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**Final Exam**

This is a three and one-half hour examination. The first half hour is to be devoted to reading the questions and gathering your thoughts. The remaining three hours are to be used in crafting and completing your answers to the exam questions.

This exam consists of two essay questions and ten short answer questions. The two essays are worth a total of 200 points. The first question is worth 125 points and the second is worth 75 points. The ten short answer questions are worth a total of 100 points, 10 points each with 5 points allocated for the correct answer to the question asked and 5 points allocated to your explanation of your answer. You should allocate your time based on the point value per question.

This exam is open-outline only. You may refer ONLY to an outline that you prepared yourself or in a study group in which you have been an active participant. You are not to reproduce an outline from any other source. You can not bring in your textbooks, handouts, or any other materials. Your outline may include ONE chart on future interests from an outside source, such as a copy of the chart from the Edwards text, the chart prepared by Barry Berenberg, the chart distributed in Professor Gauna's class, OR the chart provided by your tutor. **YOU MAY NOT USE ANY OTHER MATERIALS OR ELECTRONIC OR HUMAN RESOURCES**

In your answers, you are to apply the law to the facts and to provide specific citations to and analysis of relevant provisions of the statutes and relevant case law to demonstrate your reasoning and to support your conclusion. References to case names and code sections are sufficient as citation.

If you find any ambiguities in the facts or questions posed, identify the assumptions you make to resolve the ambiguities and then proceed with your answer.

**Your answers are to be concise and directly applicable to the problems presented. If handwritten, your answers are to be single-sided. If typed, your answers are to be single-sided and double-spaced with 1" margins at tops, bottoms and sides of pages.**

You are to return your exam questions with your answers.

## **Applicable Law**

The governing jurisdiction presumes a tenancy in common unless contrary intent is indicated.

All future interests are alienable, devisable, and inheritable.

The Rule in Shelley's Case, the Doctrine of Worthier Title, the merger doctrine, and the Doctrine of Destructibility of Contingent Remainders have all been abolished.

The common law Rule Against Perpetuities is in effect; statutory reform doctrines have not been enacted.

Assume that all named parties are alive and 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 was removed."

The jurisdiction has adopted the Group II states' rule in Sawada v. Endo.

The jurisdiction has adopted the rule that "a joint tenancy is not severed when one joint tenant executes a mortgage on his interest in the property."

The jurisdiction has a statute that reads: "A surviving spouse may renounce the decedent's will and may elect to take a share of the property, both real and personal, owned by the decedent at the time of death in the following proportions: one-half if there are no surviving children of the decedent, one-third if there is one surviving child of the decedent, and one-quarter if there are two or more surviving children of the decedent."

**Essay One (125 points) (75 minutes)**

Uncle Buck Owens was growing old, and wished to dispose of his real estate prior to his death. He owned a small apartment building containing four apartments in the state of Excitement. In January 1995 he executed and delivered a deed of this building to his niece and nephew (who lived in Excitement), reading as follows:

I hereby grant my apartment building [legal description inserted here] to Carrie and Perry Owens jointly, and then to the survivor. [Signed] Buck Owens

Carrie and Perry were excited to receive the property. They visited it in February 1995 and made arrangements for a local real estate agent to begin collecting the rent and dividing it between them. They also agreed to share all expenses of operating the building equally. As they walked around the building, they noticed an adjoining neighbor, Ab Adams, was building a wooden fence separating the apartment property from his parcel. They chatted with him briefly and said, "That's a nice fence. We appreciate your building it." Nothing further was said about the fence.

In January 2000, Carrie made a surprisingly successful appearance on the TV program "American Idle." As a result, she was offered recording and film contracts, and moved to Los Angeles.

In February 2000, Perry discovered that the roof of the apartment building was leaking badly and that the roof trusses were rotting. He hired a contractor and spent \$60,000 replacing the entire roof. He then telephoned Carrie and asked her to send him \$30,000 as her share of the roof, but she refused to pay anything, saying, "You could have simply patched the leaks for a couple of hundred dollars."

Angered by this response, Perry instructed the real estate agent to send all further rent collections directly to Perry. Since that time, Perry has received \$120,000 in gross rents from the building, and has spent \$80,000 on property taxes, insurance, maintenance, utilities, and other necessary operating expenses. Carrie has received no rent and has paid none of the expenses.

Since Perry began taking all of the rents for himself (and paying all of the expenses), all four of the apartments have become vacant and have been relet by Perry to new tenants. He did not consult with or involve Carrie in signing any of these new leases. He has updated the

kitchens and bathrooms in each apartment to a level that could qualify as luxury apartments and has increased the rents accordingly. He paid for these renovations by borrowing \$100,000 from Uncle Buck. In exchange for the loan, Uncle Buck received a lien on the apartment building in a mortgage document signed only by Perry and Uncle Buck.

In February 2005, Perry discovered for the first time that the fence built by Ab Adams in 1995 was in fact constructed ten feet on Perry's and Carrie's side of the property boundary. Adams has been mowing the lawn and maintaining shrubs on the ten-foot strip continuously since he built the fence. When confronted by Perry, Adams admitted that the fence encroached on the adjoining property. "I knew it was over on your land when I built it," he said. "I thought I just might get away with it (heh, heh), and it looks like I did!"

Also last month, Carrie was killed in a freak multicar freeway pileup in Los Angeles. She left no will, and her sole heir is her husband, Brad Pick, whom she married a year earlier. Her estate has substantial assets and no liabilities.

