

W/ans

**PROPERTY
FINAL EXAMINATION
Professor Peter M. Malaguti
Fall 2010 Semester**

Please provide **both** numbers requested below.

YOUR ENTIRE STUDENT ID NUMBER:

_____ 5 9

YOUR PR NUMBER: _____

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.

YOU ARE NOT TO HAVE A CELL PHONE, OR ANY OTHER DEVICE THAT CAN TRANSMIT AND/OR RETAIN INFORMATION, ON YOUR PERSON DURING THIS EXAM. POSSESSION OF A CELL PHONE OR SUCH OTHER DEVICE SHALL BE TREATED, AND DEALT WITH, AS CHEATING.

Please take three (3) blue books. Please write "Scrap" on one of the blue books. Please write "Two" on one of the other two blue books and "Three" on the third blue book. Please write your student id number and PR number *on all three* blue books.

Please do not identify yourself in any way other than by social security number and PR 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.

During this exam, unless otherwise stated or implicated by the facts, you are to use multistate law.

This examination consists of three (3) parts:

Part One consists of several 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. 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 a blue book. Please limit your answers to the lines provided below each question. Do not sandwich extra lines into the lines provided. I will not read beyond the lines provided under each question, and will not read doubled-up text; I

am not kidding about this. 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. Part One counts for 2/3 of your exam (67 out of 100 points).

Please note that sometimes the lines given for your answers in Part One run onto the next page.

Part two consists of one (1) short essay question. Please put your answer in the blue book entitled "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 two counts for 1/6 of your exam (16½ out of 100 points).

Part three consists of one (1) short essay question. Please put your answer in the blue book entitled "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). Part three counts for 1/6 of your exam (16½ out of 100 points).

Despite the fact that the suggested time for all three parts is three hours, I 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.

I will tell you when there are 15 minutes left, at which point *no one* may leave the room. I will also warn you when there are 5 minutes left and 1 minute left. When I 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!

Part One – Suggested Time: 2 Hours

Questions 1 through 12 are based on the following fact pattern:

Honey bees comprise the genus *Apis* in the family *Apidae*, order *Hymenoptera*. Known specifically as *Apis mellifera*, the honey bee is one of several species of bees that produce honey. The honey bee is a social insect that can survive only as a member of a community called a “colony.” The colony inhabits an enclosed cavity, called, of course, a “hive” or “nest”.

The average honey bee hive houses 50,000 bees, but at times well over 80,000 honey bees can live in a hive. A honey bee colony consists of a “queen,” “drones” (male honey bees), and “workers” (non-reproductive female honey bees), each performing vital functions in a caste-like system to maintain the health and prosperity of the colony. Each caste possesses its own special instincts tailored to the needs of the colony.

The queen is the only sexually productive female in the colony and accordingly is the mother of all drones, workers, and future queens. Her capacity for laying eggs is stupefying, often exceeding 1500 eggs a day (roughly the equivalent of her own body weight). Anatomically, the queen is strikingly different from the drones and workers. Her body is long, with a much larger abdomen than a worker bee. Her “mandibles,” or jaws, contain sharp cutting teeth as opposed to the toothless jaws of her offspring. The queen has a curved, smooth stinger that can be used repeatedly without endangering her own life. In contrast, the worker honey bees are armed with straight, barbed stingers that remained anchored in the flesh of their victims. In an attempt to remove their stingers after a sting, workers tear their internal organs and later die. But the queen bee’s anatomy lacks the working tools possessed by worker bees, such as pollen baskets, beeswax-secreting glands, and a well-developed honey sac. The average lifespan of the queen is one to three years.

Worker bees are the most numerous members of the colony. Workers build and maintain the nest and care for the brood. They build the nest from wax secreted from glands in their abdomen. The hexagonal cells constructed by the workers are arranged in a latticework known as the “comb.” The cells of the comb provide the internal structure of the nest; comb used for storage of honey is called “honeycomb.” Workers leave the hive to gather nectar, pollen, water, and “propolis,” a gummy substance used to seal and caulk the exterior of the hive. They convert the nectar to honey, clean the comb, and feed the larvae, drones, and the queen. They also ventilate the nest and when necessary, and defend the colony with their stings. Workers do not mate and therefore can not produce fertile eggs.

As with all bees, pollen is the principal source of protein, fat, minerals, and vitamins, the food elements essential for the growth and development of larvae of all three castes. Adult bees can subsist on honey or sugar, a pure carbohydrate diet. For the first three weeks of their adult lives, the workers confine their labors to building the honeycomb, cleaning and polishing the cells, feeding the young and the queen, controlling the temperature, evaporating the water from the nectar until it thickens as honey, and many other tasks. At the end of this period, they function as field bees and defenders of the colony. The workers that develop early in the season live extremely busy lives, which, from egg to death, last about six weeks. Worker bees reared late in the fall usually live until spring, since they have little to do in the winter except eat and keep warm. Unlike other species of bees, honey bees do not hibernate; the colony survives the winter as a group of active adult bees.

