

Introduction: This examination consists of five pages. There are three essay questions with sub-parts. 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. If you use abbreviations, please define them.

Materials allowed: During the exam, you may use your assigned casebook, a legal dictionary, any class handouts, 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.

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.

Essay 1 (60 points)

1.a. Rhondo together with his wife Sandra purchased several tracts of land in the state of Missouri in Fee Simple Absolute. The couple raised a family there – living in a house on one of the tracts. (Two kids, Theta and Ursul, who are now adults). Another tract owned by the couple is developed with an apartment having three residential units that the couple let – typically using leases that terminate each year on August 1. It is their long-term plan to build more apartment buildings on the remaining vacant tracts. Meanwhile, the couple regularly mows, cleans-up trash, insures the property, and pays any property taxes owed.

Several events from over a decade-ago are coming back to haunt the couple. Rhondo is a gambler and 12 years ago he won \$45,000 in a high-stakes game. He failed to report that income or pay taxes on that income. However, the casino reported the payout to the United States Internal Revenue Service (IRS) and the IRS is now coming to collect. The next year Rhondo lost \$50,000 in a game and in order to satisfy his debt he signed a title-transfer document. The document as written purported to transfer title in one of the vacant tracts (Tract W) via a quitclaim deed to Rhondo's creditor Vito. Vito did not immediately come to claim possession of the land because he did not need the land at that moment and had no desire to kick Sandra off of the land. Rhondo retained the paperwork, but never recorded his title with the county recorder of deeds.

After twelve years, the IRS has won its case against Rhondo (who, incidentally, filed his return separately from his wife) and the agency is now coming to collect on its judgment. Rhondo has no cash-on-hand but the land would satisfy the judgment. Thus, the IRS filed suit to claim title to several vacant lots (including Tract W) as payment for Rhondo's debts to the government. Before the court rendered judgment but after a long and relatively happy life, Sandra died. She knew about the IRS lawsuit and thus had drawn-up her Will so as to transfer title to all of her property to her children Theta and Ursul "in a non-severable joint tenancy with rights of survivorship." Rhondo did not challenge the Will. After learning of Sandra's death and then the IRS lawsuit, Vito sued to intervene – arguing that Tract W is his.

1.a. Who owns Tract W and in what form? In reaching your conclusion, you should trace the ownership of the property. Can the IRS claim title to Tract W?

1.b. Assume that Theta and Ursul now own the various tracts as joint tenants with rights of survivorship. What is the legal status (*vis-à-vis* landlord-tenant law) of the tenants living in the apartment now that Sandra is dead and Rhondo no longer owns the property? (Here, only consider the status of tenants who had signed 1-year leases with Sandra and Rhondo).

1.c. The siblings are having some difficulty in their management styles. In particular, Theta spending lots of uncompensated time managing the properties and Ursul expects a 50% share of any profits. Theta has offered to buy-out Ursul. That offer was rejected. Can Theta force Ursul to sell since Ursul is not helping to maintain the property?

1.d. Now assume that Theta owns all of the land in fee simple absolute. Theta has decided to pursue Rhondo & Sandra's dream of building apartments on the vacant lot. After hearing about Theta's plans, neighbors complain to the city about the potential problems created by new apartments and the city re-zones the property in a manner that excludes the possibility of building multi-family residential apartments on the new lots. The already-built apartments are also in violation of the new ordinance, but city officials have privately assured Theta that they will not take any action against those units. Frustrated, Theta then sold all of the land ("the tracts") to Xranger. Xranger also plans to continue to operate the apartments and to build new ones on the vacant tracts. In the negotiations, Theta did not specifically tell Xranger about the zoning issues but did say that he was "frustrated by his inability to build the apartments because it was Rhondo's dream." During the transfer, Theta had the idea of forcing Xranger to fulfill Rhondo's dream. Thus, rather than granting title in fee simple absolute, Theta included a clause in the grant that "if no multi-unit apartment buildings are built on the vacant lots within ten years of the transfer to from Theta to Xranger then Theta has the right to reenter and retake possession and title to the real estate." Theta ensured that his rights regarding the clause were recorded with the county recorder of deeds. Xranger quickly sold the property to Ybarra who lobbied the city for several years to change the zoning restriction, but the city has refused. Meanwhile, Theta died and gave all of his worldly possessions to the Anti-Lead-Based-Paint-Society except for \$1,000 that he gave to his closest relative (Ursul). We are now only one-month away from the ten-year deadline and Ybarra is worried that he will lose all of his investment. Provide a Memo for Ybarra explaining (i) his legal position and (ii) his best and most practical options.

