; and his maternal grandparents, Frank and Judy. He was predeceased by his wife, Olivia; his legitimate sons by Olivia, Dhani and Bapu; another illegitimate, but filiated son, Yogi, by Lama, his high school sweetheart, Lama; his grandson, Delhi, by Dhani; his father, Dylan; his mother, Janice; his older brothers, Paul and Ringo; his nephews Sean and Julian, sons of his predeceased older brother, John; his niece, Star, daughter of his older brother, Ringo; his brother, John; and his paternal grandfather, Nat. All died intestate.

Unless you are told otherwise, assume that every successor asserts every right to which he’s entitled.

[Diagram]

12

Who is entitled to George's house and lot now? Why? (You should assume, as would be correct under the facts given here, that George owned the house and lot outright, i.e., had full ownership of 100%, when he died.)

a.

Ethyl, 1/4; Frank, 1/4; Judy, 1/4; Elvis, 1/8: if the de cujus leaves no privileged descendants, no privileged ascendants, no privileged collaterals, and no surviving spouse not judicially separated, then his estate falls to his other ascendants; as among other ascendants, those closer in degree exclude those more remote in degree, save in the case of representation; here, Ethyl, Frank, and Judy are other ascendants of the closest degree in their own right; Elvis and Roy, by representation, take the degree of Nat, which is the same as that of Ethyl, Frank, and Judy

b.

Ethyl, ½; Frank, 1/4; Judy, 1/4: if the de cujus leaves no descendants, no privileged ascendants, no privileged collaterals, and no surviving spouse not judicially separated then his estate falls to his other ascendants; as among other ascendants, those closer in degree exclude those more remote in degree; when there are other ascendants of the same degree in both lines, the estate is divided between the lines by halves and each half is thereafter divided by heads; here, Ethyl, Frank, and Judy are other ascendants of the closest degree; Ethyl alone is in the paternal line, whereas Frank and Judy are in the maternal line

c.

Ethyl, 1/3; Frank, 1/3; Judy, 1/3: if the de cujus leaves no descendants, no privileged ascendants, no privileged collaterals, and no surviving spouse not judicially separated, then his estate falls to his other ascendants; as among other ascendants, those closer in degree exclude those more remote in degree; as between other ascendants of the same degree, the estate is divided by heads, regardless of line; here, Ethyl, Frank, and Judy are other ascendants of the closest degree

d.

none of the above

For purposes of the rest of Subpart I(A)(2), assume that the correct answer to this Question is either b or c.
Suppose that Ethyl renounces her share of George’s estate. To whom does it accrete? Why?

- Frank and Judy, by halves: when an heir renounces his share, that share accretes as if he had predeceased the *de cujus*; had Ethyl predeceased the *de cujus*, her estate would have accreted to her co-heirs of the same degree; here, that’s Frank and Judy
- Elvis and Roy, by halves: when an heir renounces his share, that share accretes as if he had predeceased the *de cujus*; had Ethyl predeceased the *de cujus*, her share of the estate would have fallen to her descendants, Elvis and Roy, by representation
- neither of the above

Now George is survived by his paternal uncles, Elvis and Roy; his maternal uncle, Buddy; his paternal cousin, Elton. He was predeceased by his wife, Olivia; his legitimate sons by Olivia, Dhani and Bapu; another illegitimate, but filiated son, Yogi, by Lama, his high school sweetheart, Lama; his grandson, Delhi, by Dhani; his father, Dylan; his mother, Janice; his older brothers, Paul and Ringo; his nephews Sean and Julian, sons of his predeceased older brother, John; his niece, Star, daughter of his older brother, Ringo; his brother, John; his paternal grandparents, Nat and Ethyl; and his maternal grandparents, Frank and Judy. All died intestate.

Unless you are told otherwise, assume that every successor asserts every right to which he’s entitled.

<table>
<thead>
<tr>
<th>Nat</th>
<th>Ethyl</th>
<th>Frank</th>
<th>Judy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elvis</td>
<td>Roy</td>
<td>Dylan</td>
<td>Janice</td>
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<tr>
<td>Elton</td>
<td>John</td>
<td>Paul</td>
<td>Ringo</td>
</tr>
<tr>
<td>Julian</td>
<td>Sean</td>
<td>Starr</td>
<td>Yogi</td>
</tr>
</tbody>
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Who is entitled to George's house and lot now? Why? (You should assume, as would be correct under the facts given here, that George owned the house and lot outright, i.e., had full ownership of 100%, when he died.)

