AMERICAN LAW PROGRAM
The Catholic University of America, Columbus School of Law
Jagiellonian University, Faculty of Law and Administration
17th year, 2016-2017

ENTRANCE EXAM 2 – ESSAY PART

Dear American Law Program Candidate!

In order to let the American Law Program stuff 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 2016. 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

There was a West Virginia legislation in the World War II period passed, which forced all the students to participate in the patriotic ceremonies, including giving a salute to the flag. This particular behavior was rejected by Jehovah witnesses, who regarded it as a religiously prohibited praising of an idol. The U.S. Supreme Court in: *West Virginia State Board of Education v. Barnette* (1943), claimed that this way of achieving national unity was improper.

"Struggles to coerce uniformity of sentiment in support of some end thought essential to their time and country have been waged by many good, as well as by evil, men. Nationalism is a relatively recent phenomenon, but, at other times and places, the ends have been racial or territorial security, support of a dynasty or regime, and particular plans for saving souls. […] Probably no deeper division of our people could proceed from any provocation than from finding it necessary to choose what doctrine and whose program public educational officials shall compel youth to unite in embracing. […] Those who begin coercive elimination of dissent soon find themselves exterminating dissenters. Compulsory unification of opinion achieves only the unanimity of the graveyard.

It seems trite but necessary to say that the First Amendment to our Constitution was designed to avoid these ends by avoiding these beginnings. There is no mysticism in the American concept of the State or of the nature or origin of its authority. We set up government by consent of the governed, and the Bill of Rights denies those in power any legal opportunity to coerce that consent. Authority here is to be controlled by public opinion, not public opinion by authority.

The case is made difficult not because the principles of its decision are obscure, but because the flag involved is our own. Nevertheless, we apply the limitations of the Constitution with no fear that freedom to be intellectually and spiritually diverse or even contrary will disintegrate the social organization. To believe that patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous, instead of a compulsory routine, is to make an unflattering estimate of the appeal of our institutions to free minds. We can have intellectual individualism and the rich cultural diversities that we owe to exceptional minds only at the price of occasional eccentricity and abnormal attitudes. When they are so harmless to others or to the State as those we deal with here, the price is not too great. But freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. […]

If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.

We think the action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power, and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control."

On a very similar fact pattern, the U.S. Supreme Court made a judgment in *Minersville School District v. Gobitis* case only three years before and ruled exactly the opposite – having claimed that a compulsory participation in the patriotic ceremonies is admissible. Should it be like this that the government and legislation are allowed to enforce national unity through patriotic ceremonies obligatory to all the students, regardless of their religious concerns (protected by the Constitution) and maybe other concerns, like pacifistic maybe? Consider different times, which may sometimes demand different means to achieve a legitimate aim in creating a community.

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ENTRANCE EXAM 2 – READING PART (TEXT)

Read the text, which is the Court of Appeals of New York judgment in: *Riggs v. Palmer* (1889), based on which the relative was excluded from inheritance of a murderer after a victim. 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.

"EARL, J.

On the 13th day of August 1880, Francis B. Palmer made his last will and testament, in which he gave small legacies to his two daughters, Mrs. Riggs and Mrs. Preston, the plaintiffs in this action, and the remainder of his estate to his grandson, the defendant, Elmer E. Palmer, subject to the support of Susan Palmer, his mother, with a gift over to the two daughters, subject to the support of Mrs. Palmer, in case Elmer should survive him and die under age, unmarried and without any issue. The testator at the date of his will owned a farm and considerable personal property. He was a widower, and thereafter, in March 1882, he was married to Mrs. Bresee, with whom before his marriage he entered into an ante-nuptial contract in which it was agreed that, in lieu of dower and all other claims upon his estate in case she survived him, she should have her support upon his farm during her life, and such support was expressly charged upon the farm. At the date of the will, and, subsequently, to the death of the testator, Elmer lived with him as a member of his family, and at his death was sixteen years old. He knew of the provisions made in his favor in the will, and, that he might prevent his grandfather from revoking such provisions, which he had manifested some intention to do, and to obtain the speedy enjoyment and immediate possession of his property, he willfully murdered him by poisoning him. He now claims the property, and the sole question for our determination is, can he have it? The defendants say that the testator is dead; that his will was made in due form and has been admitted to probate, and that, therefore, it must have effect according to the letter of the law.

