

QUESTION I

Harry died in 1992 survived by his wife, Mary, by his son, Stu, by his daughter, Dana, and by Dana's three daughters, ages 25, 26 and 27. Harry left a will which provided in part that he gave certain securities to Bank as trustee "for the benefit of my wife, if she survives me, for the term of her life, and upon her death, for the benefit of my children then living for the terms of their lives, and upon the death of the survivor of my children, for the benefit of my grandchildren who reach age 30. I give all the rest and residue of my property to the Historical Society." Mary did not elect to take a forced share.

Mary and her cousin were the sole heirs of their grandfather when he died intestate in 1993 owning Windy Farm, a tract of farm land.

In 1995 when Mary reached age 70, she opened a joint safe deposit box in her name and in the name of her son, Stu. In the safe deposit box Mary placed the deed to her house, certain items of jewelry and some savings bonds.

Mary held a checking account and a savings account in her name.

When Dana attended the presidential inauguration, Mary handed Dana a plain cardboard box containing Mary's diamond earrings, saying "Wear them to the ball. And keep them so Eliza can wear them at her wedding if she wants." Eliza, Dana's eldest daughter, was to be married in June. The earrings are still in Dana's possession.

Mary died in 2002 survived by her son, Stu, by her daughter, Dana, and by Dana's three daughters, ages 35, 36 and 37, and by one great granddaughter (Eliza's daughter). Mary left a will which provided, "I give all my property to my issue who survive me per stirpes."

Who is entitled to the above property? What property is in Mary's probate estate?

EXAMINATION CONTINUES

Question 1

Elise and her brother, Maxwell, were the sole heirs of their mother, a widow, who died in 1975 owning a house (the "house"). Elise lived in the house alone until 2000 when she moved to a nursing home. Since 2000 Maxwell has lived in the house. When Elise moved to the nursing home, she had all her valuable antique furniture delivered to the home of her daughter, Claudine, who lived nearby. At that time Elise telephoned Claudine and said, "I'm having my antiques delivered at your place. Take good care of them. I know your brother wouldn't. So I don't want him to have them. Those dogs of his." Claudine said, "O.K., Mom. Don't worry." The furniture is still in the home of Claudine at the present date.

Elise held securities and bank accounts in her name.

Elise died in 2004, survived by Maxwell, Claudine, Carl (Elise's son), and Claudine's three children. Elise left a will which provides:

"I give all my real property to my brother, Maxwell, if he survives me, for the term of his life. Upon his death I give said real property to my issue then living per stirpes. I give the rest and residue of my property to First Bank as trustee to hold for the benefit of my issue who survive me per stirpes until a grandchild of mine reaches age 30, then to my issue then living per stirpes."

Who is entitled to the above property? What property is in Elise's probate estate?

Question 2

Mary discovered a box of 20 old coins (the “coins”) tucked under the eaves in the attic of her house in 2000. In 2004 she had the coins appraised by Numismatics, Inc., an auction house, and hired Numismatics, Inc., to sell the coins, which are rare and valuable, at auction. In 2004 the coins were featured on a national television news program. The auction has not yet taken place. Mary purchased and has lived in her house since 1990.

The coins were missing after a burglary at the house of Farley, a coin collector, in 1970. In 1970 Farley searched his house for the coins and consulted a numismatics expert for advice. In 1970 Farley reported the burglary to the police, but did not mention the coins to the police.

In 2004 Farley wrote a letter to Mary asking for the coins. Mary denied that Farley had any right to the coins and Mary still has the coins at her house.

Who is entitled to the coins?

Glossary

Numismatics- the study and collection of money and medals

Question 3

Your client, Martha, a divorced woman in her 40s, has consulted you regarding the drafting of her will. Martha has four children, Ted (age 20), Thom (age 18), Jessie (age 16), and Kim (age 14). Kim suffers from Downs Syndrome. Martha wants her property to be shared equally by her children when she dies. Martha is concerned about looking after Kim after Martha's death. Draft a gift for Martha's will that addresses her wishes and concerns.

Question 4

Answer one (1) of the following questions:

- A) What evidence is there that a future interest in real property, although not possessory, is indeed, an interest in real property? Provide at least three concrete examples, although it is not necessary to cite cases.
- B) Based upon your reading of International News Service v. Associated Press and Moore v. Regents of the University of California, what is the meaning of the term “property”?