CONVEYANCING

FINAL EXAMINATION

Professor Peter M. Malaguti

Spring 2005 Semester

You may look to the next page to read the instructions, but do not turn beyond that page.
INSTRUCTIONS

Please take three (3) blue books. Write "One," "Two," and "Scrap" on the three blue books. Please write your social security number on all three 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, scrapbook, 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. The only thing you may use as scrap paper is the "scrap" blue book. Please turn in your scrap blue book with your exam blue books 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 four (4) essay questions that count equally. The suggested time for each essay is forty-five (45) minutes. Do not exceed five (5) single-spaced pages for each essay answer. Do not test me on this; I will not read beyond the fifth page of any essay.

Please put your first two essays into Book One, and your last two essays into Book Two.

When you are finished, please put the two essay blue books into your "Scrap" blue book and place them in the box at the front of the room. Please do not hand these materials to me. You may keep this exam booklet.

Unless the facts of the questions suggest otherwise (such as a Massachusetts address), please use "multistate" law. You will receive additional credit for discussing Massachusetts law where it differs from multistate law.

This is a comprehensive examination designed to test your ability to analyze and apply the concepts we covered over the entire semester. You will score points only for a proper recitation of the relevant law, and a proper application of the law to the presented facts in a cogent, efficient manner. This is not a brain dump; you will not receive any points for merely regurgitating pre-memorized law. You should not waste precious time spouting irrelevant law, esoterica or minutiae. Please assume I know the facts, but nothing else. I will not guess that you know concepts you have not explained.

Please make your answers legible. I cannot grade what I cannot read.

I will tell you when there are 15 minutes left in the exam, 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 do not turn to the next page until I tell you to.
The exam begins on the next page.
Question One
Suggested Time: 45 Minutes

Please assume multistate law for this question. In each instance, please explain whether Massachusetts law would produce a different result.

Solaris conveyed Blackacre to Boxford by a general warranty deed for $400,000. Boxford did not immediately record the deed. After Solaris sold to Boxford, Caulfield obtained a civil judgment against Solaris in the amount of $100,000. Caulfield had no actual knowledge of the deed to Boxford when he obtained the judgment against Solaris. He did not immediately record his judgment. Then Boxford recorded his deed. Then Caulfield recorded his judgment. Then Solaris sold Blackacre to Dunedin for $375,000. Dunedin recorded his deed immediately and had no actual knowledge of the judgment to Caulfield, or the deed to Boxford, when he obtained the deed from Solaris.

Assume that there are two pertinent statutes in the jurisdiction pertaining to this question. The first says: “any judgment properly obtained shall be treated in the same manner as any other conveyance or mortgage of real property.” The second statute says: “No conveyance or mortgage of real property shall be good as against a subsequent purchaser for value and without notice unless the same be recorded.”

Please address the following questions:

A. In an action between Boxford and Caulfield in which Boxford claims he is not subject to Caulfield’s judgment, who will win? Please explain.

B. In an action between Caulfield and Dunedin in which Dunedin claims he is not subject to Caulfield’s judgment, who will win? Please explain.

C. In an action between Boxford and Dunedin in which both claim ownership of Blackacre, who will win? Please explain.

D. Would your answer to questions A, B or C have been different if the second statute had instead read as follows: “No conveyance or mortgage of real property shall be good as against a subsequent purchaser for value and without notice, who first records, unless the same be recorded?” Please explain.

Question Two
Suggested Time: 45 Minutes

Please assume multistate law for this question. In each instance, please explain whether Massachusetts law would produce a different result.

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 2004 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. The purchase and sale agreement did not mention the mortgage to Bank, and Oscar and Bronson never discussed that mortgage.

Please address the following questions:

A. For this subpart, assume that, prior to the closing, Bronson discovered the mortgage and demanded that Oscar discharge it. Oscar refused to do so under any circumstances. Is Oscar within his rights in so refusing? Please explain.

B. For this subpart, assume that Bronson did not discover the mortgage until three months after Oscar delivered a special warranty deed, which gave the covenant against encumbrances and the covenant of quiet enjoyment. Bronson wants Oscar to either pay off the mortgage or take back the title to Blackacre. Oscar refuses to do so under any circumstances. Is Oscar within his rights in so refusing? Please explain.

C. For this subpart, assume that shortly before the closing on Blackacre, Bronson discovered the outstanding mortgage. He also discovered another property that he liked much better than Blackacre. In an effort to get out of the deal, and knowing that Oscar did not have much cash or savings on hand, Bronson told Oscar that Oscar was required to discharge the mortgage prior to delivery of the deed and receipt of the purchase price. Oscar said he needed the proceeds from the closing and would allow Bronson to appoint an escrow agent to take the proceeds from the closing, and use them to secure a mortgage discharge of the Bank mortgage right after the closing. Bronson refused to agree to this. At the closing, Bronson refused to accept the deed without first obtaining a discharge. Oscar wants to keep the deposit. Bronson purchased another property and has sued Oscar for a return of the full deposit. Who will win in that lawsuit? Please explain.

Question Three
Suggested Time: 45 Minutes

Please assume multistate law for this question. In each instance, please explain whether Massachusetts law would produce a different result.

In 2000 Alice conveyed Blackacre to Beppo for $250,000. Alice gave a general warranty deed with the covenant of quiet enjoyment and covenant against encumbrances. In 2001, Beppo placed an easement on the property in favor of Eddie, and never disclosed it. In 2002 Beppo conveyed Blackacre to Colson for $300,000. Beppo gave Colson a special warranty deed with the covenant of quiet enjoyment and covenant against encumbrances. In 2004 Colson conveyed to Danielle for $250,000. Colson gave Danielle a multistate quitclaim deed. After Colson conveyed to Danielle,
Eddie began to use the easement, which is so extensive that the value of Blackacre is rendered worthless.

Please address the following questions:

A. Who wins in a suit by Danielle against Colson? Please explain.

B. Who wins in a suit by Danielle against Beppo? Please explain.

C. Who wins in a suit by Danielle against Alice? Please explain.

Question Four
Suggested Time: 45 Minutes

Please assume multistate law for this question. In each instance, please explain whether Massachusetts law would produce a different result.

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, which the grantee assumes and agrees to pay.” 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 late 2004 Barbara was in deep financial difficulty and unable to pay any of her mortgages. Please discuss the rights, duties and liabilities of the parties.

END OF EXAMINATION