

Write your Exam Number Here: \_\_\_\_\_

## **PROPERTY LAW**

**Introduction:** This examination consists of five pages. There are three essay questions and no multiple choice questions. This is a three hour examination. The exam covers concepts derived from the assigned reading and 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, and any of your own work product. Your work product includes any material that you substantially participated in developing. Thus, a “group outline” is permitted, but a commercial outline is not 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.

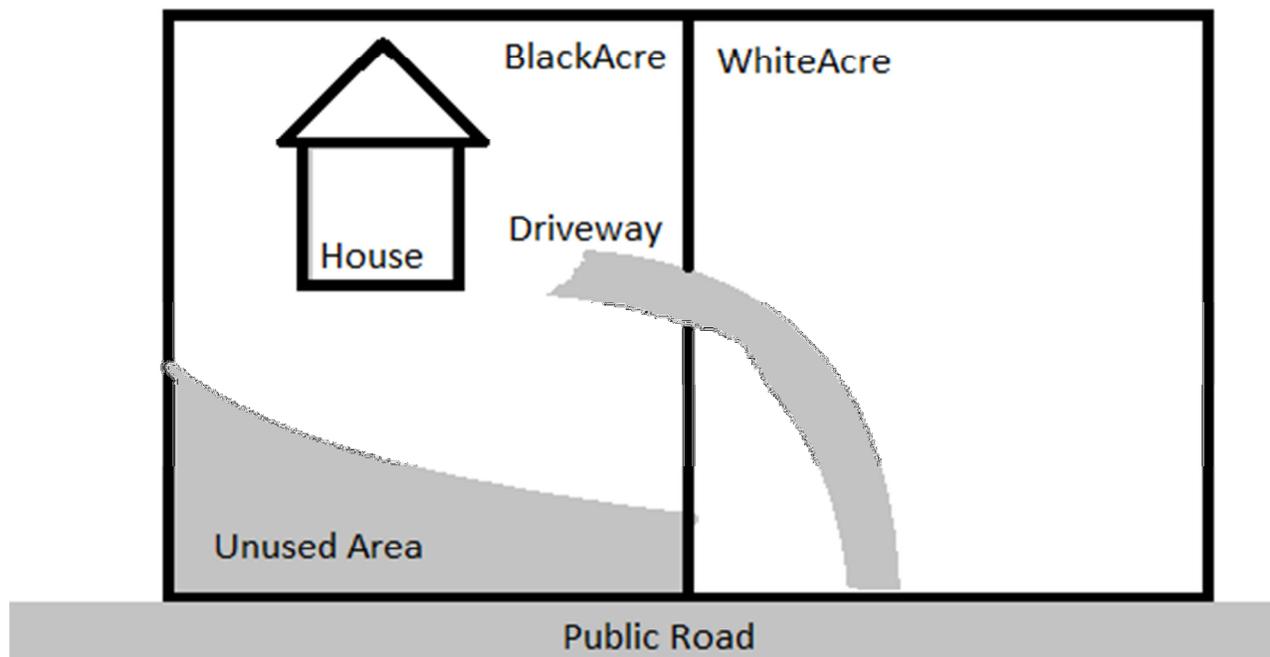
**Writing answers:** The essay questions are divided into subsections. The best answers will follow the exam structure. Thus, the answer to question 1(a) should be labeled 1(a). Fully explain your reasoning and thought process supporting each answer -- including an analysis of why potential answers were excluded.

**Timing:** I have indicated a suggested time for each question. These are merely suggestions and not requirements. Do keep in mind, however, that the relative number of points allotted to each question is roughly proportional to the suggested time.

**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.

**Question 1** (35 Points)

Desseem originally owned BlackAcre in fee simple absolute. BlackAcre is a rectangular plot of previously undeveloped land. When Desseem died in 1993 he left all his worldly possessions to Oliveeri who also owned WhiteAcre next-door. Oliveeri then built a house (House) on BlackAcre. She used a driveway (Driveway) to access the House that crossed WhiteAcre even though BlackAcre bordered on a public road. Because of the Driveway access, Oliveeri never entered the forested Unused Area shown on the map below, but rather let it grow wild. (See diagram).



