

**PART ONE**

**20 SHORT ANSWER QUESTIONS**

**SUGGESTED TIME: FORTY-FIVE (45) MINUTES)**

**TOTAL POINTS: 20**

**INSTRUCTIONS:**

Please place your answers in the space provided **in this exam book**, not in the blue book. Please limit your answers to the lines provided below each question. I will not read beyond the lines provided under each question. Please make each answer readable in terms of neatness and the size of your handwriting. (I will not use a magnifying glass to read your answers.) Please answer the question responsively; don't provide information not asked for in the question. For example, if the question asks "Who wins?" please state the name of the person who wins; don't state why he or she wins. Please state your reasoning only if the question asks for it.

**QUESTIONS:**

1. O conveyed Blackacre to A and B, "as joint tenants with rights of survivorship." B conveyed all her interest to C by warranty deed, which contained the covenant of seisin and covenant of quiet enjoyment. Then, A conveyed to D by warranty deed, which contained the covenant against encumbrances and covenant of quiet enjoyment. After all this occurred, state all who own an interest in Blackacre, along with the type of concurrent estate, if any, they own, and the percentage/fractional interest each person owns:

Owner(s):

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Concurrent Estate(s):

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Percentage/Fractional Interests:

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2. A built in his backyard a garage that encroached by ten feet onto the property of his neighbor, B. A thought he had built the garage entirely on his own property, but was mistaken. B also was unaware of the encroachment. Six years later, A sold his property to C, who also was unaware that the garage encroached on B's land. When he learned of the encroachment some eight years later, B sued A for trespass. A has defended by stating that his trespass was not intentional.

Who will prevail? (circle one):

A

B

On what grounds?

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3. Blackacre is a large tract of land owned by the Catholic Archdiocese of Boston. Originally, the only buildings on Blackacre were a church and attached residence for the priests. There is also a parking lot on Blackacre which accommodates 75 automobiles. The only means of ingress and egress to Blackacre, a landlocked property, is an easement over a 30 foot wide strip of land the church had purchased from Able, who owned a parcel of land adjacent to a public road. The church had built an asphalt driveway on the easement, and used for 20 years without incident or objection.

Last year, the church constructed a "community center" on Blackacre and commenced running "bingo" games on Friday nights. The bingo games were so successful that, on Friday nights, there were not enough parking spaces for all the people wishing to play. Visitors soon started parking their automobiles all along the driveway, down to the public road. About a month after the church started the bingo games, Able erected a "jersey" barrier across the driveway, preventing all use of the driveway. The Church objected. In a single lawsuit, Able and the church have brought claims against each.

Based on the foregoing facts, please circle ALL of the following statements that are CORRECT:

- Able will obtain an injunction preventing the church from allowing parking on the driveway because the church improperly exceeded the scope of the easement.
- Able will prevail on a claim that the easement should be extinguished in its entirety because the parking on the easement exceeded the scope of the easement.
- The church will obtain an injunction preventing Able from placing the barrier across the driveway only if it can demonstrate that it acquired an easement by prescription.
- The church will obtain an injunction preventing Able from placing the barrier across the driveway even if it cannot demonstrate that it acquired an easement by prescription.

4. B agreed in writing to buy Blackacre, S's single-family residence, for \$310,000. B paid S a \$15,000 deposit to be applied to the purchase price. The purchase and sale agreement gave S the right to retain the deposit as liquidated damages in the event of B's default. The closing was to take place on November 15. Two weeks prior to the closing, B's employer notified him that he was to be transferred to another job 1,000 miles away. B immediately notified S that he could not close and demanded the return on his \$15,000. S refused, waited until after the stated closing date in the purchase and sale agreement, listed the property with a broker, and then conveyed to C \$320,000. S has refused to return any of the deposit. In an action by B against S for the return of the deposit, what will the result be?

Who wins (please circle):

B

S

How much \$\$, if any?

\$ \_\_\_\_\_

On What Grounds?

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5. A conveyed Blackacre to B by a general warranty deed. B did not record the deed until three days later. Between the time of the delivery of the deed and the recording, C recorded a civil judgment against A. There are two pertinent statutes in the jurisdiction pertaining to this question. The first says: "any judgment properly recorded shall, for ten (10) years from filing, be a valid lien on the real property then owned or subsequently acquired by any person against whom the judgment is rendered." The second statute says: "no conveyance or mortgage of real property shall be good against a subsequent purchaser for value and without notice unless the same be recorded according to law." What is B's best argument that he does not take subject C's judgment?

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6. A owned Blackacre, which consisted of 50 acres of land fronting on a public road. A sold the back 25 acres to B. The back 25 acres have no access on any public road. A's deed to B expressly granted a right of way over a specified strip of A's remaining 25 acres so B could reach the public road. Then, B conveyed the back 25 acres to C. They had discussed the right of way over A's land to the public road, but B's deed to C did not mention it. C began to use the right of way as B had, but A has brought an action seeking to enjoin C's use of the right of way.

Who wins (please circle):                      A    C

On What Grounds?

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7. A conveyed Blackacre "to B, but if Blackacre is not used as a recreational site for children, then A may reenter and repossess." Ten years later, B entered into a purchase and sale agreement with C which was silent as to the quality of title B was required to deliver. At the closing, B gave C a general warranty deed to Blackacre that purported to convey a fee simple absolute. Five years after B delivered the deed to C, A died with a will leaving "all my real estate to my good friend B." Shortly after A died and B inherited, C stopped using Blackacre as a recreational site for children. B has brought an action to eject C for breaching the condition.

Who wins (please circle):                      B    C

On What Grounds?

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8. O, the owner of Blackacre, a 20 acre parcel of land with a house on it, gave Bank a \$125,000 mortgage on it in 1997. In 2000 O entered into a written purchase and sale agreement with A in which O agreed to sell Blackacre to A for \$579,000. The purchase and sale agreement required O to deliver marketable title. The purchase and sale agreement did not mention the mortgage to Bank, and O and A never discussed that mortgage. Shortly before the closing on Blackacre, A discovered another property that he liked much better than Blackacre. At about the same time, A's title search came back and revealed the outstanding mortgage to Bank. In an effort to get out of the deal, A told O he would back out of the transaction unless O could provide a mortgage discharge at the closing. O said he would allow A to appoint an escrow agent to take the proceeds from the closing, and use them to secure a mortgage discharge of the Bank mortgage right after the closing. A has continued to insist that O discharge the mortgage prior to any payment of the purchase price, and the closing date has passed. In an action by O against A for specific performance,

Who wins (please circle):

O

A

On What Grounds?

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Questions 9, 10 and 11 are based on the following fact pattern:

In 1998 A conveyed Blackacre to B for \$200,000. A gave a special warranty deed with the covenant of quiet enjoyment and covenant against encumbrances. In 1999 B conveyed Blackacre to C for \$225,000. B gave a special warranty deed with the covenant of quiet enjoyment and covenant against encumbrances. In 2000 C conveyed to D for \$250,000. C gave a general warranty deed with the covenant of quiet enjoyment and covenant against encumbrances. In 1995 A had placed an easement on the property and never disclosed it. For whatever reason, B, C and D did not find the easement in their title searches. After C conveyed to D, the owner of the easement began to use it. D now wants to sue someone for breach of the covenant against quiet enjoyment and the covenant against encumbrances. Assume that the easement is so extensive that the value of Blackacre is rendered worthless. Assuming there are no statute of limitations problems, please address the results of a lawsuit in the following circumstances:

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9. In a suit by D against C for breach of deed covenants, who wins? (circle one):

C

D

How much \$\$, if any? \$ \_\_\_\_\_

On What Grounds?

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10. In a suit by D against B for breach of deed covenants, who wins? (circle one):

B

D

How much \$\$, if any? \$ \_\_\_\_\_

On What Grounds?

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11. In a suit by D against A for breach of deed covenants, who wins? (circle one):

A

D

How much \$\$, if any? \$ \_\_\_\_\_

On What Grounds?

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12. In the space provided below the following metes and bounds, courses and distances description, please draw the proper shape of Blackacre, keeping the accompanying compass rose in mind:

Beginning at Main Street, running northeast by the land now or formerly of Samuel E. Smith seventy-nine and 00/100 (79.00') feet; thence bearing true north by the land of said Smith twenty-four and 00/00 (24.00') feet to the land now or formerly of Jeremiah H. Jones; thence turning and running west by the land of said Jones one hundred and fifty (150.00') feet to the land now or formerly of Ezekiel Doe; thence turning and running south by the land of said Doe ninety one and 00/100 (91.00') feet to said Main Street; thence running east along said Main Street to the point of beginning.



