PROPERTY

FINAL EXAMINATION

Peter M. Malaguti

Fall 2003 Semester

FULL SOCIAL SECURITY NUMBER: ___ ___ ___-___ ___-___ ___

INSTRUCTIONS

Please take five (5) blue books. Write "Part One" on one of the blue books, "Part Two" on another, "Part Three" on another, "Part Four" on another, and "Scrap" on the fifth blue book. Please write your entire social security number on each of the blue books and on this exam.

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 of equal length. The suggested time for each essay is forty-five (45) minutes. Please put your answer to each essay question in the blue book marked with that question's number. 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 on any essay. Also, do not put more than one essay answer in any one blue book. Each essay counts for one quarter (1/4) of the final exam grade.

When you are finished, please put all four blue books and this exam booklet 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.

Unless the facts of the questions suggest otherwise, please use "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 the application of properly stated rules of 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.

Although the suggested total time for the four parts is three (3) hours, I will give you three and one-half (3½) hours to complete the exam.

Please sign out and in when you leave the room and return. 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 do not turn to the next page until instructed to do so.
**Question One**

Blackacre is a 20 acre parcel of unimproved real estate in Andover, Massachusetts. By general warranty deed, Olive, the owner of Blackacre in fee simple absolute, conveyed it “to Alice, Barrett, Caleb and Denise as joint tenants with rights of survivorship.” At the time of the grant, none of the grantees were related. After the grant, the following events and transactions occurred in the following order:

1. Alice and Barrett married each other.
2. Caleb sold “my entire right title and interest in Blackacre to Edward.”
3. To secure a debt of $25,000, Denise granted a mortgage on her interest to the Snowy Night Bank.
4. Edward married Denise.
5. Alice and Barrett got divorced.
6. Denise paid off the $25,000 loan to the Snowy Night Bank.
7. Barrett died with a will that left “all my real estate to my mistress, April.”
8. Edward died with a will that left “all my real estate to my heretofore undisclosed illegitimate son, Freddie.”
9. Alice delivered a deed to what she purported to be the entire fee simple interest in all of Blackacre to Gene.
10. Denise died, leaving all of my real estate “to my good friend, Alice.”
11. Gene delivered a deed conveying his interest in Blackacre “to Harry for life, then to Harry’s widow for her life, and then to Harry’s children who survive Harry’s widow and their heirs, and if Harry has no such children who survive his widow, to Ignatius and his heirs. At the time of the grant, Harry was married to Beth but they did not have any children. Gene’s will had a “residuary clause” that left all his residual property (property not effectively granted by other portions of the will) “to my good friend Ignatius.”

After completion of all these events and transactions, please determine the respective real estate interests in Blackacre. Please explain your conclusions in detail.

**Question Two**

Alejandro owned Blackacre, a tract of land used for commercial purposes, in fee simple. In 1994, he signed a promissory note and gave a mortgage on Blackacre to the Seventh Street Bank.
in the amount of $250,000. There was no “due on sale” clause in either the mortgage or promissory note.

In 1997, Alejandro leased Blackacre to Tetley for a term of 10 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 1998, Alejandro signed another promissory note and gave another mortgage on Blackacre, this time to the First Bank of Westover, in the amount of $25,000. There was no “due on sale” clause in either the mortgage or promissory note.

In 2001, Alejandro sold Blackacre to Benny “subject to the lease to Lou and the mortgages to the Seventh Street Bank and First Bank of Westover, which the grantee assumes and agrees to pay.” Benny was fully aware of the mortgage obligations when he purchased Blackacre.

Benny overpaid for Blackacre and fell into financial difficulties almost immediately. Unable to obtain a conventional mortgage on Blackacre, Benny approached Conan, a man known to loan money at high interest rates. Conan agreed to lend $25,000 to Benny but demanded that Benny convey Blackacre outright to him by general warranty deed. Conan orally agreed not to record the deed and to reconvey Blackacre to Benny if the loan was paid in its entirety, with interest, within two years. If Benny did not so perform, Conan would record the deed and evict Benny from the premises. Benny agreed and delivered the deed as demanded, which Conan held without recording. None of the other parties had knowledge of the transaction between Benny and Conan.

