Part II: Short Answer Question (Approximately 8% of the exam and 14 minutes)

Oliver Owner grants his property “to the first of my children to retire, for life, then to my nephew Robert for life, then to my grandchildren who reach the age of 25.”

Oliver and Robert are both alive. Oliver has two children alive at the time of the grant, Connor and Carla, both of whom work full time. Oliver also has two grandchildren at the time of the grant, Victor, who is 26, and Vivian, who is 17.

Fully identify all future interests and present estates described in the grant above and discuss the implications, if any, of the common law Rule against Perpetuities (you do not need to apply the Wait and See approach) for each interest. Apply the Rule of Convenience, if relevant. You should explain your reasoning; this may enable you to earn partial credit, even if your ultimate conclusions are incorrect. If the Rule against Perpetuities voids any interest(s) please rewrite the language of the grant.

Part III: Essay Questions (Approximately 54% of the exam and 1 hour and 35 minutes total)

**Please number your essay answers and identify the sub-part of each essay (1a, 1b, 1c, 2)**

The statute governing adverse possession claims in New Suffolk reads as follows: “An action to recover the title to or possession of real property shall be brought within ten years after the cause of action thereof accrued, but if a person entitled to bring such action, at the time the cause thereof accrues, is under the age of majority, of unsound mind, or imprisoned, such person (or anyone claiming under that person) may bring such action within seven years after such disability is removed.”

**Question 1** (Approximately 34% of the exam and 1 hour)

In 2000 Alex Apple purchases an old warehouse on 10 acres of land on the outskirts of Bostonia, the largest city in New Suffolk, for $500,000. Alex previously worked as an apprentice in a local brewery, John Adams, and plans to open his own brewery on the warehouse site. He opens his brewery in 2001 and begins selling beer on site and to a few local bars. In 2003 Alex invites his brother, Brock, to join him in the business. Brock pays Alex a sum of money for half of the business and half of the warehouse site. In exchange, Alex signs a deed that states: “I, Alex Apple hereby grant this land to myself and my brother Brock to hold jointly as tenants in common.”

The brewery is successful and Alex and Brock soon open an on-site tasting room, where customers can purchase and drink their beer, and a small restaurant. Alex is significantly invested in the enterprise, both financially and emotionally. It has long been his dream to make beer and he is finally succeeding in that effort. Brock, however, has grown tired of long hours making beer and can no longer stand the smell of the brewery.

Meanwhile, Bostonia is growing as a city and in 2005 a real estate developer – who has recently built a number of new buildings in the neighborhood around the brewery – contacts Alex and Brock and says he would like to purchase the warehouse and the 10 acres of land and develop it into condos. Brock is eager to jump at the chance, particularly since the developer is offering over $2 million for the property.

Brock comes into the brewery one day in hopes of convincing Alex to sell to the developer. Brock tells Alex that the money the developer is willing to pay is far more than the property is worth and that it would be enough for Alex to buy land not too far away and to move the brewery there, plus he would have a good chunk of money left over. An argument ensues, leading Alex to yell at Brock, “I love this place and I’m not selling! Now get out of here and don’t come back!”

Brock then leaves, bumping into a customer, Carl Cask, accidentally on the way out. Carl drops his cell phone on the floor and leans down to pick it up. He notices a small hole at the base of the warehouse wall and the reflection of light off of an object inside the hole. Carl gets down on his hands and knees, squeeze his finger through the hole, and pulls out a mesh bag, which has what appears to be very old gold coins in it. The mesh shopping bag containing the coins has on it the name of a local grocery store, which opened about ten years earlier.

Carl is incredibly excited and eager to get the gold coins home. But he is also eager to pick up his growler (a glass container for beer) from the bar. When Carl arrived he brought his growler to the bar and asked the bartender to fill it with a new beer the brewery just started making. The bartender gave him a claim ticket with a number on it and attached a tag with the same number to Carl’s growler. Carl’s growler was given to him as a gift by a friend and has significant sentimental meaning. Carl walks up the bar and shows the bartender his claim ticket. The bartender searches around but then tells Carl he can’t find the growler. The bartender tells Carl he thinks a new employee may have dropped it as he saw the other employee cleaning up some shattered glass on the floor. Carl is upset but decides to just leave. He heads towards the door, stopping on the way to grab his coat off one of the hooks by the front door. However, he looks multiple times at all of the hooks and cannot find his coat. “Forget it,” he says and heads out the door towards home. A few days later Carl seeks an appraisal of the value of the gold coins and discover that they are from the late-1800s and are worth around $20,000.

