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UNM School of Law
Final Examination
Four Credits

508 Property I
(Section II only)

Professor Em Hall
Friday, December 13, 2002
1:30 p.m. to 5:30 p.m.

FOUR HOURS

INSTRUCTIONS

1. Please be certain your exam consists of 17 pages, including this cover sheet.
2. This exam consists of three parts. Part I consists of 10 multiple choice questions, worth 6 points each. Parts II and III consist of two essay questions, worth 90 points each. Part I should take one hour; Parts II and III should take an hour and a half each. Budget your time accordingly.
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. Part I must be answered on the exam itself, in the space provided. If you chose to explain your choice, the explanation should appear on the same sheet as the question to which it pertains. Answer Parts II and III in Blue Books, writing on the front side of each page only and skipping alternate lines; or neatly type on plain paper.
5. Be sure to place your exam number on each of your Blue Books or typed pages, and on each multiple answer sheet. Do not identify yourself in any other way. Please turn in the exam itself with your Blue Book 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 Destructibility Doctrine and the common law Rule Against Perpetuities are in effect.

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.”

The jurisdiction has the same community property and intestacy statutes as New Mexico.

GOOD LUCK

Part II

FANTASTIC MR. PRAIRIE DOG

They called Joe C de Baca “JoeC” for short and to differentiate him from his father and grandfather and the rest of the CdeBaca clan that had lived for what seemed like hundreds of years on the family’s 140 acre ranch fifteen miles east of the Santa Fe Plaza. Like his relatives before him, JoeC lived in a rambling, ramshackled adobe located under a huge cottonwood near the eastern edge of the tract.

For three generations the CdeBacas had gardened on half an acre near the house. They’d raised hay on ten other acres, also on the eastern half of the tract. They cut and baled that hay in the fall of every year and used it to feed the twenty head of cattle that roamed over the rest of the “ranch.” It was typical high desert land---cholla and cheat grass and just plain dirt wherever you looked--- and the twenty cows needed every inch of it just to stay alive. They would have gone farther than the boundaries of the ranch in search of forage, but an old three-strand barbed-wire and cedar post fence still surrounds the 140 acres and they can’t get out.

In recent years, the 78 year-old JoeC had scaled his operation down even more. His wife died ten years ago after 40 years of marriage and his four kids had all left for California and greener pastures. For the last ten years, JoeC has kept the house garden going, but he’s sold off all but two cows and he no longer grows feed for them. The place looks even shabbier than it used to. JoeC spends most of his days walking the place and looking around. What he has really come to love is the prairie dog village on a low hill near the dilapidated fence that marks the western boundary of his property.

About fifteen years ago, the prairie dog village sprang up. It started as nothing more than a couple of tunnels and animals, but over the years it has grown. Now there are perhaps two hundred prairie dogs in residence year-round. JoeC has left an old, leaking stock tank near the village and the prairie dogs drink from the leakage. From time to time JoeC scatters dog food around the site in the evening. When he comes back in the morning, the food is gone and he assumes the prairie dogs are eating it, but he’s never quite sure because he rarely sees them. JoeC does make a special effort to keep the boundary fence in good repair near the village, mostly, as he says to no one in particular, to keep marauding domestic dogs out, rather than to keep the prairie dogs in.

Indeed, the prairie dogs come and go from their village pretty much as they please. Some of the tunnels in their compound actually pass under the boundary fence and come back up on the other side. Of late, JoeC has spent a lot of warm afternoons lying against a fat, old pinon, watching the prairie dogs come and go through an old pair of binoculars. He thinks that he understands how the tunnels are inter-connected and which ones extend beyond his old fence. It pleases him to map this as he watches different prairie dogs come and go. Sometimes, just for fun, he tries to track the comings and goings of particular prairie dogs. He’s even given a couple of them names.

As he lies there, observing, JoeC is aware that there's a distinctive odor that emanates from the village. The smell is a combination of the sweet scent of excrement and urine and a slightly stronger rodent smell. It's particularly noticeable to JoeC when the wind blows out of the west, towards his house. "No worse," he thinks, when he notices at all, "than those cows used to smell when dad and grand-dad had them around the place."

When the sun's warm and all of the prairie dogs are out, JoeC notices that the animals together can make quite a racket. JoeC lives in such a quiet world now that he welcomes the prairie dog sounds when they come. He's even convinced himself that the dogs speak a language common to themselves and he's trying to figure that out, too. "I know it's not English or Spanish," he thinks. "But they do have a way of warning each other. The chirps and clicks get higher and more rapid. Must be something."

