QUESTION 6

On January 5, 1990, Debra Duncan completed a printed form will. Frank Fellows and Gail Garven, two of Debra's co-workers, witnessed the will in Debra's presence and in the presence of each other. Neither read the will nor knew its contents. The completed will read: [Debra's handwritten additions are in bold]

LAST WILL AND TESTAMENT

I, **Debra Duncan**, a resident of **Smalltown** in the county of **Orange** of the State of **Generality**, being of sound and disposing mind and memory, do make, publish and declare this my last WILL AND TESTAMENT, hereby revoking and making null and void any and all other Wills and Codicils heretofore made by me.

FIRST, All my debts, funeral expenses, and any Estate or Inheritance taxes shall be paid out of my Estate, as soon after my death as shall be convenient.

SECOND, I give, devise and bequeath, **my 1989 Ford Escort to Frank Fellows and all my investments to Martha Murdo.**

THIRD, I nominate and appoint **Sally Smith** of **Smalltown** as the executor of this my Last Will and Testament.

In Testimony Whereof, I have set my hand to this, My Last Will and Testament, on this **5th** day of **January**, in the year **1990**.

/s/ Debra Duncan

The foregoing instrument was signed by **Debra Duncan** in our presence who at **her** request and in **her** presence and in the presence of each other have subscribed our names as witnesses.

/s/ Frank Fellows Dated this **5th** day of **January 1990**.
/s/ Gail Garven Dated this **5th** day of **January 1990**.

Debra Duncan died on February 14, 1998. After Debra's death, her sister, Sally Smith, found a file folder in Debra's desk labeled "WILL." In the file were the printed will form (above) and a piece of paper dated November 11, 1996, in Debra's handwriting and signed by her that read:

Addition to My Will

1. All of my jewelry and clothing shall go to Sally Smith.
2. All my books and music shall go to Ned Duncan.

/s/ Debra Duncan - Dated this 11th day of November 1996.

Debra Duncan never married and had no children. Her parents and her brother, Brad Duncan, predeceased her. She is survived by her sister, Sally Smith, and her brother's son, Ned Duncan.

At the time of her death Debra owned: (1) a house at 1211 Main Street; (2) a portfolio of stocks valued at $100,000; (3) household furnishings, including books and music; (4) jewelry and clothing; and (5) a 1989 Ford Escort.

QUESTION:

Assuming that the will is to be probated in a UPC jurisdiction, explain how Debra Duncan's property should be distributed.

DISCUSSION FOR QUESTION 6

Debra's will was properly executed pursuant to UPC § 2-502(a) as Debra signed in the presence of both witnesses, and both witnesses signed immediately after her. *See, In re Estate of Kimble,* 117 N.M. 258, 871 P.2d 22 (1994). The signed attestation clause creates a rebuttable presumption that the will was duly executed. *Id.*

Under UPC § 2-505 a witness may also be a beneficiary under the will. The fact that an interested person witnesses the will neither renders the will invalid nor deprives that beneficiary of the property bequeathed. *See, In re Estate of Martinez,* 99 N.M. 809, 664 P.2d 1007 (1983) (where the beneficiary was a witness and the issue was not raised in the will contest). Thus, the fact that a witness to Debra's will was left property under that will does not affect its validity.

The November 11, 1996, document is a valid holograph will as defined by UPC § 2-502. A holographic document must be executed with testamentary intent, must be in the testator's handwriting, signed by her, and dated. UPC § 2-502(b). Here, all formalities were observed. The words "Addition to My Will" and "please give" evidence Debra's testamentary intent, as intent may be gleaned from the language of the document. See, *In re Estate of Kimble,* 117 N.M. 258, 871 P.2d 22 (1994); *In re Estate of Harrington,* 850 P.2d 158 (Colo. App. 1993); *In re Estate of Olschansky,* 735 P.2d 927 (Colo. App. 1987); *In re Estate of Kelly,* 99 N.M. 482, 660 P.2d 124 (1983).

The 1990 will could be revoked by another testamentary document that specifically revokes it or that revokes it by making inconsistent dispositions. UPC § 2-507. See, *In re Estate of Blake,* 120 Ariz. 552, 587 P.2d 271 (1978). The November 11, 1996, document does neither. Therefore, Frank Fellows and Martha Murdo will be allowed to take the property given to them in the January 5, 1990 will. Thus Fellows gets the 1989 Ford Escort and Murdo takes the stock portfolio valued at $100,000. The dispositions in the holographic codicil are valid as well. Sally takes the jewelry and clothing and Ned takes the books and music.

Debra's remaining property, the house and its furnishings, pass by intestacy because these items were not specifically disposed of in either testamentary document and because neither testamentary document contained a residuary clause. Debra is survived only by her sister Sally and her nephew, Ned. Under UPC § 2-103 the descendants of a decedent's parents share equally. A deceased sibling's share passes to his descendants by right of representation. Debra's deceased brother, Brad, had one son Ned. Thus, Ned and Sally share equally in Debra's intestate property.

Where property passes to two or more persons, that property passes by tenancy in common, not as joint tenants with the right of survivorship. *See,* Colo. Rev. Stat. Ann. §§ 38-11-101 (personal property), 38-21-101 (real property).

Examinee # _____

Final Score _____

SCORESHEET FOR QUESTION 6
ASSIGN ONE POINT FOR EACH STATEMENT BELOW

1.	The January 5, 1990, will was properly executed. Debra signed it in the presence of both witnesses.	1. _____
2.	A witness may also be a beneficiary of the will.	2. _____
3.	The November 11, 1996, document did not specifically revoke the January 5, 1990, will; therefore 1990 will is valid.	3. _____
4.	November 11, 1996, document is a valid (i.e., handwritten) holographic codicil.	4. _____
5.	To be a valid holographic will or codicil, the instrument must be entirely in the testator's handwriting, signed and dated.	5. _____
6.	Fred takes the 1989 Ford Escort.	6. _____
7.	Martha takes the stock portfolio.	7. _____
8.	Sally takes the jewelry and clothing.	8. _____
9.	Ned takes the books and music.	9. _____
10.	The house and furniture are not disposed of by the will or codicil and therefore pass by intestacy.	10. _____
11.	Because she is not survived by a spouse or children, property passes to descendants of decedent's parents in equal shares.	11. _____
12.	A deceased sibling's share passes by right of representation.	12. _____
13.	The house and furniture therefore pass by intestacy to Sally and Ned; each takes half interest.	13. _____

QUESTION 4

Todd decided that he should make a will and scheduled an appointment with his attorney, Amy, for the purpose of doing so. In preparation for their meeting, Amy wrote to Todd and asked him to prepare a list of beneficiaries and make some notes about how he would like his estate distributed. She also asked him to send the notes to her prior to their meeting. Accordingly, Todd handwrote, signed, and mailed the following letter to Amy:

Feb. 14, 1998

Dear Amy:

As you suggested, I have given some thought to how I want to distribute my estate. These are my intentions: to my friend, Felipe, my stereo. Everything else to my wife. My dad, Franco, is executor. Let me know if you need anything else. I look forward to meeting with you next week.

/s/ Todd

P.S. My piano goes to my mom, Myrna.

Several days before his appointment with Amy, Todd died after being struck by a car while attempting to cross a busy street. That same day, upon hearing of Todd's untimely and tragic death, his mother, Myrna, suffered a massive heart attack and died. Todd was survived by his wife, Winnie, to whom he had been married for three years prior to his death. He and Winnie had no children at the time of his death, though she was pregnant and gave birth to a son, Salvadore, two months after Todd's death. Todd was also survived by his sister, Selina, and his father, Franco. Selina is also a child of Myrna and Franco.

Unknown to Todd, Felipe had passed away in South America one month before Todd wrote the letter to Amy. Felipe was survived by his spouse, Janet.

QUESTION:

Assuming that the Uniform Probate Code is in effect, explain the interests of the various parties in Todd's estate.

DISCUSSION FOR QUESTION 4

Existence and Validity of Todd's Will. Todd's letter to Amy can be probated as his holographic will. "A will ... is valid as a holographic will, whether or not witnessed, if the signature and material portion of the document are in the testator's handwriting, and that the document constitutes the testator's will can be established by extrinsic evidence ..." UPC sec. 2-502(b) & (c).

Because the document was entirely handwritten and signed by Todd, the requirements of subsection (b) are met. As to whether Todd intended the document to constitute his will, the text of the document itself and the surrounding circumstances provide extrinsic evidence sufficient to evidence his intent. First, Todd prepared the document in response to Amy's request that he "prepare a list of beneficiaries" and decide "how he would like his estate distributed." Second, in the document Todd specifically states: " I have given some thought to how I want to distribute my estate. These are my intentions..." This evidence is sufficient to conclude that the document expresses Todd's dispositive intent as to the distribution of his property upon death. Thus, the letter may qualify as valid holographic will.

Salvadore as an Omitted Child. Todd made his will before the birth of his son, Salvadore, but made no provision for Salvadore in his will. UPC sec. 2-302(a)(1) provides:

> [I]f a testator fails to provide in his will for any of his children born or adopted after the execution of the will, the omitted after-born or after-adopted child receives a share in the estate as follows: (1) If the testator had no child living when he executed the will, an omitted after-born or after-adopted child receives a share in the estate equal in value to that which the child would have received had the testator died intestate, unless the will devised all or substantially all the estate to the other parent of the omitted child and that other parent survives the testator and is entitled to take under the will.

Todd's will contains only two specific bequests to others and devises substantially all of the estate, as a residuary disposition, to Winnie, Salvadore's other surviving parent. Although Salvadore is an omitted child, he receives no share of the estate.

