Louisiana Civil Law
Successions & Donations
Professor Trahan

KEY to FINAL EXAM 2001

Solutions to Objective Questions

Part I

1 a 23 c
2 b
3 a 25 b
4 a 26 b
5 b 27 b
6 c 28 a
7 e 29 b
8 b 30 e
9 a 31 c
10 a 32 d
11 a
12 b 34 a
13 a 35 a
14 a 36 b
15 a 37 b
16 c
17 a 39 c
18 c
19 c

Part II

20 a
21 c

Part III

Solutions to Subjective Questions

Part II

A

22 a Defect: possible immoral condition .................................................. 1
b Sanction:
   * Concept of “determinative motive” ............................................. 1 2
1) If determinative motive, whole donation is null ................................. 1
2) If not determinative motive, condition is stricken ............................ 1
   * Not clear whether realization of condition was determinative motive ..... 1
24 a Defect: possible immoral condition .................................................. 1
* Implicit ban on alienability: entailed in duty to “conserve”
† Stipulations of inalienability generally prohibited; permissible (if at all) only if brief & based on legitimate motive
† Here--
‡ Motive is unknown
‡ But time is short
€ In recent legislation, legislature has approved double cond’l legacies that leave ownership in suspense for up to 6 mons

–B
27: Julian & Sean

–D
38 a Effect: possible tacit revocation under CC art. 1608(3)
b Issue: Is a binding promise to donate inter vivos an “inter vivos disposition”?
c Analysis:
1) Certainly not a completed disposition
2) However--
   a) Promise to donate, if in proper form, is binding
   b) And, further, creates an obligation that, in principle, should be heritable; analogy to promise to sell
   * Here, promise to donate is in proper form: though not required for dons of movables, authentic act is surely permissible
   † For promise to donate, authentic act may be necessary even for movables

Part III
–(A)(2)
a Life ins. (E)
   1) AAD: no
      * By special legislation (Insurance Code), belongs to beneficiary
   2) FAB: no
      * Excluded under CC art. 1505(C)

b Land (C)
   * AAD: yes
      a) Disguised donation (relative simulation)
      * Treated as don b/c value given was less than 1/4 FMV
      b) Improper form
      * Don IV of immovable requires authentic act

c Cash (A’s docs)
   1) AAD: no
      * Transfer valid
   2) FAB: no
      * Excluded under CC art. 1505(A): too old (more than 3 years)

d Stocks & bonds (C)
   1) AAD: at least in part
      * Stocks: definitely; bonds: not clear
      † Improper form
Don IV of incorporeal generally requires authentic act ........................................ 0.5 1

Stocks & bonds are incorporeals ......................................................... 0.5 1

Exception for negotiable instruments ...................................................... 0.5 1

Stocks are not negotiable instruments ..................................................... 0.5 1

Not clear if bonds were negotiable ............................................................ 0.5 1

# Even if they were negotiable, transfer would have been valid only if
they were “bearer” paper (since no endorsement) ........................................ 0.5 1

FAB: if not AAD, then yes ........................................................................ 0.5 1

* Don IV within last three years of life ..................................................... 0.5 1

House & lot (B)

1) AAD: possibly, but probably not ......................................................... 0.5 1

a) Act of donation fine ............................................................................. 0.5 1

b) But was B’s acceptance valid? .............................................................. 0.5 1

1] Acceptance of don IV generally requires acceptance by authentic act ........ 0.5 1

2] By exception, not required when donee is put into possession (tacit)

* Not clear whether exception applies to don’s of immovables ................ 0.5 1

† Better view: history: meaning of “chose” ........................................ 0.5 1

2) FAB: if not ADD, then yes .................................................................... 0.5 1

* Don IV within last three years of life ..................................................... 0.5 1

Vase (F)

* AAD: yes ............................................................................................... 0.5 1

† Donation valid ....................................................................................... 0.5 1

‡ No form problem ..................................................................................... 0.5 1

€ Manual gift sufficient for corp. mov’s ...................................................... 0.5 1

† But don IV can be invoked for ingratitude ............................................. 0.5 1

‡ “Crime” against donor is act of ingratitude ........................................ 0.5 1

€ Theft of ring was a crime ....................................................................... 0.5 1

‡ Action is heritable .................................................................................. 0.5 1

‡ Not prescribed: less than one year ....................................................... 0.5 1

Check (B)

1) AAD: no ............................................................................................... 0.5 1

* Donation valid ....................................................................................... 0.5 1

† No form problem ..................................................................................... 0.5 1

‡ Check itself an incorporeal movable ..................................................... 0.5 1

‡ But once cashed, don is treated as a cash don ................................... 0.5 1

