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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

FOUR HOURS

Instructions

1. **READ THESE INSTRUCTIONS COMPLETELY. THEN FOLLOW THEM.**
2. Be certain that this exam consists of 15 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 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.
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 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 other 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. Finally, I've made every effort to avoid contradictions and ambiguities. To the extent you perceive one, state what it is and how you resolved it in the course of your answer.

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Part II: Essay (suggested time 90 minutes – 37 ½%)

Robert Carillo has owned land off Candelaria Road, down next to the Rio Grande bosque, for almost 50 years. Before he inherited the property, his father and his grandfather and his great-grandfather owned it and for as long as anyone can remember it has been farmed, for the last several decades in alfalfa. Being along the Rio Grande flyway, it has always attracted lots of birds, especially during the winter months. The birds, in turn attract predators, including coyotes and the occasional fox.

The neighborhood used to be pretty humble and for years Robert's place wasn't the worst-looking in the area, but in recent years more and more outsiders have moved in and built huge expensive adobe mansions. Now Robert's house is by far the worst-looking on the block. He tries to keep it neat, but he hasn't had the money lately to do any maintenance and he's getting too old to even keep the weeds down or the trash that blows in from Candelaria picked up. Luckily, he's in the Village of Los Ranchos, not Albuquerque and neither the Village which incorporated a few years ago nor the county has any weed or litter ordinances. Heck, they don't even have any zoning ordinances.

The bosque area is so popular with birders that the year before last, a couple from Philadelphia started the Middle Rio Grande Sandhill Crane Protection Society, a non-profit corporation dedicated to providing habitat and safe refuge to the sandhill cranes who migrate south along the Rio Grande corridor. The Society purchased the lot directly north of Ramon's property and has spent a bunch of money to put in an irrigation system that floods much of the property all winter long and to build a beautiful combination bird blind and cappuccino bar, tastefully furnished and fully plumbed and heated. The resulting facility has become so popular with cranes that it attracts birders from all over the world. Business is so good that the Society

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has had to expand the blind three times, tripled the price of a Rio Grande Latte and now accounts for fully 50% of the gross receipts taxes taken in by the Village, accounting for 35% of the Village's total budget.

The trouble really begin last winter when Robert noticed an orphan group of four coyote cubs living in a stand of cottonwood trees on the north side of his property that he'd never really used for much anyway. Knowing that the cubs would probably die without their parents to teach them to hunt, Robert started putting out food for them. They've hung out around his place ever since. They never bother him or his chickens or the two sheep he keeps; it's almost as if they know to behave. He's named each one and occasionally they even let him come close and pet them. He's never seen or heard of anything like it before, but he likes having them around, likes to hear them howl at night, and likes knowing that they always come back to their den among his cottonwoods, so he continues to feed them and look out for them.

Unfortunately, the coyotes are now scaring away the sand hill cranes that attract most of the business to the Society's bird blind. The coyotes roam along his north fence, chasing birds and generally having a good time, occasionally managing to munch on a crane that strays a little too far south. As a result, the number of cranes has plummeted – more from fear than ingestion – to a mere fraction of what it was last season. The Society had been planning on building a full-scale interpretive visitor's center with the cappuccino proceeds, but they've had to put it on hold until they see if they can solve the coyote problem.

The Society tried to resolve the problem with Robert amiably. They explained the problem and asked him to stop feeding the coyotes. He told them that frankly he didn't like all the traffic and noise from the cappuccino bar – it disturbed the quiet he had long enjoyed and been accustomed to – and he wasn't inclined to stop feeding his buddies. The Society then called

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the Village, County, and State and discovered, to their horror and dismay, that there were no laws against keeping coyotes. Frustrated and worried that every minute they delayed risked sand hill crane snacks and disappointed birders (not to mention unsold lattes), the Society decided to pursue a self-help remedy.

First, the Society had its maintenance crew re-work a shallow arroyo so that water from the Society's property drained into the cottonwood stand where the coyotes lived. Next, the Society's chief of staff rented four live traps, baited them with hazelnut torts and liver spread, and waited. It wasn't long before she had caught two coyotes. She locked them up in a small pen and re-baited her traps. Robert got wise, caught and tethered the remaining two animals and really began taming them. While the number of sand hill sandwiches dropped sharply as the cranes figured out the length of the coyotes' tethers, the birds remained nervous and most moved on to safer pastures. Latte sales continued to plunge.