Drones are male honey bees. They are stingless, defenseless, and unable to feed themselves; the worker bees must feed them. Drones have no pollen baskets or wax glands and cannot secrete royal jelly. Their one function is to mate with new queens. After mating, which always takes place in flight, in the open air, a drone dies almost immediately. The queen usually mates with six or more drones in the course of a few days. Drones are prevalent in colonies of bees in the spring and summer months. As fall approaches, they are driven out of the nests by the workers and left to perish.

Workers collect flower nectar. Upon entering the hive with a full honey sac, which is an enlargement of the esophagus, the field worker bee regurgitates the contents into the mouth of a young worker, called a "house bee," or "nurse bee." The house bee deposits the nectar in a cell and carries out the tasks necessary to convert the nectar to honey. When the honey is fully ripened, the bees seal the cell with an airtight wax capping. Both old and young workers are required to store the winter supplies of honey.

Worker bees use their hind legs to carry pollen into the nest, which they place directly in the cells. The pollen of a given load is derived mostly from plants of one species, which accounts for the honey bee's outstanding role as pollinator. If it flew from one flower species to another, it would not be effective in the transfer of pollen, but by confining its visits on a given trip to the blossoms of a single species, it provides the cross-pollination required in many varieties of plants.

Honey bees have become the primary source of pollination for approximately one-fourth of all crops produced in the United States and some other countries. The value of the crops that rely on such pollination has been estimated as high as \$10 billion annually in the United States. Examples of fruit crops that rely on honey bees are almonds, apples, apricots, avocados, blackberries, blueberries, cantaloupes, cherries, cranberries, cucumbers, pears, raspberries, strawberries and watermelons. The seeds of many vegetables are also produced with honey bee pollination; examples include alfalfa, asparagus, broccoli, brussel sprouts, cabbage, carrots, clover, cotton, cucumbers, onions, radishes, squash, sweet clover, and turnips.

Many species of wild pollinators have disappeared from the land as their habitats have been destroyed or altered by humans. The honey bee has taken over as pollinator of many of the wild plants that remain; its ecological value in this regard is tremendous. Additionally, honey bees are the sole source of honey and beeswax, a fine wax with unusual qualities. Additionally, propolis has antibacterial properties. Honey bee venom is extracted for the production of anti-venom therapy and is being investigated as a treatment for several serious diseases of the muscles, connective tissue, and immune system, including multiple sclerosis and arthritis.

* * *

At some point humans began to domesticate wild bees in artificial hives made from hollow logs, wooden boxes, pottery vessels, and woven straw baskets. Apiculture – beekeeping – is the human maintenance of honey bee colonies using scientific methods. A beekeeper, or "apiarist," manages bees in order to collect their honey and beeswax, to pollinate crops, or to produce bees for sale to other beekeepers. The location where bees are kept is called an "apiary" or "bee yard." The science of beekeeping has advanced substantially since the days of wooden logs, etc. Today, most beekeepers use moveable frame hives that allow the bees to do their work around the apiary, yet

return to the artificial hive where the honey later can be taken. Bees will not wander off to other colonies. They always return to their own hive and own colony.

A beekeeper's primary tasks in hive management are to assess the behavior of the bees, to monitor and anticipate the space needed by the colony, and to treat the colony for diseases. Beekeepers have a yearly set of activities that are required for good management of their hives. During the winter, equipment is typically repaired, painted, or replaced. In the late winter, the beekeeper will assess whether the colony has enough food to last until the spring. When the bees become active with the onset of springtime, the keeper will make sure that the brood nest is being formed in the lower tiers of the colony, remove any damaged equipment, and provide food if the colony needs an extra boost. As the weather reliably warms and flowers begin to appear, the primary task becomes monitoring the space needs of the hive. Once spring arrives, a beekeeper will visit each colony at least every two weeks to check on the bees. The beekeeper will remove honey made in the spring and early summer, leaving the bees an opportunity to rebuild the honey stores they will need to sustain them through the winter.

In past centuries, taking honey from wild colonies usually involved subduing the bees with smoke and breaking open the area of the hive where the colony was located. The honeycombs were torn out and destroyed along with the eggs and larvae. The honey was strained through a sieve or a basket to remove the broken pieces of comb and any other solids from the liquid honey. Modern beekeepers, however, have the benefit of moveable frame hives, and when the honey is removed using a hive tool and extracted from the honeycomb frames, the beeswax can be returned to the hive for refilling by the worker bees.