These days the trouble is that the city of Santa Fe has been pushing out towards JoeC's homestead. It used to be that JoeC's place was ten miles distant from the nearest Santa Fe house and a universe apart. Over the last decade, "settlers," as JoeC calls them, mostly from California, have been buying up small tracts between Joe and the City. There's never been a big development in this part of town. But one by one, newcomers have filled in, paying more and more money for smaller and smaller lots. Just a couple of months ago, a new resident constructed a two-story, 5,000 square foot adobe tract home on the quarter acre adjoining JoeC's western fence and the prairie dog village just inside it. The new house looms over the village. The newcomers have started small herb gardens in their backyards and that's where this trouble began.

First, the prairie dogs from the village on JoeC's property used the tunnels that they had burrowed under the boundary fence to raid the neighbors' herb garden. The prairie dogs were particularly partial to the neighbors' basil. No sooner had a couple of leaves appeared than a prairie dog would poke his head out of one of the holes and nip the leaf just after the bud. The new neighbors spoke to JoeC about the problem; he just smiled. They built their own fence right next to Joe's. They extended it a foot into the ground. There didn't seem anyway to stop the saucy intruders. Then a graduate of the UNM Law School, Ray Romero, moved onto the last lot next to JoeC's and all hell broke loose.

First, Romero set his two sons to blocking all the tunnels that surfaced on the property. They shoveled and they dug for \$.35 cents an hour, but they couldn't shovel fast enough to keep ahead of the prairie dogs. Then the Romeros tried poison, but they only managed to kill their own cat. Next the two boys tried to lasso the prairie dogs as they emerged from the tunnels. This technique also failed, as you might imagine. Finally, the boys and their dad settled on live traps.

Every evening, just at dusk, Ray Romero and his sons would place these box-like structures at the head of every tunnel that they could find. The boxes were built in such a way that an animal that climbed in couldn't get out. Surprisingly, where the earthmoving

techniques and the poison had failed, the live traps worked. On the first night that they set the traps, they found one prairie dog curled up in the corner in the morning. On the next night they found four boxes occupied. It looked like they'd found the ultimate solution. But what were they to do with the captured animals?

The boys wanted to keep them as pets but their dad balked. Instead, he took the animals in a cat box to the Santa Fe Humane Society. The Society promised to place the animals if it could. Luckily, the Humane Society knew of a private zoo near the mountains where the owners charged mostly elementary-aged kids to see captive animals and miniature trains. The Zoo owners paid \$5 a head for all the prairie dogs that the Humane Society could produce. "How do we know that they are yours to sell?," the Zoo owner asked the Humane Society representative. "Their ears are marked with successive numbers," replied the representative. "O.k.," said the zoo owner, checking the ear of the latest arrival, number 71.

Unfortunately, there never was a number 72. The prairie dogs got wise to the live-trap trick and wouldn't fall for it anymore. Ray Romero, lawyer that he was, considered two alternatives. First he went to the Santa Fe City Council and asked them to adopt an ordinance forbidding maintaining on one's property a collection of more than 100 small live animals in an area of less than a quarter acre. The proposed City ordinance declares such a dense collection to be a threat to public health and safety and makes it a public nuisance. Further, it declares such a situation to be an emergency, citing a recent case of bubonic plague exported from the Santa Fe area to Manhattan, and orders land owners to remove the collection at once.

In addition, Romero and the five sub-division neighbors living closest to the prairie dog city sue Joe C. for an injunction ordering Joe C. to abate the nuisance on his property. The neighbors allege that the prairie dog city has destroyed the quiet enjoyment of their homes. At dusk, the prairie dogs make such a racket that their children cannot do their homework. At dawn the prairie dogs start right up again, awakening everyone. When the winds blow east, they say, the smell is so foul that they cannot sleep at night. Some kids and a few adults are sick from the exposure and sleep deprivation.

Terrified, JoeC comes to your office with the ordinance and the complaint in the lawsuit. He tells you that he considers the prairie dogs his "pets" and wonders whether he can get them back from the Museum/Zoo. Can Santa Fe, he asks, really forbid him from allowing the village on his property and what are his alternatives with respect to the ordinance? Finally, he wants to know, what should he do about that "pinche" Romero and his nuisance law suit?

Please write a memo, analyzing all aspects of the three issues.

