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Multistate Performance Test

Estates of Nguyen

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Estates of Nguyen

FILE

Memorandum to examinee 1

Last Will and Testament of Linh Ha Nguyen 2

Last Will and Testament of John Khanh Nguyen 2

Certified Death Certificate of Linh Ha Nguyen 3

Certified Death Certificate of John Khanh Nguyen 3

Deed to 432 Fairview Drive, Utopia Springs, Franklin 4

Franklin Mutual Life Insurance Policy 5

Columbia Insurance Company Life Insurance Policy 5

LIBRARY

Excerpt from Walker's Treatise on Trusts and Estates 7

Excerpts from Franklin Probate Code 8

In re Estates of Skow, Franklin Court of Appeal (2007) 10

FILE

Littleton & Wallace LLC
Attorneys at Law
42 First Street
Utopia Springs, Franklin 33402

MEMORANDUM

To: Examinee
From: LaVonda Wallace
Date: July 28, 2026
Re: Estates of Linh and John Nguyen

Linh Ha Nguyen and John Khanh Nguyen recently died. Tragically, they were in a car accident a month ago. They are survived by their adult children, Brandon Nguyen and Melissa Nguyen-Stevenson. Linh and John both had relatively simple wills. The wills were probated in the appropriate court in the State of Franklin and were determined to be valid, and Melissa was appointed executor in accordance with her parents' wishes. Melissa retained our firm to represent her in the administration of her parents' estates. She is seeking advice on the distribution of her parents' assets.

Please draft a memorandum to me that explains the correct distribution of the Nguyens' assets under the controlling documents and relevant Franklin law. In your memorandum, please discuss the following topics:

(1) As a preliminary matter, I believe that the Uniform Simultaneous Death Act of 1993 (USDA 1993), which has been adopted in Franklin, may apply. Clearly explain the applicability or inapplicability of this statute to the Nguyens' deaths.

(2) Regardless of your conclusion on the statute's applicability, explain the correct distribution of the following assets under the USDA 1993:

(a) John's interest and Linh's interest in the home located at 432 Fairview Drive;

(b) the proceeds of Linh's and John's life insurance policies; and

(c) any other assets under the applicable provisions of John's will and Linh's will.

Last Will and Testament of Linh Ha Nguyen (excerpt)

I, Linh Ha Nguyen, a resident of St. John's County, Franklin, do hereby declare this to be my last will and testament, hereby revoking all prior wills and codicils.

. . .

2.1 I give all of my property, including real property, tangible personal property, and intangible personal property, to my husband, John Khanh Nguyen, if he survives me. If we die simultaneously, or if we die within three days of each other, I give my property in equal shares to my son Brandon Nguyen and my daughter Melissa Nguyen-Stevenson. Otherwise, I give my property in equal shares to my son Brandon Nguyen, my daughter Melissa Nguyen-Stevenson, and Franklin Animal Rescue Inc.

. . .

3.1 I appoint my daughter Melissa Nguyen-Stevenson to be the executor of my estate.

Last Will and Testament of John Khanh Nguyen (excerpt)

I, John Khanh Nguyen, a resident of St. John's County, Franklin, do hereby declare this to be my last will and testament, hereby revoking all prior wills and codicils.

. . .

2.1 I give all of my property, including real property, tangible personal property, and intangible personal property, to my wife, Linh Ha Nguyen, if she survives me. If she does not survive me, I give my property in three equal shares to my son Brandon Nguyen, my daughter Melissa Nguyen-Stevenson, and the University of Franklin Medical Center.

. . .

3.1 I appoint my daughter Melissa Nguyen-Stevenson to be the executor of my estate.

Certified Death Certificate of Linh Ha Nguyen (excerpt)

Name of Decedent: Linh Ha Nguyen

Sex: Female **Age:** 63 **Date of Birth:** August 23, 1962
Birthplace: Ha Tien, Kien Giang Province, Vietnam
Residence: 432 Fairview Drive, Utopia Springs, St. John's County, Franklin

Place of Death: Intersection of Reiter Rd. and Third Street, City of Whitney, Franklin
Date and Time of Death: March 18, 2026, 10:23 p.m.
Cause of Death: Trauma due to automobile accident;
pronounced dead at scene by EMT
Name of Person Certifying Death: Cynthia Nance, M.D.
Title of Person Certifying Death: Attending Physician
License Number: A24795-9983
Was Medical Examiner Contacted? Yes.