It is quite true that statutes regulating the making, proof and effect of wills, and the devolution of property, if literally construed, and if their force and effect can in no way and under no circumstances be controlled or modified, give this property to the murderer.

The purpose of those statutes was to enable testators to dispose of their estates to the objects of their bounty at death, and to carry into effect their final wishes legally expressed; and in considering and giving effect to them this purpose must be kept in view. It was the intention of the law-makers that the donees in a will should have the property given to them. But it never could have been their intention that a donee who murdered the testator to make the will operative should have any benefit under it. If such a case had been present to their minds, and it had been supposed necessary to make some provision of law to meet it, it cannot be doubted that they would have provided for it. It is a familiar canon of construction that a thing which is within the intention of the makers of a statute is as much within the statute as if it were within the letter; and a thing which is within the letter of the statute is not within the statute, unless it be within the intention of the makers. The writers of laws do not always express their intention perfectly, but either exceed it or fall short of it, so that judges are to

collect it from probable or rational conjectures only, and this is called rational interpretation; and Rutherforth, in his Institutes (p. 407), says: "When we make use of rational interpretation, sometimes we restrain the meaning of the writer so as to take in less, and sometimes we extend or enlarge his meaning so as to take in more than his words express."

Such a construction ought to be put upon a statute as will best answer the intention which the makers had in view, for *qui haeret in litera, haeret in cortice*. In Bacon's Abridgment (Statutes I, 5); Puffendorf (book 5, chapter 12), Rutherforth (pp. 422, 427), and in Smith's Commentaries (814), many cases are mentioned where it was held that matters embraced in the general words of statutes, nevertheless, were not within the statutes, because it could not have been the intention of the law-makers that they should be included. They were taken out of the statutes by an equitable construction, and it is said in Bacon: "By an equitable construction, a case not within the letter of the statute is sometimes holden to be within the meaning, because it is within the mischief for which a remedy is provided. The reason for such construction is that the law-makers could not set down every case in express terms. In order to form a right judgment whether a case be within the equity of a statute, it is a good way to suppose the law-maker present, and that you have asked him this question, did you intend to comprehend this case? Then you must give yourself such answer as you imagine he, being an upright and reasonable man, would have given. If this be that he did mean to comprehend it, you may safely hold the case to be within the equity of the statute; for while you do no more than he would have done, you do not act contrary to the statute, but in conformity thereto." In some cases the letter of a legislative act is restrained by an equitable construction; in others it is enlarged; in others the construction is contrary to the letter. The equitable construction which restrains the letter of a statute is defined by Aristotle, as frequently quoted, in this manner: *Aequitas est correctio legis generaliter latae qua parti deficit*. If the law-makers could, as to this case, be consulted, would they say that they intended by their general language that the property of a testator or of an ancestor should pass to one who had taken his life for the express purpose of getting his property? In 1 Blackstone's Commentaries (91) the learned author, speaking of the construction of statutes, says: "If there arise out of them any absurd consequences manifestly contradictory to common reason, they are, with regard to those collateral consequences, void. * * * When some collateral matter arises out of the general words, and happen to be unreasonable, then the judges are in decency to conclude that the consequence was not foreseen by the parliament, and, therefore, they are at liberty to expound the statute by equity and only *quoad hoc* disregard it;" and he gives as an illustration, if an act of parliament gives a man power to try all causes that arise within his manor of Dale, yet, if a cause should arise in which he himself is party, the act is construed not to extend to that because it is unreasonable that any man should determine his own quarrel.

There was a statute in Bologna that whoever drew blood in the streets should be severely punished, and yet it was held not to apply to the case of a barber who opened a vein in the street. It is commanded in the Decalogue that no work shall be done upon the Sabbath, and yet, giving the command a rational interpretation founded upon its design, the Infallible Judge held that it did not prohibit works of necessity, charity or benevolence on that day.

What could be more unreasonable than to suppose that it was the legislative intention in the general laws passed for the orderly, peaceable and just devolution of property, that they should have operation in favor of one who murdered his ancestor that he might speedily come into the possession of his estate? Such an intention is inconceivable. We need not, therefore, be much troubled by the general language contained in the laws.

