



The University of New Mexico

School of Law Library
MSC11 6080
1 University of New Mexico
Albuquerque, NM 87131-0001
Telephone (505) 277-0939
FAX (505) 277-0068

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Final Exam

Instructions

1. **READ THESE INSTRUCTIONS COMPLETELY. THEN FOLLOW THEM.**
2. Be certain that this exam consists of 10 (ten) pages, including this cover sheet.
3. 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.
4. Parts Two, Three, Four, and Five 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.
5. **SKIP LINES. WRITE ON ONE SIDE OF THE PAGE.**
6. 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.
7. 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.
8. You have four hours to complete this exam. You must stop writing and turn in your exam when instructed.

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9. **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.

The jurisdiction 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.

10. **A Few Tips**. First, watch your time carefully. The times given before each section are recommended, corresponding to the amount each section will count. You need to give yourself time to answer each essay and complete the short-answers. Second, take time to outline and plan your answer. Third, unless the question indicates otherwise, apply general legal principles, addressing alternative approaches where applicable.

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Part II: Short Answers (50 minutes, 20 points total)**Answer in Bluebook, NOT on exam.**

1. Omega, an alumna of UNM Law School, devised a small home near the law school, Lexacre, “to Dean Desiderio, but when the new addition to the UNM Law School is completed, to my niece Anna.” The new addition to the law school is scheduled to be completed by August 2002. Dean Desiderio would like to tear down Lexacre and use the lot for additional parking. Is he legally entitled to do this? Please explain his rights and obligations with respect to Lexacre.

2. In her will, Olivia left Flatacre, “to my husband Harlan for his life, then to Harlan’s children for their lives, and on the death of the last of Harlan’s children, to Harlan’s grandchildren who are living at that time.” Olivia was survived by her 84 year old husband Harlan, their two children, Arnie and Beth (ages 56 and 54 respectively), and by seven grandchildren (three of Arnie’s children and four of Beth’s), and five great- grandchildren. Do any of the interests in Flatacre violate the common law Rule against Perpetuities? Please explain.

3. In 1990, Odellia conveyed her farm, Sproutacre, to herself and her three children, Arvin, Biff, and Caroline, as joint tenants with right of survivorship. Arvin transferred his interest in Sproutacre to his wife Wilma when they divorced in 1992. Odellia died in 1994, leaving a will that devised all her property to her friend Dante. Arvin, Biff, and Caroline were Odellia’s only heirs. Biff died intestate in 1996; his wife Evelyn was his only heir. Caroline has died recently in 2000; Caroline was survived by her daughters Francesca and Gwen. Caroline’s will left all her property to Hernando, her neighbor. Who owns Sproutacre after Caroline’s death? Please explain.

4. When Orlando died many years ago, he devised his ranch, Rodeoacre, to his daughter Abby for her lifetime, “and after Abby’s death, to her children equally.” Orlando left the rest of his property to his son Brad.” Abby had no children at the time of her father’s death, but she later married Craig, and they had three children, Diane, Ernie, and Federico. Abby’s children grew up. Diane married Gary, and they had two daughters, Hattie and Ingrid. Ernie lived with his girlfriend, Jennifer; they had no children. Federico remained single and childless. Diane and Gary were killed in a mountain climbing accident several years ago, survived by their daughters Hattie and Ingrid. Neither Diane nor Gary had a will. Ernie died a few years later, leaving all his property to Jennifer in his will. Now, Abby has died. Brad, Federico, Hattie, Ingrid, Jennifer, and Federico are living.
 - (A) What interests were created in Rodeoacre at Orlando’s death?
 - (B) Who owns Rodeoacre after Abby has died? Please explain.

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5. Howie and Wanda had two children by their marriage. When Wanda and Howie divorced, Wanda was awarded custody of their two children, Andrea and Brett. Howie was granted visitation privileges, although he did not maintain much contact with the children. As part of their property division, Howie was awarded Blissacre, the family home, which was fully paid for. Several years later, Howie remarried. Howie and his new wife Wendy lived on Wendy's salary as a nurse, although they lived in Blissacre. Howie invested his income in a stock brokerage account with the Merlin-Sterling Company. Only Howie's name was on the Merlin-Sterling account. A few years ago, Howie inherited a cabin in Taos, Snowacre, from his aunt. Recently, Howie fell in love with another woman, Fiona, and he intended to divorce Wendy. Before any legal papers were filed, Howie died of a heart attack. Howie had never gotten around to writing a will, but he had planned to when he filed for divorce, and he intended to leave all his property to Fiona. Assuming all events occurred, and all property was owned, in New Mexico, who is entitled to Blissacre, the Merlin-Sterling account, and Snowacre? Please explain.

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Part III: Essay (55 minutes, 23 points)

Last summer, Onnie bought an adorable and expensive miniature schnauzer dog, Frisbie, who came from a long line of champions. Frisbie became her constant companion and Onnie treasured that pup more than anything. Onnie planned to show and breed Frisbie once he was older. Several days ago, Onnie began having dizzy spells and was convinced she was dying of a brain tumor. She sent a letter to her niece Ashley, who lived in a near-by city. Onnie wrote, "My dear Ashley, I am afraid I won't live to see you again, and I want you to have my precious little pup, Frisbie. I am giving him to you because I am sure you will love him as much as I do. Please keep him in remembrance of me and don't ever sell him or give him away." Onnie enclosed several color photographs of Frisbie in the letter. When Ashley received Onnie's letter, Ashley called her aunt and said, "Aunt Onnie, that was such a sweet thing for you to do, but I am sure you will be all right. I will come to visit you and Frisbie as soon as I can."

