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FOUR HOURS

INSTRUCTIONS

1. Be certain that your exam consists of 7 pages, plus this cover sheet.
2. This exam consists of five parts. Part I consists of 5 multiple choice questions, worth 3 points each. Part II consists of seven short answer questions, worth 4 points each. Parts III, IV, and V are essay questions, worth 20 points each. (Total: 103 points.) Please answer all questions in Blue Books, writing on the front side of each page and on alternate lines, or type your answer on plain paper, double spacing. If you feel that you must qualify or explain your answer because of an ambiguity or possible typo, please do so next to that answer, in 25 words or less. Points will be deducted for wrong reasons given for right answers.
3. 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 references.
4. Place your exam number on each Blue Book and on each page of any typed answer. Do not identify yourself in any other way.
5. Please staple your Blue Books or typed pages together in the upper left hand corner. You must return the exam itself, which must not be reproduced in any manner. Please do not staple it to your answers.
6. **Applicable Law**: The jurisdiction presumes a fee simple absolute unless a contrary intent is indicated by the language of the instrument, and all future interests are alienable, devisable, and descendible. The Rule in Shelley's Case, the Doctrine of Worthier Title, and the Destructibility Doctrine have been abolished, but that the common law Rule Against Perpetuities is in effect. Assume that all parties are alive and that the time is the present, unless the fact pattern indicates otherwise.

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.

Unless the question indicates otherwise, apply general legal principles, addressing alternative approaches where applicable.

Part III: Essay 1 (20 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 nearby 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 at SmartPetz, Crystal, saw Frisbie in a cage, where he had been placed after grooming. Crystal asked a clerk how much the dog cost. 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 \$800.

In the late afternoon of the same day, Bentley stopped at SmartPetz to pick up Frisbie. After considerable confusion, the manager of SmartPetz discovered what had happened. Bentley was very upset and demanded that the store get the dog back. After tracking down Crystal and talking with her, 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 she told Bentley that she wanted to pick up Frisbie. 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 explained to Ashley what had happened, but firmly stated to her that, in any event, Frisbie belonged to him and he was going to get him back no matter what. Bentley, who loves Frisbie like a brother, wants to get the pup returned and keep him for himself.

Both Ashley and Bentley have sued SmartPetz, Crystal, and Dennis. Who has the best right to Frisbie? What rights and liabilities, if any, do SmartPetz, Crystal, and Dennis have, and to whom?

Part IV: Essay 2 (20 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 Wildacre will revert to me." 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?

Part V: Essay 3 (20 points)

Argus Argyle, 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. (This the herd is not subject to any federal laws.)

Argus's next door neighbor, Bonnie Braveheart, 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, which is the site of an annual, centuries-old prayer vigil by residents of the Village of Tierra Naranjada. The vigil is meant to ensure that the headwaters of the Rio Grandito continue to flow. In recent years, Bonnie 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 Tierra Naranjada residents, Clyde Clemente, 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 Tierra Naranjada about the unbranded horse but no one came forward to claim it. He even asked Bonnie if she was missing a horse. She said no. Clyde has cared for the horse faithfully ever since.

In December 2000, Argus Argyle saw a newspaper article in the Tierra Naranjada Times about Clyde's expertise as a horse trainer. Argus knew right away from the picture that accompanied the article that the horse was from the Bravo herd. He called Clyde and demanded that he return the horse or pay for it. Meanwhile, Bonnie has learned where Clyde got the horse and Bonnie has called, making the same demands as Argus. Clyde has consulted you for legal advice. Please discuss who owns the horse.

END OF EXAM

HAPPY HOLIDAYS!