

MASSACHUSETTS SCHOOL OF LAW

Property Midterm Exam Professor Carmen R. Corsaro

This is a one hour **closed book examination**. Do not identify yourself other than by your social security number on your blue book cover and this exam in the space provided below.

Remember that spotting issues is a key to success in this exam. Express your answers in a scholarly manner. Each answer should demonstrate power of analysis, capacity to express ideas clearly, as well as familiarity with the subject matter.

Legibility of your script is essential. It is also essential that you write on only one side of a page. This is an exercise in examsmanship as much as your knowledge of the materials.

When finished, place exam in blue book and hand in both.

Bill Baggins was a hermit. He lived at the edge of Shiretown in what was known as GollumWood. This was a twenty acre wooded parcel of land which long had a reputation of being haunted. On the parcel was a cave like structure built into the side of a hill. This was where Bill lived. He had signs posted around the woods announcing "No visitors".

In his younger days, Bill was rumored to have been an adventurer. There were stories that in his travels, he had accumulated many valuables, medieval weapons, armor, jewelry and an unusual ring. The ring it was rumored, could be traced back to the notorious Lord Sourman. It was whispered that these valuables were the reason Bill so closely guarded his privacy.

GollumWood had previously been occupied by another strange character, Bruce Gollum. Bruce was the only surviving Gollum. The last in a long line of Gollum family members who had called GollumWood their home. When Baggins was much younger, Bruce Gollum disappeared from the Shiretown area shortly after the death of his mother. When Baggins later returned from his own "adventures", he thought GollumWood would be the perfect place to live a quiet and secluded life. So he moved into the cave like structure.

Bill's only living relative was his nephew, Frodo Baggins. Frodo and an old traveling friend, Gandolph, were the only people with which Bill would have contact. Gandolph recently visited Bill, only to be seen leaving in quite a hurry. Bill immediately summonsed Frodo. He informed Frodo that he had received very perilous news from Gandolph and he must leave Shiretown immediately, probably never to return. He stated that Frodo could have his home and what was in it. He also stated that many of the valuables that he possessed, had actually been found at various locations in the cave. He said that Frodo should continue to keep an eye out for valuables. He then handed Frodo an envelope which contained a ring. He told Frodo, "Guard it with your life" and "Gandolph will know what to do with it." Bill then left in the dark of the night. When Frodo closely examined the ring by the firelight, he noted an inscription which stated, "Property of Lord Sourman".

Frodo remained at GollumWood. One evening, the entrance door slammed open and there, standing in the doorway, was Bruce Gollum. "Get out of my home", Gollum shouted to Frodo. Gollum then spotted the ring on the fireplace mantle. "My ring! My precious ring! Give it to me." The police were then called to the scene to keep the peace. Both Frodo and Gollum have now retained attorneys.

Discuss the rights and liabilities of the parties.

MODEL ANSWER TO PROPERTY MIDTERM

Who owns GollumWood? The facts indicate that the Gollums may have had record title to GollumWood as the property seems to have been passed down for a number of generations of Gollums. It appears that Bruce is the last surviving Gollum and he likely inherited the same upon the death of his mother by a will, law of descent and distribution or otherwise took sole title by a remainder interest or concurrent estate. A search of the records of the registry of deeds and registry of probate would indicate who has record title to the premises. Assuming that Bruce is found to have such title, it appears that if Bill Baggins and Frodo, who claims under him, have rights to Gollumwood, then they must claim them through Adverse Possession. Bill Baggins took possession of GollumWood an undetermined time ago. He did not take possession under a deed or other document that would give him 'color of title'. Assuming that color of title is not a requirement of the adverse possession statute in this jurisdiction, then the Baggins must still satisfy the other elements required to obtain title by adverse possession. These elements are:

Open- which is often linked with the element of notorious possession. His possession must be "visible" and not surreptitious. He must "fly his flag" over the premises. It appears that Bill was somewhat of a hermit and perhaps did not often leave his cave. He wasn't seen by many other residents of the area and perhaps was somewhat secretive in his whereabouts. Nonetheless, he posted the area with signs indicating he wished no visitors and it appeared to be a matter of general knowledge among local citizens that he was present on the premises and claimed this GollumWood as his own.

Continuous - It is apparent that once Bill settled into Gollumwood in his later years he remained there until leaving on his perilous journey, whereupon, he then attempted to transfer Golumwood to Frodo his nephew who remained on the premises thereafter. It appears there is no break in the continuity of possession by the Baggins once they took possession.

Exclusive - the signs and the facts indicate that other individuals were kept away from Gollumwood by Bill's behavior in a manner that reflects the possessor's dominion and control over the land; and it appears from the facts that no one substantially attempted to interfere with same during this period until Bruce arrived.

Entire - this is a 20 acre parcel of wooded land which contains a cave like structure used for a residence. The facts are not clear as to what extent Bill actively "possessed" the whole twenty acres, although he did post signs "around the woods". Since he did not have a deed giving him color of title and constructive possession of the whole, we would have to consider the nature of the land and the use which he made of it to determine the extent of his adverse possession over the total area.

"Actual" possession is also necessary under the circumstances and therefore, it is quite possible that he may have acquired title by adverse possession of the cave and surrounding area but not the whole twenty acres.

Adverse and hostile- vis a vis the owner of the premises and any of those claiming under him. It is apparent that Bill took possession of GollumWood, without the true owner's permission and his use of the premises from the inception appears to indicate contempt of any rights that Gollum may have had to it.

If the required statutory period necessary to obtain title by adverse possession has been satisfied during Bill's stay on the premises, Gollum is now barred by the statute from bringing an action of ejectment against Bill and those claiming under him. If Bill left the premises prior to the expiration of this period, Frodo may be able to add his own time of possession under the theory of tacking to meet the time requirements, since he and Bill are in privity to each other with respect to the land.

