

**PROPERTY  
FINAL EXAMINATION  
Professor Peter M. Malaguti**

**Fall 2005 Semester**

**YOUR ENTIRE SOCIAL SECURITY NUMBER:**

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**INSTRUCTIONS:**

**The instructions run onto the next page. You may read this page and then turn the page to finish reading the instructions. You are not to look beyond the second page of instructions until you are instructed to begin the exam.**

Please take three (3) blue books. Please write "Scrap" on one of the blue books. Please write "Two" and "Three" on each of the other two blue books. Please write your social security number *on all four* blue books.

Please do not identify yourself in any way other than by social security number. Please do not write any information in your blue book, scrap book, or this exam booklet that might reveal who you are.

This is a closed-book examination; other than writing implements, you are not to have any materials on your table or at your feet. Please place all books, knapsacks, briefcases, etc. at the side or front of the room.

Please do not use your own scrap paper. You may use the blue book labeled "Scrap" as scrap paper. Please turn in your scrap blue book with your exam blue book and this exam booklet. I will not accept any blue books after you have turned in your exam materials -- no exceptions.

This examination consists of three parts:

Part One consists of 10 short fact patterns, each of which has a number of questions that follows and inquires about the law and analysis that applies to the particular fact pattern. You are to read each fact pattern carefully and answer each question that follows. On one or two occasions, there are questions that appear without a prior fact pattern. There are a total of 50 questions, and you are to answer them all. The suggested time for Part One is two hours (120 minutes).

Please place your answers to Part One in the space provided **in this exam book**, not in the blue book. Please limit your answers to the lines provided below each question. We will not read beyond the lines provided under each question. Please make each

answer readable in terms of neatness and the size of your handwriting. (We will not use a magnifying glass to read your answers.) Please answer the question responsively; don't provide information not asked for in the question. For example, if the question asks "Who wins?" please state the name of the person who wins; don't state why he or she wins. Please state your reasoning only if the question asks for it.

Part Two consists of one (1) short essay question. Please put your answer in a blue book entitled "Part Two," and not into this examination booklet. Please limit your answer to four (4) single-spaced bluebook pages. The suggested time for Part Two is thirty (30 minutes).

Part Three consists of one (1) short essay question. Please put your answer in a blue book entitled "Part Three," and not into this examination booklet. Please limit your answer to four (4) single-spaced bluebook pages. The suggested time for Part Three is thirty (30 minutes).

Please take note again that Parts Two and Three are to go in **separate** blue books. Do not put both parts in the same blue book.

Despite the fact that the suggested time for all three parts is three hours, we will give you three and one-half (3.5) hours to complete the exam. You may use the extra half hour however you like, if you choose to use it at all.

Please make your answers legible. There is a bathroom book at the front of the room. Please sign out and in when you leave the room.

You have three and one-half (3-1/2) hours to complete the exam. We will tell you when there are 15 minutes left, at which point *no one* may leave the room. We will also warn you when there are 5 minutes left and 1 minute left. When we call time, you are to bring up your exam and blue books *immediately*.

Please use multistate law unless the facts or instructions suggest otherwise.

**GOOD LUCK!**

# QUESTIONS

## PART ONE

### DIRECTED ESSAYS

**SUGGESTED TIME: TWO HOURS (120 MINUTES)**

**PERCENTAGE OF EXAM POINTS: 65%**

### INSTRUCTIONS FOR PART ONE:

This part consists of ten (10) short fact patterns, each of which has a number of questions that follows and inquires about the law and analysis that applies to the particular fact pattern. You are to read each fact pattern carefully and answer each question that follows. On one or two occasions, there are questions that appear without a prior fact pattern. There are a total of 50 questions, and you are to answer them all.

Please place your answers in the space provided **in this exam book**, not in the blue book. Please limit your answers to the lines provided below each question. I will not read beyond the lines provided under each question. Please make each answer readable in terms of neatness and the size of your handwriting. (I will not use a magnifying glass to read your answers.) Please answer the question responsively; don't provide information not asked for in the question. For example, if the question asks "Who wins?" please state the name of the person who wins; don't state why he or she wins. Please state your reasoning only if the question asks for it.

