

**PROPERTY
FINAL EXAMINATION
Professor Peter M. Malaguti
Fall 2007 Semester**

YOUR ENTIRE SOCIAL SECURITY NUMBER:

_____ - ____ - _____ - ____ - _____

INSTRUCTIONS:

The instructions run onto the next page. You may read this page and then turn the page to finish reading the instructions. You are not to look beyond the second page of instructions until you are instructed to begin the exam.

YOU ARE NOT TO HAVE A CELL PHONE, OR ANY OTHER DEVICE THAT CAN TRANSMIT AND/OR RETAIN INFORMATION, ON YOUR PERSON DURING THIS EXAM. POSSESSION OF A CELL PHONE OR SUCH OTHER DEVICE SHALL BE TREATED, AND DEALT WITH, AS CHEATING.

Please take three (3) blue books. Please write "Scrap" on one of the blue books. Please write "Two" and "Three" on each of the other two blue books. Please write your social security number *on all four* blue books.

Please take one preprinted Answer Sheet for Part One. Please write your social security number where indicated on the Answer Sheet for Part One. Your answers to Part One will go on the Answer Sheets for Part One, and not in a blue book or on this exam booklet.

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 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 blue book labeled "Scrap" 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.

During this exam, unless otherwise stated or implicated by the facts, you are to use multistate law.

This examination consists of three parts:

Part One consists of 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. There are a total of 50 questions, and you are to answer them all. The suggested time for Part One is two hours (120 minutes).

Please place your answers to Part One in the Answer Sheet for Part One, and not in a blue book or on this exam booklet. Please limit your answers to the lines provided for each answer on the Answer Sheet for Part One. I will not read beyond the lines provided for 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. Part One counts for 70% of your exam (70 out of 100 points).

Part Two consists of one (1) short essay question. Please put your answer in a blue book entitled "Part Two," and not into this examination booklet. Please limit your answer to four (4) single-spaced bluebook pages. The suggested time for Part Two is thirty (30 minutes). Part Two counts for 15% of your exam (15 out of 100 points).

Part Three consists of one (1) short essay question. Please put your answer in a blue book entitled "Part Three," and not into this examination booklet. Please limit your answer to four (4) single-spaced bluebook pages. The suggested time for Part Three is thirty (30 minutes). Part Three counts for 15% of your exam (15 out of 100 points).

Despite the fact that the suggested time for all three parts is three hours, I will give you three and one-half (3.5) hours to complete the exam. You may use the extra half hour however you like, if you choose to use it at all. Students with an accommodation of time and one-half will receive five and ¼ hours (5 hours and 15 minutes) to take the exam.

Please make your answers legible. There is a bathroom book at the front of the room. Please sign out and in when you leave the room.

You have three and one-half (3-1/2) hours to complete the exam. We will tell you when there are 15 minutes left, at which point *no one* may leave the room. We will also warn you when there are 5 minutes left and 1 minute left. When we call time, you are to bring up your exam and blue books *immediately*.

GOOD LUCK!

QUESTIONS

PART ONE

DIRECTED ESSAYS

SUGGESTED TIME: TWO HOURS (120 MINUTES)
PERCENTAGE OF EXAM POINTS: 70%

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. There are a total of 50 questions, and you are to answer them all.

Please place your answers in the space provided **in the Answer Sheets for Part One, and not in a blue book or on this exam booklet**. Please limit your answers to the lines provided for each question. I will not read beyond the lines provided for 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.

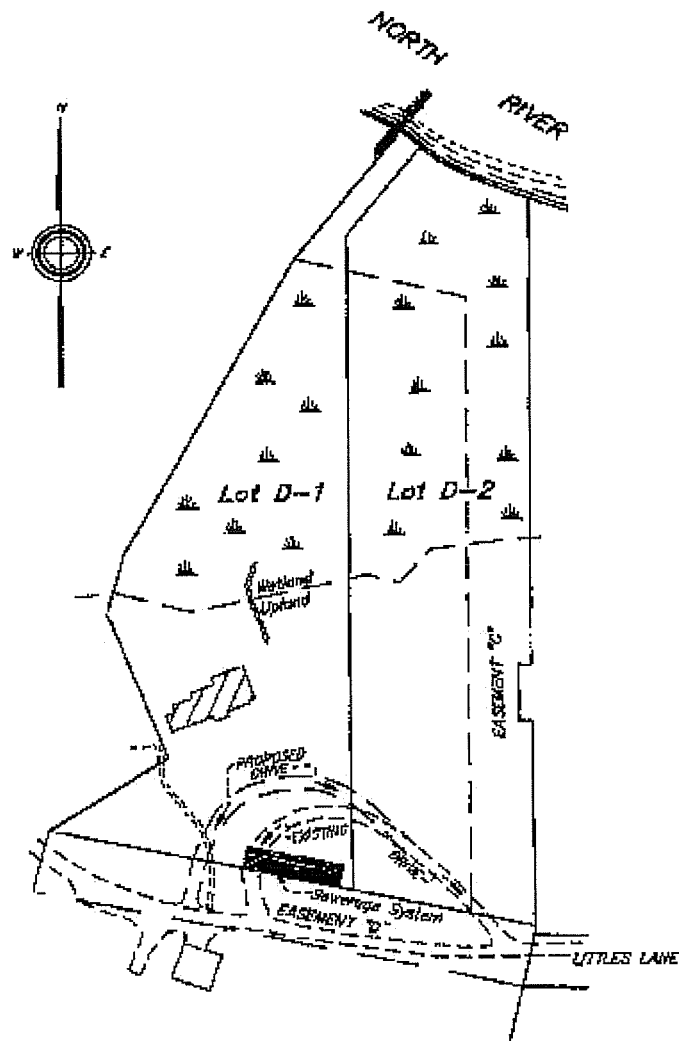
If you have not finished this Part of the exam when the suggested time is up, you should go onto the next part of the exam, and come back to finish it later.