Many adverse possession statutes provide extensions of time to the statutory period if the title owner is incompetent, insane, a minor, imprisoned or suffers from other like types of incapacity. The condition must usually exist at the time adverse possession commences and any extension period would begin to toll upon the removal of the disability or condition. If Bruce can show that he was under such a disability at the commencement of Bill's possession and which continued thereafter so that he is entitled to such an extension of the statutory period, he may be able to defeat the Baggins' claim of Adverse possession.

Prior to Bill leaving he stated to Frodo that he could have his home and what was in it. Do his actions constitute valid gifts of the realty, its contents, and, in particular, the ring? A gift is a voluntary transfer of property without consideration. Assuming that a person has the legal capacity to make a gift, the necessary elements of a gift are donative intent, delivery and acceptance. Intent can be inferred by the actions of the donor, delivery and acceptance are usually indicated by the parties exercise or release of dominion and control over the object constituting the gift.

There are two major classifications of gifts made during one's lifetime: inter vivos and causa mortis. Gifts made by will or which are to take effect only after the death of a donor are gifts which are testamentary in nature. As such, these gifts, with few exceptions, must satisfy the requirements of a writing which conforms to the statute of wills in that particular jurisdiction. If a non-testamentary gift does not meet all the legal elements necessary prior to the death of the donor, the gift object itself would fall back into the probate estate of the donor and pass to his heirs and not the donee of the gift. In gifts inter vivos, the donor must usually give up, by delivery, total dominion and control over the gift. Delivery can be actual, constructive or symbolic.

A gift causa mortis is a gift which has all the elements of a gift inter vivos but which is also made with the donor facing an illness or peril which places the donor in expectation of death, then imminent. Such gifts are made during the donor's lifetime and are effective upon delivery and acceptance of the gift, but the chief distinction between such gifts and inter vivos gifts is that the donor retains the right to revoke the gift at any time prior to the death of the donor. If the donee predeceases the donor, the gift is revoked. If the Donor does not survive the illness or peril then the gift becomes absolute.

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Gollum, Inc
McLennan

In the present case, we have Bill receiving "perilous news" and Bill leaving on a journey "probably never to return". These circumstances surrounding the "gifts" to Frodo may indicate that they may be causa mortis and revocable. Nonetheless, certainly Bill could have intended that the gifts be absolute, although he may have felt that he was close to death at the time, he could still make a gift inter vivos, whether or not he returned. To date he has not, he could possibly be deceased, and in any case, as to claims by third parties, Frodo is the owner of whatever title Bill transferred to him. As to the sufficiency of the elements of each gift we should examine them on a case by case basis.

The gift of the land- Bill attempted to give Gollum Wood, including the cave, to Frodo. Since this is real estate, a voluntary transfer of same must comply with the Statute of Frauds, that is, a writing signed by the party to be charged (Bill) must exist. Delivery in a constructive and symbolic sense must be satisfied by a transfer of a deed of gift. This did not occur here and therefore it appears that Bill, if he is still alive, retains whatever title he had in Gollumwood. If he is dead and Frodo is his only heir apparent, Frodo may have inherited Bill's title through a will or by the laws of descent and distribution and a formal probate of Bill's estate would cause a record of such inheritance indicating Frodo's title to Gollumwood (and everything else in it). Nonetheless, Frodo's occupancy of Gollum Wood is permissive through Bill, if Bill is the owner, and in such a case, Frodo would have priority over any claims of Bruce to the land under the theory of relativity of title.

The contents of the home- Bill stated that Frodo could have what was in his home, its contents. The personalty therein is not subject to the Statute of Frauds and therefore an oral gift of these items is permitted. Actual delivery of each and every item therein may be a problem to Frodo since he was not physically handed each item in the premises at the gifting. Nonetheless, Frodo was properly in possession of the cave at the time the statement of gift was made. Bill by leaving, ceased to exercise any dominion and control over the personalty. These are factual indications of delivery since it was impractical to hand each item to Frodo. There is also the issue of items which may yet be found on the premises. How can they be delivered if not yet found? Under the theory of unconscious possession, Frodo could be said to have been transferred such items also particularly since Bill advised him to "keep an eye out for valuables". Bill's intent to transfer same is implied in that statement.

The ring- There is an indicia of ownership in Lord Sourman inscribed on the ring. At common law, a duty exists to return found items to the true owner especially those with an indicia of ownership. Liability for conversion exists in the event a finder does not do so. We are not told if Sourman is an historical figure or still alive. Therefore, a duty may exist to attempt to locate him and ascertain if he or his heirs if found continue to claim ownership. We should ascertain if lost property or finders statutes exist in this jurisdiction as they can impose legal duties on all parties in connection with these goods. The fact that the ring was handed to Frodo in an envelope with instructions to "Guard it with your life" and "Gandolph would know what to do with it" raises issues as to whether a gift of this item to Frodo was intended. With respect to the ring, his role might be seen as a trustee, bailee, or agent of the donor in a gift transaction. The words may merely be precatory or suggestive in nature indicating that Frodo is intended to have title to the ring subject to a non binding suggestion of disposition. The words do not seem to grant a gift to Gandolph, but only seem to be suggestive as to an ultimate disposition of the same. Nonetheless, the ultimate disposition may not give complete ownership to Frodo or Gandolph. A bailment which is the contractual granting of mere possession of goods may have been made here. A trust could have been imposed whereby Frodo had legal title to the ring subject to a beneficial interest in Frodo or a third party. All three relationships are contractual in nature and would have to be subject to a more in depth examination of the facts. Development of these facts are necessary to reach a conclusion. That the gifts may be causa mortis and revocable may be important to these issues. It is the intent of the donor of the gift and not the person who may be entrusted with same which is controlling. There are cases which address the issue of an inter vivos gift being made under circumstances where the enjoyment of the gift by the donee is postponed to a point in the future beyond the donor's lifetime. A present gift of a future interest beyond the lifetime of the donor is now allowed in many jurisdictions. Certainly, trust provisions which are established for minor children which postpone the transfer of funds to the beneficiaries until they achieve the age of majority have been commonly allowed for decades. Present gifts of future remainder interests subject to life estates of the donor have even been allowed in cases when evidenced by writings. Of course, the intent of the donor as evidenced by his conduct and the writings will have to be carefully examined to establish exactly the vehicle which will be favored to justify the transaction as an inter vivos gift and not as being testamentary in nature.