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13. A owned Blackacre. In 1994, A entered into a 10 year lease with B, the tenant. In 1996, B subleased to C. B and C agreed that C would pay rent directly to A. In 1998, C stopped paying rent, and B brought an eviction action against C. C has defended by arguing that B is not the owner of Blackacre and has no right to evict C; only A does. Please state why or why not C's defense is a proper one?

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Questions 14 and 15 are based on the following fact pattern:

In 1993, O conveyed Blackacre to his son, S, as a gift, by multistate quitclaim deed. S took possession of Blackacre but did not record the deed at that time. In 1995, O conveyed Blackacre to A by warranty deed for \$279,000. A had no knowledge of O's prior quitclaim deed to S. A neither recorded his deed nor attempted to take possession of Blackacre at that time. In 1999, S learned that O had conveyed Blackacre to A, and immediately recorded his deed. In 2000, after learning that S claimed title to Blackacre, A recorded his deed. The jurisdiction in which Blackacre is located has a statute that states: "No conveyance or mortgage of real property shall be good against a subsequent purchaser for value and without notice unless the same be recorded according to law."

14. After recording his deed in 2000, A brought an action for declaratory relief against S asserting that he is the true owner of Blackacre.

Who wins (please circle):                      S    A

On What Grounds?

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15. Assume for the purposes of this question that the applicable statute said: "No conveyance or mortgage of real property shall be good against a subsequent purchaser who pays value, takes without notice, and who first records his or her conveyance or mortgage, unless the same be recorded according to law." In 2001, about a year after recording his deed, A sold Blackacre to B for \$300,000, and B immediately recorded his deed. B had no knowledge of O's prior quitclaim deed to S. After recording his deed, B discovered that S claimed ownership, and brought an action for declaratory relief against S asserting that he is the true owner of Blackacre.

Who wins (please circle):

S

B

On What Grounds?

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**End of Part One**

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## **PART TWO**

### **ESSAY QUESTION**

**SUGGESTED TIME: FORTY-FIVE (45) MINUTES)**

**TOTAL POINTS: 20**

**PLEASE LIMIT YOUR ANSWER TO FIVE (5) SINGLE-SPACED  
BLUEBOOK PAGES IN ONE BLUE BOOK.**

In 1941 Ollie conveyed Blackacre by deed "to Agnes for life, then to Agnes's widower for his life, and then to Agnes's children in equal shares." At the time, Ollie was 69 years old, and Agnes, who was Ollie's granddaughter, was 6 years old with no children.

In 1946 Ollie died with a will leaving his entire estate to the American Legion. The will said nothing specifically about Blackacre. Agnes was Ollie's only heir at law.

In 1965 Agnes married Bart. In 1969 Agnes and Bart had a child, Cecelia. They would have no other children. Agnes and Bart chose not to live on Blackacre.

In 1974, Daniel began trespassing on Blackacre. He placed a mobile home on the property, landscaped the entire lot, and fenced in the entire lot. Daniel lived on Blackacre until 1984, when he sold "all my right, title and interest in Blackacre" to Edgar by deed. Edgar has continued to live in the mobile home, and has kept up the landscaping, to this day.

In 1979 Bart commenced an affair with Freda. Realizing that Freda was a woman of expensive tastes who was only drawn to men who displayed generosity, Bart showered her with gifts. In 1981, as a sign of his love, Bart transferred to Freda "all my right, title and interest in Blackacre." In 1982 Freda broke off the affair with Bart, and started a romantic involvement with Agnes (this is not a typo). In 1984 Freda convinced Agnes to convey to her "all my right, title and interest in Blackacre."

In 1996 Cecelia married Gordie. Immediately after their honeymoon, Cecelia conveyed "all my right, title and interest in Blackacre to Cecelia and Gordie jointly." In 1997 Cecelia and Gordie got divorced. The final divorce judgment said nothing about Blackacre.

In 1999 Bart and Cecelia, while traveling together to an Elvis Presley convention in Las Vegas, were killed in an airplane crash. Bart had a will that left everything he owned to Agnes if she survived him, and if not, to Cecelia. Cecelia had a will that left everything to the "Save the Harbor Seals" Trust (the Trust).

In 2000 Agnes married Harvey. They had no children. Early in 2001 Agnes died with a will leaving her entire estate to Harvey. Harvey has just died with a will leaving everything he owned to the American Legion.

Please discuss the interests, rights, duties and liabilities of the parties.

### **PART THREE**

#### **ESSAY QUESTION**

**SUGGESTED TIME: FORTY-FIVE (45) MINUTES)**

**TOTAL POINTS: 20**

**PLEASE LIMIT YOUR ANSWER TO FIVE (5) SINGLE-SPACED BLUEBOOK PAGES.**

In 1980 Owen conveyed Blackacre "to Aaron, Bertha and Chloe, with rights of survivorship." Blackacre was, and is, located in Massachusetts. Aaron, Bertha and Chloe were siblings. In 1990 Chloe, left Massachusetts to perform missionary work in the Amazon Basin. She never returned to Massachusetts.

In 1995 Aaron and Bertha decided to borrow \$100,000 from Bank. They had to give a mortgage in that amount to Bank to secure the loan. Bank also demanded, as a condition of the loan, that all three owners of Blackacre sign the mortgage document. Desperate for the money, but unable to secure Chloe's signature on the mortgage, Aaron and Bertha agreed with their friend, Darby, that Darby would attend the mortgage closing and portray herself as Chloe. In exchange, Aaron and Bertha would pay Darby \$5,000. At the closing, Darby presented herself as Chloe, and signed Chloe's name to the mortgage. Darby also signed several other closing documents under the name, "Chloe." The closing attorney never suspected a thing.

In 1998 Aaron died. He had a will that left all his property, including Blackacre, to the United Way.

In 1999 pirates cruising the Amazon Basin robbed and killed Chloe. Chloe had a will that left all her property, including Blackacre, to "Aaron and Bertha jointly, or the survivor thereof."

In 2001, after failing to receive close to a year's worth of mortgage payments, Bank has commenced a foreclosure procedure on the Blackacre mortgage.

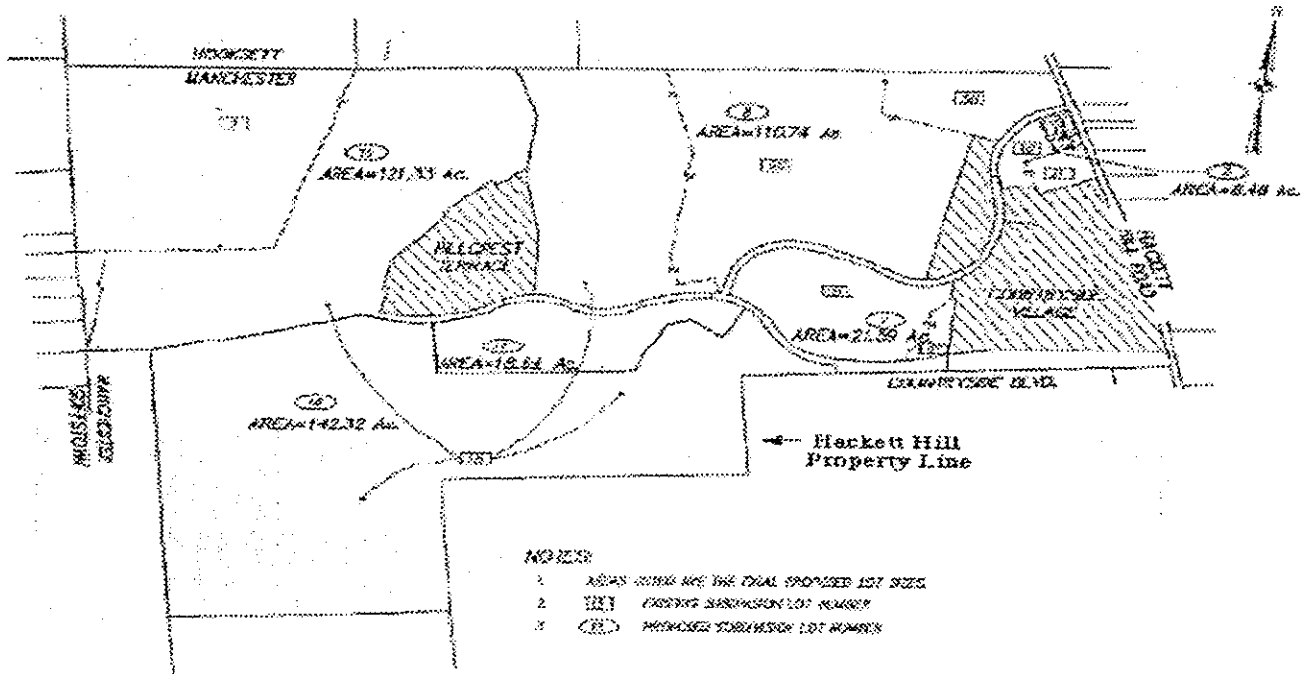
You are an attorney who represents Bank, and have been asked to advise Bank on the status of ownership interests, as well as the rights, duties and liabilities of the parties. Please do so.

