ANSWER TO QUESTION NO. 3

This wills question tests the knowledge of several factual complications that may arise when probating a valid will. The correct disposition of Bradford's estate is:

1. Greg is entitled to a $200,000 payment from the estate as the fair market value of the Aston Martin.

This raises an issue of *ademption:* that is, there is specifically bequeathed property in the will that is *no longer a part of the estate at the testator's death.* In Michigan, there is a *presumption of non-ademption,* MCL 700.2606(1)(f), which is a change from the prior rule in Michigan where ademption would operate to cause the gift to fail entirely. *Hankey v French,* 281 Mich 454, 462-463 (1937). Where another statutory provision does not compensate the beneficiary for the value or replacement of specifically bequeathed property, the devisee is entitled to the value of the property unless the facts and circumstances show that the ademption was intended by the testator or within the testator's manifested plan of distribution. MCL 700.2606(1)(f). Notably, a beneficiary potentially has a right to: any insurance proceeds for injury to the specifically devised property unpaid at the death of the testator, MCL 700.2606(1)(c), or property procured by the testator as a replacement for the specifically devised property. MCL 700.2606(1)(e).

Here, Bradford bequeathed his Aston Martin to Greg, however the car was destroyed in an automobile accident prior to Bradford's death, and therefore cannot be given to Greg per the terms of the will. The presumption of non-ademption operates in favor of Greg: because the facts and evidence demonstrate that the ademption was *not* intended--the car was accidentally destroyed in the year prior to Bradford's death--Greg should be entitled to the cash equivalent of the Aston Martin. (Note that although Bradford received insurance proceeds from the destruction of the Aston Martin, Greg does *not* have an interest in these proceeds [$195,000] because the proceeds were fully paid *prior* to the testator's death. Note also that because Bradford never replaced the Aston Martin, Greg can have no interest in any replacement property.) Thus, the cash legacy should be equal to the value fo the vehicle at the time of the disposition, which would likely be an amount similar to its fair market value of $200,000.

2. State College receives nothing.

The primary goal in the construction of wills is to determine the testator's intent. *In re Edgar Estate,* 425 Mich 364, 378 (1986). Changes to the face of a will shall be enforced pursuant to the statutory dispensing power if there is clear and convincing evidence that the testator intended the change by the addition or alteration. MCL 700.2503(c).

Here, there is likely clear and convincing evidence that Bradford intended to change his will and thus remove the bequest to State College. On the face of the will, the bequest is crossed out, followed by specific words of disinheritance in the testator's handwriting that are signed and dated by the testator. This demonstrates an intent to remove entirely the original gift from the will by clear and convincing evidence, and the probate court should honor this intent by awarding nothing to the college.

3. One half of the remaining value of the state ($900,000) goes to Courtney, the sole remaining member of the Caravaggio Club. (Any heirs of prior deceased members of the club receive nothing.)

A testator may properly make a gift to a class of people, i.e., persons who are members of a common group where the intent of the testator is to create a class, however only members of the class who survive the testator take their share of the gift. MCL 700.2104, MCL 700.2604(1), Michigan Law & Practice 2d Wills, §213-214. The Rule of Convenience provides that the class closes when the testator dies; subject to exceptions not applicable here, any person who is not a member of the class at that time will not take.

Here, although the Caravaggio Club had three other members (in addition to Bradford) at the time Bradford made his will, only Courtney survived Bradford's death. Because the class closed upon Bradford's death, the two members who predeceased do not take their shares of the gift. (Note that because they were not related to Bradford, the Anti-Lapse Statute cannot prevent their gifts from lapsing.) Accordingly, their estates/descendants have no valid claim to their shares, which are distributed proportionately to the remaining class member(s). Thus, Courtney takes the entire interest (one half of the remaining value of the estate, $900,000).

4. Erin and Morgan, the twin daughters of David, receive one half of the remaining estate ($900,000), pursuant to Michigan's Anti-Lapse Statute, to be divided equally.

The general rule in Michigan provides that if a beneficiary predeceases the testator, then the gift lapses; a will cannot distribute property to a deceased person. See MCL 700.2104, MCL 700.2604(1). However, Michigan has modified this general rule through the enactment of an Anti-Lapse Statute. MCL 700.2603(1). The statute provides that if the predeceasing beneficiary is a grandparent or descendant of a grandparent or a stepchild of the testator, and the descendants are alive after 120 hours of the testator's death, then the gift will pass to the descendants of the beneficiary.

Here, because David predeceased the testator, his gift would normally lapse, but for Michigan's Anti-Lapse statute. Because David, as Bradford's son, is a descendant of Bradford's grandparents, the Anti-Lapse Statute operates to save the gift that would have been dispensed to David. This gift will instead pass to David's descendants, his daughters Erin and Morgan and will be divided equally between them. MCL 700.2718.