

Property I Examination

Section B

May 4, 2013

3:00 p.m. - 6:00 p.m.

Josh Blackman

Instructions:

You will have three hours to complete this exam. There are two essay questions. Each question is worth 50% of the final score. Each question has a 500-word limit. Anything you write past 500 words will not be read. Please use the word-count feature to check the length of each answer.

The exam is completely open-book. You can use anything you wish, so long as it was printed *before* the distribution of this exam. Obtaining any new information from anyone or anything *after* the exam is prohibited.

Please don't turn the page until the proctor signals that the exam has begun.

Good luck!

Question 1 (50%)

***Instructions:** You are a reporter for a national legal publication. A high profile and miserable property dispute, involving Anne, Borat, Cosette, Gene, Javert, and Marius, has garnered attention. Your editor has asked you to write a 500-word article explaining the issues in the case. Your readers are mostly property attorneys, so they are well versed in the lingo. The state of Massajersey is a common-law property state, and has adopted all modern property rules, as articulated in the Restatement (Third) of Property, and has all three types of concurrent interests. Massajersey offers, and recognizes same-sex marriage. The state of Texiana is a community property state that retains all common law property rules, as articulated in the Restatement (First) of Property, and has all three types of concurrent interests. Texiana has no law either allowing or forbidding the recognition of same-sex marriage. The federal Defense of Marriage Act is currently in effect, although the Supreme Court of the United States is expected to rule on its constitutionality in June of 2013—be sure to address any issues if DOMA is, or is not in effect.*

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Gene, the mayor of Bayside in the state of Massajersey, is also the owner of a local factory and owns many plots of land in the town. Gene learns that one of his employees, Anne, is a poor single mother. Anne has to “moonlight” to support her poor child, Cosette. Cosette lives with an evil innkeeper named Borat.

On January 1, 2012, out of sympathy, Gene makes the following conveyance: “I give **Blackacre** to Anne for life, then to Borat and his heirs, but if Borat fails to care for Cosette, then to Cosette and her heirs. On January 15, 2012, Anne dies of some ailment she picked up while moonlighting. Cosette is “on her own,” with no other family.

Borat, a rather unscrupulous man, learned of Anne’s death, and screamed “Great Success!” On January 20, 2012 Borat promptly moves onto Blackacre, and brings Cosette with him. Although Borat provides Cosette with food and clothing, he makes her sign a lease for the basement apartment on Blackacre on February 1, 2012. The lease states that Cosette can live in the apartment as long as Borat wants her to. Cosette must pay Borat \$1,000, due the first of each month. On February 1, 2012, Cosette paid Borat \$1,000.

When Cosette moves into the apartment, she finds that it is filled with trash left by the previous tenant, Marius. After moving some of the garbage around, she discovers Marius

is still there. The two reach an agreement: Cosette agreed to allow Marius to stay in the apartment, if he paid half the rent. Cosette delivered \$1,000 to Borat on March 1, 2012.

However, soon the conditions in the apartment became unbearable. The septic tank sprang a leak, and raw sewage seeped through the floorboards. The pipes in the bathroom ruptured, and it became impossible to use the shower, sink, or toilet. Cosette refused to pay her share of the rent, as did Marius. Borat, who was not aware of Marius's presence, demanded that Cosette pay the entirety of the rent. She refused, and withheld the rent for April, May, and June. On June 30, 2011, Cosette, who had become pregnant with Marius's child, moved out.

Soon, Gene finds love. He proposes to his boyfriend, Javert, and the two arrange to be married on July 1, 2012. On the morning before the wedding, Gene makes the following conveyance:

“I give **Whiteacre** to Javert, so long as we are married, otherwise, to Cosette's heirs.”

After signing the papers, Gene and Javert proceed to the chupah, Gene steps on the glass, and the two are proudly married.

After the wedding, on July 2, 2012, Gene makes the following conveyance:

“I convey **Redacre** to Gene and Javert jointly for our joint lives.” The couple moves into Redacre together. Gene, who had a considerable fortune of \$10 million prior to the wedding, purchased a pair of silver candlesticks for the price of \$24,601 from his bank account, which the couple put on their dining room table.

On August 1, 2012, in order to work on his debut album, *Gladiator*, Javert builds a recording studio on Redacre. Gene knocks on the door and asks to listen. Javert replies, “Who are you?” Indignantly, Gene screams, “Who am I? Who am I? I'm Gene Valjean.” Javert, embarrassed by his tone-deafness, barricades the door from the inside with a bundle of sticks. Frustrated with this decision to lock him out, Gene decides to revise his will.

On September 1, 2012, Gene and Javert move to San Houstonio, Texiana.

