Property I - Spring 2014 - Top Exam

Question 1

1. With NY being a common law property state recognizing gay marriage, A is correct and should own BA in FS. BA was a tenancy by the entirety seizing C and D of the entirety (not by moieties) per tout et non per my. C survived D by one month, triggering the right of survivorship and BA vested to C with A as his heir. D's interest in BA does not descend to E. The act of D moving to back to BA without C and locking the gate is ineffectual. Only death and divorce trigger a change in interest. A also should receive half of BA's rental earnings from F prior to D's death. Edna has no interest in BA, only in D's separate property of WA.

2. After establishing domicile in TX, C&D's future earnings and non-real-estate purchases become community property regardless of where the money is located, unlike real property, which follows the law of situs. The facts do not state whether D established domicile in NY, but since they did not divorce we may assume the couple remains domiciled in TX. Therefore, half of the earnings in D's bank account incurring after the marriage (including the lottery winnings, which is not exempted as aa gift) belong to C because they are considered community property. C can devise half of his share of the community property by will to A. D may not exclude C of his share of the community property by will. Conversely, WA was separate real property in NY. It remained separate and was never transmuted to community property, but because of the law of situs, C is entitled to an elective share of half of WA and any other separate common law property in NY. I'm unsure if A can assert the elective share on C's behalf post mortem.

3. F probably believes he has a LE in half of BA because the language of the lease is similar to that in Garner v. Gerrish. However, D cannot convey a life estate in BA without C's consent, so the lease must only be interpreted as a lease. Additionally, F may have violated the "quiet enjoyment" terms of the lease when he opened a convenience store. Therefore, A may evict F. E has no power to evict F, as she has no interest in BA as shown in #1.

4. Under current TX law, BA would not be considered community property. E would presumably be entitled only to $2,500 that D contributed to the installment payments for BA.

5. Even assuming that TX recognition of C&D's marriage would be retroactive with respect to their property, the locus in quo would not become community property at the point where C&D established domicile there and D began contributing to the payments because TX follows the right of inception, meaning the property retains its character at the time of purchase rather then the time of vesting. Same result as #4.

Question 2

1. If JudgeD follows M'Intosh, then he is likely to declare the (presumably non-Christian) dinosaurs to be savages incapable of holding title that may only occupy the Kingdom of Jurassic, and validate F's acquisition by discovery and establishment of Jersey- Four Kingdom. The JSC's approach incorporates Locke's labor theory and the ruling Ghen v. Rich, where a hunter's effort is rewarded in order to create incentives for hunters to maximize the efficient use of land. The downside of this approach is that it is difficult to determine when/where hunting begins and to compare the amount of effort contributed by the parties. The GSC's approach mimics the ruling in Pierson v. Post, following the rule of capture, which provides a high degree of certainty, but potentially discourages hunters who fear their prey could be legally taken from them at the last moment before wounding or capturing the animal. I would begrudgingly choose the GSC's approach in favor certainty.

2. B has a LE. F has a vested remainder in FS subject to divestment if F does not survive B. KJ has springing executory interest in FS if F does not survive B. KJ's interest descends to his heirs.

3. The Conventional Congress notes taken by Madison with intent to later publish should be viewed as a creation of property, which was protected from copying in International News Service v. Associated Press. Since Madison fashioned the words in the journal from his own observations, those concepts and words belong to him and cannot be copied by F, "until the commercial value of the news has passed away." Assuming Madison's account is the only one in existence, his account doesn't lose commercial value until after he publishes. F is liable to Madison's estate for any revenue from the publication.

4. If the dinosaur image's likeness to B is equivalent or greater than the likeness of the robot in Samsung's commercial to Vanna White, then we apply the holding of White v. Samsung. In this case the rehearing was denied, but we're given insight by Justice Kozinski in his dissent that if Judge D rules in B's favor, he is actually expanding B's rights, rather than protecting her right of publicity. If the Judge D rules in favor of B, he does prevent the T-shirt shop from capitalizing on B's likeness that B might otherwise capitalize upon, but such a ruling also minimizes the world's fair use of parodies.

5. Whether we refer to the grant given in 1215 or to the newly discovered 38th article matters not. In both cases Runnymede(R) belongs to the heirs of KJ. With respect to the grant, F did not survive B, triggering the executory interest and divesting F of his interest, which gave R to KJ and his heirs in FS. So E/F has no claim to R. However, if both QEII and J2 descendent and heirs of KJ, they have interest in proportion to their biological relationship to all the other heirs of KJ.