Exactly how a beekeeper removes honey frames from beehives depends on the number of frames and the number of colonies that the beekeeper is managing. A hobby beekeeper may harvest just a few frames of honey, while a large beekeeping operation might harvest hundreds of frames. The first challenge is to remove the bees from the frames of honey. A hobbyist may simply remove individual frames and use a soft bee brush to dust off the adult bees before taking the honey away, while a larger operation will use a machine – a “bee blower” – that creates forced air to blow the adult worker bees off the honey frames. Another technique is the use of chemical bee repellents, either benzaldehyde (almond oil) or butyric anhydride. A few drops of these liquids are placed on a board that is specially designed for hive fumigation, and the board is placed for two to five minutes on top of the honey frames. The bees in the honey area will move away, and the beekeeper can take the honey off but leave the bees inside the colony. If used properly, chemical repellents are effective, but if overused, they can disrupt the entire colony.

The next task is to remove the honey from the combs. Each frame of honey is capped with a thin layer of beeswax that must be removed so that the honey can be extracted. The cappings can be removed with an uncapping fork, an uncapping knife, or another mechanical tool. Next, the frames are put into a honey extractor, which works like a large salad spinner. As the extractor rotates, the honey is forced out of the frames and down into a large holding vessel, and then the honey is usually filtered to remove large bits of wax. In some larger honey-extraction facilities, the honey is heated so that it flows readily through the extraction and filtration process, but smaller honey extractors do not heat the honey as it is being processed.

The best honey produced in America is tupelo honey, made from the blossoms of the tupelo gum tree, *nysa aquatica*. The tupelo gum tree grows in flooded forest areas in states such as Florida, Louisiana, Georgia and Virginia, as well as along the Mississippi River, but tupelo honey is mainly only produced commercially in areas along the Choctawhatchee, Apalachicola and Ochlockonee rivers in Florida. Employing the pollen of the white tupelo gum tree, *nysa ogeche*, tupelo honey is valued for its uniquely delicious flavor and its inability to granulate.

White tupelo honey is sometimes called fine tupelo honey and is the most expensive honey because it is the most expensive to produce. The beekeepers must take care to clean the combs at the right time so that when the white tupelo gum tree blossoms only the honey from these blossoms is collected.

* * *

Beeson Barry, a master beekeeper from Wewahitchka, Florida, specialized in the production of tupelo honey until the State of Florida took the portion of his property supporting the apiary by eminent domain to construct a highway. Unable to practice his trade, and becoming increasingly depressed, Beeson wandered the county observing local bee operations and expatiating about beekeeping with old friends, who eventually came to worry about their friend's obvious depression and worsening economic condition. Beeson seemed to have no options.

One morning, Beeson decided to end it all. Toting a handgun, he walked to the rear section of his remaining property intending to accomplish the dread deed. The sun shone through the trees, hindering his ability to assay the landscape. As he put the gun to his head and girded for the impact, a passing cloud momentarily softened the sun's rays and Beeson saw before him something he had never seen on that part of his property: a tupelo gum tree. But this was not just any tupelo gum tree; it was a tupelo gum tree teeming with hyperactive tupelo honey bees. Beeson lowered his gun and realized that only divine intervention could have supplied this newfound tree; his life was about to begin anew. Beeson went to the tree, extracted a Swiss Army knife from his pocket, and carved his initials – "BB" – into the tree, a common act employed by apiarists to mark their territory.

Beeson didn't waste time in reestablishing his profession; he set up his moveable frame hives around the tree within hours. Toward the end of the day, his neighbor, Ulee Jackson, came over to see what was going on. Beeson described his gleeful discovery and announced his plans to put his life back on track. Ulee was thrilled for his friend, offered profuse congratulations, and brought over some good bourbon for the two to sip on while they savored Beeson's good fortune. What neither man realized, however, was that the tupelo gum tree, and now Beeson's frame hives, were located on Ulee's land.

Day after day, Beeson tended his hives as described above. His efforts paid off and he soon was again supporting himself. Often, Ulee came over to talk to Beeson. The two discussed their respective beekeeping businesses and often offered each other advice. Not once did Ulee question whether Beeson's frames were on his own property. Not once did Beeson ever assume or believe that the frames were not on his own property.

Question 1 is on the next page.

Assume for the remaining questions related to this fact pattern that Beeson carried on his beekeeping activities on Ulee's land as described for 11 years, and that Ulee continued to offer Beeson advice and further continued not to realize that Beeson was on his land rather than Beeson's. After 11 years, Beeson died and left his real estate to his daughter, Helga, who continued the beekeeping activities. For another 10 years, Ulee continued to support Helga as he had supported her father.

- 8. Please state the five (5) elements of adverse possession.
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - v. _____

- 9. In the space provided below, please define and describe each of the elements you just listed above.
 - i. _____

 - ii. _____

iii.

iv.

v.