Myrna as a Deceased Devisee. Myrna will be deemed to have predeceased Todd according to UPC Sec. 2-702(a):

> [A]n individual who is not established by clear and convincing evidence to have survived an event, including the death of another individual, by 120 hours is deemed to have predeceased the event.

Myrna died one day after Todd and therefore will be deemed to have predeceased him. Her specific bequest of his piano under Todd's will therefore be distributed in accordance with UPC Sec. 2-603(b)(1):

> If a devisee fails to survive the testator and is a grandparent, a descendant of a grandparent, or a stepchild of either the testator or the donor of a power of

> appointment exercised by the testator's will, the following apply: (1) ... [I]f the devise is not in the form of a class gift and the deceased devisee leaves surviving descendants, a substitute gift is created in the devisee's surviving descendants. They take by representation the property to which the devisee would have been entitled had the devisee survived the testator.

The gift of the piano to Myrna is not a class gift. The piano will be distributed to Selina, Todd's sister, who is Myrna's sole surviving descendant as defined by UPC sec. 1-201(9).

Distribution to Other Beneficiaries. Neither Felipe's estate nor Janet will receive the stereo. Felipe predeceased Todd, and therefore the gift lapses. UPC Sec. 2-702(a). Since Felipe is only a friend and not a grandparent or a descendant of a grandparent of the testator, the anti-lapse statute is inapplicable. UPC Sec. 2-603(b). Thus, the stereo will become part of the residuary estate.

Winnie will receive "everything else" in Todd's estate. The term "everything else" would constitute the residue of the estate. UPS Sec. 2-602. This would include the stereo, since Felipe has died. UPC Sec. 2-604(a).

Examine # _____

Final Score _____

SCORESHEET FOR QUESTION 4
ASSIGN ONE POINT FOR EACH STATEMENT BELOW

SCORE SHEET

1. An instrument can be valid as a holographic will if : 1. _____

   1a. the signature is the testator's 1a. _____

   1b. the material portion is in the testator's handwriting; and 1b. _____

   1c. the intent that an instrument constitutes the testator's will can be established by extrinsic evidence. 1c. _____

2. Salvadore, Todd's after-born son, is an omitted pretermitted child because he made no provision for him in this will 2. _____

3 Myrna, Todd's mother, will be deemed to have predeceased him because she did not survive him by at least 120 hours. 3. _____

4. Myrna's specific bequest of the piano does not lapse and will be distributed to Selina, her sole surviving descendant because of the anti-lapse statute. 4. _____

5. Neither Felipe's estate nor Janet will receive the stereo, as it becomes part of Todd's residuary estate. 5. _____

6. Winnie receives the residue of Todd's estate. 6. _____

7. If the instrument is found to not be a valid holographic will, then Todd is considered to have died intestate, and distribution shall follow the laws of intestacy. 7. _____

QUESTION 9

Tyrone Testator properly executed his last will and testament in 1997. It provided as follows:

> To my friend Bill, I leave my 2,000 shares of IBM stock.
> To my sister Mary, I leave my home.
> To my brother Marty, I leave the remainder and residue of my estate.

Tyrone died in a fire which occurred at his home in July of 1998. The home was totally destroyed in the fire and was not covered by insurance. At the time of his death, Tyrone's car, which was undamaged in the fire, was worth $25,000. Tyrone also had 3,000 shares of IBM stock and $50,000 in cash accumulated from IBM dividends. (The IBM stock had split giving Tyrone an additional 1,000 shares.)

It was determined that Tyrone's nephew, Mack, started the fire in order to get back at Tyrone for leaving him out of his will. Mack was convicted of arson for his misdeed.

QUESTION:

Discuss what interests Bill, Mary and Marty have in Tyrone's estate. Assume that the Uniform Probate Code is in effect in this jurisdiction.

DISCUSSION FOR QUESTION 9

BILL'S INTERESTS:

Bill is clearly entitled to 2,000 shares of the IBM stock. A specific devisee has a right to the specifically devised property in the testator's estate. Uniform Probate Code Sec. 2-606(a). Tyrone's gift to Bill was a specific devise because it is a gift of a particular item of property separate and distinct from any other property of the estate.

The second issue is whether Bill is entitled to the additional 1,000 shares due to the stock split. Under the Uniform Probate Code Sec. 2-605(a), if a testator executes a will that devises securities, and the testator then owned securities that meet the description as set forth in the will, the devise includes any additional securities acquired by the testator after the will's execution as result of an action initiated by the organization that issued the securities, including stock splits. Hence Bill would be entitled to distribution of the additional 1,000 shares of IBM stock if they were in the estate at the time of Tyrone's death.

Third, is Bill entitled to the accumulated dividends from the IBM stock? Under the Uniform Probate Code Sec. 2-605(b), cash distributions made before death with respect to a described security are not part of the devise. Therefore, the $50,000 in dividends from the stock are not part of Tyrone's devise to Bill.

MARY'S INTERESTS:

Under the Uniform Probate Code Sec. 222-606(a)(3), a specific devisee is entitled to any unpaid fire or casualty insurance proceeds or other recovery for injury to property. Tyrone did not have insurance on the house so there are no insurance proceeds. However, the Personal Representative has the authority under the Uniform Probate Code Sec. 3715(22) to prosecute claims of the estate. Therefore, the representative may resolve the matter prior to final distribution. Mary would be entitled to any proceeds from a lawsuit against Mack if the Personal Representative is successful in recovering the value of the house from Mack.

MARTY'S INTERESTS:

The clause that gives Marty the rest, residue and remainder of Tyrone's estate is called the residuary devise. A residuary devise consists of the all property remaining in the estate after satisfying all of the specific, general and demonstrative gifts. Marty is therefor entitled to Tyrone's car and the accumulated cash, including the IBM dividends because that property was not otherwise devised by Tyrone's estate.

44689

Essay 9 GradeSheet **Seat** ☐☐☐ **Score** ☐☐

Please use blue or black pen and write numbers clearly

1. Bill, as a specific devisee, is entitled to 2,000 shares of IBM stock. 1. _____

   1a. He is also entitled to the additional 1,000 shares because additional securities were acquired after the devise by virtue of IBM's action. 1a. _____

   1b. Bill is not entitled to any of the dividends from stock. Cash distributions made by IBM before death relating to a described security are not part of devise. 1b. _____

2. Mary is entitled to any future recovery by estate in lawsuit against Mack if there is a recovery against him. 2. _____

   2a. Mary's bequest/devise was adeemed by extinction. 2a. _____

   2b. Personal Representative has power to prosecute a claim belonging to estate. 2b. _____

3. Marty is entitled to residuary estate which consists of all property left after satisfying specific, general, and demonstrative bequests. 3. _____

   Residuary Estate consists of:

   3a. Car and 3a. _____

   3b. $50,000. 3b. _____

QUESTION 6

In 1995, Bob executed a valid will at the office of his attorney. The will read:

WILL OF BOB

I, Bob, declare this to be my will.
I give my coin collection to my son, Fred.
I give my stamp collection to my daughter, Sue.
I give the remainder of my estate to my girlfriend, Allison.
Signed on January 1, 1995
/s/Bob

After signing the will, Bob was given a photocopy of the will, which he took with him and kept at home.

In 1997, Bob decided to change his will. He tore up and destroyed the photocopy of the will that his attorney had given to him. He then hand-wrote a document that stated:

At the time of my death, I give my coin collection to my friend, Gary. The rest I will decide at some future date.

/s/ Bob
January 31, 1997

Later in 1998, Bob began to experience severe financial difficulties and decided to sell his coin collection and use the cash to pay his debts. Even after he sold his entire coin collection, however, Bob's financial situation continued to worsen. Desperate and facing certain bankruptcy, he committed suicide on January 1, 2000. Bob was survived by his children, Fred and Sue.

QUESTION:

Discuss the rights of inheritance of Fred, Sue, Gary and Allison and explain how Bob's estate will be distributed. Assume the Uniform Probate Code is in effect in this jurisdiction.

DISCUSSION FOR QUESTION 6

1. Did Bob revoke his will of January 1, 1995?

UPC Section 2-507(a)(2) explains:

> A will is revoked...(2) by performing a revocatory act on the will, if the testator performed the act with intent and for the purpose of revoking the will.... For purposes of this paragraph, "revocatory act on the will" includes burning, tearing, canceling, obliterating, or destroying the will or any part of it.

Bob intended to revoke his will, but he tore up and destroyed the copy of the will that his attorney had given to him, rather than the original document. Thus, Bob's attempted revocation of his will of January 1, 1995 was ineffective.

2. Was the writing executed by Bob on January 1, 1996 valid?

UPC Section 2-502 (b) provides:

> A will that does not comply with subsection (a) is valid as a holographic will, whether or not witnessed, if the signature and material portions of the document are in the testator's handwriting. The document of January 1, 1996 was written entirely in Bob's handwriting and was signed by him. As such, the document constituted a valid holographic codicil to the will.

3. What is Fred's right to the coin collection?

Bob's will included a specific bequest of his coin collection to his son, Fred, and later through the January 1, 1996 will, gave the coin collection to his friend, Gary. However, in 1998, Bob sold his coin collection and used the cash to pay his debts. When specifically devised property is sold or given away by the testator before death, the gift is considered to have been adeemed, or canceled. UPC Section 2-606 (6). The gift of the coin collection to Gary therefore, was adeemed so that Gary will receive nothing.

4. How will Bob's will and holographic codicil be given effect and interpreted?

When a testator has more than one will, all of the wills will be read together and given effect unless one or more of the subsequent wills revoke a prior will or are inconsistent. UPC Section 2-507(d) instructs:

> The testator is presumed to have intended a subsequent will to supplement rather than replace a previous will if the subsequent will does not make a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the subsequent will revokes the previous will only to the extent the subsequent will is inconsistent with the previous will; each will is fully operative on the testator's death to the extent they are not inconsistent.

