

SPECIAL INSTRUCTIONS

1. Answer all questions. Explain your conclusions and discuss fully the arguments on each side of every issue.
2. You may bring to this examination your casebook, your class notes, your outline and any other written or printed material.
3. Write only on the right hand side of the bluebooks. Write only on every other line.
4. Suggested time allocations for each question are as follows:

Question I	70 minutes
Question II	25 minutes
Question III	25 minutes
Question IV	15 minutes
Question V	<u>45</u> minutes
	180 minutes

IMPORTANT:

- 1. This is a common law property jurisdiction.**
- 2. This jurisdiction applies the common law Rule against Perpetuities.**
- 3. The statute of limitations for the recovery of possession of real property is 10 years.**

QUESTION I

Helen, a widow, and her sister, Phoebe, inherited a summer cottage located in Burwick, Maine, when their mother died intestate in 1970. Helen held a life insurance policy payable on Helen's death to Helen's "issue per stirpes." Helen owned securities and a savings account.

In 1998 after Helen was diagnosed with Alzheimer's disease, she sold her house and moved to a small apartment in a retirement community. At that time, Helen hired movers to truck a large antique wooden chest once used by General Washington when on campaign to the nearby house of her daughter, Sally. Helen telephoned Sally and said, "The movers are bringing the Washington chest to your house. I've always wanted you to have the chest when I'm gone." Sally said, "OK, Mom."

Shortly after moving into the retirement community, Helen opened, with her own funds, a checking account in the names of "Helen Howard and Sally Howard as joint tenants." No deposits or withdrawals have been made by Sally, nor has Sally written any checks on the checking account. Helen has written checks on the checking account to cover her expenses.

Helen died in 2001 survived by her sister, Phoebe, by Helen's three children, Sally, Peter and Jim, and by Sally's daughter, Dana. Helen left a will which provided, "I give my real property located in Burwick, Maine, to my children for their lives, and upon their deaths, to my grandchildren for their lives, and upon the death of the survivor of my grandchildren, to my oldest great-grandchild then living. I give all the rest and residue of my property to my issue per stirpes living at my death."

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

QUESTION II

In your own words explain the meaning of each of the following statements from *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992).

- a) “And the functional basis for permitting the government, by regulation, to affect property values without compensation – that ‘Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law, id., at 413 – does not apply to the relatively rare situations where the government has deprived a landowner of all economically beneficial uses.”
- b) “A given restraint will be seen as mitigating ‘harm’ to the adjacent parcels or securing a ‘benefit’ for them, depending upon the observer’s evaluation of the relative importance of the use that the restraint favors.”
- c) “Where the State seeks to sustain regulation that deprives land of all economically beneficial use, we think it may resist compensation only if the logically antecedent inquiry into the nature of the owner’s estate shows that the proscribed use interests were not part of his title to begin with.”

QUESTION III

Your client, Jane Wilson, a widow, has three grown children, Ralph, Phyllis and George. Ralph suffers from schizophrenia, is unable to work and must be hospitalized periodically. Jane wants to divide her property at her death equally among her three children, but is concerned to provide care for Ralph after her death. Draft gifts for Jane's will consistent with her desires.

QUESTION IV

Apply the statute below to both of the following problems:

- a) Dan, unmarried, died intestate survived by his sister, Sarah, and by Ginny and Jack (the children of his brother, Bob). Bob predeceased Dan. Who is entitled to Dan's estate and in what shares?
- b) Martha, unmarried, died intestate survived by her cousin, Peg (the daughter of Martha's Uncle Paul, Paul being the brother of Martha's mother) and by Fern (the daughter of Martha's cousin, Joyce, Joyce being the daughter of Martha's Aunt Nancy, Nancy being the sister of Martha's mother). Martha was thus survived by only 2 people, Peg and Fern. Who is entitled to Martha's estate, and in what shares?

QUESTION V

In 1945 Harriet Barclay deeded a three-acre lot (the “lot”) to City “so long as used as a public park, and when no longer used as a public park, to my issue then living.”

In 1945 City installed paths, benches, fountains, and restrooms on the lot and held the lot open to members of the public until 2001. In 2001, pursuant to City’s plans to build a shopping mall on adjacent land as well as on the lot, City removed the benches and fountains, and began cutting down the 100-year-old trees which cover the lot. The shopping mall planned by City will contain a central atrium with potted plants.

Harriet Barclay died in 1960 survived by her children and her grandchildren and by her sister, Grace. Harriet Barclay left a will in which she gave all her real property to her sister, Grace. Today Grace and Harriet’s issue oppose the construction of a shopping mall on the lot. What are their options and chances for success? Who is entitled to possession of the lot?