- Elvis, Roy, and Buddy, by thirds: if the *de cujus* leaves no descendants, privileged ascendants / collaterals, surviving spouse not judicially separated, or other ascendants, his estate falls to his other collaterals: as among other collaterals, those closer in degree exclude those more remote in degree; as among other collaterals of the same degree, the estate is divided by heads, regardless of line; here, Elvis, Roy, and Buddy are the other collaterals of the closest degree
- Elvis, 1/4; Roy, 1/4; and Buddy, ½: as among other collaterals, those closer in degree exclude those more remote in degree; as among other collaterals, those closer in degree exclude those more remote in degree; as among other collaterals of the same degree, the estate is divided, first, by lines and, then, within each line, by heads; here, Elvis, Roy, and Buddy are the other collaterals of the closest degree; whereas Elvis and Roy are in the paternal line, Buddy alone is in the maternal line
- neither of the above

B

Dylan dies. He leaves behind a boat, which is separate property.

Dylan is survived by his wife, Janice; his son, Paul; his grandsons, Julian and Sean, by his predeceased son, John; his granddaughter, Starr, by his predeceased son, Ringo; his grandsons, Yogi and Bapu, by his predeceased son, George; and his great-grandson, Delhi, by his grandson, Dhani. He was predeceased by his sons, John, Ringo, and George and his grandson, Dhani, by his son George.

Unless you are told otherwise, assume that every successor asserts every right to which he’s entitled.
Who is entitled to Dylan's boat? Why?

a Paul, 1/4; Julian and Sean, each 1/8; Starr, 1/4; Yogi, Delhi, and Bapu, each 1/12; among heirs, descendants are first in line to inherit separate property; as among descendants, those closer in degree exclude those of more remote degree, save when representation occurs; as among descendants who come in their own right and those who come by representation, the estate is divided by roots and then, within each root, by branches; here, Paul comes in his own right; Julian and Sean represent John; and Yogi, Delhi (by representation of Dhani), and Bapu represent George

b Paul, Julian, Sean, Starr, Yogi, Delhi, and Bapu, each 1/7; among heirs, descendants are first in line to inherit separate property; as among descendants, those closer in degree exclude those of more remote degree; save when representation occurs; as among descendants who come in their own right and those who come by representation, the estate is divided by heads; here, Paul comes in his own right; Julian and Sean represent John; and Yogi, Delhi (by representation of Dhani), and Bapu represent George

c Paul, 1/4; Julian and Sean, each 1/8; Starr, 1/4; Yogi and Bapu, each 1/8; as among descendants, those closer in degree exclude those of more remote degree, save when representation occurs; as among descendants who come in their own right and those who come by representation, the estate is divided by roots and then, within each root, by branches; here, Paul comes in his own right; Julian and Sean represent John; and Yogi and Bapu represent George; Delhi, however, cannot participate in representing George because Delhi is not George’s 1st degree descendant

d Paul alone, 100%; among heirs, descendants are first in line to inherit separate property; as among descendants, those closer in degree exclude those of more remote degree; of Dylan’s descendants, Paul is closest in degree

e none of the above

C

Bapu dies intestate. He leaves only one asset, a savings account with a balance of $100,000.

Bapu is survived by his full-brother, Dhani; his half-brother, Yogi; his nephew, Delhi; and – look out, for he’s a new character – his other half-brother, Newton, who was born of his mother’s prior marriage to Wayne. He was predeceased by his parents, George and Olivia.

Unless you are told otherwise, assume that every successor asserts every right to which he’s entitled.

Who is entitled to the $100,000 in the savings account? Why?

a Dhani: when the de cujus leaves no descendants and no privileged ascendants, his estate falls to his privileged collaterals; as among them, those closer in degree exclude those farther in degree, save when representation occurs; here, Dhani is the closest privileged collateral

b Dhani, Yogi, and Newton, by thirds: when the de cujus leaves no descendants and no privileged ascendants, his estate falls to his privileged collaterals; as among them, those closer in degree exclude those farther in degree, save when representation occurs; as among those closest in degree, the estate is divided by heads; here, Dhani, Yogi, and Newton are all privileged collaterals and all of the same degree
c  Dhani, 1/2; Yogi, 1/4; and Newton, 1/4: when the *de cujus* leaves no descendants and no
privileged ascendants, his estate falls to his privileged collaterals; as among them, those
closer in degree exclude those farther in degree, save when representation occurs; as
among those closest in degree, the estate is divided by heads, save where they are born
different unions; when that is so, the ownership must be divided between the paternal
and maternal lines and only “full blooded” privileged collaterals may be permitted to
take in both lines; here, Dhani, Yogi, and Newton are all privileged collaterals and are
all of the same degree; Dhani, as a full sibling, takes in both lines, whereas Yogi, as a
paternal half-sibling, takes only in the paternal line, and Newton, as a maternal half-
sibling, takes only in the maternal line

d  Dhani, 2/3; Yogi, 1/6; Newton, 1/6; the same rationale as in c, but different numbers
e  none of the above

