

Your personal identification number goes here \_\_\_\_\_

**PROPERTY FINAL EXAMINATION**

**PROF. GREG R. VETTER**

**SPRING, 2006**

May 10, 2006

9:00 a.m. to 1:00 p.m.

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**DOCTRINE-APPLICATION QUESTION(S)  
AND POLICY QUESTION(S)**

Examination Serial Number:

**1** \_\_\_\_\_

Turning in an examination answer to this final examination is deemed to be a pledge under the Law Center honor code that the exam taker has complied with the honor code in all respects in relation to this examination.

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I. EXAM INSTRUCTIONS

A. *Instructions Applicable to the Administration of My Exams*

1. *Conventions*

By convention, these instructions use the word “examination” to refer to this document. The word “exam” refers to the event of taking this test, as in “exam room” “exam taker” or “exam time.”

2. *Identification*

Identify yourself only by your personal identification number as set forth below. Do not identify yourself in any other fashion.

If you are an L.L.M. student, write “LLM” after your personal identification number.

a. Bluebook Exam Takers

- (i) write your personal identification number on the cover of *each* of your bluebooks; and
- (ii) write your personal identification number on the top right-hand corner of the cover page of this examination and on *the last* page of the examination problem itself.

In addition, write the examination serial number given on the cover page of this examination on the cover of *each* of your bluebooks.

## GENERALLY APPLICABLE EXAM INSTRUCTIONS

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### b. Typing Exam Takers

- (i) type your personal identification number in a prominent place on the first page of the typed answer; and
- (ii) write your personal identification number on the top right-hand corner of the cover page of this examination and on *the last* page of the examination problem itself.

In addition, type the examination serial number given on the cover page of this examination in a prominent place on the first page of the typed answer.

### 3. *Prohibited actions: copying, reproducing, or memorializing this examination; or taking this examination from the exam room*

I have not determined whether I will make this final examination available to students in the future. Accordingly, I am prohibiting this examination from release. It is an honor code violation to take any action designed or intended to cause all or any portion of this examination to be released. ***Copying, reproducing, or memorializing this examination or any of its contents in any form or fashion will be treated as a violation of the Honor Code and will be penalized accordingly. Taking notes about any portion of this examination is expressly prohibited under this rule.***

### 4. *Hand-Writing Your Answer*

Write legibly. I cannot grade what I cannot read. Skip every other line and write only on the right side of the page (i.e., skip every other page). You are only permitted to submit what you have written in the exam room during the exam time. Previously-drafted attachments of any sort may not be submitted for grading.

***Number your bluebooks consecutively on the outside cover of the bluebook***, i.e., “1” for the first bluebook, “2” for the second, and so on.

### 5. *Typing Your Answer*

You are permitted to type your answer to the examination. If allowed by the capabilities of the exam taking software, double space your answer. Also, type only on one side of the page. You may not use the memory capabilities of your typewriter or computer in any manner.

For students typing their answer on a computer, the student is responsible for compliance with the various technical requirements and mechanics for using the exam taking software, Examssoft. In particular, the student is presumed to be on notice of all information available under the links at the web page(s) maintained by the Law Center’s information technology department related to use of the exam taking software. Please realize that I am not undertaking any action to be in a position to provide any assistance with the exam taking software.

### 6. *Materials Allowed*

This is an “open materials” exam. You may use class notes or outlines (prepared by yourself or others), commercial outlines, and other similar materials. You may not communicate or collaborate with anyone during the exam about the examination or obtain direct or indirect information or assistance from any person; except for questions to the professor in the case of a severe discrepancy, defect, issue or similar problem with the examination. You may not receive any assistance from any live or electronic

## GENERALLY APPLICABLE EXAM INSTRUCTIONS

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retrieval/computer source during the exam. You may not do any library research or access the internet once the exam has begun.

Students writing the exam by hand are not allowed to use their computers for any purpose during the exam. Students typing the exam using the Law Center's sponsored exam-taking software may only use their computers to run such software.