**1(a)** It turns out that Deseem was a gambler and in 1990 had lost BlackAcre in a dice game with Leeton. Although Leeton received valid title, he had agreed (orally) that Deseem could retain possession of BlackAcre for the next five years. In 2004, Leeton arrived on the property ready to take possession and was surprised to find Oliveeri living there in her newly constructed house. Sort-out the property rights as between Oliveeri and Leeton.

**1(b)** Assume that the parties were able to work-out a deal. Oliveeri still owns WhiteAcre; Leeton now owns BlackAcre and holds an easement for

ingress and egress along the Driveway as shown in the map above. In May 2008, Johnseen stole a valuable diamond ring from Heeld and buried the ring under the Driveway on the WhiteAcre side. Later, when Gelee decided to visit Leeton, he spied the ring on the Driveway (poor burial job). Gelee picked up the ring and put it in his pocket. Rather than notifying Leeton or the police, Gelee sold the ring to a local jeweler then who sold it to Conkleen who then gave it to Esbeek. Esbeek absolutely loves the ring. Who has superior title to the ring? What are the potential liabilities between these parties?

**Question 2 (30 Points)**

Upon graduation from Law School, Powell fulfilled his lifelong dream by opening his own solo-practitioner law firm. Powell leased a building from Collins & Levsen (C&L) who held title to the building as joint tenants with rights of survivorship. The building included both office space and an apartment. Powell rented the apartment to Walker. The Walker-Powell lease agreement indicated that the apartment would be used for "residential purposes." However, Walker did not actually live there but instead used the space for her fortune telling business.

Powell and C&L had agreed to a five-year lease at a rate of \$30,000 per year for the plus 5% of Powell's annual profits. Walker paid \$12,000 per year in rent (paid monthly to Powell) and had a two-year lease.

A few months after moving in, Walker began having health problems and ultimately concluded that the apartment was not properly ventilated and that the smoke from her incense made the place uninhabitable. Powell refused pursue the major renovations necessary to fix the problem and Walker eventually moved-out with a full-year remaining on her lease. After about two months, Powell found a new tenant, Spieler who was actually going to live in the apartment and Spieler agreed to a four-year lease on the same \$12,000 per year terms as Walker. (Powell mistakenly agreed to a four-year term even though he had only three-years, ten-months remaining on his building lease.)

With about one year remaining on Powell's lease, Levsen decided to sell his interest in the building to Tanner (a wealthy real estate magnet). As soon as he had purchased Levsen's interests, Tanner sued Collins for partition (hoping to force a sale and thereby obtain Collins' portion as well). Powell immediately stopped paying rent and abandoned the property. Powell believed that his agreement was only with C&L and that the change in ownership allowed him to escape from the lease. At that point, Spieler was also a bit confused about the ongoing viability of her lease.

Discuss the rights and liabilities as between Collins, Levsen, Powell, Walker, Tanner, and Spieler.

**Question 3 (20 Points)**

Mobile device manufacturers (such as Apple, the maker of the iPhone) have historically aligned with particular wireless carriers (such as Verizon or Sprint). In many cases, the mobile devices are capable of communicating through other wireless networks. However, that capability is disabled by the manufacturers. Savvy users have found ways to restore the capability of their devices through a process known as “jail-breaking.” The manufacturers argue that jail-breaking reduces their ability to make a profit through corporate alignment; and that jail-breaking leads to technical problems. For example, they argue that an iPhone designed for the AT&T network does not work as well when modified to operate over the Verizon network.<sup>1</sup>



Apple would (hypothetically) like to use a legal mechanism to bind iPhone owners to use a particular carrier. Original purchasers sign a contract and perhaps could be bound that way. However, that contract would not normally bind second-hand purchasers.

**3(a)** Would it make sense for Apple to structure the sale of the iPhone as either (1) the grant of a determinable estate or (2) the grant of rights subject to a promissory servitude (be sure to distinguish between these two options).

**3(b)** Servitudes are powerful because they restrict what the owner of private property can do with her property. *From a policy perspective*, should the law allow Apple to enforce a jail-breaking restriction against the *original* purchaser who agreed to the restriction via contract? (Please don't write much about unconscionability – save that for Royce.)

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<sup>1</sup> To be clear, a jail-broken iPhone can only work on the Verizon network if the device owner has a contract with Verizon. Thus, the jail-breaker is not stealing air-time from the wireless carriers, but only using the device in a way not approved by its manufacturer.