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Exam # \_\_\_\_\_

**508 Property I  
Final Examination  
Four Credits**

**Professor Wolf  
Monday, December 13, 1999  
1:30 to 5:30 p.m.**

**Four Hours**

**INSTRUCTIONS**

1. Be certain that your exam consists of 19 pages, plus this cover sheet.
2. This exam consists of three parts. Part I consists of 12 multiple choice and short answer questions, which **must be answered on this exam itself**. Circle the letter preceding the one most correct answer for each multiple choice 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 will be deducted for wrong reasons given for right answers.) Answer the short answer questions in the space provided below the question.
3. Parts II and III are essay questions, each containing four sub-parts. Please handwrite your answers (as neatly as possible under the circumstances!) in Blue Books, writing on the front side of each page only and writing on every other line, or type your answer on plain paper, double-spacing.
4. Suggested time allocation: 1 hour each for Part I, 1 ½ hour for each of Part II and Part III.
5. This is a limited open book exam. You may use your casebook, class handouts, and your own work product, such as class notes or outlines prepared by yourself or by a group in which you were an active participant. You may not consult outside outlines, hornbooks, or other references.
6. Place your exam number in the designated space on this cover sheet and on each Blue Book and on each page of any typed answer. Do not identify yourself in any other way.
7. You must return the entire exam, which must not be reproduced in any manner. Please staple your Blue Books and answer sheets in the upper left hand corner behind your exam.
8. **Applicable Law**: Be sure to carefully read the provisions on page 1.

**The Honor Code is in effect.**

## APPLICABLE LAW

- (1) The common law Rule Against Perpetuities is in effect.
- (2) You may assume that all jurisdictions presume a fee simple absolute unless a contrary intent is indicated by the language of the instrument, and that all future interests are alienable, devisable, and descendible. You may also assume that the Rule in Shelley's Case and the Destructibility Doctrine have been abolished.
- (3) The State of Excelsior is a common law marital property state, not a community property state, and allows a surviving spouse an elective share of 1/3 of the decedent spouse's estate. It has abolished tenancy by the entireties and common law dower.
- (4) The State of Excelsior has a statute that reads: "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 after 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) or was of unsound mind or was imprisoned, that person, or any person claiming through that person, may bring the action within three years after the time the disability is removed.
- (5) Unless the question indicates otherwise, apply general legal principles, addressing alternative approaches where applicable.
- (6) Assume that all parties are alive and that the time is the present, unless the fact pattern indicates otherwise.

## **PART II: Essay 1**

Harold and Maude were penniless when they married in 1952 in the 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 to take care of the family. 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. Charlotte, who didn’t get along with her family, moved to New Mexico and was happily settled as a school-teacher in Taos. Shortly after arriving, 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, Gregg and Isaiah. In 1997, Gregg 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 a month, which Lydia assumed was her share of the Mall’s rents and profits.

The Mall was located on the outskirts of a large urban area. Its main customers were wealthy suburban residents, although most of the employees lived in the inner city. Parking was always at a premium, so when the recently-privatized bus company asked to rent space for bus stops, Kelsey proposed an innovative, space-saving lease. The Mall would provide two acres of space for buses, but would limit bus access only to buses servicing routes between the Mall and the suburbs, and to buses going to and from the inner city only at the times of the Mall’s major shift changes. It would not allow access to buses from any other routes. This policy, Kelsey said, would assure that customers and employees could get to and from the Mall easily but meant that the Mall still would have ample parking. As an inducement, Kelsey decided to repair the pavement in the parking 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 bus 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 inner city at other than shift change times to get to the Mall.

At the request of the West Entropy ACLU, the Reverend Jesse Jackson recently came to the Mall of Confusion for a demonstration. 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 inner 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 pleased.

Please address the following four questions, thoroughly explaining your reasoning.

- A. Who owned the Mall of Confusion at time of Harold's death and in what form of title?
- B. Who owned the Mall of Confusion after Maude died and in what form of title?
- C. Can Kelsey prevent the bus company from using its stops for buses other than those originally allowed by the lease?
- D. 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 terminate her involvement in this situation, and what claims does she have against Kelsey and what claims against her does Kelsey have?

**END OF PART II--CONTINUE TO PART III**

### **PART III: ESSAY 2**

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. 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 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 a 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, not only did Filmont not own Westacre or Eastacre, but 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 she liked 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 Total Recall, could have been very profitable, Pamela only wanted to help people and she gave away Total Recall to her friends and acquaintances. Pamela's reputation spread quickly and she received many requests for Total Recall.

Due to her success in developing Total 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 immediately 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, 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 Total 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 Total Recall. Loretta began growing yerba rara on her own property and marketing an identical product she called Brain-O, and selling it for an exorbitant price.

In early 1999, a newspaper in Jerry's town 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 near Westacre and Eastacre. The town had expanded, and the two tracts had become quite valuable by this time. Chip decided recover possession of the property 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. Furthermore, Aster's friend, Marty, a jeweler had sold them for Aster back in 1992. They were purchased by Norma, a customer from New York, for \$10,000. Marty gave Aster the \$10,000 (less a modest commission for himself), which she had long since spent. Norma 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.

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 claims, including, but not limited to, the following. (Be sure to refer to the Excelsior statute on page one of this exam.)

- A. What are the rights of the relevant parties to Westacre and Eastacre?
- B. What are the rights of the relevant parties to the emerald earrings?
- C. Who owns Gato, the bobcat?
- D. How should Pamela's suit to enjoin Loretta from making, selling, and distributing Brain-O and to recover the profits be decided?

**END OF EXAM**

**Have a Happy Holiday Season!**