AMERICAN LAW PROGRAM
The Catholic University of America, Columbus School of Law
Jagiellonian University, Faculty of Law and Administration
18th year, 2017-2018

ENTRANCE EXAM 2 – ESSAY PART

Dear American Law Program Candidate!

In order to let the American Law Program staff assess your English language skills and abilities to actively participate and benefit from the regular courses, we kindly ask you to take our Entrance Exam. As the amount of students willing to join the program exceeds the amount of students who can be admitted, it serves also the selection of the best candidates in an objective manner.

To make the assessment and competition both fair and reasonable, we kindly ask you to obey the following rules:

During the exam **you are not allowed** to:
- consult anyone nor any materials, except for the texts that we distribute;
- look at other candidate's work;
- leave the room without permission;
- possess turned on cell phones or similar devices.

During the exam **you are supposed** to:
- write in a readable way, so that we are able to read your answers and grade them;
- mark your papers with your PESEL only.

The exam contains of two parts and **altogether lasts 75 minutes.**

The **first part**, is an **essay** part. Your task is to write an essay on the separate sheet of paper, on the assigned topic, which is based on the text attached in order to inspire you. You are supposed to show us that you can discuss a general legal topic in an interesting manner and proper English. Your essay must not exceed one sheet of the given paper. You have **45 minutes** to complete this part. After this time you must turn in your essay. This part is graded for 0-30 points.

The **second part**, which you are supposed to take later, is a **reading** part. You should read the text provided carefully. You may take notes on the separate sheet of paper. After **20 minutes** you must turn in the texts, but you may still keep the notes. Then you receive the questions and answers sheet. You are supposed to mark T for True and F for False on the given questions, for which you have **another 10 minutes**. This part is graded for 0-20 points.

The **results** should be available in the middle of July 2017. The results will be sent to you via e-mail and published on our website: http://www.law.uj.edu.pl/okspo/pl/alp.

Good luck!

Essay Question

The Supreme Court of the United States in its judgment in: *Dred Scott v. John Sandford*, 60 U.S. 393, 1857, agreed that there is no legal subjection of Afro-American slaves:

The question is simply this: Can a negro, whose ancestors were imported into this country, and sold as slaves, become a member of the political community formed and brought into existence by the Constitution of the United States, and as such become entitled to all the rights, and privileges, and immunities, guarantied by that instrument to the citizen? One of which rights is the privilege of suing in a court of the United States in the cases specified in the Constitution.

It will be observed, that the plea applies to that class of persons only whose ancestors were negroes of the African race, and imported into this country, and sold and held as slaves. The only matter in issue before the court, therefore, is, whether the descendants of such slaves, when they shall be emancipated, or who are born of parents who had become free before their birth, are citizens of a State, in the sense in which the word citizen is used in the Constitution of the United States.

The words 'people of the United States' and 'citizens' are synonymous terms, and mean the same thing. They both describe the political body who, according to our republican institutions, form the sovereignty, and who hold the power and conduct the Government through their representatives. They are what we familiarly call the 'sovereign people,' and every citizen is one of this people, and a constituent member of this sovereignty. The question before us is, whether the class of persons described in the plea in abatement compose a portion of this people, and are constituent members of this sovereignty? We think they are not, and that they are not included, and were not intended to be included, under the word 'citizens' in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States. On the contrary, they were at that time considered as a subordinate and inferior class of beings, who had been subjugated by the dominant race, and, whether emancipated or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the Government might choose to grant them.

It is not the province of the court to decide upon the justice or injustice, the policy or impolicy, of these laws. The decision of that question belonged to the political or law-making power; to those who formed the sovereignty and framed the Constitution. The duty of the court is, to interpret the instrument they have framed, with the best lights we can obtain on the subject, and to administer it as we find it, according to its true intent and meaning when it was adopted.

It is very clear, therefore, that no State can, by any act or law of its own, passed since the adoption of the Constitution, introduce a new member into the political community created by the Constitution of the United States. It cannot make him a member of this community by making him a member of its own. And for the same reason it cannot introduce any person, or description of persons, who were not intended to be embraced in this new political family, which the Constitution brought into existence, but were intended to be excluded from it.