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# PROPERTY

## FINAL EXAMINATION

Peter M. Malaguti  
Fall 2002 Semester



YOUR FULL SOCIAL SECURITY NUMBER: \_\_\_\_\_

## INSTRUCTIONS

Failure to follow these instructions will result in a ten (10) point deduction from your final raw score.

Please take five (5) blue books. Write "Part One" on one of the blue books, "Part Two" on another, "Part Three" on another, "Part Four" on another, and "Scrap" on the fifth blue book. Please write your **entire** social security number on each of the blue books and on this exam.

Please do not identify yourself in any way other than by social security number. Please do not write any information in your blue book, scrapbook, or this exam booklet that might reveal who you are.

This is a closed-book examination; other than writing implements, you are not to have any materials on your table or at your feet. Please place all books, knapsacks, briefcases, etc. at the side or front of the room.

Please do not use your own scrap paper. The only thing you may use as scrap paper is the "scrap" blue book. Please **turn in your scrap blue book with your exam blue books and this exam booklet**. I will not accept any blue books after you have turned in your exam materials; no exceptions.

This examination consists of four (4) essay questions of equal length. The suggested time for each essay is forty-five (45) minutes. Please put your answer to each essay question in the blue book marked with that question's number. **Do not exceed five (5) single-spaced pages for each essay answer**. Do not test me on this; I will not read beyond the fifth page on any essay. Also, **do not put more than one essay answer in any one blue book**. Each essay counts for one quarter (1/4) of the final exam grade.

When you are finished, please put all four blue books and this exam booklet into your "scrap" blue book and place them in the box at the front of the room. Please do not hand these materials to me.

Unless the facts of the questions suggest otherwise, please use "multistate" law.

This is a comprehensive examination designed to test your ability to analyze and apply the concepts we covered over the entire semester. You will score points only for the **application of properly stated rules of law to the presented facts** in a cogent, efficient manner. This is not a brain dump; you will not receive any points for merely regurgitating pre-memorized law. You should not waste precious time spouting irrelevant law, esoterica or minutiae. Please assume I know the facts, but nothing else. I will not guess that you know concepts you have not explained.

Please make your answers legible. I cannot grade what I cannot read.

Although the suggested total time for the four parts is three (3) hours, I will give you three and one-half (3½) hours to complete the exam.

Please sign out and in when you leave the room and return. I will tell you when there are 15 minutes left, at which point no one may leave the room. I will also warn you when there are 5 minutes left and 1 minute left. When I call time, you are to bring up your exam and blue books *immediately*.

**Please do not turn to the next page until instructed to do so.**

## Question One

**Suggested Time: 45 minutes**

Assume for this question that the jurisdiction, Massachusetts, has a recording statute that says: "Any conveyance of an interest in land shall not be valid against any subsequent purchaser who pays value and takes without notice of that conveyance."

In 1975, Alan Alanson and Bella Bellissima met in Watertown, Massachusetts. They lived happily together for many years in a studio apartment in an old warehouse in Watertown that had been willed to Bella by her grandmother. Alan and Bella were not married. Alan dabbled in holistic medicine and Bella was a massage therapist. At first they just earned enough money to get by, but as public interest in holistic medicine grew, Alan's business began to expand. He opened a factory and office, and his thriving business soon paid him \$200,000 a year. Bella, who objected to Alan's capitalistic tendencies, continued to give massages at the apartment for a small fee.

In 1979, when Bella became pregnant, Alan and Bella decided to move to a larger home. For sentimental reasons, they kept the apartment, but never returned there. They found a four bedroom home in Concord, Massachusetts, called "Respite," which cost \$300,000. Relying entirely on Alan's salary and money for a down payment, Alan and Bella took title to Respite, giving a \$200,000 mortgage to the Concord National Bank (CNB). The deed granted title to "Alan and Bella, husband and wife, as tenants by the entirety."

Prior to the purchase, the CNB's attorney, I.M. Slowe, searched the title, finding "good and clear record title." After the closing, I.M. decided to take a brief nap before going to the Registry of Deeds. When he awakened, the Registry had closed for the day. I.M. left the documents on his desk, where they got misplaced in the clutter. His secretary eventually found them and placed them in a filing cabinet.

In 1980, shortly after Alan and Bella had moved out of the studio apartment in Watertown, a former neighbor and friend, Carla Carlson, worried that the empty warehouse might be vandalized, and decided to move into the apartment to keep an eye on things. She restarted the utilities, which Alan and Carla had cancelled. When an overdue tax bill came, Carla paid it. Eventually Carla started a fortune telling business, which attracted a steady stream of customers to the apartment. She has stayed in the apartment ever since.

In February of 1985, Bella decided that she wanted to open a small massage studio in her Concord home. She obtained a \$20,000 home equity loan from the CNB, and allowed the Bank to secure the loan with a \$15,000 second mortgage on the property. Alan never knew about Bella's project, and did not sign the second mortgage. I.M. Slowe recorded Bella's loan and mortgage immediately.

In 1988, Alan, who was not used to handling large amounts of money, developed a severe gambling problem and found himself strapped for cash. Because he had a poor credit history, he borrowed \$50,000 from Househome Finance Bank (HFB), in return for a mortgage for all Alan's right, title and interest in Respite. HFB recorded promptly. Because Bella sensed that her relationship with Alan was in trouble, she demanded that he marry her. They had a private ceremony late in 1988.

By 1992, Alan was having trouble making the payments to HFB, and his business was failing. To solve his financial problems, he agreed to sell Respite to a drinking buddy, Ed Edwards, for \$100,000. He told Ed about the mortgage to HFB. Alan's mistress, Deedee Deere, forged Bella's name on the documents. Ed did not know he was supposed to record the deed, and hence did not do so. With the money from the sale, Alan and Deedee flew to Bora Bora.

Distraught over Alan's disappearance, Bella has now decided that she wants to return to the apartment in Watertown where she and Alan were so happy. She has placed Respite on the market. You are Bella's lawyer. Please advise her as to her rights and liabilities.

**Please go onto the next page.**

## Question Two

**Suggested Time: 45 minutes**

Samsonov owned Bearacre, an unenclosed parcel of woods, meadows and agricultural land, consisting of approximately 240 acres in the shape of a square. Samsonov had purchased Bearacre from Sinden in 1980. The deed to Samsonov, which was valid and proper in every respect, described Bearacre as follows:

Commencing at a point at the legal boundary of Main Street, Bruinsville, Massachusetts, and heading north by the land now or formerly of Orr, three thousand two hundred sixty-five and 00/100 feet (3,265.00'); thence turning and running west by the land now or formerly of Esposito, three thousand two hundred sixty-five and 00/100 feet (3,265.00'); thence turning and running south by the land now or formerly of Sanderson, three thousand two hundred sixty-five and 00/100 feet (3,265.00'); thence turning and running east along said Main Street, to the point of beginning.

In 1999 Samsonov sold the western half of Bearacre (about 120 acres) to Dafoe for \$500,000. The deed delivered to Dafoe described the new parcel, to be known as "Fleetacre," as follows:

Commencing at the point that comprises the northwest corner of my land known as Bearacre, and heading east by the land now or formerly of Esposito, one thousand six hundred thirty-two and 50/100 feet (1,632.50') to the stonewall that divides my land know as Bearacre; thence turning and running south, along said stonewall, three thousand two hundred sixty-five and 00/100 feet (3,265.00') to Main Street, Bruinsville, Massachusetts; thence turning and running west, along said Main Street, one thousand six hundred thirty-two and 50/100 feet (1,632.50') to the western boundary of said Bearacre; thence turning and running north by the land now or formerly of Sanderson, three thousand two hundred sixty-five and 00/100 feet (3,265.00') to the point of beginning. Consisting of a total of 120 acres, more or less.

In reality, the stonewall intersects the northern boundary of Bearacre 2,000 feet to the east of the northwest corner, rather than the 1,632.50 feet provided in the deed from Samsonov to Dafoe. In addition, the stonewall intersects the southern boundary of Bearacre at Main Street 2,000 feet to the east of the southwest corner, rather than the 1,632.50 feet provided in the deed from Samsonov to Dafoe. If one were to use the stonewall (rather than the 1,632.50 foot distance from the western boundary) to mark the eastern boundary of the grant, Dafoe would receive about 147 acres of land rather than about 120 acres of land, an extra 27 acres with an additional value of \$112,500.

