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508 Property I, Section 2

UNM School of Law
Final Examination
Four Credits

Professor Sheryl Wolf
Monday, December 10, 2001
1:30 p.m. to 5:30 p.m.

FOUR HOURS

INSTRUCTIONS

1. Please be certain your exam consists of 8 pages, plus this cover sheet.
2. This exam consists of three parts. Part I consists of 5 multiple choice questions, worth 3 points each. Part II consists of 5 short answer questions, worth 5 points each. Part III consists of two essay questions, worth 30 points each.
3. This is a limited open book exam. You may use your casebook, class handouts, and any material you prepared individually or as an active participant in a group, such as class notes or outlines. You may not consult outside references, such as treatises, commercial or bar review outlines, or other people.
4. Please answer all questions in Blue Books, writing on the front side of each page only and skipping alternate lines; or neatly type on plain paper. If you feel it is necessary, you may briefly explain your answer to any of the multiple choice questions in part I, in 25 words or less, next to your answer. Points will be deducted for wrong reasons given for correct answers.
5. Be sure to place your exam number on each of your Blue Books or typed pages, and staple all your answer sheets together. Do not identify yourself in any other way. Please turn in the exam itself separately, without stapling it to your answers.

6. **Applicable Law:**

Unless otherwise indicated, 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 the common law Rule Against Perpetuities is in effect. The jurisdiction has the same community property and intestacy statutes as New Mexico.

The jurisdiction has a statute that reads: "Any action for recovery of personal property is barred after six 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."

Part III: 2 Essays, 30 points each

Essay 1

Otis owned two large adjacent wooded tracts of land in the mountains. Although they appeared to be one contiguous tract, they were described separately in Otis's deed as Rockacre and Stoneacre. Rockacre lies directly to the west of Stoneacre, and on Stoneacre's eastern boundary was a gravel road. A rustic, dilapidated log fence ran directly through the middle of Stoneacre, and in the far northeast corner of Stoneacre was an old storage shed, which had been unused for many years.

Otis died in January 1990. Otis's will devised "Rockacre and Stoneacre to my two

grandchildren, Alice and Burt, share and share alike.” Alice was 22 years old and a chronic alcoholic; Burt was 10 years old. In late spring of 1990, Alice and Burt drove up to the mountains to inspect their inherited property. Unfortunately, Alice had been drinking, and before they got to the property, she missed a curve, and hit a large tree. Alice incurred only minor injuries, but Burt suffered a severe head injury that left him incapacitated.

Upon reading Otis’s obituary and learning of Rockacre and Stoneacre, Xerxes concocted a scheme to get rich quick. In February 1990, Xerxes forged deeds to the tracts, and sold Rockacre to Carla and Stoneacre to Devon. Xerxes then disappeared. Devon lived in a distant state and bought Stoneacre as an investment without ever setting foot on the land, hoping some day to retire there. Carla, on the other hand, immediately went out to the land and began clearing away brush and stacking rocks, preparing to build a small cabin on the land. Carla did not have the land surveyed, however, and because of the rugged terrain, Carla misread the description of her deed to Rockacre and mistook the boundaries. Carla believed Rockacre’s eastern boundary began at the rustic fence on Stoneacre and extended westward to what actually was the middle of Rockacre. Thus, Carla began developing what in fact was the eastern half of Rockacre and the western half of Stoneacre--precisely in the middle of the two tracts. Carla constructed an environmentally sound and inconspicuous cabin barely visible from the road. The cabin straddled the true boundary of Rockacre and Stoneacre. Carla spent a good portion of each year in the cabin, continuing to engage in clearing and naturally landscaping what she thought was her property. She built a winding driveway to the cabin from the gravel road on the east boundary of Stoneacre, across that tract, knowing she did not own that portion of the land.

Carla became ill in 1996, and was hospitalized for six months before she died intestate. Carla’s only heir was Edna, and Edna immediately moved out to the cabin and took up where Carla left off. In the summer of 1997, Edna found an injured squirrel near the cabin and nursed it back to health. The squirrel became quite tame, came around daily, and would eat from Edna’s hand, although it always disappeared back into the woods. The squirrel was quite mischievous, and developed a habit of stealing small, shiny objects, such as foil, paper clips, and the like, from Edna’s porch.