D

During the last three years of his life, George, with the full knowledge and consent of his wife,
Olivia, bestoyed a number of gifts on his children. To Yogi, he gave a large collection of rare books;
to Dhani, a farm; and to Bapu, a large sum of cash (over $20,000). Then Dhani died. And then
George himself died. George was survived by his wife, Olivia; his eldest son, Yogi (then aged 25);
his youngest son, Bapu (then aged 15); and his grandson Delhi (by his predeceased middle son,
Dhani, who, had he lived, would have been 18 when George died).

Lama***George++++Olivia
  |   |
Yogi Dhani Bapu
  |   |
Delhi

17 Which of George's survivors -- Olivia, Yogi, Bapu, Delhi -- may demand that at least one of
the others "collate" something that was given to one of the others or, in Delhi's case, to his
father?

a  Bapu: only forced heirs properly so called (i.e., first degree descendants who are either
"young" or "permanently disabled") can assert collation rights; here, Bapu is the only
one who fits that description
b  Bapu and Delhi: collation rights may be asserted by anyone who may assert forced
heirship rights, whether in his own right or by "representation"; here, Bapu is a forced
heir properly so called and Delhi is the representative of another would-have-been
forced heir, namely, Dhani; Yogi, however, is neither
c  Bapu, Delhi, and Yogi: collation rights may be asserted by anyone who may assert
forced heirship rights, whether in his own right or by "representation"; here, Bapu and
Yogi are forced heirs properly so called and Delhi is the representative of another
would-have-been forced heir, namely, Dhani
d  Bapu and Yogi: only forced heirs properly so called (i.e., first degree descendants who
are either “young” or “permanently disabled”) can assert collation rights; here, Bapu and
Yogi, but not Delhi, fit that description
e  none of the above

18 Which of George's survivors -- Olivia, Yogi, Bapu, Delhi -- can be compelled to "collate"
something that was given to him or, in Delhi's case, to his father? Take a holiday from the
"why" question!

a  Yogi can be compelled to collate the books and Bapu can be compelled to collate the
cash; Delhi, however, cannot be compelled to collate the farm
b  Yogi can be compelled to collate the books and Delhi can be compelled to collate the
farm; Bapu, however, cannot be compelled to collate the cash
c  Yogi can be compelled to collate the books; Bapu can be compelled to collate the cash;
Delhi can be compelled to collate the farm
d  Bapu can be compelled to collate the cash; Delhi can be compelled to collate the farm;
Yogi, however, cannot be compelled to collate the books
e  none of the above

For purposes of the rest of Part I, **assume** that both the books and the farm are collatable.

19 How may / must Yogi collate the books and Delhi collate the farm? The holiday from the
“why” question continues! (You may **assume** that there are no complicating factors present
that might require that one or the other collate by value through a monetary payment.

a. both may collate either in kind or by value (taking less)
b. Yogi may collate either in kind or by value (taking less); Delhi must collate by value (taking less)
c. Delhi may collate either in kind or by value (taking less); Yogi must collate by value (taking less)
d. both must collate by value (taking less)
e. none of the above

Part II

(85 minutes [1 hr, 25 min] for 20 questions)

Remember George of Part I? Well, he's still dead. But suppose now that he left a testament, the pertinent part of which reads as follows:

8/31/2001

Here's what I, George Harrison, want to happen to my stuff when I'm dead and gone.

1. Ringo gets my music collection, consisting of LPs, 8-tracks, cassettes, and CDs, provided that he divorces his current wife (whom I loathe so much that I can't bear even writing her name).
2. I give Yogi, Dhani, and Bapu all my movable property, share and share alike, jointly and with right of accretion.
3. I give my beachhouse and lot to Uncle Elvis, but he shall own and use them for only six months. After that, he's to turn over ownership and use of it to Starr.
4. I leave 50 of my 100 thoroughbred horses to Paul.
5. I leave all the rest of my stuff to Olivia.
6. I also want Olivia, whom I appoint as executor, to give $10,000 cash to whichever of my children, in her judgment, is most deserving and/or most in need of it.

[signed]
George Harrison

PS: I almost forgot: John gets my Beatles LPs.

