

2004

QUESTIONS

PART ONE

DIRECTED ESSAYS

SUGGESTED TIME: ONE AND ONE-HALF HOURS (90 MINUTES)

PERCENTAGE OF EXAM POINTS: 50%

INSTRUCTIONS FOR PART ONE:

This part consists of ten (10) short fact patterns, each of which has a number of questions that follows and inquires about the law and analysis that applies to the particular fact pattern. You are to read each fact pattern carefully and answer each question that follows. On one or two occasions, there are questions that appear without a prior fact pattern. There are a total of 50 questions, and you are to answer them all.

Please place your answers in the space provided **in this exam book**, not in the blue book. Please limit your answers to the lines provided below each question. I will not read beyond the lines provided under each question. Please make each answer readable in terms of neatness and the size of your handwriting. (I will not use a magnifying glass to read your answers.) Please answer the question responsively; don't provide information not asked for in the question. For example, if the question asks "Who wins?" please state the name of the person who wins; don't state why he or she wins. Please state your reasoning only if the question asks for it.

Please work quickly but carefully through these questions. You will have enough time to answer all of the questions within the suggested time if you have adequately learned the law.

If you have not finished this Part of the exam when the suggested time is up, you should go onto the next part of the exam, and come back to finish it later.

QUESTIONS:

Questions 1 through 10 are based on the following facts:

A built in his backyard a garage that encroached by ten feet onto the property of his neighbor, B. A thought he had built the garage entirely on his own property but was mistaken. B also was unaware of the encroachment. Six years later, A sold his property to C by general warranty deed. C also was unaware that the garage encroached on B's land and used it fully as if he owned all of the land on which the garage stood.

1. Did A trespass when he built the garage on C's land? (Circle the best answer.)

YES

No

2. Why or why not?

3. Assume that, when B learned of the encroachment some two years after A sold to C, B sued C for trespass. Is C liable to B for trespass? (Circle the best answer.)

YES

No

4. Why or why not?

5. Assume that, instead of learning of the encroachment two years after A sold to C, B learned of the encroachment 17 years after A sold to C. When B sues C for trespass, C counterclaims for title by adverse possession. What are the five elements of adverse possession?

A.

B.

C.

D. _____

E.. _____

6. Keep the same assumptions as stated in Question 5. Briefly apply each of the elements stated in your answer to Question 5 to the facts given to determine whether each is satisfied.

A. _____

B. _____

C. _____

D. _____

Put your answer to E. on the next page.

E. _____

7. Is C allowed to add the time that A owned the property onto his own time in making out his claim for adverse possession? (Circle the best answer.)

YES

No

8. Why or why not?

9. Does the concept of "constructive adverse possession," otherwise known as "color of title," apply to the given facts? (Circle the best answer.)

YES

No

10. Why or why not?

Questions 11 through 16 are based on the following facts:

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 deed 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 deed to Boxford deed when he obtained the deed from Solaris.

11. 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." What kind of a recording statute is the second statute?

12. Assuming that the statutes recited in Question 11 apply, in an action between Boxford and Caulfield in which Boxford claims he is not subject to Caulfield's judgment, who will win? (Circle the best answer.)

Boxford

Caulfield

13. Assuming that the statutes recited in Question 11 apply, in an action between Caulfield and Dunedin in which Dunedin claims he is not subject to Caulfield's judgment, who will win? (Circle the best answer.)

Caulfield

Dunedin

14. Assume for this question and the next two questions that the first statute reads the same as that stated in Question 11, but the second statute reads as follows: "no conveyance or mortgage of real property shall be good against a subsequent purchaser for value and without notice, and who first records, unless the same be recorded." What kind of a recording statute is the second statute?

15. Assuming that the statutes recited in Question 14 apply, in an action between Boxford and Caulfield in which Boxford claims he is not subject to Caulfield's judgment, who will win? (Circle the best answer.)