The next day, Onnie was on her way to her doctor's office to have a brain scan when she was run over by a city bus. Her son, Bentley, immediately rushed to the emergency room where Onnie was dying. Onnie's last words were, "Son, please take care of little Frisbie." Onnie's will, which she had executed several years earlier, gave all her property to Bentley. As soon as his mother died, Bentley went to her house and picked up Frisbie. Before taking the dog to his home, Bentley dropped him off at SmartPetz, a large pet store that has a dog grooming department, to have him clipped and bathed before the funeral. That afternoon, a customer, Crystal, saw Frisbie in a cage at SmartPetz, where he had been placed after grooming, and asked a clerk how much he was. The clerk, who was new on the job, thought Frisbie was a mixed-breed dog left for adoption, and told Crystal the dog was \$50. Crystal, recognizing that he was a purebred miniature schnauzer of high quality, said, "What a bargain!" and paid the clerk \$50 in cash. Crystal took Frisbie and immediately sold him to Dennis for \$600.

In the late afternoon of the same day, Bentley stopped at SmartPetz to pick up Frisbie. After considerable confusion, the manager of the store discovered what had happened. Bentley was very upset and demanded that the store get the dog back. After tracking down and talking with Crystal, the manager apologized but told Bentley there was nothing she could do about it, and offered Bentley the \$50. Bentley refused and said he would sue everyone until he got the dog back.

The next day Ashley arrived for Onnie's funeral, and immediately afterwards told Bentley she wanted to pick up Frisbie. Bentley told her what had happened, but advised her that, in any event, Frisbie belonged to him and he was going to get him back no matter what. Ashley informed Bentley that Onnie had given her Frisbie and she planned to get him back and sell him to a breeder, because she knew the dog was worth a lot of money. Bentley, who loves Frisbie like a brother, wants to get the pup returned and keep him for himself.

Who has the best right to Frisbie? What liabilities does SmartPetz have, and to whom?

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Part IV: Essay (55 minutes, 23 points)

In 1982, Ophelia conveyed a large, undeveloped tract of land, Wildacre, to April. The deed stated, "I, Ophelia, convey Wildacre to April, provided that, and only as long as, Wildacre is never sold and is never used for immoral purposes; but if April ever sells or attempts to sell Wildacre or if Wildacre is ever used for immoral purposes, I, Ophelia, shall have the right to reenter and reclaim Wildacre as my own." Ophelia died in 1986, leaving a will that devised "all my property to my son, Stan and my daughter Daphne, in equal shares." Stan was eight years old at the time of Ophelia's death; Daphne was twenty years old, and was appointed Stan's guardian. In 1988, April sold Wildacre to Buck, delivering a deed, which stated, "I, April, hereby transfer all my rights and interest in Wildacre to Buck." Buck developed Wildacre into a mobile home park, "Wildacre Park," and leased lots to 30 tenants. In 1998, one of the tenants, Charlie, had his girlfriend, Dana, move in with him. Two weeks ago, Dana was arrested for operating a pornographic website from the mobile home that she shared with Charlie. The story hit the front page of the local paper and Stan and Daphne realized that the website was being operated on Wildacre. Stan and Daphne have asserted ownership of Wildacre, and have brought a quiet title action. You are the law clerk for Judge Bobwolf, who must determine the ownership of Wildacre. Please write a memo to Judge Bobwolf, explaining who owns Wildacre in 2000.

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Part V: Essay (55 minutes, 23 points)

Ted Turner, the largest private landowner in the United States, owns the 180,000 acre Catron Ranch in the northeastern part of the State of Serenidad. The ranch is home to the Bravo herd of wild mustangs, one of the few remaining mustang herds on private land anywhere in the west. Turner can prove the herd is not subject to the federal Wild Horses and Burros Act applicable only to federal lands.

Turner's next door neighbor, Emily Post, owns a much smaller private ranch upon which she gathers wood and grazes a small herd of cattle. Her land includes a high-mountain lake, Lake Azulito, site of an annual, centuries-old prayer vigil by residents of the Village of Tierra Naranjada meant to ensure that the headwaters of the Rio Grandito continue to flow. In recent years, Emily has tried to keep the villagers from coming on her land, but they have ignored her signs and attempts to post guards, choosing a new route each time they come. In 1994, during the three day vigil at the Lake, one of the residents, Roberto Cly, came upon a young horse whose foot was injured. He bandaged the injury and carefully transported the horse home to Tierra Naranjada. At that time, he made discreet inquiries around TN about the unbranded horse but no one came forward to claim it. He even asked Emily if she was missing a horse. She said no. He has cared for the horse faithfully ever since.

In December 2000, Turner saw a story on his news network about Roberto's prowess as a horse trainer. Turner knew right away from the video that the horse was from the Bravo herd. He called Roberto and asked him to return the horse or pay for it. Meanwhile, Roberto's wife Alice, who recently moved in with Emily following a marital dispute, told Emily where Roberto got the horse and Emily has called demanding the same thing as Turner. Roberto has consulted you for legal advice. Please tell him who owns the horse.

END OF EXAM