€ Manual gift sufficient for corp. mov’s ...................................................... 0.5 1

2) FAB: yes ............................................................................................... 0.5 1

* Don IV within last three years of life ..................................................... 0.5 1

Cash (H)

* AAD: probably yes ................................................................................ 0.5 1

† Donation valid in form .......................................................................... 0.5 1

‡ Manual gift sufficient for corp. mov’s ...................................................... 0.5 1

† But don IV can probably be nullified for error .................................... 0.5 1

‡ Some uncertainty about whether error is vice of consent for don IV ........ 0.5 1

€ Better view: yes: it’s just another contract ........................................... 0.5 1
‡ M made an “error on cause,” viz., regarding identity of donee . . . . . . . 0.5 1 1.5
‡ But did H know of M’s cause? .................................................. 0.5 1
† Not prescribed ................................................................. 0.5 1

i Min. serv. (G)

1) AAD: no ................................................................. 0.5 1
* Donation valid ........................................................ 0.5 1
† No form problem ................................................. 0.5 1

‡ But did H know of M’s cause? .................................................. 0.5 1
† Not prescribed ................................................................. 0.5 1

2) FAB: yes, but only part ................................................. 0.5 1
a) Liberality made within last three years of life ....... 0.5 1
b) But a predominantly gratuitous / remunerative don IV ........ 0.5 1 1.5

1] Alternative formulae: remunerative don IV is predominantly gratuitous if–
a] O > 1.5 S ............................................ 0.5 1
b] S < 2/3 O ............................................ 0.5 1

2] a] $20,000 > 1.5 ($10,000), i.e., $15,000 ....................... 0.5 1 1.5
b] $10,000 < 2/3 ($20,000), i.e., $13,333 ....................... 0.5 1 1.5

² So, only excess is added back ........................................ 0.5 1
* Here, that’s $10,000 (O [$20,000] - S [$10,000]) .................. 0.5 1 1.5

j Ring (F)

* AAD: yes ........................................................... 0.5 1
† Stolen thing still belongs to owner .............................. 0.5 1

–B

¹ Calculation of active mass ................................................. 0.5 1

a) Net assets left at death .................................................. 0.5 1

1 ) Assets left at death .................................................. 0.5 1
a) Assets under the de cujus’ control .............................. 0.5 1

1] Office building .......................................................... 40,000 | 0.5 1
2] Houseboat .............................................................. 130,000 | 0.5 1
3] Cash ................................................................. 20,000 | 0.5 1

SUBTOTAL 190,000 | 0.5 1

b) Recoverable assets ................................................... 0.5 1

1] The disguised donation by M to C of the land .............. 50,000 | 1 1.5
2] The donation by M to F of the vase ............................. 40,000 | 1 1.5
3] The donation by M to H of cash ................................. 10,000 | 1 1.5
4] The ring stolen by F .................................................. 10,000 | 1 1.5

SUBTOTAL 110,000 | 0.5 1

TOT ASSETS 300,000 | 0.5 1

2 ) Debts left at death ..................................................... 0.5 1
* Error in CC art. 1505: subtract debts before fictitious aggregation .... 0.5 1 1.5 2

a) Houseboat mortgage loan .......................................... 100,000 | 0.5 1
b) Credit cards .............................................................. 50,000 | 0.5 1
c) Tort judgment .......................................................... 100,000 | 0.5 1
d) Back taxes .............................................................. 30,000 | 0.5 1

TOT DEBTS 280,000 | 0.5 1

NET ASSETS 20,000 | 0.5 1

b Fictitious aggregation .................................................. 0.5 1
1) The donation by M to C of the stock ........................................ 200,000 | 1 1.5
2) The donation by M to B of the house & lot ............................ 180,000 | 1 1.5
3) The donation by M to B of the check .................................... 70,000 | 1 1.5
4) The donation by M to G of the min. serv. ............................... 10,000 | 1 1.5

TOT FICT AGG ........................................ 460,000 | 0.5 1

TOT ACT MASS ........................................ 480,000 | 0.5 1

2  Apportionment of active mass .............................................. 0.5 1

a) Quotients
1) Number of FHs / FH successors: 4 (given) ............................... 0.5 1
*FH who renounces is nonetheless counted in calculation of FP ........................ 1 2

