

LANDLORD-TENANT FINAL EXAMINATION

Professor Peter M. Malaguti
Spring 2013 Semester

INSTRUCTIONS

Please do not turn to the next page until you are instructed to do so.

Please take four (4) blue books. Write "One," "Two," "Three" and "Scrap" on the four blue books. Please write your student identification number on **all four** blue books.

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. **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, even if the phone/device is not switched on.**

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 five (5) short essay questions that count equally. The suggested time for each essay is thirty (30) minutes. **Do not exceed four (4) single-spaced pages for each essay answer.** Do not test me on this; I will not read beyond the fourth page on either essay.

Please put your first two essays into Book One, your next two essays into Book Two and your last essay into Book Three.

Unless the facts of the questions suggest otherwise please **use Massachusetts law.** You will receive additional credit for discussing "multistate" law where it differs from Massachusetts 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 a proper recitation of the relevant law and a proper application of the 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 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.

Please do not turn to the next page until you are instructed to do so.

Question One

Longstreet owned a 100 unit apartment complex in Town, Massachusetts. The apartment complex contained a mixture of government-supported, low-income housing, government-supported moderate-income housing, and luxury units.

Butterworth rented one of the luxury apartments for \$4,100 a month. His next-door neighbor in the complex was Tappet, who rented a low income apartment. Tappet, a gruff, high-school educated, substantially-tattooed manual laborer, and Butterworth, a highly-educated, high-income finance industry executive who had recently transferred to Town from another city, just could not seem to get along with each other. Their biggest dispute was about Tappet's chain smoking. Butterworth was a health enthusiast and could not tolerate the second-hand smoke emanating from Tappet's apartment. Tappet always started and ended his day with a cigarette in his mouth, and throughout the day lit new ones with those that were about to go out. Butterworth, on the other hand, began his day with a run on the treadmill in his apartment, and ended it with several sets of weightlifting.

Butterworth smelled smoke in his apartment constantly, and it bothered him greatly. He developed a cough, which he attributed to smoke wafting from Tappet's apartment. His complaints to Tappet evoked only scorn.

About a month ago, Butterworth began complaining to Longstreet about the smoking at least twice a week. Longstreet did look at Tappet's state-approved lease and determined that she could only evict Tappet for "cause." As much as she sympathized with Butterworth's dilemma, she believed that Tappet probably had a right to smoke in his own home, and that she lacked "cause" to evict him.

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

Question Two

Langston, the owner of a 10 unit apartment house in City, Massachusetts, leased an apartment to Tankersley, with the term beginning on January 1. Although the apartment would have been worth \$1,500 a month in satisfactory condition, the parties reached an agreed rent of \$1,000 a month because the apartment suffered from a severe ventilation problem. The defective ventilation forced Tankersley to keep the bathroom door shut and to run the fan continuously.

Tankersley thought he could tolerate the ventilation problem in order to obtain an apartment he otherwise could not afford, but soon found the situation intolerable. The apartment constantly suffered from moisture and foul odor problems. Furthermore, the constant running of the fan led to a fire in the apartment.

Tankersley started to complain to Langston about the problem within a week of moving in. Several of these complaints were in writing, and the complaints continued through

June. Langston did make several attempts to correct the problem – he installed a dehumidifier, sealed the foundation, repainted some of the surfaces, etc. – but these efforts were ineffective. Complete correction would have required the installation of several new windows and a sophisticated ventilation system, all of which would cost in excess of \$10,000.

In April, after paying three months' rent, Tankersley stopped paying his rent and told Langston that he would not pay again until the ventilation problem was corrected. Langston responded by insisting that Tankersley had made a deal, and was bound by it. In June, after failing to receive any rent for the prior three months, Langston served notice to quit on Tankersley for failure to pay rent. He intends to start an eviction action if Tankersley does not vacate. Tankersley intends to assert his defenses and file a counterclaim against Langston if Langston proceeds with an eviction.

Please discuss the rights, duties and liabilities of the parties, including appropriate damages, if any.

Question Three

Louis and Tabatha entered into a commercial, written lease for a period of ten years in Louis's strip mall. The lease required Tabatha to pay the rent on the first day of each month, and was silent about whether Tabatha could assign or sublease. Two years later, and with Louis's permission, Tabatha assigned the lease to Applegate. One year after that, Applegate subleased to Boris. This time, Applegate did not secure Louis's permission. Finally, one year after that Boris assigned to Capuchen, again without Louis's permission. In January 2004, Capuchen stopped paying rent, and no one has paid rent since. Louis would like to bring an action for rent against as many parties as possible. Please discuss the rights, duties and liabilities of the parties.