Suppose further that George died on August 25, 2001; that several persons are prepared to testify that (i) the testament is entirely written, dated, and signed in George's handwriting; (ii) they saw George write out the testament on the night of July 31, 2001, not August 31, 2001; (iii) George was notorious for misnumbering the months of the year in his correspondence; and (iv) they saw George add the "PS" disposition to the testament on July 31, 2001 immediately after Olivia, who had just read over the testament as originally drafted, had said to him, "I thought you wanted to leave John the Beatles records. You didn't change your mind, did you?" There is no evidence to suggest that George had any sort of "mental capacity" problem at anytime during the last months of his life.

The roster of the survivors and the predeceased of George is the same here as it was in Part I(a). George was survived by his wife, Olivia; his legitimate sons by Olivia, Dhani and Bapu; another reputed son, Yogi, whom his high school sweetheart, Lama, had conceived while George and she were dating and whom George had informally acknowledged as his own; his grandson, Delhi, by Dhani; his older brothers, Paul and Ringo; his nephews Sean and Julian, sons of his predeceased older brother, John; his niece, Star, daughter of his older brother, Ringo; his father, Dylan; his mother, Janice; his paternal uncles, Elvis and Roy; his maternal uncle, Buddy; his paternal cousin, Elton; his paternal grandmother, Ethyl; and his maternal grandparents, Frank and Judy. He was predeceased by his brother, John (who died on August 20, 2001, after George had written the testament), and his paternal grandfather, Nat (who died years ago). All died 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 George attempted to dispose by testament was his separate property.

A

20 Can all or part of the testament be challenged on the ground that the date is defective? Why or why not?

a no: the date is complete; though it is erroneous (as to the month), the error can, under the circumstances here, be corrected by resort to parol evidence

b yes: the date is erroneous (as to the month) and, under the circumstances here, the error cannot be corrected by resort to parol evidence

c yes: the date is erroneous (as to the month); errors of this kind are fatal, that is, cannot be corrected by resort to parol evidence under any circumstances

d yes: the date is ambiguous, inasmuch as the testator used the “numeral /” form for the date; here there’s no evidence available where with to resolve the ambiguity

e none of the above

21 Can all or part of the testament be challenged on the ground that the signature was in the wrong place? Why or why not?

a yes: the testament is totally invalid: in an olographic testament, the signature must be placed at the very end of the dispositions; here, there was a post-signature disposition

b yes as to part: whereas the dispositions before the signature are undoubtedly valid, that after the signature is not: in an olographic testament, only those dispositions that precede the signature are valid

c probably not: the dispositions before the signature are undoubtedly valid and those after the signature are probably valid: 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; in the light of the evidence regarding the circumstances surrounding George’s writing of the post-signature disposition, the court could and probably would give effect to that disposition

d no way: totally and unquestionably valid: all that’s required in the way of the signature to an olographic testament is that the signature be written “in the hand” of the testator; where on the testament the signature appears is immaterial

e none of the above

22 Is there anything “wrong” with the disposition in favor of Ringo? If so, what is it? And what would be the appropriate sanction for the “wrong”?

_________________________________________________________________________
_________________________________________________________________________
_________________________________________________________________________
_________________________________________________________________________
_________________________________________________________________________

For purposes of the rest of Part II, assume that there was nothing wrong with the disposition and, further, that Ringo divorced his wife.

23 Does the disposition in favor of Uncle Elvis and Starr entail a prohibited substitution? Why or why not?

a no: the institute (Elvis) is not under a duty to preserve the thing and then render it to the substitute (Starr)

b no: there's no double disposition of the thing in full ownership first to Elvis and then to Starr
24 Assume that the answer to the last question is, for whatever reason, "no" (i.e., the disposition does not contain a prohibited substitution). Is there nonetheless something "wrong" with the disposition in favor of Uncle Elvis and Starr? If so what is it?

_________________________________________________________________________
_________________________________________________________________________
_________________________________________________________________________
_________________________________________________________________________
_________________________________________________________________________
_________________________________________________________________________

25 Is the disposition of $10,000 cash that George directs Olivia to give to whichever child she thinks is most deserving and/or most in need of it 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
e none of the above

26 Assume, for the moment, that the disposition to John (Beatles LPs) is not valid (for want of proper form), but that the rest of the testament is valid. Who gets those LPs? Why?

a Julian and Sean: when a legacy made to a sibling of the testator lapses, the object of that legacy accretes to those of the sibling’s descendants who were in existence when the testator died
b Ringo: absent certain 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 particular legatee, Ringo
c Yogi, Dhani, and Bapu: absent certain 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 general legatees, Yogi, Dhani, and Bapu
d Olivia: absent certain 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 recipient of the legacy of the residuum, Olivia
e none of the above

