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  40  b
21 c

Part III
22 a  Defect: possible immoral condition ........................................ 1
  * Encourages divorce / undercuts policy in favor of marriage .......... 1 2
  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

Solutions to Subjective Questions

Part II

A
22 a  Defect: possible immoral condition ........................................ 1
  * Encourages divorce / undercuts policy in favor of marriage .......... 1 2
  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” ......................... 1 2
† Stipulations of inalienability generally prohibited; permissible (if at all) only if brief & based on legitimate motive .............................. 1 2 3
† Here--
‡ Motive is unknown .................................................. 1
‡ But time is short .................................................. 1
€ In recent legislation, legislature has approved double cond’l legacies that leave ownership in suspense for up to 6 mons .............. 1 2

-B
27: Julian & Sean ................................................................. 2

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

-Part III

-(A)(2)
a Life ins. (E)
  1) AAD: no ................................................................. 0.5 1
     * By special legislation (Insurance Code), belongs to beneficiary 0.5 1 1.5
  2) FAB: no ................................................................. 0.5 1
     * Excluded under CC art. 1505(C) ........................................... 0.5 1 1.5
b Land (C)
  * AAD: yes ............................................................... 0.5 1
     a) Disguised donation (relative simulation) ................................. 0.5 1 1.5
        * Treated as don b/c value given was less than 1/4 FMV .............. 0.5 1
     b) Improper form ......................................................... 0.5 1
        * Don IV of immovable requires authentic act ......................... 0.5 1
c Cash (A’s docs)
  1) AAD: no ................................................................. 0.5 1
     * Transfer valid .......................................................... 0.5 1
  2) FAB: no ................................................................. 0.5 1
     * Excluded under CC art. 1505(A): too old (more than 3 years) ........ 0.5 1 1.5 2
d Stocks & bonds (C)
  1) AAD: at least in part ..................................................... 0.5 1
     * Stocks: definitely; bonds: not clear ................................. 0.5 1 1.5 2
† Improper form ............................................................ 0.5 1
2) FAB: if not AAD, then yes ........................................... 0.5 1
  * Don IV within last three years of life ........................................... 0.5 1

<table>
<thead>
<tr>
<th>e</th>
<th>House &amp; lot (B)</th>
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<tbody>
<tr>
<td>1)</td>
<td>AAD: possibly, but probably not ........................................... 0.5 1</td>
</tr>
<tr>
<td></td>
<td>a) Act of donation fine .................................................. 0.5 1</td>
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<td></td>
<td>b) But was B’s acceptance valid? ....................................... 0.5 1</td>
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<td></td>
<td>1] Acceptance of don IV generally requires acceptance by authentic act .. 0.5 1</td>
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<td></td>
<td>2] By exception, not required when donee is put into possession (tacit) .................................................. 0.5 1 1.5</td>
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<td></td>
<td>* Not clear whether exception applies to don’s of immovables ......... 0.5 1 1.5 2</td>
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<tr>
<td></td>
<td>† Better view: yes: history: meaning of “chose” ..................... 0.5 1 1.5 2</td>
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<tr>
<td>2)</td>
<td>FAB: if not ADD, then yes ............................................... 0.5 1</td>
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<td></td>
<td>* Don IV within last three years of life .................................. 0.5 1</td>
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<tr>
<td></td>
<td>† Dispensation from collation does not prevent FAB .................. 0.5 1</td>
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<tr>
<th>f</th>
<th>Vase (F)</th>
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<tbody>
<tr>
<td>*</td>
<td>AAD: yes ................................................................. 0.5 1</td>
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<tr>
<td>†</td>
<td>Donation valid .......................................................... 0.5 1</td>
</tr>
<tr>
<td>‡</td>
<td>No form problem ......................................................... 0.5 1</td>
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<tr>
<td>†</td>
<td>Manual gift sufficient for corp. mov’s .................................. 0.5 1</td>
</tr>
<tr>
<td>†</td>
<td>But don IV can be invoked for ingratitude ................................ 0.5 1</td>
</tr>
<tr>
<td>‡</td>
<td>“Crime” against donor is act of ingratitude ................................ 0.5 1</td>
</tr>
<tr>
<td>†</td>
<td>Theft of ring was a crime .................................................. 0.5 1</td>
</tr>
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<td>‡</td>
<td>Action is heritable .......................................................... 0.5 1</td>
</tr>
<tr>
<td>‡</td>
<td>Not prescribed: less than one year ........................................ 0.5 1 1.5</td>
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<th>Check (B)</th>
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<tr>
<td>1)</td>
<td>AAD: no ................................................................. 0.5 1</td>
</tr>
<tr>
<td>*</td>
<td>Donation valid .......................................................... 0.5 1</td>
</tr>
<tr>
<td>†</td>
<td>No form problem ......................................................... 0.5 1</td>
</tr>
<tr>
<td>‡</td>
<td>Check itself an incorporeal movable ..................................... 0.5 1</td>
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<tr>
<td>‡</td>
<td>But once cashed, don is treated as a cash don. ....................... 0.5 1</td>
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<tr>
<td>†</td>
<td>Manual gift sufficient for corp. mov’s .................................. 0.5 1</td>
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<td>2)</td>
<td>FAB: yes ................................................................. 0.5 1</td>
</tr>
<tr>
<td>*</td>
<td>Don IV within last three years of life .................................. 0.5 1</td>
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<th>h</th>
<th>Cash (H)</th>
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<tr>
<td>*</td>
<td>AAD: probably yes ......................................................... 0.5 1</td>
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<tr>
<td>†</td>
<td>Donation valid in form .................................................. 0.5 1</td>
</tr>
<tr>
<td>‡</td>
<td>Manual gift sufficient for corp. mov’s .................................. 0.5 1</td>
</tr>
<tr>
<td>†</td>
<td>But don IV can probably be nullified for error ....................... 0.5 1</td>
</tr>
<tr>
<td>‡</td>
<td>Some uncertainty about whether error is vice of consent for don IV .... 0.5 1</td>
</tr>
<tr>
<td>†</td>
<td>Better view: yes: it’s just another contract .......................... 0.5 1 1.5 2</td>
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‡ M made an “error on cause,” viz., regarding identity of donee.
‡ But did H know of M’s cause?
† Not prescribed