QUESTIONS:

Questions 1 through 5 are based on the following fact pattern:

Prior to May, 1996, Aldro S. French (French) owned, as a single parcel, lots D-1 and D-2, shown below on a plan entitled "Plan of Land Off Littles Lane, Marshfield, MA." On February 24, 1995, the Marshfield Planning Board endorsed the plan under the Massachusetts Subdivision Control Law, thus allowing French to subdivide the property into lots D-1 and D-2. The plan depicts access to both properties from the public way, Littles Lane, over an easement located adjacent to the southerly property lines of lots D-1 and D-2 and labeled as "EASEMENT 'D'," as shown below.

APPENDIX



For many years prior to the conveyances, French used an unpaved circular drive to access his home on what is now lot D-1, the Zotoses' property. As can be seen, the plan depicts this circular drive as extending from Littles Lane, a public way, westerly along Easement D, with the first cutout at the easterly one-third of lot D-2, crossing over lot D-2 and into lot D-1 in a semicircle, with a second cutout on the easterly one-third of lot D-1's southerly property line, back to Easement D and then easterly back to the public way. The semicircle portion of the driveway is roughly split in half by the property lines of lots D-1 and D-2. As depicted on the plan, it is apparent that both lots D-1 and D-2 would have access to their respective properties by the separate cutouts without ever having to cross the property lines.

French sold lot D-1 to Thomas and Nancy Zotos (the Zotoses) on May 30, 1996. French retained ownership of lot D-2. The deed to the Zotoses provided an express easement "for all purposes over Easement 'D' ... for access, egress and utility and water connection purposes." The deed also specifically reserved certain easements for the

benefit of the French, the grantor. The deed was silent as to any right of the Zotoses to pass over lot D-2.

A new septic system was installed on lot D-1 between May 30, 1996, and June 13, 1996 as shown on the plan. The portion of the circular driveway located on lot D-1 was removed to make way for the new septic system's leaching field, thus obliterating the portion of the circular driveway that provided access directly from Easement D to lot D-1, the Zotoses' property. The plans for the new septic system depicted a "proposed driveway" with an entrance to lot D-1 west of the original driveway's cutout on lot D-1, but the proposed driveway was never constructed. The result was that the only existing driveway access to lot D-1 from Easement D was over the portion of the circular driveway that runs from Easement D over lot D-2 to lot D-1.

After the closing, the Zotoses began using the circular driveway over lot D-2 to access their lot, D-1. Within two years of the closing, however, French posted "no trespassing" signs on lot D-2 and informed the Zotoses that they could not use the portion of the driveway located on that lot.

The Zotoses have brought an action for declaratory relief to establish an easement lot D-2 over the former circular drive on that lot.

1. In their first cause of action, the Zotoses claim to have acquired an easement by prescription over lot D-2. List (do not explain) the elements of an easement by prescription?
2. In the space provided, briefly state whether the Zotoses will prevail on their first cause of action.
3. In their second cause of action, the Zotoses claim to have acquired an easement by implication over lot D-2. List (do not explain) the elements of an easement by implication?
4. In their second cause of action, the Zotoses claim to have acquired an easement by necessity over lot D-2. List (do not explain) the elements of an easement by necessity?
5. Why will the Zotoses fail to prevail under both claims for implied easements (easement by implication and easement by necessity)?

Questions 6 through 11 are based on the following fact pattern:

In the 1940s, Reverend Robert H. Lord of St. Paul's Parish in Wellesley sought permission from the Roman Catholic Archdiocese of Boston (RCAB) to purchase land to establish a church to serve the needs of the growing Roman Catholic population of East Natick and the adjacent "Fells section" of Wellesley, who were geographically isolated from existing parishes in those towns. The RCAB approved the request, and Reverend

Lord began searching for a suitable location for the new church. He soon identified a tract of approximately eight acres of land on the Worcester Turnpike in Wellesley as “the best site-and, indeed, the only good site-for such a church.” The land was held in equal shares as tenants in common by the six children of James Maffei, an Italian immigrant who had died in 1937.

Sometime in 1946, Reverend Lord had several conversations with Waldo Maffei, one of James’s sons, in which he inquired about the Maffei family’s donating the property to the RCAB for use as the site of a church. The Maffeis rejected the first couple of overtures by Reverend Lord. On a third visit to Waldo’s home, however, Reverend Lord told Waldo that the church would be named “St. James” in honor of the Maffei siblings’ father, and that the church would remain a tribute to James “forever.” He also told Waldo that the RCAB would pay each of the other four Maffei brothers \$3,000 to transfer their respective interests in the property. Reverend Lord did not inform any members of the Maffei family that canon law permitted the closure of the church in the future.

