

**FACULTY OF LAW
FINAL EXAMINATION – DECEMBER, 2005**

LAW 582 WILLS (BROWN)

Time allotted: **TWO (2) Hours**

Code Number: DO NOT ENTER YOUR NAME ON ANY PART OF YOUR EXAMINATION. To ensure anonymity during marking, a list will be circulated in the course of the examination and you are to enter your name opposite a number on that sheet. That number will be your code number FOR THIS EXAMINATION ONLY. Please enter it at the top of the front page of your examination paper.

Special instructions:

1. This examination paper contains one (1) question on three (3) pages (*not including this page*). Please check NOW to ensure that you have received a complete examination. Raise your hand immediately if your paper is incomplete.
2. This examination is an **OPEN BOOK EXAMINATION**. You may consult any materials you find helpful.
3. **WRITE IN COMPLETE SENTENCES**. Credit will not be awarded for point-form answers.
4. **WRITE LEGIBLY**. If this means that you must write on every other line, then please do so.
5. Computers, cell phones, pagers, beepers and related devices are strictly forbidden. Please turn off and stow away such devices immediately.
6. Adhere strictly to the time limitation imposed on this examination. Failure to stop writing at the end of the examination may lead to a deduction of grades or failure to accept the examination paper.
7. As a courtesy to your classmates, if you finish your examination during the last 15 minutes of the examination period, please do not leave the room.

PLEASE DO NOT TURN THE PAGE TO BEGIN READING THE EXAMINATION UNTIL YOU ARE INVITED TO DO SO

In May, 1952, Viola Parkinnen, then a 20 year old waitress living in Grande Prairie, Alberta, married Archie Johnson, a logger from Beaverlodge, Alberta. Archie loved his new bride dearly, and she loved him. Shortly after their wedding, they settled as Mr. and Mrs. Archie and Viola Johnson near Beaverlodge. In 1997, after 45 years of happy marriage and hard work, they retired to Red Deer, Alberta. Archie passed away in September, 2005.

Viola and Archie had one child – a daughter, Philippa Johnson, born in 1957. Viola and Philippa speak only occasionally, as Viola disapproves of almost everything Philippa does in life. Philippa also had but one child – a daughter, Essa – who is now 16 years old. Philippa and Essa are estranged from each other and, with Viola's financial support, Essa lives on her own in an apartment in Red Deer. Essa has just last month been diagnosed as suffering from a rare and incurable kidney disorder, and has been given between one year and five years to live. This tragedy is all the more acute because Essa had just given birth to her first child (a boy, Nicholas, now four months old) – fathered by a former boyfriend with whom Essa has not maintained contact. Viola wishes to continue providing financial support for Essa but, at the same time, she wants to make sure that Essa does everything necessary to see that Essa's estate goes entirely to Nicholas after Essa dies. In particular, Viola wants to ensure that on Essa's death, Philippa will take nothing. Essa is agreeable to doing "whatever it takes", including making a will, to keep her mother from inheriting anything of hers, and to make sure that all of her estate goes to Nicholas.

Essa's father is a former boyfriend of Philippa named Michael Ip. Michael has been missing since the southeast Asian tsunami of December 26, 2004. He and his wife Bonnie had taken a Thai beach vacation in order to try to recover from the sudden and unexpected death of their 4 year old son James, in October, 2004. Michael was last seen by Bonnie sunning himself on the beach, approximately five minutes before the tsunami struck. Michael's will, made shortly after his marriage to Bonnie in 1995, divided his estate equally between Essa and James. It also expressly excluded Ryan Ip, a child born to Michael and a former girlfriend, as (in the words of Michael's will) "*he has refused to have any association with me or to take any financial support from me, despite my numerous offers.*" Viola wishes to see Michael's entire estate – valued at over \$700,000 – go in its entirety to Essa.

Remarkably, Viola's mother, Doris Parkinnen, is alive and well at 95 years of age, and lives in a seniors' home in Beaverlodge, Alberta. Doris still takes short walks in the garden every day, and participates in weekly bridge tournaments at Beaverlodge's Sons of Finland Cultural Centre. Her living arrangement at the seniors' home is "semi-independent" (meaning she keeps her own apartment, but her meals are provided for her). She has never sought help in managing her pension income or her portfolio of investments, worth approximately \$600,000, and which generates sufficient income to pay the rent at the seniors' home.

From her 8th birthday and until she was 14 years old, Doris was confined to “The Princess Royal’s Asylum for Lunatics.” She is a devout Lutheran and takes a taxi to church every Sunday. She believes that Viola has been possessed by Satan. She loves watching the CBC News on television, particularly when, as she puts it, “Peter Mansbridge stops talking about the news and has a little chat with me about how Viola is going to hell.”