### 7. *Collection of Examinations and Materials – Via 8.5 x 11 Inch Envelopes*

The examinations, bluebooks, and scratch paper will be collected at the end of the designated time. ***You will not receive a grade in the class unless you turn in:***

- (i) your entire examination with your personal identification number written on the top right-hand corner of the pages indicated above;
- (ii) your bluebooks with your personal identification number and examination serial number written on the cover of each bluebook, ***or*** your typed answer with personal identification number and examination serial number typed in a prominent place on the first page of the typed answer; and
- (iii) ALL scratch paper that you have used.

Scratch paper will neither be read nor graded. Nevertheless, you must turn in ALL of your scratch paper at the completion of the exam. You MAY NOT leave the exam room with any scratch paper that you used. You may mark on the examination itself.

I will provide 8.5 x 11 inch envelopes for exam takers. Use the envelope to turn in ALL your materials, including all of the examination, your answer, and any scratch paper.

This is slightly modified by  
the exam-specific instructions

#### a. Those Hand-Writing their Answer

Assemble your materials for collection by ordering your bluebooks sequentially, then place all scrap paper or other materials and the examination beneath the bluebooks. Place this stack inside the 8.5 x 11 inch envelope. Close the envelope with the metal clasp, but do not wet the adhesive. ***Write your personal identification number on the outside of the 8.5 x 11 inch envelope.***

#### b. Those Typing their Answer

Place all scrap paper, the examination, and the floppy disk inside the 8.5 x 11 inch envelope. Close the envelope with the metal clasp, but do not wet the adhesive. ***Write your personal identification number on the outside of the 8.5 x 11 inch envelope.***

#### c. I Perform a Post-Exam Inventory of the 8.5 x 11 Inch Envelope's Contents

As soon as practically possible after collecting the examinations, I cause administrative assistants to perform an extensive inventory process to ensure that all original examinations have been returned. If you discover that you have inadvertently kept some materials contrary to these instructions, get in touch with my administrative assistant immediately. Do not contact me personally because that creates the possibility of you losing your anonymity.

On the flip side, if in the inventory process we discover that a particular exam taker did not turn in the examination or some portion of it, this creates a potentially grave situation, especially if we cannot communicate with you to inquire about the situation. My administrative assistant would attempt to get in

## GENERALLY APPLICABLE EXAM INSTRUCTIONS

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touch with you in this instance. Thus, it is important to pay attention to your regular communication channels even though you may be undertaking other exam preparation.

### 8. *Restroom*

You may leave the exam room to visit the restroom. If you leave the exam room, you must leave your examination, any scrap paper, and your bluebooks with the proctor. If the proctor is not present, you must leave your examination, any scrap paper, and your bluebooks on the desk at the front of the room. You may not discuss the examination with anyone or consult any materials while you are out of the exam room.

If you leave the exam room, you must exercise a very high standard of care in exiting and entering the room in order to minimize disruption and noise that will distract other students.

### 9. *Makeup Exams*

***Because certain members of the class may be taking a makeup exam, it is a violation of the Honor Code to discuss this examination with any class member who has not yet taken it.*** Do not discuss this examination with any students not in this class until after the makeup exam period is over. Do not discuss this examination with any student in the class without first asking such student whether he or she has taken the exam. Abide by the Honor Code in this and in all other particulars.

### 10. *Compliance*

Failure to follow any of the directions provided with this examination will result in such penalty as I deem appropriate to the nature and degree of the violation. ***The spirit of these instructions will be enforced as well as their letter.***

### 11. *Pledge*

***In placing your personal identification number on your bluebook covers or typed answer, and on the examination pages, and by writing and turning in an answer to this examination, you are pledging that you have not received or given any unauthorized aid in preparing for or taking this examination or violated any of the instructions given here. Such behavior is grounds for the imposition of a variety of sanctions, including expulsion from law school.***

## GENERALLY APPLICABLE EXAM INSTRUCTIONS

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### *B. Instructions Generally Applicable to Writing Answers for My Examinations*

#### *1. Materials Needed*

To take this examination, you may/will need a copy of the assigned casebook and any supplement. Bluebook exam takers will also need a pen and bluebooks.

