

SPECIAL INSTRUCTIONS

1. Answer all questions. Explain your conclusions and discuss fully the arguments on each side of every issue.
2. This exam is closed book.
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 - 105 MINUTES
QUESTION II- 35 MINUTES
QUESTION III – 25 MINUTES
QUESTION IV - 15 MINUTES
180 MINUTES

IMPORTANT

1. This is a common law property jurisdiction.
2. This jurisdiction applies the common law Rule against Perpetuities.
3. The forced or elective share of a surviving spouse in this jurisdiction is one third of the net probate estate.
4. The statute of limitations for the recovery of the possession of real property is 10 years.
5. This jurisdiction applies the intestacy statute on Page 2 of the exam (EXCEPT in problem IV.)

I.

In 1990, a house was transferred to two sisters, Caroline and Alison, by a deed which granted the house "to Caroline May Wells and Alison Parker Bell." Caroline and Alison, in their seventies at the time of the transfer, had planned to live in the house together, but, due to her heart condition, Caroline moved into a retirement home in 1990. Since 1990 Alison has occupied the house alone.

In 1990 Caroline opened, with her own funds, a checking account in the names of "Caroline Wells and Katie Wells as joint tenants." No deposits or withdrawals have been made by Katie, who is Caroline's daughter, nor has Katie written any checks on the checking account. Caroline has written checks on the checking account to cover her expenses.

In 1990 Caroline had her sailboat, "The Muggy May" taken to the house of Caroline's son, Paul, who lives on the coast. At that time Caroline told Paul, "I'm sure you can put the May to good use. And when I'm gone, I'll be glad to know she's in good hands. But for goodness' sake, be careful." Paul has sailed the May regularly but has failed to move the boat to dry dock for cleaning and maintenance, and the hull is now in poor repair. The boat is still at Paul's house.

Caroline held a savings account and securities in her own name.

Caroline, a widow, died in 2002, survived by Alison, Katie, Paul, Katie's three children and Paul's two children. Caroline left a will which provided "I give all my real property to my sister, Alison Parker Bell, if she survives me, for the term of her life. Upon her death I give said real property to my issue then living per stirpes. I give all the rest and residue of my property to my grandchildren who graduate from an accredited four- year institution of higher education with either the degree of bachelor of arts or bachelor of sciences." Since Caroline's death, Katie's eldest child and Paul's older child have graduated from accredited four-year institutions of higher education with degrees of bachelor of arts.

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

II

Your client, Helene, who has consulted you regarding the drafting of her will, has two children, Phyllis and Maxwell, aged 25 and 27, by her first marriage. Helene has been married for 3 years to her second husband, by whom she has a two-year old child, Paulette. Helene's second husband, although employed as a stock analyst, is a compulsive gambler. Helen owns a house, where she now lives with her husband and Paulette, now worth approximately \$350,000, and securities now worth approximately \$300,000. Helene is concerned about the care of Paulette, but does not want to slight Phyllis and Maxwell. Helene's estate will not be subject to federal or state estate tax. What is your plan for drafting gifts for her will?

III

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.

IV

Peter died without a will survived only by Molly (the daughter of Sally, who was the daughter of Peter's maternal grandparents) and by Sylvia (the daughter of Claire, who was the daughter of Bob, who was the son of Peter's paternal grandparents.) Who is entitled to Peter's estate and in what shares under the following intestacy statute?

The property of a decedent not disposed of by will shall be distributed as provided in this section.

Distribution shall then be as

follows:

(a) If a decedent is survived by:

- (1) A spouse and issue, fifty thousand dollars and one-half of the residue to the spouse, and the balance thereof to the issue by representation.
- (2) A spouse and no issue, the whole to the spouse.
- (3) Issue and no spouse, the whole to the issue, by representation.
- (4) One or both parents, and no spouse and no issue, the whole to the surviving parent or parents.
- (5) Issue of parents, and no spouse, issue or parent, the whole to the issue of the parents, by representation.
- (6) One or more grandparents or the issue of grandparents (as hereinafter defined), and no spouse, issue, parent or issue of parents, one-half to the surviving paternal grandparent or grandparents, or if neither of them survives the decedent, to their issue, by representation, and the other one-half to the surviving maternal grandparent or grandparents, or if neither of them survives the decedent, to their issue, by representation; provided that if the decedent was not survived by a grandparent or grandparents on one side or by the issue of such grandparents, the whole to the surviving grandparent or grandparents on the other side, or if neither of them survives the decedent, to their issue, by representation, in the same manner as the one-half. For the purposes of this subparagraph, issue of grandparents shall not include issue more remote than grandchildren of such grandparents.
- (7) Great-grandchildren of grandparents, and no spouse, issue, parent, issue of parents, grandparent, children of grandparents or grandchildren of grandparents, one-half to the great-grandchildren of the paternal grandparents, per capita, and the other one-half to the great-grandchildren of the maternal grandparents, per capita, provided that if the decedent was not survived by great-grandchildren of grandparents on one side, the whole to the great-grandchildren of grandparents on the other side, in the same manner as the one-half.

End of Examination