Common sense often makes good law.
William O. Douglas

Use your social security number on the blue book and this examination. Write legibly and coherently.

Your grade is based on your knowledge of the law, analysis of the issues and thorough treatment of the issues.

You may write no more than six (6) pages, one side only, or four (4) typed double spaced pages for Part One. Please place your answers in the spaces provided for on Part Two. I will not read anything that exceeds the page limitation. Enjoy your summer!

QUESTION ONE

Consumer Drug Stores of Virginia (CDS) is the nation’s largest retail drugstore chain. It has a retail store at 45 Main Street in North Andover, Massachusetts in a strip mall owned by Messing Development, Inc. of Tewksbury, Massachusetts. Recently Messing Development and CDS entered into a long-term lease so that CDS could expand its store to increase its offerings to customers and increase its customer base. It received a building permit to expand the store and its operating permit allows it to have retail operations from 7:00 a.m. until 11:00 p.m.

Peter and Paula Pudder live immediately behind the strip mall at 12 Second Street in North Andover, with Peters’ elderly mother Ida. They are concerned that the proposed larger store with a drive-up window will create additional noise, trash and lighting issues. This is of special concern as the three family house they live in is occupied by Ida, who is not well and needs her rest, Peter and Paula who convinced Ida to transfer title to the home to them on the promise that would later take care of Peter’s brothers Dan, Jeff and Kirby, and also Rebecca Baker, a tenant who has started to withhold her $1,000 monthly rent because of recent activities at CDS.

Beginning in November of 2006, CDS has had truck deliveries at the rear of its store throughout the week and sometimes between 2 and 4 a.m. in the morning. Not only is there lots of noise from the truck drivers and CDS workers, but the trucks are left running in the winter creating more noise and diesel fumes that often permeate the surrounding neighborhood.

When Peter, Dan, Jeff and Kirby (who all live nearby) discussed this situation with the store operator in North Andover, Billy Budd of Salem, New Hampshire, he said it would stop. Budd claims it has now stopped and says that there is nothing else he can do. He did offer them some coupons for free sleeping pills.
In investigating this matter, Kirby, who is a licensed surveyor, discovered that Messing Development has long had a history of disputes with its neighbors and the foundation for the strip mall encroaches on the property at 12 Second Street. The encroachment runs the entire length of the property for 200 feet and the encroachment is as few as 8 inches to as much as 4 feet at its widest point. It was discovered that this has existed since the building was built in 1983 and cannot be removed except at significant cost to CDS.

Peter and Paula Pudder come into your office to discuss their situation with you. What are their rights and responsibilities? Discuss specifically the procedural issues and remedies that your legal training indicates are likely to be involved in this action.

QUESTION TWO

Lucent Technologies, Inc., a large Massachusetts telecommunications corporation, employs over five thousand employees at its facilities in North Andover, Massachusetts and San Diego, California. Lucent is considered by many to be one of the leaders in emerging technology and internet-related business strategies.

Lucent recently learned that ten individuals, who it believes are its employees, have set up a website on American Online, Inc., a Delaware corporation, called ‘NOTLUCENT.COM’. These individuals have in written materials, chat rooms and bulletin boards displayed information regarding company working conditions, retirement plans, management strategies and products. While a few of the employees are using their real names online, including Mark Jerry who also works for Lucent’s major competitor TATINC of Nashua, New Hampshire, others are using screen names so their actual identity is unknown. All of the individuals appear to work at the company’s North Andover plant since the proprietary information discussed pertains to products only manufactured and distributed at the North Andover plant.

Lucent consults with you regarding what they describe as inappropriate “company bashing.” They are very concerned that their image as a good employer is suffering and that their intellectual property, trademarks and contractual agreements with others are being compromised. Some resellers of their products have cancelled orders for these new products complaining that the information on NOTLUCENT.COM has seriously hurt their ability to drum up new business. Lucent believes that the information on the website helped a company create a product very similar in design, packaging and function to Lucent’s new Echo Reduction Software which enhances the quality of voice and video distributed over the Internet and it’s now losing over $5,000 a month in sales.

Management is incensed at these developments.
Damages

93A and 176D Actions

Wang Test
Declaratory Judgment

Equitable Defenses

Bond