Computer software typing exam takers should also have bluebooks and writing instruments as a backup mechanism in the case of technical difficulty.

#### *2. Applicable Law*

The law applicable to this examination is the law covered in this class from: the assigned reading from the casebook and any assigned supplement, and additional law (if any) provided in the class overheads (collectively, the “Materials”). In my upper level Intellectual Property classes the Materials also include the primary statutory, regulatory, or treaty-based provisions relating to the assigned reading materials. Be sure to answer all questions on the basis of the law provided in the Materials.

There are some situations where the Materials provide alternative rules or tests for resolving a specific legal issue. In these instances, the “majority” rule is the rule or test relied on by the majority in a primary case in the casebook/supplement. Any other different tests or rules, (which could be multiple) whether mentioned by the majority opinion, offered in a dissent, described in the notes to the case, or given in the overheads, are alternative or “minority” rules. This instruction does not necessarily mean that issues exist in this examination requiring the application of alternative or minority rules. And, it may or may not be necessary to analyze any or all such alternative or minority rules depending on the specific examination instructions and/or the facts provided.

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*C. Instructions Specific to this Particular Exam*

*1. Structure*

The final examination is designed to be four (4) hours in length. It consists of three sections, each of which presents an independent problem, issue(s), or opportunity to earn points. Each section has a particular unique focus, and is worth a different amount of the total points available on the examination. The sections, and their point weights, are given in the table of contents above, and in the table below.

All multiple choice questions are worth an equal number of points.

*2. Documents and Collecting Documents*

You will receive four documents at the beginning of the examination: (1) this document, called the “Examination Document”; (2) the Multiple Choice Question Document; (3) one Scantron Answer Sheet for the multiple choice questions; and (4) a one-page form to report issues with multiple choice questions.

Your personal identification number must be on documents (1)-(3). And, it must be on your answer, whether Bluebooks or a floppy disk for exam-taking software.

The Examination Document has an examination serial number. Place it on your answer. Put it on each Bluebook, or on the floppy disk if using exam-taking software.

Please note that each Multiple Choice Question Document has a control number corresponding to the examination serial number.

You will also receive a brown, 8.5 x 11 inch, manila envelope.

You will return the materials with your examination answer in the hand-writing room.

Form one (1) line to return your materials. This will take some time, so please be patient.

Provide your materials as indicated in the table below.

Brown, manila envelope	Provide to proctor separately	Provide to proctor separately
<ul style="list-style-type: none"> <li>• Your examination answer (Bluebooks or floppy disk)</li> <li>• The Examination Document (this document)</li> <li>• Your Scantron Answer Sheet</li> <li>• Any scratch paper you used</li> </ul>	<ul style="list-style-type: none"> <li>• Multiple Choice Question Document</li> </ul>	<ul style="list-style-type: none"> <li>• Issue form for multiple choice questions, if completed; <i>if not completed</i>, turn it in as scratch paper in the brown, manila envelope</li> </ul>

During this collection process the proctor will collect and count, in-class, and as they are collected, the number of Multiple Choice Question Documents returned to ensure that it matches the number given out.

3. *Designations and Assumptions for Legal and Factual Matters*

On this examination, including the multiple choice questions: (i) the common law “Rules Furthering Alienability” apply unless the question states otherwise; (ii) unless otherwise indicated, grantors own fee simple, transactions occur in current times and are regular and satisfy applicable formalities, named parties are ascertained, alive and competent, and are not charities unless so specified, and limitations periods have not run; (iii) assume that any facts given about actual persons, entities, places, things, etc., are actually true, even if you know them to be questionable or false; and (iv) when conditions are expressed for a named party, the condition is met only by that named party meeting the condition, not by the named party’s successors or heirs fitting the conditional language.

