

Property I Examination
Fall 2014
December 2, 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. Both answers combined should not total more than 1,000 words. Please use the word-count feature to check the length of each answer. If you hand-write the exam, please do a manual word count.

The exam is completely open-book. You can use anything you wish, so long as that 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:

Today is June 1, 2015. But this case begins in the year 1985, where hair was big, jeans were ripped, and everyone was looking for the beef. Then it jumps back in time to 1955, where hair was quaffed, jeans were tight, and everyone liked Ike. But not before a final detour to 1885, where hair was covered, jeans were riveted, and everyone was looking for gold.

You are an associate in the law firm of Bach, Tew, DaFütcher LLP. You are asked to prepare a memo of no more than 500 words that analyzes a series of property disputes that occur in 1885, 1955, 1985, and 2015, among Arty, Biff, Doc, George, Lorraine, Seamus, and Tannen. This case is currently pending before the District Court of Hill Valley, Texas. Texas adheres to all common law property rules, as articulated in the Restatement (First) of Property. 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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1985

Arty comes from a long line of residents in Hill Valley, Texas. Arty, a 17-year old, lives with his mother Lorraine and his father George. George was born in 1885. George, who was orphaned at a young age, was raised by his grandfather Seamus. Seamus, Arty's paternal great-grandfather, was born in 1840 and died in 1940.

Arty's family has been in the town since the middle of the 19th century, and has long had an interest in Blackacre. However, due to a fire in the records office, all deeds concerning Blackacre were lost. With the state of property in Hill Valley in ashes, Arty has an idea. His friend Doc built a time machine out of a DeLorean sports car. With the DeLorean, they decided to travel through time in an excellent property adventure, to research the history of Blackacre. Alas, as with all time travel, there would be many unintended consequences.

Blasting a *Huey Lewis & the News* cassette tape, Arty and Doc rev up the plutonium-powered DeLorean to 88 miles per hour, and drive back in time. Their first stop was 1955, to investigate the estate of Blackacre.

1955

After breaking the space-time continuum to travel back to "good 'ole 1955," Arty and Doc go to the Hill Valley Courthouse, and discover a deed for Blackacre, which was recorded in year 1885.

From Seamus, all of the land on Blackacre to my grandson George for life, then to George's first born son, but if any issue of George's first-born son are ever convicted of a crime, then to Doc and his heirs.

Doc is really confused. He wasn't born until 1930, and there was no one else living in Hill Valley in 1885 with that name (he checked the census!). How could Arty's great-grandfather possibly give him an interest in Blackacre? Arty was secretly happy, as he knew he would be George's first-born son—even though he would not be born for another 12 years. Blackacre was his soon enough, he thought! Arty and Doc make a copy of the deed for Blackacre.

Having messed enough with the past, Arty and Doc decide to venture into the great unknown—the year 2015. Blasting *Elvis Presley* from their AM radio, the duo went back to the future.

2015

Miraculously, in the brief period between December 2, 2014 and January 1, 2015, there was a technological revolution. Now there are flying cars, robots doing chores, and kids floating around on hoverboards.

Arty and Doc go to the Hill Valley Courthouse to check up on the state of Blackacre. Just as they enter, they see some teenager flying on a hoverboard in front of the Courthouse. Out of nowhere RoboCop knocks over the hoverboard, and screams “Arty Jr.” you are under arrest. “For what?!” the teen screams. The officer replies, “For selling your kidney. You have the right to remain silent...” Ignoring the warning, Arty Jr. shot back and said, “It's my body and I can do what I want!” It seems young Arty Jr., who was in the need of some extra cash, sold his kidney on the black market, in violation of Texas's ban on organ sales. RoboCop laughs, and says his trial would be scheduled next week (justice moves much faster in 2015--just you wait!).

Arty panics, and realizes the teen, who looks just like him, is his son in the future! Arty decides he must go back in time to prevent his son from getting convicted. Doc, for reasons we shall see, isn't so keen on changing that past.

But before they venture back in time, Arty has a genius idea. He goes to the Hill Valley Bookstore and buys a sports almanac that lists the results of all sporting events in the 20th century. Arty decides that he can travel back in time, and place bets on all the winning teams. Easy money!

Doc is furious with his idea. He steals the almanac out of Arty's hands, and throws it on top of an overflowing garbage can outside of the Bookstore. The almanac teeters on top of the trash. Doc

tells him that he should not be profiting from the future.

