

ST. MARY'S UNIVERSITY  
SCHOOL OF LAW

PROPERTY I

FALL SEMESTER 1990

PROFESSOR DOUGLAS R. HADDOCK

FACTUAL INFORMATION FOR FINAL EXAMINATION

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DIRECTIONS

1. A substantial part of your examination will focus on the following facts. This statement of facts includes many of the facts you will be using in the examination; a few additional facts will be included with the questions, and some of the questions will not be based on these facts. The information given here will give you general background and numerous clues as to questions that might be asked in the examination.

2. Prior to the examination period, you are allowed to get assistance from whatever resources you desire, including the text, your notes, and your colleagues, in studying and reviewing the Factual Information. You are encouraged to study this information individually and in groups, and to discuss and analyze together the questions you anticipate from studying the Information and reviewing the course.

3. During the three-hour examination period, you will be allowed to use whatever resources you desire, including the text and your notes, except that you may not collaborate with other people during that period, and the answers you turn in must be entirely your own work, composed during the examination period.

4. In responding to the questions, you will be expected to assume that the following rules of law are in force, unless instructed otherwise in the question. Except as otherwise indicated, assume that the "common law" generally in effect in the United States in 1990 is in force.

FACTUAL INFORMATION  
FINAL EXAMINATION

Property I  
Fall Semester 1990

Professor Haddock

In 1957, Olivia owned what appeared on the record to be a fee simple absolute in Blackacre, 200 acres of land near a metropolitan area. In 1959, Olivia died. In one pertinent provision of her will, Olivia provided that Blackacre was to pass to her husband (Harry) "as long as he lives" and then "to my children for as long as any of them is living" and then "to my then living grandchildren." At her death, Olivia was survived by Harry and three children (Aaron, Bernie and Callie Ann). None of the children had children in 1959. The only other provision in Olivia's will that is pertinent to the examination is a clause providing that "all the rest of my property, real and personal, not otherwise disposed of in this will, I leave to my husband Harry."

In 1975, a child (Margaret) was born to Aaron and in 1978 a child (Norene) was born to Callie Ann. In 1985, Aaron was killed in an automobile accident. Aaron had no will and was survived by his wife, Allison, and his daughter, Margaret.

For the past ten years, Olivia's three children have maintained a game preserve on half of Blackacre. The property was fenced at considerable expense and then the children began to import exotic animals from various locations throughout the world. At first, this activity was a rather expensive hobby, but during the past few years Bernie and Callie Ann have turned the preserve into a fairly popular tourist attraction, and they now charge a fee for admission to the park.

Land bordering Blackacre was owned by the Martinez family, but in 1975 they transferred most of their land to a residential developer. The deed stated that the land was granted "to Danielle Developer and her heirs, provided that if any of the land is used for commercial or industrial purposes, grantor shall have a right to reenter." Since 1975, Developer has subdivided the property, constructed a number of houses, and sold those improved lots to various purchasers. Some of the purchasers have now voiced some concern about the game preserve. Some animals have turned up on their property, and the new residents fear that the exotic animals pose a threat to their safety.

Harry recently had his lawyer draft a new will, in which Harry leaves all of his real property to Bernie and Callie Ann for life and then "to the first of my grandchildren to graduate from law school," and all of his personal property in equal shares to "my children and their spouses."

Callie Ann was recently looking through things stored in the attic of her father's home. She discovered an old painting and showed it to her father. He had forgotten about it, but indicated that Olivia's aunt, who died in 1952, had bequeathed the painting to Olivia. Curious about the painting, Callie Ann took it to an art dealer, who informed her that it was now extremely valuable if authentic. Callie Ann then asked her father if she could hang it in her home and Harry said that was fine with him. The painting is now hanging in Callie Ann's living room.

ST. MARY'S UNIVERSITY  
School of Law

Examination in Property I

Fall Semester 1990

Professor Haddock

INSTRUCTIONS

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2. The examination consists of ten essay problems, the first six of which are based on the Factual Information distributed during the last two weeks of class. Additional information, applicable only to the problems for which the information is stated, is provided with the problems. Five problems are worth 5 points each, three are worth 10 points each, one is worth 15 points, and one is worth 30 points.