Please work quickly but carefully through these questions. You will have enough time to answer all of the questions within the suggested time if you have adequately learned the law.

If you have not finished this Part of the exam when the suggested time is up, you should go onto the next part of the exam, and come back to finish it later.

### QUESTIONS:

#### **Questions 1 through 5 are based on the following facts:**

Muse and Caruso reside with their four young children at 290 North Street in the North End of Boston. In May 2001, they began construction on a four story addition to their single story home. Sorrentino owns a four story building next door at 282 North Street. On December 29, 1999, when Muse and Caruso were seeking a zoning variance for their addition, Sorrentino signed a letter declaring that he did not object to their addition. He did not, however, ever grant permission to Muse or Caruso to use his roof as a staging area for the construction of their addition. Muse and Caruso nonetheless allowed their contractor to work off Sorrentino's roof, who did so openly. On September 14, 2001 and again on September 19, 2001, Sorrentino wrote Muse and Caruso demanding that they cease their trespass upon his roof. The parties and their attorneys

met to discuss the matter but could not resolve it as neighbors. On October 10, 2001, Sorrentino sued Muse and Caruso for trespass, seeking injunctive relief to bar Muse and Caruso and their contractors from continuing to trespass on his roof.

1. Did Muse and Caruso, through their agent-contractor, trespass when they used Sorrentino's roof as a staging area? (Circle the best answer.)

YES

No

2. What is the definition of trespass?

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3. Please explain your conclusion as to whether they trespassed in the space below:

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4. Please list the exceptions to trespass that we discussed in class this semester:

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5. Do any of the exceptions we studied apply to this action? (Please circle one.)

YES

NO

**Questions 6 through 12 are based on the following facts:**

On March 9, 1984, Frank and Ellen McNeill conveyed Blackacre Jacquelyn M. McNeill by a valid and proper deed. On March 12, 1999, Michael G. Miller and Donna K. Miller obtained Whiteacre by a valid and proper deed. Whiteacre abuts Blackacre at its rear boundary line. The "Disputed Area" is a strip of land located along the rear of the Whiteacre that is approximately four to six feet wide and eighty feet long, and is enclosed by a wood fence on two sides.

Frank and Ellen McNeill, along with their daughter, Jacquelyn M. McNeill, removed bamboo from the Disputed Area during the period from 1962 to 1972. Jacquelyn M. McNeill moved out of Plaintiff's Property in 1972. From 1972 to 1984, Jacquelyn M. McNeill returned to Blackacre occasionally. In 1984, when Frank and Ellen McNeill sold Blackacre to Jacquelyn M. McNeill, they had not paid any real estates taxes assessed to the Disputed Area. After he purchased Plaintiff's Property in 1962, Frank McNeill and his friends removed a substantial amount of debris from the Disputed Area. Frank removed trees from the Disputed Area, cultivated the Disputed Area, and planted grass and shrubbery in the Disputed Area on a regular basis while he resided at Blackacre from 1963 to 1984.

Frank McNeill hired a swimming pool company to install a swimming pool on Blackacre. Frank completed the cement work around the pool and erected a concrete wall located near the southerly boundary of Blackacre. Frank put fill behind the concrete wall which encroached on the Disputed Area. The pool was enclosed on three and one-half sides by a fence located on Blackacre, and one-half of the southerly side on the Disputed Area on Whiteacre. Since that time, Frank McNeill stored cement blocks (used to hold the pool cover down in the winter) and additional swimming pool equipment (a hook, buoys, a net, a pool cover, a hose for the slide) in the Disputed Area for a majority of the year. Since 1973, a black hose connected to the swimming pool filter laid in the Disputed Area.