Dafoe was only able to purchase Fleetacre because the Jacobs National Bank (JNB) loaned him \$400,000, which Dafoe secured by granting a mortgage on the property. At the same time, Dafoe obtained from the Guerin-Dallas Stars Mortgage Company (GDSMC) an equity credit line mortgage in the amount of \$50,000. Both mortgages employed the same description as the deed that Samsonov delivered to Dafoe. The attorney handling the closing recorded both mortgages right after recording the deed from Samsonov to Dafoe, with the GDSMC mortgage going to record first.

By 2001, the value of Fleetacre had doubled. In order to finance the construction of a spacious new house, Dafoe obtained a loan from the Cheevers-Rockingham Bank (CRB) in the amount of \$300,000. Dafoe granted a mortgage to CRB to secure that loan, and CRB recorded the mortgage promptly and properly.

In mid-2002 Dafoe's job situation took a turn for the worse, and he could no longer afford to make his hefty mortgage payments. Dafoe sold Fleetacre to Lapointe for \$250,000, "subject to the



outstanding mortgages of record." In addition to that language in the deed, Dafoe and Lapointe signed a separate agreement that said, in part, "Lapointe agrees to assume all monthly mortgage payments to the Jacobs National Bank, the Guerin-Dallas Stars Mortgage Company and the Cheevers-Rockingham Bank."

In late 2002 Lapointe got injured and was unable to work. He too was unable to make the mortgage payments. At about the same time, the real estate market dropped, and Fleetacre lost about half its value.

All the mortgagees are looking to foreclose on Fleetacre, which will now bring only about \$400,000 at foreclosure sale, leaving a total shortfall from the outstanding mortgage amounts of about \$350,000. Thornton would like to purchase Fleetacre at the foreclosure sale, but thinks a purchase will be worthwhile only if the acreage is measured by the stonewall description rather than by the 1,632.50 foot distance description.

Please discuss the rights, duties and liabilities of the parties.

**Please go onto the next page.**

### Question Three

**Suggested Time: 45 minutes**

Abner Able owned a 100 acre parcel known as Farmacre. In 1980, he executed and delivered a deed transferring two acres of Farmacre to Babs and Boris Beauregard, a legally married couple, for life. The relevant portion of the deed stated:

Abner Able hereby grants two acres of Farmacre [adequately described] to Babs and Boris Beauregard, husband and wife, jointly, for life, and then to the children of Babs and Boris, jointly, as long as the land is used for a farm stand, but if said use does not commence within six months from this date or, having commenced, ceases at any point, to my niece, Cecily Crafts and her heirs.

At the time of the grant, Babs and Boris had two children, Xavier and Yolanda. Babs and Boris immediately moved onto Farmacre, and opened a farm stand.

Later in 1980, David Dogood, who had always wanted to raise earthworms, noticed that large portions of Abner's land were not being used. He approached Abner and asked if he could use some of his land to raise earthworms. Abner gave him permission, but David mistakenly began digging on some of Babs's and Boris's land. Babs and Boris had no idea that David was there, and would not have cared if they did know, because that piece of land was not suitable for farming.

David visited the land daily, digging for worms. In 1998, while David was digging for worms one day, he noticed a slimy black substance in the earth, which he thought might be oil. David went back to Abner and requested permission to drill for oil on the property. Abner agreed, but demanded 75% of any profit David received from the oil.

Early in 1999, while Babs was out of town visiting her mother, Boris saw oilrigs going up on his property. He confronted David and demanded that he leave. David said he had Abner's permission to be there and offered to let Boris share in the drilling and the proceeds. Boris capitulated and immediately contracted with an oil company to start drilling. When Babs returned home, she was disgusted to see all the oilrigs. She went back to live with her parents and wrote a will conveying her interest in the property to her sister, Brenda.

By the end of 1999, Boris was spending the oil money faster than the oil was coming out of the ground. Boris eventually obtained a \$200,000 loan from First Bank, which was secured by a mortgage on Boris's interest in Farmacre. By this time, Boris had stopped farming and allowed the farm stand to fall into disrepair.

In early 2000, Cecily, a natural foods enthusiast, became very upset at the demise of the farm stand. She found a copy of her Uncle Able's will and read it. She now believes that she has rights to Farmacre.

In 2001, while driving back from a meeting with his bankers, Boris was so excited about his newfound wealth that he took a curve too fast, drove over an embankment, and died instantly. When Babs heard that Boris was dead, she had a heart attack and died shortly thereafter.

Please discuss the title to Farmacre, and the rights and liabilities of all the parties.

**Please go onto the next page.**

#### Question Four

**Suggested Time: 45 minutes**

Since the late 1980s, Hector and Diane Berlioz have lived near Barbara Stravinsky on Figaro Bay, which is located on Michigan's Upper Peninsula. Over the years, Stravinsky and Diane Berlioz became friends. During conversations, Stravinsky occasionally expressed interest in selling her cottage, and Diane Berlioz always responded that she and her husband would buy the property if Stravinsky decided to sell. In June 1999, unable to keep up with maintenance on the property, Stravinsky decided to sell her cottage. Stravinsky sent a letter to the Berliozes to inform them about this decision, stating:

Dear Diane & Hector,

I have decided to sell the cottage at Figaro Bay. I had it appraised last summer. It was valued at \$159,900, so that's what I'm asking. I promised you first chance. Please let me know if you're interested, if possible by July 5. I want to sell this summer. If you aren't interested, I want to get it on the market fast.

Love,

Barb

The same day the Berliozes received the letter, Diane Berlioz called Stravinsky and told Stravinsky that she and her husband would buy the cottage. That week, the Berliozes visited a loan officer at the Peninsula National Bank for the purpose of obtaining a mortgage. When the Berliozes met with the loan officer, he told them that they should obtain a written contract, and provided them with a standard form purchase and sale agreement.

Diane Berlioz completed the form, which stated that Stravinsky was the seller, and the Berliozes were the buyers. The form stated the street address of the cottage and listed a selling price of \$159,900. It stated a closing date of August 31, 1999. The Berliozes signed the purchase agreement on July 21, 1999, and mailed the signed purchase agreement to Stravinsky for her signature. Stravinsky never signed that document but told the Berliozes she intended to close on August 31, 1999.

Shortly after she received the form from Diane Berlioz, Stravinsky visited her attorney, who prepared a warranty deed for the transfer of the property in exchange for \$159,900. Stravinsky signed the deed and left it with her attorney to deliver at the closing because Stravinsky was leaving the Upper Peninsula and could not attend the closing in person. However, at about the time the deed was being prepared, a neighbor approached Stravinsky and offered to help with the maintenance of her cottage. Stravinsky decided that she could not go through with the sale. In early August 1999, Stravinsky telephoned Diane Berlioz and told her that the deal was off.

The Berliozes have sued Stravinsky in an attempt to force a transfer of the real estate. Please state all the issues the Berliozes should raise, the affirmative defenses Stravinsky should raise, and discuss whether each will be successful. Please justify each conclusion you reach with analysis (application of law to fact).

**END OF EXAM**

**Have a terrific holiday, and thank you for an enjoyable semester**

**PART ONE**

**30 SHORT ANSWER QUESTIONS**  
**SUGGESTED TIME: ONE HOUR (60 MINUTES)**  
**TOTAL POINTS: 30**

**INSTRUCTIONS:**

Please place your answers in the space provided in this exam book, not in the blue book.

Please limit your answers to the lines provided below each question. I will not read beyond the lines provided under each question. Please make each answer readable in terms of neatness and the size of your handwriting. (I will not use a magnifying glass to read your answers.) Please answer the question responsively; don't provide information not asked for in the question. For example, if the question asks "Who wins?" please state the name of the person who wins; don't state why he or she wins. Please state your reasoning only if the question asks for it.

Please note that the lines provided sometimes extend onto the next page.

**QUESTIONS:**

- 1. Please state all five elements of adverse possession. (You must get all five to answer correctly.)

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- 2. Allan and Barbara hold Blackacre as joint tenants. What four unities are present?

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- 3. Assume that Allan sells his interest to Carla. Which unities have been broken?

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4. What is the state of title *after* the following conveyance: O to A for life, and then to B and his heirs, but if B dies without having gone to Disney World, to C and her heirs?

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5. Which future interest is in favor of the grantor, always follows the grant of an equal estate, and occurs after the preceding present estate is forfeited automatically?