Certified Death Certificate of John Khanh Nguyen (excerpt)

Name of Decedent: John Khanh Nguyen

Sex: Male **Age:** 64 **Date of Birth:** October 2, 1961
Birthplace: West Morriston, St. John's County, Franklin
Residence: 432 Fairview Drive, Utopia Springs, St. John's County, Franklin

Place of Death: St. John's County Medical Center
Date and Time of Death: March 20, 2026, 10:03 p.m.
Cause of Death: Multiple organ failure due to injuries from automobile accident
Name of Person Certifying Death: Cynthia Nance, M.D.
Title of Person Certifying Death: Attending Physician
License Number: A24795-9983
Was Medical Examiner Contacted? Yes.

Deed to 432 Fairview Drive, Utopia Springs, Franklin

General Warranty Deed

Made the 14th day of May, 2009

BETWEEN

Laura Drake Williams (Grantor)

And

Linh Ha Nguyen and John Khanh Nguyen, a married couple (Grantees)

WITNESSETH

That the Grantor, in consideration of THREE HUNDRED FIFTY THOUSAND DOLLARS paid by the Grantees to the Grantor, the receipt whereof is hereby acknowledged, does hereby grant and convey to the Grantees, as joint tenants with right of survivorship and not as tenants in common:

[Legal description of the 432 Fairview Drive property]

. . .

The grantor shall and will Generally Warrant the property hereby conveyed.

In witness whereof, the Grantor has caused this Deed to be executed as of the day and the year written above,

Laura Drake Williams

State of Franklin
County of St. John's

On this, the 14th day of May, 2009, before me, a Notary Public, the undersigned officer, personally appeared Laura Drake Williams, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that she executed the same for the purposes therein contained.

In witness whereof, I have hereunto set my hand and notarial seal.

Jane Mirren
Notary Public
My commission expires 2/28/2028

Franklin Mutual Life Insurance Policy (excerpt)

Insured: Linh Ha Nguyen

Death Benefit: $500,000

Beneficiary Designation: My husband, John Khanh Nguyen, if he survives me. If he does not survive me, I designate my children, Brandon Nguyen and Melissa Nguyen-Stevenson, as beneficiaries in equal shares.

Columbia Insurance Company Life Insurance Policy (excerpt)

Insured: John Khanh Nguyen

Death Benefit: $600,000

Beneficiary Designation: My wife, Linh Ha Nguyen, if she survives me. If my wife and I die simultaneously, or if we die within three days of each other, I designate my estate to be the beneficiary of this policy. Otherwise, I designate my children, Brandon Nguyen and Melissa Nguyen-Stevenson, as beneficiaries in equal shares.

LIBRARY

Excerpt from Walker's Treatise on Trusts and Estates

§ 9 Simultaneous Death. The Uniform Simultaneous Death Act (USDA) is a model law designed to address inheritance issues that arise when two or more individuals die simultaneously or in close succession to each other. Simultaneous or close succession deaths often complicate the distribution of estates, especially when determining the order of inheritance.

Historical Background. The USDA was first promulgated in 1940 by the Uniform Law Commission to provide a standardized approach for states to resolve inheritance questions in cases of simultaneous death. The original act was widely adopted across the United States. In 1993, the Act was revised to incorporate a 120-hour (five-day) survival requirement, aiming to simplify estate administration and prevent assets from passing through multiple estates in quick succession.

Policy Provisions. The core provision of the USDA 1993 stipulates that if an individual does not survive another by at least 120 hours, the individual is deemed to have predeceased the other for purposes of asset distribution. This rule applies unless a will, trust, or other governing instrument explicitly states otherwise. The Act covers various scenarios, including intestate succession, wills, joint tenancies, and life insurance policies. By implementing the USDA, states aim to reduce legal disputes between beneficiaries and prevent the need of multiple probate proceedings associated with simultaneous deaths or close succession deaths, ensuring a more straightforward and efficient distribution of assets.

Practical Effect. The USDA often arises when spouses die within 120 hours of each other and each spouse has designated the other as the primary beneficiary in their wills. In this situation, if the spouses die within 120 hours of each other, the law treats each spouse as if that spouse had predeceased the other. As a result, and regardless of the order of deaths, neither spouse's assets pass to the other spouse or the other spouse's estate, if the bequest to the other spouse was subject to a survivorship contingency. Rather, the assets go to each spouse's secondary (or contingent) beneficiary or beneficiaries in each of the spouses' wills.