That the items found at Gollum Wood by Frodo may be subject to rights of their "true owners" depends on the nature of the circumstances surrounding the found object.

The law of finds categorizes four major types of properties: lost, mislaid, abandoned and treasure trove.

That Gollum left Gollum Wood and all its contents for an extended period is evidence of his abandonment of same. If property is abandoned then it belongs to the finder. This would be a more persuasive argument to the personalty therein, than to the real estate itself in view of the statute of frauds. Nonetheless, Gollum is now claiming rights to the property. If property is lost, dispossession from the owner was not intentional. If property is mislaid, dispossession was intentional, but the owner forgot where he placed it or to regain possession of it. The law seems to give priority of rights over the finder to the owner of the place where the mislaid property was found. A treasure trove is an item of antiquity usually jewelry, precious metal or monetary in nature wherein the object was intentionally placed in a secretive manner by the owner with an intent to return to it. If it appears that the true owner is probably deceased, the American rule gives title to the finder.

In this case it appears that those items which were found in Gollum Wood may most probably be treasure trove as the apparently were intentionally hidden in the premises for safekeeping. Depending on by whom, when and where, the items were placed and found, may be conclusive on many of these issues. Ultimately, who has ownership of the realty, may also be conclusive on the issues of who has better rights to the personalty between the parties.

As to Gollum and Frodo now claiming rights to Gollum Wood, whoever prevails in the ownership of the land and items may be conclusive on possible trespass and conversion actions which now may exist between them.

MASSACHUSETTS SCHOOL OF LAW
MIDTERM EXAM

PROPERTY

PROFESSOR CORSARO

Rick O'Pateen was a first year law student at Massachusetts University Law School. Rick's godfather, Bill M. Quick, a noted trial attorney, gave Rick a rare first edition volume of Black's Law Dictionary, autographed by the author. He told Rick to keep same and when he was through with it, he should give it to the proposed new law school library.

Rick, doubting that he could make law review on his own merit, proceeded to befriend the law school dean, Dean Smith, who was an avid basketball fan. The university mascot was a weasel usually kept in a cage in the Dean's office between athletic events. Rick offered to feed and care for the animal in order to get into the Dean's good graces. Unfortunately, Rick, in the middle of the exam period, forgot to regularly feed the animal which died of malnutrition. In a panic, Rick contacted his friend, Arthur Antique Dealer. Having no money to speak of, Rick traded with Arthur the Black's Law Dictionary for a very old, but functional, weasel trap. Arthur called Dean Smith and sold the dictionary to him for \$2,000.00. Rick went with the trap and dead mascot to a wooded area on campus to attempt to capture a replacement. He set the trap and placed the dead animal next to it as a lure and left.

Martha Nature, while walking through the woods, came upon the dead weasel. She took the weasel to a taxidermist, who, while gutting the animal, found that it had swallowed a ring which was encrusted with emeralds in the shape of a shamrock and on which could be read the letters BOSTON CELTICS WORLD CHAMPIONS 1986. On the inside of the ring were inscribed the words "To Dean, Love, Larry Legend".

When Rick returned to the trap, he found that his plan had worked and a live weasel was trapped inside. Rick, not wanting to be late for his exams, placed the trapped weasel in his car trunk and drove to the main campus visitor's garage. The garage did not open officially until 9:00 A.M. Rick parked, locked his car, and took the keys with him. At 10:30 A.M. he returned, checked on the weasel, and paid the attendant for parking. While handing Rick his receipt, the attendant informed Rick that there was a big game on campus that night and all daytime parkers had to leave the garage by 6:00 P.M., as game parking was \$15.00 per car in advance. He also asked Rick for the keys to his car as it was parked in the Property Professor's reserved spot. The attendant left the keys in the garage office. At 6:00 P.M., as the attendants changed shifts, Tom Thief entered the office, stole the keys and drove off in Rick's car, which was never seen again.

Bill M. Quick, upon hearing of Rick's doings, went to Arthur Antique Dealer and demanded a return of the dictionary. Arthur Antique Dealer paid Bill M. Quick \$1,000 and Bill M. Quick agreed not to pursue the matter further.

Discuss the rights and liabilities of the parties.

MASSACHUSETTS SCHOOL OF LAW

PROPERTY

Professor Carmen R. Corsaro

Final Exam

December 20, 1993

DO NOT READ QUESTIONS UNTIL TOLD TO DO SO.

This is a three hour closed book exam. The three questions will be equally weighed and it is recommended that you spend approximately 60 minutes answering each question. Do not identify yourself other than by social security number on your blue book and this cover sheet.

Remember that spotting issues is a key to success in this exam. Read questions carefully. Express your answers in a scholarly manner. Each answer should demonstrate power of analysis, capacity to express ideas clearly, as well as familiarity with the subject matter.

Legibility of your script is essential. It is desirable that you write on only one side of the page.

When finished, place exam questions inside blue book and hand in both. Take care not to discuss this exam with any student who may be taking same at a later time for any reason.

Write your Social Security number here _____.

QUESTION I

Louise had been living in a furnished Manhattan apartment with Raoul. After learning that Raoul had been seeing his girlfriend, Louise packed all of Raoul's belongings and forcibly threw Raoul out of the apartment.