In his will, Bob gave all of his estate to his children and his girlfriend. In his holographic codicil written in 1997, Bob gave his coin collection to Gary. Although Bob may have intended to revoke his will by destroying its photocopy, the revocation was invalid and the will remained in effect. After making the specific devises, Bob added, "The rest I will decide at some future date." Thus, the codicil can be read to supplement the will because the codicil does not make a complete disposition of the Bob's estate and is not so inconsistent with the former as to revoke it.

5. How will Bob's testamentary estate be distributed?

Reading each of the testamentary documents in accordance with the dispositive provisions found in Bob's will and in the holographic codicil, Sue will receive the stamp collection. The residue of Bob's estate belongs to his girlfriend, Allison.

21610

Essay 6 GradeSheet **Seat** ☐☐☐ **Score** ☐☐

Please use blue or black pen and write numbers clearly

1. A testator may revoke a will by intentionally performing a revocatory act on the will, including destroying the will or any part of it. 1._____

2. Bob's attempted revocation of his will of January 1, 1995 is invalid because he did not destroy the original will. 2._____

3. A will is valid as a holograph will, whether or not witnessed, if the signature and material portions of the document are in the testator's handwriting. 3._____

4. The document dated January 31, 1997, which was written entirely in Bob's handwriting and signed by him, is a valid holographic will in the nature of a codicil. 4._____

5. Both wills are effective because when a testator writes more than one will, all of the wills will be read together and given effect unless one or more of the subsequent wills revokes a prior will or are inconsistent. 5._____

6. When specifically devised property is sold or given away by the testator before death, the gift is considered to have been adeemed, or canceled. 6._____

7. The gift of the coin collection to Gary has been adeemed so that he will receive nothing. 7._____

8. Reading both wills together, Sue will receive the stamp collection. 8._____

9. Reading both wills together, the residue of Bob's estate passes to his girlfriend, Allison. 9._____

10. Fred gets nothing. 10._____

QUESTION 7

Mike married Connie in 1997. At the time of their marriage, Mike had a seven-year-old son, Rey, born out of wedlock from a previous relationship. Mike has had little contact with Rey and was never legally determined to be Rey's father. Mike, nevertheless, has often sent Rey's mother money for Rey's support. Mike also has told Connie that he believes Rey is his son.

In 1998, Mike met with his attorney and prepared a will by which Mike gave one-half of his estate to his wife, Connie, and one-half to Rey. After Mike signed the will, Mike's attorney gave him the original and told him to store it in a safe place.

In 1999, Mike decided to revise his will. A new will was prepared by Mike's attorney in which Mike expressly revoked the 1998 will and left his entire estate to Connie. After Mike signed the new will, his attorney gave him the original, told him to store it in a safe place, and instructed him to immediately destroy the 1998 will. Mike took the new will home and placed it with the rest of his important papers, but failed to destroy the 1998 will.

A few months later, while sorting through his papers and files at home, Mike came across the 1999 will. Mistakenly believing that it was the 1998 will that he had revoked, he tore up the 1999 will and burned the pieces. There were no copies of the 1999 will, only the original.

In September of 2000, Mike died. At the time of his death, Mike owned a home, titled jointly with Connie, an automobile, also titled jointly with Connie, and an investment account in his name alone with a balance of $500,000 which he had accumulated prior to his marriage to Connie.

Connie was six months pregnant at the time of Mike's death, and gave birth three months later to a healthy daughter she named Marisa.

QUESTION:

Discuss how Mike's property will be distributed. Assume that the Uniform Probate Code is in effect in this jurisdiction.

DISCUSSION FOR QUESTION 7

UPC §2-507(a) explains that "a will or any part thereof is revoked: (1) by executing a subsequent will that revokes the previous will ... or (2) by performing a revocatory act on the will, if the testator performed the act with the intent and for the purpose of revoking the will." A revocatory act on a will includes destroying it. Id. Moreover, if a subsequent will that wholly revoked a previous will is thereafter revoked by a revocatory act, then the previous will remains revoked unless it is revived. Id. §2-509(a). A previous will is not revived unless it is evident from the circumstances of the revocation of the subsequent will, or from the testator's contemporary or subsequent declarations, that the testator intended the previous will to take effect as executed. Id.

As he intended, Mike revoked the 1998 will when he executed the 1999 will. Although this made it legally unnecessary to physically destroy the 1998 will, Mike attempted to do so, but instead destroyed the 1999 will. Because he destroyed the 1999 will by mistake, Mike did not intend to revoke the 1999 will. However, because the 1999 will is no longer in existence and cannot be produced, and there is no evidence that Mike intended to revive the 1998 will, the probate court will presume the 1999 will to have been revoked as well and will rule that Mike died intestate.

If Mike died intestate, his estate passes to his intestate heirs. See UPC §2-101. Connie, as Mike's surviving spouse, is an intestate heir. See UPC §2-102(4). Marisa also will be considered a surviving descendant of Mike even though she is an afterborn heir. Because she was in gestation at the time of his death, and lived more than 120 hours after her birth, Marisa is an intestate heir. See UPC 8.

To determine if Rey is a surviving descendant of Mike, it will be necessary to establish the parent-child relationship between them. UPC §2-114(a) provides that an individual is a child of his natural parents, regardless of their marital status. Section 4 of the Uniform Parentage Act, to which UPC §2-114(a) refers, permits a court to consider evidence that the putative father has supported and openly acknowledged the child as his own. Mike supported Rey by sending his mother money since Rey's birth and acknowledged to others that Rey was his son. Therefore, Rey likely will be considered a surviving descendant of Mike.

Mike's estate consists of those items of property to which there was no joint ownership. The home and automobile pass by right of survivorship to Connie as joint owner. See UPC §6-104. The investment account balance, which represents Mike's intestate estate, will be distributed according to UPC §2-102(4). Connie's share, as Mike's surviving spouse, will be the first $250,000, plus one-half of any of the remainder of the intestate estate, if one or more of Mike's surviving descendants are not descendants of Connie. As such, Connie will receive a total of $375,000, which represents the first $250,000, plus one-half of the remaining $250,000.

Pursuant to UPC §2-103(1), the remaining $125,000 will pass to Mike's descendants by representation. Both Rey and Marisa are Mike's surviving descendants, so they will share the balance remaining and will each receive $62,500.

42345

Essay 7 GradeSheet **Seat** ☐☐☐ **Score** ☐☐

Please use blue or black pen and write numbers clearly

Revocation of a will occurs when:

1. a subsequent will is executed, or 1. _____

2. a revocatory act is performed upon a will with intent to revoke (mistaken revocation is no revocation). 2. _____

3. The 1998 will was expressly revoked when Mike executed the 1999 will. 3. _____

   3a. A will remains revoked unless it is <u>intended to be revived</u>. 3a. _____

4. The 1999 will might not govern because there is no evidence of it; it no longer exists, or intent will be difficult/impossible to prove. 4. _____

5. Thus, the probate court likely will presume that Mike died intestate. 5. _____

6. Mike's estate consists of those items of property to which there was no joint ownership. Thus, Mike's investment account constitutes his entire estate. 6. _____

7. Because Connie was the joint owner of the home and automobile, these items pass to Connie by right of survivorship. 7. _____

8. Marisa will be considered a surviving descendant of Mike because she was in gestation at the time of his death and lived more than 120 hours after her birth, making her Mike's afterborn heir. 8. _____

9. Rey is likely to be determined to be an heir as well because an individual is a child of his natural parents, regardless of their marital status, or a parent-child relationship exists when there is evidence that the putative father has supported and openly acknowledged the child as his own. 9. _____

10. The intestate share of Connie will be an amount of the total off the top, plus one-half the remainder of the account because one or more of Mike's surviving descendants are not descendants of Connie. 10. _____

11. The remainder will pass to Rey and Marisa by representation. 11. _____

QUESTION 2

John and his wife Susan were married in 1981, and divorced in 1991. They had two children, Mary and Mike, during the course of their ten year marriage.

In 1995, John married Jane who had a daughter from a prior marriage named Amy. That same year, John met with his attorney and prepared a will by which he gave one-half of his estate to his second wife, Jane, and one-half of his estate to his children from his first marriage, Mary and Mike. At the direction of his attorney, John executed two duplicate originals of his will. He kept one with his important papers, the other he gave to his ex-wife Susan.

In 1998, John decided to make some changes to his will. He, however, did not want to pay the cost of having a lawyer make the changes, so he went to the public library and read a few self-help legal books on will drafting. When he was ready to draft his new will, his computer was "on the blink," and so he wrote it out in longhand.

In the new will, John expressly revoked the 1995 will and left the entire balance of his estate to Jane, except for his 1990 Buick which he left to Amy. He also specifically stated that he was not leaving any of his estate to his two children, Mary and Mike, "because they have rejected me." John signed and dated the handwritten will and then carefully destroyed his original of the 1995 will, forgetting that he had given a duplicate original to his ex-wife Susan.

In January of 2000, John sold the 1990 Buick for $5,000 and replaced it with a BMW for which he paid $40,000 in cash. John died in November of 2000. At the time of his death John had the following assets: 1) the BMW, 2) a home owned with Jane in joint tenancy with right of survivorship, 3) a brokerage account valued at $20,000 payable on death to his children Mary and Mike, 4) a $25,000 life insurance policy with his ex-wife Susan named as the beneficiary, 5) a valuable Rolex watch, and 6) a bank account containing $100,000 held in his name alone.

When John died, Jane attempted to probate the 1998 handwritten will. Susan produced the duplicate original of the 1995 will and challenged the 1998 handwritten will as invalid.