Question Four

Leonard and Tory orally agree that Tory would lease an apartment from Leonard for a term of one year. The occupancy began on January 1, 2013. Tory did not pay his February rent until Leonard served a notice to quit on February 23, 2013. Tory did not pay his March 2013 rent until Leonard served a notice to quit on March 18, 2013, and did not pay his April 2013 rent until Leonard served a notice to quit on April 19, 2013. Tory has not paid his May 2013 rent, and Leonard served notice to quit on May 10, 2013.

Tory has just offered the May rent to Leonard, but Leonard no longer wants Tory as a tenant because he believes that Tory is a deadbeat. Leonard wants to proceed to evict Tory as soon as possible. Tory would like to stay in the apartment, but if he cannot, he would like to extend his actual ouster as long as possible. Please discuss the rights, duties and liabilities of the parties. A calendar is attached.

Question Five

Landlord and Tenant entered into a one-year written lease for residential premises that began on January 1 and was to end on December 31. The lease provided a monthly rent of \$1,000. At the time of the commencement of the lease, Landlord took a "security payment" from the tenant in the amount of \$3,500, which Tenant delivered in cash. The parties did not discuss why that amount was taken. The lease provided that "Landlord will not be responsible for paying interest to Tenant for any security payments taken hereunder." The parties did not inspect the apartment together. Landlord ended up depositing the \$3,500 cash Tenant had given him into a joint checking account he maintained with his wife. Landlord and Tenant exchanged no paperwork other than that mentioned above.

Six months into the lease, Tenant told Landlord that he was experiencing financial difficulties, and asked Landlord to return the security payment. Landlord offered to return half of the \$3,500. When Tenant demanded the entire amount, Landlord came over to Tenant's apartment to negotiate with Tenant. Upon seeing that Tenant's apartment was excessively dirty, Landlord stated he would not return any part of the \$3,500, and left immediately. Tenant again demanded that Landlord return the entire security payment. Landlord has refused.

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

END OF EXAM

ENJOY YOUR SUMMER

2013 Calendar on Next Page

January						
Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		
4:● 11:● 18:● 26:○						

February						
Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28		
3:● 10:● 17:● 25:○						

March						
Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						
4:● 11:● 19:● 27:○						

April						
Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			
3:● 10:● 18:● 25:○						

May						
Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	
2:● 9:● 18:● 25:○ 31:○						

June						
Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						
8:● 16:● 23:○ 30:○						

July						
Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		
8:● 15:○ 22:○ 29:○						

August						
Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31
6:● 14:○ 20:○ 28:○						

September						
Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			
5:● 12:○ 19:○ 26:○						

October						
Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		
4:● 11:○ 18:○ 26:○						

November						
Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
3:● 10:○ 17:○ 25:○						

December						
Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		
2:● 9:○ 17:○ 25:○						

Holidays and Observances:

May 27 Memorial Day

Jul 4 Independence Day

**PROPERTY
FINAL EXAMINATION
Professor Peter M. Malaguti**

Fall 2006 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.

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 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 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. Part One counts for 70% of your exam (70 out of 100 points).

Part Two consists of one (1) medium-length 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 forty (40 minutes). Part Two counts for 20% of your exam (20 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 twenty (20 minutes). Part Three counts for 10% of your exam (10 out of 100 points).

Please take note again that Parts Two and Three are to go in **separate** blue books. Do not put both parts in the same blue book.

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.

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*.

Please use multistate law unless the facts or instructions suggest otherwise.

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 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 16 are based on the following facts:

Elaine Blaustein (Elaine) is a resident of Newton and owns the property known as 163 Beach Avenue, Hull, Massachusetts, which contains 5,107 square feet (the Blaustein lot). Fred and Maryann Marmo own the adjacent lot at 161 Beach Avenue, Hull, Massachusetts (the Marmo lot). The Marmos live in Wakefield, Massachusetts, and the Marmo lot is undeveloped. A sand dune covered with beach grass encompasses approximately one-third of the total lot area of the Marmo lot. In the center of the Marmo lot were a few large pieces of concrete that remained from a building that once stood on the property. Tall, unkempt shrubs were located south of the concrete pieces and extended to the southern boundary line of the Marmo lot. Most of the remainder of the Marmo lot was essentially a grass area that measured approximately 3,189 square feet (grass area).

