Chapter 2

True or False

1. Personal property is all property that is not classified as real property. (T)
2. Personal property may be subclassified as either tangible personal property or intangible personal property. (T)
3 Dishes and china, cars, computers, and royalties are all examples of tangible personal property. (F) (Royalties are intangible)
4 “Chose in action” is a legal term for an item of personal property that is intangible. It is a personal right in which the owner does not possess the property but has a right to recover it in a lawsuit. (T)
5 Property that is owned severally is owned by several individuals. (F)
6. Joint tenancy presumes that each owner has an identical right to possess the property. (T)
7. The right of survivorship requires the joint tenant(s), upon the death of another joint tenant, to present his or her claim to the decedent's ownership rights, in a court of law. (F)
8. Tenancy by the Entirety is a form of jointly owned property that only exists between husband and wife. (T)
9. A fee simple estate is the smallest estate a person can hold. (F) (it is the largest)
10. Real property is any type of property that is immovable, fixed, or permanent. (T)
11. An example of a fixture is a refrigerator. (F)
12. When a joint tenancy is created, a tenancy in common is automatically created. (F)
13. All states have tenancy by the entirety. (F)

Multiple Choice

1. Real property includes all of the following except:
   a. vacant land.
   *b. automobiles.
   c. condominiums.
   d. barns.
2. Example(s) of fixtures are:
   a. trees and flowers.
   b. sinks.
   c. pictures.
   *d. a and b only
3. A life estate is:
   a. a home that is willed to a beneficiary for the remainder of his or her natural life.
   b. a legal term used to describe one's domicile at the time of death.
   *c. the right of a person, called the life tenant, to live on the property until the death of the life in being.

d. also known as “estate de la chaim” in some southern regions of the United States.

4. Life estate pur autre vie refers to:

   *a. property held for the life of someone other than the tenant.

   b. property held for the life of the tenant.

   c. property held in perpetuum by the executor of a will.

   d. lack of legal standing in life estate disputes.

5. A reversion, as it pertains to life estates, is also known as a:

   a. revocation order.

   *b. reversionary interest.

   c. suspension of the will.

   d. reversal of the rights specific to the pur autre vie.

6. All of the following are true of probate assets except:

   a. all forms of property in a descent’s estate that require probate court proceedings.

   b. property that is conveyed by will, or is being distributed by descent and distribution statutes.

   *c. they do not require any court proceedings.

   d. court orders are necessary to properly pass title in the probate assets from the decedent's estate to the beneficiaries or heirs.

7. The following are common to non-probate assets except:

   a. they do not require any court proceedings to pass title from the descendant’s estate to the beneficiaries or heirs.

   b. they are not distributed according to the decedent's will.

   *c. it is necessary to gain a court order to pass title for all non-probate assets.

   d. both a and b

8. Pay-on-death (POD) accounts are also known as:

   a. Keough accounts.

   *b. Totten Trust.

   c. Roth accounts.

   d. living trusts.

9. The following are characteristic(s) of living trusts, also known as inter vivos trusts:

   a. They become effective during the testator's lifetime.

   b. They are not part of a decedent's probate estate.

   c. Any assets that are mode part of the trust become non-probate assets.

   *d. all of the above

10. The following is characteristic of a tenancy for years:
    a. The time that the tenant will hold the property is specifically designated.
    b. The tenant always must take a long-term lease from the remainderman.
    c. The person has actual ownership of the property for the designated period of time.
    *d. both a and c
11. The following best exemplifies the characteristics of a joint tenancy:
    a. Time and title.
    b. Title, possession and interest.
    c. Interest only.
    *d. Time, possession, interest and title.
12. Community property is permitted in all but which of the following:
    a. Texas
    *b. Wyoming
    c. California
    d. Idaho

Essay

1. Discuss the concept of joint ownership and its subcatagories: joint tenancy, tenancy in common, tenancy by the entirety, and community property. How do they effect the distribution of the decedent's property?

   Joint ownership refers to multiple parties owning an interest in one property whether of real property or personal property. The interests may be equal or disparate depending upon the form of joint ownership.

   - Joint tenancy, if it is right of survivorship, is a non-probate asset so it is transferred as a matter of law and is not subject to the probate of a decedent's estate. In some circumstances, property therefore transfers to the other joint owner and the decedent's will beneficiaries or other heirs may not be happy about the disposition (for example: when the parent owns a bank account with one child and not the others). Nonetheless, they can do nothing about it unless they can prove some type of fraud in the form of transfer while the decedent was incapable etc or that the joint ownership was merely for the convenience of one of the parties. Joint tenants own the same interest in property.
   - Tenancy in common means that all the title holders own their share jointly but not with survivorship rights and the decedent's portion transfers either by intestacy to heirs or by will to beneficiaries. Tenants in common may not own the same interest and may acquire their interests at different times.
   - In a tenancy by the entirety, the property passes automatically to the decedent's spouse as this is form of title is specific to husbands and wives. In most instances, this is the desirable outcome but in second families, and especially when the home is the only or largest asset, children from prior marriages/relationships may be upset. There is no recourse however. This form of property ownership is not subject to the claims of creditors.

- Community property laws vary from state to state (in those that have community property), however, the one thing to remember is that a community asset is owned ½ by the husband and ½ by the wife. Therefore the decedent's spouse does not automatically own the decedent's portion of the property upon the decedent's death, as with tenancy by the entirety. With marriages in which all the children are from that marriage this is often not an issue. However with second or third marriages, it is vitally important in community property states to insure that each spouse make provision for the other spouse so that a surviving spouse does not find him or herself owing half of his/her house with the decedent's children from prior marriages/relationships.

2. The fee simple estate is not subject to restrictions, entitling the owner(s) to all the rights and privileges associated with the property. Discuss all of the characteristics of a fee simple estate and their significance.

   - Fee simple = largest estate that can be held by a property owner.
   - Subject to the government's right of eminent domain, the estate may not be taken away from the owner or his or her heirs or assigns without consent. While this is total ownership, more than one person may hold a fee interest in the property. In cases such as this, the joint owners are tenants in common. Unless otherwise stated, all conveyances are presumed to create a fee simple estate.
   - A fee simple estate is fully transferrable during the life of the owner.
   - A fee simple estate may be transferred by will.
   - A fee simple is subject to the claims of creditors. This rule applies both before and after the death of the fee simple owner.
   - If the fee simple is not transferred by will, the fee simple will pass through intestacy to the owner's heirs and is subject to the rights of a surviving spouse.

3. What percentage of people in the U.S. currently live in a community property state? (more than 20%)

4. Describe POD and Totten Trusts.

POD accounts are savings accounts that a depositor, called the, trustee opens for the benefit of another. Upon the depositor's death, the money automatically passed to the possessor of the benefit and does not become part of the estate. That is known as a TOTTEN TRUST.