Doris had once shown Viola a copy of her will, which divided her estate among her three children: Viola, Rolf and Marie. (Sadly, Marie passed away in a car accident near Airdrie, Alberta, in September, 2005, while driving to Archie’s funeral.) Then, in October, Viola received a letter from Doris, enclosing a copy of a new codicil to her will. The codicil revokes all earlier testamentary gifts and leaves half of Doris’s estate to Rolf, and half to the Beaverlodge Independence Party (the “BIP”), which advocates the separation of Beaverlodge from Canada. While the gift to the BIP caught Viola by surprise, what worries her about it is that Rolf is a founding member and the current President of the BIP. Furthermore, it seems to Viola that Rolf has been spending a lot of time with Doris this past year. On several occasions when Viola (who now lives in Red Deer) has phoned to chat with Doris, Rolf has answered the phone and told Viola that “mom can’t talk right now, she’s having a nap.” Viola has tried calling at different times of day, but still gets the same answer. Viola is reluctant to complain, because he knows that Rolf is a help to Doris, even to the extent of helping Doris with her new codicil. (Viola is able to tell this because Rolf signed the codicil as one of the witnesses).

Perhaps because her mother’s new codicil has left Viola’s mind consumed with matters testamentary, Viola has decided to try drawing up her own will, which she has shown you. She wrote it just a few weeks ago, while visiting friends in Kalispell, Montana, on a piece of her own personalized stationary. At the top of the page appears, in engraved lettering, “**From the Desk of Viola A. Johnson.**” Then, immediately below the engraved letters, and off to the far left-hand side of the page, appears Viola’s handwritten signature. Then, below that, the entirety of the rest of the page is taken up with the following handwritten text:

*This is the last will and testament of me, Viola Anna Johnson
(née Parkinnen), made in Kalispell USA, on November 25, 2005.*

*I was born in Pouce Coupe, British Columbia. When I was 5, my
father moved us all out to Alberta. I have had a happy life,
thanks to my father’s thrift and my husband’s affection.*

*I revoke all previous wills or other similar such documents, and I
appoint my friend Bert Saunders as my executor.*

*My sole disappointment in life has been my daughter Philippa.
The only good thing she has ever done is give me a beautiful
granddaughter, Essa. I pray that a miracle will cure Essa. Essa
is to have everything I own in this world. If God sees fit to call
Essa home before me, then I give everything to Essa’s son
Nicholas.*

Viola misses Archie, but she also misses deeply her sister Marie, with whom she had remained very close since childhood. She remembers the day Marie had her first will prepared and executed. It was 1955, and Marie was 21 years old. Viola recalls Marie's exact words to her: "Now that I'm getting married, I suppose I'd better start acting like an adult and get a will." Viola recalls the will itself, which Marie showed to her when she had returned from the lawyer's office in Grande Prairie. Viola distinctly remembers being moved by the romantic language which Marie employed, leaving her entire estate "*to my beloved Halvor Likkell, whose proposal of marriage I have solemnly accepted, in anticipation of a lifetime of love together.*" Then, it also read, "*Failing Halvor surviving me by 30 days, I leave everything to Beaverlodge's Sons of Finland Cultural Centre.*"

In 1956, Marie married Halvor. Just a few, all-too-short months later, Halvor was killed in a logging accident. They had no children, and Marie never remarried, instead grieving Halvor's death until her own death 49 years later. A few weeks after Marie died, Viola travelled to Marie's house in Lethbridge, Alberta to sort through her belongings. As she went through Marie's papers, she found a typewritten note, signed by Marie, and dated March 31, 1996, which stated "*I hereby state my desire that the will I made in 1955 be revoked.*" The note contained no other statement or notation. The will which Marie had showed Viola in 1955 was nowhere to be found. This surprises Viola, not only because Marie was a fastidious housekeeper, but also because Viola happened upon the will by accident while helping Marie put away dishes after Christmas dinner in 2000 – it was under the cutlery tray in a drawer in Marie's kitchen.

Currently, Viola's property consists principally of her small home in Red Deer (which she holds in fee simple), the chattels she keeps in her home, a 1994 Chevrolet Corsica automobile (which she rarely uses and is parked at her home), and a small parcel of realty at her birthplace at Pouce Coupe, British Columbia (also in fee simple). She uses the Pouce Coupe realty as a summer residence. She loves that place – in part because it is where she scattered Archie's ashes just this past Thanksgiving. She is giving serious thought to having it "winterized" so that she can live out her last years there year-round.

Please write a memorandum to Viola addressing ALL wills law issues that may arise in the facts set out above and give full reasons to support your answers.

Please indicate in your memorandum if you need more information on any matter and, if your advice to her depends on what such additional information might reveal, please canvass the possible outcomes.

Additionally, if the outcome of a particular issue is uncertain, please canvass the various possible outcomes.

END OF EXAMINATION