Louise thought that it would be wise to find a roommate to share the expenses. After interviewing numerous prospects, she chose a young woman named Thelma. Thelma agreed to pay half the rent of \$2,000.00 on the first of the month as well as to pay her share of the utilities as they became due.

From the first night that Thelma moved in, she noticed almost immediately that Tito Fuentes music emanating through an old heating vent in her bedroom from the adjacent apartment which was occupied by Tommy Tune. Tommy is disabled and suffers from a progressive condition involving hearing, sight and speech difficulties. His Uncle Ernie, who had raised Tommy and owned the building, had passed away two months earlier. Shortly before his death, Ernie had deeded the building to himself and Tommy as joint tenants.

Uncle Ernie had leased the apartment one year earlier to Raoul and Louise for a three year period. The written lease provided that the tenants shall not assign or sublet the premises without the written consent of the Landlord.

Thelma complained to Louise about the noise. Unfortunately, Louise could not get Tommy to answer either the door or the phone. After two weeks of trying, Louise sent Tommy a registered letter demanding that he stop the noise.

From their first meeting, Thelma was impressed by Louise's sophisticated appearance and soon had her hair styled and dyed to look like Louise's. Steadily, their relationship became increasingly strained, and Thelma refused to pay her share of the rent until the noise was stopped.

Distressed, Louise contacted Raoul who immediately begged for forgiveness. Louise suggested that they meet the next evening at their favorite spot to patch things up.

That evening, while Louise was out working very late, Thelma returned to Louise's loft bedroom where the music was not audible and she had already fallen into a deep sleep. Raoul couldn't wait to make up with Louise, and using his keys, entered the apartment. Thinking that it was Louise, Raoul quietly undressed in the dark and made advances to her. Thelma awoke, and fearing for her life, she valiantly struggled with him. In the struggle, a loose bannister broke and both Raoul and Thelma fell. Raoul was killed and Thelma sustained a fractured arm and collarbone.

Thelma refuses to leave the apartment or pay any money to Louise.

Louise broke down and was hospitalized upon hearing of Raoul's death. She has been advised by her doctors that her mental health would be at risk if she were to return to the apartment.

Louise has not paid rent to Tommy since Thelma stopped paying. There are 20 months remaining in the lease term. All utilities to the apartment have been shut off for non-payment.

Discuss the rights and liabilities of the parties.

Question 2

Discuss the interests and estates of the parties in the following fact patterns. Assume the original Grantor has a present interest fee simple absolute estate in the premises prior to the conveyance.

- a) Tina conveys to Norman for life, then one day later to Frank and his heirs.
- b) Phyllis conveys to Stephanie for two years, then to Ed for life, then to the heirs of Phyllis's friend, Dan, and their heirs.
- c) John conveys to Paul and his heirs until Joe marries Patricia, then to Steve, Mike, and Mel and their heirs, as tenants in common.
- d) Bill conveys to Dave and his children. At the time of the conveyance, Dave has a son, Gerald; a daughter, Lisa; and a grandson, Bruce.
- e) Delores conveys to Eric for life, then if Kristen has a daughter to Kristen and her heirs, but if Kristen does not have a daughter, to Charles and his heirs.
- f) James conveys to Donna and her heirs, but if Donna gets divorced, then to the heirs of James.
- g) Scott conveys to Mark for 100 years, but if Mark ceases to use the premises for agricultural purposes, Scott shall have the right to retake the premises.
- h) Adam conveys to Sue and Gregg as tenants by the entirety for one year, then to Ryan.

QUESTION III

Mary Squatter died in 1970, after living a long life, owning as part of her substantial estate a modest log cabin on an unenclosed 30 acre lot in the State of Newmont. In her younger days, the property was used as a summer retreat; but she had not visited there for many years prior to her death.

In her will, she devised this property to her son, Jack, for his life, and upon his death the property was to go to his heirs outright.

In 1971, a young political radical, Abby Hoffman, discovered and moved into the cabin. She established a new identity, as she was wanted by the FBI for numerous subversive activities. Later, during the fuel crisis of the 1970's, she began to cut timber on the land for sale as firewood and lumber. She sold same to various companies for resale to the public.

In the mid-eighties, Abby became an avid follower of a young religious leader, David Coresh. In 1988, her identity about to be exposed, Abby was forced to leave the country. Before she left, she signed over all of her worldly property including the realty to David Coresh.

David and some followers moved into the cabin and dramatically increased lumber operations to support his growing community. Within a short period, he had built a large compound on the premises to house his increasing number of followers.

In 1992, Jack Squatter, a career military officer, became a casualty of Operation Desert Storm, leaving two teenage daughters as his only heirs. Stationed overseas, he never had an opportunity to travel to the Newmont property after his mother's death.

David Coresh's activities have drawn much attention recently and he is suspected to have stockpiled an arsenal on the premises. He now believes the government is out to destroy him.

You have been contacted to represent the interests of Jack Squatter's daughters and/or Jack's estate. Discuss the rights and liabilities of the various parties with attention to possible claims and defenses by all parties that may arise in view of the above facts.

Assume the state of Newmont has established statutes and recognizes Common law rules similar to those of the majority of other States.

QUESTION I

Discuss the interests and estates of the parties in the following fact patterns. Assume the original Grantor has a present interest fee simple absolute ownership in the premises prior to the conveyance.

- A) Dexter conveys to Gervase for one month, then to Pat and her children. Pat has one child, Chris, at the time of the conveyance.
- B) Rudy conveys to Nomar, Pedro and Manny, then one day after Jimmy's death, to Carl.
- C) Groucho conveys to Harpo until Chico marries Oprah.
- D) Rudy conveys to Susan for life, then to Gretchen if Richard gets married, but if Richard does not marry, then to Jenna.
- E) Larry conveys to himself for life, then to the heirs of Larry.
- F) Sara conveys to Connie for life, but if Mary passes the bar exam, Sara may reenter and reclaim the premises.
- G) Tim devises to Tony for life, then to the heirs of John.
- H) Joe conveys to Barbara until he changes his mind.