QUESTION:

Discuss the validity of the wills, and how all items of John's property will be distributed. Assume that the Uniform Probate Code is in effect.

DISCUSSION FOR QUESTION 2

Is the 1998 handwritten will valid? Under the Uniform Probate Code, holographic wills are valid whether or not witnessed if the signature and material portions of the document are in the Testator's handwriting. See UPC §2-502(b). Thus, the holographic will is valid. As to the 1995 will, UPC §2-507(a) states that "a will or any part thereof is revoked: (1) by executing a subsequent will that revokes the previous will...." Revocation of a duplicate original will raises the presumption that a testator intended to revoke the original will in the possession of another. See 619 P.2d 91; see also UPC §2-507(1).

Thus, the 1995 will produced by Susan after John's death, although appearing to be valid, was revoked by the 1998 will. Because John revoked his duplicate original, the law will presume that he intended to revoke the original duplicate in Susan's possession.

May John exclude his children? The UPC only addresses pretermitted children within the context of children born or adopted after the executing of the will. See UPC §2-302. Under the UPC, those children would be given a statutory share of the estate. However, if the omission is intentional, UPC §2-302(2)(a), then the afterborn children do not receive a share of the estate. Here, we have no children who are afterborn, and so the pretermitted heirs language would not apply. Moreover, here the omission of the two children is clearly intentional, so the children are foreclosed from any share in the estate.

The BMW. At common law, if a testator executed a will containing a specific devise and the subject of that gift is not in the estate at the time of death, the specific devise is adeemed. See PAUL G. HASKELL, PREFACE TO WILLS, TRUSTS AND ADMINISTRATION 111 (2d ed. 1994). However, the UPC changes the common law to protect specific devisees from ademption in various situations. In particular, it provides that a specific devisee is entitled to tangible personal property owned by the testator at death which the testator acquired as a replacement for specifically devised tangible personal property. UPC §2-606(a)(5). Here, the gift of the Buick to Amy was a specific devise because it is a gift of a particular item. Although John sold the Buick, he purchased the BMW to replace it. Amy gets the BMW.

The Personal Residence. The home would pass by right of survivorship to Jane as the joint owner. See UPC §6-104. The will does not control the disposition of joint tenancy property.

The brokerage account. John's 1998 will, although valid, will not control the disposition of the brokerage account which was payable on death to his children Mary and Mike. According to UPC §6-104(b), if the account is a P.O. D. account, the balance in the account will belong to the P.O.D. payees — here, Mary and Mike, upon John's death.

The life insurance policy. Virtually all insurance policies require that the company receive notice of change of beneficiary signed by the insured and that the notice be received before the date of death. See ITT Life v. F. Damm, 567 P2d 809 (Colo. App. 1977). Thus, if the examinee concludes that Susan is the beneficiary under the policy because no notice of change was given, the answer is correct. However, since the facts do not state the requirements of the policy, the examinee could rely on UPC §2-804 regarding the revocation of probate and non-probate transfers by divorce. UPC §2-804(2) revokes by statute all designations which name the ex-spouse as beneficiary if the designation was made before the date of the final decree of divorce. Under this analysis, Susan is not the recipient of the insurance proceeds and the proceeds become a part of the residuary estate.

Residuary. The personal items including the valuable Rolex watch and the bank account containing $100,000, will pass to Jane because they are assets of the estate and she is the beneficiary under the 1998 will.

21321

Essay 2 GradeSheet **Seat** ☐☐☐ **Score** ☐☐

Please use blue or black pen and write numbers clearly

1. The 1998 handwritten will is a holographic will. 1. _____

2. A holographic will is valid whether or not witnessed if the signature and material portions of the document are in the Testator's handwriting. 2. _____

3. The holographic will validly revokes the 1995 will. 3. _____

4. Cancellation of the original also cancels the duplicate original in the possession of another. 4. _____

5. Omission of the children was intentional; therefore, they have no statutory right to participate in the estate so they get nothing. 5. _____

6. A specific devisee is entitled to tangible personal property owned by the testator at death which the testator acquired as a replacement for specifically devised tangible personal property; thus, the BMW goes to Amy. 6. _____

7. A will does not control joint tenancy property, therefore the home passes by operation of law to Jane. 7. _____

8. A will does not control a payable on death account; therefore, the proceeds are paid equally to Mary and Mike. 8. _____

9. Under common law, an insurance policy creates a contractual right for the named beneficiary; therefore, Susan as the named beneficiary gets the $25,000. 9. _____

10. The UPC, however, provides for the revocation of probate and non-probate transfers in the event of divorce unless the operative document provides otherwise. Here, there is no indication that the policy provides otherwise, thus the proceeds are payable to the estate and Jane would benefit. 10. _____

11. The remaining assets (Rolex and cash) pass to Jane as the beneficiary of the will. 11. _____

QUESTION 4

On March 1, 1990, Feliza hand wrote and signed a document that read as follows:

> MY WILL - I give and bequeath all of the land that I own
> at my death to my good friend, Miguel. /s/ Feliza March 1, 1990

Feliza and Miguel were subsequently married in July of 1995. On November 1, 2000, Feliza hand wrote and signed another document that read:

> MY WILL - I give and bequeath all of my personal effects to
> my brothers, Roberto and Bill. /s/ Feliza November 1, 2000

After her death on December 19, 2001, both of these documents were found in Feliza's desk. Feliza and Miguel had no children. She was survived only by Miguel and Bill, but not by Roberto, who had died three months before and was survived by his daughters, Azalea and Iris.

At the time of her death, Feliza owned the following property, none of which was encumbered: a farm, valued at $100,000; personal effects, valued at $40,000; a life insurance policy, valued at $200,000, which she had purchased in 1990 and which she had named Bill the sole death beneficiary; and a savings account, valued at $100,000.

QUESTION:

Discuss how Feliza's property should be distributed. Assume the Uniform Probate Code is in effect in this jurisdiction.

DISCUSSION FOR QUESTION 4

The question raises a variety of issues, including the validity of holographic wills, rules of revocation and intestate succession, pretermitted spouses, non-testamentary contracts in the form of life insurance policies, and the representational shares of a deceased devisee's heirs. The issues raised are resolved as follows:

Are the 1990 and 2000 documents handwritten by Feliza valid holographic wills?

According to UPC § 2-502(b), "A will that does not comply with subsection (a) is valid as a holographic will, whether or not witnessed, if the signature and material portions of the document are in the testator's handwriting." The entirety of both documents was written in Feliza's handwriting and signed by her. As such, the 1990 and 2000 documents will be considered valid holographic wills.

Did Feliza revoke the 1990 Will by executing the 2000 Will?

A writing or a subsequent act of the testator may revoke a will. According to UPC § 2-507(a)(1), a "will or any part thereof is revoked by executing a subsequent will that revokes the previous will or part expressly or by inconsistency." As to inconsistent subsequent wills, UPC § 2-507(d) further explains:

> The testator is presumed to have intended a subsequent will to supplement rather than replace a previous will if the subsequent will does not make a complete disposition of the testator's estate. If this presumption arises ... the subsequent will revokes the previous will only to the extent the subsequent will is inconsistent with the previous will; each will is fully operative on the testator's death to the extent they are not inconsistent.

Thus, where a testator makes more than one will, all of the wills are to be read together and given effect, unless one or more of the subsequent wills are inconsistent or revoke the prior will. Feliza's 2000 Will, which bequeathed only her personal effects, did not make a complete disposition of her estate. Likewise, the 2000 Will is not inconsistent with the 1990 Will in which Feliza bequeathed only her land. Accordingly, both wills will be effective.

Is Miguel a pretermitted spouse who is entitled to an intestate share of Feliza's estate?

Feliza's 1990 Will bequeathed all of her land to Miguel as a friend. Subsequently, she married Miguel, but did not provide for him in her 2000 Will. According to UPC § 2-301(a)(1):

> If a testator's surviving spouse married the testator after the testator executed his will, the surviving spouse is entitled to receive, as an intestate share, no less than the value of the share of the estate she would have received if the testator had died intestate ... unless:
>
> (1) it appears from the will or other evidence that the will was made in contemplation of the testator's marriage to the surviving spouse; or
>
> (2) the will expresses the intention that it is to be effective notwithstanding any subsequent marriage... .

The premarital 1990 Will does not appear to have been made in contemplation of her later marriage to Miguel nor does it express Feliza's intention that Miguel be prevented from taking an intestate share if they were married. Likewise, UPC § 2-301(a) remains applicable even "if the person the decedent later married was a devisee in his or her premarital will." Id. comment. Rather, "the existence and amount of a premarital devise to the spouse [is] irrelevant." Id. As such, Miguel also is entitled to receive an intestate share of Feliza's estate.

Who are Feliza's heirs and beneficiaries, and how will her estate be distributed?

Feliza's farm will be distributed to Miguel in accordance with her 1990 Will.

Under the 2000 Will, her personal effects are to be distributed to her brothers, Bill and Roberto. However, Roberto has predeceased Feliza, but was survived by his two daughters. Under UPC § 2-603(b)(1), if a devisee fails to survive the testator ... and the deceased devisee leaves surviving descendants, ... [t]hey take by representation the property to which the devisee would have been entitled had the devisee survived the testator." When a distribution is to be made "by representation," the property is divided into as many equal shares as there are (i) surviving descendants in the generation nearest the designated ancestor which contains one or more surviving descendants (ii) and deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants....

Thus, Feliza's personal effects will be divided in half. Bill will receive one-half, valued at $20,000, and the other half will be divided in half again and shared by Azalea and Iris, with each receiving a $10,000 share.

The life insurance policy is not part of Feliza's probate estate because it is a contractual obligation and therefore non-testamentary. See UPC § 6-201(a). Therefore, the benefits of the policy ($200,000) will pass directly to Bill, the named beneficiary.