The Maffei family agreed to transfer the property to the RCAB for \$12,000 (representing payment of \$3,000 to each of Waldo’s four brothers and gifts of the interests of Waldo and a sister). This was well below the market price of the time. The parties did not enter into a purchase and sales agreement, but executed a deed transferring all their interests in the property to the RCAB in exchange “for consideration paid.” An attorney hired by the RCAB prepared the deed, which the Maffei siblings, choosing not to be represented by counsel, had the opportunity to read and then signed before a notary public in Waldo’s home. The deed, in fee simple absolute, made no reference to naming the church in honor of James Maffei. Nor did it recite any alleged agreement concerning using the property “forever” as a church. The Maffeis claimed that the family never would have executed the deed had they been informed that the property might not always be used as the locus of a church named for their father.

The RCAB built a church on the property and named it “St. James the Great.” The RCAB continued to use the property as a Roman Catholic church for about 50 years. By 1999, the RCAB included St. James on a list of parish churches to be closed. When its pastor retired in 2003, the RCAB replaced him with an administrator, an interim position, rather than another pastor. On October 5, 2004, the RCAB issued a “decree of suppression of St. James, meaning it would shut down on October 31, 2004. The decree reassigned the territory covered by St. James to other parishes, transferred the canonical registers of St. James to another parish, and transferred “the goods and obligations” of St. James to the RCAB.

The surviving members of the Maffei family and several other parishioners have sued to block the closing of the St. James church. They are attempting to enforce Reverend Lord’s promise that the property would remain a church, and a tribute to James Maffei “forever.”

6. What is the greatest legal obstacle that the plaintiffs face?

7. The plaintiffs raise causes of action in constructive trust and resulting trust. Briefly explain the legal concept of a trust.
8. Briefly explain the legal concept of a constructive trust.
9. Make the plaintiffs' best argument that the RCAB has been holding the property in constructive trust.
10. Briefly explain why the plaintiffs will fail in arguing a resulting trust.
11. What could the Maffei siblings have done differently in the late 1940s to ensure that the property would continue to be used as a church?

Questions 12 and 13 are based on the following fact pattern:

Amanda Reece, who owned an 83-year house in Bucolic, Minnesota, contracted with Bob Kitts, high school classmate, to rehabilitate the home. While Kitts was gutting Reece's bathroom, he found a box below the medicine cabinet that contained \$25,200 in Depression-era United States currency. "I almost passed out," Kitts recalled. "It was the ultimate contractor fantasy."

Kitts immediately called Reece, who rushed home from work. Together they found another steel box tied to the end of a wire nailed to a stud. Inside was more than \$100,000. The two then found two more boxes filled with money and religious memorabilia. In total, Reece and Kitts found \$182,000 hidden behind bathroom walls.

Now Kitts and Reece are feuding over the money. Kitts believes he is entitled to half, and Reece says Kitts deserves none of the money.

12. Please circle which of the following best describes the status of the property:

LOST ABANDONED MISPLACED EMBEDDED

13. Please briefly explain why each of the other three choices are not correct:

Questions 14 through 24 are based on the following fact pattern:

Living in a lovely coastal community is the dream of many home owners. The sound and smells of living near the ocean has an appeal most people living in the Midwest can only dream of. Amanda Whitehead wanted to live near the ocean. Amanda was the middle child of a family raised by her parents George and Mary in suburban Missletown, Nebraska. Amanda never quite got along with her brother and sister, so when she was 18 years old she moved from the family's tiny suburban home to the big city of Belchertown, Kansas, where she worked sorting corn kernels in a factory owned by

Orville Redenbacher. She was a good employee and learned the art of sizing corn kernels where she advanced to master kernel sorter by the time she was 21 years old; this was no small feat.

The yearning to live near the ocean continued to be Amanda's dream. She continued to work year after year advancing within the company until she finally was responsible not only for sizing the corn kernels, but selecting the kernels for Mr. Redenbacher himself. Saving money had always been easy for Amanda. She saved and saved until she finally had the money she needed to buy a house of her own, a house near the ocean. But where would she go? She searched and searched until she decided that she would buy a house in Massachusetts, a state that welcomes all first time home buyers and was on the ocean, at least some of it.

So on June 19, 1961 Amanda Whitehead bought her first house, a Cape Cod style house on Popcorn Way in Cohasset, Massachusetts. A deed was given to Amanda by the seller David and Betsy Regan. Amanda had retained the Law Firm of Dewey, Cheatham & Howe to represent her in the transaction and handed the deed to Attorney Howe to do with it whatever it is that lawyers do with deeds.

Amanda lived at Popcorn Way until she met Gina Lowy, the woman of her dreams, in 1963. Amanda asked Gina to move in with her; Gina agreed and moved in. As their relationship blossomed Amanda decided that she wanted to add Gina onto the deed, which she did on May 2, 1973. It was Amanda's desire that Gina receive an interest in her home that would survive Amanda's death.