27 Now assume that the disposition to John (Beatles LPs), as well as the rest of the testament, was valid. Would that cause you to change your answer to the last question? Why or why not? (Don't forget that John predeceased George.) If your answer is “yes,” to whom does the object of the legacy now accrete?

a no: whether the cause of the lapse of the legacy was formal invalidity or the predecease of the legatee, the result is the same
b yes: here the accretion goes to ___________________________; under certain circumstances, to whom the accretion of a legacy made to a sibling goes varies depending on whether the cause of the lapse of the legacy was formal invalidity or the predecease of the legatee
28 Now assume that the disposition to John (Beatles LPs) was valid, but that the cause of the lapse of that legacy was not that John predeceased George, but that John renounced the legacy. Would you answer to the last question now be different? Why or why not? If your answer is “yes,” to whom does the object of the legacy now accrete?

a no: whether the cause of the lapse of the legacy was the predecease of the legatee or renunciation by the legatee, the result is the same

b yes: here the accretion goes to __________________________ ; under certain circumstances, to whom the accretion of a legacy made to a sibling goes varies depending on whether the cause of the lapse of the legacy was the predecease of the legatee or renunciation by the legatee

29 Assume that the disposition to Elvis and Starr was valid as to Elvis but invalid as to Starr and, further, that Elvis renounced the legacy. Who gets the beachhouse now? Why?

a Olivia, as universal legatee: absent certain circumstances not present here, when a non-joint legacy lapses due to renunciation, the object of that legacy accretes to whomever would have taken it if that legacy had not been made; here that’s the universal legatee, Olivia

b Olivia, as general legatee: absent certain circumstances not present here, when a non-joint legacy lapses due to renunciation, the object of that legacy accretes to whomever would have taken it if that legacy had not been made; here that’s the recipient of the general legacy of the residuum, Olivia

c Elton: when a legacy made to an aunt / uncle lapses due to renunciation, the object of that legacy accretes to those of the descendants of the aunt / uncle who were in existence when the testator died

d George’s intestate successors: Yogi, Dhani, and Bapu

e none of the above

Assume for purposes of the rest of Part II that the correct answer to this Question is a (Olivia gets it as “universal legatee”).

30 Was the legacy that George gave to Yogi, Dhani, and Bapu joint or separate? Why?

a joint (probably): the testament is confusing, because George used contradictory terminology, but the language “jointly” and “with right of accretion,” which is indicative of jointness, probably outweighs the language “share and share alike,” which is indicative of separateness

b joint: all of the language George used is indicative of jointness

c separate (probably): the testament is confusing, because George used contradictory terminology, but the language “share and share alike,” which is indicative of separateness, probably outweighs the language “jointly” and “with right of accretion,” which is indicative of jointness

d separate: all of the language George used is indicative of separateness

e it’s just too close to call

Assume for purposes of the rest of Part II that the answer to this Question is b.

31 Suppose that Dhani predeceased George and that Yogi renounces George’s succession. If one can take the comments to the pertinent CC articles seriously, who ends up with George’s movables (less the Beatles LPs left to John)? Why?

a Bapu, one third, and Olivia, two thirds: absent certain circumstances not present here, when part of a joint legacy lapses due to the predecease of the legatee or renunciation by the legatee, that part of the legacy accretes to whomever would have taken it if that legacy had not been made; here that’s the legacy of the residuum to Olivia

b Bapu: absent certain circumstances not present here, when part of a joint legacy lapses due to the predecease of the legatee or renunciation by the legatee, that part of the legacy accretes to the other co-joint legatees; the only co-joint legatee left is Bapu

c Bapu, one half; and Delhi, one half: absent certain circumstances not present here, when part of a joint legacy made to a child of the testator lapses due to the predecease of the child legatee or renunciation by the child legatee, that part of the legacy accretes to those of the child legatee’s descendants who were in existence when the testator died; if that child legatee has no descendants, then that part of the legacy accretes to the child legatee’s co-joint legatees and / or those descendants of his co-joint child legatee who, by virtue of the first rule above cited, have taken the lapsed part of that other co-joint
child legatee; here, whereas Yogi had no child, Dhani did, i.e., Delhi.

d  Bapu, two thirds, and Delhi, one third: absent certain circumstances not present here, when part of a joint legacy made to a child of the testator lapses due to the predecease of the child legatee or renunciation by the child legatee, that part of the legacy accretes to those of the child legatee’s descendants who were in existence when the testator died; if that child legatee has no descendants, then that part of the legacy accretes to the child legatee’s co-joint legatees; whereas Yogi had no child, Dhani did, i.e., Delhi.

e  none of the above

C

Olivia, as executor, has alleged that the only reason why George included Yogi among his legatees is that Lama and Yogi, pursuant to a conspiracy, had falsely persuaded him that Yogi was "his" child.

