

PROPERTY LAW

Write your Exam Number Here: _____

Introduction: This examination consists of three essay questions and no multiple choice questions. This is a 4 hour in-class examination. The exam covers concepts derived from the assigned reading and in-class discussions. The best answers will rely upon those concepts to provide a full explanatory answer to each question presented.

Materials allowed: During the exam, you may use your assigned casebook, any class handouts or printouts (including printed versions of the reading from the web), and any of your own work-product. Your work-product includes any material that you substantially participated in developing. Thus, your “group outline” may be used, but a commercial outline would not be permitted. No other materials may be used during the exam.

Blind Grading: Write your examination number in the space indicated above on this page. Do not put your name on anything in connection with this examination. At the end of the exam, you must return this paper.

Writing answers: The essay questions are divided into subsections. The best answers will follow the same exam structure. Thus, the answer to question 1(a) should be labeled 1(a). Fully explain your reasoning and thought process supporting each answer -- including an analysis of why potential answers were excluded. If there are additional facts or information that you believe you need to know to formulate any answer, indicate what additional information you would need, and how it would affect your analysis and conclusions.

Location: You should assume that all events take place in the United States and that all characters are located in the United States, except where the question clearly indicates the contrary.

Thank you: I truly enjoyed teaching property law this semester. I wish you the best of luck on the examination and look forward to seeing you at the law school over the next few years.

Essay 1. (40 points)

In 1989, Abrar and Tanya were given a plot of land large enough for several house-sites (known as Blackacre) by Abrar's uncle. The deed conveyed Blackacre "to Abrar and Tanya with rights of survivorship." Abrar had enjoyed Blackacre as a place of solitude and regularly walked the grounds. However, in 1993 Abrar desperately needed cash and sold Blackacre to Leonard for \$10,000 (without Tanya's knowledge). Leonard quickly built a house in the corner of Blackacre with a fenced-in yard. In January 2004, Abrar died in a car accident leaving behind few assets (all willed to Tanya) and a large gambling debt owed to Jimmy.

(a) As between Leonard, Tanya, and Jimmy, who holds superior rights to Blackacre?

(b) Assume that the parties negotiated a settlement with Leonard emerging as fee simple title holder to Blackacre. Leonard decided to develop the property further. While excavating, a worker (Carlyle) found a beautiful golden box buried six-feet under the ground. Carlyle did not tell his employer EXCACO or Leonard about the golden box and instead sold it on eBay for \$1,000. Neither Carlyle nor the buyer (McAdams) could open the box. However, one of McAdams customers (Donna) discovered a secret button and opened the box to reveal \$20,000 in currency. Discuss who holds superior rights to the golden box and the currency inside and potential liability of the parties.

(c) As part of the development, Leonard believes that the land will be more marketable if he can assure buyers that the whole area will be limited to only residential uses for at least the next 50 years. Leonard hopes that he can also limit uses of the nearby estate of Whiteacre to residential purposes. Whiteacre is owned by Ella. What steps could Leonard take to implement this limitation on use? Would it matter if the city re-zoned the property for commercial use?

(d) In his will, Leonard included the following grant: "I grant a life estate in my house and adjoining property ('House') to my nephew Fred. However, if Fred should divorce then the House goes to my niece Greta in fee simple absolute." Leonard gave the rest of his estate to the University of Missouri except for \$5,000 which he left to his closest living relative, his only son. Describe the various interests in the House.

Essay 2. (30 points)

Walter ran an automobile repair shop. Walter operated his business in a building on Main Street that he leased from Xena for \$5,000 per month. The shop was on the ground floor. Walter lived on the second floor, and Walter often rented the third floor apartment to college students. In 2006, Sally signed a one-year lease with Walter to rent the third floor as her living space for \$500 per month. The lease included a provision that Walter was *not* under any duty to ensure that the apartment was “habitable.” After three weeks living in the apartment, Sally moved-out because she could not stand the vibration and fumes created by the repair shop below. In addition Sally was bothered by the building’s furnace that did not work well and left both the apartments and the shop somewhat cold in the winter. Walter did not notice the vacancy until Sally failed to pay for the next month’s rent. At that point, Walter entered the apartment and found it empty. Several months later Walter caught-up with Sally and sued her for the remaining rent. Meanwhile, Walter posted a classified ad online for a new tenant. In the ad, Walter indicated that “I would probably prefer to rent to a man because he might be less disturbed by the repair shop on the first floor.” Walter did indeed rent the place to a man named Kohn who moved in exactly two-months after Sally moved out. Kohn agreed to a rent of \$300 per month plus an agreement that Kohn would work as a janitor for the repair shop. The lease did not have an end date, but instead stated that the lease would continue “for as long as Kohn continued to pay the rent.”

Kohn and Walter had a good working relationship. However, Walter was not very good at fixing cars and the business soon closed. Xena (the land owner) believed that she could re-let the building for a higher price and accepted Walter’s surrender of the lease. Xena found a new tenant (Mohair) who signed a lease for the whole building at a rate of \$10,000 per month beginning January 1, 2010. Kohn continued to pay the \$300 per month, Xena sent him an eviction notice. She argued that the lease was no longer binding because (1) it was clearly a personal agreement between Walter and Kohn; (2) that Kohn failed to uphold his agreement to work as a janitor (since the shop was closed); and (3) that the lease violated the rule against perpetuities. At 12:01 am on January 1, 2010, Xena arrived at the building and changed the locks on Kohn’s apartment while he was at a party. Kohn continued to send a \$300 check each month to Xena although Xena never deposited the money. In May 2010, Kohn sold all his rights in the lease to a local venture capitalist who decided to pursue a claim for damages.

Question: What rights and obligations are created by this situation?

Essay 3. (30 points)

An oil leak off the coast of Louisiana has threatened to ruin the business of fishing-companies in the area. Many of the fish that would have been caught have left the area and the remaining fish and oyster beds are contaminated. Assume that the company BP is responsible for the oil leak.

(a) Explain whether the fishing-companies have any property claim against BP. Regarding oysters, does it make a difference that some of the fishing-companies lease oyster beds from the State of Louisiana while other fishing-companies collect oysters from public beds.

(b) *From a policy perspective:* Should BP be forced to compensate for the lost & spoilt catch? Should the cause of action (if any) be considered a tort against the fishing-companies or instead a property rights violation? Should compensation be directed only to the fishing-companies & boat owners or also to at-will and migrant employees? Does it matter that some of the workers are third-generation fishermen while others have only been in the business for a few years?