Besides, all laws as well as all contracts may be controlled in their operation and effect by general, fundamental maxims of the common law. No one shall be permitted to profit by his own fraud, or to take advantage of his own wrong, or to found any claim upon his own iniquity, or to acquire property

by his own crime. These maxims are dictated by public policy, have their foundation in universal law administered in all civilized countries, and have nowhere been superseded by statutes. They were applied in the decision of the case of the *New York Mutual Life Insurance Company v. Armstrong* (117 U. S. 591). There it was held that the person who procured a policy upon the life of another, payable at his death, and then murdered the assured to make the policy payable, could not recover thereon. Mr. Justice FIELD, writing the opinion, said: "Independently of any proof of the motives of Hunter in obtaining the policy, and even assuming that they were just and proper, he forfeited all rights under it when, to secure its immediate payment, he murdered the assured. It would be a reproach to the jurisprudence of the country if one could recover insurance money payable on the death of a party whose life he had feloniously taken. As well might he recover insurance money upon a building that he had willfully fired."

These maxims, without any statute giving them force or operation, frequently control the effect and nullify the language of wills. A will procured by fraud and deception, like any other instrument, may be decreed void and set aside, and so a particular portion of a will may be excluded from probate or held inoperative if induced by the fraud or undue influence of the person in whose favor it is. (*Allen v. M'Pherson*, 1 H. L. Cas. 191; *Harrison's Appeal*, 48 Conn. 202.) So a will may contain provisions which are immoral, irreligious or against public policy, and they will be held void.

Here there was no certainty that this murderer would survive the testator, or that the testator would not change his will, and there was no certainty that he would get this property if nature was allowed to take its course. He, therefore, murdered the testator expressly to vest himself with an estate. Under such circumstances, what law, human or divine, will allow him to take the estate and enjoy the fruits of his crime? The will spoke and became operative at the death of the testator. He caused that death, and thus by his crime made it speak and have operation. Shall it speak and operate in his favor? If he had met the testator and taken his property by force, he would have had no title to it. Shall he acquire title by murdering him? If he had gone to the testator's house and by force compelled him, or by fraud or undue influence had induced him to will him his property, the law would not allow him to hold it. But can he give effect and operation to a will by murder, and yet take the property? To answer these questions in the affirmative, it seems to me, would be a reproach to the jurisprudence of our state, and an offense against public policy.

Under the civil law evolved from the general principles of natural law and justice by many generations of jurisconsults, philosophers and statesmen, one cannot take property by inheritance or will from an ancestor or benefactor whom he has murdered. (Domat, part 2, book 1, tit. 1, § 3; Code Napoleon, § 727; Mackeldy's Roman Law, 530, 550.) In the Civil Code of Lower Canada the provisions on the subject in the Code Napoleon have been substantially copied. But, so far as I can find, in no country where the common law prevails has it been deemed important to enact a law to provide for such a case. Our revisers and law-makers were familiar with the civil law, and they did not deem it important to incorporate into our statutes its provisions upon this subject. This is not a *casus omissus*. It was evidently supposed that the maxims of the common law were sufficient to regulate such a case and that a specific enactment for that purpose was not needed.

For the same reasons the defendant Palmer cannot take any of this property as heir. Just before the murder he was not an heir, and it was not certain that he ever would be. He might have died before his grandfather, or might have been disinherited by him. He made himself an heir by the murder, and he seeks to take property as the fruit of his crime. What has before been said as to him as legatee applies to him with equal force as an heir. He cannot vest himself with title by crime.

My view of this case does not inflict upon Elmer any greater or other punishment for his crime than the law specifies. It takes from him no property, but simply holds that he shall not acquire property by his crime, and thus be rewarded for its commission.