Carol Ann White lived on Whiteacre from 1959 to 1970. She continued to visit Whiteacre until 1973. Carol's father erected a fence that was one of the boundaries of the Disputed Area. That Preston Fence was set back approximately four to six feet from the rear property line of Whiteacre Carol observed lilac bushes and trees growing in the Disputed Area. Carol's mother, Rose, went into the Disputed Area to pick and prune lilac bushes in the fall and spring from 1959 to 1973. Carol raked the Disputed Area in 1969. Philip and Ellen Russo owned Whiteacre from 1973 to March 12, 1999, when they sold it to the Millers. From April 1973 to March 1999, the Russos did not use the Disputed Area.

At some point in the early 1980s Frank McNeill asked Philip if he could attach a fence to an existing fence in the northwesterly corner of Whiteacre. Philip gave Frank permission to do so. Frank built the fence in the Disputed Area but never attached the fence to the mentioned fence on Whiteacre. After purchasing Blackacre in 1984, Jacquelyn M. McNeill stored fifteen (15) fifty-pound sandbags in the Disputed Area which she used to hold down the pool cover. Between 1984 and 1993, she attempted to plant flowers, saplings, and a small flowering tree in the Disputed Area. Jacquelyn M. McNeill removed a vine in the Disputed Area that appeared every spring and removed bamboo. In an attempt to stop the bamboo from growing, Jacquelyn M. McNeill installed a plastic tarp in the Disputed Area. From 1987 to 1992, Jacquelyn M. McNeill retained the services of Quality Landscaping, which performed fall clean-up services in the Disputed Area on seven occasions from 1988 to 1991.

The Millers have paid real estate taxes assessed to the Disputed Area since purchasing Whiteacre. They caused a survey plan of Whiteacre in May 2000 and discovered that Jacquelyn M. McNeill was on, and maintaining, the Disputed Area. A law suit ensued between Jacquelyn M. McNeill and the Millers in the Fall of 2000.

6. Please list the five elements of adverse possession?

A. \_\_\_\_\_

B. \_\_\_\_\_

C. \_\_\_\_\_

D. \_\_\_\_\_

E.. \_\_\_\_\_

7. Please describe each of the elements you listed above in your answer to Question 6.

A.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

B.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

C.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

D.

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E.

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8. Briefly apply each of the elements stated in your answer to Question 6 to the facts given to determine whether each is satisfied.

A.

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B.

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C.

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D. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

E. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. Is Jacquelyn M. McNeill allowed to add the time that her parents, Frank and Ellen McNeill, owned the property onto his own time in making out his claim for adverse possession? (Circle the best answer.)

YES

No

10. Why or why not?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

11. Does the concept of "constructive adverse possession," otherwise known as "color of title," apply to the given facts? (Circle the best answer.)

YES

No



12. Why or why not?

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**Questions 13 through 18 are based on the following facts:**

Sizemore owned Blackacre. Cally obtained a real estate attachment against Sizemore in the amount of \$100,000, which he immediately recorded. Then Sizemore conveyed Blackacre to Billingsly by a quitclaim deed for \$500,000. Billingsly had no actual knowledge of Cally's real estate attachment, but did not do a title search before buying the property. Billingsly did not immediately record his deed. Then Sizemore sold Blackacre to Danforth for \$475,000. Danforth recorded his deed immediately and had no actual knowledge of the attachment to Cally or deed to Billingsly when he obtained the deed from Sizemore.

13. Assume that the jurisdiction in which Blackacre is located has the following recording statute: "no conveyance or mortgage of real property shall be good as against a subsequent purchaser who first records, pays substantial value and takes without notice, unless the same be recorded." What kind of a recording statute is the second statute?

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14. Assuming that the statute recited in Question 13 applies, in an action between Billingsly and Cally in which Billingsly claims he is not subject to Cally's real estate attachment, who will win? (Circle the best answer.)

Billingsly

Cally

15. Assuming that the statute recited in Question 13 applies, in an action between Cally and Danforth in which Danforth claims he is not subject to Cally's real estate attachment, who will win? (Circle the best answer.)