Still frustrated, the Society sent Robert a stern letter threatening him with a well-funded lawsuit if he didn't get rid of the remaining coyotes. By this time, Robert was really steamed so he took the letter to his granddaughter, a recent graduate of the UNM School of Law, and asked what he should do. He told his granddaughter that he not only wants the Society off his back, he wants to close the bird blind and bar and he wants his coyotes back. If you were the granddaughter how would you evaluate his claims? In your answer, discuss the strength of both his claims and the Society's.

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Part III: Essay (suggested time 90 minutes – 37½%)

Rhonda Parker's dad was from Isleta Pueblo – she's an enrolled member – but she was born and grew up away from the pueblo, mostly in Germany, Italy, and Alabama where her dad was stationed as an Air Force officer. Once she graduated college though, she moved home to take care of her grandma. It was while she was taking her grandma to the Indian Health Service facility on Lomas that she met Christopher Pino who was from another area pueblo. They soon married and using money they saved after they wed, bought a home in a nice older neighborhood in the city where they've lived ever since. It wasn't long before they had two sons, the first coming in 1982 and the second in 1984.

Chris helped Rhonda's grandpa, Johnny Abeita, with some cattle he ran on pueblo land. In return, Johnny started taking Chris and his two boys – as soon as the oldest could walk – to a little-known spring west of the Manzano mountains, not too far east of the huge development the State was planning as Manzono del Sol. They built a small sweat lodge that they used at least two or three times a week and during vacations almost every day. Before Chris started coming, the spring had been a favorite party spot for East Mountain teenagers so the family cleaned up the trash and Chris went out most weekend nights to chase kids away and keep strangers from bothering their site. He posted no trespassing and no hunting signs on fence posts that he set up around the area surrounding the spring, roughly an acre square.

Chris did some checking around and learned that although people from Isleta and other pueblos had been going to the spring for generations, it had not been included in any of the Pueblo grants. Surprisingly, it wasn't in any other Spanish or Mexican grants either. According to the county records, the land it was on was now owned by Eastland Development Corp. He also discovered that the Indian Claims Commission had adjudicated all the aboriginal title claims

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in the area – including the spring – and Congress had compensated the tribes that had used the land over the centuries. Of course, the compensation didn't include interest. He figured that he had a moral right to the spring even if he didn't own it under Anglo law.

As the family spent more and more time at the spring, they began to explore the surrounding area. It was then that they found a near by mesa with dozens and dozens of very old looking petroglyphs. They never saw anyone there until one day about five years ago when they came upon a group of about a dozen men, most looking to be Native, who appeared to have just finished some sort of prayer or ceremony. They didn't want to pry, but they made friendly conversation and learned that they were a group from the Duke City Indian Center that had been coming regularly to the mesa for almost fifteen years to pray. One of the older members of the group said he had heard that representatives from about five different area Pueblos still came to the mesa in secret, continuing a tradition going back at least a thousand years. The site is believed to have the only petroglyphs of their kind still accessible to the pueblos. After running into the group a few more times, Chris started joining them on their trips to the mesa.

Chris and his family were even more surprised a few months ago when they found a survey crew on the mesa. Their surprise turned to dismay when they read in the newspaper that the new State Land Commissioner had sold the mesa to Eastland Development Corp. for an exclusive luxury gated community called Petroglyphs de la Mesa. Proceeds of the sale were enough to pay to extend University Avenue all the way from the city to Mesa del Sol. Eastland already has all the necessary permits and the development is slated to open next year on the 323rd anniversary of the Pueblo Revolt of 1680.

Unfortunately, for the last twenty years Chris had been spending too much time at the spring, most of it without Rhonda, and the two had grown apart. For the last two years, Chris has

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supported Rhonda while she completed her pharmacy degree. In the fall of 2002, she told him she wanted a divorce and intended to get every bit of property from him that she was entitled to under state law. Luckily from his standpoint, his boys are both too old for child support and they don't really have much other than their house and two vehicles. As if his life weren't complicated enough already, about the same time, one day while he was away working, Eastland workers dismantled his sweat lodge, tore down his fenceposts, and plugged the spring. They put up a huge fence surrounding the mesa and, to add insult to injury, posted Chris' no trespassing signs on the fence.

You are an attorney new to this area, having moved here recently from New Jersey. Chris comes to see you. He wants to know if he has any rights regarding the spring, whether he and his prayer group can do anything about the closure of the mesa, and what his wife will be entitled to in the divorce.

You consult with a graduate of the UNM School of Law who assures you that there are no special Indian law issues that you need to consider and that you would have learned all you need to know to advise your client in a good Rutgers University first semester Property Law course. He tells you, to your surprise, that the state has no particular property precedents other than those mentioned in the instructions and that given the circumstances of Chris and Rhonda, the state court hearing the divorce will apply the principle of equitable distribution and simply award half of the community property to each spouse.