Is it really true that judges are allowed only to interpret the legal instruments already framed and there is no place for justice to be applied by them? Is the interpretation in form of the analysis of the original legislator's intent the only admissible option? Should the answer be different with regard to the legal position of a human as such? The 1868 Amendment to the U.S. Constitution changed the position of Afro-American people, but how would you, as a judge, proceed the judicature in this field if such a legislative change had not been issued then?

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ENTRANCE EXAM 2 – READING PART (TEXT)

Read the text of the <u>two</u> Supreme Court of Montana judgments in: *In re the Estate of Charles Kuralt* (1999) and (2000) – the first on preliminary judgment and the second on final resolution of the dispute. You should understand the main issues and reasoning. You may also take notes. After 20 minutes you will have to turn in the text and answer the questions with a use of your notes as well as your memory and understanding only.

<u>Judgment no. 1</u>

Justice W. WILLIAM LEAPHART delivered the Opinion of the Court.

Mr. Kuralt and Shannon first met in 1968 in Reno, Nevada, when Mr. Kuralt brought his CBS show "On the Road" to Reno to cover the creation and dedication of the "Pat Baker Park," a project which Shannon had spearheaded. During that weekend, Mr. Kuralt, a married man, invited Shannon to dinner. Thus began a protracted personal relationship between Mr. Kuralt and Shannon, lasting nearly thirty years until Mr. Kuralt's untimely death on July 4, 1997. Mr. Kuralt and Shannon took pains over the **773 years to keep their relationship secret, and were so successful in doing so that even though his *357 wife, Petie, knew that Mr. Kuralt owned property in Montana, she was unaware, prior to Mr. Kuralt's death, of his relationship with Shannon.

From 1968 to 1978, Shannon and Mr. Kuralt saw each other every two-to-three weeks for several days at a time. Indeed, Mr. Kuralt maintained close contact by telephone and mail, and spent a majority of his non-working time with Shannon during this ten-year period. Although Mr. Kuralt and Shannon spent less time together over the remaining twenty years of their relationship, they maintained meaningful personal and financial ties. The couple regularly vacationed together, frequently traveling around the United States, as well as Europe.

Mr. Kuralt also established close, personal relationships with Shannon's three children, acting as a surrogate father and providing them with emotional and material support which continued into their adult lives. For example, Mr. Kuralt paid the entire tuition for Shannon's eldest daughter to attend law school and for Shannon's son to attend graduate school. Over the years, in fact, Mr. Kuralt was the "primary source of support" for Shannon and her children, providing them with substantial sums of money on a regular basis—usually $5,000 to $8,000 per month.

In the 1980s, Mr. Kuralt and Shannon formed a limited partnership called "San Francisco Stocks," which packaged and sold frozen cooking stocks. Mr. Kuralt provided all the capital for the partnership, while Shannon and her two children ran the day-to-day operations of the business. San Francisco Stocks operated for approximately five years, closing in 1988. At that time, Shannon moved to London, England, where Mr. Kuralt paid for Shannon to study landscape gardening at the Inchbald School of Design. During this time period, Mr. Kuralt and Shannon traveled regularly around Ireland.

In 1985, Mr. Kuralt purchased a home in Ireland and then deeded the property to Shannon as a gift. That same year, Mr. Kuralt purchased a 20–acre parcel of property along the Big Hole River in Madison County, near Twin Bridges, Montana. On this parcel, Mr. Kuralt and Shannon constructed a

North Carolina-style cabin. In 1987, Mr. Kuralt purchased two additional parcels along the Big Hole River which adjoined the 20–acre parcel, one parcel upstream and the other parcel downstream of the cabin. These two additional parcels constitute approximately 90 acres, and are the primary subject of this appeal.

On May 3, 1989, Mr. Kuralt executed a holographic will, which stated as follows: *In the event of my death, I bequeath to Patricia Elizabeth Shannon all my interest in land, buildings, furnishings and personal belongings on Burma Road, Twin Bridges, Montana. Charles Kuralt*. Mr. Kuralt mailed a copy of this holographic will to Shannon.