Boxford

Caulfield

16. Assuming that the statutes recited in Question 14 apply, in an action between Caulfield and Dunedin in which Dunedin claims he is not subject to Caulfield's judgment, who will win? (Circle the best answer.) **(Put answer on the next page.)**

Questions 17 through 24 are based on the following facts:

Adam conveyed Blackacre "to Bernard for life, and then to Caleb and his heirs but if, after Bernard dies, Blackacre is ever not used as a half way home for special needs adults, then to the YMCA."

17. Immediately upon the grant, what is Bernard's interest in Blackacre?

18. Immediately upon the grant, what is Caleb's interest in Blackacre?

19. Immediately upon the grant, what is the YMCA's interest in Blackacre?

19. Immediately upon the grant, what is Adam's interest in Blackacre?

20. Are any of the interests subject to rule against perpetuities consideration? (Circle the best answer.)

YES

NO

21. Which ones, if any? (Circle **all** that apply)

Adam's

Bernard's

Caleb's

The YMCA's

22. Assume for this question that none of the interests violated the rule against perpetuities. Ten years after the grant, Bernard died. Then Caleb entered into a purchase and sale agreement to sell Blackacre to Danza. The P & S was silent as to the quality of title B was required to deliver. At the closing, Danza refused to take title, asserting that Caleb could not deliver marketable title. Danza demanded a return of his deposit. Caleb refused to return the deposit and sued Danza for specific performance. Who will win in that lawsuit? (Circle the best answer.)

Caleb

Danza

23. Assume the same facts as asserted in Question 22 except that Danza did not refuse to accept title. Instead Caleb gave Danza a general warranty deed to Blackacre that contained the covenant against encumbrances and the covenant of quiet enjoyment. Three years after Caleb delivered the deed to Danza, Danza sued Caleb asserting the sole cause of action that Caleb did not deliver marketable title. Who will win in that lawsuit? (Circle the best answer on the next page.)

Caleb

Danza

24. Assume the same facts asserted in Question 23, except that, instead of suing for failure to deliver marketable title, Danza sued Caleb for breaching the covenant against encumbrances. Who will win in that lawsuit? (Circle the best answer.)

Caleb

Danza

Questions 25 through 28 are based on the following facts:

Oliver conveyed Blackacre to Harold and Wilma, "husband and wife, as tenants by the entirety." At the time of the grant, Harold and Wilma were legally married.

25. What concurrent estate did Harold and Wilma own at the time of the grant?

26. Five years after the grant Harold and Wilma got divorced, but continued to own Blackacre together. What concurrent estate did Harold and Wilma own after the divorce?

27. Two years after the divorce, Harold sold his interest in Blackacre to Abigail. After that sale please state all those who own any interest in Blackacre, along with the type of concurrent estate, if any, they own, and the percentage/fractional interest each person owns:

Owner(s):

Concurrent Estate(s):

Percentage/Fractional Interests:

Question 28 is on the next page.

28. Three years after Harold's sale to Abigail, Harold and Wilma got remarried. Without any further transactions between and of the parties, after the remarriage please state all those who own any interest in Blackacre, along with the type of concurrent estate, if any, they own, and the percentage/fractional interest each person owns:

Owner(s):

Concurrent Estate(s):

Percentage/Fractional Interests:

Questions 29 through 35 are based on the following facts:

Olivia conveyed Blackacre to Hermes and Winona, "husband and wife, as tenants by the entirety." At the time of the grant, Hermes and Winona were legally married. Ten years after the grant, Winona conveyed all her "right title and interest" to Alonzo by general warranty deed, which contained the covenant of seisin, covenant of the right to convey, covenant against encumbrances and the covenant of quiet enjoyment.

