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Final Exam**Instructions**

1. Be certain that this exam consists of 18 pages, including this cover sheet.
2. Part One of this exam should be answered on the exam itself. On multiple choice questions, circle the letter preceding the single most correct answer for each question. If you feel that you must qualify or explain your answer, please do so in the space directly below the answer, in 25 words or less. Points may be deducted for wrong explanations.
3. Parts Two and Three of this exam should be answered in Blue Books. Please write your exam number and the number of the Blue Book (e.g. "1 of 3") on each book. Please make any notes or outlines in your Blue Book(s), not on separate paper.
4. **SKIP LINES. WRITE ON ONE SIDE OF THE PAGE.**
5. This is a limited open-book exam. You may consult your casebook, class handouts, Minzner (the book, not the Chief Justice), and your own work product, such as class notes or outlines prepared by you or by a group in which you were an active participant. You may not consult outside references, commercial outlines or study guides, or materials prepared by other students without your material participation.
6. Place your exam number in the designated space on this cover sheet and on each Blue Book (and page if you're typing). Do not identify yourself in any other way.
7. You have four hours to complete this exam. You must stop writing and turn in your exam when instructed.
8. **Applicable Law:** Unless otherwise instructed, the governing jurisdiction presumes a fee simple absolute unless contrary intent is indicated. All future interests are alienable, devisable, and inheritable. The Rule in Shelley's Case, Doctrine of Worthier Title and Destructibility Doctrine have been abolished, but the common law Rule Against Perpetuities is in effect; statutory reform doctrines have not been enacted. Assume that all named parties are alive and that the time is the present unless otherwise indicated.

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9. **Adverse Possession.** The jurisdiction follows this statute on adverse possession:

“Any action for recovery of personal property is barred after five years from the time the cause of action arose; any action for recovery of real property is barred ten years from the time the cause of action arose. If, however, at the time the cause of action arose, the person entitled to bring the action was under the age of majority (18 years), imprisoned, or of unsound mind, that person, or any person claiming through that person, may bring the action within three years after the time the disability is removed.”

10. **Intestacy.** The jurisdiction’s intestacy statute reads as follows:

“The intestate share of the surviving spouse is determined as follows: (1) as to community property, the entire intestate estate; (2) as to separate property, if there is no surviving issue of the decedent, the entire intestate estate or if there is surviving issue of the decedent, one-fourth of the intestate estate, with the surviving issue receiving the remainder by representation.”

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Part Two (45% -- suggested time one hour, forty-five minutes)

Taylor, a widow, owned two large, heavily wooded, adjacent parcels of land, Westacre and Eastacre. Westacre and Eastacre were located about 10 miles from the town of Elixir, in the State of Excelsior. County Road 22 ran along the south side of the two tracts. Neither Westacre or Eastacre had been used for some time and both parcels were overrun with weeds and brush. A rustic, wooden fence divided the two lots, but was broken down in a number of places. Westacre had an old, run-down house on the land, which had been deserted for many years. On the south portion of Eastacre, near the road, was an old barn that had fallen into disrepair.

In 1985, Taylor had a heart attack and was hospitalized. When her best friend, Aster, came to visit her, Taylor told Aster, "This heart of mine is killing me. I want you to have my emerald earrings. They're in my safe at home." Taylor gave Aster a slip of paper with the combination to the safe written on it. She told Aster that the back door of the house was always unlocked and to go and get the earrings. Aster replied, "Oh, Taylor, you are too generous. But you will be out of here and wearing those earrings yourself again soon." Aster put the slip of paper in her wallet but did not go to get the earrings.

Taylor felt somewhat better in a few days, and although she remained in a weakened condition, she was released from the hospital. Recognizing her mortality, Taylor executed a valid will, which stated, "I give Westacre and Eastacre to my grandchildren. I give the rest of my property to my only child, Sonny." In early 1986, Taylor had another heart attack, which affected both her mental and physical ability, and she was moved to a nursing home. Aster helped pack up Taylor's belongings, and when she came across Taylor's safe, she remembered that she still had the combination in her wallet. She opened the safe and took the emerald earrings.

In 1987, Sonny was killed in a plane crash. When Taylor heard the news, her heart gave out immediately and she died. Her will was probated, but the nursing home costs had depleted Taylor's assets, and her only significant assets at the time of her death were Westacre and

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Eastacre. Sonny was survived by his wife, Wendy, and two children, Bonnie, age ten, and Chip, age seven. Sonny left all his property by will to Wendy.