Together, Feliza's 1990 Will and 2000 Will made only a partial disposition of her estate. "Any part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs... ." UPC § 2-101(a). As Feliza's surviving spouse, Miguel will take the entire residuary estate, consisting of a savings account valued at $100,000. See UPC § 2-102(1).

21453

Essay 4 GradeSheet **Seat** ☐☐☐ **Score** ☐☐

Please use blue or black pen and write numbers clearly

1. Feliza's 1990 and 2000 wills are valid holographic wills. 1. _____

   1a. Wills are valid because they are in the testator's handwriting and signed by her. 1a. _____

2. If there is more than one will, they will be read together and given effect, unless they are inconsistent or revoke the prior will. 2. _____

3. Feliza's farm will be distributed to Miguel under her 1990 Will. 3. _____

4. Under the 2000 Will her personal effects will be distributed one-half to her brother, Bill. 4. _____

5. Roberta failed to survive Feliza, and therefore, the other half of Feliza's personal effects will be shared by Roberto's daughters, Azalea and Iris. 5. _____

6. Any part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs. 6. _____

7. Miguel, as Feliza's surviving husband/pretermitted spouse, is entitled to receive an intestate share of Feliza's estate. 7. _____

   7a. Feliza's premarital 1990 Will does not appear to have been made in contemplation of her later marriage to Miguel nor does not express Feliza's intention that Miguel be prevented from taking an intestate share if they married. 7a. _____

8. Therefore, Miguel will take the entire residuary estate, the $100,000 savings account. 8. _____

9. The life insurance policy is not part of Feliza's probate estate since it is a non-testamentary contractual obligation and therefore will pass to Bill, the named beneficiary. 9. _____

QUESTION 1

In 1998, Thomas, a widower, with no children, properly executed a will which provided in pertinent part:

> I devise my Buick automobile to my nieces Debbie and Dorothy, who are the daughters of my deceased brother, Bill.
>
> I devise my apartment in Center City to my only living natural brother, Bob.
>
> I devise the residue of my estate to my friend, Frank.

Following the execution of the will, Thomas sold the Buick for $5,000 and purchased a new BMW convertible. He paid $40,000, in cash, for the BMW.

In 1999, Bob was killed in an automobile accident. Bob was survived by his wife, Wilma, and his emancipated, only son, Sam. Bob's will left all of his property to Wilma.

Thomas died on January 1, 2002.

Frank died on January 2, 2002.

Thomas' assets, after payment of taxes, debts, and funeral expenses, consist of his BMW convertible, his apartment in Center City, and $150,000 in cash.

QUESTION:

Discuss how Thomas' estate should be distributed. Assume that all the events mentioned in this question occurred in a jurisdiction which has adopted the Uniform Probate Code.

DISCUSSION FOR QUESTION 1

1. The BMW Convertible. Debbie and Dorothy are entitled to the BMW convertible. At common law, if a testator executes a will containing a specific devise and the subject of that gift is not in the estate of the testator at the time of the testator's death, the specific devise is adeemed. *See* PAUL G. HASKELL, PREFACE TO WILLS, TRUSTS AND ADMINISTRATION 111 (2d ed. 1994). However, the Uniform Probate Code (UPC) changes the common law to protect specific devisees from ademption in various situations. *See* UPC § 2-606. In particular, it provides that a specific devisee is entitled to real or tangible personal property owned by the testator at death which the testator has acquired as a replacement for specifically devised property. *See* UPC § 2-606(a)(5). Here, the gift of the Buick car to Debbie and Dorothy was a specific devise because it is a gift of a particular item. Although Thomas sold the Buick, he purchased the BMW convertible to replace it. As a result, Debbie and Dorothy take the BMW convertible. *See* UPC § 2-606 cmt., ex. 1 (stating that "my 1984 Ford" would include replacement vehicles).

2. The Apartment. Sam is entitled to the apartment. Because Bob predeceased Thomas, at common law, the gift to Bob would lapse or fail. However, the UPC provides for substitutional gifts in the event of lapse in certain circumstances. Specifically, the UPC "antilapse statute" provides that if the predeceasing devisee is the testator's grandparent, a lineal decedent thereof or a step child of the testator, who leaves descendants who survive the testator by 120 hours, a substitute gift is created in the devisee's surviving descendants. *See* UPC § 2-603(b)(1). Bob falls within the scope of antilapse statute; as Thomas' brother, he is a lineal descendant of Thomas' grandparents. He also left a descendant, Sam, who survived Thomas. As a result, a substitute gift would be created in Sam and he would take the apartment.

The fact that Thomas' will left all of his property to Wilma is irrelevant. The UPC antilapse statute tells us who takes; it does not allow Bob to choose someone else.

3. The $150,000 Cash. Debbie, Dorothy and Sam would share equally the $150,000. The gift to Frank would fail because he did not survive Thomas by 120 hours. Under the UPC, where a devisee fails to survive the testator by 120 hours, the devisee is treated as if he or she predeceased the testator, unless the will provides otherwise. *See* UPC § 2-702 (requiring an individual to survive the testator by 120 hours to qualify to take under the testator's will). In addition, the antilapse statute does not apply to Frank because he is not the testator's grandparent, a lineal decedent thereof or a step child of the testator.

The failed gift to Frank is the residue. As a result, the $150,000 devise would pass to the intestate takers. The UPC provides for inheritance by the surviving spouse, descendants of the decedent, parents and their descendants, and grandparents and collateral relatives descended from grandparents. *See* UPC § 2-102 - 2-103. Here, Thomas' only surviving relatives are his nephew, Sam, and nieces, Debbie and Dorothy. Because they are descendants of Thomas' parents, they are entitled to the intestate property by representation. *See* UPC § 2-103(3). The system of representation under the UPC is per capita (not per stirpes). *See* UPC § 2-106. Under this system, the property is divided into as many equal shares as there are surviving descendants in the nearest degree to the decedent; each surviving descendant in the nearest degree receives one share. Applying this system here, Sam, Debbie and Dorothy are the surviving descendants in the nearest degree to the decedent, Thomas. As a result, they would share equally the intestate property; each would receive a one-third share or $50,000 each.

21202

Essay 1 GradeSheet **Seat** ☐☐☐ **Score** ☐☐

Please use blue or black pen
and write numbers clearly

BMW Convertible:

1. Under UPC, devisees are protected from ademption when a replacement for the gift is acquired. 1. _____

2. Therefore, Debbie and Dorothy are entitled to the BMW. 2. _____

The Apartment:

3. The UPC Antilapse Statute provides that if the named devisee predeceases the Testator, then the gift goes to the devisee's descendants. 3. _____

4. The named devisee must, however, be a lineal descendant of the testator's grandparents. 4. _____

5. Wilma, as Bob's spouse or beneficiary under his will, does not get the apartment. 5. _____

6. Sam, as Bob's lone descendant, receives the apartment. 6. _____

The Cash:

7. Frank's estate would receive nothing because the UPC requires that Frank survive Thomas by 120 hours. 7. _____

8. The failed gift to Frank becomes part of the residue of Thomas' estate and passes under the UPC as if Thomas had no will. 8. _____

9. Under that scenario, the cash passes to any surviving spouse, if none then to Testator's descendants, parents and their descendants, grandparents and their descendants in that order. 9. _____

10. Sam, Debbie and Dorothy take the residuary equally, as they are the surviving descendants in the nearest degree. 10. _____

QUESTION 3

Todd retained an attorney to draft a will for him. The will was drafted and executed on May 27, 1992, and consisted of two typewritten pages. The provisions on the first page of the will directed that, after payment of his debts, 50 percent of Todd's estate should be paid to his wife, Willa, and that the balance of his estate should be shared equally by his sisters, Susan and Sandra. The second page of the will contained only the signatures of Todd and two witnesses. Todd kept the original, and his attorney made and retained a photocopy of the will.

In 2003, Todd separated from Willa. Shortly thereafter, Todd decided to make some changes to the will. In the presence of his two sisters, he removed the second page of the original will and attached it to a new typewritten first page. The new first page was identical to the first page of the original will, except for a provision which stated: "In light of my estrangement from Willa, all of my estate should be divided equally between my two sisters." He did not sign the new first page nor did he handwrite any of the text.

Several months later, Todd was killed in a helicopter crash. At the time of his death, Todd and Willa still were separated, but had not filed for divorce. Todd was survived by his mother, Marilyn, as well as Willa, Susan, and Sandra. Todd had no children. At the time of his death, Todd's estate was valued at $1,000,000 and he had no debt.

QUESTION:

Discuss the validity of the two wills and the interests of Willa, Marilyn, Susan, and Sandra in Todd's estate. Assume the Uniform Probate Code is in effect in this jurisdiction.

DISCUSSION FOR QUESTION 3

Did Todd revoke his 1992 will?

A valid will is one that is in writing, signed by the testator, and signed by at least two individuals, each of whom signed within a reasonable time after he or she witnessed the testator's signing of the will. See UPC § 2-502.

In relevant part, UPC § 2-507 provides:

> (a) A will or any part thereof is revoked: (1) by executing a subsequent will that revokes the previous will or part expressly or by inconsistency; or (2) by performing a revocatory act on the will, if the testator performed the act with the intent and for the purpose of revoking the will or part ... .
>
> (b) If a subsequent will does not expressly revoke a previous will, the execution of the subsequent will wholly revokes the previous will by inconsistency if the testator intended the subsequent will to replace rather than supplement the previous will.