Excerpts from Franklin Probate Code
Uniform Simultaneous Death Act (1993)

§ 1 Definitions. In this Act,

(1) "Co-owners with right of survivorship" includes joint tenants, tenants by the entireties, and other co-owners of property or accounts held under circumstances that entitle one or more to the whole of the property or account on the death of the other or others.

(2) "Governing instrument" means a deed, will, trust, insurance or annuity policy, ...

§ 2 Requirement of Survival by 120 Hours Under Probate Code. Except as provided in Section 6, if the title to property, the devolution of property, [or] the right to elect an interest in property depends upon an individual's survivorship of the death of another individual, an individual who is not established by clear and convincing evidence to have survived the other individual by 120 hours is deemed to have predeceased the other individual. . . .

§ 3 Requirement of Survival by 120 Hours Under Governing Instrument. Except as provided in Section 6, for purposes of a provision of a governing instrument that relates to an individual surviving an event, including the death of another individual, an individual who is not established by clear and convincing evidence to have survived the event by 120 hours is deemed to have predeceased the event.

§ 4 Co-Owners with Right of Survivorship: Requirement of Survival by 120 Hours. Except as provided in Section 6, if it is not established by clear and convincing evidence that one of two co-owners with right of survivorship survived the other co-owner by 120 hours, one-half of the property passes as if one had survived by 120 hours and one-half as if the other had survived by 120 hours . . . .

§ 5 Evidence of Death or Status. In addition to the rules of evidence in courts of general jurisdiction, the following rules relating to a determination of death and status apply:

. . .

(2) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie evidence of the fact, place, date, and time of death and the identity of the decedent. . . .

§ 6 Exceptions. Survival by 120 hours is not required if

(1) the governing instrument contains language dealing explicitly with simultaneous deaths or deaths in a common disaster and that language is operable under the facts of the case;

(2) the governing instrument expressly indicates that an individual is not required to survive an event, including the death of another individual, by any specified period or expressly requires the individual to survive the event for a specified period; but survival of the event or the specified period must be established by clear and convincing evidence;

. . .

§ 8 Uniformity of Application and Construction. This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

In re Estates of Skow
Franklin Court of Appeal (2007)

David and Mary Skow, a married couple, died in 2004 within minutes of each other. David and Mary were married on June 3, 1995. Each had children from a prior marriage. David had two children: Max Skow and Janet Dyre. Mary had three children: Nancy Bard, William Bard, and Cindy Bard. We will refer to these groups as "David's children" and "Mary's children" respectively.

Disputes arose over the distribution of the estates between David's children and Mary's children. The Albion County Probate Court resolved the disputed issues in favor of David's children. Mary's children appeal. We affirm.

David and Mary died from carbon monoxide poisoning apparently caused by a leak in the furnace exhaust in their home. A neighbor found them unconscious and unresponsive. The neighbor called 911, and the Skows were taken to Carrigan Hospital. Attempts to revive them were unsuccessful. According to their certified death certificates, David died at 9:32 p.m. on November 4, 2004, and Mary died at 9:36 p.m. on November 4, 2004.

David and Mary both had wills. David's will left his property to "my wife Mary, if she survives me, and, if she does not survive me, then in equal shares to my children, Max Skow and Janet Dyre." Mary's will left her property to "my husband David, if he survives me, and if he does not survive me, then in equal shares to my children and stepchildren, Nancy Bard, William Bard, Cindy Bard, Max Skow, and Janet Dyre." Thus, the wills differed in that David's listed only his children as contingent beneficiaries while Mary's listed both her children and David's children as contingent beneficiaries.

Mary's children argue that David's property should go to Mary's estate because Mary survived David by four minutes. If this were to be the case, then David's property would be distributed between all five of David's and Mary's children. David's children argue that from a legal perspective, David and Mary died simultaneously and that under the terms of the Uniform Simultaneous Death Act (1993) ("USDA 1993"), David's property would go to David's children.

The Franklin legislature enacted a statute adopting the USDA 1993 in 1995. The Uniform Law Commission enacted the first version of the Uniform Simultaneous Death

Act in 1940. Prior to the 20th century, it was rare for people who were married or close family relations to die simultaneously. With the invention of the automobile and air travel, simultaneous deaths became increasingly common. The Uniform Simultaneous Death Act was enacted to help the legal system solve problems that arise when people who should inherit from each other die simultaneously.