Cally

Danforth

16. Assume for this question and the next two questions that the recording statute says: "no conveyance or mortgage of real property shall be good against a subsequent purchaser who pays substantial value and takes without notice unless the same be recorded." What kind of a recording statute is the second statute?

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17. Assuming that the statute recited in Question 16 applies, in an action between Billingsly and Cally in which Billingsly claims he is not subject to Cally's real estate attachment, who will win? (Circle the best answer.)

Billingsly

Cally

18. Assuming that the statute recited in Question 16 applies, in an action between Cally and Danforth in which Danforth claims he is not subject to Cally's judgment, who will win? (Circle the best answer.)

Cally

Danforth

**Questions 19 through 27 are based on the following facts:**

Adrose conveyed Blackacre "to Billy for life, then to Coleman for life, and then to Danny and his heirs but if, after Danny dies, but within the next 20 years after his death, Blackacre is not used as a half way home for special needs adults, then to the American Cancer Society."

19. Immediately upon the grant, what is Billy's interest in Blackacre?

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20. Immediately upon the grant, what is Coleman's interest in Blackacre?

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21. Immediately upon the grant, what is the American Cancer Society's interest in Blackacre?

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22. Immediately upon the grant, what is Androse's interest in Blackacre?

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23. Are any of the interests subject to rule against perpetuities consideration? (Circle the best answer.)

YES

NO

24. Which ones, if any? (Circle **all** that apply)

Androse's

Billy's

Coleman's

The American Cancer Society's

25. Assume for this question that none of the interests violated the rule against perpetuities. Ten years after the grant, Billy died. Then Coleman entered into a purchase and sale agreement to sell Blackacre to Donnell. The P & S was silent as to the quality of title B was required to deliver. At the closing, Donnell refused to take title, asserting that Coleman could

not deliver marketable title. Donnell demanded a return of his deposit. Coleman refused to return the deposit and sued Donnell for specific performance. Who will win in that lawsuit? (Circle the best answer.)

Coleman

Donnell

26. Assume the same facts as asserted in Question 25 except that Donnell did not refuse to accept title. Instead Coleman gave Donnell a general warranty deed to Blackacre that contained the covenant against encumbrances and the covenant of quiet enjoyment. Three years after Coleman delivered the deed to Donnell, Donnell sued Coleman asserting the sole cause of action that Coleman did not deliver marketable title. Who will win in that lawsuit? (Circle the best answer on the next page.)

Coleman

Donnell

27. Assume the same facts asserted in Question 25, except that, instead of suing for failure to deliver marketable title, Donnell sued Coleman for breaching the covenant against encumbrances. Who will win in that lawsuit? (Circle the best answer.)

Coleman

Donnell

**Questions 28 through 31 are based on the following facts:**

Oliver conveyed Blackacre "to Harold and Wilma." At the time of the grant, Harold and Wilma were legally married to each other.

28. What concurrent estate did Harold and Wilma own at the time of the grant?

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29. Five years after the grant Harold and Wilma got divorced, but continued to own Blackacre together. What concurrent estate did Harold and Wilma own after the divorce?

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30. Two years after the divorce, Harold and Wilma sold Blackacre "to Abigail and Benito as joint tenants." Abigail and Benito were legally married. One year after the sale, Benito died with a valid will that left all of his real estate, including Blackacre, "to my beloved mistress, Missy." After Benito's death, please state all those who own any interest in Blackacre, along with the type of concurrent estate, if any, they own, and the percentage/fractional interest each person owns:

Owner(s):

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Concurrent Estate(s):

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Percentage/Fractional Interests:

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31. Three years after Benito's death, Abigail married Carlito. Upon the marriage of Abigail and Carlito, and without any further transactions between any of the parties, state all those who own any interest in Blackacre, along with the type of concurrent estate, if any, they own, and the percentage/fractional interest each person owns:

Owner(s):