The common law “Rules Furthering Alienability” are: (i) Merger; (ii) the Doctrine of Destruction of Contingent Remainders; (iii) the Rule in Shelley’s Case; (iv) the Doctrine of Worthier Title; and (v) the Rule Against Perpetuities (RAP); all as expressed and described in the Estates book used during the course.

If a question asks you to state the title or label for an interest, unless the question specifies otherwise, a correct statement of the title includes: (i) a statement as to whether any executory interests are “springing” or “shifting”; (ii) a statement as to whether classes are “subject to open” if not closed; and (iii) a statement as to whether vested remainders are additionally “subject to divestment.”

When a conveyance is described with additional facts such as, for example, the existence of ascertained class members or potential class members, those additional facts are part of the analysis to initially characterize the title at the time the conveyance becomes effective. Finally, post conveyance factual developments are to be considered if the question provides these and asks for the state of the title at different points in time.

The various efforts to reform the Rule Against Perpetuities are not applicable unless a question specified that they are in effect. On the other hand, however, the Charitable Exception is in effect for the examination unless specified otherwise.



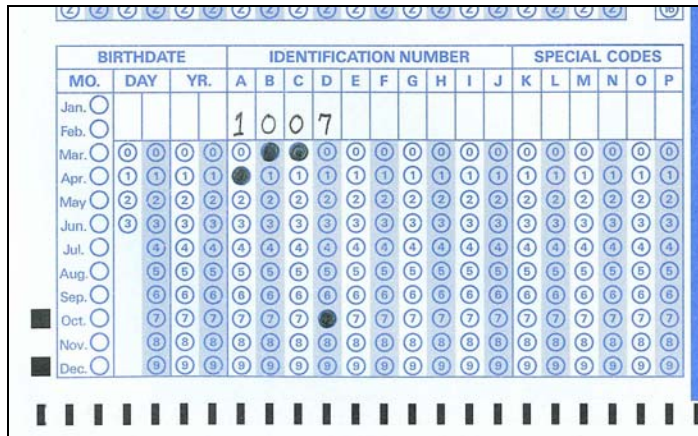
4. *Suggested Time Allocation and Other Exam Metrics*

Given the point percentages for the three sections disclosed above, one logical division of time in a four hour (4) examination is as follows.

Section	% of Points	Time (h:mm)	Comments
Multiple-Choice	50%	2:00	There are 53 multiple choice questions, allowing for a student to earn no more than 50 correct answers. Thus, each question is worth 1.0% of the examination total. <sup>1</sup> Working all 53 questions in 2 hours amounts to spending 2:26 on each question.
Doctrine-Application	35%	1:24	This section is just under three (3) pages.
Policy Analysis	15%	0:36	This section is just under one (1) page.

5. *“ScanTron” Answer Sheet – Multiple Choice Questions*

Do not identify yourself in any way on the answer sheet, except by writing-in and darkening-in your personal identification number. For example:



Otherwise, enter one and only one answer selection for each numbered multiple choice question in the corresponding numbered item on the “Scantron” answer sheet. Question numbers with more than one selection will be deemed blank.

You may mark on the multiple choice questions in the Multiple Choice Question Document in any way, however, no answer selections will be taken from the Multiple Choice Question Document. Your answer selections will only count if properly marked on the Scantron answer sheet.

You must fully mark the Scantron answer sheet during the time allotted for the examination. After time is called, no one is allowed to mark on the Scantron answer sheets.

<sup>1</sup> Fifty percent (50%) against 50 questions amounts to 1.0% per question, but fifty percent (50%) against 53 questions amounts to 0.94% per question.

You will be provided with a one-page form that allows feedback on multiple choice questions that you think may have issues. This form was posted to the class web site in advance of the final examination. If you decide to use this form, you must follow its instructions precisely, which includes only a limited number of minutes after time is called for discussing any multiple choice questions that may have issues.