32  If this allegation were to be proved, could the legacy to Yogi be set aside? If so, on what ground?

a  yes: fraud
b  yes: error
c  yes: either fraud or error for sure
d  yes: fraud for sure and maybe error (the law regarding the latter is murky)
e  yes: error for sure and maybe fraud (the law regarding the latter is murky)

D

Forget Subpart C, but not Subparts A and B. And now consider these additional facts. It turns out that what one might call George's "testamentary situation" was rather more complicated than the narrative at the beginning of Part II would suggest.

First, there was the "prior" testament. In a document that George wrote, dated, signed in his own hand, bearing the date "March 1, 2001," George purported to leave "25 of my 100 horses to Paul." At the time at which George wrote that testament, at the time at which he wrote the testament (mis-)dated 8/31/01, George owned 100 horses.

Second, there were the marks on the testament (mis-)dated 8/31/01. Across the testament there was a large "X," evidently written by George, beside which was written, in George's handwriting, "I revoke: August 30, 2001."

Third, there was the "act of revocation." In a writing prepared (by typewriter) before a notary and dated, by the notary, August 30, 2001, George purported to "revoke all my prior testaments." The act was not witnessed.
Fourth, there was the promise to donate the horses. A week before he died, George promised to donate his horses -- all 100 of them -- to Bapu. This "promise" was evidenced by an authentic act, which both George and Bapu (as well as the notary and two witnesses) signed. The "closing" for this promise, that is, the execution of the actual act of donation, was scheduled for the day after George died.

Fifth, there was the "destruction" of the act of revocation. The night before he died, George (deliberately) put the act of revocation through his paper shredder.

34 What effect did George's "X-ing" of the 8/31/01 testament, together with his writing thereon "I revoke," have upon that testament? Why?
   a none at all: the revocation was defective for want of proper form
   b it would have revoked the testament: though not effective as an express revocation, it was effective as a tacit revocation; what George did was "some act which supposes a change of will"
   c neither of the above

Assume for purposes of the rest of Part II that the correct answer to this question is a (i.e., the testament was not revoked).

35 If George had not shredded the "act of revocation," what effect, if any, would that "act of revocation" have had upon the testament dated 8/31/01? Why?
   a none at all: the revocation was defective for want of proper form
   b it would have revoked the testament: the revocation was proper in both form and substance
   c it would have revoked the testament: though not effective as an express revocation, it was effective as a tacit revocation; what George did was "some act which supposes a change of will"
   d none of the above

Assume for purposes of the rest of Part II that the correct answer to this question is b (i.e., it would have revoked the prior testament).

36 What effect, if any, did George's shredding of the act of revocation have upon the effectivity of the testament dated 8/31/01? Why?
   a according to French doctrine (and Trahan), none at all: it is simply illogical to infer from the revocation of the revocation of a testament that the testator wishes to revive the revoked testament
   b according to the Civil Code, it would have saved the testament from revocation: with certain exceptions not applicable here, the revocation of a testament is not effective if the revocation itself is revoked prior to the testator's death
   c according to the Civil Code, it would not have saved the testament from revocation: here we have some of the "exceptional" circumstances in which the revocation of a revocation of a testament does not strip the latter of its revocatory effect
   d both a and b are true
   e both a and c are true

Assume for purposes of the rest of Part II that the correct answer to this question is b (i.e., that the revocation of the revocation would have saved the prior testament).

37 Suppose that George, instead of passing the act of revocation and then shredding it, had done this: first, revoked the testament dated 8/31/01 by shredding it and, then, made this declaration in an authentic act: "I hereby revoke my act of revocation by destruction." Would it still be correct to say that the testament had been "revived"? Why or why not?
   a yes: this situation is not materially different from the other
   b no: here we have some of the "exceptional" circumstances in which the revocation of a revocation of a testament does not strip the latter of its revocatory effect

38 What effect, if any, did George's promise to donate the horses to Bapu (complication # 4 above) have upon the legacy / legacies to Paul? Why?
assume for purposes of the rest of Part II that the correct answer to this question is "no effect."