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Concurrent Estate(s):

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Percentage/Fractional Interests:

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**Questions 32 through 37 are based on the following facts:**

Oliver conveyed Blackacre to Harvey and Winnie, "husband and wife, as tenants by the entirety." At the time of the grant, Harvey and Winnie were *not* legally married. Two years after the grant, Harvey and Winnie got married. Ten years after the grant, and unbeknownst to Harvey, Winnie entered into a purchase and sale agreement with Abacore to conveyed all her "right title and interest" to him. Subsequently, Winnie did deliver a general warranty deed to Abacore, which contained the covenant of seisin, covenant of the right to convey, covenant against encumbrances and the covenant of quiet enjoyment.

32. What estate did Abacore own after the sale from Winnie to Abacore?

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33. Which, if any, of the covenants for title did Winnie breach upon the sale of Blackacre to Abacore? (Circle any or all of the appropriate covenants.)

covenant of seisin                      covenant of the right to convey                      covenant against encumbrances

34. As to each of the covenants listed in the facts preceding Question 32, please explain why each was or was not breached:

covenant of seisin:

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covenant of the right to convey:

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covenant against encumbrances:

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35. Three years after Winnie conveyed to Abacore, Harvey died leaving all his real estate, including Blackacre, "to my darling Winnie." Then, Abacore entered into a purchase and sale agreement to convey his interest in Blackacre to Bennett. The purchase and sale agreement was silent as to the quality of title that Abacore was to deliver. Prior to the closing, Bennett claimed that Abacore lacked marketable title. If Abacore sues Bennett for specific performance, insisting that he had marketable title, who will win?

Bennett

Abacore

36. Assume the same facts stated in Question 35 except that Bennett did not complain about a lack of marketable title. Instead, he purchased Blackacre from Abacore by quitclaim deed. After the sale to Bennett, state all those who own any interest in Blackacre, along with the type of concurrent estate, if any, they own, and the percentage/fractional interest each person owns:

Owner(s):

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Concurrent Estate(s):

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Percentage/Fractional Interests:

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37. Please explain the significance of Abacore's quitclaim deed to Bennett.

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**Questions 38 through 40 are based on the following facts:**

Oscar, the owner of Blackacre, a 20 acre parcel of land with a house on it, gave Bank a \$325,000 mortgage on it in 1999. In 2003 Oscar entered into a written purchase and sale agreement with Bronson in which Oscar agreed to sell Blackacre to Bronson for \$679,000. The purchase and sale agreement required Oscar to deliver "a good, clear record title," but said nothing about marketable title. Bronson found the mortgage to bank by doing a title search and demanded that it be discharged in full prior to the delivery of the deed. Oscar refused to discharge the mortgage prior to delivery of the deed, but did state he would agree to have the entire purchase price held in escrow until the mortgage was discharged. Bronson has refused, and Oscar has sued for specific performance.

38. Who should win that suit?

Bronson

Oscar

39. Assume for this question that Bronson never discovered the mortgage prior to delivery of the deed. He accepted a general warranty deed from Oscar that contained the covenant of

quiet enjoyment and the covenant against encumbrances. In Bronson's suit for breach of marketable title brought after the deed was delivered, who will win?

Bronson

Oscar

40. Assume for this question that Bronson's suit was for breach of one of the deed covenants mentioned in Question 39. Who will win that law suit? ?

Bronson

Oscar

**Questions 41 through 46 are based on the following facts:**

In 1999 Alice conveyed Blackacre to Beppo for \$250,000. Alice gave a special warranty deed with the covenant of quiet enjoyment and covenant against encumbrances. In 2000, Beppo placed an easement on the property in favor of Eddie, and never disclosed it. In 2001 Beppo conveyed Blackacre to Colson for \$300,000. Beppo gave Colson a quitclaim deed. In 2003 Colson conveyed to Danielle for \$350,000. Colson gave Danielle a general warranty deed with the covenant of quiet enjoyment and covenant against encumbrances. After Colson conveyed to Danielle, Eddie began to use the easement. Danielle now wants to sue someone for breach of the covenant against quiet enjoyment and the covenant against encumbrances. Assume that the easement is so extensive that the value of Blackacre is rendered worthless and that there are no statute of limitations problems. Also assume that the state in which Blackacre is located is a so-called "consideration received" jurisdiction.