29. What estate did Alonzo own after the sale from Winona to Alonzo?

30. Which, if any, of the covenants for title did Winona breach upon the sale of Blackacre to Alonzo? (Circle any or all of the appropriate covenants.)

covenant of seisin covenant of the right to convey covenant against encumbrances

31. As to each of the covenants listed in the facts preceding Question 29, please explain why each was or was not breached:

covenant of seisin:

The rest of the question is on the next page.

covenant of the right to convey:

covenant against encumbrances:

32. Three years after Winona conveyed to Alonzo, Alonzo conveyed his interest in Blackacre to Bennett by special warranty deed, which contained the covenant against encumbrances and covenant of quiet enjoyment. After the sale to Bennett, state all those who own any interest in Blackacre, along with the type of concurrent estate, if any, they own, and the percentage/fractional interest each person owns:

Owner(s):

Concurrent Estate(s):

Percentage/Fractional Interests:

Question 33 is on the next page.

33. Please explain the significance of Alonzo's special warranty deed to Bennett.

34. Which, if any, of the covenants for title did Winona breach upon the sale of Blackacre to Alonzo? (Circle any or all of the appropriate covenants.)

covenant against encumbrances

covenant of quiet enjoyment

35. As to each of the covenants listed in Question 32, please explain why each was or was not breached:

covenant against encumbrances:

covenant of quiet enjoyment

Questions 36 and 37 are based on the following facts:

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 2003 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.

36. Bronson discovered the mortgage and demanded that Oscar discharge it. Oscar refused to do so under any circumstances. In refusing to take care of the outstanding mortgage, which, if any, of the following covenants did Oscar breach? (Circle **all** that apply)

covenant to deliver good record title

covenant to deliver marketable title

37. Assume the same facts as those stated **before** Question 36. Further assume that the facts stated **in** Question 36 did not occur. 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? (Circle the best answer.)

Oscar

Bronson

Questions 38 through 43 are based on the following facts:

In 1999 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 2000, Beppo placed an easement on the property in favor of Eddie, and never disclosed it. In 2001 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 2003 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. Danielle now wants to sue someone for breach of the covenant against quiet enjoyment and the covenant against encumbrances. Assume that the easement is so extensive that the value of Blackacre is rendered worthless and that there are no statute of limitations problems. Also assume that the state in which Blackacre is located is a so-called "consideration received" jurisdiction.

38. In a suit by Danielle against Colson for breach of deed covenants, who wins? (circle the best answer)

Colson

Danielle

How much \$\$, if any? \$ _____

Question 39 is on the next page.

39. Briefly explain the reasoning of your answer to Question 38.

40. In a suit by Danielle against Beppo for breach of deed covenants, who wins(circle the best answer)

	Beppo		Danielle
How much \$\$, if any?		\$	_____

41. Briefly explain the reasoning of your answer to Question 38. (Please put your answer on the next page.)

42. In a suit by Danielle against Alice for breach of deed covenants, who wins? (circle one.)

	Alice		Danielle
How much \$\$, if any?		\$	_____

43. Briefly explain the reasoning of your answer to Question 38.

44. In the space provided below the following metes and bounds, courses and distances description, please draw the proper shape of Blackacre, keeping the accompanying compass rose in mind:

Beginning at Main Street, running north by the land now or formerly of Samuel E. Smith one hundred and 00/100 (100.00') feet; thence bearing and running northeast by the land of said Smith fifty-four and 00/00 (54.00') feet; thence turning and running southeast by the land of said Smith fifty-four and 00/00 (54.00') feet to the boundary of the land now or formerly of Jeremiah H. Jones; thence bearing and running true south by the land of said Jones one hundred and 00/100 (100.00') feet; thence turning and running true west along said Main Street fifty (50.00') feet to the point of beginning.



MAIN STREET

Questions 45 through 49 are based on the following facts:

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 to Tolland 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 2003 Barbara was in deep financial difficulty and unable to pay any of her mortgages.

45. Assume for this question that the Twelfth Bank of Nighttime is foreclosing on Blackacre. Please circle below **all** of the real estate interests the purchaser at foreclosure will take subject to:

First National Bank of Justice

Second Street Bank

Thirty-Seventh National Bank

Lease to Tolland

46. Assume for this question that the Second Street Bank is foreclosing on Blackacre. Please circle below **all** of the real estate interests the purchaser at foreclosure will take subject to:

First National Bank of Justice

Twelfth Bank of Nighttime

Thirty-Seventh National Bank

Lease to Tolland

47. Assume for this question that the Second Street Bank has foreclosed on Blackacre and is left with a \$75,000 deficiency after foreclosure. Please circle below **all** persons against whom Second Street Bank can obtain a judgment on the deficiency. (Please circle your answer on the next page.)

