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Exam No. _____

**508-001 Property I
Spring 2010**

**UNM School of Law
Final Examination
Three Credits**

**Professor M. Baum
R: May 6, 2010
1:00-4:30 p.m. (3.5 hrs)**

Examination Format: Essay

Professor's Instructions

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 one essay question worth a total of 300 points.

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 **cannot** 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 answer, 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 and double-spaced. 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.

Essay Instructions

Bluebooks for writing: using black or blue ink only, write on every-other line and only on the front side of each page. On the front cover of each bluebook record the class name, professor's name, date of exam, and your examination number. Make sure to number each bluebook in order. **DO NOT WRITE YOUR NAME ON BLUEBOOKS.**

Laptop for typing:

1. Log off all programs that you are currently running or have opened!
2. Make sure you are connected to Lobo-Sec and have authenticated (entered your NetID and password).
3. Start the Exam4 program.
4. Make sure "**Prepare to start new exam**" is marked and click, "**Next.**"
5. Enter your "**Exam ID**" number and confirm it.
6. Click the drop box next to "**Course**" and select your course and professor and confirm. Click, "**Next**".
7. Optional choices screen: If you choose to change these options please do so. If not, click "**Next**".
8. Notice you should not turn off or restart your computer before contacting a proctor. Check the box marked "**Got it**" and click, "**Next**".
9. Type "**Closed**" for exam mode, check the box below that to confirm and click, "**Next**".
10. At this point Exam4 will indicate "**Wait!**" in the lower right side of the screen.
WAIT!
11. The proctor will tell you when to click "**Begin Exam.**"
12. A "**Security Check**" to scan your computer will run. Please be patient. It should disappear within a short period of time. If not, please exit the room and see a proctor.
13. Use the Tools menu above and select "**Insert Answer Separation**" for a page break.

ALL EXAM TAKERS

If you have any questions or feel the need to explain/clarify your interpretation/understanding of the question being posed by the professor, please write them on the exam and do not sign your name.

If you have an emergency, procedural question, or issue that may occur during this exam period, **do not contact the professor**, please contact the Proctor or the Registrar's Office (William or Ernest) at 277-2146/2147 or jackson@law.unm.edu or tafoya@law.unm.edu

You may not make/keep a copy of this exam! You are required to return this exam with your answer.

A five-minute warning will be given prior to the conclusion of the examination. When time is called, **STOP** immediately.

Bluebook (Writers): At this point immediately stop writing, close all blue books, and gather up any materials. If you have not already filled out the exam receipt, exit the room and fill out the receipt at the table(s) provided near the proctor(s), then proceed to the exam check-in table.

Laptop (Typers): At this point immediately stop typing and proceed to save the exam. Select **End Exam, End Exam Now** from the menu bar. Confirm that you want to end the exam. Select **Submit Electronically** and follow either the Mac or Windows user directions below:

Mac users only:

- Wait for the airport icon to indicate you have reconnected to the wireless network.
 - If the “Check Network Connection” screen displays, select OK.
 - Use your Airport to reconnect to Lobo-Sec.
 - Reauthenticate using your browser.
- Return to Exam4 and select **Exam4 Save Options**, then **Submit Electronically**.
- You will receive a confirmation that your exam has been saved successfully. Click **I understand** and **OK**.
- Exit the exam by selecting **Exam4 Save Options, Exit**.
- If the exam **did not submit electronically**, reconnect to the Lobo-Sec network, making sure you authenticate (open a browser and put in your NetID).
 - Start Exam4 again. Choose **Select existing exam**, highlight the exam name, and click **Submit Electronically**. Click OK to accept the default Start Code.
 - Click **Quit** to exit Exam4.
 - If the exam still did not submit electronically, contact an IT proctor

If you have not already filled out the exam receipt, exit the room and fill out the receipt at the table(s) provided near the proctor(s), then proceed to the exam check-in table.