Gina and Amanda decided on June 8, 1979 that due to Gina's bad credit score they would convey the property back to Amanda; they did this so that any creditors of Gina would not be able to execute any judgments against the house. They executed a deed, which they promptly gave to Attorney Howe to do whatever it is that attorneys do with deeds. At the same time, unbeknownst to Gina, Amanda had Attorney Howe draft a will for her, which Amanda executed in due course. Amanda never discussed the terms of her will with Gina; in fact Gina didn't even know a Will existed while Amanda was alive.

In 1980 Amanda and Gina married in a ceremony performed by the Reverend Cornelius Hargrove, pastor of the Open Society Righteous Redemption Church. Although Amanda and Gina understood that the ceremony carried no legal weight, and conferred no legal benefits, they participated as a symbolic sign of their love for each other.

Both Amanda and Gina continued to happily live together as a couple on Popcorn Way. On January 14, 1981 Amanda died. She had never legally married, and had no surviving spouse. She left no surviving children. The only known relative of Amanda was a distant cousin, Fiona Chameleon, who lived in Salem, Massachusetts.

Gina made no effort to find Fiona when Amanda died as she did not know where she lived. While going through Amanda's important papers Gina discovered the Will drafted by Attorney Howe back in 1979. Gina looked at the Will and in her haste to do the right

thing accidentally shredded the Will. Gina continued to live at the home on Popcorn Way; she believed she was entitled to own the home where she lived for 18 years.

Answering a telephone call from a telemarketer on July 5, 2007, and having enjoyed an upswing in her credit score in recent years, Gina decided to refinance the equity of the house with Mortgage Trust Company, a licensed mortgage company in Massachusetts. Prior to closing the loan for Mortgage Trust a title exam was performed on title. This title exam was done by the ever-prudent Attorney James Brady. Attorney Brady notified Gina that the last deed on title showed that Amanda still was the true and rightful owner of the property and Gina would not be able to refinance.

Gina has just filed an action to quiet title. She is seeking a declaration that she is now the true owner of Popcorn Way.

14. What real estate interest did Gina have in Popcorn Way as a result of moving in with Amanda in 1963?

15. The facts state that the deed Amanda executed in 1973 was meant to reflect Amanda's desire that Gina receive an interest in her home that would survive Amanda's death. Circle the appropriate concurrent estate that would provide for Amanda's desire and be legally appropriate.

TENANCY IN COMMON JOINT TENANCY TENANCY BY THE ENTIRETY

16. For each of the two estates you did not circle, briefly state why each would either not accomplish Amanda's desire, or would not be legally appropriate.

17. What effect did the marriage ceremony performed by the Reverend Cornelius Hargrove have on the concurrent estate circled in your answer to Question 15?

18. Briefly explain your answer to Question 17.

19. One of Gina's causes of action in her recent Complaint is that she acquired title to Popcorn Way by adverse possession. Please list the five elements of adverse possession.

20. Please briefly describe each of the elements you listed above in your answer to Question 19.

21. Briefly apply each of the elements stated in your answer to Question 19. Don't forget to state whether each element is satisfied.

22. Briefly explain the concept of "constructive adverse possession," and the impact it will have on Gina's action should she prevail.

23. This year, the Massachusetts Land Court decided the case of Pepe v. DeSantis. In Pepe, the property in question was owned by two adult brothers as joint tenants following the death of their parents. One brother moved out of the house after a disagreement with his sibling, leaving the house to be occupied solely by the other brother for over 25 years with no objection by Pepe. The Land Court found that a brother's exclusive possession of the house for more than 25 years without the objection of the other brother who shared title was sufficient to constitute an ouster. Briefly make your best argument that Pepe is good precedent that should apply on behalf of Gina's claim.

24. Briefly make your best argument that Pepe is not good precedent, and should not apply on behalf of Gina's claim.

Questions 25 through 30 are based on the following fact pattern:

Alex conveyed Blackacre to Billy. After the description of the property, and near the end of the deed, was the following restriction: "Billy, his heirs, successors, grantees and assigns agree that Blackacre shall be used only as a single family residence." Billy promptly and properly recorded the deed. Billy moved into Blackacre and used the property as a single family residence. Ten years later, Billy sold Blackacre to Cara. The deed that Billy delivered to Cara made no mention of any limitation on the use of Blackacre. Cara never moved onto Blackacre, choosing instead to leave it vacant. Shortly after Cara bought Blackacre, Dirk began adversely possessing the property. Some 21 years later Dirk obtained a declaratory judgment in a court of competent jurisdiction demonstrating that Dirk became the owner of Blackacre by adverse possession. Dirk promptly and properly recorded that declaratory judgment. Dirk has announced that he intends to begin constructing an addition onto the existing building and use Blackacre as a half-way house for recovering drug addicts. Alex, who now lives next door to Blackacre, has brought a legal action against Dirk.

25. Assume that the action Alex has brought seeks monetary damages against Dirk. Please list (without describing) the three necessary elements Alex must prove to recover.

26. Please describe each of the elements listed in your answer to Question 25.

27. Who will win the suit between Alex and Dirk?

28. Please briefly apply the facts to each of the elements you described in your answer to Question 25.

29. Would your answer be any different if Alex sought to enjoin Dirk's use as a half-way house rather than seeking damages?