Lurking in the shadows was Biff. Biff—who 60 years earlier was rejected by Arty’s mother Lorraine—seized on this opportunity. While Arty and Doc were fighting, Biff finds the almanac atop the garbage can, takes it, hops in the DeLorean, and travels back to 1955. He then gives the almanac to his younger self in 1955. The Biff of 2015 explains to the Biff of 1955, “this book tells the future. All you have to do is bet on the winning team.” Biff then returns back to 2015, before Arty and Doc even realize the DeLorean is gone. But Biff had already changed the course of time. The 1955 Biff proceeds to place winning bets on all sporting events. By 1985, Biff became a billionaire, and is called the “Luckiest Man on Earth.”

Totally unaware of Biff’s time-travels, Arty and Doc agree to go back to 1985, and leave the future as it is. They hop into the DeLorean, and turn on the satellite radio. They are confused by someone named Miley Cyrus singing about “twerking.” As they accelerate to 88 MPH, the time machine is struck by lightning, scrambling the time circuits. Rather than going back to 1985, they hop a century earlier, winding up in 1885.

1885

In 1885, Hill Valley was still a frontier town. Arty goes to Blackacre to check on the land. Arty’s great-grandfather Seamus, was standing on Blackacre, holding his recently orphaned grandson, the *boy George*. Arty, without revealing his identity asked how Seamus acquired Blackacre. Seamus replied that his father had acquired it from the Texans, a Native American tribe, in 1823, and it has stayed in the family since. Arty asked if there was any deed to show that Seamus owned it. Seamus, suspicious, fires his rifle at Arty.

Arty dodges the shot, but the bullet ricochets and strikes the ground. Immediately, a burst of oil starts gushing up. “Oil! Black gold! Texas tea!” Arty screams! Seamus has no idea what oil even is, so he ignores him. Without telling Seamus, Arty starts to pump oil from the ground.

The next day, Seamus’s neighbor Tannen, who owns the adjacent Whiteacre tells Arty to stop drilling. Tannen said, “you are taking oil from the reserves underneath Whiteacre.” Arty replied, and said, “Has anyone ever drilled here before”? Tannen replied, “No.” Arty laughs, and says “Too bad! Now all the oil is mine forever!”

Seamus, a simple farmer, finds out about Arty’s acts, and becomes enraged. He executes and records a deed to make sure that Blackacre stays in his family. And if it doesn’t, he wants it to go to his newfound friend Doc. The deed provides:

From Seamus, all of the land on Blackacre to my grandson George for life, then to George's first born son, but if any issue of George's first-born son are ever convicted of a crime, then to Doc and his heirs.

(This was the deed Arty and Doc discovered in 1955).

Little did Seamus know, that the jerk who was drilling on his land would become George's first-born son! Also, Seamus did not realize that his newfound friend Doc was actually from the future, and hadn't even been born yet!

Seamus struck the drilling equipment with a sledgehammer, and stopped the pumping. The oil reserves underneath would remain dormant for 100 years.

Arty and Doc hop back into the DeLorean, humming the tune of "Home on the Range," for one last trip home to 1985.

1985

However, it was not the 1985 they expected. Due to Biff's newfound fortune, an alternate timeline emerged. In 1972 Biff killed George, and married Lorraine (Arty's mom). Biff was now Arty's step-father.

Arty, who was not as upset as he should have been about his father's death, cheered, and said "I own Blackacre, and all of its oil!" Arty then began drilling again on Blackacre, and discovered one of the largest reserves in North America.

Doc confronted Biff. Doc said, "you stole my almanac." Doc demanded that Biff return the almanac. Biff laughed at him, and said "Hello, hello, anyone home! Think! I don't owe you anything. Arty bought the almanac, not you!"

Over the next thirty years, soaked in oil money, Arty forgot about his time-travelling adventures, and started a family. His first son Arty, Jr. was born in 2000. Despite his massive wealth, Arty would not give his kid any money, leading his son to explore other means of getting cash. Ultimately, in the year 2015, Arty Jr. decided to sell his kidney for money. Alas—as we already know—RoboCop discovered the crime, and arrested him. Arty Jr. is about to stand trial for selling his organ on the black market.

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This brings us back to your assignment in the year 2015. You are asked to write a memo of no more than 500 words for your senior partners analyzing the following five issues. Please pay

special attention to the year in which the property dispute takes place.

