Instructions: The examination consists of four problems of varying weight, totaling 100 points. Each problem states the weight to be given to such problem. Take a quick look at the problems before deciding how to allocate your time. For example, Problem II. will probably take most of you more time to answer than Problem IV, even though each is accorded the same weight (25 points).

In answering the questions, you may find that additional facts are needed in order to reach even a tentative conclusion. In any such case, you should specify what additional information is needed and indicate how it would be relevant to your reasoning or argument.

I. (26 points)

Part (a) - This part consists of 4 questions each worth 2 points. Good luck, and remember - don't push the panic button!

1. True or False: No advance notice is required to terminate a tenancy for years.

2. O conveys Blackacre to T for life, remainder in fee simple to T's children. Assuming that X negligently destroys Blackacre while T is alive, the soundest approach would be to let T only recover from X: (a) damages for injury done to T's life estate; (b) damages equal to the market value of Blackacre at date of destruction; (c) same as (b) but require T to hold the value of the remainder or reversionary interest as trustee.

3. True or False: At common law a landlord could only bring an action for waste against a tenant if the value of its reversionary interest had been reduced.

4. Severance occurs when one joint tenant transfers his interest voluntarily or involuntarily to another. This follows according to common-law dogma, because the conveyance destroys two of the following four unities which must exist in any joint tenancy:

(a) Unity of time - i.e., the interests of the joint tenants must vest at the same time.
(b) Unity of possession - i.e., the joint tenants must have undivided interests in the whole, not divided interests in separate parts.
(c) Unity of title - i.e., the joint tenants must derive their interests by the same instrument.
(d) Unity of interest - i.e., the joint tenants must have estates of the same type and duration.

Pick out the two which are destroyed!

Part (b) - This part consists of a choice - either answer question number 1 or question number 2. Don't answer both! Either question: (1 or 2) is worth a maximum of 8 points.

1. Massachusetts General Laws, Ch. 184, §7 (cited in Casner text in Chapter 14) reads as follows: "A conveyance or devise of land to two or more persons or to husband and wife, except... a devise or conveyance in trust, shall create an estate in common and not in joint tenancy, unless it is expressed in such conveyance or devise that the grantees or devisees shall take jointly... A devise of land to a person and his spouse shall, if the instrument creating the devise expressly so states, vest in the devisees a tenancy by the entirety. Why in the first sentence above did the draftors of the statute make an exception to "a conveyance or devise in trust" and why are only devises (transfers by will) and not also "inter-vivos" conveyances (transfers during grantor's life-time) included in the second sentence cited above. Explain briefly!
2. (a) G grants Blackacre "to A for life." A, then transfers his interest to B. What interests, if any, do G, A and B have? 

(b) In 1600, G bargains and sells "to A for life; then to B for life if B survives A, then to the heirs of A." What problems do you see in this conveyance? Can you suggest a way or ways to avoid them?

Part (c) - This part contains 5 questions, worth 2 points each, involving only the Rule against Perpetuities (A future interest, if it is to be valid, must vest in interest, if it vests at all, within the life time of some person who was alive at the time of the creation of the future interest plus 21 years after such person's death):

1. T devises (by will) Blackacre "to my grandchildren who shall reach the age of 21." The measuring lives in this problem are the lives of: (a) T; (b) T's children; (c) T's grandchildren.

2. True or False - Certain future interests including a "possibility of reverter" and "right of entry for condition broken" are not subject to the Rule against Perpetuities.

3. T devises Blackacre "to B for life and then to such children of A as shall then be married". Assume A is dead on T's death. Is the interest in A's children valid? Explain briefly.

4. G grants intervivos (during his life-time) Blackacre "to A for life, remainder to A's wife, if any, for her life, remainder to children of A then living." What is the state of title after applying the Rule against Perpetuities? Explain briefly!

5. T devises Blackacre in trust "to T to pay the income to A for life, then to pay the income to the children of A for their lives, and upon the death of the survivor of such children, to pay the principal to the grandchildren of A." At the time of T's death A is 80 years old and has three children. Is the future interest in the grandchildren valid? Explain briefly!

II. (25 points)

Owen Owner has valid record fee simple title to an island known as Blackacre in a jurisdiction which has the following statutes of limitation:

(1) "An action for the recovery of land shall be commenced only within 21 years after the right of action first accrued, but if a person entitled to bring such action at the time the cause thereof accrues is within the age of minority, of unsound mind, or imprisoned, such person, after the expiration of 21 years from the time the cause of action accrues, may bring such action within 10 years after such disability is removed."

(2) "An action for injury done to real estate or for unauthorized removal of personal property therefrom shall be commenced only within three years after the right of action first accrued."

Owen, who has never been to Blackacre, devised by will in 1946 all his property "to such of his children living at the date of probate (proof) of his will." In 1948 Owen died, survived only by his son, Sam (and only heir), born in 1927. In 1949 after the will had been probated and Owen's estate settled, Sam purported to convey Blackacre by written deed to Pat Purchaser, who was born in 1903. In 1950 Pat was declared mentally incompetent, and remained so until his death in 1970, at which time his only heir, Harry Heir, born in 1930 succeeded to Pat's interest in Blackacre. In 1965 Harry learned from a friend living near Blackacre "that two bearded hippie types have been stealing lumber off his land."