30. Please briefly explain your answer to Question 29.

Questions 31 through 36 are based on the following fact pattern told to you by a client who has just come into your office:

My name is Sean A. McNonnah. I live at 133 Mockingbird Lane, Andover, Massachusetts with my wife, Shawna, and my 11 year-old daughter, Tawna. Mockingbird Lane is a quiet cul-de-sac with about 15 houses.

My next door neighbor, Billy Krock, and I have never really gotten along. Billy is a little off beat. He doesn't keep up his house or mow his lawn. He plays loud music, and I don't like it. He has tattoos all over his body. But the most disturbing thing of all is that he keeps exotic pets in the house. He has boa constrictor snakes, iguanas, lizards whose types I don't recognize, exotic birds, possums, and other rat-like mammals. The only good thing is that he keeps these animals in the house.

Although I don't like Billy, and I know he doesn't like me, we have always managed to co-exist. But, last week things changed.

For some reason, Billy decided to put an iguana out on the lawn. You know what an iguana is. It's a wicked ugly oversized lizard that sticks its tongue out and lounges around in the sun. The animals are from very warm climates and can't exist in the cold for any extended period of time. As far as I know, despite their ugly appearance, they are utterly harmless to people.

In any event, one morning last week Billy put the iguana out on the lawn. He actually put a collar around the creature's neck and leashed it to a stake in the ground. The length of the line was about 15 feet. Then Billy left. I don't know if he went to work or what, but he was gone for about 10 hours. It started out as a bright sunny day in the upper 70s. The iguana seemed happy.

As the morning progressed, however, the weather started to change. A cold front came through and we had a quick shower. As the day progressed, the skies remained overcast and temperature dropped about 25 degrees. By early afternoon, it was 54 degrees.

The formerly-happy iguana then began to look distressed. Instead of lounging around the way it had early in the morning, he began to stalk around the yard as far as his leash would let him. It looked as if he were looking for a way to escape. Then, after quite a bit of stalking around, it became very still. I thought the iguana might be getting ill, or might even be dying. Tawna saw this with me and became very concerned. I told her that Daddy would take care of it, and to go play in the back yard. She went in the back yard and played on her swing set.

I went inside to call the Andover Animal control officer. Still concerned about the health of the iguana, Tawna left the back yard and went in Billy's yard, over to the iguana. She intended to free it from its leash and bring it into our house where it could be warm until Billy got home. She removed the collar from the animal and reached down to pick it up.

At that moment, the animal stuck out its tongue and scared Tawna. She dropped the iguana and ran home. In tears, she tried her best to tell me what had happened. By that time the Andover Animal Control Officer was on his way.

I ran out of the house to secure the iguana, but it was gone. I searched high and low to no avail. The Andover Animal Control Officer helped me search after he arrived. We just couldn't find the iguana.

Then, a couple of days later, the iguana turned up at a neighbor's house. It seems that the neighbor's teen-aged son, Todd, found the iguana after it had run from Billy's property, and took it home. He has been keeping the iguana inside the house as a pet.

Now, Billy has threatened to sue Todd and his parents for the return of the iguana. He has also threatened to charge Tawna with trespass and to sue us for the value of the iguana. It seems that this iguana was worth \$1,500.

You don't think anyone is liable to Billy, do you?

31. Please state the definition of trespass.
32. Apply the elements to state whether Tawna was a trespasser.
33. State the elements of the "attractive nuisance" exception to trespass.
34. Briefly apply those elements to the facts.
35. Briefly make your best argument that Billy should get the iguana back.
36. Briefly make your best argument that Todd should keep the iguana.

Questions 37 through 42 are based on the following fact pattern:

Blackacre was a large, 20 acre tract of land. In 1970, Orrin, who owned Blackacre in fee simple absolute, conveyed it "to Angus and Barbara, husband and wife, as joint tenants for their natural lives, then to Collier provided he has graduated from the Massachusetts School of Law, my alma mater." At the time of the grant, Collier was 14 years old. Angus and Barbara lived near Blackacre, but rarely visited it.

Barbara, a devoted ornithologist, went on an extended bird watching trip to Ecuador in latter half of 1972. While Barbara was away, Angus went out onto Blackacre one day to hunt. He was "a shootin' at some food, when up from the ground come a bubblin' crude. . . ." Seeing dollar signs, and the opportunity to support his gambling addiction, Angus decided to cash in and sell Blackacre. While Barbara was still in Ecuador, Angus delivered to Chuck a deed purporting to convey all of Blackacre for \$1 million. Angus never told Barbara about the sale. Instead, he mailed to Barbara at her Ecuadorian camp a letter stating that he was running off with his mistress, Mitzie.

Angus and Mitzie promptly flew off to Las Vegas where they embarked on a gambling binge.

Broken hearted as a result of Angus's digression, Barbara decided to stay in Ecuador and devote her life to studying the Ecuadorian Swallow, a rare breed of bird little understood by ornithologists. In 1977, Barbara obtained a final divorce from Angus.

Chuck moved onto Blackacre in November 1972, obtained all appropriate licenses and permits, and erected an oil well on the western one-acre of the property. Chuck did not live there, but the oil operations continued 24 hours a day, seven days a week. Chuck visited the oil operations on an almost-daily basis.