2) Division
a) General rules:
   1] If there are 2 or more FHs, FP and DP are each ½. ............ 0.5 1 1.5
   2] Legitimes: FP divided by heads ........................................ 0.5 1
b) Special rule: If one FH renounces, his legitime is subtracted from FP and added to DP. ........................................... 0.5 1

b) Calculation
1) Initial a) 1] FP (½ of 480,000) ........................................ 240,000 | 1 1.5
     2] Legitimes (240,000 / 4) ........................................... 60,000 | 1 1.5
b) DP (1/2 of 480,000) ........................................... 240,000 | 1 1.5
2) Adjusted a) FP ($240,000 - $60,000) ............................... 180,000 | 0.5 1 1.5
b) DP ($240,000 + $60,000) ........................................... 300,000 | 0.5 1 1.5

3  Satisfaction of legitimes .................................................. 0.5 1

a) Satisfaction by “free” assets / intestate succession .................... 0.5 1
*From net assets left at death, all $20,000 worth are tentatively earmarked for Y’s DMC .................................................. 0.5 1
†That leaves $0 in “free” assets ........................................... 0.5 1

   LEGITIME BAL of B, D, E each ....................................... 60,000 | 1 1.5

b) Satisfaction by imputation ............................................... 0.5 1
*As general rule, only collatable liberalities to FHs are imputable. ........... 1 1.5 2
1) Not the disguised donation by M to C of land (asset at death)
2) Not the liberality by M to A in the form of payment of debts ............... 0.5 1
*Too old: > 3 years ................................................................... 0.5 1
3) Not the donation by M to C of the stocks & bonds .......................... 0.5 1
*Thanks to renunciation, C no longer has a legitime ........................... 0.5 1
4) Not the donation by M to B of the house and lot .......................... 0.5 1
*Dispensed from collation by will of donor .................................... 1 1.5
†Express dispensation: form valid ............................................. 1 1.5
5) Not the donation by M to F of the vase (F not a FH; revoked anyway)
6) The donation by M to B of the check ..................................... 60,000 | 1 1.5
*Subject to collation ............................................................... 0.5 1
†Not exempted by will or by law ................................................ 0.5 1 1.5
†Not too old ........................................................................... 0.5 1
*Excess of $10,000 ($70,000 - $60,000) is “imputed to DP” ................... 0.5 1

B’s LEGITIME BAL ................................................... 0 | 1 1.5

7) Not the donation by M to H of cash (H not a FH; nullified anyway)
8) Not the donation by M to G of the min. serv. (G not a FH)
9) The proceeds of the life ins. policy left by M to E .................. 20,000 | 1 1.5
   * Imputation required by CC art. 1505.C ............................................. 0.5 1
   E’s LEGITIME BAL .................. 40,000 | 1 1.5
   D’s LEGITIME BAL .................. 60,000 | 0.5 1
   GLOBAL FP BAL .................... 100,000 | 0.5 1

c Satisfaction by reduction ......................................................... 0.5 1
   * Raison d’être: to protect legitimes of FHs ........................................ 0.5 1
   * Technique: “return” of excessive donations ..................................... 0.5 1
   * Ordre † Donations MC before donations IV ...................................... 0.5 1
     † Among donations MC, proportionally ............................................ 0.5 1
     † Among donations IV, in reverse chron’l order, up to 3 yrs back ...... .......................................................... 0.5 1 1.5

1) Donations MC .................................................. 0.5 1
   a) Legacy to Y .................................................. 20,000 | 1 1.5
      1] Legacy to Y insufficient to satisfy GLOBAL FP BAL. ..................... 0.5 1
      2] And so, it must be integrally reduced. ........................................ 0.5 1
          GLOBAL FP BAL .................... 80,000 | 1 1.5
   b) Not life insurance proceeds to E .............................................. 1
      * Exempt from reduction under special state legislation .................. 0.5 1

2) Donations IV .................................................. 0.5 1
   a) The donation by M to G of the min. serv. ....................... 10,000 | 1 1.5
      * With remunerative donation, difference in value is reduced .......... 1 1.5
          GLOBAL FP BAL .................... 70,000 | 1 1.5
   b) Not the donation by M to H (already allocated)
   c) The donation by M to B of cash ........................................... 10,000 | 1 1.5
      * Only excess above imputation is reducible ................................ 0.5 1
          GLOBAL FP BAL .................... 60,000 | 1 1.5
   d) The donation by M to B of the house and lot ...................... 60,000 | 1 1.5
      * Express & voluntary designation of gift as “extra portion,” though effective to exempt gift from collation & imputation, is not effective to exempt it from reduction . 0.5 1 1.5
      * B keeps excess of $120,000 .................................................... 0.5 1

------------------- The 3 DIVs reduced above were made w/in 3 yrs of death .... 0.5 1

 e) Not other, older donations IV ............................................. 0.5 1
    * Not needed: FP already satisfied thanks to intestacy, imputation & reduction. .......... 1
    * Those made before Nov 1998 are too old anyway: > 3 years ................. 0.5 1 1.5