

**Property I Examination**

**May 12, 2014**

**6:00 p.m. - 9:00 p.m.**

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**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 junior associate at a Houston, Texas law firm. Your senior partner recently told you about a complicated case involving a same-sex couple with property in Texas and New York City. She instructs you to write a memo of no more than 500 words, addressing five issues present in this case.

Three of the issues will be litigated in New York Courts. New York applies all modern property rules, as articulated in the Restatement (Third) of Property, and applies common law property rules for marital property. New York also recognizes same-sex marriages.

The final two issues will be litigated in Texas Courts. Texas applies all modern property rules, as articulated in the Restatement (Third) of Property, and applies community property rules for marital property. Presently, Texas has a constitutional amendment prohibiting same-sex marriages. However, you have been asked to address this issue both under current law, and if same-sex marriages will be recognized in Texas in the future.

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On January 1, 2013 Carl acquired Blackacre, a property in Austin, Texas on an installment contract. The installment contract provided for the payment of \$500 on the first of each month, for 120 months (10 years). If all payments are made on time, Carl would acquire Blackacre in fee simple on January 1, 2023.

On January 2, 2013, Domer acquired Whiteacre, a property in New York City. Domer owned Whiteacre in fee simple.

On January 1, 2014, Carl and Domer travelled to New York where the two men were married. New York law permits the celebration of same-sex marriages, and fully recognizes the property rights of same-sex married couples from other states. Carl and Domer did not sign a prenuptial agreement.

Shortly after their marriage on February 1, 2014, Carl and Domer purchased together Greenacre, a property in New York City, and titled it as a tenancy by the entirety. The couple immediately took up domicile on Greenacre.

On March 1, 2014, Carl and Domer moved back to Austin, where they became domiciled on Blackacre. Carl executed a deed titling Blackacre as a joint tenancy between Carl and Domer. Prior to executing the deed, Carl and Domer agreed that they would each pay half of the monthly payments on the installment contract equally; Carl would pay \$250 a month and Domer would pay \$250 a month. Domer drew the checks from his personal bank account at the Monopoly Savings Bank in Staten Island, New York. Both Carl and Domer made payments starting on March 1, 2014.

On April 1, 2014, Domer won the one million dollar (\$1,000,000) lottery jackpot, and deposited that money in his personal bank account in New York.

The couple began to have marital problems. On January 1, 2015, Domer packed his bags at Blackacre, and flew back to New York, where he moved back onto Greenacre. Domer did not pay his share of the installment contract on January 1, 2015, or any month thereafter.

On January 2, 2015, Carl called to reconcile, but Domer told him he should stay in Texas. Domer then placed a lock on the front gate of Greenacre. Carl never traveled to New York to see Domer.

On February 1, 2015, Domer executes a lease to the back half of Greenacre to Fapu. The lease reads:

“The lease shall continue for and during the term of quiet enjoyment from February 1, 2015 for the sum of \$1,000 a month. Fapu has the privilege of terminating this agreement at a date of his own choice.”

Unbeknownst to Domer, who wasn't particularly observant, Fapu opens a convenience store on his half of Greenacre on March 1, 2015.

On June 1, 2015, Domer has a heart attack and suddenly dies. Domer did not leave anything in his will for Carl, but left everything to his daughter from a previous marriage, Edna. Domer's estate is scheduled for probate in New York on August 1, 2015.

On June 2, 2015, Carl learns about Domer's death, and also learns about the lease of Fapu. Carl gives Fapu notice to vacate. Fapu refuses. Edna also gives notice to vacate. Fapu also refuses.

On June 3, 2015, Edna asserts an interest in Blackacre, based on contributions Domer made towards the installment contract (totaling \$2,500).

On July 1, 2015, at the Houston Rodeo and Livestock Show, Carl is trampled in a tragic Mutton Bustin' stampede, and dies the next day. Carl dies without a will. Carl's only heir is his daughter, Aggie. Carl's estate is scheduled for probate in Austin, Texas on September 1, 2015.

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In your memo, please address fully the following five issues.