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6. Please explain the “algebraic equation” or “close the circle” concept as stated by Malaguti in class.

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7. What is the state of title *after* the following conveyance: O to A for life, then to the children of B and their heirs. At the time of the grant, B had one child, C.

8. What is the key consideration in determining ownership of a wild animal?

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9. Name the three exceptions to the rule that one cannot transfer better title to personal property than he or she has.

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10. A owns a bag of cement. It falls off his truck and B finds it. Then it falls off B's truck and C finds it. Who owns as between B and C? Please circle the correct answer.

B

C

11. What is the common law standard of liability when a bailee misdelivers bailed goods?

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12. Compare the rules regarding misplaced personal property and lost personal property.

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13. What is constructive adverse possession?

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14. Why does the following grant violate the rule against perpetuities?: O to A for life, then to the children of A for their lives, and then to the grandchildren of A who survive their parents. At the time of the grant, A has a 26 year old child.

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15. Under what circumstances may a tenancy by the entirety be severed?

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16. What effect does conveyance of property into trust have in regard to the title of the property?

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17. Describe the elements of an appurtenant easement.

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18. State the requirements of an easement by implication.

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19. State the requirements of an easement by necessity.

20. What is the difference between a notice and a race-notice jurisdiction?

21. What is the difference between a race and a race-notice jurisdiction?

22. What two circumstances create unmarketable title?

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23. What three circumstances result in a covenant which "touches and concerns" the land?

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24. Who may enforce covenants created by way of a common scheme?

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25. State one example which results in an "overburdening" of an easement.

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26. State at least two elements of the statute of frauds as it relates to real estate.

27. In regard to equitable conversion, who gets legal title and who gets equitable title?

28. What is required to make a deed description adequate?

29. We talked about the "merger" rule in regard to two or three different concepts. Please identify one of them.

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30. Why is it important to know the difference between "present" covenants for title in deeds and "future" covenants for title in deeds?
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## PART TWO

### ONE LONG ESSAY QUESTION

**SUGGESTED TIME: ONE HOUR (60 MINUTES)**

**TOTAL POINTS: 35**

In 1986, James and Wendy Symmes, a married couple, searched for property on which to build a home; they were particularly interested in land that was suitable for raising horses. In December of 1986, a real estate broker, Tristram Landing, showed them an unimproved 3.36 acre parcel in Hamilton, Massachusetts ("the Property"), owned by the Myopia Development Company ("Myopia"). According to a plan of the land that Mr. Landing showed them, the Property was to have separate means of access to two nearby public roads: Pierson Lane to the west and Post Road to the south.

On June 6, 1987, the Symmes signed a purchase and sale agreement on the "Greater Boston Real Estate Board" standard form to purchase the Property, on which Myopia was to construct a house. The agreement was silent about the quality of title that Myopia was to deliver, but did require Myopia to deliver a "Massachusetts Quitclaim" deed. The description of the real estate to be conveyed referred to the plan Mr. Landing had shown them, which was "attached to, and made a part of," the agreement. The plan showed that a .4 acre triangular parcel of land in the northeast corner of the Property ("the triangular parcel") was included in the Property. In addition, the plan indicated that, although the Property would be almost completely surrounded by adjacent properties, the Symmes would have access to Pierson Lane by means of a "panhandle strip" that they would own in fee simple; they would also have use of a right-of-way to Post Road ("the right-of-way"). Attached to the agreement was a "Right-of-Way Agreement and Declaration of Maintenance Obligations" for the common use of the right-of-way.

At the closing on September 14, 1987, Myopia delivered to the Symmes a "Massachusetts Quitclaim" deed which contained a metes and bounds description of the Property. Unknown to them at the

time, however, the deed did not convey either the triangular parcel or the panhandle strip.

The Symmes did not learn of any problems with the title to their Property until the spring of 1988, when James Symmes was clearing shrubs in the triangular parcel. Ralph Polo, who, along with his wife, Estelle Polo, owned the immediately contiguous parcel of land, approached Mr. Symmes and told him that he believed Myopia had sold the triangular parcel to him, and that he would look into the matter. After the Symmes heard nothing from Polo for several weeks, they decided to look into the matter themselves. Mr. Symmes obtained a copy of his deed and "plot plan" and took them to a surveyor.

After the surveyor compared the Symmes' deed and his survey of the Property, he advised the Symmes of several problems with their title. First, neither the triangular parcel nor the panhandle strip was conveyed to the Symmes. Second, the Symmes were "landlocked," because their Property had no access to any public roads. Moreover, the instrument by which Myopia had previously created the right-of-way actually identified the Polos' lot, and not the Symmes' lot, as one of the properties benefitted by the right-of-way. Accordingly, the Symmes were not entitled to use the right-of-way.

In early 1990, Donald Dorigt, the owner of the property that the right-of-way crossed, hired an attorney who sent the Symmes a letter instructing them not to use the right-of-way across his property. Dorigt also erected cattle fencing and a barricade that substantially narrowed the right-of-way and made it difficult for the Symmes to drive their horse trailers on it, although the right-of-way was not completely blocked. Myopia has refused to do anything about the Symmes' title problem.

At some point during this time period, the Symmes discovered an additional problem with their title; Myopia had created but not discharged two mortgages on the Property. Myopia has refused to cause the mortgages to be discharged.

The Symmes would like to know whether they have any recourse. They need access to and from their property, would like the .4 acre triangle, and would like to cause the mortgages to be discharged. Please discuss the rights, duties and liabilities of the parties.

## **PART THREE**

**TWO SHORT ESSAY QUESTIONS**  
**SUGGESTED TIME: ONE HOUR (60 MINUTES)**  
**TOTAL POINTS: 35**

### QUESTION ONE

Harry Hardscrabble owns an oceanfront parcel of land named "Oysteracre" in Nantucket. He inherited Oysteracre from his Uncle Charlie, and it is the only real property of any value that Harry owns. Harry owns Oysteracre outright; he has steadfastly refused to place a mortgage on it.

Harry is a fisherman who is heavily indebted to the Nantucket Savings Bank, which has financed his fishing boat and equipment. Sometimes Harry makes a lot of money, and sometimes he does not. Lately, Harry has not been doing well, and is afraid creditors may soon attempt to reach Oysteracre.

A 56 year old widower, Harry had only one child, Todd, who died when his trawler sank in a storm two years ago. Todd was survived by his wife, Delila, and a five year old son named Ned. Ned, who bears a striking resemblance to his late father, is the apple of Harry's eye. A budding artist who is now 29 years old, Delila has eked out a living since Todd died without life insurance. Delila has been a waitress, cab driver, and intern at the Nantucket Art Museum. She has run up \$12,000 in credit card debt, and has constantly been in financial difficulty.

Harry loves Oysteracre, and wants his daughter-in-law and grandson to enjoy it after he dies. He has come to you for legal advice and has expressed the following goals:

31. He wants to live on Oysteracre until he dies. He also wants to ensure that his creditors cannot get at the property. He thinks he should take immediate steps to ensure that Oysteracre will pass after his death without liens or encumbrances.
32. He wants Delila to get to live on Oysteracre after he dies, but recognizes her financial difficulties. He is afraid that, if she inherits it, she may declare bankruptcy or lose Oysteracre to creditors. At all costs, Harry wants Ned to get Oysteracre free of any liens or encumbrances.
33. He does not want Delila to get Oysteracre if she remarries, but wants Ned to get it, and to be able to live there, no matter what happens with his mother. Suspecting that Ned may also become a fisherman (a dangerous profession), he wants Ned's children, if any, to get Oysteracre if Ned does not survive his mother.

Please construct a grant which best accomplishes Harry's goals. Please state the names of the estates you create. Please fully explain why you chose each estate, and why you eliminated estates you considered but did not choose.

## QUESTION TWO

The following events happened in the order stated in a race-notice jurisdiction:

1. Appenzeller, the fee simple owner of Dogacre, sold it to Boxer for \$237,000. Boxer did not immediately record the warranty deed he received from Appenzeller.
2. Appenzeller granted a mortgage on Dogacre to the Collie National Bank ("CNB"). CNB immediately recorded the mortgage.
3. Appenzeller conveyed Dogacre to his nephew, Dachshund, as a gift (for no consideration). Dachshund immediately recorded the quitclaim deed he received from Appenzeller.
4. Appenzeller sold Dogacre to Labrador for \$231,000. Labrador immediately recorded his special warranty deed from Appenzeller.
5. Boxer recorded his deed from Appenzeller.

Please fully identify and discuss all interests each party has in Dogacre after the five events stated above.