Windows users only:

- If the Status” window indicates a problem with submitting electronically (usually Error 12: No response), close the window with the Red X and select File and Save Options. Select Exit (don’t worry...the completed exam is saved to your hard drive). “Check Network Connection” screen displays, select OK.
 - Exit the exam by selecting **File and Save Options, Exit**.
 - Reconnect to the Lobo-Sec network, making sure you authenticate (open a browser and put in your NetID).
 - Start Exam4 again. Choose **Select existing exam**, highlight the exam name, and click **Submit Electronically**. Click OK to accept the default Start Code.
 - Click **Quit** to exit Exam4.
- Click the verification options and/or OK until you return to Exam4. Select **File and Save Options, Exit**.
- If the exam still did not submit electronically, contact an IT proctor.

If you have not already filled out the exam receipt, exit the room and fill out the receipt at the table(s) provided near the proctor(s), then proceed to the exam check-in table.

[Exam begins on the next page]

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."

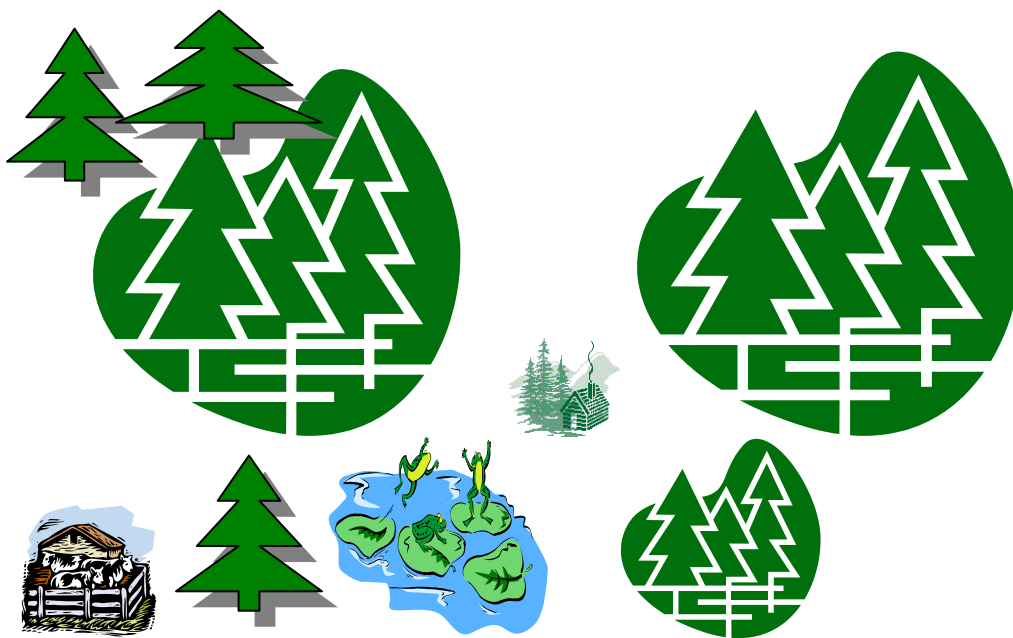
The jurisdiction has a statute that reads: "A surviving spouse may renounce the decedent's will and may elect to take a share of the property, both real and personal, owned by the decedent at the time of death in the following proportions: one-half if there are no surviving children of the decedent,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

The jurisdiction has a statute that reads: "When a person dies without a will, property will be distributed as follows: if survived by a spouse and no children, all to the surviving spouse; if survived by a spouse and issue, one-half to the surviving spouse and one-half to the issue per stirpes; if no spouse and no issue, then to ancestors; if no spouse, no issue and no ancestors, then to collaterals out to one generation; if no spouse, no issue, no ancestors and no collaterals out to one generation, then to the state."

QUESTION ONE (300 points)

You are the lawyer for Marge and Stan, an elderly couple who own a five-acre wooded lot with a house and corral at one side of the property that is accessible from the main road. The house and corral are surrounded by a heavy growth wood lot that has served Stan well for hunting and logging over the years. In the middle of the woods is an old run-down shack that Stan used to use as a hunting cabin. Marge and Stan rely on well water taken from an underground source that also feeds the small pond that sits between the house and the hunting shack.