6. *BlueBook Use – Doctrine-Application and Policy Analysis*

***Start a new bluebook before beginning your analysis of each major area or logical subdivision.*** This means that you should use a new BlueBook (or, if typing and allowed by the exam taking software, use its mechanisms to create a page break) before your analysis of each major area of law. ***Put your personal identification number on the cover of each bluebook.***

7. *Read the Assignment Section in Advance*

Even if you do not read the other sections before starting, it is ***highly recommended*** that you read the “Assignment” section before you begin.

Further, it is ***highly recommended*** that you read the “Assignment” section ***first***, before reading the other sections of the examination. The Assignment section is one of several portions of the examination that was made available before the exam date via the class web page.

8. *Starting and Stopping the Exam*

The examination sections containing the Doctrine-Application and Policy Analysis questions, excluding the multiple choice questions, are in this document in pages numbered one (1) through four (4).

The examination section containing the multiple choice questions is in a different document, in pages numbered one (1) through twenty-eight (28), excluding the cover page. Do not un-staple the Multiple Choice Question Document.

Without looking at the content of the examination sections, please count your pages now for both documents to ensure that they are complete. If not, notify the proctor immediately.

A proctor will provide “warning” that the end of the exam period is approaching by writing on the board in the exam room(s) the amount of time remaining at approximately the five minute mark.

***When time is called, stop writing or typing immediately.***

You may, however, save to you floppy disk after time is called if you are writing your answer with exam-taking software.

After time is called, you are only allowed to write if you decide to discuss any multiple choice questions on the form, in which case you may write on the form provided for this, and you may refer to the multiple choice questions themselves. These forms, and the Multiple Choice Question Document, will be collected separately from your examination answer.

**DO NOT TURN THE PAGE UNTIL YOU ARE INSTRUCTED TO DO SO.**

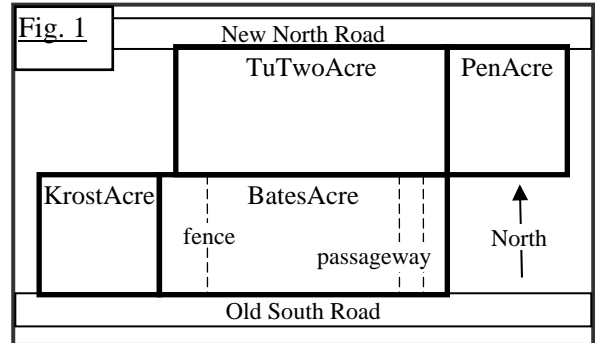
II. MULTIPLE CHOICE QUESTIONS SECTION (50%) { IN A SEPARATE DOCUMENT }

*This section is intentionally left blank.* These questions are provided in a separate document.

III. DOCTRINE-APPLICATION “IRAC” SECTION (35%)

At the time of his death, Oscar’s will contains only one devise and no residuary clause.<sup>1</sup>

The devise is for KrostAcre: “to Alice for life, then to Betty for twenty years.” Oscar’s heirs are Yorba and Zeb.<sup>2</sup> There are some additional parcels near KrostAcre as shown in Fig. 1.



A day before his death on January 1, 1970,

Oscar executed and had recorded the following: “I grant a north-south-running easement across my land, BatesAcre, for the benefit of TuTwoAcre to provide a passageway for humans traveling on foot to gain entry and egress to TuTwoAcre.” BatesAcre has a north-south-running fence near its west border. To the east of the fence, BatesAcre is a paved parking lot, with some open-air covered parking spots. To the west of the fence, BatesAcre is an undivided, unpaved area of dirt, called “WestField.” The owner of TuTwoAcre at the time of the grant, the Dewey Cheatum and Howe (DC&H) law school, paid Oscar for the easement. Oscar converted one of the parking rows into a covered walkway for students to more conveniently use the passageway.