**PROPERTY  
FINAL EXAMINATION**

Peter M. Malaguti  
Fall, 2000

**YOUR SOCIAL SECURITY NUMBER:** \_\_\_\_\_

**INSTRUCTIONS:**

Please take three (3) blue books. Write "Part Two" on one blue book. Write "Part Three" on another blue book. Write "Scrap" on the third blue book. Please write your social security number on all three books.

Please do not identify yourself in any way other than by social security number. Please do not write any information in your blue book, scrap book, or this exam booklet which might reveal who you are.

This is a closed-book examination: other than writing implements, you are not to have any materials on your table or at your feet. Please place all books, knapsacks, briefcases, etc. at the side or front of the room.

Please do not use your own scrap paper. You may use the third blue book as scrap paper. Please turn in your scrap blue book with your exam blue book and this exam booklet. I will not accept any blue books after you have turned in your exam materials. No exceptions.

This examination consists of three parts. The first part consists of 30 short answer questions, and the suggested time is one hour. Please answer the 30 short answer questions in the space provided after the applicable question in this examination booklet, not in a blue book. The first part counts for 30 of a possible 100 points.

The second part is a long essay question, and the suggested time is one hour. Please answer the long essay question in one separate (1) blue book. The second part counts for 35 of a possible 100 points.

The third part consists of two shorter essay questions. Please answer the short essays in one separate blue book. The third part counts for 35 of a possible 100 points.

You may not exceed one blue book each for parts two and three. When you are finished, please put all three blue books and this exam booklet into one of your blue books and hand them in.

Unless the facts of the questions suggest otherwise, please use "multistate" law. Of course, you may gain additional points by addressing Massachusetts or minority jurisdiction viewpoints. Please keep in mind, however, that time is a factor: you should not waste precious time on esoterica or minutiae. Please assume I know the facts, but nothing else.

Please make your answers legible. I cannot grade what I cannot read.

There is a bathroom book at the front of the room. Please sign out and in when you leave the room. Only one person at a time may be out of the room.

You have three and one-half (3-1/2) hours to complete the exam. I will tell you when there are 15 minutes left, at which point no one may leave the room. I will also warn you when there are 5 minutes left and 1 minute left. When I call time, you are to bring up your exam and blue books *immediately*.

**GOOD LUCK!**

## PART ONE

### 30 SHORT ANSWER QUESTIONS

SUGGESTED TIME: ONE HOUR (60 MINUTES)

TOTAL POINTS: 30

#### INSTRUCTIONS:

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Please limit your answers to the lines provided below each question. I will not read beyond the lines provided under each question. Please make each answer readable in terms of neatness and the size of your handwriting. (I will not use a magnifying glass to read your answers.) Please answer the question responsively; don't provide information not asked for in the question. For example, if the question asks "Who wins?" please state the name of the person who wins; don't state why he or she wins. Please state your reasoning only if the question asks for it.

Please note that, although I have tried to space the questions so that all lines appear on the same page as the question, it is possible that the lines provided sometimes extend onto the next page.

#### QUESTIONS:

1. Which of the following situations *do not* require compliance with the statute of frauds? Please circle *all* that are correct:
- a construction contract that the parties agreed will be completed in 6 months
  - a purchase and sale agreement for the sale of land
  - a brokerage agreement whereby a real estate broker agrees to market real estate
  - a mortgage
  - a restrictive covenant that runs with the land
  - a license agreement
  - a real estate attachment

Go On to The Next Page



2. Murray was vacationing in Miami in January 2000. He stayed at a friend's condominium at the luxurious South Beach Villa. One evening, after a few drinks, Murray came back to what he thought was his friend's room, put the borrowed key in the keyhole in the door, opened the door, and walked in. Unfortunately, Murray entered the room of someone other than his friend. For some inexplicable reason, the key to his friend's condominium also worked in the door of a stranger's condominium. Murray found the owner of the condominium he entered in a very embarrassing situation (which situation I'll leave to your own imagination). The owner of the condominium Murray entered has sued him civilly for trespass. Can Murray defend on the ground that he innocently believed he was entering his friend's condominium? Please circle the correct answer.

YES

NO

3. What is the only remedy that tenants in common and joint tenants have against their cotenants who refuse to contribute to upkeep and maintenance expenses?

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4. What fundamentally does a trust do?

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Go On to The Next Page

5. At common law, what was the standard of liability if a bailee misdelivered bailed goods?

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6. State the *nvo* presumptions that apply to assist a court in finding that a deed has been delivered.

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7. A and B own Blackacre as joint tenants in a lien theory state. A grants the Yahoo National Bank a mortgage on his interest. One year later A pays off the mortgage. Then B dies leaving all real estate he owns by will to C. Who owns Blackacre? Why?

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8. Under what body of law must a bank chase a mortgagor whose real estate has been foreclosed, leaving a deficiency in the amount collected at foreclosure?

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9. What is the difference between a "race-notice" jurisdiction and a "race" jurisdiction?

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10. State the three (3) situations that cause restrictive covenants to "touch and concern" the land.

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Go On to The Next Page

11. Andrew conveys States Avenue to Boris for life, then to Cara and her heirs, but if States Avenue is used to manufacture or sell alcoholic beverages to Daniel and his heirs. Immediately after the grant, what interest does Andrew have in States Avenue?
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Questions 12 through 15 are based on the following grant: "O conveys Blackacre to A for life, and then to the children of A." A has one child, B, at the time of the grant.

12. What interest does B own immediately after the grant?
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13. What interest do the unborn children of A own immediately after the grant?
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14. In determining whether one of the interest violates the rule against perpetuities, explain why you *cannot* use B as a measuring life.
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Go On to The Next Page

15. Explain why the interest in the unborn children of A does not violate the rule against perpetuities.

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16. Please consider the following two scenarios, which present different results. Then, state the legal justification for the difference.

A. Oscar was in the business of capturing wild animals for display. He invested time and money in this activity, and he considered it his livelihood. Oscar captured a sea lion in the Pacific Ocean, its natural habitat, and took it to New York where it escaped. Sea lions are not normally found in the Atlantic ocean. Billy Tyne, a fisherman, captured the sea lion and has kept it as a pet. Oscar has discovered that Billy has the sea lion and has demanded its return. A court rules that Billy Tyne, the finder, gets to keep the sea lion.

B. Barnum runs a circus and keeps elephants for use in the circus. While the circus was in New York City, one of Barnum's elephants escaped and was captured by Bailey. Barnum has discovered that Bailey has the elephant and wants him back. A court rules that Barnum gets the elephant back.

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Go On to The Next Page

17. A is the record owner of Blackacre. In 1990, B begins adversely possessing Blackacre. B's adverse possession will not ripen into title until 2010. In 1998, 8 years after B began adversely possessing, but before his title ripened, C attempted to establish possession of Blackacre. Immediately, B brought an ejectment action against C. C has defended on the ground that B doesn't have title to Blackacre and that B is only a trespasser. C argues that only A, the record owner, can eject C. Explain why or why not C's defense is proper or improper.

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18. State two (2) exceptions to the general rule that a finder of lost property owns against the whole world except for the true owner.

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Go On to The Next Page

19. State the elements necessary to show an easement by prescription.

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20. Explain the concept of "color of title / constructive adverse possession."

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21. What is the usual time period that a copyright lasts.

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22. Generally, describe what a trademark is.

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23. State and very briefly describe all five (5) unities that may attach to particular cotenancies.

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24. What are the elements required to create a constructive trust?

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Go On to The Next Page



25. What estate is created in multistate law for the following grant: "to A and B jointly?"

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26. What estate is created in Massachusetts law for the following grant: "to A and B jointly?"

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27. Consider the following hypothetical:

O had a diamond ring on her finger, and she took it off and handed it to A, saying, "I give you this ring." A tried the ring on, and it was too small; but both agreed that A could have it enlarged at a jewelry store. O then said, "let me take it and wear it until I am through with it, but the ring is yours." A turned over the ring to O, and O wore it until she died, several years later. On O's death, A demanded the ring from O's administrator. What is A's best argument that she is entitled to the ring?

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Go On to The Next Page

28. Briefly, state the rules relating to joint passbook account cases.

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29. Explain the difference between the Massachusetts rule and multistate rule regarding risk of loss under the doctrine of equitable conversion.

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30. State the exception to the marketable title rule (that title must be marketable just before delivery of the deed) regarding mortgages.

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**Extra Credit Questions.**

Please answer only **one** of the extra credit questions listed below, depending on whether you are a day student or evening student.

Extra Credit for Day Students. This is a multiple choice question. Please circle the correct answer.

Which Fall 2000, Day Property student has a better understanding than anyone else of fox hunting, fishing, property law in England, esoterica, trivia, and just about everything about anything?

