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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. **BE SURE THAT YOU READ THE ENTIRE QUESTION BEFORE YOU BEGIN TO ANSWER.**

This exam consists of one essay question worth a total of 300 points. There are seven numbered parts to the exam question, some with multiple parts. Each numbered question has been given a point allocation. You should allocate your time to complete the exam based upon the number of points for each 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 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, **OR** the chart distributed in Professor Gauna's class. **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. Assume that all named parties are alive and the time is the present unless otherwise indicated.

**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.

## **Applicable Law**

Common law principles as set out in your casebook and as discussed in class are in effect unless contradicted by statements of law below.

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.

The jurisdiction has a statute that reads: "Any action for recovery of personal property is barred after three 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)

The mate (Gilligan) was a mighty sailor man. The Skipper was brave and sure. Five passengers set sail that day for a three hour tour. The weather started getting rough. The tiny ship was tossed. If not for the courage of the fearless crew (Gilligan), the *Minnow* (the ship) would be lost. The ship (the *Minnow*) set ground on the shore of this uncharted desert isle, with Gilligan, the Skipper, the millionaire (Thurston Howell) and his wife (Lovey Howell), the movie star (Ginger), the Professor, and Marianne. (You may find yourself humming the theme song quietly to yourself as you read this. For that, I apologize.)

The island does have native inhabitants, whose existence has been noted by brief physical appearances of people here and there such as from behind trees or in caves and by artifacts and belongings found around the island.

More than ten years have passed since the *Minnow* landed on the desert isle and much has happened to the crew and passengers of the little ship. The rescue boat arrives with a very important person aboard, the lawyer who can help them sort out their various interests as they prepare to leave the island. You are that lawyer. Unfortunately, as you all are leaving the island, Mr. Howell suffers a fatal heart attack and is buried at sea.

You have obtained the information summarized in the numbered items 1-7 below either from conversations with the castaways or from documents that you have been given or have found. As you travel away from the desert island, you prepare to meet with each of the castaways to discuss their property interests. Your preparation consists of drafting for each person a written explanation of his/her property law issue(s) and the result(s) for each situation, transaction, or development described below based upon the law of the jurisdiction you have been given. **For each scenario, you must identify and describe the interests and the legal issue(s), state the appropriate rule(s), apply those rules directly and explicitly to the facts that you have been given, and give a clear legal conclusion on each property law issue implicated by the fact pattern so that each person will know his/her property law rights and responsibilities.**

1. (110 points) The Howells have interests in the following land and/or buildings. The Howells have no children. Mr. Howell has one brother, who has a child. You must describe the interests and any legal issue(s) that arise from these scenarios. Be sure that you state definite legal conclusions for ownership and all legal issues arising from ownership before they arrived on the island, while they were on the island, and after they left the island if applicable.
  - a. A high-rise apartment complex held as tenants in common with Donald Trump. The title reads, "Lovey and Thurston Howell, a married couple, and Donald Trump, a single person, as tenants in common."

While the Howells have been on the desert isle, all rents have been collected at fair rental value and have been deposited in the Donald's personal account. One half of the taxes have been paid each year from the Howells' bank account held jointly with Trump; the other half of the taxes has been paid from Trump's personal account. The Donald installed gold-plated fixtures in each bathroom in the 500 unit building at a total cost of \$500,000, half of which Trump took from the account held jointly with the Howells.

- b. A penthouse for which the title reads, "Lovey and Thurston Howell, a married couple, as joint tenants with right of survivorship and not as tenants in common."

Unbeknownst to Lovey, Thurston had drafted a holographic will devising the penthouse "to Ginger and her heirs." The will is found among Thurston's items on the rescue boat.

- c. An estate on the island that they had Gilligan and Marianne build for them. (The details of that transaction get into contracts which are beyond the scope of your practice.) The estate consisted of 4 acres of beach front property with a 4 room mansion/hut. Gilligan and Marianne erected a palm leaf fence around the property to provide privacy. The Howells walked the "grounds" every day, collecting sea shells for Marianne to attach to the walls of the hut to keep the sand out. The Howells had placed a monogrammed handkerchief on a pole as a flag that they placed outside the entrance to their fenced area.

Since this house did not previously exist and there was no system for property recordation on the island, there is no recorded deed. Explain if and how the Howells hold title to this property.

In Thurston's holographic will, he devised the island estate to "Lovey Howell for her life, remainder to Donald Trump so long as the land is developed into a vacation resort." Explain the effect of the will provision.

- 2. (40 points) The Professor, a single-minded scientist, spent his time on the island developing the cocona, a coconut you can peel. He has successfully crossed a banana tree with a coconut tree to develop this new fruit. He has an orchard of cocona trees near his grass hut that extends into land on which the native islanders have been observed watching the castaways from behind trees.

The Professor has drafted a document conveying the orchard, the concept for the cocona, and the methodology for combining the two plants to "the Massachusetts Institute of

Technology so long as it develops the plants and shares the development freely with the world population, but if MIT fails to develop the plants and share the development with the world, then to the International Red Cross.”

3. (45 points) Gilligan shared a hut with the Skipper. Gilligan built the hut with raw materials found around the island but he did his interior decorating with items he tripped over one day while out exploring. The items were lying under a tree in a bundle. He did not see anyone in the area so he picked up the bundle and brought it with him to the hut. He has now had these dishes and wall decorations for three years. He has been using them every day, washing the dishes outside the hut in the community sink.
4. (20 points) Gilligan planted a garden at the edge of the lot shared with the Skipper. Every growing season for the past decade, some of the plants grew over on the Howells' estate under their palm leaf fence. Gilligan would go onto the Howells' estate through an opening in the palm leaves to weed, water, and harvest the crops. He then would share the produce with the Howells. Gilligan wants to know if he is entitled to a share of the Donald Trump vacation resort that Mr. Howell was always discussing as the future plan for the estate.
5. (20 points) You are a big fan of Ginger and were wearing your favorite T-shirt when you arrived at the desert isle. Ginger was thrilled but surprised to see her face on the T-shirt. Although she was a star at the time she went missing, in her absence, she became an iconic figure. An enterprising trio, Moe, Larry and Curly, developed a T-shirt and poster line of products that has become a million dollar business. The three did not obtain permission from anyone to put Ginger's face on their products.
6. (25 points) The Skipper and Gilligan were joint owners of the *Minnow*, with title held “as joint tenants with right of survivorship and not as tenants in common.” Before they set sail for the three hour tour, the Skipper took out a loan to pay off gambling debts, using the boat as collateral. The creditor has notified you that, as soon as the boat is towed back to the U.S., she intends to take possession of the boat as payment in full for the debt plus accrued interest. In your answer, be sure you consider both the current ownership interests and consequences of the debt and the result of the creditor taking possession of the boat upon their return to the U.S.
7. (40 points) Before she left Hollywood for the three hour tour on the *Minnow*, Ginger had borrowed a powder blue designer evening gown worth \$5000 from her friend Marilyn. While on the island, from which she never expected to be rescued, she gave the dress to Marianne, expecting her to wear the gown. Marianne immediately began to tear the dress apart to make several pairs of short shorts. As soon as she saw the way that Marianne

was treating the dress, Ginger screamed, “I gave you the dress to wear. If you’re going to treat it that way, I want it back.” Marianne did not give the dress back to Ginger. Instead, she hung it as a window covering, where it has been bleached by the sun for the past five years so it is white on one side and powder blue on the other. Now that they are getting ready to leave the island, you need to determine ownership of the dress and rights and responsibilities associated with the possession of the dress.