3. Respond directly and thoroughly to the specific questions and assignments given in each problem. Your answers will be graded according to how well you recognize and analyze the issues of property that are presented by the questions. Discuss all issues raised even if your resolution of one or more issues would, as a practical matter, make the resolution of other issues immaterial. Conclusions are sometimes important; your recognition of the questions to be asked is always important, whether or not you can come to any conclusion.

4. Write your exam number on each bluebook.

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## RULES OF LAW

a. Any transfer by an owner is presumed effective to convey the owner's entire interest in the property. This presumption can be rebutted by evidence of contrary intent on the part of the grantor.

b. What would have been a fee tail estate at common law (after the Statute de Donis) is deemed to be a life estate in the first grantee in tail and a remainder in fee simple in that person's children.

c. Executory interests are valid legal interests.

d. Contingent remainders are not subject to the common law rule of destructibility of contingent remainders.

e. As to deeds and wills taking effect on or after January 1, 1964, (1) the rule in Shelley's case has been abolished, and (2) the rule forbidding a remainder to a grantor's heirs and the doctrine of worthier title are treated as rules of construction rather than rules of law.

f. All estates and future interests are fully inheritable, alienable, and devisable.

g. The common law rule against perpetuities is in force.

h. Actions to recover possession of personal property must be brought within two years of the time the claim accrues.

i. Actions to recover possession of real property must be brought within ten years of the time the claim accrues.

j. All real property owned by a person at death and not effectively disposed of by that person's will passes by intestate succession as follows: 1/3 in fee to the surviving spouse and 2/3 to children or their descendants, per stirpes. If no spouse survives the decedent, 100% passes to the children and/or their descendants, per stirpes. All personal property owned by a person at death and not effectively disposed of by that person's will passes by intestate succession as follows: 100% to a surviving spouse. If no spouse survives the decedent, but issue do survive, 100% to lineal descendants, by right of representation.

k. All concurrently owned estates are presumed to be tenancies in common, but language clearly expressing the intention to create a joint tenancy is effective to create a common law joint tenancy. Tenancies by the entirety are not recognized.

FINAL EXAMINATION  
PROBLEMS

Property I  
Fall Semester 1990

Professor Haddock

Problems 1-6 are based on the Factual Information distributed during the last two weeks of class.

1  
(5 points)

Describe and explain the interests presently owned in Blackacre by Margaret, Norene and Allison.

2  
(5 points)

Discuss who is entitled to share in the profits from the game preserve maintained on Blackacre.

3  
(5 points)

Assuming Harry is still living, discuss whether it would be accurate to say that we can not now determine whether all of the interests that would be created by Harry's will would be valid.

4  
(15 points)

Identify and discuss all of the issues you can concerning rights and liabilities regarding the painting now hanging in Callie Ann's living room.

5  
(10 points)

A rare African antelope was recently shot and killed by one Cooper, an owner of property adjoining the game preserve. The animal had apparently jumped over the fence and was on land owned by Cooper when it was killed. The animal was worth \$10,000 alive but the carcass is worth only \$150. Discuss in property terms whether Cooper should be held liable to anyone for the loss of the antelope.

6  
(30 points)

The following excerpt from the Factual Information refers to land bordering Blackacre:

Land bordering Blackacre was owned by the Martinez family, but in 1975 they transferred most of their land to a residential developer. The deed stated that the land was granted "to Danielle Developer and her heirs, provided that if any of the land is used for commercial or industrial purposes, grantor shall have a right to reenter."

Suppose that you represent Sunshine Enterprises, a company that specializes in the development and sale of alternative energy devices. A major part of Sunshine's business right now revolves around using wind as a source of energy, and it just so happens that 20 acres of the land transferred to Danielle Developer is ideally suited for research about harnessing wind as a source of energy. Sunshine wants to purchase that 20 acres and install various modern windmills and other devices on the property for research and testing purposes. The 20 acres has not been conveyed by Developer to anyone, but much of the property adjacent to that 20 acres is occupied as residential property. You have checked pertinent public regulations of land use (zoning, etc.) and are satisfied that Sunshine's proposed use of the 20 acres would not violate any laws or ordinances. You have also learned that the grantors in the 1975 deed to Developer were Roberto and Maria Martinez, both of whom have since died intestate. Roberto and Maria were survived by three children, each of whom had two children, but one of the children of Roberto and Maria died intestate in 1985, survived by a spouse and their two children. Discuss the advice you would give to Sunshine and all of the issues you think they ought to consider in deciding what to do about the 20 acres.