Abraham

Barbara

Tolland

48. On what legal theory, if any, can the Second Street Bank obtain its deficiency judgment against Abraham?

49. On what legal theory, if any, can the Second Street Bank obtain its deficiency judgment against Barbara?

50. Aardvark owned a bag of cement. He asked Beagle to watch it for him. While Beagle was driving with the bag of cement, it fell off his truck and Chameleon found it. Chameleon put the bag of cement on the back of his truck and went into Starbucks to purchase a grande dark roast. While Chameleon was in the store, Dingo came along and stole the bag of cement from the back of Chameleon's truck. Chameleon recovered the bag of cement from Dingo. Beagle has discovered the Chameleon has the bag of cement and wants it back. Who will win a lawsuit between Beagle and Chameleon in which title to the bag of cement is contested? (circle the best answer.)

Beagle

Chameleon

PART TWO

ESSAY QUESTION

SUGGESTED TIME: FORTY-FIVE (45) MINUTES
PERCENTAGE OF EXAM POINTS: 25%

INSTRUCTIONS FOR PART TWO:

This part consists of one (1) substantial essay question. Please put your answer in a blue book entitled "Part Two," and not into this examination booklet. Please limit your answer to five (5) single-spaced bluebook pages.

QUESTION:

In 1962 Othello conveyed Blackacre by deed "to Agatha for life, then to Agatha's widower for his life, and then to Agatha's children in equal shares provided they survive Agatha's widower." At the time, Othello was 79 years old, and Agatha, who was Othello's granddaughter, was 12 years old with no children.

In 1964 Othello died with a will leaving his entire estate to the United Way. The will said nothing specifically about Blackacre. Agatha was Othello's only heir at law.

In 1972 Agatha married Bennie. In 1974 Agatha and Bennie had a child, Candace. They would have no other children. Agatha and Bennie chose not to live on Blackacre.

In 1975, Danson began trespassing on Blackacre. He built a home on the property, landscaped the entire lot, and fenced in the entire lot. Danson lived on Blackacre until 1980, when he sold "all my right, title and interest in Blackacre" to Edmund by deed. Edmund has continued to live in the home, and has kept up the landscaping, to this day.

In 1985, in order to satisfy a gambling debt, Bennie sold to Frances "all my right, title and interest in Blackacre" for \$100,000.

In 1996 Candace married Gifford. Immediately after their honeymoon, Candace conveyed "all my right, title and interest in Blackacre to Candace and Gifford." In 2001 Candace and Gifford got divorced. The final divorce judgment said nothing about Blackacre.

In 2002 Agatha and Bennie died in an automobile accident. Bennie had a will that left everything he owned to Agatha if she survived him, and if not, to Candace. Agatha had a will that left everything to the United Way.

In 2003 Candace married Gustav. They had no children. Early in 2004 Candace died with a will leaving her entire estate to Gustav.

Please discuss the interests and rights of the parties.

PART THREE

ESSAY QUESTION

SUGGESTED TIME: FORTY-FIVE (45) MINUTES
PERCENTAGE OF EXAM POINTS: 25%

INSTRUCTIONS FOR PART THREE:

This part consists of two (2) shorter essay questions. Please put your answers in a blue book entitled "Part Three," and not into this examination booklet. Please limit your answer to each essay questions to three (3) single-spaced bluebook pages.

QUESTIONS:

A. In 1999, Able left Greenacre by will "to Bannister and his heirs, but if Greenacre is not used solely for farming purposes to Casey and her heirs." Able had used Greenacre as a coal mine. Bannister continued to use the property as a coal mine immediately upon moving onto Greenacre. Bannister made \$1,000,000 from his coal mining operations.