One year after giving the deed to Conan, Benny fell behind in his mortgage payments to the Seventh Street Bank and First Bank of Westover. The First Bank of Westover would like to take some legal action, but does not believe there is sufficient equity in Blackacre to pay off all the debts.

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

**Question Three**

On May 15, 1980, Olive purchased Spinachacre in fee simple absolute. The purchase price was $162,500. Spinachacre is located in the state of Missibama, which has a recording statute stating, “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.”

On July 23, 1992, Olive conveyed Spinachacre to Popeye, by general warranty deed, for a price of $279,000. Popeye did not record at that time. On August 30, 1982, Olive married Bluto and took his last name, thus calling herself “Olive Bluto.” Shortly thereafter Olive conveyed Spinachacre to her new husband, Bluto, by a special warranty deed. The deed Olive delivered reported that the consideration was "nominal." Bluto in fact paid no money for Spinachacre. He had no knowledge of the prior conveyance to Popeye. Bluto recorded his deed immediately.
On January 6, 2000, after learning that Popeye did not record his deed, Olive granted a mortgage of $200,000 to the Comicsville Bank and Trust Company. The Comicsville Bank and Trust Company had no actual knowledge of Olive's prior sale to Popeye. It did not do a title search, and did not learn of Olive’s conveyance to Bluto. The bank immediately recorded the mortgage that Olive gave in the grantor index under the name “Olive Bluto.” Olive began making monthly mortgage payments.

On November 16, 2002, Popeye realized that he had not recorded his deed, and immediately recorded it. Early in 2003, Olive and Bluto got divorced. On April 16, 2003, Olive, under her prior unmarried name (not “Olvie Bluto”), conveyed Blackacre to Wimpy by quitclaim deed. Wimpy immediately recorded the deed. On August 13, 2003, Bluto, by special warranty deed, conveyed Spinachacre to Peter Pan for a price of $439,000. Peter Pan had no actual knowledge of the prior transactions and promptly recorded his deed.

The various parties are making claims as to their real estate interests in Blackacre. Please discuss the rights, duties and liabilities of the parties.

Question Four

Alice conveyed Blackacre to Balwin by general warranty deed for $300,000 on January 13, 1979. The general warranty deed specifically said that it included “the covenant of seisin, the covenant against encumbrances, the covenant of quiet enjoyment, the covenants of general warranty and further assurances, and none other.” On April 15, 1980, and for consideration of $20,000, Baldwin granted an easement in Blackacre to Eldred, allowing him and his invitees “to hunt, hike, fish and game over the entire fee without hindrance of structures or other man-made objects.” Eldred did not immediately use the easement.

In November 1980, Templeton, a stranger to all parties, and without permission from either Eldred or Baldwin, began using Blackacre for hiking and fishing. Templeton came back to Blackacre each year thereafter in the Fall, Winter and Spring months to hike and fish. Although Templeton made no efforts to hide his activities on Blackacre, none of the owners of interests ever spotted him.

On June 17, 1994, Baldwin conveyed Blackacre to Calvin for $525,000 by special warranty deed. The deed made no mention of the easement to Eldred, and Baldwin did not tell Calvin of such. The special warranty deed did specifically say that it included “the covenant of seisin, the covenant against encumbrances, the covenant of quiet enjoyment, the covenants of general warranty and further assurances, and none other.”

On January 4, 2002, while traveling by car on a small public road adjacent to Blackacre, Tiptoe came upon a fallen tree blocking the road. Unable to pass, Tiptoe drove around the tree, and onto Blackacre. Tiptoe’s car caused damage to some young trees and topsoil in the amount of $1,000.

On November 12, 2003, Calvin conveyed Blackacre to Dante by quitclaim deed for $750,000. On November 14, 2003, the first day of hunting season, Eldred began using his easement on
Blackacre for the very first time. Dante immediately spotted him and confronted him. Eldred has demonstrated to Dante that Baldwin validly and properly conveyed the easement to him. It is now clear to everyone involved that Eldred’s easement renders Blackacre virtually worthless for any other use.

Dante has asked you for legal advice concerning his rights against the other parties. Alice, Baldwin and Calvin are all alive and in the area. Dante has discovered Templeton’s use of the property, as well as that Tiptoe came on the land without permission and caused damage in 2002. Please discuss the rights, duties and liabilities of the parties.

END OF EXAM
ENJOY YOUR HOLIDAY