Part III

THE FIFI ARROWHEAD

Lucky and Pat are brother and sister. In 1991 they traveled together to the gambling capital of the world. One evening during their trip they noticed that a local charity was selling expensive raffle tickets to win a mountain cabin. Lucky, who enjoyed taking chances and had always wanted a mountain chateau, wanted to buy a ticket. Pat, Lucky's younger sister, also liked the idea.

Pat and Lucky purchased one ticket together. The following month, Lucky, who admittedly had a serious gambling problem, hit rock bottom when he finally gambled away his life savings. His family immediately enrolled him in a rehabilitation program. Several weeks into his program, Pat and Lucky received a phone call from the charity saying that the two had won the mountain cabin.

The cabin itself had been uninhabited for years. One year before the raffle, a local entrepreneur, Jack Youver, had forged a deed to the cabin and sold it to Mike. Mike subsequently moved into the cabin, where he resided for three years. Mike loved the cabin, but it became increasingly difficult to stay there over the winters due to the copious amounts of snowfall. Mike, being unable to easily come and go in the winter, sold the land to Brad, who loved the winters. Brad, only stayed at the cabin during the winter months, as he loved to snow shoe and cross country ski.

Brad typically chopped his own wood from the surrounding land. To store the wood he built a shed near the house, which also served as a home for many mountain critters. Unfortunately, in the summer of 1995, Brad became very ill and was unable to return to the cabin. That same summer, Carl, an eccentric local resident, noticed that the cabin had been empty for several months and decided to move in.

Carl was not fond of people. Soon into the winter he became exasperated with the constant flow of people using his yard as a short cut to get to the local ski area. He tried to stop the traffic by putting up "no trespassing" signs, but to no avail. He even put up a sign claiming that trespassers would be shot on sight. These signs were similarly ineffective, and Carl did not have the money to fence off the property. Instead, he lined the part of the property that was used as a walkway with a barbed wire fence.

Fiona, a ski fanatic, vacationed that same winter at a lodge down the road from the cabin. After walking the long route several days in a row, she discovered the shortcut by the cabin. She also found a spot where the barbed wire was very easy to cross. She used this path for the rest of her trip. One morning, while walking along the path, Fiona noticed a shiny, polished, rock-like object on the ground, lying in the snow several feet to the right of the path. Upon further examination, she saw that its edges were sharp and realized that it was probably an arrowhead. She put it in her pocket and promptly forgot about it.

When she was done skiing, Fiona was so exhausted that she took a cab, driven by Skippy, to return to the lodge. Unbeknownst to her, the arrowhead slipped out of her pocket onto the back seat of the cab. After dropping off Fiona, Skippy took his cab to the local car wash, as it was muddy from the melting snow.

Ursula, the car-washer, felt something strange in between the seats in the back seat of Skippy's cab. She probed a bit and pulled out the arrowhead. Delighted, Ursula put it in her pocket and never mentioned it to Skippy.

Fiona, when she returned to the lodge later that day, searched her pockets for the arrowhead. Mildly perturbed, she called the taxi company to see if it had fallen out of her pocket in Skippy's cab. She was told that nothing had been found but kept her number just in case.

Several days later Ursula gave the arrow head to her favorite niece, Katie, as Ursula was undergoing chemo therapy for bone cancer, of which the doctors told her she only had 3 months to live. Ursula thought her niece would enjoy the arrow head. Several days later Ursula died of asphyxiation due to a improper insertion of a breathing tube.

Katie, knowing that this was a rare find, gave the arrow head to the local archeological society thinking that it would benefit society much better in their hands.

Earlier this year, the archeological society traced the arrowhead to a band of people that had resided in the area long before anthropologists had previously calculated. The story quickly became national and international news.

Fiona, who had always liked recognition for her good deeds, read the story and realized that this was the arrowhead she had found. She called the newspapers to clarify her pivotal role in the discovery.

Pat, who had been so occupied with keeping her brother out of trouble that she had forgotten about the cabin, read the story of what had now been termed the "Fifi arrowhead." Pat realized that the arrowhead had been found on the property that she and her brother had won with the raffle ticket. She immediately called Lucky in the halfway house where he was currently residing. Lucky, who happened to be an archaeologist by training, was so delighted by the find that he swore off gambling forever. The two of them went to the archeological society to claim either the arrowhead or the money it was worth, but to no avail.

Pat and Lucky have come to your office to see who has claims to what. Please analyze the claims of all parties to the arrowhead among all claimants. *For the purposes of this question, please assume that no special law applies with regards to Native American artifacts.*