39 According to the Louisiana jurisprudence, to how many of George's horses is Paul now entitled? Why?

a 25: when it cannot be determined whether the testator intended to give a greater or a lesser amount, it is presumed that he intended to give the lesser

b 50: when a testator, in two successive testaments, gives different amounts of the same thing and the amount given in the second is greater than the amount given in the first, he is deemed to have revoked the former gift, on the theory that the it is incompatible with the new one

c 75: when a testator, in two successive testaments, gives different amounts of the same thing, it is presumed that he intended to give both amounts, provided, of course, that he had that much to give

d none of the above

Part III
(90 minutes [1 hr, 30 min])

Mimi died on November 1, 2001. By testament she left a particular legacy of $20,000 to her uncle, Yule. The rest of her estate, of course, fell intestate.

During her lifetime Mimi, a single mother, bore five children (in this order): Al, Bud, Cal, Dee, and Elle. When Mimi died, Al was 28, Bud was 25, Cal was 22, Dee was 20, and Elle was 18. At that time, all of Mimi’s children were in excellent physical health and, save for Bud, in excellent mental health. Bud, you see, was a little “slow,” in fact, had an IQ of only 75. Due to this deficit in intelligence, Bud had managed to complete only six years of schooling and had never been able to hold any but the most menial of jobs. Even so, he was fully independent, both physically and financially: he held a driver’s license and, so, could drive himself about; he lived by himself in the house Mimi gave him (the details of that gift are given below); he did his own shopping, cooking, and cleaning; and he maintained a checking account.

At the time of her death, Mimi had a sizeable patrimony, “passively” as well as “actively” speaking. On the active side, her “in hand” assets included an office building worth $40,000; a houseboat worth $130,000; and $20,000 cash. On the passive side, she carried a number of debts, including her houseboat mortgage loan, the balance on which stood at $100,000; credit card debt of $50,000; a $100,000 tort judgment that had been rendered against her; and unpaid state income taxes (going back several years) of $30,000. She also left behind an insurance policy on her life, the payoff value of which was $20,000 (as to which she had named Elle as beneficiary).

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

January 1, 1995 To Cal: Mimi purported to “sell” to Cal a tract of land for a price of $50,000, which was the land’s fair market value. Cal took possession of the land. But no money ever changed hands, as was the intention of both Mimi and Cal from the start. The sale was commemorated in an instrument that Mimi and Cal both signed (without the help of a notary or witnesses). The act of sale was filed into the appropriate public records.

February 1, 1997 For Al: Mimi paid off Al’s outstanding medical bills in the amount of $20,000.

March 1, 1999 To Cal: Mimi gave Cal $200,000 in stocks. The bonds were delivered by hand; there was no other instrument.
April 1, 1999
To Bud: Mimi gave Bud a house and lot worth $180,000. The act of
donation, which Mimi alone signed and was executed before a notary
and two witnesses, stipulated that the gift was given as an “extra
portion” and was to be “exempt from collation.” Though Bud never
signed any sort of acceptance, he did move onto the house and lot.
The act of donation was filed into the appropriate public records.

May 1, 2000
To Fae: Mimi gave her friend, Fae, an antique vase worth $40,000 on
the occasion of her (Fae’s birthday). The vase was hand-delivered;
there was no instrument.

June 1, 200
To Bud: Mimi gave Bud a check drawn on her account in the amount
of $70,000, which he promptly deposited into his checking account.
The check was hand-delivered; Mimi made no other instrument.

August 1, 2001
To Huck: One night, while watching TV, Mimi heard about a father
who lacked the money necessary to pay for an operation for his ailing
daughter. Mistaking Huck (a fatherless bachelor) for that father,
Mimi mailed him $10,000 cash anonymously. The cash was
accompanied by type-written note, with no name and no return
address, that read simply, “For your daughter’s operation.”

September 1, 2001
To Gail: Mimi purported to give her friend, Gail, a “mineral
servitude” (a kind of real right), the value of which was $20,000. The
act of donation, which was signed by both Mimi and Gail and was
executed before a notary and two witnesses, stipulated that Mimi
gave Gail the servitude to repay her for certain “legal work” that Gail,
a lawyer, had performed for Mimi in the past free of charge. The fair
market value of those legal services was $10,000. The act of
donation was filed into the appropriate public records.

Here’s some miscellaneous additional information that you may or may not find useful. On
October 1, 2001, just one month before Mimi died, Fae, while dining at Mimi’s houseboat, slipped
into Mimi’s bedroom and purloined (for you folks from Bunkie, “stealed”) Mimi’s diamond ring,
worth $10,000. With one exception, all of Mimi’s successors accept her succession, and everyone
asserts every right he or she has (save for actual collation rights!); the exception is Cal, who
renounces the succession. The value of all of Mimi’s assets has remained stable through time.