However, Mr. Kuralt thereafter executed a formal will, on May 4, 1994, in New York City. The will makes no specific mention of the description or location of any of the real property, in Montana or elsewhere, that had been owned by Mr. Kuralt. The beneficiaries under Mr. Kuralt's Last Will and Testament are his wife, Petie, and the Kuralts' two children; neither Shannon nor her children are named as beneficiaries. In fact, Shannon was not even aware that Mr. Kuralt had executed his Last *359 Will and Testament until institution of the probate proceedings at issue in this appeal.

On April 9, 1997, Mr. Kuralt deeded his interest in the original 20–acre parcel with the cabin along the Big Hole River to Shannon. Although Shannon ostensibly "paid" Mr. Kuralt $80,000 for this parcel, those funds in fact came from Mr. Kuralt, who, some time earlier, had begun sending Shannon installments of money to accumulate the necessary "purchase" price. It appears that Mr. Kuralt and Shannon dressed this gift up as a sale so as to keep their long-standing personal relationship a secret. After the filing of the deed to the 20–acre parcel, Shannon sent Mr. Kuralt, at his request, a blank buy-sell real estate form. Apparently, Mr. Kuralt's intent was to deed the additional 90 acres along the Big Hole River to Shannon. At Shannon's behest, however, Mr. Kuralt and Shannon agreed that this transfer should be accomplished in much the same manner as they had previously negotiated the "sale" of the 20–acre parcel with the cabin—by Mr. Kuralt providing the purchase money so that the gift-transaction could be disguised as a sale. They further agreed that the transaction would be consummated in September of 1997 when Shannon, her son, and Mr. Kuralt had agreed to meet at the Montana cabin.

Tragically, Mr. Kuralt became suddenly ill and entered a New York hospital on June 18, 1997. On that same date, Mr. Kuralt wrote a letter to Shannon in which he expressed grave concern for his health and arguably sought to devise the remainder of the Montana property to Shannon: *Dear Pat Something is terribly wrong with me and they can't figure out what. After cat-scans and a variety of cardiograms, they agree it's not lung cancer or heart trouble or blood clot. So they're putting me in the hospital today to concentrate on infectious diseases. I am getting worse, barely able to get out of bed, but still have high hopes for recovery ... if only I can get a diagnosis! Curiouser and curiouser! I'll keep you informed. I'll have the lawyer visit the hospital to be sure you inherit the rest of the place in MT. if it comes to that. I send love to you & [your youngest daughter,] Shannon. Hope things are better there! Love, C.*

After this letter was mailed, Mr. Kuralt did not have any formal testamentary document drawn up devising the 90–acres of Montana property to Shannon. Thus, Shannon sought to probate the letter of June 18, 1997, as a valid holographic codicil to Mr. Kuralt's formal 1994 will.

We're here for a June 18, 1997, document, and whether or not that document is a holographic codicil to Mr. Kuralt's May 4, 1994, will. The letter speaks for itself. We believe that it's clear and unambiguous; and in that matter, because of that, extrinsic evidence is not permitted to be considered.

[C]ounsel for Shannon cited Montana case law and a Montana statute in support of the argument that, irrespective of ambiguity, "extrinsic evidence is allowed on holographic wills." The District Court apparently agreed with Shannon since it overruled the Estate's "standing objection" to the presentation of extrinsic evidence on Mr. Kuralt's intent.

Thus, the District Court allowed the presentation of extrinsic evidence relevant to the question of Mr. Kuralt's intent in writing the letter of June 18, 1997. Regardless of whether the court admitted that evidence because it found the letter to be ambiguous or whether the court allowed the presentation of extrinsic evidence because it agreed with Shannon's argument that such evidence may be discretionarily admitted in any holographic will dispute, the result is the same: extrinsic evidence was admitted showing that Mr. Kuralt had previously gifted 20 acres along the Big Hole River to Shannon while disguising the transaction as a sale; that evidence also suggested that Mr. Kuralt intended to do the same with the remaining 90 acres of his Madison County property.