1.e. This is a side story that occurred back when Theta and Ursul owned the land together. Normally Theta worked with the apartments, found the tenants, negotiated the leases, and signed the leases. Thus, when unmarried friends Barth and Cath rented their apartment, they never met Ursul and Ursul did not personally sign the 1-year lease or authorize Theta to sign the lease. As a joint tenant, Ursul had full rights of possession to the land. However, once the land was rented, Ursul no longer had the right to fully possess the land. Does it make sense (as a policy matter) that Theta can unilaterally take away co-owner Ursul's right of possession by renting the land to a third party?

1.f. During their tenancy, Barth was severely annoyed by the unbearably loud noise created by his neighbor Durango (another tenant in the building). Cath, who was effectively deaf, was not annoyed. Can Barth get out of the lease? On what grounds?

1.g. Assume for this question that the unbearably loud noise constitutes an actionable private nuisance, but that Durango is willing to pay for any and all harm caused to Barth. (Durango is an aspiring musician and wants to continue to be able to practice at high decibel levels.) Barth is unwilling to accept a buyout and instead wants an injunction to protect his property rights and so he can quietly enjoy the property.

Draft a short memorandum in support of *Durango's* position that an injunction should be denied.

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Essay 2 (20 points)

2. I enjoy fresh eggs and believe it is important for my children to have some experience in raising livestock. Thus, I would like to keep a few chickens in a coop in my backyard. The houses in my neighborhood are some distance apart and I am willing to design and build a coop such that only the most peeping of neighbors would ever see or hear my chickens.

Recently, the city of Columbia changed its zoning ordinance to allow homeowners to once again keep a small number of chickens within the city limits. Further, state law would bar a nuisance action in this circumstance. However, I live in a subdivision that has a homeowners association and a binding CCR (predating the zoning relaxation) that includes a restriction barring the keeping of any livestock (including chickens). Please draft a memorandum discussing whether I am bound by the CCR and whether I have any viable options available besides moving.

Essay 3 (20 points)

3. Lead based paint has been found to have severe negative health effects on humans. Decades ago, the US federal government banned the use of lead based paint for in residences. However, the problem persists because millions of older homes still contain lead based paint that has never been remediated. In some ways, the problem is getting worse because the old paint is more likely than ever to peeling and creating lead contaminated dust. This creates an extreme risk to young children from lead exposure and ingestion from picking up chips of paint or inhaling aerosol from paint scrapings in doorways or window frames. In many urban areas, almost all older houses in lower price ranges are contaminated with lead based paint. Several studies have shown that the societal costs of lead poisoning are significant because children with lead poisoning are much more likely to have ongoing health problems, be unemployed (and thus on the public rolls), and to be criminally convicted.

The law requires that any owner attempting to sell a home constructed in 1978 or before disclose their knowledge of the existence of lead based paint existing in the property, if any. After full disclosure, buyers have several days to escape from the contract without penalty. However, a buyer can purchase a house with lead based paint if desired.

An important element in this situation is that the disclosure does not change whether or not the house contains lead based paint. It is a requirement of the law that disclosure be made and the buyers understand what they are buying. The remediation process is very expensive – especially because both inspection and remediation may be legally done only by certified professionals (or *pro se*) following particular methods that largely ensure that all hazardous materials are collected and properly disposed.

Missouri does not require inspection, only disclosure if lead paint known. Most homeowners do not conduct an inspection for fear that it would sour any potential deal and lower property values if the results were positive. Likewise, inspections are not required (and typically not conducted) for residential rentals (except those subsidized by certain state funding). The results is that most folks turn a blind-eye to the potential hazard.

Is there a solution that helps protect children (and society) from the problem of lead poisoning? Is your solution based upon regulation, a new property rule, or something else? Is any group particularly burdened by your solution?

END OF EXAM – CONGRATULATIONS!!!