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UNM School of Law  
Final Examination  
Four Credits

**508 Property I  
(Section II only)**

Professor Em Hall  
Wednesday, May 12, 2004  
1:30 p.m. to 5:30 p.m.

**FOUR HOURS**

**INSTRUCTIONS**

1. Please be certain your exam consists of 16 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. For the purposes of this exam, assume that each heir of a person who dies intestate takes an equal undivided interest in the decedent’s property in proportion to his or her position as an heir.

**GOOD LUCK**

## Part II

Billy's dad, Able, had loved the ornate railroad watch his mother, Billy's grandmother, had given Able on his ninth birthday. The watch was inscribed with Able's name and the date of his birth, May 12, 1939. Able had carried it with him in the many places he had worked over the years, hauling his growing family with him. By the time this story begins, Able's wife had died and he was left in sole charge of two older daughters, Deidre and Evangeline, and the nettlesome Billy.

Billy had pestered his dad for the watch, but time and again, Able had resisted turning it over to him. When Billy was a boy, Able would tousle Billy's mop head and tell him, "Billy, just wait. I want you to have that watch when I'm gone. You can put that one in the bank. But I want to keep it for now."

When Billy reached the age of majority, Able repeated the same line. Billy, now out of school and working as an itinerant physical therapist, kept pestering. Finally, at the age of 70, Able relented. "O.k., Billy," he said, "I'll let you have the watch now. But I want you to know that your two sisters may want it too, after I die, and I want to be able to figure that one out later." Able handed Billy the watch and Billy took it.

Without the watch, Able went back into his study, where he spent more and more time as the years went by, and wrote himself a note. "Billy's got Mom's watch now," he wrote on an old piece of stationery. He picked up the piece of paper, inspected it, turning it over in his hands as he did, set it back down on his desk, and signed it. Able put the letter back in the bottom drawer of the desk where he had kept the watch in recent years and closed it.

Billy, watch in pocket, went about his business. Eventually it took him to a spiritual center east of Santa Fe where he got yet another job as a physical therapist. The Center belonged to three children of a turn-of-the-century East Coast industrialist who had bought the 1,500 acre tract in the 1940s and then deeded the land to the most loyal of his many children, three daughters, in the late 1960s. The deed to the three daughters included all 1,500 acres. The deed read "to my daughters Cordelia, Regan and Goneril as joint tenants with right of survivorship and not as cotenants and then to the survivor and her heirs in fee simple." Goneril had died. Cordelia lived alone in northern California. Some said that she has "gone around the bend." And Regan had taken the old ranch and turned it into the health spa where Billy had gone to work.

The ranch buildings that Regan had refurbished as the Spa core sat on about ten acres at the easternmost border of the property. The remaining 1490 acres, to the west, north and south, were undeveloped. Regan had built a radius of trails leading out from the Spa, heading towards the Ranch boundaries in all directions. The trails were well maintained near the Spa and petered out not far away. Out beyond the trails' end, the land became rolling high desert hills with no trees. In the far distances you could just make out the tumble-down fence posts that marked the end of the property and might have believed that you could see everything in between. In fact the rolling terrain hid swales, near the bottom of which small ponds collected and troops of animals gathered.

By day Billy worked at the Spa. He was supposed to live there too. Every evening, however, he left work and walked out across the Ranch hills. When he got a mile or so away from the Spa, he would look for a space to throw down his sleeping bag

for the night. He tried to sleep in a different swale every night, to minimize, as he saw it, his impact on the land.

Imagine his surprise then when one evening he topped a hill and found at the bottom of the swale below a small, low cabin, hidden from the Spa but well within the Ranch boundaries. A young man, about Billy's age and named Fred, lived alone in the cabin. Fred and Billy talked long into that first night. Billy learned that Fred had been squatting there on the ranch property for about eleven years. Nobody bothered him; he was careful not to bother anybody. Billy bedded down that night near Fred's cabin and walked back to the Spa the next morning. Over the next month and years he slept more and more at Fred's place, especially in the spring, summer and fall.

As a place of his own at Fred's place, Billy constructed his own bower for sleeping. It had no roof. It had no walls. But it was clearly demarcated on the ground. Billy's place was surrounded with little shrines that he had built. One of the shrines was a tiny bunker-like box, set mostly below the ground, but with the top protruding just above. Into that box, Billy laid the railroad watch that Able had given him so he would always know exactly where it was and wouldn't forget it. He promptly did.

In the coming years Billy wandered off and disappeared. Able died. One of Regan's more adventurous guests, George, ventured out beyond the end of the trail's and stumbled on Billy's and Fred's lair. Kicking around with the toe of his Tony Lama boot, he unearthed Billy's miniature bunker. He pried open the top and saw the watch. "Hey, look what I've found!," he exclaimed as you knew he would, taking up the watch in his hand and inspecting it. He carried the watch back to the spa but didn't show it to anyone there.