QUESTION 2

Atty. Anthony A. Tony was a representative of Phil Anthropist who was known to regularly give preselected individuals the sum of \$1,000,000.00 just to see how they would react. Phil was in failing health and decided that before he died he would put his house in order. He called Atty. Tony to his sickbed and told him that he was prepared for the worst.

"I therefore instruct you to do the following. I want you to give my summer home that I had recently listed for sale with Sellem Realty to my nephew George. I have in my safe at the office \$2,000,000.00 in cash and I want you to give it to the person who earns the highest grade point average at Mass Law School at the end of the Spring 2001 semester."

Phil then gave the key to the safe to Tony and two letters signed by him. One was to the Dean of the Law School telling him that Phil had long admired the school. The second was to George stating that he was giving him his summer home on the condition that Phil could use it during the first two weeks of August for as long as Phil lived, which wouldn't be long, he thought.

Phil then said to Anthony, "You have been a good friend and counselor, I want you to have my priceless gold and diamond Samurai pen which I know you have long admired". Anthony picked up the pen from the bureau, handed it to Phil, smiled and said "First you have to sign your new will and the deed of the summer residence to George. I will prepare these for you and be back in two hours.". Tony then put the letters and the key in his pocket and left for his office.

When Tony returned, Phil had taken a turn for the worse and had lapsed into a coma. The next day, Anthony delivered the letters to George and the Dean. Two days later, Phil died never having regained consciousness.

In his last will which he had executed one year prior to his death, Phil had given his whole estate to his now estranged daughter, Marsha. In the new will which he had been working on with Tony he wished to give his estate in full to his nephew George.

Marsha upon hearing of the death of her father, immediately probated the old will which was in her possession. She then telephoned her friend at Faster Realty to place the summer residence on the market. Her friend informed her that she knew a person who was interested in buying it. Within 24 hours Faster had received a written offer to purchase the property from John Jones at a price of \$500,000.00. In the interim, George, who had always wanted to own the summer residence, called Marsha and offered to match the offer of John Jones. Marsha agreed and delivered a deed to the property to George in exchange for a check in the amount of \$500,000.00.

When George brought the deed to his lawyer for recording, George also showed her the letter from Phil, and the attorney told George to immediately stop payment on the check to Marsha.

The next day, when Marsha found out about the stop payment on the check, she executed a deed to John Jones who paid her the full purchase price in cash.

The following day, George's lawyer recorded the deed from Marsha to George, and one hour later, John Jones' attorney recorded Marsha's deed to Jones.

Discuss the rights and liabilities of the parties.

QUESTION 3

The Hatfields and McCoy's were two rival families who owned large tracts of hilly woodland adjacent to each other. Both families derived their title from deeds by John Cleves Symmes who had been authorized by the government to convey land rights to settlers in this area during the Great Depression.

Mr. Symmes deeded 400 acres to Jebediah Hatfield and also deeded an adjacent 400 acres to Lucas McCoy both in 1935.

The area of dispute involves a 100 acre tract of land which apparently had been divided by a stream. The McCoy's have accused the Hatfields of artificially changing the course of the stream so as to add to their acreage. The description in the deeds to both the Hatfields and McCoy's describe their common boundary by the stream in question with the Hatfields owning the property to the East of the stream and the McCoy's owning the property to the West.

The descriptions in the original deeds indicate equal acreage by area, but a recent survey of both properties now indicates that the Hatfield have approximately 500 acres and the McCoy's only 300 acres when using the stream as presently located as the common boundary.

The diversion of the stream allegedly occurred when prospectors diverted the stream through various small dams and other canal type structures when panning for gold in the 1940's.

The Hatfields and McCoy's have been feuding over this disputed area ever since Lucas McCoy jilted Joshua Hatfield's sister, Ophelia, at the altar, while she was with child fathered by him in 1960. In 1980, Joshua and Lucas were both killed in a gunfight between them at the stream.

Joshua Hatfield's only heirs were his sons, Jeb and Jed, who were devised the property as joint tenants. Lucas McCoy died intestate survived by his son, Luke, and his illegitimate son by Ophelia, Lenny, who has been institutionalized since age five as a "mental deficient".

After the death of his father, Jeb Hatfield began using the 100 acre woodland parcel to hunt and fish. Then one day, he was shooting at some food, when up through the ground came a bubbling crude. Oil, that is.

When this oil was discovered, Jeb began building oil derricks on the easterly side of the stream and began pumping out large quantities of oil. His brother, Jed, had previously moved to Beverly Hills to start a career in films and has not been heard from since he left five years ago.

Luke who lives near the stream, has been disturbed by the constant pounding of the oil pumping machines. Luke also believes that Jeb McCoy has been stealing his oil and his gold in the stream.

Discuss the rights and liabilities of the parties.

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QUESTION I

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Atty. Anthony A. Tony was a representative of Phil Anthropist who was known to regularly give preselected individuals the sum of \$1,000,000.00 just to see how they would react. Phil was in failing health and decided that before he died he would put his house in order. He called Atty. Tony to his sickbed and told him that he was prepared for the worst.

"I therefore instruct you to do the following. I want you to give my summer home that I had recently listed for sale with Sellem Realty to my nephew George. I have in my safe at the office \$2,000,000.00 in cash and I want you to give it to the person who earns the highest grade point average at Mass Law School at the end of the Spring 2001 semester."

Phil then gave the key to the safe to Tony and two letters signed by him. One was to the Dean of the Law School telling him that Phil had long admired the school. The second was to George stating that he was giving him his summer home on the condition that Phil could use it during the first two weeks of August for as long as Phil lived, which wouldn't be long, he thought.