In this case, Todd executed a valid will in 1992 because it was typewritten and signed by him and two witnesses. In 2003, it appears that Todd attempted to replace the dispositive clause of the 1992 will by removing and replacing the first page of the will and leaving the execution provisions intact. Nevertheless, the resulting document is not a valid will that revokes the 1992 will because the document was not properly executed. Although the new first page was in writing, it was not separately signed by Todd and at least two other individuals, even though the signature page containing the original executions was reattached. As such, attachment of a new first page to the signature page of the 1992 will was invalid as an attempt to make the new will effective.

While Todd did not revoke his 1992 will by a subsequent will, he did revoke it by performing a revocatory act. Todd performed a revocatory act on the 1992 will by removing its signature page. As the comment to UPC § 2-507 explains: "By substantial authority, it is held that removal of the testator's signature -- by, for example, ... removing the entire signature page -- constitutes a sufficient revocatory act to revoke the entire will." Moreover, Todd's intent to revoke the 1992 will is evidenced by his statement in the 2003 document that he was acting "[i]n light of my estrangement from Willa" and by his attempted replacement of the dispositive provision by one that was wholly inconsistent with that contained in the 1992 will.

As a result, Todd died intestate since his estate was not effectively disposed of by a valid will. See UPC § 2-101.

Is Willa a surviving spouse for purposes of intestate succession?

A surviving spouse does not include "an individual who is divorced from the decedent." UPC § 2-802(a). Moreover, "[a] decree of separation that does not terminate the status of husband and wife is not a divorce ... ." Id. At the time of his death, Todd and Willa were informally separated, but had not yet filed for divorce. As such, their marriage was not terminated and Willa remains Todd's spouse for purposes of intestate succession.

How will Todd's intestate estate be distributed?

Todd was survived by his wife, Willa; his mother, Marilyn; and his sisters, Susan and Sandra. According to UPC § 2-102(2), the intestate share of a decedent's surviving spouse is "the first $200,000, plus three-fourths of any balance of the intestate estate, if no descendant of the decedent survives the decedent, but a parent of the decedent survives the decedent." That part of Todd's intestate estate not passing to his surviving spouse, passes "if there is no surviving descendant, to the decedent's ... surviving parent." UPC § 2-103(2).

At the time of his death, Todd's estate was valued at $1,000,000. Under the UPC, Willa receives $800,000, which represents the first $200,000, plus three-fourths of any balance of the intestate estate, or $600,000. The remaining $200,000 of Todd's intestate estate not passing to Willa passes to Marilyn, his surviving parent.

COLORADO SUPREME COURT
Board of Law Examiners

FEBRUARY 2004 BAR EXAM
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ESSAY Q3

SEAT

ISSUE

		YES	NO
1.	A valid will is one that is in writing and		
1a.	Is executed by a testator who is at least 18	o	o
1b.	Is executed by a testator who is competent	o	o
1c.	Is signed by the testator	o	o
1d.	Is witnessed and signed by two individuals as witnesses	o	o
2.	A will may be revoked by validly executing a subsequent will that revokes the previous will or by performing a revocatory act.	o	o
3.	The 2003 "will" or codicil is not valid because it was not properly executed and witnessed.	o	o
4.	Todd died intestate.	o	o
5.	Since their marriage was not terminated, Willa remains Todd's spouse for purposes of succession.	o	o
6.	Without descendants, the intestate share of a decedent's surviving spouse is the first $200,000, plus three-fourths of any balance of the intestate estate.	o	o
7.	Willa receives $800,000, and the remaining $200,000 of Todd's intestate estate passes to Marilyn, his surviving parent.	o	o

QUESTION 9

MaryAnn and Willie were married in 1980. During their marriage, they had two children, Rose and Rob.

In 1995, Willie became deeply involved with the Animal Rescue Society. At that time he adopted Spot, a terrier, upon whom he lavished most all of his attention.

In 1996, Willie secretly handwrote and signed the following will:

> I, Willie, being of sound mind and body, do hereby leave all of my worldly possessions to my furry friend, Spot. The Animal Rescue Society to act as Trustee during Spot's lifetime and which Society shall become the successor recipient of my estate upon Spot's death.
>
> My wife, MaryAnn, should receive nothing from my estate. My two children, Rose and Rob, should receive nothing as well because they have rejected me. /s/ Willie

Willie and MaryAnn were legally separated in 2002 and ceased living together at that time, but never divorced. Willie died in 2004, and the will was discovered shortly thereafter.

QUESTION:

Discuss whether the will is valid and any claims that MaryAnn, Rose, or Rob may have to Willie's estate. Assume the Uniform Probate Code is in effect in this jurisdiction.

DISCUSSION FOR QUESTION 9

There are several issues to consider in this scenario: 1) whether the form of the will is valid as a holographic will; 2) whether the bequest to Spot and thereafter to the Animal Rescue Society is valid; 3) whether Willie's stated desire to disinherit his estranged spouse and children will be allowed; and 4) whether MaryAnn, Rose or Rob may make claims against Willie's estate under the UPC or Colorado law regardless of whether the will is upheld as valid.

Whether the will is valid as a holographic will.

The 1996 handwritten will signed by Willie constitutes a valid holographic will. UPC § 2-502(b) provides: "A will . . . is valid as a holographic will, whether or not witnessed, if the signature and material portions of the document are in the testator's handwriting." The will was written entirely in Willie's handwriting and was signed by Willie. Accordingly, the will was a valid holographic will when executed.

Whether the bequest to Spot and the Animal Rescue Society is valid.

A way in which the will might be invalidated, because it leaves all of Willie's estate to a dog, would be if it was held to be capricious or against public policy. The courts, however, try to honor the intentions of the decedent as much as possible. The modern American rule is that such a trust to take care of the dog is valid because it can be performed indirectly by a trustee. So as long as the trustee agrees to perform the purpose of the trust, then the trust will be upheld. See Shaffer, Mooney and Boettcher, The Planning and Drafting of Wills and Trusts (4th ed. 1991, Foundation Press). Another avenue might be to try to have the will declared invalid because, by leaving all of his estate to his dog and thereafter the Animal Rescue Society, Willie may be found to have lacked testamentary capacity. (If either approach is successful, Willie's will would be invalidated and it would be as if he died intestate. MaryAnn, Rose, and Rob then would be able to take a share of Willie's estate under intestacy rules. UPC Section 2-102.)

Whether Willie's stated desire to disinherit his estranged spouse and children will be allowed.

The will was executed in 1996, while Willie and MaryAnn were still married. However, Willie explicitly sought to omit MaryAnn from his will. Although the Uniform Probate Code ("UPC) refers to omitted spouses in Section 2-301, these references only apply to marriage that occurs after the execution of a will, which was not the case here. Under the UPC and Colorado law, a testator may dispose of property in any way he wishes.

Willie can also "write out" his children from his will. The UPC only addresses pretermitted children within the context of children born or adopted after the execution of the will. See UPC Section 2-302. Here, there are no afterborn children, and so the pretermitted heirs language of the UPC would not apply. Moreover, the omission of Rose and Rob from the will is clearly intentional, so if the will is upheld, they would be foreclosed from any share in the estate.

Whether MaryAnn, Rose or Rob may make claims against Willie's estate.

A surviving spouse has the right to elect against the will under the UPC. Under these provisions, a surviving spouse can take possession of up to one-half of a testator's augmented estate. UPC Section 2-201(a) (amount of surviving spouse's election relates to the number of years of the marriage). Despite the fact of separation between Willie and MaryAnn, MaryAnn still qualifies as a surviving spouse under the UPC. Separation, even a formal decree of separation, "which does not terminate the status of husband and wife is not a divorce." UPC Section 2-802(a). Only divorce or annulment voids the relationship of surviving spouse under the UPC. Id. Thus, MaryAnn has the option to follow the statutory provisions to make this election and to receive at least a portion of Willie's estate. However, when MaryAnn dies, the unexpended amounts of her share of Willie's estate as a surviving spouse will most likely pass according to the residuary clause of Willie's will, or to the trust set up to care for Spot the dog and thereafter the Animal Rescue Society. See C.R.S. Section 15-11-206.

Another source from Willie's estate for MaryAnn, Rose, and Rob could be the homestead allowance, referenced in UPC Section 2-401, and the family allowance, referenced in UPC Section 2-403. The homestead allowance would go to MaryAnn. Id. at Section 2-401. The family allowance would apply if Rose and Rob were still minors, and would continue during the period of administration of the estate, but not for more than one year. Id. at Section 2-403.

COLORADO SUPREME COURT
Board of Law Examiners

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ESSAY Q9

SEAT

ISSUE		POINTS AWARDED
1.	In order to be valid as a holographic will, the document must (a) be in the testator's handwriting and (b) signed by the testator.	1. o
2.	Willie's 1996 secret will likely will be considered to be a valid holographic will because it meets these requirements.	2. o
3.	MaryAnn could argue that the will is invalid due to lack of testamentary capacity/mental capacity.	3. o
4.	Devise to dog Spot and Animal Rescue Society will likely be upheld as courts try to honor intentions of testator.	4. o
5.	Only divorce (not a legal separation) has the effect of nullifying a spouse's rights.	5. o
6.	MaryAnn is the surviving spouse because she and Willie were still married at the time of his death.	6. o
7.	MaryAnn can take an elective share of Willie's augmented estate despite his attempt to disinherit her in his will.	7. o
8.	MaryAnn's elective share will be a percentage of Willie's augmented estate calculated according to the length of the marriage.	8. o
9.	If the will is upheld, and if MaryAnn takes her elective share, the remainder of the estate shall pass to Spot the dog with the Animal Rescue Society as Trustee and ultimate beneficiary.	9. o
10.	If the will is invalidated, MaryAnn will take an intestate share as the surviving spouse.	10. o
11.	MaryAnn may also claim a homestead allowance and/or family allowance.	11. o
12.	Willie can disinherit his children Rose and Rob so long as it is intentional.	12. o
13.	The only way Rose and Rob may have a claim to Willie's estate is if the will is invalidated and they take an intestate share as heirs.	13. o
14.	Rose and Rob may be able to claim a family allowance while the estate is probated if they were minors at the time of Willie's death.	14. o

QUESTION 7

During his last illness, Tyler decided to make a will. He called his daughters, Alma, Beata, and Calla to his bedside. Because he was unable to write, Alma, in her own handwriting, wrote the text that her father dictated to her. Afterwards, Tyler signed the will in the presence of his children with an "X" at the end of the text Alma had handwritten for him. The entire will read as follows:

TYLER'S WILL

I, Tyler, leave all of my estate to my children, share and share alike.