Problems 7-10 are not based on the Factual Information distributed during the last two weeks of class.

7  
(5 points)

Blackacre was owned by Aretha Jones in fee simple. Jones deeded Blackacre "to Josie Sanchez and her heirs as long as the property is maintained as a rehabilitation center for those suffering from chemical dependency." Aretha Jones has died, without a will, leaving George Jones as her sole heir. Your client wants to purchase Blackacre and redevelop the property for sale as expensive condominiums. Describe and discuss the advice you would give the client.

8  
(10 points)

Whiteacre was owned by Benjamin Torn until 1989, when he was killed in an automobile accident. Torn had a valid will in which Whiteacre was devised "to my wife, Marie, as long as she is alive, and then to my brothers and sisters to share equally while they are alive, and then in equal shares to all of my nephews and nieces who have graduated from college." Discuss the interests in Whiteacre purportedly created by this will and what additional facts, if any, you need to know in order to determine the validity of the interests.

9  
(5 points)

Anthony owned a recent model Rolls Royce valued at \$100,000. He recently died, bequeathing the Rolls Royce "to my faithful chauffeur, Max, as long as he shall live." No other provision in the will is pertinent. Who owns the Rolls Royce?

10  
(10 points)

O owned Blackacre in fee simple absolute. He transferred "1/2 of Blackacre" to X, Y and Z, "as joint tenants, with right of survivorship, and not as tenants in common." Z then conveyed "all of my interest in Blackacre to A and B as joint tenants, with right of survivorship, and not as tenants in common." Discuss (a) the interests created by these transactions and (b) the major ambiguity contained in the transactions. Assume that O, X, Y, Z, A and B are living persons at all relevant times.

FINAL EXAMINATION  
ANALYSIS AND COMMENTS

Property I  
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1. Margaret and Norene have a contingent remainder in fee simple. It is contingent because of the phrase "then surviving," which I think makes surviving-the-last-living-child a condition precedent for the grandchildren's interest. The interest doesn't violate the rule against perpetuities because it will vest or fail no later than the death of the last surviving child (a member of a closed class at the time Olivia's will took effect). Harry, who, as a result of the residuary clause in Olivia's will, owns a reversion (or an alternative contingent remainder) as well as his life estate, apparently is still alive and therefore Allison, a potential beneficiary under Harry's will, has nothing at this point.

2. Technically, as a property matter, those who are entitled to possession would presumably be entitled to the profits from the land. If that is true, and assuming for the moment that these are "profits from the land," Harry is the only one entitled to present profits, since the children's interests are future interests. The facts suggest, however, that it is the children who have expended the time, effort and money to create the game preserve. In cases involving title by accession, we have seen that courts are willing to bestow title upon innocent converters who drastically alter the nature or value of personal property by labor, etc. Should the same idea be applied here to give the children a right to part or all of the profits, since they appear to be the individuals operating the game preserve? The problem, of course, is that the analogy to accession is not a particularly good one, since the land has not really been changed to something different than it was. Even so, I suspect there is a somewhat compelling urge to give the children something for their efforts, and that would most likely be translated into conclusions that these are profits from a business, not the land, and that Harry would be entitled to rent from the children but nothing more.

3. Because of the way facts might evolve in this case, the statement is accurate. Assuming the will took effect immediately, the transfer to a grandchild would violate the rule against perpetuities. But if all of Harry's children predecease him, his grandchildren (a closed class at the time of Harry's death and the effective date of his will) could be used as the lives in being (either one of them will graduate from law school or none of them will during their collective lifetimes) and the interest would be valid. (I am putting aside the interesting question of posthumous graduation from law school, a possibility that is brought close to home this year at our own law school,

with a degree being bestowed next spring upon an individual who passed away while a student at the law school.) In any event, if any of Harry's children is alive at his death, the grandchild's interest violates the rule against perpetuities.