Alice dies on January 1, 1980. Betty dies intestate on January 1, 1990. Sally is Betty’s only heir. Sally leases KrostAcre to WholeWallet, Inc. for a term of fifteen years beginning

<sup>1</sup> “no residuary clause” means that nothing in Oscar’s will directs any of his unnamed property to anyone.

<sup>2</sup> The intestacy statute of the jurisdiction where Oscar’s will becomes effective (the same jurisdiction where the parcels of Fig. 1 are located) says that Oscar’s heirs take as joint tenants with equal interest.

January 1, 1990.<sup>3</sup> WholeWallet operates a high-end grocery store. After five years, however, WholeWallet decides that the high-end grocery market is unsustainable, so on January 1, 1995, it executes a short document with Krager, Inc., having only this substantive language: “WholeWallet, Inc. hereby sublets its leasehold interest in KrostAcre to Krager, Inc. for five years, and Krager, Inc. hereby accepts this assignment.”<sup>4</sup>

Meanwhile, Yorba & Zeb (Y&Z) arrange a lease with Brandells, Inc. to lease KrostAcre beginning January 1, 2000, for a term of ten years. However, when Brandells shows up on that date to move in, it finds Krager still operating on the premises. It turns out that Krager did not pay any rent to anyone during the last of the five years, but Sally received all rents before then.

Brandells sues Y&Z, wanting Y&Z to get Brandells into KrostAcre. Sally sues Krager for the year of unpaid rent.<sup>5</sup> What result(s), and why? (include labels for interests)

On January 1, 1995, Sally purchased TuTwoAcre from DC&H. She uses TuTwoAcre as an animal training and boarding facility, under the name HipAnimal<sup>TM</sup>. The facility works with regular household pets, but also with large animals such as horses, or even elephants and rhinos. HipAnimal’s business grew, so Sally purchased PenAcre from a third party on January 1, 2000, and uses it to house the large animals. Additionally, on that date a new city ordinance went into

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<sup>3</sup> The lease from Sally to WholeWallet did not prohibit assignments or subleasing. Sally was able to quickly put the deal together with WholeWallet the day Betty died. In having the land prepared for WholeWallet, Sally did not properly manage the contractors, who placed a huge pile of dirt in the northwest corner of KrostAcre on top of (and thus killing) 100 year old premium grape vines which regularly produced a grape crop highly valued by local vineyards.

<sup>4</sup> Shortly after executing the document with Krager, business degrades for WholeWallet at all stores such that it isn’t worth naming WholeWallet as a defendant in any lawsuit on any issue.

<sup>5</sup> For all suits posited, assume that any applicable statute of limitations has not run on any party’s cause(s) of action. In the jurisdiction where the parcels of Fig. 1 are located, the statutory period to bring an ejectment action for trespass is ten (10) years. Also assume that there are no procedural problems with the court adjudicating all claimants’ rights to any particular parcel. This footnote applies to each rectangle of text giving the “call” for a question.

effect prohibiting large animals on New North Road. Thereafter, Sally had HipAnimal bring the large animals into the facility using the passageway on BatesAcre.

Because Sally spends so much time at HipAnimal, every weekend she sets up produce stands all over WestField. Each stand carried one of her world-famous pimento varieties. Customers driving along Old South Road on Saturday and Sunday would pull into WestField to purchase Sally's delicious pimentos. Sally did this every weekend beginning the day she purchased TuTwoAcre, saying to herself: "I'll just make WestField mine for my weekend farmer's market and pimento paradise." She camps on WestField during the weekend to protect her pimentos. Y&Z drive by most weekends and mutter to themselves upon seeing Sally, but they never did anything.<sup>6</sup>

On February 2, 2005, Yorba conveys as follows: "I convey my interest in BatesAcre from myself as a joint tenant to myself as a tenant in common." The next day, Yorba sells his interest in BatesAcre to Sally. The day thereafter, he dies. Zeb, by this time, has grown tired of seeing the large animals crossing BatesAcre.<sup>7</sup> He reviews the original deed and confronts Sally. She proposes moving the passageway across WestField, but Zeb is in no mood to bargain.