In 1999, Edna decided that since no one appeared to have any interest in the eastern half of Stoneacre, she would plant a large organic garden on that land. Edna hired Freddy to clear a large garden plot, adjacent to the road. One afternoon while Freddy was working on the garden, a sudden storm arose, and Freddy took shelter in the old, unused shed on the northeast corner of Stoneacre. While trying to get his bearings in the dim light, Freddy knocked over a squirrel’s nest, and out rolled several old and beautiful silver buttons. Freddy pocketed the buttons, and later took them to an antique collector, who told Freddy the buttons were probably from the jacket of an early Spanish settler and were very valuable. This fall, in 2001, a reporter from the area paper wrote an article about Freddy’s discovery. The article was reprinted in newspapers across the country.

As luck would have it, Alice, who had recently been released from a rehabilitation center and had recovered from her drinking problem, saw the article and decided to investigate. Alice realized that the buttons had been discovered on the land she and Burt had inherited years ago, and Alice made a claim on her and Burt’s behalf to both the buttons and the two tracts of land. After being notified of Alice and Burt’s claims, both Edna and Devon now each claim ownership

to the land, as well as the buttons. Freddy has refused to relinquish the buttons, and Edna won't leave the land. All the parties's claims have been consolidated into one huge, complicated law suit, and Judge Wolfhall must determine the respective rights to the buttons, Rockacre, and Stoneacre. Judge Wolfhall has assigned you, the new law clerk to write a memo to resolve the matter. Please write that memo.

Essay 2

Billy Williams recently came into my law office with the following story: "This," he told me, "is a baseball story. Not just any baseball story. This is the story of a baseball, the last baseball that was knocked out of the Albuquerque Dukes stadium before the Dukes left town and they tore the stadium down."

"I remember," I replied tersely, thinking back to ten summers before when the last professional baseball team to play in this town just pulled up stakes and moved to Portland. "Just go ahead and tell me your sad tale."

"Well," Billy continued, "the Dukes had made a big deal of this being their last game in New Mexico. They doubled the charge for admission. They gave out special tickets as memorabilia, I guess, and charged for that.

"I was twelve years old that year, ten years ago, and was crazy for baseball. My dad was sixty then, but he was still crazy for baseball too so we decided to go to the last game together. We each took a glove, my dad the one that he had used fifty years before when he had played Little League, me the good Wilson glove that he had bought me when I made the Eastdale all-star team. We cherished those gloves and thought they'd bring us good luck at the last game.

"The Dukes were offering a prize for the person who caught the last home run hit at the Sports Stadium. Starting in the seventh inning, the Dukes said, the umpires would use only specially numbered balls and the person who came up with the last ball hit out of the Stadium would win special recognition, a small cash prize, and, of course, the marked ball itself.

"Naturally, the Stadium was packed when my dad and I got there for the last game and the only place that we could find to watch was in the cheap seats, way out in right field, just behind the bull pen where relief pitchers hung around and warmed up. We were the only fans in the area who had brought gloves. Home plate was a long way away. You couldn't see very well. But we were lucky enough to get seats in the front row of the right field stands, right next to the foul pole and right above the bull pen, located underneath the top of the wall, just in foul territory.

"Signs in the stands warned us to stay out of the bull pen which was reserved for players. A tall, heavy wire fence separated the stands from the bull pen and enclosed the pen itself. There was really only one entrance, on the side of the pen facing the field. Players would come and go in golf carts as the game progressed. It was not a place where fans were welcomed.

"That last game started slowly but the score was close and as the end drew near, you could feel the excitement rising. By the bottom of the seventh inning, when the Dukes announced that the marked balls would be used, the right field mob was really getting rambunctious. Everyone had left their seats and was crowding down along the top of the wall, pressing down on

where my dad and I sat with our gloves. No one hit one anywhere near us.

“Then in the bottom of the ninth, with the Dukes trailing by one run, a runner on second, and two outs, the Dukes shortstop, a weak hitter if there ever was one, came to the plate. He took two called strikes. On what looked for sure like a wasted third pitch, low and outside, the Dukes hitter reached out and somehow connected with the ball. The ball was not well hit and the batter had sliced it into right field. But somehow, the ball, bent on a slicing upward arc, seemed headed straight towards the right field bleachers where my dad and I, crushed from behind by the pressing crowd, watched in awe.

“The right fielder, running almost with his back to home plate, tracking the ball over his left shoulder, stretched backhanded up towards the top of the wall, trying to grab the hit before it left the field. My dad, facing the field, leaning over the wall, reached down, backhanded, towards the field. The Dukes right fielder and my dad, each straining as far as he could, almost touched gloves. But the slicing drive slammed into my dad’s ancient glove. Then chaos broke loose.

“The first base umpire, running into the outfield with his back to home plate to rule on the play, immediately raised his right hand, and indicated a home run.