In 1949 Lon Lumber and Jerry Jack claiming under a deed conveying fee simple title to Whiteacre island, entered by mistake onto the adjoining island, Blackacre. Blackacre, like Whiteacre, consists of about 1000 acres of mountainous timber land, and is accessible by ferry service from the mainland. In 1952 Lon and Jerry began to operate - during the spring and summer months - a logging operation on Blackacre - cutting timber and hauling it back to their permanent camp on the mainland. By 1970 they had cleared 300 acres of timber - always
posting 'private property - no trespassing' signs where they worked. Since 1949 both Lon and Jerry (and since 1970 Lon alone) paid the property taxes due in respect to Blackacre, and on numerous occasions chased hunters off the island. In 1969 Lon, without Jerry's permission or knowledge, purported to grant a profit to the H. Mining Co. permitting it to extract and remove iron ore deposits - if and when found - from the island for a share of the earnings.

In 1970 Jerry, tired of the outdoors life, informed Lon "I am leaving Blackacre for good," and promised Ron "when I leave you can keep my share of the island." Two months later Jerry left Blackacre. In 1972 Jerry tired of the big city life, attempted to return to Blackacre but Ron refused to let him re-enter.

(a) In 1971 Harry brings an action to recover possession of Blackacre from Lon? What result? Discuss all issues fairly presented.

 Assuming that Harry is unsuccessful in the above action, answer the following:

(b) In 1972 Harry brings an action against Lon for damage to the land inflicted by him between 1969 and 1972. What result? Discuss briefly.

(c) In 1972 Jerry decides to bring an action against Lon to recover his share of the profits from the timber operation earned between 1970 and 1972. What result? Are there any other actions Jerry can bring against Ron to obtain justice and/or to "get even" with Ron? Discuss all issues fairly presented.

III. (24 points)

Dan Developer will own and manage the XYZ Shopping Center, once its construction is completed, and would like to negotiate a lease agreement with Tom Tenant who would like to operate a sporting goods store in the Center. Dan is optimistic about the near future but right now business is slow and shopping centers in his area are experiencing high vacancy rates so he is forced to accept a $12,000 annual rental from Tom even though he feels the fair market rental on the store could soon increase and in a few years even double. Dan is worried about the fact that Tom in the past has had trouble meeting his debts, and wants a tight security provision in the lease.

Part (a) - Tom's attorney insists that his draft of the agreement be used as a paradigm for negotiation. Assume that you are an associate attorney with the firm of Legal, Beagle & Eagle, and that Dan has come to your firm seeking advice. You have been asked by one of the senior partners "to prepare a brief memorandum pointing out which provisions are unfair and analyzing for me the potential adverse legal and/or business effects, if any, of the following first two lease provisions submitted by Tenant's attorney - from the standpoint of our client, Dan, and to suggest changes (along with reasons in support of such changes which we can cite to Tenant's attorney) in the provisions which we should attempt to obtain from Tenant's attorney to meet our objections:

EXCERPTS OF DRAFT LEASE AGREEMENT (between XYZ Shopping Center, Inc., as Lessor, and Tom Tenant, as Lessee):

"Lessor hereby leases the demised premises to Lessee and Lessee hereby leases the same from Lessor, subject to the following conditions, covenants and agreements hereinafter set forth.

Sec. 1 - Term and Rental: The term of this Lease shall be for 20 years and said term and rental hereunder shall commence on the day the demised premises have been sufficiently completed to make the premises ready for occupancy, on which date Lessor covenants and agrees to deliver possession to Lessee. Said rental shall be $1,000 per month - payable on the first day of the month succeeding the commencement date of this lease, and a like sum payable on the first day of each and every month during the full term of this lease.

Sec. 2 - Condemnation: If, during the term of this lease, all or any portion of the demised premises and/or Shopping Center area, is condemned and taken by eminent domain, then Lessee may, at its option, terminate the Lease by giving appropriate notice to Lessor of its intention to do so. If this Lease should
not be so terminated then Lessor, at its expense, shall restore the premises to the condition existing immediately prior to such condemnation and in such event rent shall be equitably reduced until said restoration is completed.

In the event of any condemnation, all damages awarded for such taking shall belong to Lessor; provided, however, that Lessee shall be entitled to the portion of the award equal to the value of its loss of fixtures and loss of its leasehold estate. Note: Remember that general rules of law (i.e. how a condemnation award is apportioned between Landlord and Tenant) ordinarily apply only in the absence of a specific agreement by the parties.

Part (b) - Dan comes into your office with the following proposed form of lease provision which he has used in previous leases, and asks for your comments:

Sec. 3 - Security and Default Provision: "In the event of any default by Lessee, whether material (substantial) or not (i.e. tenant violates or defaults under proposed Sec. 22 which prohibits tenant from hanging pictures or putting nails into any wall without Landlord's consent), then Lessor may, at its option, keep the security deposit made by Lessee - equal to 3 months rent - or, immediately, without notice, re-enter the premises and terminate the Lease." Do you see any problems? Explain briefly.

IV. (25 points)

Please comment on the following. Your discussion should, of course, be based as closely as possible on issues considered in this course, and should refer for purposes of illustration, when possible, to doctrines, and cases and other materials examined by you this semester. If you wish to cite a case and fail to remember its name you may refer to it by means of a brief description thereof. MAXIMUM LENGTH OF ANSWER: five pages - do not write on both sides of each page.

Here is the statement to be commented upon:

"The present law of leases is a blend of property concepts sometimes regarding the interest of the lessee as merely an estate in land, and contractual doctrines treating the lease as essentially a contract for space and services - and these two approaches have often collided, especially in today's predominantly urban society fraught with its many social ills."