Back in 1985, Pamela, an amateur herbalist, came across Westacre and Eastacre while she was hiking. She was excited to discover that a number of rare, medicinal herbs were growing on the property. Pamela began spending a lot of time on Westacre and Eastacre, often staying for long weekends and sleeping in the empty house in her sleeping bag. She harvested many herbs and other wild plants from the property

By late 1986, Pamela began making some repairs to the house and barn, cut back the weeds and brush, and cleared an area behind the barn to cultivate some rare, non-local herbs. She soon was spending most of her time on the property, and in 1988, she decided she would like to own it. Pamela contacted the farmer, Filmont, who lived down the road, and he assured her that Westacre and Eastacre had been in his family for generations. They agreed on a price and Filmont executed and delivered a deed to Pamela. Unfortunately, the deed misdescribed the property they had agreed on, and only described Westacre, but not Eastacre. Pamela recorded the deed and paid taxes on both parcels. Pamela remodeled the inside of the house and barn, but like the rustic appearance of the outside, and left it largely intact. She expanded the garden plot on Eastacre and planted some fruit trees in the yard around the house on Westacre.

By 1992, Pamela had become quite an expert herbalist. After discovering a rare plant, yerba rara, growing in a small, localized portion of the northeast, undeveloped corner of Eastacre, she began experimenting. She developed a formula, made from yerba rara, that was effective in dramatically improving memory without any adverse side effects. Although the formula, which she called Rara Recall, could have been very profitable, Pamela only wanted to help people and gave away Rara Recall to her friends and acquaintances. Pamela's reputation spread quickly and she received many requests for Rara Recall.

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Due to her success in developing Rara Recall, Pamela was offered a one-year fellowship at the American Herbal Institute in 1995. Although she was reluctant to leave her now-beautiful Westacre and Eastacre, she decided she couldn't pass up the opportunity, and left the property unattended for the year. Upon completion of the fellowship, Pamela was offered a professorship at the Institute, and decided to give the property to her close friend, Quint, who was a naturalist and had always loved Pamela's place. In 1996, Pamela delivered a deed to Quint, describing the property in the same manner as in the deed Pamela received from Filmont. Quint moved into the house on Westacre, making it his residence, and used the barn for a workshop.

Later in 1996, Quint found an orphaned baby bobcat in the woods nearby and brought it back and raised it in the barn on Eastacre. Quint named the bobcat Gato, and it soon responded to that name. Because of Quint's constant care and attention, Gato became very tame. When it was grown, Gato came and went from the barn at will, but always returned for the night. One afternoon in 1997, Jerry, who lived in about 100 miles away, in Rapture, Excelsior, was bird watching near Eastacre, and came across Gato in the woods. Jerry was startled when the bobcat approached him instead of running off, and even more surprised when it began rubbing against his leg and purring. Jerry picked up Gato and decided to take him home as a pet for his little daughter, Karley, who was disabled and house-bound. Karley immediately fell in love with Gato and they became inseparable.

Quint was very distressed when Gato did not return to the barn, and searched everywhere for the bobcat. He posted notices on fences throughout the area, offering a reward for his return, but to no avail. Quint became resigned to the likelihood he would never see Gato again.

About that same time, Loretta, a not-too-successful herbalist, got a sample of Rara Recall and decided that this could be her claim to fame and fortune. After some investigation, she discovered where yerba rara grew, collected some specimens from Eastacre, and analyzed the formula that Pamela had developed for creating Rara Recall. Loretta began growing yerba rara

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on her own property and marketing an identical product she called Brain-O, and selling it for an exorbitant price.

In early 1999, a local paper in Rapture ran a human interest story about Karley and her pet bobcat, along with their picture. A friend of Quint's sent a clipping to Quint, with a note reading, "Thought this might interest you--didn't you have a pet bobcat once?" Quint immediately recognized Gato's unique markings and drove to Jerry's home, demanding the bobcat. Jerry refused, responding that it would break Karley's heart to separate them.

Quint filed an action to recover Gato, which created quite a controversy and was reported in papers throughout Excelsior. As luck would have it, Bonnie, now age 22, who had time on her hands, since she was serving time in the state reformatory since she was 17 for armed robbery, read the story. It caught Bonnie's interest, since she remembered that she had inherited some property in the vicinity from her grandmother, Taylor, back when she was a child. Bonnie called Chip, now 19 years old, and asked him to investigate. Chip found out that the property where the bobcat had been found was in fact Westacre and Eastacre. The town had expanded, and the two tracts had become quite valuable by this time. Chip decided to try to claim it for himself and Bonnie, who would be released from the reformatory in another two years. One thing led to another. When going through records and old pictures to try to support their claim to the land, Chip and his mother, Wendy, found a picture of Aster at Taylor's funeral, wearing the emerald earrings, which Wendy recognized as Taylor's. Wendy demanded them from Aster, who informed her that Taylor had given them to her as a gift many years earlier. Aster has no intention of parting with the earrings, as she wears them often and is quite proud of them.

Meanwhile, adding to the commotion, Pamela has found out that Loretta is making a fortune from sales of Brain-O, which Pamela says Loretta wrongfully appropriated from her. Pamela wants to enjoin Loretta from making, selling, or distributing Brain-O, and wants to recover any profits Loretta has made, so Pamela can donate the money to charity.