10. In the space below, please describe “tacking” and its elements.

Questions 13 through 18 are based on the following fact pattern:

Thirty years ago, Penelope Pious conveyed land by warranty deed the Holy Schmoly Evangelical Church “so long as the Church erects a church building within a year and maintains the land as its principal place of religious practice, but if not to the International Society of Apiculturists (ISA).”

13. What is the state of the title without applying the rule against perpetuities?

14. What is the state of the title, applying the rule against perpetuities?

Question 15 is on the next page.

20. State the specific type of that relationship between Ben and Al at common law?

21. What was the standard of care that Ben owed to Al under the specific type of that relationship you identified in your answer to the preceding question?

22. What is the standard of care that Ben owed Al under the modern rule?

After picking up the stereo system from the distribution center, Ben walked out to the parking lot to get to his car. He put the package on the roof of the car while he fumbled through his coat pockets to find the car keys. Ben dropped the keys as he pulled them out of his pocket. As he bent down to get the keys, Callie, who had been watching Ben leave the distribution center, saw his opportunity, grabbed the package, and dashed off before Ben could reach.

Out of breath and tired of running, Callie stopped at Mollie's Pub to quaff a cold beer. Upon entering the establishment, Callie placed the package on top of the bar and made his order. Six or seven quaffs later, Callie settled his tab and left the pub, entirely forgetting about the package he had brought in.

Question 23 is on the next page.

26. In the space provided below, please apply the facts to the law to justify your conclusion.

27. Please place the four people mentioned in the facts into the proper order of rights in the package, with the person having the most rights being listed below in space number "i" and the person with the least rights being listed below in space number "iv."

- i. _____
- ii. _____
- iii. _____
- iv. _____

Questions 28 through 32 are based on the following fact pattern:

On March 1, 2003, Lou, as landlord, leased Millacre to Tim, as tenant, by written lease for a term of 10 years. The lease was for commercial use, and the rent was \$3,500 a month. The lease was silent on the question whether Tim could assign or sublease Millacre.

Tim occupied Millacre from March 1, 2003 to February 28, 2005, and paid all his rent when it became due. As of March 1, 2005, Tim "assigned all [his] right, title and interest in Millacre" to Tammy.

28. Based on these facts, did Tim have the authority to "assigned all [his] right, title and interest" to Tammy? (Circle only one.)

YES

NO

29. In the space provided below, please apply the facts to the law to justify your conclusion.

Tammy moved in immediately and made rental payments to Lou as required under the original lease until, as of March 1, 2007, Tammy “assigned all [her] right, title and interest to Tony for a term of five (5) years.” Tony immediately moved in and began to pay the rent called for in the lease until January 1, 2008, when he stopped paying any rent at all.

In March 2008, Lou brought a breach of lease action against both Tammy and Tony to collect outstanding rent.

30. Absent any valid defenses, Lou should recover a judgment for the outstanding rent against:

YOU MAY CIRCLE ONE OR BOTH OF THE ANSWERS BELOW.

TAMMY

TONY

For the next set of questions, assume that Tony did pay all rent required by the original lease, and that Lou did not sue him and Tammy as of that time. As of September 1, 2010, Tony “assigned all [his] right, title and interest in Millacre” to Toliver. Toliver never paid any rent, and rent is now due and owing for the months of September 2010, October 2010 and November 2010.

31. Lou desires to bring a contract action to collect the \$10,500 he is owed in back rent. Absent any valid defenses, Lou should recover a judgment for the outstanding rent against:

YOU MAY CIRCLE ANY, SOME OR ALL OF THE ANSWERS BELOW.

TAMMY

TONY

TOLIVER

32. In the space provided below, please fully explain why each person is or is not liable under Lou's law suit.

TAMMY: _____

TONY: _____

TOLIVER: _____

Questions 33 through 37 are based on the following fact pattern:

Tammy leased a two-bedroom apartment from Larry under a written lease that: (1) identified the parties, (2) described the land by its proper address and apartment number, (3) stated the proper term, which began on January 1, 2009 and ended at midnight on December 31, 2009, and (4) was signed by both parties. The lease made no provisions for any extension after December 31, 2009.

As the end of the lease term approached, neither Tammy nor Larry notified the other of their intentions regarding a new lease term or extension of the current lease. At the end of the lease term on December 31, 2009, Tammy remained in the apartment. On January 1, 2010, Tammy mailed to Larry a rent check in the same amount as her payments for each of the previous twelve months. It is now January 4, 2010 and Larry has not deposited or cashed the check.

33. What kind of a tenancy existed at the inception of the tenancy between Larry and Tammy?

34. In the space provided below, please apply the facts to the law to justify your answer to the previous question.

35. What kind of a tenancy existed between Larry and Tammy on January 4, 2010 as Larry was contemplating what to do with Tammy's rent check?