4. Under the residuary clause in the will, Harry has apparently succeeded to his wife's ownership of the painting. One possible interpretation of the transaction between Harry and Callie Ann is that Harry gave her the painting. The facts are very vague on this point but it is possible that a gift was made. The decisive question in this situation is Harry's intent at the time of the conversation with Callie Ann. If he intended a gift at that moment, Callie Ann is the owner of the painting; delivery and acceptance do not appear to be a problem since Callie Ann took the painting. The facts tell us only that Harry said it was fine with him that Callie Ann hang the painting in her living room, and we really can draw no definitive conclusions about Harry's intent from that ambiguous statement.

If Harry did not intend a gift, we have a different set of issues. For one thing, Callie Ann is in the position of bailee, and thus may be liable to Harry in the event of damage to or loss of the painting. Also, it is quite clear that Callie Ann is at least entitled to possession for the time being, and that is a significant right which she can assert against anyone other than Harry.

Although the circumstances, particularly the fact that Callie Ann is presently entitled at least to possession, do not suggest the possibility of "adverse possession," it is probably worth mentioning. Under certain circumstances, people who do not "own" property can acquire "title" to it by long-maintained possession. We are told that the statutory period of limitations for recovery of personal property is two years. Cases on the subject suggest that the possession in question must be actual, adverse or hostile, open and notorious, continuous and uninterrupted. Callie Ann's possession is presumably actual (possession of a house, I assume, amounts to actual possession of things within the house); hanging it in the living room (an ordinary way to possess a painting) would seem to make her possession open and notorious under the circumstances; and there is no indication that it has not been continuous and uninterrupted possession. The facts say, however, that she discovered the painting recently, and I assume she has not yet had the painting for two years. Also, if Harry did not "give" the painting to Callie Ann, he at least permitted her to take possession for the time being. Therefore, as against Harry, Callie Ann's possession is not hostile or adverse, and therefore the statute of limitations is not running against Harry. Bernie

and Allison have an expectant interest under Harry's will in all of his personal property, but the will has no effect at all during Harry's lifetime. (It is not accurate to say that Bernie and Allison have a "future interest" at this point; they have no interest at all.) Callie Ann's possession is thus not effective, at this point, to deprive anyone other than Harry of rights in the painting, other than the right of possession alone.

5. In part, this question can be characterized as one concerning wild animals. Traditionally, ownership in wild animals comes as a result of possession, and can be lost when the animal escapes without the intention to return. But the fact that this antelope was presumably far from its native habitat may make a difference. It is likely that no one would assume that the antelope was on the premises naturally, and in this case, Cooper probably knew exactly where the animal came from and who claimed ownership rights. That being the case, Harry, Bernie and/or Callie Ann seem still to have strong claims of ownership of this wild animal, and therefore a potential claim of \$10,000 against Cooper. This example illustrates, I think, the evolution of common law principles: the wild animal notions of *Pierson v. Post* don't work very well under these facts, and therefore are not likely to be applied. Should it really make any difference whether this animal was "wild" or "domesticated"? Should we divest the "owners" of all rights to the animal simply because it escaped the confines of the game preserve?

Other pertinent questions may include whether it is significant that the animal was on Cooper's land and whether a landowner should be able to engage in rather drastic self-help measures to remedy a trespass. If we are inclined to discourage extreme self-help measures, a related question would be whether we feel comfortable imposing a very significant loss (\$10,000) on the wrongdoer. I think Cooper is culpable to some extent, in part because I assume that the antelope posed no real danger to him or his family; a \$10,000 penalty may be too much, but not necessarily so. One interesting tension in this problem is the conflict between the ownership rights in the antelope and Cooper's exclusive right of possession and enjoyment of his land, which was perhaps effectively breached by an animal brought into the neighborhood by the neighbors. In any event, even if we assume that Harry, Bernie, and Callie Ann are guilty of maintaining a nuisance, or trespassing, shooting the antelope would not, I think, be a proper response or remedy for the problem, and I am inclined to impose a fairly stiff penalty on Cooper.

6. This is a somewhat involved question. The land Sunshine wants to purchase is divided into a present estate (Developer's fee simple subject to a condition subsequent) and a future

interest (the right of reentry retained by Roberto and Maria Martinez). The right of reentry descended by intestate succession from Maria and Roberto to the three children, and the deceased child's share has since descended to the child's spouse and two children. This future interest is therefore owned by five individuals.