- A. Peter Unitt
- B. Peter Unitt
- C. Peter Unitt
- D. Peter Unitt

Extra Credit for Evening Students. This is a multiple choice question. Please circle the correct answer.

Which Property professor at the Massachusetts School of Law has become notorious for accidentally transposing names in hypotheticals, thereby confusing his Property students?

- A. Professor Malaguti
- B. Peter M. Malaguti
- C. Professor Peter Malaguti
- D. Malaguti

Go On to The Next Page for Part Two

## PART THREE

### TWO SHORT ESSAY QUESTIONS

SUGGESTED TIME: ONE HOUR (60 MINUTES)

TOTAL POINTS: 35

#### QUESTION ONE

In 1971, Atlantic Richfield owned a parcel of land on State Highway 15, which it operated as a gasoline filling station. On February 18, 1971, Atlantic Richfield conveyed a portion of that real estate to Howard Johnson, and recorded an instrument entitled "Restrictive Covenant" by which Atlantic Richfield imposed on its remaining land, for the benefit of "Howard Johnson, its successors and assigns," a restriction that the remaining land "shall and will not be used or permitted to be used as a restaurant, motel or hotel, or for advertising such business or for the sale of food or beverages except packaged candies, crackers and soft drinks dispensed through vending machines." Atlantic Richfield imposed a reciprocal restriction upon the parcel that it conveyed to Howard Johnson, that it not be used for the sale of petroleum products. At the time, Howard Johnson was a well known operator of roadside restaurants.

Until 1987, the gasoline filling station confined its non-petroleum products sales to soda, candy, and cigarette vending machines. Through 1989 and 1990, by a step at a time, the food product line available at the gas station grew and the methods of sale changed. A milk reach-in cooler was installed and then an ice cream chest. Packaged pastries, packaged chips, peanuts, and crackers were displayed on a counter rather than being sold through vending machines. Then some packaged sandwiches became available. Next, the gas station management set up a hot dog steamer and provided a microwave oven in which customers could "nuke" items that would benefit from thawing or heating.

In 1994, Mobil Oil Corporation (Mobil) became the operating tenant of the gas filling station parcel (formerly operated by Atlantic Richfield). Exit 1 Properties had previously become the owner of the restaurant parcel (formerly operated by Howard Johnson). Exit 1 was running two franchise restaurants, a "Roy Rogers" and a "Sbarro." Both provided for on-the-premises eating. Roy Rogers featured hamburgers, chicken, roast beef, and french fries, and Sbarro featured pizza and pasta.

By 1994 Mobil's sale of food was quite expansive. The whole layout in the customer area of the gas station was altered to emphasize food sales. Mobile sold sandwiches. The beverage coolers grew from two to three and there was a specialty ice cream (Ben & Jerry) chest. A coffee bar offered six or seven "gourmet" coffees from carafes. By 1994, annual food sales were in the range of \$170,000 per year compared to \$74,000 in 1990. With a profit margin of 35% to 40% on food sales compared to from 10% to 11% on gasoline, the incentive to push food was considerable.

**PROPERTY  
FINAL EXAMINATION**

Peter M. Malaguti

**YOUR SOCIAL SECURITY NUMBER:** \_\_\_\_\_

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You have three and one-half (3-1/2) hours to complete the exam. I will tell you when there are 15 minutes left, at which point no one may leave the room. I will also warn you when there are 5 minutes left and 1 minute left. When I call time, you are to bring up your exam and blue books immediately.

**GOOD LUCK!**

Aardvark owned Appleacre, a 100 acre apple orchard, in fee simple absolute. He conveyed it "to Bobo and his heirs so long as Appleacre is used as an orchard, and if not, Aardvark may reenter and repossess, and thereupon Bobo will forfeit Appleacre." Bobo used the front 80 acres as an apple orchard and left the back 20 acres fallow. In 1970, Apier, with Aardvark's permission, entered the back 20 acres of Appleacre. For the next 26 years, Apier planted and harvested apple trees and permitted the public to come upon the land and pick apples for a price. Apier did not live on Appleacre, and did not use the property in the wintertime. Although Bobo knew Apier was on the land, he did nothing because Aardvark told Bobo that Aardvark had given Apier permission to be on the land. In 1996, Apier brought an action against Bobo seeking a declaration that Apier has obtained title to Appleacre. Please discuss the rights, duties, obligations and liabilities of the parties.

## QUESTION TWO

Your clients, Bull and Matilda Dozier, real estate developers, own a 100 acre parcel of land which they intend to develop into a residential subdivision. Bull and Matilda figure they can build 50 houses as well as streets, a central park with a ball field, a community center and community pool. They have expressed to you the following goals they desire to achieve:

1. They want all the houses to be maintained strictly as residences.
1. They want everyone who purchases houses, and only those who purchase houses (and their guests, invitees and licensees), to have the permanent right to use the streets they build in the subdivision. They are also afraid that adjacent property will be developed in the future, and that the purchasers of that property will be tempted to use the streets to cut through. They would like to prevent this.
2. They want everyone in the subdivision to have rights to use the community center and community pool for as long as they own their property. However, they want that right to stop once they move away.
3. They would like the houses to be slightly different from each other, yet maintain a style and size that will ensure that the market value of all remaining unsold lots remains as high as possible. Specifically, they want each house to be at least 2,100 square feet in size. They want the ability to review and veto unacceptable plans for each proposed house.
4. They want each purchaser to pay a yearly fee to maintain the pool, community center, roads, drainage systems and other capital improvements in the subdivision.
5. They occasionally would like to allow outside groups to stage events such as art festivals, concerts and carnivals at the central park. However, they don't want to give any of the outside groups leases or other property interests which might be hard to terminate.

Please render advice to Bull and Matilda regarding their goals. Please make suggestions about which legal devices they can use to accomplish their goals. Please discuss the benefits and detriments of each legal device. Please compare and contrast the legal devices to determine which is best for the accomplishment of each goal.

**PART THREE**

**30 SHORT ANSWER QUESTIONS**

**SUGGESTED TIME: ONE HOUR (60 MINUTES)**

**PERCENTAGE OF TOTAL SCORE: ONE-THIRD (1/3)**

**INSTRUCTIONS:**

PLEASE LIMIT YOUR ANSWERS TO THE LINES PROVIDED BELOW EACH QUESTION. I WILL NOT READ BEYOND THE LINES PROVIDED UNDER EACH QUESTION. PLEASE MAKE EACH ANSWER READABLE IN TERMS OF NEATNESS AND SIZE OF THE HANDWRITING. (I WILL NOT USE A MAGNIFYING GLASS TO READ YOUR ANSWERS.) PLEASE ANSWER THE QUESTION RESPONSIVELY; DON'T PROVIDE INFORMATION NOT ASKED FOR IN THE QUESTION. FOR EXAMPLE, IF THE QUESTION ASKS "WHO WINS," PLEASE STATE THE NAME OF THE PERSON WHO WINS; DO NOT STATE WHY HE OR SHE WINS. PLEASE STATE YOUR REASONING ONLY IF THE QUESTION ASKS FOR IT. PLEASE NOTE THAT THE LINES PROVIDED SOMETIMES EXTEND ONTO THE NEXT PAGE.

**QUESTIONS 1-5 ARE BASED ON THE FOLLOWING INSTRUCTIONS:**

Do you remember your "connect the concepts" quizzes in elementary school, where you drew lines between columns to connect related concepts? This is a law school "connect the concepts" quiz. In the space provided in the left column, please write the appropriate letter of the concept which properly relates from the right column. There is only one correct answer for each concept stated in the left column. Please note that there are twelve concepts in the right column, only five of which will be connected with a concept in the left column. Therefore, seven concepts in the right column will remain unmatched.

- |                            |     |    |  |
|----------------------------|-----|----|--|
| 1. POSSIBILITY OF REVERTER | ___ | A. | WHEN INVOLVING A CLASS OR GROUP, AT LEAST ONE MEMBER MUST BE A LIFE IN BEING |
| 2. JOINT TENANCY           | ___ | B. | FOLLOWS THE GRANT OF A SMALLER ESTATE  |

3. IF MORTGAGED, ITS OWNER IS RESPONSIBLE FOR INTEREST, BUT NOT PRINCIPAL \_\_\_\_\_

C. RULE AGAINST PERPETUITIES

4. MEASURING LIFE (for the rule against perpetuities, not life estates) \_\_\_\_\_

D. EXECUTORY INTEREST

E. WHETHER SOMEONE IS ONE SOMETIMES DEPENDS ON THE TYPE OF CONVEYANCE INVOLVED, i.e. DEED, WILL, ETC.

F. MUST HAVE FOUR UNITIES: TIME, TITLE, INTEREST AND POSSESSION

G. LIFE ESTATE

H. CURRENTLY NOT FAVORED BY THE LAW

I. REMAINDER

5. IN FAVOR OF GRANTEE AND CUTS SHORT THE PRIOR ESTATE \_\_\_\_\_

J. FEE SIMPLE SUBJECT TO EXECUTORY LIMITATION

K. FORFEITURE OF THE ESTATE THAT PRECEDES IT HAPPENS AUTOMATICALLY

L. CAN NEVER HAVE MORE THAN ONE UNITY: POSSESSION

6. How can a seller ensure that a purchase and sale agreement he or she signs does not require him or her to deliver marketable title?