In arguing to the District Court that extrinsic evidence may be admitted regardless of ambiguity, Shannon relied principally upon § 72–2–522, MCA, which states in relevant part: "*Intent that the document constitute the testator's will may be established by extrinsic evidence*, including, for holographic wills, portions of the document that are not in the testator's handwriting." Section 72–2–522(3), MCA (emphasis added). The language of that statute does not admit of any exception or qualification, but clearly permits a court to discretionarily admit extrinsic evidence bearing on testamentary intent in any will *364 dispute.

Nor is the language of § 72–2–522(3), MCA, inconsistent with our prior case law. It has long been the general rule in this jurisdiction that: "All that is necessary to make an instrument testamentary is that it should show, when read in connection with surrounding facts and circumstances, a testamentary intention." If the paper propounded is clearly of a testamentary character, it speaks for itself; but, if the intention of the testator is left in doubt by the form of expression used, then the intention must be arrived at by considering it in the light of the surrounding circumstances, and the intention must clearly appear".

In re Noyes' Estate (1909), 40 Mont. 231, 240–41, 106 P. 355, 358 (citations omitted). More recently, this Court has restated this general rule as follows: "Whether sufficient testamentary intent is present in an alleged will should be determined by first looking to the writing itself. However, if the intent is not clear from the writing, then the surrounding circumstances may be considered." *Matter of Estate of Ramirez* (1994), 264 Mont. 33, 36, 869 P.2d 263, 265 (citations omitted).

[T]he aforementioned authorities suggest that " 'the determination of the testamentary intent is to be made from the writing itself,' " and " 'the surrounding circumstances may be considered' " in making the determination whether an alleged testamentary document *itself* contains the requisite *animus testandi*. *In re Van Voast's Estate* (1953), 127 Mont. 450, 452, 266 P.2d 377, 378, quoting *In re Augestad's Estate* (1940), 111 Mont. 138, 140, 106 P.2d 1087, 1088. Under no circumstance, however, may extrinsic evidence be utilized to manufacture testamentary intent where the alleged testamentary document contains no indication of an intent by the testator to make a disposition of property effective on death.

The letter suggests, as previously noted, that Mr. Kuralt desired Shannon to "inherit" the remainder of his property along **778 the Big Hole River. Of course, as the parties dispute, other language in the letter raises the question of whether that expression of Mr. Kuralt's desire embodies merely an intent to perform an act in the future (i.e., prospective intent to draft a formal codicil to his Last Will), rather than a present, testamentary intent to dispose of his property (i.e., intent that the very letter constitute a valid holographic codicil to his Last Will).

However, when viewed in light of the extrinsic evidence, which shows not only the history of gift-giving by Mr. Kuralt to Shannon and her children but also that Mr. Kuralt wrote the letter in dispute under circumstances of dire health, the question of whether that letter contains the necessary *animus testandi* becomes an issue suitable for resolution by the trier of fact. Because Mr. Kuralt's letter is unclear as to testamentary intent, the District Court properly admitted extrinsic evidence bearing upon Mr. Kuralt's intent in the summary judgment proceeding.

In sum, we reverse the District Court's grant of summary judgment to the Estate because there are genuine issues of material fact which preclude judgment as a matter of law. Accordingly, we remand for trial the question of whether Mr. Kuralt's June 18, 1997, letter evinces testamentary intent. In resolving that question at trial, the District Court shall admit, for the benefit of the trier of fact, extrinsic evidence germane to the question of testamentary intent.

Chief Justice J.A. TURNAGE dissenting.

The June 18, 1997 letter, as set forth in the majority opinion, contains this—and only this—language relating to the question of a holographic will: "I'll have the lawyer visit the hospital to be sure you inherit the rest of the place in MT. if it comes to that." That language clearly indicates that decedent Kuralt did not intend the letter to operate as a holographic will but, rather, expressed his intent that at a future date he would have a lawyer visit him in the hospital to be sure that Patricia Shannon would, by a document thereafter to be executed, inherit "the rest of the place in MT." Such language is precatory and expresses only a desire or wish. It certainly does not constitute imperative, direct terms of bequest.

Judgment no. 2

Justice TERRY N. TRIEWEILER delivered the Opinion of the Court.

Montana courts are guided by the bedrock principle of honoring the intent of the testator. *See e.g., In re Estate of Irvine* (1943), 114 Mont. 577, 139 P.2d 489; *In re Estate of Van Voast* (1953), 127 Mont. 450, 266 P.2d 377; *In re Estate of Ramirez* (1994), 264 Mont. 33, 869 P.2d 263.