Phil then said to Anthony, "You have been a good friend and counselor, I want you to have my priceless gold and diamond Samurai pen which I know you have long admired". Anthony picked up the pen from the bureau, handed it to Phil, smiled and said "First you have to sign your new will and the deed of the summer residence to George. I will prepare these for you and be back in two hours.". Tony then put the letters and the key in his pocket and left for his office.

When Tony returned, Phil had taken a turn for the worse and had lapsed into a coma. The next day, Anthony delivered the letters to George and the Dean. Two days later, Phil died never having regained consciousness.

In his last will which he had executed one year prior to his death, Phil had given his whole estate to his now estranged daughter, Marsha. In the new will which he had been working on with Tony he wished to give his estate in full to his nephew George.

Marsha upon hearing of the death of her father, immediately probated the old will which was in her possession. She then telephoned her friend at Faster Realty to place the summer residence on the market. Her friend informed her that she knew a person who was interested in buying it. Within 24 hours Faster had received a written offer to purchase the property from John Jones at a price of \$500,000.00. In the interim, George, who had always wanted to own the summer residence, called Marsha and offered to match the offer of John Jones. Marsha agreed and delivered a deed to the property to George in exchange for a check in the amount of \$500,000.00.

When George brought the deed to his lawyer for recording, George also showed her the letter from Phil, and the attorney told George to immediately stop payment on the check to Marsha.

The next day, when Marsha found out about the stop payment on the check, she executed a deed to John Jones who paid her the full purchase price in cash.

The following day, George's lawyer recorded the deed from Marsha to George, and one hour later, John Jones' attorney recorded Marsha's deed to Jones.

Discuss the rights and liabilities of the parties.

QUESTION 3

The Hatfields and McCoy's were two rival families who owned large tracts of hilly woodland adjacent to each other. Both families derived their title from deeds by John Cleves Symmes who had been authorized by the government to convey land rights to settlers in this area during the Great Depression.

Mr. Symmes deeded 400 acres to Jedediah Hatfield and also deeded an adjacent 400 acres to Lucas McCoy both in 1935.

The area of dispute involves a 100 acre tract of land which apparently had been divided by a stream. The McCoy's have accused the Hatfields of artificially changing the course of the stream so as to add to their acreage. The description in the deeds to both the Hatfields and McCoy's describe their common boundary by the stream in question with the Hatfields owning the property to the East of the stream and the McCoy's owning the property to the West.

The descriptions in the original deeds indicate equal acreage by area, but a recent survey of both properties now indicates that the Hatfield have approximately 500 acres and the McCoy's only 300 acres when using the stream as presently located as the common boundary.

The diversion of the stream allegedly occurred when prospectors diverted the stream through various small dams and other canal type structures when panning for gold in the 1940's.

The Hatfields and McCoy's have been feuding over this disputed area ever since Lucas McCoy jilted Joshua Hatfield's sister, Ophelia, at the altar, while she was with child fathered by him in 1960. In 1980, Joshua and Lucas were both killed in a gunfight between them at the stream.

Joshua Hatfield's only heirs were his sons, Jeb and Jed, who were devised the property as joint tenants. Lucas McCoy died intestate survived by his son, Luke, and his illegitimate son by Ophelia, Lenny, who has been institutionalized since age five as a "mental deficient".

After the death of his father, Jeb Hatfield began using the 100 acre woodland parcel to hunt and fish. Then one day, he was shooting at some food, when up through the ground came a bubbling crude. Oil, that is.

When this oil was discovered, Jeb began building oil derricks on the easterly side of the stream and began pumping out large quantities of oil. His brother, Jed, had previously moved to Beverly Hills to start a career in films and has not been heard from since he left five years ago.

Luke who lives near the stream, has been disturbed by the constant pounding of the oil pumping machines. Luke also believes that Jeb McCoy has been stealing his oil and his gold in the stream.

Discuss the rights and liabilities of the parties.

MASSACHUSETTS SCHOOL OF LAW

COMPREHENSIVE EXAM

PROPERTY

7031 m
PROFESSOR CORSARO
OCTOBER 8, 1992

Larry Hick was a first year law student at Massachusetts University Law School. Larry's godfather, Bill M. Quick, a noted trial attorney, told Larry that if he made law review, he would give him a new sports car and bring him into his high powered law firm, Dewey, Cheatem & Howe. He also gave Larry a rare first edition volume of Black's Law Dictionary, autographed by the author, which he told Larry to keep and when he was through with same, he should give it to the proposed new law school library.

Larry, doubting that he could make law review on his own merit, proceeded to befriend the law school dean, Dean Smith, who was an avid basketball fan. The university mascot was a badger which had been kept in a cage in the Dean's office between athletic events. Larry offered to feed and care for the animal in order to get into the Dean's good graces. Unfortunately, Larry, in the middle of an exam period, forgot to regularly feed the animal who died of malnutrition. In a panic, Larry contacted his friend, Arthur Antique Dealer. Having no money to speak of, Larry traded even up with Arthur the Black's Law Dictionary for a very old, but functional, badger trap. Arthur later called Dean Smith and sold the dictionary to him for \$2,000.00. Larry went with the trap and dead mascot to a wooded area on campus to attempt to capture a replacement. He set the trap and placed the dead animal next to it as a lure and left.

Martha Nature, while walking through the woods, came upon the dead badger and thought she would take it home and have it stuffed. She took the badger to a taxidermist, who, while gutting the animal, found that it had swallowed a ring which was in damaged condition but which was encrusted with emeralds in the shape of a shamrock and on which could be read the letters B STON CEL ICS WO LD CHAM IONS 1971. On the inside of the ring were inscribed the words "To Dean Love Red".