“My dad whipped his glove hand back from below and in front of him to above and behind him. The ball was still in the glove webbing.

“Someone in the maddening crowd behind my father pushed forward and smacked my dad’s glove. The ball dislodged. Everyone in the crowd watched, half in horror and half in amazement, as the ball bounced once on the top of the wall and then fell to the ground inside the bull pen. My father hesitated, looking down at his empty glove, and as he did, some of the young men pressing in behind us leapt over the wall and down into the bull pen.

“The lounging pitchers scattered, laughing. A whole crowd of ball seekers piled willy nilly on top of each other, groping and laughing and fooling around. A melee ensued. It took the stadium police half an hour to calm things down.

“When they finally did, no one had the ball. The Dukes announced the number of the ball--“2796”-- and asked whoever possessed it to come forward. No one did. The game and the season ended. The Dukes left Albuquerque.

“My dad didn’t give up. Before the club left town, he got the Dukes to ask for the person who had Ball 2796 to come forward so it could be restored to my dad. The Dukes got the umpire at the game to declare that, had my father been a player on the field, he would have ruled the batter “out” based on my dad’s catch. Finally, the Dukes even acknowledged publicly that my dad had all of the Dukes’ rights to the ball. No ball appeared.

“Most people, I guess, would have let the matter rest, but not my dad. He ran paid advertisements in the paper, asking for information on the ball. He haunted baseball memorabilia stores wherever he went. He watched e-bay auctions on the internet to see if the ball ever turned up. It never appeared.

“My dad wanted me to continue the search, but I wasn’t as interested in it as he was. I left Albuquerque for college and the letters that my dad sent me occasionally referred to the ball, the search for which had achieved monomaniacal proportions in his life. I still have the letter that he sent me about it late in his life, when he was pretty sick. Would you like to see it?”

“O.K.,” I replied, waking myself up, and reaching forward to take from Billy Williams an opened envelope with the single sheet still neatly folded inside. I took it out, noted the date six

years ago, and read on. The letter contained the usual news from home, tales of the neighborhood and home and local characters. And then the letter turned to the ball.

"I know," Billy's dad had written, "that you think I'm a little crazy on this subject, but I've been trying to put my business in order and Ball 2796 is part of it. I feel that it's mine, even though I don't have it. I've been talking about it to a neighborhood kid who is in law school and she's told me what to do. I'm giving you the ball. I want to keep it while I'm alive if it shows up, but then, when I'm gone, I want you to have it. I don't want it ever to be sold, but you should always keep it in our family. Love, Dad."

"How old are you?" I asked Billy.

"Well, I was 12 when dad lost the ball, 16 when I got the letter and now I'm 22."

I wrote the numbers down, not because I knew what they meant but because I thought I should look like I was doing something.

"Finish the story, Billy," I told him.

"I didn't pay much attention to the letter then, but I did save it. My dad died three years ago," Billy Williams continued. "His will left all his property to my step-mother, whom he married two years before his death. I certainly didn't think much about the ball. But then a couple of weeks ago I happened to be passing a gallery in Santa Fe that specializes in old maps, books and other artifacts. I looked in the store window and saw the usual early maps of New Mexico and the usual out-of-print first editions of Melville. And then I saw it, set on top of a small pedestal of its own: Ball 2796. A small printed sign underneath identified the ball as the last ball hit out of the Albuquerque Dukes Sports Stadium in the last game played there ten years ago. I went inside, of course, and made some inquiries.

"The store owner told me that the ball had been on display for almost three years. A couple of patrons almost had bought it but the ball had never actually been sold. The store owner had obtained the ball four years before from a young man the owner didn't know. The young man said that he had caught Ball 2796 himself at the last game and wanted the store owner to try to sell it for him. The store owner had agreed, arranging to take a hefty commission on any sale.

"When I told the store owner that the ball really had belonged to my dad and now to me, he just laughed.

"'Possession,' he told me, 'is nine-tenths of the law, and I've got possession. Besides, I'm in business and the law will protect me. How about if I pay you the prize money that the Dukes offered ten years ago?'

"I refused, of course, and went home to think about the whole thing. When I went back the next week, the ball wasn't in the window any more, and the store owner told me he'd sold it to a tourist from Portland. He wouldn't give me the tourist's name.

"With that kind of response," Billy Williams told me, "I thought that I'd better come see you. I'd like to get the ball back if I can."

"I'll see what I can do," I replied.

Because I am about to go on vacation, I'd like you, new associate, to write a memo analyzing Billy's claims to the ball.

End of Exam--Have a Happy Holiday Season!