Zeb sues Sally for illegal use of the easement beginning January 1, 2000.<sup>8</sup> Sally sues Zeb to quiet title in WestField to her, and for partition in kind of the rest of BatesAcre, arguing that she should receive: (i) the west quarter of the paved area because it borders WestField, and (ii) the east quarter of the paved area because it contains the passageway, leaving half of the paved area in the middle for Zeb. Finally, Zeb sues Sally for waste of KrostAcre for two reasons: (A) loss of the grape crop revenue; and (B) renting to a worthless operation, meaning WholeWallet, a company Zeb despises. What result(s), and why? (include labels for interests)

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<sup>6</sup> The Fig. 1 area is commercial, meaning that the normal activity is during-the-week use for various businesses. The area is inactive on weekends, except for Sally's pimentos.

<sup>7</sup> The elephants regularly cause damage to the structure covering the passageway, which Zeb always repairs because he wants the parking facility to look nice.

<sup>8</sup> Zeb and Sally want to keep their legal bills low, so neither is interested in any assertion of real or equitable covenants, or easements by prescription or implication or any type.

IV. POLICY ANALYSIS SECTION (15%)

Paul works for Jane, a state legislator in the hypothetical U.S. state of Bash. Real property in Jane's state is bland, mostly held in cotenancy, and well below national averages for property value. Then Jane comes across page 381 of our course case book. She reads the improvements discussion with interest.<sup>9</sup> The law of Bash is completely ambiguous on cotenant obligations for improvements, so Jane proposes the following:

- (i) While the cotenancy is continuing, a cotenant who owns 33%-66% may recover from other cotenants<sup>10</sup> 1/3rd of the costs for improvements if the improving cotenant presents to the others ("contributors") an appraisal before the improvements, and one more than two (2) years after the improvements, from two different appraisers, showing an increase in total value (at least double the costs), and an increase greater than the market average increases for similar property.
- (ii) If the improver implements the improvements herself or if they have an artistic and unique motif created by the improver, cost recovery under the rule in item (i) shall be 1/2 in recognition of the contribution of the improver's labor and/or personality.
- (iii) Upon the sale, or partition by sale, of property improved under (i) or (ii), contributed costs are ignored and cotenants receive sales proceeds according to their respective interests.

Jane asks Paul to write a policy analysis of this proposal for (A) tenants in common, and (B) joint tenants; although the analysis may not necessarily be different between these two.<sup>11</sup>

Write Paul's analysis. Critique from a policy perspective the proposal using concepts from our class: what are the proposal's benefits?; what are the potential arguments against the proposal? Would you endorse this proposal or reject it? Why? Suggest at least one alteration to the proposal and justify why the alteration improves the proposal.

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<sup>9</sup> The discussion of improvements begins at the start of the first full paragraph on page 381 with the word *improvements* in italics as a heading.

<sup>10</sup> Each such other cotenant contributes according to her percentage interest, excluding the improver. For example, if improver owns 40%, A owns 20% and B owns 40%, then A pays one-third of the costs recovered: 20% divided by 60% (20% + 40%).

<sup>11</sup> Jane is not interested in: (1) tenancies by the entirety; (2) a comparison of her rule to the law governing repair costs, or rents, between cotenants; and (3) partition in kind.

## V. THE ASSIGNMENT

Write an analysis for each of the issue(s) raised by the facts or information enumerated in the examination. At the end of each section or subsection the focus or “call” of the question is given in a short paragraph enclosed in a rectangle.

Organize your written answer logically by the sections or subsections of the examination. Your written answer does not need a general introduction. Proceed immediately to analyzing the issues, problems or questions.