Questions

1. Doc files an action in replevin against Biff, seeking the return of the almanac. Biff counterclaims that he is the lawful owner of the almanac. The owner of the Hill Valley Bookstore intervenes, arguing that he is the rightful owner of the almanac. Arty, who is enjoying all of his oil money, asserts no claim in the almanac. Please address the strongest argument for ownership of the almanac for (a) Doc, (b) Biff, or (c) the owner of the Hill Valley Bookstore.
2. Arty Jr. is facing a criminal conviction for selling his kidney. While Texas law prohibits the sale of organs, you are asked to create a powerful argument to force the jury to nullify. In other words, you have to persuade the jury that the law banning the sale of organs is unjust, and Arty Jr. should not be convicted. Be sure to consider all relevant ethical, legal, and economic rationales in favor of allowing organ sales.
3. In 1885, after the dispute over the gushing oil, Seamus filed an action in the Hill Valley District Court, to quiet title, and asked the court to determine the present and future interests for Blackacre of George and Doc. The Texans Native American Tribe intervenes in that suit. How would a court in 1885 resolve that suit?
4. Due to the peculiar nature of this time-travelling case, you are asked to identify the present and future interests for Blackacre in a very special manner.
 - a. At the time the deed was discovered in 1955 (before the trip back to 1885), how would a court in 1955 describe the present and future interests of (1) George, (2) Arty, and (3) Doc?
 - b. How would a court in the alternate 1985 (where Biff killed George), identify the present and future interests of (1) Arty and (2) Doc.
 - c. How would a court in 2015, assuming Arty Jr. is convicted, identify the present and future interests of (1) Arty and (2) Doc.
5. There is a dispute over the ownership of the oil reserves underneath Blackacre. There are four competing claims: (1) Arty, (2) the heirs of Tannen, (3) the heirs of Seamus (not Arty), and the (4) Texans Native American Tribe. Address the strongest argument for each claim, and conclude who should own the interest in the oil.

Question 2 (50%)

Instructions

You are a law clerk for the Chief Justice of the Arendelle Supreme Court. You are asked to write a bench memo of no more than 500 words that analyzes a *frozen* property dispute between Anna, Elsa, and Hans over the estate of Whiteacre. The Kingdom of Arendelle adheres to all common law property rules, as articulated in the Restatement (First) of Property. Arendelle applies a common law system with respect to marital property.

In the Kingdom of Arendelle live two sisters, Princesses Elsa and Anna. Elsa has magical powers, and can create ice, frost, and snow with her fingers. But she struggles mightily to keep her powers under control.

On January 1, “for the first time in forever,” the castle gates opened, and a huge banquet was held in honor of Queen Elsa’s coronation.

Following Elsa’s coronation, Anna meets the charming and handsome Hans. After getting to know each other for all of five minutes, Hans blurts out “Can I say something crazy? Will you marry me?” Anna replies, ebulliently, “Can I say something even crazier? Yes!”

Hans gives Anna a sparkling diamond ring. Just as Anna is about to put it on her finger, Hans tells her to “This is for you to hold onto for now.” Ignoring him, she giddily puts the ring on. Hans explains—not that Anna is listening—that the ring belongs to his grandmother, and she told Hans that he could have it once she dies.

Anna and Hans’s wedding is held on January 2. In truth, Elsa is a bit jealous, and tells herself, “conceal, don’t feel.”

On January 3, the day after the wedding, Elsa executes the following deed:

“Whiteacre, from Elsa to Hans and Anna as tenants by the entirety.”

The couple quickly signed the paperwork, and ran onto Whiteacre to enjoy their new home. Whiteacre was the only property the couple would acquire. Later that day, Hans’s grandmother dies in a horrific ice fishing accident. The grandmother’s will left all of her property to her husband, Hans’s grandfather.

On February 1, Anna invites Elsa to Whiteacre. Anna has an idea to create something—or more

precisely, *someone*. Anna asks “Elsa, do you want to build a snowman?” Elsa, not interested, replies “Go away, Anna.” Begrudgingly, Anna says, “Okay, bye.” Yet, later that day, Elsa agrees to Anna’s idea. With her magical powers, Elsa conjures up a pile of snow. Then Anna rolls the giant snowballs and she builds the snowman. Elsa puts sticks inside the snowballs to create arms, and adds a carrot for a nose. With a spark of Queen Elsa’s magic, the snowman comes to life! They call the snowman Olaf. Olaf chimes in, not ironically, “Just imagine how much cooler I’ll be in summer.” Soon the sisters start bickering over the snowman. Anna insists it was her idea to create him. Elsa counters that it was her magic that brought Olaf to life.

