PROPERTY FINAL EXAM 2006
ANSWERS TO PART ONE

1. Trespasser

2. Trespass is intentionally going on someone else’s land without permission. Elaine: (1) intended to place the driveway where she placed it; (2) didn’t own the 35 sq. ft. strip; and (3) didn’t have permission to place the driveway where it was or use it.

3. - Open & Notorious
   - Hostile
   - Exclusive
   - Actual
   - Continuous

4. A. Open & Notorious: Holding yourself out to the community as the actual owner of the land.

   B. Hostile: Trespassing or otherwise acting adversely to the owner’s property rights.

   C. Exclusive: No use by the owner.

   D. Actual: Physical presence. You only get what you possess.

   E. Continuous: Meet all other criteria for the statutory period (20 years).

5. A. Open & Notorious: Satisfied. Installing and using a driveway is an act that actual owners of real estate customarily do.

   B. Hostile: Satisfied. Elaine was a trespasser by building and suing the driveway. Even the facts say it is an encroachment.

   C. Exclusive: Satisfied. No facts suggest that the Marmos used the driveway.

   D. Actual: Satisfied. Elaine’s driveway, and her parking of cars on it, represent physical use of the property.

   E. Continuous: Satisfied. All of the elements were met between 1962 and 2006: 44 years.

6. A. Open & Notorious: Satisfied. Elaine’s following uses are those which property owners customarily employ: children playing, swing set, parked cars, garden.

   B. Hostile: Tough one to prove. There is evidence that there was permission for
Haggas & Wanda: Joint tenancy as between them. Although grantor expressed TBE, they couldn’t get one because they weren’t legally married.

TC as between the couples because the grant expressly states it.

18. Nothing

   Concurrent Estates: Hermes: TBE w/ Winifred, TC w/Haggas & Kevlar
                      Winifred: TBE w/ Hermes, TC w/ Haggas & Kevlar
                      Haggas: TC with other three
                      Kevlar: TC with other three
   Percentage Interest: Hermes: ¼
                        Winifred: ¼
                        Haggas: ¼
                        Kevlar: ¼

20. Owners: Stoddard, Winifred, Haggas, Kevlar
   Concurrent Estates: All have tenancies in common
   Percentage Interests: All have ¼

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22. Oblio: Nothing
   Angina: Life Estate
   Bubba: Vested Remainder Subject to Complete Divestment
   Consolata: Executory Interest

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24. Oblio: Nothing
   Bubba: Fee Simple Subject to an Executory Limitation
   Consolata: Executory Interest

25. BUBBA
parking the cars, and children playing. There may well have been a general permission given for gardening, etc, when Marmo said “do anything you want on the lot.”

C. Exclusive: Not satisfied. The Marmos used the grassy area by parking cars on it.

D. Actual: Satisfied. The following uses occurred on the property: children playing, swing sets, park cars, gardens.

E. Continuous: C and possibly B not satisfied for who statutory period.

7. Person who meets all the elements of A. P. can get more than he actually possessed if he has a deed showing greater possession that was defective, and if he took the deed with a good faith belief that it was valid.

8. NO

9. There is no evidence suggesting that Elaine got a deed, defective or otherwise, to the Marmo lot.

10. Sometimes “continuous” is satisfied even when you don’t use the property year round. You can use it during the appropriate season for that use and still make out an A.P. E.g., use beach property only during the summer months.

11. YES

12. In 1982, when she moved to Newton, Elaine stopped using the property year round. Then, she continued to use it, but only during the summer months.

13. YES

14. Quality of Title: Elaine gets a new title, not a continuation of the title held by the Marmos. The bank therefore lacks privity of title with Elaine and cannot foreclose the new title.

15. A. Life Estate

B. None

16. Quantity of Title: The adverse possessor gets the title of the person who could have evicted him. The only person who could have evicted Elaine were those with the right to possession. This was the Marmos and not their children.

17. Hermes & Winifred: TBE as between them. The are legally married and the grant expresses TBE.
26. Bubba owns a fee simple. Therefore, he has the right to commit waste.

27.

28. A. Easement by Implication

   B. Easement by Necessity

29. Easement by Implication:

   i. Common Ownership
   ii. Quasi Easement
   iii. Quasi Dominant Estate
   iv. Quasi Servient Estate
   v. Reasonable” Necessity

30. Easement by Necessity:

   vi. Common Ownership
   vii. “Absolute” or “Strict” Necessity

31. Whether the surrounding owners’ land was previously held in common ownership with your land.

32. Open & Notorious
   Actual
   Hostile
   Continuous
33. Covenants Running With the Land; Restrictive Covenants

34. Covenant Running at Law

1. Intent that the Covenant Run with the Land
2. Touch & Concern
3. Privity of Estate/Title

Covenant Running in Equity

1. Intent that the Covenant Run with the Land
2. Touch & Concern
3. Notice

35. Covenant Running in Equity

36. Adverse possession creates a new title and breaks privity of title. Alex fails, therefore, it he seeks to enforce at law.

37. Statute of Frauds

38. YES

39. The land is not properly described. Sidney owned several parcels and the writing didn’t specify which one.

40. CASTLETON

41. The deed has been delivered. It is too late under the merger rule.

42. CASTLETON

43. As an exception to marketable title, a seller is allowed to pay the mortgage off with the purchase proceeds paid at closing if he provides adequate protection for the buyer. Here Castleton offered to provide adequate protection.

43. CASTLETON $0

44. A quitclaim deed has no covenants of title.

45. BENNIE $450,000

46. Bennie gave a general warranty deed. The covenant of quiet enjoyment runs with the land. It is enforceable by remote grantees.
47. Martin: YES  Privity of Contract
    Arnold: NO  No P.K., No Third-Party Beneficiary
    Barbara: YES  Third-Party Beneficiary
    Carrie: YES  Third-Party Beneficiary

48. Pure Notice

49. Brian – Appleby’s deed is outside the chain of title.

50. Nirvana National Bank – Brian has constructive notice of the mortgage. He can find it in a title search.