The sections vary in the degree to which they suggest incorporating policy analysis. One section, IV, overtly suggests policy analysis. Another explicitly suggests traditional IRAC analysis: Issue, Rule, Application and Conclusion. The multiple choice question section has little to no policy analysis. Its questions have broad coverage and tend to be primarily informational, although some of them cover problems similar to the problems worked in class.

### 1. *Multiple Choice Questions*

The first section is merely a placeholder for the separate Multiple Choice Question Document.

### 2. *Doctrine-Application “IRAC” Analysis*

Write a short analysis for each of the issues raised by the facts enumerated in the examination question, **based on the law and materials from the Property Law class**. The analysis should communicate the following as briefly as possible based on the facts available: (i) discuss the arguments, positions and rights that the plaintiff should assert, or has asserted,<sup>a</sup> against the defendant(s); (ii) evaluate the arguments and substantive merits from plaintiff’s perspective and defendant(s) perspective, articulating defenses and counter-arguments each should/might assert; (iii) assess the strength of each party’s arguments; and (iv) determine for each issue who is likely to prevail and explain why. Your written answer, however, should not be organized according to these four points.

Rather, for each issue, your analysis should communicate the issue, and then state/apply the law to the issue’s facts (applying counterarguments as well), and then conclude on the issue. An exception to this is that there is no need to restate a legal test that has already been stated; simply refer to the previous statement of the rule. Another way to say this is that if a second issue arises where there is a need to apply a legal test already related and discussed, you may analyze the second issue by exception, i.e., discussing the differences in application and outcome.

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<sup>a</sup> The examination question is written in such a way that certain issues are sometimes clearly “in” the case/dispute because they have been asserted by either plaintiff or defendant(s). You should analyze these issues, but there may be other issues to be analyzed as well because the examination question is silent about whether they have been, will, or will not be asserted by either side, and there are facts to support them. In addition, the examination question may also indicate that certain other possible issues are “out” and not to be analyzed because the parties disclaim certain issues or protections.

If you believe that there are any additional critical yet unsupplied facts that would materially impact the outcome of a particular issue, you should note what such facts would be. In such case, *briefly* describe how such critical facts might impact the outcome, i.e., indicate *at most one and only one* differing result that would ensue from different reasonable factual assumptions about such unsupplied facts.<sup>b</sup>

*Apply majority rules from the primary cases; apply minority rules only when they are a prominent part of the primary case analysis.* “Primary cases” are the cases listed in a dark, bold font on the class web syllabus. The “majority” rule for purposes of our “Law of the Course” is the rule applied by the primary case. The “minority” rule is the rule not selected by the court in the case, and is sometimes argued for by a dissent. Sometimes the cases used other labels for such rules. For example, the “English Rule” versus the “American Rule” as to the landlord’s duty to provide the incoming tenant with physical possession of the premises. It is acceptable to identify majority/minority rules by such labels if the primary case used such labels to refer to the rules. Minority rules or dissents are also relevant in that they sometimes provide inspiration for counterarguments.

Organize your written answer logically by subdivisions within the law we studied.

3. *“Policy” Analysis*

The policy oriented section is designed to allow one to employ some of the various policy arguments that arose during the class. A productive organization of the policy analysis depends on the context of the problems, disputes or questions posed in the policy-oriented section.

Application and deployment of arguments is the emphasis of the “policy” section. Some may view the question(s) in the “policy” section as having two “sides” along political or other ideological lines. Even assuming this perspective (without prescribing to it), however, an answer does not earn points by picking the “right” or “best” side of the issue, but rather by effectively marshalling arguments for the two (or many) facets of the issue. The most effective way to earn points on the policy section is to apply policy arguments arising from the course Materials.

The “policy” section, however, is not completely divorced from the doctrine studied in class. Question(s) in the “policy” section may require the application of, or recognition of, the doctrine studied in class to specific fact patterns.

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<sup>b</sup> Please note that if you find yourself discussing alternative outcomes for supposedly critical yet unsupplied facts for every issue you analyze, you are probably engaging in too much analysis of such alternative outcomes.