In 1982 Collier graduated from the Massachusetts School of Law.

Blackacre, and the oil business it supported, were good to Chuck. He drew plenty of oil from the one well from 1972 until 1994, when finally the oil ran dry. Chuck left the oil rig up, but ceased using the property at all. In 1995, Chuck sold Blackacre to Billy Bob by deed for \$20,000. Billy Bob obtained a \$50,000 mortgage on Blackacre, and erected a public parking garage. The garage, which is adjacent to a major league ballpark, has been doing quite well.

In 1996, Angus was crushed and killed by a falling roulette table. He had a valid will, which left all of his real estate "to my beloved Mitzie." In 1998, Barbara was killed in Ecuador by a large group of rabid Ecuadorian Sparrows. She left all of her real estate by a valid will to the American Society of Sparrow Enthusiasts.

Last month, Collier came to Blackacre for the first time and found the parking garage. He wants to bring an action for declaratory relief to determine his rights in Blackacre.

37. What was the original state of the title immediately after Orrin's grant in 1970?
38. Things change. What was the state of the title in 1982 after Collier graduated from MSL?
39. Did Chuck legally have the right to drill for oil beginning in 1972?
40. Explain the legal grounds for your answer to Question 39.
41. Assume for this question only, that Chuck had the right to sell his interest in Blackacre to Billy Bob in 1995. What estate or interest in land did Billy Bob receive?
42. Please state the estates or interests that the following people own at the end of this entire mess: Barbara, Mitzie, Collier, and Billy Bob.

Questions 43 through 46 are based on the following fact pattern:

On August, 13, 1984, A, the owner of Blackacre, a vacant tract of wooded land, granted to E an easement to use all of Blackacre for hunting. E did not immediately begin to use the easement. On June 1, 1986, A conveyed Blackacre to B by special warranty deed for \$225,000. The deed contained the covenant against encumbrances and the covenant of quiet enjoyment. On July 2, 1997, B conveyed Blackacre to C by special warranty deed for \$325,000. That deed contained the covenant against encumbrances and the covenant of quiet enjoyment.

On September 15, 2006, E began using the easement for the first time, and has rightfully taken the position that the easement prevents C from erecting a house or using Blackacre as a residence since that will interfere with his right to hunt across the entire property. C would like to bring an action against B and A for breaching deed covenants.

43. Will C be able to recover at all against B for breaching either the covenant against encumbrances or the covenant of quiet enjoyment?

44. Briefly state the legal grounds for your answer to Question 43.

45. Will C be able to recover at all against A for breaching either the covenant against encumbrances or the covenant of quiet enjoyment?

46. Briefly state the legal grounds for your answer to Question 43.

Questions 46 through 49 are based on the following fact pattern:

A owned Blackacre. First, he conveyed it to B for \$100,000 by warranty deed. B did not immediately record the deed. Second, A conveyed Blackacre to C for \$105,000. C had no knowledge of the prior transaction between A and B. C did not immediately record the deed. Third, C recorded her deed. Fourth, B recorded his deed.

47. As between B and C, who prevails in a pure “notice” jurisdiction? (Circle the correct answer)

B

C

48. As between B and C, who prevails in a “race-notice” jurisdiction? (Circle the correct answer)

B

C

49. As between B and C, who prevails in a pure “race” jurisdiction? (Circle the correct answer)

B

C

50. Please use the following deed description to draw a shape that “closes the shape.” Although the drawing does not have to be artistic, it must: (1) represent the proper shape, e.g. square, rectangle, pie, etc., (2) must “close the shape,” and (3) have all the lines and shapes pointing in the proper direction.

Description:

Beginning at a point where the premises intersects with Main Street, running north one hundred thirty nine and 39/100 feet (139.39') by the land now or formerly owned by Jones; thence turning and running west seventy-five and 00/100 (75.00) feet by the land now or formerly owned by Doe; thence turning and running southwest seventy-one and 15/100 feet (71.15') by the land now or formerly owned by Smith; thence turning and running southeast sixty-nine and 50/100 feet (69.50') by the land of said Smith to said Main Street; thence turning and running east, by said Main Street, seventy-five and 00/100 feet (75.00') to the point of beginning.

Place Your Drawing on the answer sheet where indicated.

PART TWO

ESSAY QUESTION

SUGGESTED TIME: THIRTY (30) MINUTES
PERCENTAGE OF EXAM POINTS: 15%

INSTRUCTIONS FOR PART TWO:

THIS PART CONSISTS OF ONE (1) SHORT ESSAY QUESTION. PLEASE PUT YOUR ANSWER IN A BLUE BOOK ENTITLED “PART TWO,” AND NOT INTO THIS EXAMINATION BOOKLET. PLEASE LIMIT YOUR ANSWER TO FOUR (4) SINGLE-SPACED BLUEBOOK PAGES.

PLEASE NOTE THAT I WILL ALSO GRANT POINTS FOR ANY CIVIL PROCEDURE ISSUES THAT YOU SPOT.