Perry has consulted your firm about the ownership of the apartment building and the land. He also wants to be able to recover his costs for maintaining and renovating the building from Carrie's estate. As junior associate, you have been assigned the task of preparing the memo explaining the nature and consequences of the various transactions and actions taken regarding the apartment building, beginning with the conveyance from Uncle Buck and ending with the current ownership status of the property. You have also been asked to address the issue of Perry's expenses related to the property and the amount, if any, that Perry should seek from Carrie's estate.

**Essay Two (75 points) (30 minutes)**

O bequeathed a saddle made of pleather and other environmentally friendly materials to "A for life, then to my heirs, but if this saddle is ever used on a horse which, because of health and age, it would be cruel to ride, then the saddle shall go to The Society for the Prevention of Cruelty to Animals, a charitable organization." O, a widower, was survived by H, a cousin. O's will left all the rest of his property to The Society for the Prevention of Cruelty to Animals (SPCA).

A subsequently took the saddle to B's pleather shop to have the saddle repaired. Most of B's work is repair-related but on occasion, he sells used pleather items like gloves, hats, boots, and reins. After repairing the saddle, B put a tag on it indicating the cost of repair. B's clerk, C, mistook the repair tag for a sale tag and sold the saddle to D, an unknown customer from another part of the state who paid cash for the saddle and who was delighted in his good luck in stumbling across such a great deal.

D used the saddle on his elderly and pain-riddled horse Rusty in fox hunts in his hometown and in ceremonial events such as parades. During one of the fox hunts, D entered Y's land chasing after an animal he thought was a fox. The land was adjacent to the open land regularly used by the hunt club for its activities and was not posted or fenced off. D, not knowing he was on Y's land, scooped up the animal, which turned out to be Y's Maine coon cat and not a fox after all. When he realized that he had captured a cat and thinking that it was a stray cat in need of a home, D decided to take the cat to his daughter as a gift. D's daughter entered the cat in a cat show. At the show, Y noticed a cat that looked remarkably like her Fluffy.

At one of the parades where D was using the saddle on Rusty, the executive director of the SPCA, who was there picketing the event's inclusion of animals from the Ringling Brothers

Circus, noticed a saddle that looked very much like the one that her dear friend O had owned sitting on the back of a horse that looked to be unfit for riding. The executive director was aware of the provision in O's will leaving the saddle to the SPCA under certain conditions.

Suits have been filed by: the SPCA to gain possession of the saddle on the basis of D's use of the saddle on Rusty, by A to recover the value of the saddle from B, and by Y to recover her cat from D's daughter. These cases are being heard by the judge for whom you clerk. You are to prepare objective analyses of the issues and ownership interests presented by all parties involved. You should be sure to identify the ownership interests created in the saddle by O's will.

**Short Answer Questions (10 points each) (75 minutes)**

**You are to state a definite conclusion and to explain your answer by applying the law to the facts given. You will receive 5 points for a correct conclusion and can receive up to 5 points for your explanation and demonstrated reasoning.**

1. Your good friend Tiger is a golfer who sometimes hits a ball into the water hazard or the trees at the local golf course. His golf balls, which are marked “Tiger,” could be quite valuable on the open market. An enterprising young man from the neighborhood has taken to going onto the golf course at night and retrieving the balls and selling them on e-bay. Tiger wants to know who has rights to the golf balls.
2. Carl owns a Ferrari that his granddaughter Sally covets. On Sally’s 25<sup>th</sup> birthday, Carl hands Sally a key to the car and promises to give her the car when she turns 30. Who owns the car?
3. While up hiking on the Crest, Sam stops to take a break. He takes off his watch and sets it next to him on a rock. When he gets up, he forgets to pick up his watch. The next day, Gloria finds the watch and takes it home to her husband Bill. After wearing the watch for a week, Bill is mugged by Tom, who takes the watch. Tom carries the watch around with him along with the ten other watches that he has stolen from people. The watch drops out of Tom’s pocket onto the street. David finds the watch. Which of these people has a claim to the watch? Who has the strongest claim?

**For questions 4-10, identify the nature of all interests in the property from original grantor through all parties listed. Be sure you evaluate all appropriate conveyances under the Rule against Perpetuities. Explain your answers.**

4. On March 1, O conveyed Greenacre “to Gloria for life.” On March 2, O conveyed her entire interest to Sydney and her heirs.
5. O conveys Blackacre “to A for life.” A then conveys Blackacre “to C for C’s life.”



6. O conveys Greenacre “to A and her heirs.” A has one child, B. A wants to sell Greenacre and use the proceeds to take a trip around the world.

**Bonus point on question 7:** Can B prevent A from selling the property? Why or why not?

7. O conveys Whiteacre “to Karen for life, and one year after Karen’s death to Larry.”
8. O grants Blackacre “to A until A graduates from law school.” In 2006, A graduated from law school. In 2007, O died intestate. O has no issue and no collaterals.
9. During his life, H took out an insurance policy in the face amount of \$250,000 payable to his son and daughter, M and N. H and his former wife, W, own a house worth \$120,000 at H’s death as joint tenants with a right of survivorship, retained in that status as part of the divorce decree. H and his current wife, S, own: 1) a farm as tenants in common worth \$500,000 at H’s death and 2) a car as joint owners with right of survivorship worth \$12,000. H also owns in his name alone a Verklemt painting valued at \$1,000,000. H dies in 2007. His will leaves his interest in the farm “to his wife and his children, one-half interest to his wife and one-half to any living children of his marriage to S to be shared equally among them.” His will also devises the painting to the Museum of Modern Angst.
10. O conveys to his wife, A, for life, then to his niece, B, and her heirs, and if she dies without issue, to the daughters of John and Elizabeth Jay. John and Elizabeth Jay are each 90 years old. One year later, O dies. Two years later, A dies, leaving the Jays, their two 50-year-old daughters, and B surviving her. B does not have children.