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1. Circle all of the following descriptions or phrases which do not involve, or are unrelated to, the doctrine of equitable conversion:

- The "risk of loss" when real estate is destroyed after a contract for sale has been signed.
- Whether the seller has "real" or "personal" property after a contract for sale has been signed.
- The "conversion" of covenants contained in a contract for sale into deed covenants once the deed is delivered.
- Whether the buyer has "real" or "personal" property after a contract for sale has been signed.
- Whether the seller has agreed to give general warranty covenants in the deed.

2. Circle all of the following phrases which do not create a joint tenancy in multistate law:

- "To Able and Baker as joint tenants and not as tenants in common."
- "To Able and Baker jointly."
- "To Able and Baker as joint tenants with rights of survivorship."
- "To Able and Baker."
- "To Able and Baker or the survivor thereof." Able and Baker are legally married.

3. Zelda sold Shakeracre to Bert for \$120,000. Bert paid \$20,000 in cash and gave Zelda a mortgage in the amount of \$100,000 for the remainder of the purchase price. Bert made timely interest payments on the mortgage for two years, but did not reduce the principal at all. Two years after purchasing from Zelda, Bert sold Shakeracre to Ernie for "\$25,000 subject to my \$100,000 mortgage given to Zelda. By accepting this deed, the buyer agrees to assume the responsibility of making all mortgage payments of principal and interest directly to Zelda." Ernie never made a single mortgage payment to Zelda, or to

anyone. Taking all acts required by law, Zelda foreclosed on Shakeracre and obtained \$80,000 at the foreclosure auction. She is looking to recover the \$20,000 deficiency with accrued interest. Below please list all persons against whom she may recover and state the ground for recovery (Please note that the number of lines below are unrelated to the number of persons against whom Zelda can recover):

PERSON	GROUND
_____	_____
_____	_____
_____	_____
_____	_____

4. State the three requirements for a covenant to run in equity:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

11. State the three requirements for a covenant to run at law:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

12. State the circumstances under which a cotenant may seek an equitable accounting from another cotenant for improvements made to the property:

\_\_\_\_\_

\_\_\_\_\_

13. State the method of calculating damages in an equitable accounting when one cotenant seeks recovery for improvements made to real estate:

\_\_\_\_\_

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14. What is the mortgagor's most important right which he or she keeps right up until a mortgage foreclosure sale?

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15. Andrew conveys States Avenue to Boris for life, then to Cara and her heirs, but if States Avenue is used to manufacture or sell alcoholic beverages, then to Daniel and his heirs. What interest does Andrew have in States Avenue?

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QUESTIONS 16-17 ARE BASED ON THE FOLLOWING FACT SITUATION:

In 1979, Able conveyed Greenacre by deed "to Bannister and his heirs, so long as he uses the premises solely for farming purposes, and if Bannister does not use Greenacre solely for farming purposes, then to Casey and his heirs." Able had used Greenacre as a dairy farm. Initially, Bannister continued the dairy farm use. However, in 1989, Bannister opened a mine on Greenacre and began extracting coal. He made \$100,000 from the coal mining operations in 1989. In 1990, Bannister made \$200,000 from his coal mining operations.

16. In an action by Casey against Bannister for waste, Casey will (circle the best answer):

Win

Lose

17. Assume the same facts as in question 16. Circle all of the following persons own estates in Greenacre:

- Able

- Bannister

- Casey

18. Arthur conveyed Blackacre "to Husband and Wife as joint tenants, with rights of survivorship." Husband and wife were legally married at the time. In order to pay off a gambling debt, Husband gave Pete Rose a mortgage of the entire fee in Blackacre. Please circle the one statement which is correct:

- After the mortgage, Husband and Wife own as tenants by the entirety regardless of whether the state adheres to the title theory or the lien theory of mortgages.

- After the mortgage, Husband and Wife own as joint tenants in a state which adheres to the title theory of mortgages.

- After the mortgage, Husband and Wife (subject to Pete Rose's mortgage on Husband's interest) own as tenants in common in a state which adheres to the title theory of mortgages.

- After the mortgage, Husband and Wife own as tenants in common in a state which adheres to the lien theory of mortgages.

19. Assume all the same facts stated before Question 18, except that Arthur's grant was to "Husband and Wife or to the survivor thereof." Circle the ones who would own Blackacre in a state which follows the title theory of mortgage?

- Wife and Husband as tenants in common (subject to Pete Rose's mortgage on Husband's interest).

- Husband and Wife as tenants by the entirety (with no outstanding mortgage to Pete Rose).

- Wife and Pete Rose as joint tenants.

- Wife and Husband as tenants by the entirety (subject to Pete Rose's mortgage on Husband's interest).

QUESTIONS 20-22 ARE BASED ON THE FOLLOWING FACT SITUATION:

On May 15, 1970, Oliver purchased Quakeacre in fee simple absolute. The purchase price was \$32,500. Quakeacre is located in the state of Eldorado, which has the following recording statute:

Any conveyance of an interest in land shall not be valid against any subsequent purchaser who pays value, who takes without notice of that conveyance, and who first records.

On July 23, 1982, Oliver conveyed Quakeacre to Adrian, by general warranty deed, for a price of \$179,000. Adrian did not record at that time.

On August 30, 1982, Oliver, conveyed Quakeacre to his girlfriend, Mitzie by quitclaim deed. The deed Oliver delivered reported that the consideration was "love and affection." Mitzie in fact paid no money for Quakeacre. She had no knowledge of the prior conveyance to Adrian. Mitzie promptly recorded the deed.

On January 6, 1990, after learning that Adrian did not record the deed to her, Oliver, in dire need of money, borrowed \$100,000 from the Bunkersville National Bank and executed a mortgage in favor of the bank to secure repayment of the loan. The Bunkersville National Bank had no actual knowledge of Oliver's prior sale to Adrian and prior conveyance to Mitzie. The bank did not perform a title search before advancing the funds and taking the mortgage. However, the Bunkersville National Bank promptly recorded the mortgage that Oliver gave, and Oliver began making monthly mortgage payments.

On November 16, 1993, Adrian found the original deed from the August 30, 1982 transaction and realized that she had never recorded it. On that day, she personally took the deed to the Registry of Deeds and recorded it.

Early in 1995, Mitzie and Oliver broke-off their relationship. On April 16, 1995, Mitzie, by special warranty deed, conveyed Quakeacre to Carlotta for a price of \$239,000. Carlotta had no actual knowledge of the prior transactions and promptly recorded the deed.

20. As between Carlotta and the Bunkersville National Bank (in which Carlotta claims she holds free of the mortgage, who will prevail?

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21. As between Adrian and the Bunkersville National Bank (in which Adrian claims she holds free of the mortgage), who will prevail?

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22. Assume the same facts as originally stated except, for this question only, Mitzie had not conveyed to Carlotta and the state in which Quakeacre is located has a "race" recording statute. After Adrian recorded her deed from Oliver, Adrian, asserting that Adrian's title was held free

from any claim by Mitzie, instituted suit against Mitzie to recover title to Quakeacre. Judgment should be for (circle the correct answer):

Mitzie

Adrian

23. What do the following legal doctrines have in common?:  
adverse possession, eminent domain, and governmental takings for failure to pay taxes?

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24. What type of particularity is required when describing real estate in a deed?

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25. Generally, how are priorities determined when a mortgage is foreclosed?

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26. What benefit can be obtained by making a claim of “constructive” adverse possession?

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27. Please state the difference between a “conveyance in trust” and a “declaration of trust.”

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28. Under the law of finders, what is the difference between property that is lost and property which the true owner places somewhere but neglects to retrieve?

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29. True or false, delivery is absolutely essential to complete an inter vivos gift, but not a causa mortis gift.

True

False

30. True or false, an inter vivos gift cannot be made in contemplation of death.

True

False

*End of Exam*

*Have a Good Vacation!*