YOUR SOCIAL SECURITY NUMBER: ________________________________

INSTRUCTIONS:

Please take three (3) blue books. Write “Part Two” on one blue book. Write “Part Three” on another blue book. Write “Scrap” on the third blue book. Please write your social security number on all three 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 which 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 third blue book 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. The first part consists of 30 short answer questions, and the suggested time is one hour. Please answer the 30 short answer questions in the space provided after the applicable question in this examination booklet, not in a blue book. The first part counts for 30 of a possible 100 points.

The second part is a long essay question, and the suggested time is one hour. Please answer the long essay question in one separate (1) blue book. The second part counts for 35 of a possible 100 points.

The third part consists of two shorter essay questions. Please answer the short essays in one separate blue book. The third part counts for 35 of a possible 100 points.

You may not exceed one blue book each for parts two and three. When you are finished, please put all three blue books and this exam booklet into one of your blue books and hand them in.

Unless the facts of the questions suggest otherwise, please use “multistate” law. Of course, you may gain additional points by addressing Massachusetts or minority jurisdiction viewpoints. Please keep in mind, however, that time is a factor; you should not waste precious time on esoterica or minutiae. Please assume I know the facts, but nothing else.

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

There is a bathroom book at the front of the room. Please sign out and in when you leave the room. Only one person at a time may be out of the room.

You have three and one-half (3-1/2) hours to complete the exam. 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.

GOOD LUCK!
Question One
Suggested Time: 45 minutes

Assume for this question that the jurisdiction, Massachusetts, has a recording statute that says: "Any conveyance of an interest in land shall not be valid against any subsequent purchaser who pays value and takes without notice of that conveyance."

In 1975, Alan Alanson and Bella Bellissima met in Watertown, Massachusetts. They lived happily together for many years in a studio apartment in an old warehouse in Watertown that had been willed to Bella by her grandmother. Alan and Bella were not married. Alan dabbled in holistic medicine and Bella was a massage therapist. At first they just earned enough money to get by, but as public interest in holistic medicine grew, Alan's business began to expand. He opened a factory and office, and his thriving business soon paid him $200,000 a year. Bella, who objected to Alan's capitalistic tendencies, continued to give massages at the apartment for a small fee.

In 1979, when Bella became pregnant, Alan and Bella decided to move to a larger home. For sentimental reasons, they kept the apartment, but never returned there. They found a four bedroom home in Concord, Massachusetts, called “Respite,” which cost $300,000. Relying entirely on Alan’s salary and money for a down payment, Alan and Bella took title to Respite, giving a $200,000 mortgage to the Concord National Bank (CNB). The deed granted title to “Alan and Bella, husband and wife, as tenants by the entirety.”

Prior to the purchase, the CNB’s attorney, I.M. Slowe, searched the title, finding “good and clear record title.” After the closing, I.M. decided to take a brief nap before going to the Registry of Deeds. When he awakened, the Registry had closed for the day. I.M. left the documents on his desk, where they got misplaced in the clutter. His secretary eventually found them and placed them in a filing cabinet.

In 1980, shortly after Alan and Bella had moved out of the studio apartment in Watertown, a former neighbor and friend, Carla Carlson, worried that the empty warehouse might be vandalized, and decided to move into the apartment to keep an eye on things. She restarted the utilities, which Alan and Carla had cancelled. When an overdue tax bill came, Carla paid it. Eventually Carla started a fortune telling business, which attracted a steady stream of customers to the apartment. She has stayed in the apartment ever since.

In February of 1985, Bella decided that she wanted to open a small massage studio in her Concord home. She obtained a $20,000 home equity loan from the CNB, and allowed the Bank to secure the loan with a $15,000 second mortgage on the property. Alan never knew about Bella’s project, and did not sign the second mortgage. I.M. Slowe recorded Bella’s loan and mortgage immediately.

In 1988, Alan, who was not used to handling large amounts of money, developed a severe gambling problem and found himself strapped for cash. Because he had a poor credit history, he borrowed $50,000 from Househome Finance Bank (HFB), in return for a mortgage for all Alan’s right, title and interest in Respite. HFB recorded promptly. Because Bella sensed that her relationship with Alan was in trouble, she demanded that he marry her. They had a private ceremony late in 1988.

By 1992, Alan was having trouble making the payments to HFB, and his business was failing. To solve his financial problems, he agreed to sell Respite to a drinking buddy, Ed Edwards, for $100,000. He told Ed about the mortgage to HFB. Alan’s mistress, Deedee Deere, forged Bella’s name on the documents. Ed did not know he was supposed to record the deed, and hence did not do so. With the money from the sale, Alan and Deedee flew to Bora Bora.
Distraught over Alan’s disappearance, Bella has now decided that she wants to return to the apartment in Watertown where she and Alan were so happy. She has placed Respite on the market. You are Bella’s lawyer. Please advise her as to her rights and liabilities.