36. What will be the effect of a decision by Larry to endorse and deposit the check he received from Tammy in January 2010?

37. In the space provided below, please apply the facts to the law to justify your answer to the previous question.

Questions 38 through 40 are based on the following fact pattern:

Tom Buchanan owned West Egg, a vacant lot, in fee simple absolute. In 1995, he conveyed West Egg by quitclaim deed to Myrtle Wilson, his secret mistress, in consideration of "love and affection." Neither Buchanan nor Myrtle told anyone of the conveyance.

In 2006, Buchanan sold West Egg to Nick Carraway for \$525,000 by a special warranty deed that included the covenant of seisin, the covenant of quiet enjoyment, and the covenant of further assurances. Carraway was unaware of Buchanan's prior deed to Myrtle Wilson.

In 2007, Carraway sold West Egg to Jay Gatsby by a special warranty deed that included the covenant of seisin, the covenant of quiet enjoyment, and the covenant of further assurances. Gatsby also was unaware of Buchanan's prior deed to Myrtle Wilson.

In 2009, Buchanan and Myrtle ended their love affair and Myrtle brought a successful ejectment action against Gatsby that forced him to have to move off of West Egg. In turn, Gatsby has sued Carraway and Buchanan for breaching their deed covenants.

38. In his law suit, Gatsby will:

YOU MAY CIRCLE ONE ANSWER BELOW.

PREVAIL AGAINST
CARRAWAY ONLY

PREVAIL AGAINST
BUCHANAN ONLY

PREVAIL AGAINST BOTH
CARRAWAY AND BUCHANAN

PREVAIL AGAINST NEITHER
CARRAWAY OR BUCHANAN

Question 39 is on the next page.

Questions 39 through 41 are based on the following fact pattern:

Albert borrowed money from the JP South Bank and executed a promissory note for the amount secured by a mortgage on his residence. Several years later, Albert sold his residence to Bertram. As provided by the contract of sale, the deed to Bertram provided that Bertram agreed "to assume the existing mortgage debt to the JP South Bank." Subsequently, Bertram defaulted on the mortgage loan to the JP South Bank, and the JP South Bank initiated appropriate foreclosure proceedings. The foreclosure sale resulted in a deficiency and the JP South Bank has sued both Albert and Bertram for the deficiency.

39. The JP South Bank's law suit seeking the deficiency should be based on:

YOU MAY CIRCLE ONE OR BOTH OF THE ANSWERS BELOW.

THE PROMISSORY NOTE

THE MORTGAGE

40. The JP South Bank will prevail against:

YOU MAY CIRCLE ONLY ONE OF THE ANSWERS BELOW.

ALBERT

BERTRAM

BOTH ALBERT
AND BERTRAM

NEITHER ALBERT
NOR BERTRAM

41. In the space provided below, please apply the facts to the law to justify your answer to the previous two questions.

Questions 42 and 43 are based on the following fact pattern:

Sanctus, who owned a single family house, entered into a handwritten agreement with Balthus under which Balthus would purchase the house. Both Sanctus and Balthus signed the handwritten agreement, which was unconditional, named both parties, properly described the real estate, and stated both a closing date and the purchase price. The house on the land had been Sanctus's home, but he had moved to an apartment, so the house was vacant at all times relevant to the proposed transaction.

Three weeks after the parties had entered into their agreement, and one week after Balthus had obtained a written mortgage lending commitment from a lender, but prior to the closing date, lightning struck the house and it burned to the ground. The loss was not insured, because three years earlier, the seller had let his homeowner's insurance policy lapse after he had paid his mortgage debt in full.

The handwritten contract was wholly silent as to matters of financing, risk of loss, and insurance. Balthus has declared the contract voided by the fire, but Sanctus has asserted a right to enforce the contract despite the loss.

42. In a law suit brought to determine the rights of the parties, a court will find:

YOU MAY CIRCLE ONLY ONE OF THE ANSWERS BELOW.

BALTHUS MUST PURCHASE AND
PAY THE FULL PURCHASE PRICE

BALTHUS MUST PURCHASE BUT
WILL HAVE TO PAY THE PURCHASE
PRICE LESS THE COST OF REPLACING
THE HOUSE THAT BURNED

BALTHUS WILL NOT HAVE TO
PURCHASE AND WILL RECOVER
ANY DEPOSITS HE HAS PAID

Question 43 is on the next page.

Questions 46 through 48 are based on the following fact pattern:

Twenty-five years ago, Farmer Brown, who owned a 45-acre tract of farm land, conveyed 40 of the 45 acres to Dennis DaVelopa by a warranty deed. Farmer Brown retained the rear five-acre portion of the land and continues to live there in a large farmhouse. DaVelopa promptly and properly recorded the deed from Farmer Brown. It contained the following language: "It is a term and condition of this deed, which shall be a covenant running with the land and binding on all owners, their heirs and assigns, that no use shall be made of any portion of the 40-acre tract of land described in this deed except for residential purposes."