Anna grabs Olaf, and Elsa screams “Let it go! Let it go!” Soon Elsa’s powers get the better of her, and she creates a massive ice cave around them. Soon, the two sisters are trapped in the frozen fortress of solitude. Though they are on Whiteacre, within the limits of the Kingdom of Arendelle, they may as well be thousands of miles away. The ice is so thick that experts determine it will be impossible to drill through the walls to rescue the sisters. They will have to wait for warmer temperatures so the ice can thaw. Hans bangs on the ice walls, furious that he cannot enter.

To avoid dying of dehydration, Elsa uses her powers to melt Olaf, and she drinks him. “Desperate times call for desperate measures. The cold never bothered me anyway,” she says.

Realizing that she had the power to melt the frozen fortress, Elsa proposes a deal to Anna. Elsa demands that Anna give her a lease to Whiteacre, in exchange for releasing her from the ice cave. Anna, fearing for her life, writes the following lease on March 1:

“From Anna to Elsa, starting on March 1, a lease for Whiteacre for so long as Anna lets Elsa live there, for 100 pieces of silver per month.”

Elsa, thrilled with the transaction, inadvertently shoots Anna with a blast of cold air, freezing her heart. Anna cries out that “Only the act of true love will thaw a frozen heart.” Anna knows that unless her heart is thawed by her true love, she will die.

On April 1, Elsa finally melts the fortress. Hans, learning of Anna’s condition, leans in to kiss her. He says, “I am your true love.” But at the last minute, Hans pulls back, and says, “if you die, I get Whiteacre all to myself. Good luck with that frozen heart. I’m out of here.” Anna is furious at him.

That day, Anna executes and records the following deed:

“Whiteacre, from Anna to Anna.”

Then Anna updates her will, with all the proper witnesses and attestations:

“I leave all of my property, real and personal, to my sister Elsa, and nothing to Hans.”

The next day on April 2, Anna dies. Anna's estate is probated on April 10. Hans learns that Anna disinherited him, and he is furious!

On May 1, Elsa returns to Whiteacre and cries out, "I figured out what true love is. The truest love is the bonds between sisters." With that affection, Anna's lifeless corpse magically returned to life.

Then, Elsa tells Hans and Anna, "I'm not going to pay any rent for my lease on Whiteacre, and I'm moving out today." To that date, Elsa had not paid any rent for her lease on Whiteacre.

Following this chain of frozen events, neither party would "let it go," and a series of suits are filed in the original jurisdiction of the Arendelle Supreme Court.

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Questions

1. Hans filed an action in replevin against Anna for the return of the diamond ring. Anna counterclaimed that she does not have to return the ring. Hans's grandfather, the sole heir of Hans's grandmother, counterclaimed, and asserted that he is the lawful owner of the ring. Please address the strongest argument in favor of each party: (a) Hans, (b) Anna, and (c) Hans's grandfather, the sole heir of Hans's grandmother.

2. Anna files suit against Elsa for destruction of her property—Olaf. Elsa counterclaimed, asserting that Olaf was her property. Please discuss who acquired property of Olaf through creation? Address the strengths and weaknesses of each of their claims. (A criminal prosecution for the murder of Olaf will be held in a separate court proceeding).

3. The Chief Justice asks you to address the validity of the lease signed while Anna and Elsa were in the frozen fortress on March 1. Specifically, the Chief Justice asks you to address the state of Arendelle's property laws within the frozen cave. Please draw on all sources of law—both positive *and* natural—in addressing this question.

4. Please describe the estate of Whiteacre for Anna and Hans on the following dates:
(a) on January 3 following the wedding of Anna and Hans, and Elsa's deed;
(b) on February 1 following the creation of the ice fortress;
(c) on March 1 following the execution of the lease by Anna (assuming it was valid);
(d) on April 1 following the execution of Anna's deed;
(e) on April 2 following Anna's death. Specifically, discuss how Anna's will affects Hans's interest in Whiteacre.

5. Hans sues Elsa for a breach of the lease, and unpaid rent. Elsa counterclaims that she does not owe Hans anything. Anna does not participate in this suit. Assuming the lease is valid, address the strongest arguments of Hans and Elsa. If Elsa owes rent, how much is owed?