Early the next morning when Larry returned to the trap, he found that his plan had worked and a live badger was trapped inside. Larry, not wanting to be late for his exams, placed the trapped badger in his car trunk and drove to the main campus visitor's garage. The garage did not open officially until 9:00 A.M. Larry parked, locked his car, and took the keys with him. At 10:30 A.M. he returned, checked on the badger, and paid the attendant for parking. While handing Larry his receipt, the attendant informed Larry that there was a big game on campus that night and all daytime parkers had to leave the garage by 6:00 P.M., as game parking was \$15.00 per car in advance. He also asked Larry for the keys to his car as it was parked in a reserved spot. The attendant left the keys in the garage office. At 6:00 P.M., as the attendants changed shifts, Peter Punk entered the office, took the keys and drove off in Larry's car.

Bill M. Quick, upon hearing of Larry's doings, went to Arthur Antique Dealer and demanded a return of the dictionary. Arthur Antique Dealer paid Bill M. Quick \$1,000 and Bill M. Quick agreed not to pursue the matter further.

Discuss the rights and liabilities of the parties.

QUESTION I

Discuss the interests and estates of the parties in the following fact patterns. Assume the original Grantor has a present interest fee simple absolute ownership in the premises prior to the conveyance.

- A) Kevin conveys to Shawn for life, but if Karen graduates from Law School, Kevin may reenter and reclaim the premises as of his former estate.
- B) Deborah conveys to Valerie and her children.
- C) Scotty conveys to Richard for 25 years, then to Charles and John.
- D) Cheryl conveys to Tim for life, then to Nicholas for one day, then to the heirs of Tim.
- E) Anthony conveys to Sheri, then one day after Donald's death, to Anne.
- F) Stephen conveys to David for life, then to Marie if James gets married, but if James does not marry, then to Paul.
- G) Pierre conveys to Thon until Felipe marries Yoko.
- H) Carmen conveys to himself for life, then to the heirs of Carmen.

QUESTION I

Discuss the interests and estates of the parties in the following fact patterns. Assume the original Grantor has a present interest fee simple absolute ownership in the premises prior to the conveyance.

- A) Pat conveys to Chris for so long as Chris lives on the land, but if she moves, Pat will have the right to reclaim the property as her own.
- B) John conveys to Tim for as long as Deborah lives and then to the heirs of Ryan and their heirs.
- C) Gregory conveys to Carol for 50 years, then to Pam and her children. Pam has one child, Beverly, at the time of the conveyance.
- D) Eric conveys to Larry for life, then to Glenn for one day, then to the heirs of Larry and their heirs.
- E) Kristen conveys to Marshall for life, then one day after Roger's death, to Mo.
- F) Tony conveys to Kate for life, then to Frank if Joe gets married, but if Joe does not marry, then to Mary.
- G) George conveys to Paul until John marries Yoko, then to Ringo and Mick.
- H) George conveys to Paul until John marries Yoko.

PROPERTY

Professor Carmen R. Corsaro

Final Exam

December 14, 1992

9:00 A.M.-12:00 P.M.

This is a three hour exam. The three questions will be equally weighed and it is recommended that you spend approximately 60 minutes answering each question. Do not identify yourself other than by social security number on your blue book.

Remember that spotting issues is a key to success in this exam. Read questions carefully. Express your answers in a scholarly manner. Each answer should demonstrate power of analysis, capacity to express ideas clearly, as well as familiarity with the subject matter.

Legibility of your script is essential. It is desirable that you write on only one side of the page. Good luck.

QUESTION I

On January 1, 1988, Aggie leased a two-story building in Andover to Baggie under a written lease for a term of five years with rent payable in the amount of \$1,000 monthly on the first of each month.

The first floor of the building had been used as Aggie's Convenience Store and the second story as Aggie's residence for many years. Baggie also purchased Aggie's store inventory and equipment and opened Baggie's Convenient Store on the first floor. Baggie moved his family, consisting of his wife and two minor children, into the apartment upstairs.

The lease contained a covenant that Baggie "will not without the consent in writing of the Landlord, assign this lease or sublet the whole or any part of said premises." It also contained a clause that "Tenant would keep the premises insured against fire and other casualty".

On January 2, 1989, Baggie assigned the lease to Caggie as partial security for new refrigeration equipment purchased from Caggie for use in the store.

It wasn't contemplated by Baggie or Caggie that Caggie should occupy the store; Baggie continued to occupy same and run the business. No notice was given to Aggie of the assignment. It was agreed between Baggie and Caggie that Baggie would continue to pay the rent as it became due and Caggie would only take possession upon a default of payment.

As time passed, Baggie's business wasn't doing well and financial pressures were causing a lot of stress in the Baggie household. On January 3, 1990, after a heated argument with her husband, Mrs. Baggie obtained a domestic violence restraining order against Baggie which prohibited him from entering the building or visiting his children. Despondent and homeless, Baggie returned to his native country.

Mrs. Baggie attempted to continue to run the business, but could not make both the equipment payments to Caggie and the rental payments to Aggie. In March 1990, after three months of non payment, Caggie exercised his rights under the assignment, entered the store and repossessed the refrigeration equipment. In the process of removing the equipment, the plumbing and heating systems servicing the building were disconnected. After taking the equipment, Caggie assigned the lease to Mr. and Mrs. Baggie by an instrument in writing which he left on the store counter with the original assignment. When Aggie returned from his winter vacation in Florida in April 1990, he realized that \$500 in rental payments had been deposited in his account on February 1, 1990 and no other payments had been made since January 1990. When he went to the premises, he found the store empty, the assignments on the counter, and Mrs. Baggie and the children living in the upstairs apartment without running water and using portable space heaters as heat. In the interim, the water lines in the unheated store had frozen causing extensive damage to the heating system, store and basement. Mrs. Baggie refused to pay Aggie any more money, and would not move out as one of her children was seriously ill after being hospitalized with pneumonia.

Discuss the rights and liabilities of the parties.

QUESTION II

Discuss the interests and estates of the parties in the following fact patterns. Assume the original Grantor has fee simple absolute ownership prior to the conveyance.