The 1940 version of the Uniform Simultaneous Death Act focused on whether the people at issue literally died simultaneously, leading to often detailed testimony about, for example, which of two people killed in an automobile accident died first. The USDA 1993 that is the current law in Franklin changes the focus from literal simultaneous death to whether the people at issue died within 120 hours (or five days) of each other. Put another way, the USDA 1993 effectively expands the concept of simultaneous death from people who die exactly at the same time to people who die within 120 hours of each other. The USDA 1993 version avoids some of the practical difficulties that arose from the 1940 version while remaining true to the likely intent of the drafters of survivorship provisions—if a document requires survivorship, it is likely that the drafter had in mind that the person survive an event (typically, but not always, the death of another person) by more than 120 hours.

Our first task is to determine whether the USDA 1993 applies by its terms to the Skows' deaths. Sections 2 through 4 of the USDA 1993 address simultaneous death by requiring proof by clear and convincing evidence that the person survived the event by 120 hours. In other words, the USDA 1993 presumes that the person *did not* survive the event by 120 hours and requires this presumption to be rebutted by proof of survival with clear and convincing evidence. Section 5(2) provides that a certified or authenticated copy of a death certificate provides "prima facie evidence of the fact, place, date, and time of death and the identity of the decedent."

In this case, the record includes the certified death certificates of both David and Mary Skow. These certificates indicate that Mary died four minutes after David. There is no other evidence in the record on the times of their deaths. Thus the Skows died within 120 hours of each other under the terms of the USDA 1993 for two independent reasons. First, the USDA 1993 creates a presumption that one person did not survive the other

by 120 hours. Second, the certified death certificates provide prima facie evidence of the times of their deaths that is not rebutted on this record.

In this case, we are interpreting the provisions of the Skows' wills. David named Mary as the primary beneficiary of his will but required Mary to survive him to take under the will. Similarly, Mary named David as the primary beneficiary of her will but required David to survive her to take.

The USDA 1993 covers this exact situation. Section 1(2) of the USDA 1993 includes wills within the definition of "governing instrument." Section 3 provides that "Except as provided in Section 6, for purposes of a provision of a governing instrument that relates to an individual surviving an event, including the death of another individual, an individual who is not established by clear and convincing evidence to have survived the event by 120 hours is deemed to have predeceased the event." None of the exceptions in Section 6 apply here.

Because there is no evidence that Mary survived David by 120 hours, Mary is deemed to have predeceased David for the purpose of interpreting David's will. As a result, Mary failed to meet the survivorship requirement in David's will. David's property would therefore go to the contingent beneficiaries in his will: his children Max Skow and Janet Dyre. Similarly, because there is no evidence that David survived Mary by 120 hours, David is deemed to have predeceased Mary for the purpose of interpreting Mary's will. David failed to meet the survivorship requirement, and Mary's property would go to the contingent beneficiaries of her will: her "children and stepchildren, Nancy Bard, William Bard, Cindy Bard, Max Skow, and Janet Dyre."

Mary's children argue that because Mary literally survived David (although by only four minutes), she should be deemed to have survived David for the purpose of David's will. This argument fails because of the provisions of the USDA 1993. The court below correctly applied the USDA 1993 and reached the correct legal result.

AFFIRMED.

MULTISTATE PERFORMANCE TEST DIRECTIONS

You will be instructed when to begin and when to stop this test. Do not break the seal on this booklet until you are told to begin. This test is designed to evaluate your ability to handle a select number of legal authorities in the context of a factual problem involving a client.

The problem is set in the fictitious state of Franklin, in the fictitious Fifteenth Circuit of the United States. Columbia and Olympia are also fictitious states in the Fifteenth Circuit. In Franklin, the trial court of general jurisdiction is the District Court, the intermediate appellate court is the Court of Appeal, and the highest court is the Supreme Court.

You will have two kinds of materials with which to work: a File and a Library. The first document in the File is a memorandum containing the instructions for the task you are to complete. The other documents in the File contain factual information about your case and may include some facts that are not relevant.

The Library contains the legal authorities needed to complete the task and may also include some authorities that are not relevant. Any cases may be real, modified, or written solely for the purpose of this examination. If the cases appear familiar to you, do not assume that they are precisely the same as you have read before. Read them thoroughly, as if they all were new to you. You should assume that the cases were decided in the jurisdictions and on the dates shown. In citing cases from the Library, you may use abbreviations and omit page references.

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