X
(Tyler's mark)

Tyler died the following day. He was survived by Alma, Beata, Calla and two sons, Dwayne, and Earl. Earl was born out of wedlock, the result of an extramarital affair. Dwayne had two sons, Mark and Nathan, who also survived Tyler. Tyler's wife had predeceased him several years earlier.

Years earlier, after a family dispute, Dwayne had sent a signed letter to his father that stated, in pertinent part: "I want nothing more from you, including any inheritance."

Alma was appointed personal representative of Tyler's estate which consists of real property valued at $70,000, a bank savings account in the name of "Tyler in trust for Earl" in the amount of $5,000, and a certificate of deposit in the amount of $30,000 held in Tyler's name. The letter from Dwayne to Tyler was found by Tyler's personal representative in the same strong box in which the deed to the real estate, bank savings account passbook, and certificate of deposit were found.

QUESTION:

Discuss how Tyler's estate will be distributed. Assume the Uniform Probate Code is in effect in this jurisdiction and that Dwayne's disclaimer is valid.

DISCUSSION FOR QUESTION 7

Has Tyler executed a valid will?

A valid will is determined in accordance with UPC 2-502(a) and (b), which state:

(a) [A] will must be:

(1) in writing; (2) signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction; and (3) signed by at least two individuals, each of whom signed within a reasonable time after having witnessed either the signing of the will as described in paragraph (2) or the testator's acknowledgment of that signature or acknowledgment of the will.

(b) A will that does not comply with subsection (a) is valid as a holographic will, whether

or not witnessed, if the signature and material portions of the document are in the testator's handwriting.

Even though Tyler's will was in writing and signed by him, it does not meet the requirements of section 2-502(a) because it was not signed by at least two individuals as having been witness to signing or acknowledgment of the will. Likewise, Tyler's will does not meet the requirements of section 2-502(b) because the material portions of the will were in Alma's handwriting, not his own. As such, the will is not valid, and Tyler has died intestate.

How will Tyler's assets be distributed?

The bank savings account, held as "Tyler in trust for Earl," is a *Totten trust* type of multiple-persons account that passes outside of the intestate estate. According to UPC 6-212(a), "on death of a party sums on deposit in a multiple-party account belong to the surviving party ... ." As such, the $5,000 on deposit in the account now belongs to Earl and is not part of Tyler's intestate estate for purposes of distribution.

Tyler's estate consists of real property, valued at $70,000, and a certificate of deposit in the amount of $30,000 held in his name. According to UPC 2-101(a), "[a]ny part of a decedent's estate not effectively disposed of by will passes by intestate succession to the
decedent's heirs." UPC 2-103(1) further directs that the intestate estate "if there is no surviving spouse, passes ... to the decedent's descendants by representation."

According to UPC 1-107, "[r]elatives of the half blood inherit the same share they would inherit if they were of the whole blood." Thus, Earl will not be treated differently than Tyler's other children and will inherit the same intestate share as them.

When the decedent's estate passes by representation, the estate passes per capita at each
generation. In other words, the estate is first divided among members of the first generation of descendants at which there are living members. If any descendants at this level are deceased,
their shares are combined and divided equally among members of the next generation.[1]

Dwayne's disclaimed interest in Tyler's estate passes as though Dwayne predeceased Tyler. Therefore, Dwayne's interest in the estate will pass by representation to his heirs, Mark and Nathan.

Assuming that the real property is liquidated, the $100,000 will be distributed by representation by dividing it into five equal shares representing the surviving descendants Alma, Beata, Calla, Earl and Dwayne, who is treated as if he predeceased Tyler due to his disclaimer. Thus, Alma, Beata, Calla, and Earl will each receive $20,000. The remaining $20,000 will be distributed by representation to Dwayne's sons, Mark and Nathan, with

each receiving $10,000.

UPC 2-106(6) instructs that

The estate ... is divided into as many equal shares as there are (i) surviving descendants in the generation nearest to the decedent which contains one or more surviving descendants and (ii) deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent.

COLORADO SUPREME COURT
Board of Law Examiners

FEBRUARY 2006 BAR EXAM
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ESSAY Q7

SEAT

ISSUE		POINTS AWARDED
1.	A will must be (1) in writing; (2) signed by the testator; and (3) signed by at least two others, each of whom signed within a reasonable time after having witnessed either the signing of the will or the testator's acknowledgment of that signature or acknowledgment of the will.	1. ○
2.	Tyler's will was not valid because it was not witnessed by at least two individuals and there was no acknowledgment of the will.	2. ○
3.	A will is valid as a holographic will, whether or not witnessed, if the signature and material portions of the document are in the testator's handwriting.	3. ○
4.	Tyler's will is not a valid holographic will because the material portions of the will were in Alma's handwriting, not his own.	4. ○
5.	Because the will is not valid, Tyler has died intestate.	5. ○
6.	A decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs, and if there is no surviving spouse, it passes to the decedent's descendants by representation.	6. ○
7.	Relatives of the half blood, including illegitimacy, inherit the same share they would inherit if they were of the whole blood.	7. ○
8.	Earl will not be treated differently than Tyler's other children and will inherit the same intestate share as them.	8. ○
9.	Dwayne's interest in the estate will pass by representation to his heirs, Mark and Nathan.	9. ○
10.	On death of a party with sums on deposit in a multiple-party account, the sums on deposit belong to the surviving party.	10. ○
11.	The $5,000 on deposit in the bank savings account, held as "Tyler in trust for Earl," belongs to Earl and is not part of Tyler's intestate estate for purposes of distribution.	11. ○
12a.	Alma, Beata, Calla, and Earl will each receive $20,000.	12a. ○
12b.	The remaining $20,000 will be distributed by representation to Dwayne's sons, Mark and Nathan, with each receiving $10,000, due to Dwayne's disclaimer.	12b. ○

QUESTION 8

Tina Testator executed a valid will in 2003 which included the following two provisions:

1. I will leave a list of my valuable art in my bank safe deposit box. The list will include the names of the persons who are to receive my art.

2. I devise the residue of my estate to my cousin, Charles Turner.

In 2004, Tina validly executed a codicil to her will that devised Blackacre to Neighbor. The codicil was witnessed by Neighbor and Witness.

Tina died in 2006. A paper in Tina's handwriting was found in Tina's desk at her home after her death. In the top right hand corner of the paper Tina had written "May 6, 2004." The paper included a list of items of art. Next to the description of each item, Tina had written the name of a person. The paper did not include any other writing and was not signed. Tina owned each item described on the list when she died. No list of art was found in Tina's safe deposit box.

Tina did not have a cousin named Charles Turner. She, however, had a cousin named Charles Thomas, who she was not close to and had not seen in years. She also had a nephew named Charles Turner, who she was very close to and saw regularly.

QUESTION:

Discuss who will be the recipients of Blackacre, Tina's art collection, and the residue of her estate. Assume all persons named above survived Tina. Also assume the Uniform Probate Code is in effect in the jurisdiction where the above events took place.

DISCUSSION FOR QUESTION 8

I. Blackacre. Under the UPC, the fact that Neighbor was a beneficiary and a witness to the codicil will not affect the validity of the codicil or any provisions of the codicil. UPC §2-505(b). Thus, Neighbor will take Blackacre. A codicil is a testamentary instrument executed subsequent to a will which amends, alters or modifies the will. As with a will, a codicil requires that the testator have testamentary intent and testamentary capacity, and, further, the codicil must be duly executed.

II. Art Collection. The issue with respect to the art collection is whether it will be distributed to the persons named on the list found in Tina's desk. Under UPC §2-510, for the list to be incorporated by reference into Tina's will, it must have been in existence when the will was executed, and the will must manifest that intent and describe the list sufficiently to identify it. Because the date on the list indicates that it was made in 2004 it was not in existence when Tina executed the will in 2003. Therefore, it cannot be incorporated by reference into the will. In addition, the requirement that the will describe the separate writing sufficiently to identify it might also not be met, because the will describes a writing to be found in Tina's safe deposit box and the list was found in her desk.

UPC §2-513 allows tangible personal property, such as Tina's art, to be disposed of pursuant to a signed, separate writing referred to in the will, regardless of whether the separate writing was in existence when the will was executed. Because Tina did not sign the list, however, it will not be given effect under §2-513. Similarly, the list will not qualify as a holographic codicil because it was not signed by Tina. UPC §2-502(b).

Under UPC §2-503, the list will be given testamentary effect as a part of Tina's will if it can be shown with clear and convincing evidence that Tina intended the list to be an addition to or an alteration of her will. Because the list does not include any reference to her will or other testamentary language, because the will refers to a list to be found in her bank safe deposit box and the actual list was found in her desk, and because Tina did not sign the list, it is doubtful that the clear and convincing evidence standard of § 2-503 will be satisfied.

Accordingly, the art collection should not pass to the persons named on the list, but instead should pass as a part of the residue of Tina's estate.