1. What is the state of the title after the above-stated grant? Please explain why you choose each estate or interest.
2. Will Bannister be liable to Casey for waste? Please explain your answer.

B. Please consider the following two scenarios, which present different results. Please state the legal justification for the difference between the two situations.

1. Oscar was in the business of capturing wild animals for display. He invested time and money in this activity, and he considered it his livelihood. Oscar captured a sea lion in the Pacific Ocean, its natural habitat, and took it to New York where it escaped. Sea lions are not normally found in the Atlantic Ocean. Billy Tyne, a fisherman, captured the sea lion and has kept it as a pet. Oscar has discovered that

Billy has the sea lion and has demanded its return. A court rules that Billy Tyne, the finder, gets to keep the sea lion.

2. Barnum runs a circus and keeps elephants for use in the circus. While the circus was in New York City, one of Barnum's elephants escaped and was captured by Bailey. Barnum has discovered that Bailey has the elephant and wants him back. A court rules that Barnum gets the elephant back.

END OF EXAM

HAVE A HAPPY HOLIDAY!

**Property Final Exam
2004
Peter M. Malaguti**

Answers to Part I

1. **YES**
2. Trespass is **intentionally going onto someone else's land without their permission**. The intent required is to "go where you are going," even if you are not aware you are trespassing. **A intended to build where he built.**
3. **YES**
4. **C is maintaining and using the garage** on someone else's property. Every time B goes in the garage he is trespassing.
5. **A. Open and Notorious
B. Exclusive
C. Hostile
D. Actual
E. Continuous**
6. **A.** The garage is there for everyone to see, and A and C appear to be using it like the **average homeowner** would.
B. **There are no facts suggesting that B was also using the garage.**
C. A and C are both **trespassers** while they are using and maintaining the garage.
D. A and C **physically used** the garage.
E. 17 years plus 6 years is 23 years; this **exceeds the 20 year period.**
7. **YES**
8. They can **tack** because there is **privity of title (explain)**.
9. **NO**
10. **No faulty deed or will.**
11. **Notice**
12. **Caulfield**
13. **Caulfield**
14. **Race Notice**
15. **Boxford**
16. **Caulfield**
17. **Life Estate**
18. **Vested Remainder Subject to Complete Divestment**
19. **None**
20. **None**
21. **YMCA's**
22. **Danza**
23. **Caleb**
24. **Caleb**
25. **Tenants by the Entirety**
26. **Tenants in Common**
27. **Owners: Abigail
Wilma
Estate: Tenants in Common
% Interest: 50% each**
28. **Owners: Abigail
Wilma
Estate: Tenants in Common
% Interest: 50% each**
29. **None**
30. **Covenant of the Right to Convey**

31. Seisin: Winona **did own an interest** in Blackacre
 Right to Convey: **T by E** gave W no right to convey
 Against Encumbrances: There were **no** encumbrances
32. **Owners: Hermes
 Winona**
- Estate: Tenants by the Entirety**
- % Interest: 50% each**
33. Alonzo would protect Bennett in regard to violations of covenants **only** if the problems that caused the violations were created **when Alonzo owned the property**.
34. **Circle neither.**
35. Against Encumbrances: There were **no** encumbrances
 Covenant of Quiet Enjoyment: No interference with **possession**
36. Circle **both** covenant to deliver good **record title** and covenant to deliver **marketable title**
37. **Oscar**
38. **Colson -- \$0**
39. **Quitclaim Deed; no covenants**
40. **Danielle -- \$250,000**
41. Beppo gave a **special warranty deed** and **he created** the problem; he is liable. The covenant of quiet enjoyment, a future covenant, **runs with the land**.
42. **Alice -- \$0**
43. Problem created **after Alice owned**, not before or during her ownership.
- 44.

45. **Second Street Bank
 37th National Bank**
46. **37th National Bank**
47. **Abraham and Barbara**
48. **Privity of Contract**
49. **Third-Party Beneficiary Contract**
50. **Beagle**

