

Property I Examination

May 3, 2018

6:00 p.m. - 9:00 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 1,000-word limit. Anything you write past 1,000 words will not be read. Both answers combined should not total more than 2,000 words.

Please use the word-count (not the character count) feature to check the length of each answer. The **character count** for the exam will be visible just above the formatting icons on your screen. By clicking on the document icon, you may view the **word count**. If you hand-write the exam, or can't utilize the word-count feature, please do a manual word count.

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

PLEASE ANSWER PART I FIRST, AND ANSWER PART 2 SECOND.

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

Good luck!

Part 1 (50%)

PLEASE ANSWER PART 1 FIRST, AND ANSWER PART 2 SECOND.

Instructions: You are a law clerk and asked to write a memorandum of no more than 1,000 words assessing five property questions concerning Miguel, Coco, Ernesto, and Hector. These issues arose in Texas, which, at least for purposes of this question, applies common law property rules. With respect to marital property, Texas follows a community property system.

--

Miguel is an only child who lives with his mother, Coco, in Texas. Every year, Miguel's family celebrates the holiday, known as the *Day of the Dead*. By placing photographs of deceased relatives on an altar in their home, they can remember those who departed into the afterlife. Yet, one photograph always perplexed Miguel: it showed Coco as a young child with her parents, but someone tore out her father's face. Miguel never knew who his grandfather was.

Miguel studied the front of the photograph carefully and recognized that his grandfather was holding a distinctive guitar. It belonged to the famous musician, Ernesto, who performed the classic song "Remember Me." Ernesto died before Miguel was born.

On the back of the photograph, he found three conveyances that were written by hand. They involve Ernesto, Coco, and someone named Hector. Miguel learned that Hector died immediately after he drafted these three conveyances.

The first conveyance states:

Blackacre from Hector to Coco until her first child is born, then to her children, but if her first born child is male, then to Coco for life.

1. Identify all of the present and future interests for Blackacre at the time the first conveyance was drafted.

The second conveyance states:

I, Hector, give all of the intellectual property associated with the song “Remember Me” to Ernesto, but if Ernesto does not credit Hector with writing the lyrics, to Hector for the rest of his life.

One year after the conveyances were drafted, Ernesto released his recording of “Remember Me.” He did not credit Hector with writing the lyrics.

2. (a) Identify all of the present and future interests for the intellectual property associated with “Remember Me” at the time the second conveyance was drafted.
(b) After the release of the “Remember Me” recording, who owns the intellectual property associated with “Remember Me”?

The third conveyance states:

Whiteacre from Hector to Coco and Ernesto as joint tenants. In the event that Ernesto does not credit Hector with writing the lyrics to “Remember Me,” then Ernesto’s interest will go to Coco until her first child is born.

3. (a) Identify all of the present interests for Whiteacre at the time the third conveyance was drafted.
(b) After the release of the “Remember Me” recording, identify the present and future interests in Whiteacre.

According to a local legend, Hector intended to give Ernesto his guitar, but died before he had a chance to transfer it. Hector was buried with his guitar in his casket in a public cemetery. After the funeral, Ernesto dug up Hector’s casket, and removed the guitar. When Ernesto died, he too was buried with the guitar in the same public cemetery. Miguel travels to the cemetery, digs up Ernesto’s grave, and takes the guitar.

4. Assess the title of the guitar.

Miguel recognizes that Hector drafted the three conveyances *pro se*; that is, without the aid of an attorney. As a result, the language is imprecise, and in some cases, it is unclear how future interests should be assigned.

5. Discuss the role that “presumptions” and “rules of construction” play in how courts should construe *pro se* conveyances of property. Please discuss all relevant cases.

To Be Concluded in Part II

Part 2 (50%)

PLEASE ANSWER PART 1 FIRST, AND ANSWER PART 2 SECOND.

Instructions: You are a law clerk and asked to write another memorandum of no more than 1,000 words assessing five property questions. (This question continues from the fact pattern in Part 1.) In this jurisdiction, known as the “afterlife,” you can rely on any common law or natural law principles that inform these disputes.

--

Once Miguel touches the guitar, he and his dog, Dante, are magically transported to the afterlife. In this world beyond our world, all of the spirits of the deceased coexist in peace, with one important condition: they must always be remembered back in the world of the living. Specifically, so long as families honor the photographs of the deceased during *The Day of the Dead*, the spirits will remain in the afterlife. Miguel realizes that he had inadvertently brought the photograph from the world of the living to the afterlife. As a result, he worries that his grandfather will be forgotten, and be exiled—that is permanently removed—from the afterlife.

Suddenly, Dante sprouts a pair of wings, swipes the photograph from Miguel, and flies away. Miguel chases Dante for hours, and finally catches up to him. “Sit, Dante,” Miguel says. As the dog is about to sit, someone in the distance begins to sing and play the guitar. Distracted by the sweet music, Dante flies towards the guitarist, who snatches the photograph. Miguel looks up, and it is the spirit of Ernesto. Miguel insists that the photograph is his. Ernesto replies, “finders keepers,” and added, “your dog interrupted my performance.” Ernesto puts the photograph in his pocket.

1. At this point in time, assess the title of the photograph.

Soon, Miguel comes to his senses, and realizes who was standing in front of him. “Grandpa Ernesto,” Miguel says. “It’s me, your grandson.” But soon, Miguel learns the truth: Hector was actually Coco’s mother, and his grandfather. Shortly after Hector drafted the three conveyances discussed in Part I, Ernesto murdered him, stole his guitar, and copied the lyrics to “Remember Me.” Now that Ernesto had Hector’s photograph, Hector would be forgotten and exiled from the afterlife. Once exiled, his spirit would be injected into a new body in our world.

2. Discuss the common law principles concerning the right to exclude, as it applies to Hector’s exile.

Miguel runs away and finds his real grandfather. Hector tells Miguel that he purchased a life insurance policy for \$100,000. He paid \$1,000 in premiums before his wedding and paid another \$1,000 in premiums after his wedding to his wife, Imelda. Hector designated his daughter Coco, as the sole beneficiary of the policy, and did not leave anything to his wife. Hector tells Miguel when he returns home, he should give the insurance policy to Coco.

3. How should the \$100,000 from the insurance policy be divided?

Hector tells Miguel about another domestic problem back home. He and his wife, Imelda had purchased Greenacre as joint tenants. Hector had leased out half of Greenacre to Ernesto to build a concert hall, with a rent of \$100 per month. Hector gave half of the rent to his wife, Imelda, every month, which she accepted. Hector's last will and testament designated Coco as his sole heir. His wife would receive nothing.

4. (a) Assess the title of Greenacre when Hector and Imelda purchased it.
(b) Assess the title of Greenacre after Hector's death.

While Ernesto is distracted, Miguel takes the photograph away from him, and returns it to the altar in Texas. Hector is remembered, so his soul survives. Ernesto is exposed for the murderer and crook that he was. Back in Texas, Miguel reflects on how difficult it was to catch Dante when he ran away—especially because he had never before seen a flying dog.

5. Discuss the importance of custom and tradition when deciding how to assign fugitive property interests. Please discuss all relevant cases.