



PROPERTY I
Final Examination

Spring, 1997

Professor Terrell

Time Allowed: 4 hours and 15 minutes

INSTRUCTIONS:

- (1) This is a closed-book examination.
- (2) You have a maximum of four (4) hours and fifteen (15) minutes to complete the examination.
- (3) The examination consists of five (5) questions. Please be certain that your copy of the examination contains all five questions.
- (4) A total of 166 raw score points is available on the examination. The raw score points available on each question are noted at the beginning of each question, along with a suggested time allotment for each question corresponding roughly to the relative number of raw score points available on that question.
- (5) Any announcements concerning the examination shall be made in the room assigned for the examination and the typing room.
- (6) Three matters of substance:
 - (a) You are to assume throughout this examination that the general English common law of estates in land after the Statute of Uses is applicable in the jurisdictions involved in the questions, except that fee estates may be established by reference to a grantee without words of inheritance. If this information is in any way insufficient for you to answer any part of a question, so note the information you lack, and make any reasonable assumption you deem necessary to complete your answer.
 - (b) With regard to all other doctrinal areas -- for example, landlord-tenant, easements, and so on -- you may assume that the question places you in a generally "modern" jurisdiction. Although this information may not be terribly illuminating, it at least gives you some context for discussion of issues.
 - (c) For ease of reference, if you believe them relevant, the Due Process Clause and Taking Clause of the Fifth Amendment read as follows: "[n]or shall any person . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."
- (7) Good luck.

Question 1

17 raw score points

Suggested time: 25 minutes

The City of Mona Santica is well-known for its strict rent controls on all residential tenancies, controls that have been in effect for over thirty years. These controls apply -- in the words of the City's ordinance -- to "properties consisting of ten or more rental units."

Bob has come to you for advice. He owns a condominium in a luxury high-rise building in the City built in 1990, and he has regularly leased this condo for the last five years at rents around \$2000 per month. The high-rise building itself contains a total of fifty condominium units, many of which are leased to various tenants.

The City has recently announced that, although it has not done so in the past, it will now apply its rent control ordinance to this high-rise building, and therefore to Bob's condominium. The City's ordinance, in a detailed schedule of permissible rental charges, allows Bob to charge \$500.00 per month for his condominium. Bob has recently received a notice from the City telling him to reduce his rent to his tenant accordingly.

Bob is furious. He is convinced that the ordinance does not apply to him, but if it does, then it is a violation of the laws of nature.

Advise Bob on any legal issues you think relevant here.

Question 2

36 raw score points

Suggested time: 55 minutes

Oprah owned two adjoining pieces of property -- Lots 1 and 2 -- each of about ten heavily wooded acres, that are depicted in the following diagram:

She conveyed Lot 1 in 1991 in a deed containing the following pertinent language:

. . . to Alice and her spouse and Betty and her spouse as tenants by the entireties, with right of access to Blue Creek for fishing . . .

Alice and her husband moved onto the property immediately, building a house, as shown above. Betty and her husband moved into the house with them as soon as it was finished.

Oprah conveyed Lot 2 at the same time in 1991 in a deed containing the following language:

. . . to Ralph, although he must keep the forest area safe for wild animals, and Blue Creek stocked with trout for sport fishing . . .

For many, many years, residents of the Rosie Subdivision to the west of Lot 1 (shown in the diagram above) have used a particular path (also shown) to get to Blue Creek for fishing and picnicking. Alice, Betty, and their spouses have also regularly used the path to get to the Creek. Ralph has generally ignored this activity, although he has occasionally posted "no trespassing" signs near the intersection of the path and the Creek.

In 1995, Alice and her husband divorced and he moved out. He died a few months later.

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In 1996, Alice delivered a letter to Betty and her husband demanding that they pay one-half the cost that Alice and her husband paid to build the house they are living in with her, or if they refuse to pay that amount, then they must pay rent to her.

Recently, Alice sold her interest in Lot 1 to Sam, and Sam quickly filed an action for partition of Lot 1. Almost simultaneously, Ralph announced to all his neighbors that he was going to subdivide Lot 2 into a mixed residential and commercial area of small homes and businesses. Yesterday, a large truck drove down the path from Western Road onto Lot 2 loaded with wood-cutting and earth-moving equipment. No other roads run anywhere near Lot 2.