One problem is whether Sunshine's activities on the property would violate the condition placed in the deed from Roberto and Maria to Developer. The condition limits activity on the land to purposes other than "commercial or industrial." One might argue that "research and testing" is not commercial or industrial use, but the apparent reason for the activity is ultimate development and sale of alternative energy devices. Additional information explaining exactly what commercial and industrial means might be helpful, but in any event, there would be considerable risk in purchasing Developer's estate and then using the land for testing and research. If such use amounted to a breach of the condition, the owners of the right to reenter could oust Sunshine from possession.

This brings us to the owners of the right of reentry retained by Maria and Roberto. According to the stated laws of intestate succession, the three children initially inherited the right, 1/3 of which was subsequently inherited by the deceased child's spouse and two children. The right of reentry is thus held in shared ownership by five individuals. (This assumes that Maria or Robert, whichever one survived the other, did not remarry and have a surviving spouse at death.)

In theory, Sunshine's desire to purchase the property and use it as proposed, could be accomplished by purchasing the interests of all the owners, in this case Developer and the five owners of the right of reentry. If all those people conveyed their interests to Sunshine, the estates could be merged into a fee simple absolute and the condition now imposed on the property would disappear. The practical problems, of course, are the prospect of getting all six parties to convey their interests to Sunshine and the costs incurred (how much will it take to negotiate for and purchase the interests). The numbers involved are small enough that it would certainly be worth some initial exploration to determine whether all owners are willing to sell at what Sunshine would consider a reasonable price. If those negotiations are unsuccessful (a strong possibility in view of the numbers) I would be inclined to advise Sunshine to look for a different parcel of land.

Another consideration Sunshine ought to be apprised of involves the neighbors they will have if they purchase the

property. Even though we are told that Sunshine's use of the property would not violate zoning regulations, neighboring residential owners may object to the use contemplated for the 20 acres. This could be a serious problem, as we saw in the case of the Atlantic Cement Company. The nature of the use contemplated is not very clear, and it is possible that Sunshine's activities would be far less intrusive than those of Atlantic Cement Company. So it is difficult to say whether the testing and research activities would constitute a "nuisance," but it is certainly possible that they would. And with that threat hanging over Sunshine's head, the value of the land to them depreciates somewhat, since they may be buying a lawsuit. And if such litigation resulted in a finding that Sunshine's activities did amount to a nuisance, it is possible that those activities would be enjoined or restrained, thus frustrating their objectives. At the very least, they would probably pay a premium (in the form of damages for maintaining a nuisance) on top of the purchase price for the land.

Finally, there is also a possibility that activities of the neighbors might bother Sunshine. The possible effect on Sunshine of possible construction activity on neighboring lands and things like the game preserve and wild animals in the neighborhood should be evaluated.

In short, I would not categorically tell Sunshine to forget about the 20 acres, but there are several questions that must be answered and potential problems that should be addressed.

7. This question repeats one of the themes from #6. The client can not do what she or he wants with the property unless the conditional limitation is eliminated. One way of doing that is to purchase the fee simple determinable from Josie Sanchez and the possibility of reverter from George Jones, who apparently inherited it from Aretha. Those two estates would then merge, becoming a fee simple absolute. One difference between this problem and the one facing Sunshine in #6 is that here a fee simple absolute can be pieced together with purchases from only two people, a much more likely prospect than purchasing from the six involved in Sunshine's case.

8. This problem involves two fundamental and interrelated exercises -- application of the rule against perpetuities and recognition of the importance of, and need for, factual data. We need more information both to classify some of the interests created by Torn's will and to assess the validity of one of those interests. For starters, we will assume that Maria was living when Benjamin was killed and is still living. The interests purportedly created by Benjamin Torn's will are as follows:

Marie - life estate

Brothers & sisters of Benjamin have one of the following -

Vested remainder for life;

Vested remainder for life, subject to partial  
divestment;

Contingent remainder for life

Nephews & nieces of Benjamin have one of the following -

Vested remainder in fee simple;

Vested remainder in fee simple, subject to partial  
divestment;

Contingent remainder in fee simple

The second and third estates would be held by the owners as tenants in common.