To the north and east, the property abuts national forest land. To the west, the property abuts property recently purchased by a water hauling business. Marge and Stan have not fenced in the five acre lot on any boundary.



Marge and Stan hold title to the property as joint tenants with right of survivorship. They have five children, none of whom currently live on the property. Marge and Stan do not have any grandchildren. In a joint will, Marge and Stan have arranged for all real and personal property except the house and 5 acres to go to the survivor of the two of them and then to be divided among their children per stirpes. Marge and Stan have devised the house and 5 acres as follows: “To our youngest child, Edward, to live in for his life time so long as he pays all taxes and maintains the property and then jointly to our grandchildren who graduate from college so long as they do not sell the property but, if they do try to sell the property, then to the U.S. government to hold as part of the national forest.” This devise was drafted by another lawyer. Stan and Marge have asked whether this clause will ensure that the land stays in the family and that Edward has a place to live for his lifetime.

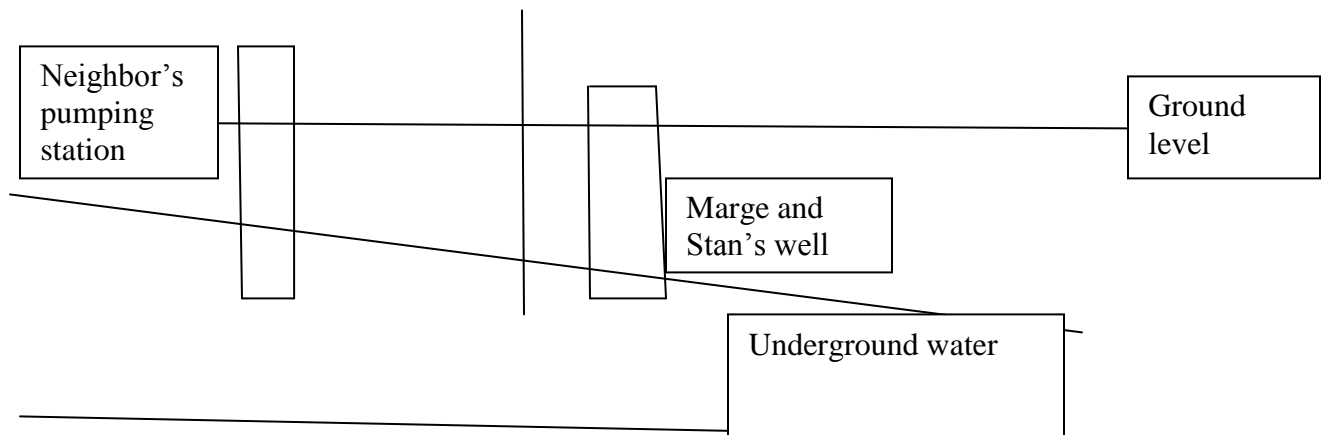
During the past few years, Marge has started to give personal property to various family members and friends. She sent a letter to her daughter Melanie saying that she was giving her

the small framed Picasso that had been handed down to Marge from her grandmother. The painting is a small sketch that measures 8” x 10” and is in a gilt-edged frame that weighs about ten pounds.

Neither Stan nor Marge has been beyond the pond for at least ten years. Marge has serious lung problems and is not able to walk very far. Stan hasn’t been able to get around so well for the past decade and has not been able to walk the property the way that he used to so he stays close to the house, puttering in the garden. Neither of them noticed that James has been living in the cabin during hunting season for the past ten years. James found the cabin when he was out hiking in the national forest and thought he had stumbled on an abandoned ranger’s cabin. Every year, Jim would get a hunting permit for the national park lands and stay in the cabin while he was hunting. Each year, Jim would get two deer, which he found on the land near the cabin rather than in the national forest. Jim has now learned that the cabin he has been using for over ten years is on private land and not in the national forest and has initiated a quiet title action for the cabin and the surrounding wooded area. Stan and Marge have come to you for advice.