Our attention is called to *Owens v. Owens* (100 N. C. 240), as a case quite like this. There a wife had been convicted of being an accessory before the fact to the murder of her husband, and it was held that she was, nevertheless, entitled to dower. I am unwilling to assent to the doctrine of that case. The statutes provide dower for a wife who has the misfortune to survive her husband and thus lose his support and protection. It is clear beyond their purpose to make provision for a wife who by her own crime makes herself a widow and willfully and intentionally deprives herself of the support and protection of her husband. As she might have died before him, and thus never have been his widow, she cannot by her crime vest herself with an estate. The principle which lies at the bottom of the maxim, *volenti non fit injuria*, should be applied to such a case, and a widow should not, for the purpose of acquiring, as such, property rights, be permitted to allege a widowhood which she has wickedly and intentionally created.

The facts found entitled the plaintiffs to the relief they seek. The error of the referee was in his conclusion of law. Instead of granting a new trial, therefore, I think the proper judgment upon the facts found should be ordered here. The facts have been passed upon twice with the same result, first upon the trial of Palmer for murder, and then by the referee in this action. We are, therefore, of opinion that the ends of justice do not require that they should again come in question.

The judgment of the General Term and that entered upon the report of the referee should, therefore, be reversed and judgment should be entered as follows: That Elmer E. Palmer and the administrator be enjoined from using any of the personalty or real estate left by the testator for Elmer's benefit; that the devise and bequest in the will to Elmer be declared ineffective to pass the title to him; that by reason of the crime of murder committed upon the grandfather he is deprived of any interest in the estate left by him; that the plaintiffs are the true owners of the real and personal estate left by the testator, subject to the charge in favor of Elmer's mother and the widow of the testator, under the ante-nuptial agreement, and that the plaintiffs have costs in all the courts against Elmer.”

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ENTRANCE EXAM 2 – READING PART (QUESTIONS)

Based on the read text of the Court of Appeals of New York judgment in *Riggs v. Palmer (1889)* – 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**
1.	Elmer Palmer was Francis Palmer's (testator's) nephew.		
2.	According to the Francis Palmer's last will and testament, the whole estate was to be given to Elmer Palmer.		
3.	The property of Francis Palmer was both movable and immovable.		
4.	During Francis Palmer's life he manifested some intention to revoke the testamentary provision(s) beneficial to Elmer Palmer.		
5.	There is no obstacle in literal meaning of the suitable statutes for Elmer Palmer's claims to the property of Francis Palmer.		
6.	In the Court's judgment there is a thorough discussion on the meaning of intent in law, but only with regard to the legislator's intent.		
7.	According to the Court's judgment the rational interpretation of law is connected with an inability of writers of law to express their intention perfectly and their most common mistake is to present it too narrowly – it is then the judge's role to extend it and make it probable and rational.		
8.	According to Rutherforth, the rational interpretation can be both extensive and restrictive with regard to the express words of law		
9.	According to Bacon an 'equitable construction' means that a solution to the case is taken out from the general terms of the statute and not from its actual content, because it is impossible for a law to set down every case in express terms.		
10.	The 'equitable construction' is only limited by a direct contradiction to the letter of the statute.		

11.	According to Blackstone, if consequences of the application of the statute to a particular case are manifestly contradictory to common reason, the common reason should lead to creation of a better solution.		
12.	According to the Infallible Judge, cited by the Court's judgment, with regard to his opinion on the commandment on the prohibition from work upon the Sabbath, it was the rational interpretation which allowed in his opinion for works of necessity or charity on Sabbath.		
13.	In the *New York Mutual Life Insurance Company* case provided a comparison of non-payment of life policy to the one who murdered the insured to non-payment of a house policy to the one who set it into fire.		
14.	Fraud or undue influence, according to *Allen* case and *Harrison's Appeal* case, may lead to exclusion of probation at a whole, but not in portion.		
15.	There were examples from both divine and Roman law given that a murderer cannot inherit after their victim.		
16.	There were examples from common law jurisdictions given, in which the enactments on lack of murderer's inheritance were established.		
17.	The argument that Elmer Palmer had no rights to the property until the death of the testator (he could have died earlier or been disinherited) was raised.		
18.	The inadmissibility of Elmer Palmer' inheritance after Francis Palmer was considered as a suitable additional punishment for his crime.		
19.	The maxim *volenti non fit iniuria* mentioned with regard to the *Owens* case was on inadmissibility of granting of property rights to a widow (for support and protection after death of her husband), when she made herself a widow by killing her husband.		
20.	The Court ruled accordingly with the judgment of the lower court.		