III. Residue. The residuary clause of Tina's will includes a latent ambiguity, because it leaves the residue to Tina's cousin, Charles Turner, and Tina did not have a cousin by that name. Extrinsic evidence is generally admissible to resolve latent ambiguities. *See, e.g., Ihl v. Oetting*, 682 S.W.2d 865 (Mo. App. 1984). Accordingly, the extrinsic evidence that Tina was close to her nephew, Charles Turner, and was not close to her cousin, Charles Thomas, will be admissible to resolve the ambiguity and cause the residue to be distributed to her nephew, Charles Turner.

COLORADO SUPREME COURT
Board of Law Examiners

JULY 2007 BAR EXAM
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ESSAY Q8

SEAT | | | | |

ISSUE		POINTS AWARDED
1.	Elements of Will or Codicil:	
1a.	Testamentary Capacity	1a. ○
1b.	Must be signed by the Testator	1b. ○
1c.	Must be witnessed by two natural persons	1c. ○
2.	Blackacre would pass to neighbor pursuant to the Codicil.	2. ○
3.	Neighbor's witnessing of the Codicil does not invalidate the Codicil.	3. ○
4.	Since the list of the artworks was not in existence at the time of Tina's death, it will not pass to those persons pursuant to UPC §2-510.	4. ○
5.	Because Tina did not sign the list of artwork, it cannot serve to pass the artwork pursuant to UPC §2-513.	5. ○
6.	The artwork would pass as part of the residuary.	6. ○
7.	Since Tina did not have a cousin by the name of Charles Turner, a latent ambiguity in the will exists.	7. ○
8.	Because a latent ambiguity exists, extrinsic evidence will be allowed to be offered to determine who receives the residuary.	8. ○
9.	The nephew will receive the residuary.	9. ○

QUESTION 9

As she was nearing death in the hospital, Jane (a widow) phoned Friend and stated: "I'm going to dictate a will to you and ask you to type it out and sign it for me." Friend agreed and Jane dictated the following to her over the telephone:

> I, Jane, make this my last will and testament. I want my sister, Susie, and my two surviving brothers, Ben and Jerry, to have everything, share and share alike. Susie will be executor of my estate.

After Friend read back to Jane what she had typed, Jane instructed: "OK, that's fine. Please print it out, sign it on my behalf, and keep it in a safe place." After hanging up the phone, Friend printed the will and signed Jane's name to it as Jane had directed. Friend's husband and daughter signed as witnesses.

Jane died the following day. The total value of Jane's estate is $300,000. She is survived by siblings Susie, Ben, and Jerry, and her sons, Sam and Sal. Her only daughter, Dora, predeceased Jane years before. Dora has two sons, David and Harry. Sam had no children, and Sal has two daughters, Thelma and Louise.

A few years before she died, Jane had given Dora $100,000. Jane enclosed the following letter when she sent the money to Dora:

> I know you are in desperate need of this money now, so I'm giving it to you now and will deduct it from your inheritance later.

Several months before Jane died, Sal won the lottery. Shortly thereafter, Sal sent his mother the following note:

> Dear Mother,
> As you know, I'm now well off financially and don't need whatever I might inherit from you. I would rather that you think of the rest of our family and not consider me in your estate planning. Love, Sal.

Sal's note was found among Jane's effects following her death.

QUESTION:

Discuss how Jane's estate will be distributed. Assume the Uniform Probate Code is in effect in the jurisdiction where the will is to be probated. Also, assume Jane was competent at the time she dictated her will.

DISCUSSION FOR QUESTION 9

Did Jane execute a valid will?

Whether Jane's will is valid will be determined by UPC § 2-502(a) and (b). Those sections read:

(a) a will must be

(1) in writing;

(2) signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction; and

(3) signed by at least two individuals, each of whom signed within a reasonable time after having witnessed either the signing of the will as described in (2) or the testator's acknowledgment of that signature or acknowledgment of the will;

(b) a will that does not comply with subsection (a) is valid as a holographic will, whether or not witnessed, if the signature and material portions of the document are in the testator's handwriting.

Jane's will was in writing and signed by two witnesses. In addition, the will was signed by Friend at Jane's direction, but it was not signed "in the testator's conscious presence" as required by section 2-502(a)(2). "Signing [by another person] is sufficient if it was done in the conscious presence, i.e., within the range of the testator's senses such as hearing; the signing need not have occurred within the testator's line of sight." UPC § 2-502 (comment). Rather, Friend signed the will in another location and after ending her telephone conversation with Jane. Because the signing occurred outside of range of Jane's senses, the will does not meet the requirements of section 2-502(a). As the material portions of the will are not in Jane's handwriting, it is not a valid holographic will. Accordingly, the will is invalid, and Jane has died intestate.

Did Jane make an advancement to Dora?

According to UPC § 2-109(a): If an individual dies intestate as to all or a portion of his or her estate, property the decedent gave during the decedent's lifetime to an individual who, at the decedent's death, is an heir is treated as an advancement against the heir's intestate share only if ... the decedent declared in a contemporaneous writing or the heir acknowledged in writing that the gift is an advancement.

The letter that Jane sent to Dora with the check stated, "I know you are in desperate need of this money, so I'm giving it to you now and will deduct it from your inheritance later." This makes clear that Jane intended to the gift of $100,000 to be an advancement to Dora. However, Dora predeceased Jane. "If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the division and distribution of the decedent's intestate estate, unless the decedent's contemporaneous writing provides otherwise." UPC § 2-109(c). Therefore, the amount of the advancement will not be deducted from the intestate shares of Dora's sons, David and Harry.

Has Sal disclaimed his interest in Jane's intestate estate?

According to the Uniform Disclaimer of Property Interests Act (UDPIA), "[a] person may disclaim, in whole or in part, any interest in or power over property." UDPIA § 2-1105(a)(formerly UPC § 2-801):

> To be effective, a disclaimer must be a writing or other record, declare the disclaimer, describe the interest or power disclaimed, be signed by the person making the disclaimer, and be delivered or filed [with the decedent estate's personal representative or a court having jurisdiction to appoint a personal representative].

UDPIA § 2-1105(c); see also UDPIA § 2-1112(c)(delivery or filing). "The disclaimer takes effect ... if the interest arose under the law of intestate succession, as of the time of the intestate's death." UDPIA § 2-1106(b)(1). "The disclaimed interest passes ... as if the disclaimant had died immediately before the time of distribution." UDPIA § 2-1106(b)(2).

Sal's letter to Jane stating that he did not "need whatever I might inherit from you" and that he "would rather that you think of the rest of our family and not consider me in your estate planning" will serve as a disclaimer of his interest in Jane's intestate estate. The disclaimer, which was in a written note and signed by Sal, unambiguously disclaimed any right of inheritance. The disclaimer was delivered to Jane and was found with Jane's effects. The disclaimer took effect upon Jane's death and Sal's interest in the estate will pass by representation to his daughters, Thelma and Louise.

How will Jane's intestate estate be distributed?

The total value of Jane's estate is $300,000. According to UPC § 2-101(a), "any part of a decendent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs". UPC § 2-103(1) further directs that the intestate estate "if there is no surviving spouse, passes ... to the decedent's descendants by representation." When the decedent's estate passes by representation, UPC § 2-106(6) instructs:

> The estate ... is divided into as many equal shares as there are (i) surviving descendants in the generation nearest to the decedent which contains one or more surviving descendants and (ii) deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent.

The $300,000 will be distributed by representation by dividing it into three equal shares representing the surviving descendants, Sam and Sal, and the predeceased descendant, Dora, as they are in the generation nearest to Jane containing one or more surviving descendants. Sam will receive $100,000. Due to his disclaimer, Sal will be treated as if he predeceased Jane. See UDPIA § 2-1106(b)(3)(A). Thus, the remaining shares of Dora and Sal will be combined, and the total amount of $200,000 will be divided into equal shares and distributed by representation to Dora's sons, David and Harry, and to Sal's daughters, Thelma and Louise, with each receiving $50,000. Siblings Susie, Ben, and Jerry receive nothing.

COLORADO SUPREME COURT
Board of Law Examiners

FEBRUARY 2008 BAR EXAM
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ESSAY Q9

SEAT

ISSUE		POINTS AWARDED
1.	To be valid, a will must be (1) in writing; (2) signed by the testator; and (3) signed by at least two others, each of whom signed within a reasonable time after having witnessed either the signing of the will or the testator's acknowledgment of that signature or acknowledgment of the will.	1. ○
2.	Even though Jane's will was in writing and signed by two witnesses, it is not a valid will because it was not signed by her or by another within her conscious presence.	2. ○
3.	Because Jane's will is invalid, her estate will pass to her descendants by intestate succession.	3. ○
4a.	Property Jane gave her daughter Dora during her lifetime may be treated as an advancement.	4a. ○
4b.	Because Jane declared in a contemporaneous writing that the gift was an advancement, such gift will therefore be counted against Dora's share.	4b. ○
4c.	Because Dora failed to survive Jane, the advancement is not taken into account in computing the division and distribution of Jane's intestate estate to Dora's sons, David and Harry.	4c. ○
5.	A person may disclaim any interest in property if it is in writing, describes the interest disclaimed, is signed by the disclaimant, and is delivered to the decedent estate's personal representative.	5. ○
6.	Sal's note to Jane was a disclaimer of interest in Jane's intestate estate which took effect upon Jane's death so that Sal's interest in the estate will pass by representation to his heirs, Thelma and Louise.	6. ○
7.	Son Sam receives $100,000 (1/3).	7. ○
8a.	Nephews David and Harry receive $50,000(1/6) each.	8a. ○
8b.	Nieces Thelma and Louise receive $50,000(1/6) each.	8b. ○
9.	Siblings Susie, Ben, and Jerry receive nothing.	9. ○