Instead he took it to the Santa Fe Flea Market the next weekend and showed it to a friend, Herman, who had a regular jewelry booth there. George asked Herman what the watch was worth. Herman said that he had no idea, but that he was willing to check. George said that that would be o.k. George said that he'd come back the next week and see what Herman had found out.

You know what happened next: On a busy day before George got back, Herman sold the railroad watch to Isaac, a regular at the flea market who knew a good deal when he saw one. Shortly thereafter an article appeared in the newspaper featuring Isaac's find. All hell broke loose.

Isaac claimed the watch because he'd bought it. George claimed it because he'd found it. Fred claimed the watch because it was found on his place. Regan claimed the watch because it was found on her place. Regan's sisters weighed in with a claim of their own. And Billy's sisters say that one way or another the watch belongs to them.

Assess the claim of each to the watch and relate the relative claims of all claimants to it.

### Part III

Bobby Smith (“BS” for short) comes to your solo office one fine morning in May, asking for advice. “Don’t worry,” BS says, “I’m willing to pay.” Smith is an eccentric sculptor, late of Santa Fe, now residing in Silver City, to where, Smith claims, all the true artists have gone. Smith has a taste for large art and an independent income to support his taste.

Smith tells you his trouble: At his new home, where he has lived for more than ten years, he has created a 20 foot tall three-pronged brass structure that takes up about ten square feet and occupies about 2,000 cubic feet. The structure consists of a large base from which three vertical prongs protrude. Each prong ends in a hammered out, bronze bell about three feet in height and three feet wide. Each bell is attached by a universal joint to its prong and connected to a solar clock and battery. At every hour, two of the bells rotate and ring the appropriate time. BS calls the structure “Three Bells in Search of the Hours.” He likes to think of the three bells ringing at three in the morning.

BS has mounted the sculpture on a large concrete base near the northern boundary of his Silver City property. The lot on which the sculpture sits used to be rural property; when he moved in ten years ago, BS only had a couple of ranching neighbors. In the last decade, the mines closed down, more and more retirees began moving in and Silver City started growing. Now developers have bought up the ranches neighboring BS’s place and they’ve started building fancy ranchettes for the Californian newcomers

BS has come to you because he wants to make “arrangements” for his work of art and the land on which it sits. When you ask, BS tells you that he has three sons, two of whom are married, and five grandchildren “that he knows about.” BS’s own wife died many years before and he never re-married. His deceased wife left no will and BS doesn’t have one either. He finds wills “morbid”, he tells you, and has never made one, but he does want to arrange for “Three Bells” and the land on which it sits.

With respect to “Three Bells” BS would like to give it to two of his three children. He wants to make sure that the third never has any interest in it. With respect to the two children who will get the sculpture, BS wants to make sure that at least one of the brothers owns it for as long as possible and that it stays in the family as long as possible.

BS also tells you that he’s ready to make a gift of the sculpture right now, but that he’d prefer that none of his children or grandchildren know at this moment what he’s done. He’s afraid that knowing would set them to fighting and he’d like to avoid that if possible.

Finally, with respect to “Three Bells”, BS tells you that he’s a little concerned about his neighbors who own the lot on the north. There’s nothing on that lot right now, but the lot was just bought by a big developer, down from Santa Fe, who has made a fortune building custom, solar-heated adobe homes. If the developer builds adobes near

the south boundary of his property, the sound of BS's bells will surely ring loud in their lives.

The developer has already been to the Silver City municipal government and asked it to pass an ordinance forbidding loud noises. The old council member, the ones that were around in the days when the copper mines were still running, remembered the constant roar of really big trucks, full of low grade ore, coming out of the open pit mines. Times have changed, however, the mines are gone and new people, seeking quiet if nothing else have moved in. Amazingly enough, the Silver City council is considering restricting noise levels way below what the bells make, every hour on the hour.

BS tells you that he's ready to make a will for the lot on part of which "Three Bells" sits. He'd like it to go to all three of his children forever as equal partners, no strings attached, if that's possible.

With respect to the proposed gift of the sculpture, BS wants to know what his legal options are. Specifically, he wants to know what the advantages, disadvantages and risks of each option are. Finally, he also wants you to draft a deed of gift which would embody what you think his best option would be.

With respect to the plans of the developer for the neighboring lot, BS wants to know what control the neighbor could exercise over his sculpture's bells and on what basis. He'd also like your judgment on the range of private and public controls that might be imposed, what the likelihood would be that the controls would somehow limit the sculpture's present use and who would pay for the limitations, if anyone would.

Finally, with respect to the lot itself, BS wants you to draft a will provision that would accomplish his goal. He'd like to know what the relative rights of the gift's recipients might be. He finally wants to know if you think his proposed disposition is a wise course given his different disposition of the sculpture.

Please do the best you can and send him a big bill.