The record supports the District Court's finding that the June 18, 1997 letter expressed Kuralt's intent to effect a posthumous transfer of his Montana property to Shannon. Kuralt and Shannon enjoyed a long, close personal relationship which continued up to the last letter Kuralt wrote Shannon on June 18, 1997. Likewise, Kuralt and Shannon's children had a long, family-like relationship which included significant financial support.

The District Court focused on the last few months of Kuralt's life to find that the letter demonstrated his testamentary intent. The conveyance of the 20–acre parcel for no real consideration and extrinsic evidence that Kuralt intended to convey the remainder of the Montana property to Shannon in a similar fashion provides substantial factual support for the District Court's determination that Kuralt intended that Shannon have the rest of the Montana property.

The June 18, 1997 letter expressed Kuralt's desire that Shannon inherit the remainder of the Montana property. That Kuralt wrote the letter *in extremis* is supported by the fact that he died two weeks later. Although Kuralt intended to transfer the remaining land to Shannon, he was reluctant to consult a lawyer to formalize his intent because he wanted to keep their relationship secret. Finally, the use of the term "inherit" underlined by Kuralt reflected his intention to make a posthumous disposition of the property. Accordingly, we conclude that the District Court did not err when it found that the letter dated June 18, 1997 expressed a present testamentary intent to transfer property in Madison County to Patricia Shannon.

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ENTRANCE EXAM 2 – READING PART (QUESTIONS)

Based on the read texts of <u>two</u> Supreme Court of Montana judgments in: *In re the Estate of Charles Kuralt* (1999) and (2000) – in particular your notes as well as your memory and understanding to it, decide whether the statements below are True (T) or False (F). You have 10 minutes to complete this part of the exam.

PESEL:

		True	**False**
Judgment no. 1			
1.	Each of the two opinions of the Court in its two judgments were written by single members we know from name.		
2.	Mr Kuralt divorced upon his wife's, Petie's, discovery of his relation with Shannon.		
3.	Mr Kuralt was father of Shannon's children.		
4.	The property in Montana was the only support of financial character given to Shannon.		
5.	The transfer of the first, 20-acre, part of the property in Montana was assigned as a sale, but in fact was a gift.		
6.	Before drafting a letter analyzed with regard to a testamentary intent there were no plans to transfer the 90-acre property in Montana to Shannon.		
7.	According to the first will mentioned in the judgments, all property, including Montana, Mr Kuralt named Petie and children as his beneficiaries.		
8.	Based on the letter Shannon claimed for admitting her beneficiary character to the whole property of Mr Kuralt.		
9.	The Supreme Court of Montana believed that extrinsic evidence was not inevitable because of clear and unambiguous character of the letter, but eventually made a use of what was established by means of the extrinsic evidence.		
10.	Among the possible reasons of allowing for presentation of extrinsic evidence the Supreme Court of Montana named ambiguity of the representation of will as well as general acceptance for extrinsic evidence with regard to last wills.		

11.	According to the statutory law cited, it is court's discretionary right to admit extrinsic evidence on testamentary intent.		
12.	According to the judgment cited in the analyzed judgment, if the intent is not clear from the document of testament, the context of its creation can be subject to consideration		
13.	There is no possibility to use extrinsic evidence to introduce testamentary intent to the document, which had no expression thereof.		
14.	The first judgment established that it is clear that there was a testamentary intent in the Mr Kuralt's letter to Shannon.		
15.	Extrinsic evidence was agreed as important with regard to the predicted further proceeding of the case.		
16.	The first judgment confirmed the judgment of the lower court.		
17.	According to the dissenting opinion the wording of the letter clearly indicates that there was no testamentary intent.		
Judgment no. 2			
18.	Honoring the intent of the testator is named as one of the less important (though still valid) principles, by which Montana courts are guided.		
19.	It is established that Mr Kuralt's intent is interpreted from the circumstances.		
20.	Lacking legal consultation by Mr Kuralt at his death to finalize the transfer of Montana property was justified by his lacking physical strength.		