41. In a suit by Danielle against Colson for breach of deed covenants, who wins? (circle the best answer)

Colson

Danielle

How much \$\$, if any in a "consideration received" jurisdiction? \$ \_\_\_\_\_

How much \$\$, if any in a "consideration paid" jurisdiction? \$ \_\_\_\_\_

42. Briefly explain the reasoning of your answer to Question 41.

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43. In a suit by Danielle against Beppo for breach of deed covenants, who wins(circle the best answer)

Beppo

Danielle

How much \$\$, if any in a "consideration received" jurisdiction? \$ \_\_\_\_\_

How much \$\$, if any in a "consideration paid" jurisdiction? \$ \_\_\_\_\_

44. Briefly explain the reasoning of your answer to Question 43.

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45. In a suit by Danielle against Alice for breach of deed covenants, who wins? (circle one.)

Alice

Danielle

How much \$\$, if any in a "consideration received" jurisdiction? \$ \_\_\_\_\_

How much \$\$, if any in a "consideration paid" jurisdiction? \$ \_\_\_\_\_

46. Briefly explain the reasoning of your answer to Question 45.

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47. In the space provided below the following metes and bounds, courses and distances description, please draw the proper shape of Blackacre, keeping the accompanying compass rose in mind:



Beginning at Main Street, running north by the land now or formerly of Samuel E. Smith one hundred and 00/100 (100.00') feet; thence turning and running due east by the land of said Smith fifteen and 00/00 (15.00') feet; thence turning and running north by the land of said Smith fifteen and 00/00 (15.00') feet to the boundary of the land now or formerly of Jeremiah H. Jones; thence turning and running west by the land of said Jones one hundred and 00/100 (100.00') feet; thence turning and running south by the land now or formerly of Hedley Madden, one hundred fifteen and 00/00 (115.00') feet to said Main Street; thence turning and running east along said Main Street eighty five and 00/100 (85.00') feet to the point of beginning.



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MAIN STREET

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**Questions 48 through 50 are based on the following facts:**

Abraham owned in fee simple absolute Blackacre, a 20 acre parcel of wooded land with a large steel frame building used as a dealership to sell heavy excavation equipment. In 1991, Abraham signed a promissory note and gave a mortgage on Blackacre to the Thirty-Seventh National Bank in the amount of \$450,000. There was no "due on sale" clause in either the mortgage or promissory note. In 1994, Abraham signed another promissory note and gave another mortgage on Blackacre, this time to the Second Street Bank, in the amount of \$125,000. There was no "due on sale" clause in either the mortgage or promissory note. In 1996, Abraham leased Blackacre to Tolland for a term of 30 years. In the lease was a provision that "the lessee hereby agrees that this lease agreement shall be subordinate to any and all mortgages the landlord grants on Blackacre to institutional lenders."

In 2001, Abraham sold Blackacre to Barbara "subject to the Tolland lease and the mortgages to the Thirty-Seventh National Bank and Second Street Bank." In order to finance the acquisition of Blackacre, Barbara signed a promissory note and gave a mortgage to the Twelfth Bank of Nighttime in the amount of \$215,000. As the same time, the Twelfth Bank of Nighttime gave Barbara an equity credit line of \$50,000, and Barbara gave the Twelfth Bank of Nighttime a mortgage to secure the credit line. When the Twelfth Bank of Nighttime's attorney recorded his client's mortgage and equity credit line mortgage, he accidentally recorded the equity credit line first.