QUESTION:

Harry Hardscrabble owns an oceanfront parcel of land named “Oysteracre” in Nantucket. He inherited Oysteracre from his Uncle Charlie, and it is the only real property of any value that Harry owns. Harry owns Oysteracre outright; he has steadfastly refused to place a mortgage on it.

Harry is a fisherman who is heavily indebted to the Nantucket Savings Bank, which has financed his fishing boat and equipment. Sometimes Harry makes a lot of money, and sometimes he does not. Lately, Harry has not been doing well, and is afraid creditors may soon attempt to reach Oysteracre.

A 56 year old widower, Harry had only one child, Todd, who died when his trawler sank in a storm two years ago. Todd was survived by his wife, Delila, and a five year old son named Ned. Ned, who bears a striking resemblance to his late father, is the apple of Harry's eye. A budding artist who is now 29 years old, Delila has eked out a living since Todd died without life insurance. Delila has been a waitress, cab driver, and intern at the Nantucket Art Museum. She has run up \$12,000 in credit card debt, and has constantly been in financial difficulty.

Harry loves Oysteracre, and wants his daughter-in-law and grandson to enjoy it after he dies. He has come to you for legal advice and has expressed the following goals:

1. He wants to live on Oysteracre until he dies. He also wants to ensure that his creditors cannot get at the property. He thinks he should take immediate steps to ensure that Oysteracre will pass after his death without liens or encumbrances.
2. He wants Delila to get to live on Oysteracre after he dies, but recognizes her financial difficulties. He is afraid that, if she inherits it, she may declare bankruptcy or lose Oysteracre to creditors. At all costs, Harry wants Ned to get Oysteracre free of any liens or encumbrances.
3. He does not want Delila to get Oysteracre if she remarries, but wants Ned to get it, and to be able to live there, no matter what happens with his mother. Suspecting that Ned may also become a fisherman (a dangerous profession), he wants Ned's children, if any, to get Oysteracre if Ned does not survive his mother.

Please construct a grant which best accomplishes Harry's goals. Please state the names of the estates you create. Please fully explain why you chose each estate, and why you eliminated estates you considered but did not choose.

:

PART THREE

ESSAY QUESTION

SUGGESTED TIME: THIRTY (30) MINUTES
PERCENTAGE OF EXAM POINTS: 15%

INSTRUCTIONS FOR PART TWO:

THIS PART CONSISTS OF ONE (1) SHORT ESSAY QUESTION. PLEASE PUT YOUR ANSWER IN A BLUE BOOK ENTITLED "PART TWO," AND NOT INTO THIS

EXAMINATION BOOKLET. PLEASE LIMIT YOUR ANSWER TO FOUR (4) SINGLE-SPACED BLUEBOOK PAGES.

PLEASE NOTE THAT I WILL ALSO GRANT POINTS FOR ANY CIVIL PROCEDURE ISSUES THAT YOU SPOT.

QUESTION:

In 1980 Owen conveyed Blackacre “to Aaron, Bertha and Chloe, with rights of survivorship.” Blackacre was, and is, located in Massachusetts. Aaron, Bertha and Chloe were siblings. In 1990 Chloe left Massachusetts to perform missionary work in the Amazon basin. She never returned to Massachusetts.

In 1995 Aaron and Bertha decided to borrow \$100,000 from bank. They had to give a mortgage in that amount to bank to secure the loan. Bank also demanded, as a condition of the loan, that all three owners of Blackacre sign the mortgage document. Desperate for the money, but unable to secure Chloe’s signature on the mortgage, Aaron and Bertha agreed with their friend, Darby, that Darby would attend the mortgage closing and portray herself as Chloe. In exchange, Aaron and Bertha would pay Darby \$5,000. At the closing, Darby presented herself as Chloe, and signed Chloe’s name to the mortgage. Darby also signed several other closing documents under the name, “Chloe.” The closing attorney never suspected a thing.

In 1998 Aaron died. He had a will that left all his property, including Blackacre, to the United Way.

In 1999 pirates cruising the Amazon Basin robbed and killed Chloe. Chloe had a will that left all her property, including Blackacre, to “Aaron and Bertha jointly, or the survivor thereof.”

In 2001, after failing to receive close to a year’s worth of mortgage payments, Bank has commenced a foreclosure procedure on the Blackacre mortgage. Please discuss the rights, duties and liabilities of the parties.

END OF EXAM

ENJOY YOUR HOLIDAY SEASON

1. actual
open & notorious
hostile
continuous
(no exclusive)
2. No
3. (i) common ownership
(ii) Quasi-easement
(iii) Quasi-dominant estate
(iv) Quasi-servient estate
(v) Reasonable necessity
4. (i) common ownership
(ii) strict or absolute necessity
5. They have direct access to Easement D, thus eliminating any claim for even a reasonable necessity (it would be expensive to achieve access to a road).
6. Lack of writing – statute of frauds
7. Separates legal title (control and manage the property) from equitable title (profits and/or possession of the property).
8. An equitable device a court will impose to protect a party who is the victim of fraud or loses property to another who is unjustly enriched.
9. By purchasing the church for less than fair market value upon a promise to name the church and keep it as a church forever, the RCAB has been unjustly enriched.
10. A resulting trust occurs when a “straw” purchases property on behalf of someone else with the other person’s money. That is not the case here.
11. A conditional fee simple or a restrictive covenant.
12. Credit for either Misplaced or Embedded
13. Not Lost: The property was purposely placed there.
Not Abandoned: No one would purposely walk away from such valuable property.
14. None
15. Joint tenancy
16. Tenancy in common: no right of survivorship.
Tenancy by the entirety: can only be owned by a legally-married couple
17. None

