PROPERTY
MID-TERM EXAMINATION
Peter M. Malaguti
Fall, 2001 Semester

YOUR SOCIAL SECURITY NUMBER: ___-___-_______

INSTRUCTIONS:

Please take three (3) blue books. Write "Part One" on one of the blue books, "Part Two" on another, and "Scrap" on the third blue book. 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. You may use the "scrap" blue book as scrap paper. 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 two essay questions. The suggested time for each is forty-five (45) minutes. Each essay question will count for 50 percent of your total grade. Please put your answer to Question One in the blue book labeled "Part One." Please put your answer to Question Two in the blue book labeled "Part Two." **You may 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 on either essay.

When you are finished, please put both blue books and this exam booklet into your scrap blue book and hand them in.

Unless the facts of the questions suggest otherwise, please use "multistate" law. Please keep in mind, however, that time is a factor. You should not waste precious time spouting irrelevant law, esoterica or minutiae. This is not a brain dump. You will not receive any points for merely regurgitating pre-memorized law. The goal of the exam is to allow you to apply the legal concepts you have learned to discrete sets of facts. You should apply the law to the facts in a cogent, efficient manner. 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.

You have one and one-half hours (90 minutes) to complete the exam: 45 minutes for each essay.

GOOD LUCK!
Question One
Suggested Time: 45 Minutes
Please limit your answer to five (5) single-spaced bluebook pages

Prior to 1970, Orrin owned in fee simple absolute Crowacre, a 20-acre tract of undeveloped land located in the town of Birdland. In 1970, he conveyed it by deed "to Angus and Barbara for their natural lives, then to Collier and his heirs, but if Crowacre is used for other than passive recreation to Daphne and Edgar jointly." At the time of the grant, Angus and Barbara and Daphne and Edgar were legally married couples. Angus was a renowned geologist, and Barbara a devoted ornithologist. Neither Angus nor Barbara moved onto Crowacre after the grant, but they lived nearby.

In late 1972, Angus decided to perform some geological research and conduct tests on Crowacre. He determined that there existed beneath the surface of Crowacre a massive oil field that extended even beyond the boundaries of Crowacre, and decided to erect several oilrigs on the property. He resolved, however, not to say anything to anyone, including Barbara, about the operation. In 1973, Angus secretly began drilling for oil, and almost immediately began to earn about $85,000 a month.

In 1979, Collier went for a walk on Crowacre and came upon the oilrigs. Collier approached Angus, and told him that he was only supposed to use Crowacre for passive recreation, and that oil mining certainly was not passive recreation. The two quickly agreed that Collier could erect his own rig on Crowacre and take whatever profits he could derive. In exchange, Collier would not say anything about Angus’s activities. Collier started his oil drilling operations in the autumn of 1979.

In 1986, Barbara discovered Angus’s activities on Crowacre. Incensed at his capitalistic behavior, Barbara, a devout communist, immediately sued for divorce. In 1987, Barbara obtained a final divorce from Angus under which their property was split evenly. The Probate Court entering the divorce decree made no specific finding as to Crowacre.

In 1991 Angus fell from an oilrig and was killed. His will left all of his property, both real and personal, “to my oil buddies, George Herbert Walker Bush and George W. Bush in equal shares.” In 1994, Barbara was attacked by a flock of rabid seagulls and died from her injuries. Her will left all of her property, both real and personal, to the American Ornithological Society ("AOS").

Collier continued to extract oil from Crowacre, and the oil field eventually dried up. At about the time that the oil field dried up, Orrin discovered what Angus and Collier had been up to. At that time, Freddy, who owned Sparrowacre, which bordered Crowacre, discovered that the dried-up oil field had extended under his property, and the wells of Angus and Collier, although erected on Crowacre, had sapped oil from underneath Sparrowacre.

Under separate headings for each, please discuss the interests, rights, duties and liabilities of the following persons: (1) Orrin, (2) the estates of Angus and Barbara, (3) Collier, (4) Daphne and Edgar, (5) Freddy, (6) H. W. and W. Bush, and (7) the AOS.
Question Two
Suggested Time: 45 Minutes
Please limit your answer to five (5) single-spaced bluebook pages

In 1953, Ralph Gillespie purchased a tract of land in Union County, Mississippi from his wife's uncle, Frank Whitten. The land, located at 207 Union County Road, was completely enclosed by a fence. After purchasing the tract, Gillespie and his friend, Roy Starnes Jr., fixed the fence and built an entrance for access to Union County Road. They also built a narrow dirt road from the entrance to the interior of the 16-acre parcel. According to the deed, Gillespie received 16 acres of land.

Although not known by him, within the property Gillespie purchased from Frank Whitten, and within the fence, was a 1.2-acre lot that really was owned by the Poplar Springs Baptist Church ("the Church"). That 1.2-acre tract was located on Gillespie's lot as follows:

As you can see, the 16-acre parcel that Gillespie purchased was bordered on the west by the land of Kelly and Smith. Kelly's land was entirely landlocked (it had no access to any public roads). The dirt road Gillespie and Starnes built crossed the 1.2 acre parcel owned by the Church, as well as land not owned by the Church, and ended at the boundary of Kelly's land. At all relevant times, there was no sign of a church structure or any other buildings on the 1.2-acre Church lot. Gillespie believed in good faith that the Church tract was included in the land he purchased from Whitten.

Gillespie sold timber off his tract in 1978 to Roger Langford of the Langford Lumber Company. Langford widened the dirt road Gillespie and Starnes had built. With Gillespie's permission, Langford logged the property, including the Church tract, and paid Gillespie for the lumber. Gillespie kept the gate to his land shut and began locking it in the 1980s. The only people who had keys were tenants and permissive users.
The Kellys purchased their lot from Billy Little, who had inherited it from his father, Wiley Little. Wiley Little had purchased the property from the Morton family. Gillespie had once given Wiley Little permission to use the dirt road across his land once in order to transport barrel staves Little had cut off of his land. Another time, in 1988, Wiley Little cut timber from his property and Gillespie gave him permission to cross the Church tract and use the road to remove his timber. In 1989, when Georgia Pacific Lumber was cutting timber on Wiley Little's property, the company accidentally crossed the property line and removed some trees from the Church tract. Georgia Pacific paid Gillespie for the damages.

After Billy Little inherited the property from his father, he sold the land to the Kellys in 1993. Billy told the Kellys that they would have to determine from the land records whether they had any sort of easement allowing them access to their land from Union County Road. Shortly after purchasing the land, the Kellys sought and received from Gillespie permission to use the dirt road to cross his land. The Kellys also paid Gillespie a deposit for a key to the entrance gate.

In 1998, Kelly began building a home. Because a previous tenant failed to give him back the key, Gillespie had a new lock placed on the gate to his land. Gillespie did not give Kelly a new key. Kelly tore down the gate and caused the dirt road to be graveled.

Under separate headings for each, please discuss the interests, rights, duties and liabilities of the parties.

END OF EXAMINATION