Subsequently, DaVelopa fully developed the 40-acre tract into a residential subdivision consisting of 40 lots with a single-family residence on each lot. Although there have been multiple transfers of ownership of each of the 40 lots within the subdivision, none of them included a reference to the quoted provision in the deed from the man to DaVelopa. Nor did any deed to a subdivision lot create any new covenants restricting use.

Last year, a major new medical center was constructed adjacent to the subdivision. Dotty Medico, a doctor who owns a house in the subdivision wishes to relocate her medical offices to her house. For the first time, Dotty learned of the restrictive covenant in the deed from Farmer Brown to DaVelopa. The applicable zoning ordinance would permit Dotty's intended use. Manny Manna, an owner of one of the house lots in the subdivision, objects to Dotty's proposed use of her property.

46. Will Manny prevail in enforcing the covenant by a law suit seeking monetary damages?
(Circle only one.)

YES

NO

47. Would your answer to the previous question be different if Manny's suit was for an injunction seeking to restrain Dotty's use of her home as a medical office? (Circle only one.)

YES

NO

48. In the space provided below, please apply the facts to the law to justify your answer to the previous two questions.

Questions 49 and 50 are based on the following fact pattern:

Five years ago, Abigail, who owned a vacant lot in a residential area, borrowed \$25,000 from a Freddy and gave Freddy a note for \$25,000 due in five years, secured by a mortgage on the lot. Freddy did not record the mortgage. Three years ago, Abigail discovered that the friend had not recorded his mortgage. She sold the lot to Barbi for \$50,000. Barbi, who knew nothing of the mortgage to Freddy, did not record her deed at that time.

One month after the sale to Barbi, Freddy discovered the sale to Barbi, recorded his \$25,000 mortgage, and notified Barbi that he held a \$25,000 mortgage on the lot.

After learning of Freddy’s mortgage, Barbi immediately recorded her deed and brought a law suit against Freddy seeking a declaratory judgment that Freddy’s mortgage and note are not enforceable against her. The recording act of the jurisdiction provides: “No conveyance or mortgage of real property shall be good against subsequent purchasers for value and without notice unless the same be recorded according to law.”

49. In that law suit, Barbi will:

PREVAIL

LOSE

50. In the space provided below, please apply the facts to the law to justify your answer to the previous two questions.

**PROPERTY
FINAL EXAMINATION
ANSWERS AND EXPLANATIONS
PART ONE
Professor Peter M. Malaguti
Fall 2010 Semester**

Questions 1 through 12 are based on the following fact pattern:

Honey bees comprise the genus *Apis* in the family *Apidae*, order *Hymenoptera*. Known specifically as *Apis mellifera*, the honey bee is one of several species of bees that produce honey. The honey bee is a social insect that can survive only as a member of a community called a “colony.” The colony inhabits an enclosed cavity, called, of course, a “hive” or “nest”.

The average honey bee hive houses 50,000 bees, but at times well over 80,000 honey bees can live in a hive. A honey bee colony consists of a “queen,” “drones” (male honey bees), and “workers” (non-reproductive female honey bees), each performing vital functions in a caste-like system to maintain the health and prosperity of the colony. Each caste possesses its own special instincts tailored to the needs of the colony.

The queen is the only sexually productive female in the colony and accordingly is the mother of all drones, workers, and future queens. Her capacity for laying eggs is stupefying, often exceeding 1500 eggs a day (roughly the equivalent of her own body weight). Anatomically, the queen is strikingly different from the drones and workers. Her body is long, with a much larger abdomen than a worker bee. Her “mandibles,” or jaws, contain sharp cutting teeth as opposed to the toothless jaws of her offspring. The queen has a curved, smooth stinger that can be used repeatedly without endangering her own life. In contrast, the worker honey bees are armed with straight, barbed stingers that remained anchored in the flesh of their victims. In an attempt to remove their stingers after a sting, workers tear their internal organs and later die. But the queen bee’s anatomy lacks the working tools possessed by worker bees, such as pollen baskets, beeswax-secreting glands, and a well-developed honey sac. The average lifespan of the queen is one to three years.

Worker bees are the most numerous members of the colony. Workers build and maintain the nest and care for the brood. They build the nest from wax secreted from glands in their abdomen. The hexagonal cells constructed by the workers are arranged in a latticework known as the “comb.” The cells of the comb provide the internal structure of the nest; comb used for storage of honey is called “honeycomb.” Workers leave the hive to gather nectar, pollen, water, and “propolis,” a gummy substance used to seal and caulk the exterior of the hive. They convert the nectar to honey, clean the comb, and feed the larvae, drones, and the queen. They also ventilate the nest and when necessary, and defend the colony with their stings. Workers do not mate and therefore can not produce fertile eggs.