On November 1, 2012, Gene enters into the rodeo, and Cosette, already eight months pregnant, serves as his rodeo clown. Gene, riding under his stage name of “Master of the House,” screamed to the bull, “Are you not entertained?” The bull, nicknamed Wolverine, was not. Both Gene and Cosette were gored and killed in a tragic bull-riding accident. They were both pronounced dead upon arrival at the hospital. Miraculously, later that

evening, Cosette's unborn child was delivered from her corpse, and survived. Marius named his daughter Eponine.

After their joint-funeral, Javert *rustles* through the papers of Gene's will, while he *crowds* about how sad he is—then he realizes it. Gene left him nothing. Instead, Gene left all property, personal and real, to Cosette. In Cosette's will, Cosette left all of her property, personal and real, to her heirs.

Then the litigation begins.

First, Borat files suit to quiet title on **Blackacre**, claiming ownership of the property. The executor of Cosette's estate files a counterclaim on behalf of the infant Eponine.

Second, Borat files suit against the executor of Cosette's estate, and Marius, to collect unpaid rent from April, May, and June of 2012. Cosette's executor and Marius counterclaim, asserting that the rent was properly withheld.

Third, Javert files suit to quiet title on **Whiteacre**. The executor of Gene's estate files a counterclaim, asserting that Javert does not own Whiteacre, but Eponine does.

Fourth, the executor of Gene's estate files a suit to quiet title on **Redacre**. Javert counterclaims, and asserts that as the surviving spouse, he owns Redacre in fee simple.

Fifth, Javert objects to the fact that Gene did not leave him anything in his will, and wants half of all of the marital property. He files suit, demanding half of all marital property, personal and real, including the candlesticks. The executor of Gene's estate claims that under the laws of Texiana, Javert gets nothing.

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For each of these five lawsuits, discuss the validity of the competing arguments of the adversarial parties, and address who will win.

Question 2 (50%)

Instructions: You are a law clerk for the honorable Doug Dougie, a rotund jurist with a Jersey wit, in the Trial Court of Seaside Heights, New Jersey. You have been assigned to write a bench memo of no more than 500 words addressing a sensational case involving some of the Garden State’s most famous residents. New Jersey adheres to all common law property rules, as articulated in the Restatement (First) of Property. However, many of the issues presented in this case, which took place at sea, and on a deserted island, may not be governed by any of our laws. Judge Dougie, a student of the natural law, who has an interest in how property rights are allocated in the absence of positive law, expects you to address all grounds on which this case can be decided.

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After recovering from SuperStorm Snooki, the Jersey Crew (A-Woww, Booki, Cangelina, Deena, Pauly “E”, and Fitchuation) decided to take a break, and GTL at sea. Following the lead of a prominent Jerseyite-turned-Texas-Law-Professor, the crew strutted down to Texas, boarded a Fiesta cruise ship, and embarked from the port of Galveston. However, what was meant to be a three-day tour turned into a tragedy.

While A-Woww was doing crunches at the *gym* on board, she placed her huge blinged-out diamond chain on a bench, but it slid off and fell into an air-conditioning grate on the floor. Later, Booki walked near the grate, and saw something shiny. She bent over, reached down into the grate for the chain, which had become caught in some insulation, pulled it out, and draped it around her neck. (A midget with a midget hanging from her necklace!)

However, when Booki went *tanning*, she took off the chain, and left it on the table outside her tanning booth (who wants tan lines?!). After Booki entered the booth, Cangelina saw this chain, and asked the manager of the tanning salon what to do with it. The manager didn’t know, but said Cangelina could hold onto it for safekeeping until the owner claimed it. Cangelina was playing dumb (you’d never know it)—she knew it was A-Woww’s chain, but didn’t know that Booki had found it. Behind A-Woww’s bronzed back, Cangelina hid the chain in her *laundry* bag. She wasn’t going to give it back.

Later, Cangelina asked A-Woww if she could have her chain after they got back to Jersey. A-Woww, who hadn’t realize she had lost it, told her Staten-Island-bred nemesis, “From my cold, dead, acrylic nails. You can have it when I die.” Cangelina, cackling, said, “I accept your generous gift.”

Above deck, Deena, Pauly E, and Fitchuation were up to no good. A nearby fishing boat from Italy, the *Firenze*, had spent almost an entire day following and trapping a school of sharks into a nearby coral reef, where the sharks would not be able to escape the fishers. Seeing this, right as the fishers were about to lure the sharks into their nets, Deena, Pauly E, and Fitchuation hurled a couple of grenades into the water. The explosions were so powerful that the sharks flew up in the air. Fitchuation, with his burly arms, grabbed two sharks at once, and wrestled them onto the deck. "Twinning!" he shouted. The fishers started yelling at Fitchuation, saying, "We worked so hard to catch those sharks." Fitch laughed, and said, "Hey losers, I got them first. Now you've got a situation!"