A
Preliminaries

1
Forced Heirs

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

40 Is/ are Al, Dee, and/or Elle in a position to assert forced heirship rights in Mimi’s succession?
Why or why not?

a “yes” as to all three: all are “young” first degree descendants of Mimi
b “yes” as to Dee and Elle, “no” as to Al: though all are first degree descendants of Mimi,
only Dee and Elle are young and Al is not permanently disabled
c “yes” as to Elle, “no” as to Al and Dee; though all are first degree descendants of Mimi,
only Elle is young and neither Al nor Dee is permanently disabled
d none of the above

41 Because Cal renounced the succession, he, obviously enough, is not in a position to assert
forced heirship rights in Mimi’s succession. But could he have, if he had not renounced?
Why or why not?

a no: though he’s a first degree descendant of Mimi, he’s neither “young” nor
“permanently disabled”
b yes: he’s a “young” first degree descendant of Mimi

42 Is Bud in a position to assert forced heirship rights in Mimi’s succession? Why or why not?
a definitely yes: though he’s not “young,” he is “permanently disabled”
b probably yes: he’s not “young,” but he might be “permanently disabled”; the case is fairly “close to the line”; on balance, however, his mental deficiency is probably serious enough to justify qualifying him as permanently disabled
c probably no: he’s not “young”; whether he’s “permanently disabled” is a fairly close question; on balance, however, his mental deficiency is probably not serious enough to justify qualifying him as permanently disabled
d definitely no: he’s neither “young” nor “permanently disabled”

For purposes of the rest of Part III of the exam (including A(2) & B below), assume (i) that Bud, Dee, and Elle can all assert forced heirship rights and (ii) that Cal, but for his renunciation, could have.

2 Analysis of Liberalities

Please tell me (i) which of the following things should be included among the assets that Mimi actually had at death or that can be recovered, on the one hand, and those that may be “fictitiously” added back to her estate, on the other, and (ii) 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 life insurance proceeds - $20,000 (payable to Elle)

_________________________________________________________________________
_________________________________________________________________________
_________________________________________________________________________
_________________________________________________________________________
_________________________________________________________________________

For purposes of the rest of Part III, assume that the insurance proceeds neither are among the assets that Mimi actually had at death or that can be recovered nor can be fictitiously added back to her estate.

b tract of land - $50,000 (“sold” to Cal)

_________________________________________________________________________
_________________________________________________________________________
_________________________________________________________________________
_________________________________________________________________________
_________________________________________________________________________

For purposes of the rest of Part III, assume that the tract of land is among the assets Mimi actually had at death or that can be recovered.

c cash - $20,000 (paid to Al’s doctors)

_________________________________________________________________________
_________________________________________________________________________
_________________________________________________________________________
_________________________________________________________________________
_________________________________________________________________________

For purposes of the rest of Part III, assume that the tract of land is among the assets Mimi actually had at death or that can be recovered.
For purposes of the rest of Part III, **assume** that the cash paid to Al’s doctors neither is among the assets that Mimi actually had at death or that can be recovered nor can be fictitiously added back to her estate.

d stocks - $200,000 (given to Cal)

For purposes of the rest of Part III, **assume** that the stocks can be fictitiously added back to Mimi’s estate.

e house and lot - $180,000 (given to Bud)

For purposes of the rest of Part III, **assume** that the house and lot can be fictitiously added back to Mimi’s estate.

f antique vase - $40,000 (given to Fae)

For purposes of the rest of Part III, **assume** that the vase is among the assets that Mimi actually had at death or that can be recovered.

g check - $70,000 (given to Bud)
For purposes of the rest of Part III, **assume** that the check can be fictitiously added back to Mimi’s estate.

h cash - $10,000 (given to Huck)

For purposes of the rest of Part III, **assume** that the cash given to Huck is among the assets that Mimi had at death or that can be recovered.

i mineral servitude - $20,000 (given to Gail)

For purposes of the rest of Part III, **assume** that the mineral servitude – at least part of it – can be fictitiously added back to Mimi’s estate.

j diamond ring - $10,000 (stolen by Fae)

For purposes of the rest of Part III, **assume** that the ring is among the assets that Mimi actually had at death or that can be recovered.

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. Be sure to explain yourself thoroughly. And be sure not to forget the assumptions about (i) forced heirs you were told to make in Part III(A)(1) above and (ii) assets at death / assets fictitiously added back you were told to make in Part III(A)(2) above.