As with all bees, pollen is the principal source of protein, fat, minerals, and vitamins, the food elements essential for the growth and development of larvae of all three castes. Adult bees can subsist on honey or sugar, a pure carbohydrate diet. For the first three weeks of their adult lives, the workers confine their labors to building the honeycomb, cleaning and polishing the cells, feeding the

young and the queen, controlling the temperature, evaporating the water from the nectar until it thickens as honey, and many other tasks. At the end of this period, they function as field bees and defenders of the colony. The workers that develop early in the season live extremely busy lives, which, from egg to death, last about six weeks. Worker bees reared late in the fall usually live until spring, since they have little to do in the winter except eat and keep warm. Unlike other species of bees, honey bees do not hibernate; the colony survives the winter as a group of active adult bees.

Drones are male honey bees. They are stingless, defenseless, and unable to feed themselves; the worker bees must feed them. Drones have no pollen baskets or wax glands and cannot secrete royal jelly. Their one function is to mate with new queens. After mating, which always takes place in flight, in the open air, a drone dies almost immediately. The queen usually mates with six or more drones in the course of a few days. Drones are prevalent in colonies of bees in the spring and summer months. As fall approaches, they are driven out of the nests by the workers and left to perish.

Workers collect flower nectar. Upon entering the hive with a full honey sac, which is an enlargement of the esophagus, the field worker bee regurgitates the contents into the mouth of a young worker, called a "house bee," or "nurse bee." The house bee deposits the nectar in a cell and carries out the tasks necessary to convert the nectar to honey. When the honey is fully ripened, the bees seal the cell with an airtight wax capping. Both old and young workers are required to store the winter supplies of honey.

Worker bees use their hind legs to carry pollen into the nest, which they place directly in the cells. The pollen of a given load is derived mostly from plants of one species, which accounts for the honey bee's outstanding role as pollinator. If it flew from one flower species to another, it would not be effective in the transfer of pollen, but by confining its visits on a given trip to the blossoms of a single species, it provides the cross-pollination required in many varieties of plants.

Honey bees have become the primary source of pollination for approximately one-fourth of all crops produced in the United States and some other countries. The value of the crops that rely on such pollination has been estimated as high as \$10 billion annually in the United States. Examples of fruit crops that rely on honey bees are almonds, apples, apricots, avocados, blackberries, blueberries, cantaloupes, cherries, cranberries, cucumbers, pears, raspberries, strawberries and watermelons. The seeds of many vegetables are also produced with honey bee pollination; examples include alfalfa, asparagus, broccoli, brussel sprouts, cabbage, carrots, clover, cotton, cucumbers, onions, radishes, squash, sweet clover, and turnips.

Many species of wild pollinators have disappeared from the land as their habitats have been destroyed or altered by humans. The honey bee has taken over as pollinator of many of the wild plants that remain; its ecological value in this regard is tremendous. Additionally, honey bees are the sole source of honey and beeswax, a fine wax with unusual qualities. Additionally, propolis has antibacterial properties. Honey bee venom is extracted for the production of anti-venom therapy and is being investigated as a treatment for several serious diseases of the muscles, connective tissue, and immune system, including multiple sclerosis and arthritis.

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At some point humans began to domesticate wild bees in artificial hives made from hollow logs, wooden boxes, pottery vessels, and woven straw baskets. Apiculture – beekeeping – is the human maintenance of honey bee colonies using scientific methods. A beekeeper, or “apiarist,” manages bees in order to collect their honey and beeswax, to pollinate crops, or to produce bees for sale to other beekeepers. The location where bees are kept is called an “apiary” or “bee yard.” The science of beekeeping has advanced substantially since the days of wooden logs, etc. Today, most beekeepers use moveable frame hives that allow the bees to do their work around the apiary, yet return to the artificial hive where the honey later can be taken. Bees will not wander off to other colonies. They always return to their own hive and own colony.

A beekeeper's primary tasks in hive management are to assess the behavior of the bees, to monitor and anticipate the space needed by the colony, and to treat the colony for diseases. Beekeepers have a yearly set of activities that are required for good management of their hives. During the winter, equipment is typically repaired, painted, or replaced. In the late winter, the beekeeper will assess whether the colony has enough food to last until the spring. When the bees become active with the onset of springtime, the keeper will make sure that the brood nest is being formed in the lower tiers of the colony, remove any damaged equipment, and provide food if the colony needs an extra boost. As the weather reliably warms and flowers begin to appear, the primary task becomes monitoring the space needs of the hive. Once spring arrives, a beekeeper will visit each colony at least every two weeks to check on the bees. The beekeeper will remove honey made in the spring and early summer, leaving the bees an opportunity to rebuild the honey stores they will need to sustain them through the winter.