18. As the facts state, the marriage had no legal consequence; therefore, it caused no changes in the concurrent estate (joint tenancy)
19. actual
open & notorious
exclusive
hostile
continuous
20. 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).
21. O & N: She lived on the property with Amanda, owned it at one time, and even after she conveyed her interest back to Amanda, continued to hold herself out as an owner.
- Hostile: This one is troublesome. Gina was never a trespasser. She entered the property with Amanda's permission. Obviously was not a trespasser when she was an owner. She continued to have Gina's permission after her ownership ended. And she was never asked to leave. Even after Amanda died, it doesn't appear that Gina's possession was as a trespasser, or otherwise hostile.
- Exclusive: It is arguable that Gina was exclusive as to the estate after Gina's death. There is no evidence that any other rightful claimant made any possession of the property.
- Actual: Gina was actually present on the property.
- Continuous: If she met the other four elements, which it appears not to be the case, she would have done so from 1981 until 2007, a total of 26 years. Continuous would be met.
22. Constructive adverse possession allows one who:
- (a) meets all the elements of adverse possession; and
- (b) took title by a defective deed or will; and
- (c) had a good faith belief that the deed or will was valid
- boost the amount of land obtained from adverse possession from that actually possessed to what was described in the deed or will.
23. After Amanda died, Gina possessed without objection by the estate for 26 years. This is similar enough to Pepe.
24. Gina and Amanda were not cotenants, like the brothers in Pepe, after 1979. Moreover, in Pepe one of the brothers abandoned the property. That is not the case here. Amanda died and the survivors of the

estate did not know enough to question Gina's possession of the property. There was nothing akin to an ouster.

25. Intent
Touch & Concern
Privity of Title/Estate

26. Intent: Grantor must intend that the covenant run with the land

Touch & Concern: The covenant must either: (a) be a use restriction, (b) affect the nature and character of the real estate, or (c) affect the value of the land

Privity of Title/Estate: The enforcer and enforcee must be in the same chain of title

27. Dirk

28. - Intent is satisfied because the "successors, grantees and assigns" language shows that Alex intended the restriction to be binding on remote grantees. Also, he put the restriction into a deed that was recorded

- Touch & Concern is satisfied because it was a use restriction

- Privity of Title/Estate is **not** satisfied because Dirk's adverse possession broke the chain of title; Alex and Dirk weren't in privity

29. YES

30. **Notice**, rather than privity of estate is required for a covenant running in equity (relief sought is injunction). Dirk had constructive notice of the restriction because he would have found it if he had done a title search.

31. (a) **Intentionally** (b) going on **someone else's property** (c) **without permission**. You must have all three.

32. - Tawna intended to go where she went, and thus formed the requisite intent

- Tawna went onto someone else's property (Billy's)

- Nothing in the facts suggest that Tawna had received Billy's permission to go there

33. Children who otherwise would be trespassers are not considered trespassers if:

(1) knows or has reason to know that children are likely to trespass;

(2) the condition involves an unreasonable risk of death or serious bodily harm to such children; and

(3) because of their youth, the children would not discover the condition or realize the risk involved.

34. (1) Billy should have known that children are interested in animals and one was likely to come upon his land to look at the iguana.

- (2) This one is tough to meet because iguanas don't appear to be dangerous. Indeed, Tawna didn't get injured.
- (3) Same as #(2).
35. Under the capture doctrine, the iguana, a wild animal, must "regain its natural liberty" in order for Billy's ownership to cease. Since the iguana could not have survived on its own, it never regained its natural liberty and should go back to Billy.
36. While colder than normal, the weather conditions weren't bad enough for the iguana to have died. It could have eaten local insects and survived on its own. Therefore, it regained its natural liberty.
37. Angus & Barbara: life estate (as joint tenants)
 Collier: Contingent remainder
 Orrin: reversion
38. Barbara & Chuck: life estate (as tenants in common)(Chuck's L.E. is "pur autre vie"
 Collier: absolutely vested remainder
 Orrin: nothing
39. No
40. Drilling for oil is waste. Life tenants do not have the right to commit waste.
41. Life estate pur autre vie (as a tenant in common with Barbara)
42. Barbara: nothing (she's dead)
 Mitzie: nothing
 Collier: fee simple absolute
 Billy Bob: nothing (Angus and Barbara, the measuring lives, are both dead)
43. No
44. B gave a special warranty deed and is only responsible if he created the title problem, which he did not. His predecessor, A, created the easement.
45. Yes
46. A gave a special warranty deed, but he created the easement. The covenant of quiet enjoyment runs with the land and is enforceable by remote grantees such as C. Because the covenant of quiet enjoyment is a future covenant, the 6 year statute of limitations doesn't start to run until E starts to use the easement. C is within the 6 years.
47. C

48. C

49. C

50.