Please go onto the next page.
Question Two
Suggested Time: 45 minutes

Samsonov owned Bearacre, an unenclosed parcel of woods, meadows and agricultural land, consisting of approximately 240 acres in the shape of a square. Samsonov had purchased Bearacre from Sinden in 1980. The deed to Samsonov, which was valid and proper in every respect, described Bearacre as follows:

Commencing at a point at the legal boundary of Main Street, Bruinsville, Massachusetts, and heading north by the land now or formerly of Orr, three thousand two hundred sixty-five and 00/100 feet (3,265.00'); thence turning and running west by the land now or formerly of Esposito, three thousand two hundred sixty-five and 00/100 feet (3,265.00'); thence turning and running south by the land now or formerly of Sanderson, three thousand two hundred sixty-five and 00/100 feet (3,265.00'); thence turning and running east along said Main Street, to the point of beginning.

In 1999 Samsonov sold the western half of Bearacre (about 120 acres) to Dafoe for $500,000. The deed delivered to Dafoe described the new parcel, to be known as "Fleetacre," as follows:

Commencing at the point that comprises the northwest corner of my land known as Bearacre, and heading east by the land now or formerly of Esposito, one thousand six hundred thirty-two and 50/100 feet (1,632.50') to the stonewall that divides my land know as Bearacre; thence turning and running south, along said stonewall, three thousand two hundred sixty-five and 00/100 feet (3,265.00') to Main Street, Bruinsville, Massachusetts; thence turning and running west, along said Main Street, one thousand six hundred thirty-two and 50/100 feet (1,632.50') to the western boundary of said Bearacre; thence turning and running north by the land now or formerly of Sanderson, three thousand two hundred sixty-five and 00/100 feet (3,265.00') to the point of beginning. Consisting of a total of 120 acres, more or less.

In reality, the stonewall intersects the northern boundary of Bearacre 2,000 feet to the east of the northwest corner, rather than the 1,632.50 feet provided in the deed from Samsonov to Dafoe. In addition, the stonewall intersects the southern boundary of Bearacre at Main Street 2,000 feet to the east of the southwest corner, rather than the 1,632.50 feet provided in the deed from Samsonov to Dafoe. If one were to use the stonewall (rather than the 1,632.50 foot distance from the western boundary) to mark the eastern boundary of the grant, Dafoe would receive about 147 acres of land rather than about 120 acres of land, an extra 27 acres with an additional value of $112,500.

Dafoe was only able to purchase Fleetacre because the Jacobs National Bank (JNB) loaned him $400,000, which Dafoe secured by granting a mortgage on the property. At the same time, Dafoe obtained from the Guerin-Dallas Stars Mortgage Company (GDSMC) an equity credit line mortgage in the amount of $50,000. Both mortgages employed the same description as the deed that Samsonov delivered to Dafoe. The attorney handling the closing recorded both mortgages right after recording the deed from Samsonov to Dafoe, with the GDSMC mortgage going to record first.

By 2001, the value of Fleetacre had doubled. In order to finance the construction of a spacious new house, Dafoe obtained a loan from the Cheevers-Rockingham Bank (CRB) in the amount of $300,000. Dafoe granted a mortgage to CRB to secure that loan, and CRB recorded the mortgage promptly and properly.

In mid-2002 Dafoe's job situation took a turn for the worse, and he could no longer afford to make his hefty mortgage payments. Dafoe sold Fleetacre to Lapointe for $250,000, "subject to the
outstanding mortgages of record." In addition to that language in the deed, Dafoe and Lapointe signed a separate agreement that said, in part, "Lapointe agrees to assume all monthly mortgage payments to the Jacobs National Bank, the Guerin-Dallas Stars Mortgage Company and the Cheevers-Rockingham Bank."

In late 2002 Lapointe got injured and was unable to work. He too was unable to make the mortgage payments. At about the same time, the real estate market dropped, and Fleetacre lost about half its value.

All the mortgagees are looking to foreclose on Fleetacre, which will now bring only about $400,000 at foreclosure sale, leaving a total shortfall from the outstanding mortgage amounts of about $350,000. Thornton would like to purchase Fleetacre at the foreclosure sale, but thinks a purchase will be worthwhile only if the acreage is measured by the stonewall description rather than by the 1,632.50 foot distance description.

Please discuss the rights, duties and liabilities of the parties.

Please go onto the next page.
Question Three
Suggested Time: 45 minutes

Abner Able owned a 100 acre parcel known as Farmacre. In 1980, he executed and delivered a deed transferring two acres of Farmacre to Babs and Boris Beauregard, a legally married couple, for life. The relevant portion of the deed stated:

Abner Able hereby grants two acres of Farmacre [adequately described] to Babs and Boris Beauregard, husband and wife, jointly, for life, and then to the children of Babs and Boris, jointly, as long as the land is used for a farm stand, but if said use does not commence within six months from this date or, having commenced, ceases at any point, to my niece, Cecily Crafts and her heirs.