1. Aggie, Carl's daughter, challenges the estate of Domer in New York court. Aggie claims that on Domer's death, Carl owned Greenacre in Fee Simple. Because her father died intestate, and Aggie is her father's only heir, she should inherit Greenacre in fee simple. Aggie also claims an interest in the rent Fapu paid. Edna counterclaims that upon Domer's return to New York on January 1, 2015, Carl no longer had any interest in Greenacre, and Aggie takes nothing. Does Aggie have an interest in Greenacre? What interest, if any, does Edna have?

2. Aggie also claims an interest in Whiteacre and Domer's personal bank account in New York. Edna, the executor of Domer's will, counterclaims that Domer did not leave anything to Carl,

and thus Aggie inherited nothing. Does Aggie have any interest in Whiteacre or the personal bank account?

3. Aggie files suit to evict Fapu in New York court. Fapu counterclaims that Aggie cannot evict him. Can Aggie evict Fapu in New York? Could Enda evict Fapu?

4. Edna files suit claiming an interest in Blackacre, as she inherited all of her father's assets. Under current law, Texas does not recognize the validity of same-sex marriages. Address this question under current law.

5. The Texas Supreme Court is currently considering a case that could invalidate Texas's constitutional amendment prohibiting the ban of same-sex marriage. Please address the previous question in the event that Texas now recognizes same-sex marriage.

## **Question 2 (50%)**

### ***Instructions:***

You are a law clerk for Judge Doug Dougie, a rotund jurist with a Jersey wit, in the Circuit Court of Seaside Heights, New Jersey. Judge Dougie has been assigned the unenviable task of sorting out several lingering property disputes stemming from the disappearance of Air Micronesia Flight 666, and four of its passengers who resided in the Garden State—A-Woww, Bookie, Erony, and Fitchuation.

You have been asked 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 in a different place and time, may not be governed by any of our laws. Judge Dougie, a student of the natural law and the common 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. For purposes of this case, assume that the court has jurisdiction over all claims, none of the claims are barred by any statute of limitations, and the Rule Against Perpetuities, or any other principle that destroys future interests, do not apply.

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Four friends live on the Jersey Shore in Seaside Heights, New Jersey: A-Woww, Bookie, Erony, and Fitchuation. On January 1, 2014, the four friends departed from Newark International Airport in Newark, New Jersey on Air Micronesia Flight 666, bound for a vacation in Bali. Halfway through the trip, suddenly the plane took a sharp turn to the left. When the friends peered out the window they saw that a wormhole had suddenly appeared, and it created a tear in the space-time continuum. The plane was sucked into the celestial vortex.

After a bright flash of orange-tinted light, the four friends were no longer on the plane, but in hot and humid jungle. They looked up, and to their surprise they saw a herd of dinosaurs grazing. Bookie screamed out, “Like, OMG. We travelled back in time 65 million years!” Even more to their astonishment, the dinosaurs were not dumb animals, but were intelligent beings. The King of the Dinosaurs, Rex, approached the four friends, and told them that they were enemies in the land, and “were not welcome in the Kingdom of Jurassic.” Fitchuation, exuding his usual bravado, declared the Kingdom in the name of the Jersey-four. Rex ignored him.

Soon a conflict arose between the friends and the Dinosaurs. Rex and his pack had an elaborate, and organized method of hunting the smaller dinosaurs in the Kingdom of Jurassic. Each pack-leader would mark off a specific area of the jungle that they would hunt. The other packs would respect the marking, and stay out of the place. This efficient approach prevented over-hunting. However, this wisdom was lost on the brutes from New Jersey. Fitchuation stumbled onto Rex’s

portion of the jungle. Rex was tracking down a Velociraptor, and had cornered him into a cave. Fitchuation thought about the raptor for a moment, stroked his chin, and then realized what he would do. He ran into the cave, strangled the raptor, and smuggled it out before Rex had even realized it. Rex was furious. Though respecting his society's legal system, Rex filed a lawsuit against Fitchuation in the Jurassic Supreme Court, seeking a return of the raptor.