In past centuries, taking honey from wild colonies usually involved subduing the bees with smoke and breaking open the area of the hive where the colony was located. The honeycombs were torn out and destroyed along with the eggs and larvae. The honey was strained through a sieve or a basket to remove the broken pieces of comb and any other solids from the liquid honey. Modern beekeepers, however, have the benefit of moveable frame hives, and when the honey is removed using a hive tool and extracted from the honeycomb frames, the beeswax can be returned to the hive for refilling by the worker bees.

Exactly how a beekeeper removes honey frames from beehives depends on the number of frames and the number of colonies that the beekeeper is managing. A hobby beekeeper may harvest just a few frames of honey, while a large beekeeping operation might harvest hundreds of frames. The first challenge is to remove the bees from the frames of honey. A hobbyist may simply remove individual frames and use a soft bee brush to dust off the adult bees before taking the honey away, while a larger operation will use a machine – a “bee blower” – that creates forced air to blow the adult worker bees off the honey frames. Another technique is the use of chemical bee repellents, either benzaldehyde (almond oil) or butyric anhydride. A few drops of these liquids are placed on a board that is specially designed for hive fumigation, and the board is placed for two to five minutes on top of the honey frames. The bees in the honey area will move away, and the beekeeper can take the honey off but leave the bees inside the colony. If used properly, chemical repellents are effective, but if overused, they can disrupt the entire colony.

The next task is to remove the honey from the combs. Each frame of honey is capped with a thin layer of beeswax that must be removed so that the honey can be extracted. The cappings can be removed with an uncapping fork, an uncapping knife, or another mechanical tool. Next, the frames

are put into a honey extractor, which works like a large salad spinner. As the extractor rotates, the honey is forced out of the frames and down into a large holding vessel, and then the honey is usually filtered to remove large bits of wax. In some larger honey-extraction facilities, the honey is heated so that it flows readily through the extraction and filtration process, but smaller honey extractors do not heat the honey as it is being processed.

The best honey produced in America is tupelo honey, made from the blossoms of the tupelo gum tree, *nysa aquatica*. The tupelo gum tree grows in flooded forest areas in states such as Florida, Louisiana, Georgia and Virginia, as well as along the Mississippi River, but tupelo honey is mainly only produced commercially in areas along the Choctawhatchee, Apalachicola and Ochlockonee rivers in Florida. Employing the pollen of the white tupelo gum tree, *nysa ogeche*, tupelo honey is valued for its uniquely delicious flavor and its inability to granulate.

White tupelo honey is sometimes called fine tupelo honey and is the most expensive honey because it is the most expensive to produce. The beekeepers must take care to clean the combs at the right time so that when the white tupelo gum tree blossoms only the honey from these blossoms is collected.

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Beeson Barry, a master beekeeper from Wewahitchka, Florida, specialized in the production of tupelo honey until the State of Florida took the portion of his property supporting the apiary by eminent domain to construct a highway. Unable to practice his trade, and becoming increasingly depressed, Beeson wandered the county observing local bee operations and expatiating about beekeeping with old friends, who eventually came to worry about their friend's obvious depression and worsening economic condition. Beeson seemed to have no options.

One morning, Beeson decided to end it all. Toting a handgun, he walked to the rear section of his remaining property intending to accomplish the dread deed. The sun shone through the trees, hindering his ability to assay the landscape. As he put the gun to his head and girded for the impact, a passing cloud momentarily softened the sun's rays and Beeson saw before him something he had never seen on that part of his property: a tupelo gum tree. But this was not just any tupelo gum tree; it was a tupelo gum tree teeming with hyperactive tupelo honey bees. Beeson lowered his gun and realized that only divine intervention could have supplied this newfound tree; his life was about to begin anew. Beeson went to the tree, extracted a Swiss Army knife from his pocket, and carved his initials – "BB" – into the tree, a common act employed by apiarists to mark their territory.

Beeson didn't waste time in reestablishing his profession; he set up his moveable frame hives around the tree within hours. Toward the end of the day, his neighbor, Ulee Jackson, came over to see what was going on. Beeson described his gleeful discovery and announced his plans to put his life back on track. Ulee was thrilled for his friend, offered profuse congratulations, and brought over some good bourbon for the two to sip on while they savored Beeson's good fortune. What neither man realized, however, was that the tupelo gum tree, and now Beeson's frame hives, were located on Ulee's land.

Day after day, Beeson tended his hives as described above. His efforts paid off and he soon was again supporting himself. Often, Ulee came over to talk to Beeson. The two discussed their respective beekeeping businesses and often offered each other advice. Not once did Ulee question