However, the party aboard the *Fiesta* soon turned to tragedy. The Jersey crew, who had plugged in way too many blow dryers, hair straighteners, and tanning lamps, overloaded the circuits on board, and the generator stopped working. Without any power, the steering mechanism failed, and the *Fiesta* drifted into the legendary "Texas Triangle," where many ships have mysteriously vanished.

Soon, the waters turned dark, and a powerful typhoon struck. The *Fiesta* could not handle the storm, and began to sink. Miraculously the entire Jersey Crew managed to crowd into the same lifeboat, and escaped the storm. Poor Leo, who was struggling in the water yelled to Cangelina, "help me!" Cangelina reached out and grabbed Leo's hand, and replied, "I'll never let go." Then a few seconds later, she changed her mind. Even though there was plenty of room on the lifeboat for Leo, she let go. Leo promptly drowned.

On board the lifeboat, there were limited food rations, and a radio that would not turn on. After a few days at sea, the rations started to run low, and there were no signs of land anywhere. So the members of the crew started to negotiate. A-Woww told Pauly E, "hey if I can eat your rations, you can have my *Scarface* poster, autographed by Al Pacino, when we get back to Jersey." Pauly E accepted that offer. A-Woww hands Pauly E the key to Orangeacre where the poster is hanging.

Despite eating Pauly's ration, the next day, A-Woww gave into starvation, and died. The other members of the crew, wasting no time, ate her corpse. Booki said, "taste's like chicken!" Cangelina added, "slimy, but satisfying." Though, A-Woww's anorexic abs proved unsatisfying, and the crew soon became hungry.

The next day, a miracle happened. They saw land! The five remaining members of the crew paddled feverishly towards land, and washed ashore on a deserted island. The next day, Booki, who had not been feeling well, came down with a horrible case of dysentery, and died. Wasting no time, the crew nosed on Booki, noting that she tasted eerily like

orange-flavored chocolate from Willy Wonka's factory. And then there were four—Cangelina, Deena, Pauly E, and Fitchuation.

After a few days on the island, a frail, bearded savage appeared from a hidden cave. Communicating in grunts, he conveyed that he was the only person on the island. The crew nicknamed him Hanks. Soon the crew determined that Hanks was an aboriginal, who washed ashore from the Mexican desert. He offered to trade the crew ownership of the land, in exchange for Fitchuation's jewel-encrusted grill. Fitchuation decided to reject this offer. The crew promptly killed the native, and, having developed a taste for flesh, held a barbeque. Fitch, proclaimed, "Conquered, baby. Now I own this land. I will call it the Island of Staten."

Deena began tinkering with the radio, and by using a duck floating in the water as a receiver, somehow got it to work. "Merp!" she shouted into the radio. Someone on the other end answered. Soon, a search party was dispatched, and a rescue boat arrived. Pauly E screamed, "Boats are heeeeeere!!!!" The four surviving cast members were brought back to Jersey. Yet, legal proceedings awaited them.

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Judge Dougie, who is very concerned with this high-profile case, asks you to address the following four issues.

- 1 Upon arriving back in Jersey, Cangelina began to wear the blinged-out chain she had smuggled in her laundry bag. Booki's heir, who learned that Booki found the chain on the boat, discovered that Cangelina was wearing it, and filed suit to recover the chain. The manager of the tanning salon intervened, and claimed she should receive the chain. What would be the best argument of Booki's heirs, Cangelina, and the manager, respectively, why each should keep the chain? Who should win?
- 2 When Pauly E returned to New Jersey, he tried to enter Orangeacre to collect the Scarface poster. He tried to use the key A-Woww gave him to unlock the doors, but he discovered someone changed the locks. It was Fitchuation. Fitchuation said that A-Woww's will, executed before the crew departed for the cruise, bequeathed all of A-Woww's personal property to Fitchuation. Pauly E sued Fitchuation for recovery of the Scarface poster. Who should win?
- 3 The crew of the fishing boat *Firenze* brought suit against Fitchuation for the value of the sharks. What is the best argument of the fishers why they should recover the value of the shark? What is the best argument for why Fitchuation should not

have to pay anything? Who should win? In your answer, please address Judge Dougie's concerns about the natural law writers, and notions of efficiency.

- 4 It turns out that Hanks was the first native to discover the deserted island. However, years earlier Hanks had sold it to an English philosopher named Locke, who was passing through the region. Locke brings suit in court against Fitchuation, seeking to quiet title, and ascertain who owns the island. Who should prevail in this suit?