Fitchuation refused to recognize the jurisdiction of the Jurassic Supreme Court ("JSC") over him. Instead, he asserted that the dinosaurs were a bunch of savages, and he was now the conqueror of the Kingdom of Jurassic. With that sovereignty, he aimed to civilize their society. He established the GTL Supreme Court ("GSC"), headed by Chief Justice Erony.

The Jurassic Supreme Court issued a judgment in favor of Rex. The Jurassic Supreme Court stressed that the law should encourage and create incentives for hunters. The GTL Supreme Court issued judgment in favor of Fitchuation, finding that the law should promote certainty.

Just as Rex and Fitchuation were about to start arguing over which court order to follow, there was a bolt of lightning. Suddenly, the wormhole re-opened, and the four friends got sucked in.

The next thing they know, they are transported to a meadow alongside a river. A-Woww looks across the river, where a bunch of knights are forcing someone wearing a crown to sign a large charter on parchment. A-Woww, who paid attention during a fieldtrip to the museum, immediately realizes what is going on. A-Woww proclaims, "We're in Runnymede, England! The year is 1215 and King John is being forced by the Barons to sign Magna Carta!"

King John looks across the river, and takes a liking to Bookie—in particular her painted face, leopard-print tights, and signature hair bump. Lonely, as his wife had recently died, King John asks Bookie to marry him, and be his queen. She enthusiastically agrees, and takes the title of Queen Bookie of Orange.

After the wedding, King John executes the following grant:

*Runnymede, from King John to Bookie for life, then to Fitchuation and his heirs, but if Fitchuation does not survive Bookie, then Runnymede to King John and his heirs.*

Two months after the wedding night, Bookie realizes she is pregnant with King John's child, which was conceived on their wedding night.

Suddenly, the sky turn dark, and the wormhole opens once again. The friends are sucked into the vortex.

They suddenly appear inside a three-story white building, with all of the windows sealed shut, and a guard watching the door. They see a group of men discussing how to form a new government for the United States of America. This time, it's the Fitchuation who figures out where, and when they are. "Dude. It's 1787 and we are in Philadelphia! They're writing the Constitution!"

Fitchuation sees a young James Madison taking detailed notes about the proceedings in a journal. When Madison isn't looking, Fitchuation swipes Madison's journal, and makes a copy of the entire book. Fitchuation then sold the copied notes of the proceedings to the *Pennsylvania Packet* newspaper. The *Packet* was the competitor to Benjamin Franklin's *Pennsylvania Gazette*.

James Madison learned that Fitchuation stole his journal and republished it. Madison told him that the proceedings in Philadelphia were secret, and that they were not supposed to be released. Madison had told his wife Dolley to sell his notes on the Convention to the United States Congress (if it was still in existence) the year after his death. Madison crossed the Delaware River, and filed suit against Fitchuation in the Circuit Court of New Jersey. His claim was based on Fitchuation selling and republishing the notes, based on the common law claim of misappropriation of property rights.

Fitchuation, already creating trouble in the Jurassic era, and at the time of Magna Carta, ignores Madison's suit.

Then, the sky turned dark again, and the wormhole re-opened. This time-travelling trip had one final stop. The wormhole sucks in the friends, and brings them home—back to Seaside Heights, New Jersey in the year 2014.

On their return, Bookie becomes a huge celebrity, with her distinctive image appearing all over the media.

Bookie learns that the Seaside Heights T-shirt Shop had begun selling T-Shirts, with the image of attractive female dinosaur, wearing lots of makeup, leopard print tights, and with a hair bump. Below the image was a headline, "#GTL: Gym, Time Travel, Laundry." After leaving the gym, and on her way to the Laundromat, as was her daily custom, Bookie screams out, "They ripped off my image. That dinosaur is totally me!" Bookie files suit against the T-Shirt Shop for an unlawful appropriation of her image.

In anticipation of the 800th anniversary of Magna Carta, Bookie takes a trip to Runnymede, England, which she claims she still owns. Fitchuation comes with her. Bookie has the bright idea of visiting Buckingham Palace to drop in on her distant cousin, the Queen of England, Elizabeth II. After all, in her mind, Bookie is still Queen Bookie of Orange, and her unborn child is next in line to the throne.

