TIME ALLOTTED: Three (3) Hours

CODE NUMBER: DO NOT ENTER YOUR NAME ON ANY ANSWER SHEETS OR BOOKLETS. A list will be circulated and your name is to be entered opposite a number on that sheet. That number will be your code number FOR THIS EXAMINATION ONLY and should be entered on the examination booklets in the space provided for your surname. This will provide for anonymity during marking.

INSTRUCTIONS:

1. This examination question paper contains 3 questions on 4 pages. Check to ensure that it is complete before starting.

2. Answer ALL questions. The questions are NOT of equal value. Please apportion your time intelligently.

3. This is an OPEN BOOK examination.

4. Unless otherwise stated, all events took place in the Province of Alberta.

5. Adhere to the time limitation imposed on this examination. Failure to stop writing at the end of the examination may lead to a deduction of marks or the refusal to accept the examination paper.

6. Please do not leave the room during the last 15 minutes of the examination to avoid disturbing your classmates.

VALUE QUESTION (40 marks)

1. Craig and Samantha had lived in a conjugal relationship with each other for a continuous period of five years. Throughout this time, Craig was lawfully married to Theresa from whom he had been separated for many years. Like Craig, Theresa was involved in a sexual relationship with another person. Craig and Theresa had an adult son.

Samantha was a divorced woman. She and her former husband were the parents of two infant daughters.
In July of last year, Craig’s adult son and a friend attempted to rob a local bank. They were chased from the bank by police officers and ultimately sought refuge in Craig’s house, despite heated protests by both Craig and Samantha. Craig, Samantha and Samantha’s two daughters were killed by bullets fired at Craig and his friend by the police officers who had chased them.

Craig was older than Samantha.

After Samantha’s death, a document containing both typed and handwritten words was found in her desk. It was clear from the document that Samantha had wanted both the typed and the handwritten words to have effect.

The handwritten words were as follows:

“If neither of my daughters survives me, I would want Craig to have all of my money.”

This document was signed on the last page by Samantha and by two other people. It had been prepared in its entirety by Samantha who signed it before she and Craig took it by automobile to the home of two friends. The two friends came out of their home to speak to Craig and Samantha who both remained seated in the automobile.

In the presence of Samantha and both friends, Craig explained that Samantha wanted the friends to witness her signature on a very special document. Craig then exited the automobile and placed the last page of the document on the hood of the automobile.

He carefully placed a blotter over everything written on the last page before asking the two friends to sign as witnesses in the space below the blotter. Samantha watched the two friends sign their names through the windshield of the automobile. After the two friends signed, neither of them could recollect seeing Samantha’s signature on the document.

Samantha was a wealthy woman with assets of many different kinds.

Craig died intestate. Among his assets was a life insurance policy in which he had named Samantha sole beneficiary.

Samantha’s former husband and her mother are competing for Samantha’s estate. Samantha was predeceased by her father. Craig’s adult son, from his cell in the Remand Centre, has claimed some of Craig’s estate.

IDENTIFY AND RESOLVE THE ISSUES RAISED BY THESE FACTS.
VALUE QUESTION
(40 marks)

2. The executors named in the testator’s formal will predeceased the testator. Two individuals were appointed after the testator’s death to act as his legal personal representatives. They are concerned about the following matters:

(a) In the will, the testator gave a generous gift to each person who acted as his legal personal representative. One of the persons appointed to act in this capacity was a witness to the testator’s will. The testator’s signature was witnessed by this person and two others.

(b) The testator had given the lawyer who prepared the will specific instructions about how he wished to dispose of the residue of his estate. An appropriate clause was included in the draft copy sent to the testator for approval but was inadvertently omitted from the will which the testator signed. No one noticed the omission at that time. The lawyer who prepared the will is able to give evidence about the wording of the residuary clause.

(c) It seems that the will was made shortly after the funeral of one of the testator’s siblings. The testator told the lawyer that he wished to give the residue of his estate to his living brothers and sisters. After the testator made his will, another sibling died.

(d) The testator had wanted to give his signet ring to a brother and his late wife’s pearl necklace to a sister. In the will, the ring was given to the sister and the pearl necklace to the brother.

(e) The testator was a member of the Progressive Conservative Party. After making his will, the testator obliterated a bequest of a sum of money to a daughter with correction fluid. In the margin of the will, the testator wrote, “... she having treacherously become a member of that misguided socialist part ...” This handwritten notation was initialled by the testator and signed by two witnesses. After the testator’s death, it was discovered that the testator was mistaken about his daughter’s political allegiance. She had remained a proud member of the Progressive Conservative Party.

(f) Towards the end of his life, the testator entered into two separate option agreements with respect to two pieces of land that he owned. One of the options was granted before the testator made his will. The second was granted after he made his will. Both options were exercised after the testator’s death. In his will, the testator gave each of the pieces of land to a specific beneficiary.

IDENTIFY AND RESOLVE THE ISSUES RAISED BY THESE FACTS.
After several years of living together in a common law relationship, Daniel and Frieda executed a formal joint will. The will has prepared by lawyer and duly executed. It provided that one-tenth of the estate of the first to die was to go to the other. It also provided that nine-tenths of the estate of the first to die and all of the estate of the survivor of them was to be divided equally among certain mutual friends.

Nothing is known about what preceded the execution of the joint will.

Daniel and Frieda then married. Before leaving on his honeymoon, Daniel drew a line in the margin of the joint will by the clause dealing with the gifts to the mutual friends. Beside this line, he wrote, “One-half of this property is to go to my wife. Everything else is to remain the same.” He then signed his name below the words that he had written.

Daniel and Frieda were killed on their honeymoon. Frieda was two months younger than Daniel.

The mutual friends are concerned that they may not get 90% of Daniel’s estate and 100% of Frieda’s estate.

**Identify and Resolve All of the Issues Raised by these Facts.**