In order to be more precise about the interests of Benjamin's brothers and sisters and nephews and nieces it would be necessary to gather additional information. Because both are the result of transfers to classes of people rather than named individuals, estate classification depends in part on whether the classes are closed. If Benjamin has brothers and/or sisters, but his parents are both deceased the siblings would simply have a vested remainder for life. If Benjamin has brothers and/or sisters, but one or both parents are alive, the siblings would have a vested remainder for life subject to partial divestment. If Benjamin has no brothers or sisters, but his parents are still alive, unborn siblings would have a contingent remainder for life. The last two of these interests would be subject to the rule against perpetuities but it does not violate the rule because Benjamin's parents can be used as lives in being if they are alive (the only contingency is being a child of Benjamin's parents and thus it will be fully vested, or fail, no later than the end of their lives) and the class of owners is closed and the interest is fully vested if the parents are not alive when the will takes effect (Benjamin could have no other brothers or sisters).

The interest of nephews and nieces is somewhat more troublesome than the life estate of Benjamin's siblings. An interpretational problem surfaces at the outset. The will states, "and then . . . to all of my nephews and nieces who have graduated from college." The estate given is a fee simple absolute, since no words of limitation are included (and assuming "owned by Benjamin Torn" means owned in fee simple) but the question is whether Benjamin intended that the remainder be limited to those nephews and nieces who have graduated by the time Benjamin's last surviving sibling dies. This is a likely, though not absolutely necessary, reading of Benjamin's intent.

With that interpretation, the interest of nieces and nephews is fully contingent -- a contingent remainder in fee simple -- if no niece or nephew has graduated from college. If a niece or nephew has graduated from college the interest would be a vested remainder in fee simple subject to partial divestment. If all of Benjamin's nieces and nephews have graduated from college, and Benjamin is survived by no parents or brothers or sisters, the nieces and nephews would own a fully vested remainder in fee simple.

If the remainder is contingent or subject to partial divestment the rule against perpetuities may be a problem. If Benjamin was survived by one or more brothers and/or sisters, and by neither parent, and assuming the interpretation discussed above concerning the closing of the class of nieces and nephews, we can use Marie and the brothers and sisters as lives in being and show that the interest in nieces and nephews will fully vest or fail at the death of the last life in being, since that will bring an end to prior estates and close the class of nieces and nephews. If, on the other hand, one or both of Benjamin's parents are living when Benjamin dies we cannot use the aforementioned group as lives in being, since the parents could have more children (brothers and sisters of Benjamin) and those children would have a share of the first remainder interest. Under these circumstances -- because those brothers and sisters could have children (Benjamin's nieces and nephews) and all lives in being could pass away leaving the first remainder in force in favor of the after-born brothers and sisters, and 21 more years might pass before the brothers and sisters die and all nieces and nephews graduate from college or die -- the remainder in nieces and nephews would be void for violation of the rule against perpetuities. [Note: If the second remainder is contingent, someone would own a reversion in fee simple.]

9. This is a fairly simple (but rather academic) question posing an estate problem in the context of personal property. As discussed in class, durational ownership has relevance for personal property as well as real property, but the questions and answers might sometimes vary because of differences in the nature of the resource. On the surface, Max owns a life estate in the Rolls Royce and Anthony's heir owns a reversion in "fee simple." And perhaps a Rolls Royce is sufficiently valuable and durable to warrant this conclusion. We might determine however, that Max owns absolute title if a future interest makes no sense. Facts that might be helpful in this respect are the age and life expectancy of Max and the "life expectancy" of the Rolls Royce."

10. This question touches on tenancy in common and joint tenancy and focuses directly on an occupational hazard for law



students -- ambiguity -- in the context of one of the most fundamental lessons of first year property. The major ambiguity referred to is found in the phrase "1/2 of Blackacre." We have seen that property in the legal sense is an abstract set of relationships and interests. This being the case, the quoted phrase is simply too ambiguous and uncertain. Does it mean 1/2 of the physical space that is (perhaps) Blackacre or does it mean a 1/2 interest in all the physical space that is Blackacre?

Assuming O divided Blackacre into two parcels of land, and transferred all of one parcel to X, Y and Z, the following conclusions are most likely:

X and Y each own a 1/3 interest in fee simple as joint tenants as to each other and as tenants in common as to A and B;

A and B each own a 1/6 interest in fee simple as joint tenants as to each other and as tenants in common as to X and Y.