At the time of the grant, Babs and Boris had two children, Xavier and Yolanda. Babs and Boris immediately moved onto Farmacre, and opened a farm stand.

Later in 1980, David Dogood, who had always wanted to raise earthworms, noticed that large portions of Abner’s land were not being used. He approached Abner and asked if he could use some of his land to raise earthworms. Abner gave him permission, but David mistakenly began digging on some of Babs’s and Boris’s land. Babs and Boris had no idea that David was there, and would not have cared if they did know, because that piece of land was not suitable for farming.

David visited the land daily, digging for worms. In 1998, while David was digging for worms one day, he noticed a slimy black substance in the earth, which he thought might be oil. David went back to Abner and requested permission to drill for oil on the property. Abner agreed, but demanded 75% of any profit David received from the oil.

Early in 1999, while Babs was out of town visiting her mother, Boris saw oilrigs going up on his property. He confronted David and demanded that he leave. David said he had Abner’s permission to be there and offered to let Boris share in the drilling and the proceeds. Boris capitulated and immediately contracted with an oil company to start drilling. When Babs returned home, she was disgusted to see all the oilrigs. She went back to live with her parents and wrote a will conveying her interest in the property to her sister, Brenda.

By the end of 1999, Boris was spending the oil money faster than the oil was coming out of the ground. Boris eventually obtained a $200,000 loan from First Bank, which was secured by a mortgage on Boris’s interest in Farmacre. By this time, Boris had stopped farming and allowed the farm stand to fall into disrepair.

In early 2000, Cecily, a natural foods enthusiast, became very upset at the demise of the farm stand. She found a copy of her Uncle Able’s will and read it. She now believes that she has rights to Farmacre.

In 2001, while driving back from a meeting with his bankers, Boris was so excited about his newfound wealth that he took a curve too fast, drove over an embankment, and died instantly. When Babs heard that Boris was dead, she had a heart attack and died shortly thereafter.

Please discuss the title to Farmacre, and the rights and liabilities of all the parties.

Please go onto the next page.
Question Four  
Suggested Time: 45 minutes

Since the late 1980s, Hector and Diane Berlioz have lived near Barbara Stravinsky on Figaro Bay, which is located on Michigan's Upper Peninsula. Over the years, Stravinsky and Diane Berlioz became friends. During conversations, Stravinsky occasionally expressed interest in selling her cottage, and Diane Berlioz always responded that she and her husband would buy the property if Stravinsky decided to sell. In June 1999, unable to keep up with maintenance on the property, Stravinsky decided to sell her cottage. Stravinsky sent a letter to the Berlioze to inform them about this decision, stating:

Dear Diane & Hector,

I have decided to sell the cottage at Figaro Bay. I had it appraised last summer. It was valued at $159,900, so that's what I'm asking. I promised you first chance. Please let me know if you're interested, if possible by July 5. I want to sell this summer. If you aren't interested, I want to get it on the market fast.

Love,

Barb

The same day the Berlioze received the letter, Diane Berlioz called Stravinsky and told Stravinsky that she and her husband would buy the cottage. That week, the Berlioze visited a loan officer at the Peninsula National Bank for the purpose of obtaining a mortgage. When the Berlioze met with the loan officer, he told them that they should obtain a written contract, and provided them with a standard form purchase and sale agreement.

Diane Berlioz completed the form, which stated that Stravinsky was the seller, and the Berlioze were the buyers. The form stated the street address of the cottage and listed a selling price of $159,900. It stated a closing date of August 31, 1999. The Berlioze signed the purchase agreement on July 21, 1999, and mailed the signed purchase agreement to Stravinsky for her signature. Stravinsky never signed that document but told the Berlioze she intended to close on August 31, 1999.

Shortly after she received the form from Diane Berlioz, Stravinsky visited her attorney, who prepared a warranty deed for the transfer of the property in exchange for $159,900. Stravinsky signed the deed and left it with her attorney to deliver at the closing because Stravinsky was leaving the Upper Peninsula and could not attend the closing in person. However, at about the time the deed was being prepared, a neighbor approached Stravinsky and offered to help with the maintenance of her cottage. Stravinsky decided that she could not go through with the sale. In early August 1999, Stravinsky telephoned Diane Berlioz and told her that the deal was off.

The Berlioze have sued Stravinsky in an attempt to force a transfer of the real estate. Please state all the issues the Berlioze should raise, the affirmative defenses Stravinsky should raise, and discuss whether each will be successful. Please justify each conclusion you reach with analysis (application of law to fact).

END OF EXAM
Have a terrific holiday, and thank you for an enjoyable semester