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You are the clerk to Judge Wolf, who is presiding over the resulting massive lawsuit which has resulted. Judge Wolf will decide all the issues involving all the possible parties arising from this set of facts. Judge Wolf wants you to thoroughly analyze the following claims:

- A. The rights of the relevant parties to Westacre and Eastacre.
- B. The rights of the relevant parties to the emerald earrings.
- C. The ownership of Gato, the bobcat.
- D. Pamela's suit to enjoin Loretta from making, selling, and distributing Brain-O and to recover the profits.

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Part Three (30% -- suggested time, one hour, fifteen minutes)

Harold and Maude Pikachu were penniless when they married in 1952 in the northeastern State of West Entropy, a community property jurisdiction. Harold worked hard and amassed a great fortune, but he was a very private man and kept all his business dealings to himself, taking title to everything in his name alone and leaving Maude alone to take care of the family and the small farm where they resided. Together they had three children, Alex, Ben, and Charlotte. By the time Harold died in 1992, he had invested all his assets in a mega-mall, the Mall of Confusion. In his will, Harold left the Mall of Confusion “to Alex, Ben, Charlotte, and Maude, jointly.

In 1993, Alex’s ex-wife, Dana, obtained a judgment against Alex for a huge amount of unpaid child support. Through legal process, Dana seized Alex’s entire interest in the Mall of Confusion. In 1994, Ben died and left all his property to his wife Elena. Meanwhile, Charlotte had moved to New Mexico and was happily settled as a schoolteacher in Taos. Shortly after arriving (not long after her dad’s death), she met Francesca and fell madly in love. Had New Mexico law permitted, they would have married; instead they were joined in a ceremony at the local Quaker Meeting House. On the advice of a lawyer, Charlotte executed a deed transferring her interest in the Mall of Confusion to “Charlotte and Francesca as joint tenants with right of survivorship”.

In early 1995, Charlotte was killed in an auto accident. Maude died in 1996, devising all her property to her two brothers, Greg and Isaiah. In 1997, Greg died, leaving a will that devised all his property to Janine.

Kelsey and Lydia purchased the Mall of Confusion in 1998. Kelsey and Lydia contributed equally to the purchase price of \$10 million and took title as tenants in common. Kelsey took over management of the Mall because Lydia was out of the country. Kelsey sent Lydia monthly checks of \$10,000, which Lydia assumed was her share of the Malls rents and profits.

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About that time, in one of those coincidences that happens only in the minds of law professors, trouble was brewing at the Mall of Confusion. The mall was located on the outskirts of a large city, the residents of which were mostly African-American, Latino, and recent Asian immigrants. The mall's employees mostly came from the city, but the majority of its customers were wealthy, mostly white, suburban residents. Parking at the mall was always at a premium, so when the recently-privatized bus company asked to rent space for bus stops, the mall proposed an innovative, space-saving lease. It would provide space for buses going to and from the city around the times of the mall's major shift changes. No other buses would be allowed on the property. This policy, Kelsey said, made sure customers and employees could get to and from the mall easily but meant that the mall still had plenty of parking. As an inducement, Kelsey decided to re-design the bus-stop area, install security lights, and build passenger shelters in the parking lot.

The bus company did not want to so severely limit public transportation to the Mall, but Kelsey would not agree to any other terms, so the company reluctantly signed the lease. All other buses had to stop across a busy expressway, with no easy – or safe – access to the mall. This made it very difficult for people coming from the city at other than shift change times to get to the mall.

At the request of the West Entropy ACLU (and with a plane ticket from the bus company), the Reverend Jesse Jackson came to the Mall to protest the Mall's policies. Before he was arrested for trespassing, he charged that the Mall was trying to keep out poor people and minorities, most of whom lived in the city and many of whom did not have cars. Kelsey was furious. She denied Jackson's charges and said that anyone was welcome, as long as their money was green. Moreover, she said that the Mall was hers and she would rent bus stops to whomever she damn pleased.

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When Lydia heard about the commotion, she was quite upset. She flew back from Europe and confronted Kelsey at the Mall. Kelsey, at the end of her rope from all the media attention, blew up and told Lydia to get out of the Mall and never to come back. Lydia left and hasn't been back since. The checks have stopped coming.

You are the clerk to the judge who is presiding over the resulting massive lawsuit which hears all the possible issues involving all the possible parties arising out of this fact pattern. How would you advise the judge on the following questions:

1. After Harold died, who owned the Mall of Confusion and in what form of title?
2. Who owned the Mall of Confusion after Maude died and in what form of title?
3. Can Kelsey prevent the bus company from using its stops for buses other than those allowed by the lease?
4. Lydia regrets ever buying the Mall of Confusion with Kelsey. Because of the bad publicity, she can't find a buyer for her share. Can Lydia end her involvement in this situation? What claims does she have against Kelsey and what claims does Kelsey have against her?

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