1. **Brock comes into your law office and asks if there are any steps he can take to, in his words, “make some money from this developer.” Explain the nature of his property interest and the possibilities available to him.**
2. **Carl comes into your office the next day. He wants to know if he can keep the gold coins. He is also upset about his beloved growler and his coat. In a letter to Carl explain his legal rights, if any, with regards to the gold coins, his growler, and his coat. Also discuss any competing interests or counterarguments related to those items.**

Assume, solely for purposes of the next question, that the deal with the developer falls through and by 2006 Brock and Alex are again on speaking terms. Brock decides to sell his interest in the property to Alex, who becomes sole owner of the brewery and the land. Fast forward to 2016. Alex has decided to get out of the brewery business. Everyone is drinking IPAs (a style of beer) these days and Alex does not like IPAs and does not wish to make them.

Alex decides to divide the property. He sells 5 vacant acres of the land to a real estate developer, David Developer, with a deed stating: “To David, so long as the property is used for residential uses only, if it is ever used for non-residential uses, then to my two sons Frank and Fred.” Alex sells the other 5 acres, which include the warehouse (that contains the brewery, tasting room, and restaurant) to Edward Elixir, with a deed stating, “To Edward and his heirs so long as the premises are never used to make IPAs, and if IPAs are ever made on the premises Alex has the right to re-enter and reclaim the premises.”

It is now early 2017, David Developer has decided that an entirely residential development no longer makes sense and he plans instead to build a development with a mixture of residential units and ground floor commercial stores. Meanwhile, Edward has been operating the brewery for nearly a year and sales are down and nothing other than IPAs appear to be selling in the area. He decides to start making IPAs on the property.

1. **Alex is very upset with David and Edward and comes into your law office to ask about his situation. Explain, as thoroughly as possible, what interests any named parties have or had, at any point in time, in the 10-acre property. Identity and analyze any legal claims Alex might have against David and against Edward.**

**Question 2** (Approximately 20% of the exam and 36 minutes)

Andrew and Betty were a wealthy, married couple. They owned multiple pieces of real estate as Tenants by the Entirety. They often fought, lived separately for long periods, and were not very honest with each other, but they never divorced.

One of their properties, Greenacre, was a rustic hunting and fishing camp set on 50 acres in the mountains. Andrew went there often to relax, but Betty never went there and rarely thought about it. Greenacre had one structure on it, a small wooden cabin in the northeast corner of the property. Andrew allowed his neighbors, most of whom also used their property to hunt and fish, to cross Greenacre and to hunt and fish on his land.

As Andrew grew older, his desire for comfort exceeded his pleasure in the outdoors. He stopped going to Greenacre. In 2001 he sold Greenacre to Chris, one of his old college buddies, for cash. Not wanting to deal with Betty, Andrew forged her name on the deed, which purported to convey all 50 acres. Chris did not suspect anything. Andrew died in 2004.

Chris was not a hunter, but did enjoy spending weeks by himself in the woods, contemplating nature and taking long walks. He enlarged and insulated the small wooden cabin on the property and occupied it about eight weeks a year (visiting regularly during the fishing season) for the next eight years. He continued to allow his neighbors to hunt and fish on the land, but only when he was not at the cabin. Chris died in 2009, leaving Greenacre to his daughter Debbie. Debbie decided to build a year-round house on the land and moved there to live full-time in 2011. Although Debbie loves the area where Greenacre is located, she is not very into the outdoors. She never ventures beyond the two acres around her house, which she has cleared of trees and turned into a lovely formal garden. Debbie allows the neighbors to continue to hunt on Greenacre, whenever they wish, with the exception of the two acres around her house, which they are not allowed to enter without her permission.

It is now 2019. Betty is still alive and, while going through her records one evening, realizes she has never been to one of her properties, Greenacre. She drives up one summer day and finds Debbie sitting on her front porch.

**Identify and evaluate the merits of any legal claims for Greenacre that might be made by Betty or Debbie. You should also identify and evaluate any likely counterarguments.**