i Min. serv. (G)
1) AAD: no
   * Donation valid
   † No form problem
2) FAB: yes, but only part
   a) Liberality made within last three years of life
   b) But a predominantly gratuitous / remunerative don IV
      1] Alternative formulae: remunerative don IV is predominantly gratuitous if–
         a] O > 1.5 S
         b] S < 2/3 O
      2] a] $20,000 > 1.5 ($10,000), i.e., $15,000
         b] $10,000 < 2/3 ($20,000), i.e., $13,333
      c) So, only excess is added back
         * Here, that’s $10,000 (O [$20,000] - S [$10,000])

j Ring (F)
   * AAD: yes
   † Stolen thing still belongs to owner

-B
1 Calculation of active mass
   a) Net assets left at death
      1) Assets left at death
         a) Assets under the de cujus’ control
            1] Office building
            2] Houseboat
            3] Cash
            SUBTOTAL 190,000
   b) Recoverable assets
      1] The disguised donation by M to C of the land
      2] The donation by M to F of the vase
      3] The donation by M to H of cash
      4] The ring stolen by F
      SUBTOTAL 110,000
      TOT ASSETS 300,000
2) Debts left at death
   * Error in CC art. 1505: subtract debts before fictitious aggregation
   a) Houseboat mortgage loan
   b) Credit cards
   c) Tort judgment
   d) Back taxes
      TOT DEBTS 280,000
      NET ASSETS 20,000

b Fictitious aggregation
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

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

b. 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

c. 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

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
   † 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
   † Express dispensation: form valid .......... 1 1.5
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
   † Exempted by will or by law .......... 0.5 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
   * Imputation required by CC art. 1505.C
   E’s LEGITIME BAL: 40,000
   D’s LEGITIME BAL: 60,000
   GLOBAL FP BAL: 100,000

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

   1) Donations MC
      a) Legacy to Y: 20,000
         1] Legacy to Y insufficient to satisfy GLOBAL FP BAL.
         2] And so, it must be integrally reduced.
            GLOBAL FP BAL: 80,000

      b) Not life insurance proceeds to E
         * Exempt from reduction under special state legislation

   2) Donations IV
      a) The donation by M to G of the min. serv.: 10,000
         * With remunerative donation, difference in value is reduced
            GLOBAL FP BAL: 70,000

      b) Not the donation by M to H (already allocated)

      c) The donation by M to B of cash: 10,000
         * Only excess above imputation is reducible
            GLOBAL FP BAL: 60,000

      d) The donation by M to B of the house and lot: 60,000
         * Express & voluntary designation of gift as “extra portion,” though effective to exempt gift from collation & imputation, is not effective to exempt it from reduction.
         * B keeps excess of $120,000
            GLOBAL FP BAL: 60,000

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