Immediately after Barbara closed on Blackacre, the Twelfth Bank of Nighttime sold "the paper" on the equity credit line to the First National Bank of Justice. By 2003 Barbara was in deep financial difficulty and unable to pay any of her mortgages.

48. Assume for this question that the Thirty-Seventh National Bank is foreclosing on Blackacre. Please circle below **all** of the real estate interests the purchaser at foreclosure will take subject to:

First National Bank of Justice

Second Street Bank

Twelfth Bank of Nighttime

Lease to Tolland

49. Assume for this question that the Second Street Bank is foreclosing on Blackacre. Please circle below **all** of the real estate interests the purchaser at foreclosure will take subject to:

First National Bank of Justice

Twelfth Bank of Nighttime

Thirty-Seventh National Bank

Lease to Tolland

50. Can the Second Street Bank obtain a deficiency against Barbara if it does not obtain enough from the foreclosure sale to satisfy the mortgage it was granted?

YES

NO

## **PART TWO**

### **ESSAY QUESTION**

**SUGGESTED TIME: THIRTY (30) MINUTES**

**PERCENTAGE OF EXAM POINTS: 17.5%**

### **INSTRUCTIONS FOR PART TWO:**

This part consists of one (1) short essay question. Please put your answer in a blue book entitled "Part Two," and not into this examination booklet. Please limit your answer to four (4) single-spaced bluebook pages.

### **QUESTION:**

In 2001 Oliver, the owner of Blackacre, a 20 acre parcel of land with a house on it, granted a mortgage to Bee Bop Bank in the amount of \$425,000. In August, 2005, Oliver entered into a written purchase and sale agreement with Agamemnon in which Oliver agreed to sell Blackacre to Agamemnon for \$679,000. The purchase and sale agreement, which set a closing date of November 15, 2005 at the county Registry of Deeds, expressly required Oliver to deliver good record title and also stated, "Seller is under no obligation, express or implied, to deliver marketable title at the time of the closing." The purchase and sale agreement did not address

the mortgage to Bee Bop Bank, and Oliver and Agamemnon did not discuss that mortgage prior to signing the contract.

Agamemnon's title search revealed the mortgage to the Bee Bop Bank, and Agamemnon brought it to Oliver's attention prior to the closing. Oliver has taken the position that he is not legally obligated to discharge or pay off the mortgage. Please discuss the rights, liabilities, duties and obligations of the parties. Of course, please provide complete support for your conclusions.

### **PART THREE**

#### **ESSAY QUESTION**

**SUGGESTED TIME: THIRTY (30) MINUTES**

**PERCENTAGE OF EXAM POINTS: 17.5%**

#### **INSTRUCTIONS FOR PART THREE:**

This part consists of one (1) short essay question. Please put your answer in a blue book entitled "Part Three," and not into this examination booklet. Please limit your answer to four (4) single-spaced bluebook pages.

#### **QUESTION:**

Atticus owned in fee simple absolute a tract of land named "Maycomb." By valid deed, he conveyed Maycomb to "Boo for life, and then to Boo's widow for her life, and then to Scout and her heirs if Scout survives Boo.

Please state all estates and interests owned in Maycomb immediately after Atticus's conveyance, remembering to: (1) identify the owner of each, and (2) explain how you reached your conclusions. In answering the question, please assume that the common law rule against perpetuities exists and is in full force.

**END OF EXAM**

**HAVE A HAPPY HOLIDAY!**

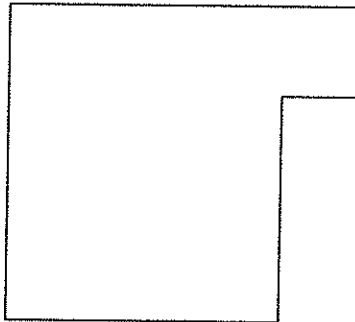
**PROPERTY FINAL EXAM 2005  
ANSWERS TO PART ONE**

1. YES
2. Intentionally going on someone else's property without permission.
3. Intent: They intended to go on Sorrentino's roof.  
  