Alice has arrived at your office, distraught over the behavior of everyone but herself. Explain to her the probable interests that various people have in Lots 1 and 2, and what causes of action you believe might be brought by whom.

Question 3

50 raw score points

Suggested time: 75 minutes

During the 1997 NCAA men's basketball tournament, the XX Automobile Manufacturing Company ("XX") broadcast a television commercial that compared the reputation of one of its automobiles to the reputation for excellence of a particularly famous former basketball player. This player -- named Will Rodnicla -- had, many years earlier, been voted the outstanding player in the NCAA tournament three years in a row, an accomplishment that has never been equalled. XX, however, had not sought or received any permission to refer to this player or his achievement in this commercial. No one at XX thought they had to do so -- this player's record is quite well-known; this player, immediately after leaving college converted to Islam and changed his name officially to Muhammed Kareem, by which he was known throughout a long and illustrious career as a professional basketball player; and moreover, Mr. Kareem died in 1995.

Nevertheless, Mr. Kareem's widow and two adult children, as his heirs, have filed a lawsuit against XX seeking (i) an injunction against any further airing of the commercial, (ii) damages for the unauthorized use of Mr. Kareem's former name, and (iii) damages for the unauthorized reference to his record as a college basketball player.

You are the newest member of the Legal Department at XX. The General Counsel (the top lawyer in the Department) has called you into her office. She is surprised and outraged by this lawsuit, and she has therefore assigned you to write a memorandum answering as best you can the following questions that have occurred to her:

(1) How can anyone base a claim on something like a name, or on a publicly well-known record of accomplishment that reflects awards bestowed by others? The General Counsel knows that, for example, in California, under the decision in *Moore v. Regents of the University of California*, a person does not apparently even own his or her own bodily cells. Surely, she comments to you, this lawsuit is groundless.

(2) How can Mr. Kareem's heirs have a claim concerning a name that was never theirs?

(3) How can these people base a claim on something that was consciously and voluntarily rejected and replaced?

(4) How can these claimants hope to win this case when it is obvious, the General Counsel asserts to you, that their victory would be economically inefficient? For example, she continues, our society would end up with far fewer -- if any -- commercials using references to American historical figures worthy of our praise.

Question 4

33 raw score points

Suggested time: 50 minutes

Orin, the owner of Blackacre, and the father of three adult daughters, recently executed a deed concerning this property that contained the following conveyance language:

I hereby grant and transfer Blackacre to Alfred for his lifetime if he ever gets the courage to marry one of my daughters. Then the daughter he marries will thereafter have Blackacre for her lifetime. Then Blackacre will go to their surviving children. But if Alfred's courage fails him, then Blackacre will belong to my friend Fifi or her grandchildren so long as no one ever uses the property for gambling, otherwise the fee estate goes to my cousin Xena's children.

When Orin delivered this deed to Alfred, he (Alfred) was delighted. He immediately proposed to Zelda, Orin's oldest daughter, but she has not yet responded to his romantic overture.

Unknown to Orin, his friend Fifi had died a year before he executed this deed. She was survived by her husband, Norman, two children, and three grandchildren.

Norman has come to you to learn who owns what kind of interest in Blackacre. He is particularly concerned because a developer friend of his would like very much to purchase the property, and Norman wants to benefit from this sale. Give Norman the benefit of your analysis of the deed, labeling and assessing the various interests you identify.

Question 5

30 raw score points

Suggested time: 45 minutes

You serve on the staff of State Senator Smith as his legislative assistant. The Senator has been asked to support a bill that reads in pertinent part as follows:

TITLE: Landlord-Tenant Reform Act

Section 1.01: For all residential tenancies, causes of action by tenants against landlords based on the covenant of quiet enjoyment or the doctrine of constructive eviction are hereby abolished in this State.

Section 1.02: For all residential tenancies, all causes of action by tenants against landlords shall, in this State, be based only on the warranty of habitability. Said warranty may be defined by the tenant and landlord at their discretion in the lease documents concerning the relevant premises.

Section 1.03: For all tenancies, the distinctions between subleases and assignments shall henceforth be abolished, and shall be replaced by the single concept of a tenant "transfer" having the legal characteristics of both. No such transfer shall be permitted without the express written consent of the landlord. Such consent shall be within the sole discretion of the landlord.

Give the Senator your advice on the legal meaning and significance of each of these sections, and your recommendation on whether he should support passage of any of the sections.