Last year, Stan leased the southeast acre of the five acre lot to a small logging company without telling Marge. Stan used to do some logging himself but is no longer physically able. While Marge doesn’t object to trees being cut, she doesn’t want strangers on the property. When the company started bringing equipment onto the property this week, Marge called the sheriff, thinking the workers were trespassing. When she found out that Stan had signed a lease with the company, she told the workers that she was going to stop them and called you for advice.

The new owners of the property to the west have dug several wells to draw water that they will provide to their customers. Their wells are very near the property line between their lot and Marge and Stan’s lot. Marge and Stan have noticed that the pond is lower than usual despite a large amount of rain. Last week, they got a report from a hydrology/geology firm that indicated that the underground water source that they have relied on for their own well has been reduced significantly by the pumping being done by their new neighbors. A diagram in the report shows access to the underground water like this:



Stan and Marge have asked you if common law property principles (they are very savvy and know that you do not know about water law yet) allow their neighbors to take the water from the underground source.

Since they were having such a bad week, Stan and Marge decided to drive to visit their daughter Melanie. Marge carefully packed the painting to take with her to give to Melanie. Before they left town, they placed their cat Henry at the Cuddly Cats DayCare, expecting to be gone only one week. This is a casual business so no agreement was signed between the owner and Marge and Stan.

Tragically, Stan and Marge were in an accident on the way to their daughter's house. Both Stan and Marge were severely injured. Stan, near death at the scene, told the EMTs and Marge that he wanted to be sure that the bear he had carved with a chainsaw was given to the right people when he died. He said that the wooden bear that is on the porch of the house was to go to Edward who had helped Stan carve the bear but the design (the shape and features of the bear) should be given to his lodge so the lodge could use the bear as the lodge symbol and raise money by licensing the design to others. Stan is a "Wheel of Fortune" fan so the bear has a faint resemblance to Pat Sajak, the host of the show. Shortly after talking about the bear, Stan died. Edward has contacted you because he wants to make bears that look like his father's design and wants to know if he can since he owns the bear itself.

Marge was taken to the hospital, where she slowly recovered over a matter of months. She had forgotten about poor Henry and did not call the Cuddly Cats DayCare. The DayCare, having no idea that Marge had been in an accident, thought that she had abandoned Henry. After a month, with no word from Marge, Cuddly Cats DayCare owner sent Henry to the animal shelter, where Henry was eventually euthanized. Marge, now out of the hospital and back at home, has called you very upset that the DayCare did not take care of poor Henry. She knows that she can't bring poor Henry back but she wants the DayCare to be held responsible for its careless handling of Henry.

The Picasso, which had been in the car with Stan and Marge, had been thrown from the car on impact and came to rest in a nearby field. While plowing the field, the farmer found the package, which had no markings or address on it, and took it home. Upon opening the package and finding a sketch inside a beautiful frame, the farmer took out the sketch and put a family portrait in the frame and hung it on his wall. At his next garage sale, the farmer sold the Picasso sketch for \$3.00 to an art dealer who later sold it to an art collector at auction for \$6 million. Melanie read a news story about the sale and recognized the sketch as the one that her mother gave to her. Knowing your great legal skills because of all of the work that you did for her parents, Melanie has called to find out how to get her sketch back.

Edward has moved into the house with Marge, claiming that he has ownership interests based on the devise. Marge has contacted you to clarify the ownership interests in the house and five acres.

You are to identify each property law issue raised by the above facts, discuss and apply the law fully for each issue, and state a conclusion for each issue on ownership. For each issue, you are

to prepare a short memo, clearly identifying the issue and the claimant in the subject line of your memo caption. Be sure that you apply and cite appropriate law in each memo. Finally, in a short letter to Marge, you are to summarize all of the ownership interests that have been raised in the real and personal property discussed in the facts.

Your final answer will include a series of memos, one on each issue you identify, and a letter to Marge.