Someone Else's Property: They were on the property of Sorrentino.  
  
Without Permission: Sorrentino never gave permission; he even asked them to leave.
4. Two out of three:
  - a. societal need to deliver information (State v. Shack)
  - b. necessity/emergency
  - c. blocked road/public way
5. NO
6.
  - A. Open and Notorious
  - B. Exclusive
  - C. Hostile
  - D. Actual
  - E. Continuous
7. A. Open & Notorious is holding yourself out to the community as the owner; acting toward the property that an owner would.  
  
B. Exclusive is possessing the property to the exclusion of the owner.  
  
C. Hostile is occupying the property in opposition to the owner's right of exclusive possession, i.e., trespass; lack of permission is essential.  
  
D. Actual is being physically on the property. In addition, with one exception (color of title) you only obtain title to the portion of the property that you actually possess  
  
E. Continuous is satisfying the previous four elements for the entire term of the statute of limitations (20 years in most cases).
8. A. The McNeils were doing things that property owners customarily do: make improvements, upkeep, etc.  
  
B. The tougher one; the owners of Whiteacre did also make some use of the disputed area, but this was up to 1973 (more than 20 years ago).  
  
C. The only evidence of permission is sometime in the 1980s (not clear whether it was more than 20 years ago). At all other times, the McNeills were trespassers.  
  
D. The McNeill's improvements, maintenance and storage activities on the disputed area constituted actual use.  
  
E. The McNeill's use was continuous for well over 20 years provided the permission given in the 1980s didn't interrupt it.
9. YES
10. She meets the elements of "tacking": there was privity of title because of the deed (formal transfer recognized by the law) from her parents.
11. NO
12. No faulty deed or will.
13. Race-Notice
14. Cally
15. Cally
16. Notice (pure notice)
17. Cally
18. Cally
19. Life estate
20. Absolutely vested remainder (I'll also accept contingent remainder upon the assumption that the student logically imputes a condition

precedent – that Coleman must survive Billy – in order to get any interest)

- 21. Executory Interest (It doesn't violate RAP because of the time limitation)
- 22. None (It's never coming back)
- 23. Yes
- 24. American Cancer Society (If student put contingent remainder for Coleman, then add Coleman as well)
- 25. Donnell
- 26. Coleman
- 27. Coleman (there are no encumbrances)
- 28. Tenancy by the Entirety
- 29. Tenancy in Common
- 30. Owner: Abigail  
Concurrent Estate: none (sole ownership)  
% Interest: 100%
- 31. Owner: Abigail  
Concurrent Estate: none (sole ownership)  
% Interest: 100%
- 32. A 50% undivided interest as tenants in common with Abigail in fee simple.
- 33. Circle none of them
- 34. Seisin: Winnie was in fact the owner as she covenanted.  
  
Convey: Winnie did in fact have the right to sell (no tenancy by the entirety)  
  
Encumbrances: There were none.
- 35. Bennett (although estoppel by deed vested the entire title in Albacore, this likely involves a law suit to extinguish Winnie's claim)
- 36. Owner: Bennett  
Concurrent Estate: none (sole ownership)  
% Interest: 100%
- 37. Because a quitclaim contains no protective covenants for Bennett's benefit. Bennett has

no cause of action against Albacore based on the deed.

- 38. Oscar
- 39. Oscar
- 40. Bronson
- 41. Danielle  
CR: \$350,000  
CP: \$350,000
- 42. C gave D a general warranty deed, which covenanted against encumbrances regardless of who created them, and when they were created
- 43. Beppo  
CR: \$0  
CP: \$0
- 44. Beppo gave a quitclaim deed, which is an "as is" deed giving no covenants or protection.
- 45. Alice  
CR: \$0  
CP: \$0
- 46. Because the easement was created *after* Alice sold to Beppo, Alice did not breach any covenants.
- 47. 
- 48. Circle none.
- 49. Circle only: 37<sup>th</sup> National Bank
- 50. YES