- A) Priscilla conveys to Vicky for life, then to Barbara and her heirs, but if Barbara dies without issue, then to Michelle and her heirs.
- B) Rob conveys to Eric for life, then if Ray has a daughter, to Ray and his heirs, but if Ray does not have a daughter, to Scott and his heirs.
- C) Steve conveys to Chris and his heirs until one month after Chris' death, then to Izzy and his heirs.
- D) Mike conveys to Gilbert for life, then to Harry for one year, then to the heirs of Gilbert.
- E) Gary conveys to Larry and his heirs until the Boston Red Sox win the World Series, then to the heirs of Gary.
- F) Pat conveys to Kristen for life, then to Ryan and his heirs on the condition that if premises is not kept up, Pat shall have the right to reenter the property as of her former estate.
- G) Lisa conveys to Lou for life, Lou then conveys all his right, title and interest to Marc.
- H) Carmen conveys to Debbie and Anne, as joint tenants, for two thousand years, then to Tony and his heirs.

QUESTION III

Dr. Hannibal Lecture was a psychiatrist with a prosperous practice. He had been married three times and had a child by each marriage, Fave, Chianti and Lamb Chop. After the sudden death of his third wife, he decided that his lifestyle needed a change and that he would retire to a small South American country, do some exploring, and live off the fat of the land. He therefore began to organize his affairs.

He placed most of his money into a bank account under the joint names of himself and Fave. It was his intent to draw from this account during his lifetime in the event that he ever needed additional cash. Most all of his furnishings and personal belongings he stored in a sealed off unit of YOUR SELF-STORAGE, paying ten years storage charges in advance. He received two keys for the unit, kept one key for himself and gave the other to his trusted lawyer, Ivan Hafrekt, with instructions to deliver same to Chianti if he did not receive other instructions within one year.

As to his penthouse condominium, he had his attorney prepare a deed of same to Lamb Chop, with similar instructions to give the deed to her in the event that he was not heard from within one year. Dr. Lecture executed the deed and left for the jungles of the Amazon.

After a few months, federal agent Clarice Starling contacted Fave as to the whereabouts of Dr. Lecture relative to an investigation concerning the disappearance of a census taker. It was then that Fave learned of the joint bank account. In the interim, a noted criminal by the name of Buffalo Bill had broken into YOUR SELF-STORAGE and taken numerous articles from Lecture's unit. Among the articles taken was a set of Dr. Lecture's paintings, he being an excellent amateur artist. Little did Bill know that behind one of these paintings was Michaelangelo's Duomo Scene From The Belvedere which had been hidden there by the Doctor for safe-keeping.

Shortly thereafter, Hafrekt received a telephone call from the Doctor and advised Lecture that Agent Starling had been asking about him. The doctor informed Hafrekt that he was about to embark on a two week safari-like adventure into unexplored territory inhabited by man eating natives. If Hafrekt did not hear from Lecture within thirty days he was to assume the worst and deliver the key and the deed to Chianti and Lamb Chop respectively.

In the meantime, Buffalo Bill had fenced some of the stolen articles, including the paintings, to Miggs, an art dealer of some disrepute. Miggs thinking the same worthless, donated them to Charitable Hospital for sale at their annual auction, hoping to obtain a substantial tax deduction. At the auction, the paintings were purchased by a Dr. Chilton for Five Hundred Dollars.

Thirty days went by and no word was received from Hannibal Lecture. Hafrekt called all Lecture's children to his office and informed them that he expected the worst had happened. He delivered the deed and keys as instructed.

Discuss the rights and liabilities of the parties.

MASSACHUSETTS SCHOOL OF LAW

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Property Final Exam
Professor Carmen R. Corsaro
December 20, 2010

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Your Exam ID Number: _____ Section: { } day { } night

(Your exam ID no. is the last 6 digits of your SS# and 59)

INSTRUCTIONS:

This is a three hour closed book examination. Please remove all materials from atop and underneath your desk. Place books, bags etc. at side or rear of room. No cell phones or electronic devices are to be on or near your person during the exam.

The examination is divided into three parts. Please take one blue book to use for outlines and scrap. Do not identify yourself other than by your exam ID number and class section on your blue book and this exam in the space provided above. The exam sections are equally weighed, and it is therefor recommended that you spend approximately one hour answering each section.

Part One consists of Eight Future Interests and Estates fact patterns. There is space for your answer and analysis following each fact pattern Please answer in the space provided beneath each question and not in the Blue Book. It is recommended that you spend one hour answering this section.

Parts Two consists of two essay questions each also to be answered in the space provided beneath each question. It is recommended that you spend one hour answering this section.

Parts Three consists of four shorter answer essay questions each also to be answered in the space provided beneath each question. It is recommended that you spend one hour answering this section.

If your answer to any question exceeds the space provided on the exam sheet, please continue same on the back of the preceding page opposite your answer.

Remember that spotting issues is a key to success in this exam. Please answer the question(s) asked, little credit is given for a general treatise on a topic raised in the question. Express your answers in a scholarly manner. Each answer should demonstrate power of analysis, capacity to express ideas clearly, as well as familiarity with the subject matter. Legibility of your script is essential. In taking this examination, you are required to comply with the law school rules and policies for examinations. Be careful not to discuss the examination with anyone who may be taking same at a later time for any reason. Do not under any circumstances reveal your identity on your examination papers other than by your identification number. Actions by a student to defeat such policies are a matter of academic dishonesty.

WHEN FINISHED, PLACE EXAM IN BLUE BOOK INCLUDING ALL SCRAP MATERIALS USED, AND HAND IN ALL. GOOD LUCK!

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C) Pat conveys to Kristen for life, and then to Pat's heirs.

D) Mike conveys Blackacre to Dennis and the heirs of his body, but if Dennis moves from Blackacre, Mike may reenter and claim his former estate.