But Fitchuation has other plans, and takes the pair to a soccer (football if you will) match. After the game, there is a horrible riot, and both Bookie and Fitchuation are simultaneously killed in a

stampede. Fortunately, the British National Health System (after some delay) is able to deliver the baby from Bookie's corpse. With no parents, the doctor calls the infant John II.

A-Woww is appointed as the guardian of John II. A-Woww is also designated as the executor of Bookie's estate, and all of Bookie's outstanding legal claims. Erony is appointed as executor of Fitchuation's estate, and all his outstanding legal claims.

Due to the bizarre nature of this situation, a number of legal issues have been submitted in a consolidated case to the Honorable Doug Dougie. The New Jersey legislature has passed a special statute that grants jurisdiction over all related matters, and the parties concede that Judge Dougie has jurisdiction. Further, all statute of limitations have been waived.

To further his research, Judge Dougie visits the Magna Carta exhibit at the Houston Museum of Natural Science (you should go if you haven't already!!). The Magna Carta on display at the museum is not the original charter signed at Runymede in 1215, but a copy made later in 1217. During those two years, there were a number of changes made, including the deletion of several provisions unfavorable to the King. Dougie stares at the eight-century old charter closely, and then he sees it! On the first eight lines, the letters B, O, O, K, I, and E are bolded. "Bookie," he proclaimed. It's a message from the past!

He called this breakthrough the *Da Jersey Code*. Late at night, Dougie snuck into the museum, opened the glass case, and looked at the back of the charter. What he saw astonished him: a never-before-seen 38th article of Magna Carta from 1217. Translating from the Latin, the faded text reads:

*All land that has been granted by King John will never escheat, but will revert to the heirs of King John.*

Judge Dougie checks with the Chief Justice of the United Kingdom Supreme Court, who confirms that this never-before-discovered 38th article of Magna Carta, which was never formally repealed by Parliament, is still in effect.

Now, Judge Dougie has some difficult decisions to make. You are his law clerk, and have been assigned to write a memorandum of no more than five hundred words addressing the following five issues.

## **Questions**

1. Though the issue has been moot for 65 million years, Erony asks Judge Dougie to adjudicate the dispute between Fitchuation and Rex. Specifically, did the Jurassic Supreme Court have

jurisdiction over Fitchuation? Was the jurisdiction of the GTL Supreme Court valid? Finally, Erony asks Judge Dougie which ruling is better—the Jurassic Supreme Court or the GTL Supreme Court. Explain the positives and negatives of each approach, in terms of efficiency, fairness, and certainty, and decide which ruling should be adopted.

2. Identify the present and future interests of Runnymede in the year 1215, after King John's grant, for: (a) Bookie, (b) Fitchuation, (c) King John, and (d) King John's heirs. (Note: Because the grant was issued in 1215, prior to the creation of the Rule Against Perpetuities, the Rule Against Perpetuities, or any other rule that destroys future interests, do not apply.)

3. The Montpelier Foundation, the Virginia organization charged with protecting James Madison's estate, re-opens the suit Madison filed against Fitchuation in 1787 (the statute of limitation had been tolled under New Jersey Law for 227 years). Because this claim was brought prior to the creation of any statutory copyright laws, please address this issue under the common-law doctrine of misappropriation of property.

4. A-Woww brings suit on behalf of Bookie's estate against the T-shirt shop for unlawful appropriation of Bookie's image by creating the T-Shirt. Please address the strengths and weaknesses of this claim, and decide if A-Woww is likely to succeed.

5. Queen Elizabeth II, the monarch of the United Kingdom, and a very distant heir of King John, files suit to quiet title on Runnymede. Erony intervenes, and files suit claiming that Fitchuation's heirs own Runnymede. A-Woww also intervenes, and claims John II owns Runnymede. Please address what interests, if any, Queen Elizabeth II, the heirs of Fitchuation, and John II have in Runnymede.