Elaine purchased the Blaustein lot on May 23, 1962. At the time Elaine bought the Blaustein lot, William L. Starr (Starr) held title to the Marmo lot. On August 17, 1966, Starr conveyed the

Marmo lot to Max Salk (Salk). By deed dated September 10, 1966, Salk conveyed the Marmo lot to Harry Avnet, who in turn deeded the Marmo lot to Paul and Hilda Moses on January 6, 1971.

Shortly after taking title in 1962, Elaine built a single-family house on the Blaustein lot. She installed a concrete driveway (driveway) on the Blaustein lot at the time they built the house. Since its construction, the driveway has not been expanded or widened. Measured along the westerly line of Beach Avenue, the driveway encroaches onto the Marmo lot by one and three-tenths (1.3) feet. The driveway encroachment occupies thirty-five (35) square feet of the Marmo lot.

Soon after moving into their house, Elaine and her husband began to park their two cars on the Marmo lot every day. Guests of the Blausteins frequently parked on the Marmo lot. As many as eight or nine cars belonging to Blaustein guests parked on the Marmo lot on a busy summer day. For a period of time after moving into their house, the Blausteins maintained a swing set on the Blaustein lot until it rotted. Thereafter, the Blausteins placed a new swing set on the Marmo lot. At various times, the swing set was relocated onto the Blaustein lot. Consequently, there were periods of time during which no swing set was located on the Marmo lot. The last swing set on the Marmo lot was removed in or about 1978.

The Blaustein children played on the Marmo lot in their youth. In more recent years, the grandchildren of Elaine have used the Marmo lot as a play area. The Blausteins planted a vegetable garden on the Marmo lot in or about 1971. The garden was no longer there when the Marmos purchased the Marmo lot in 1973. Several years later, however, the Blausteins again planted a garden on the Marmo lot. Elaine's son, Craig, mowed the grass area on the Marmo lot from approximately 1976 until 1999.

On September 4, 1973, Paul and Hilda Moses conveyed the Marmo lot to the Marmos. No swing set was present on the Marmo lot when they purchased the property. During the first three summers after they bought the property, the Marmos went onto the Marmo lot a few times a month. While at the Marmo lot, the Marmos used the beach that is situated directly across Beach Avenue. When at the beach, the Marmos parked on the Marmo lot, along the side of, but not on, the driveway built by Elaine. Occasionally, the Marmos parked further into the Marmo lot if the Blausteins had a number of cars already parked on the Marmo lot.

Nancy, Fred, and their children often parked on the Marmo lot on weekdays and weekends during the summer months of 1974 through 1976. Outside of the summer months, Nancy Marmo went to the Marmo lot six to eleven days a year when visiting friends or enjoying the local amenities. Beginning in the summer of 1977, Nancy and Fred visited the Marmo lot on alternate weekends. At some point between 1978 and 1980, Nancy and Fred stopped going to the Marmo lot on a regular basis. The last time that Nancy parked on the Marmo lot was in or about 1992.

At various times, a person from the Blaustein house would move automobiles to permit Nancy to park on the Marmo lot. Fred Marmo had a friendly relationship with Elaine's husband. In the presence of Nancy Marmo, Elaine's husband had a conversation with Fred Marmo in the summer of 1974 during which Elaine's husband discussed his family's use of the Marmo lot to park cars. Fred Marmo gave Elaine's husband permission to park their cars on the Marmo lot. In a second conversation in the summer of 1975 or 1976, Elaine's husband stated that the area was getting crowded and asked if there was anything that could be done. In the presence of Nancy Marmo, Fred Marmo gave Elaine's husband permission to do anything he wanted on the

Marmo lot. In neither conversation did Elaine's husband and Fred Marmo discuss the driveway. Elaine never authorized or directed her husband to talk with the Marmos on her behalf about using the Marmo lot.

At some point, Elaine placed one- or two-foot-long segments of telephone poles on the Marmo lot, which remained in place until the Blizzard of '78. For a number of years, Ms. Blaustein maintained wine barrels on the Marmo lot that were used for flowers and a tomato plant (the planters). For approximately ten years, Elaine stored firewood on a portion of the Marmo lot along the side of the garage standing on the Blaustein lot.

In 1982, the Blausteins established their primary residence in Newton, Massachusetts. Thereafter, the Blausteins lived full-time on the Blaustein lot only during the summer months.

In 1987, Meredith Murphy bought a lot neighboring the Marmo lot, at 159 Beach Avenue, Hull, Massachusetts (the Murphy lot). Meredith observed people passing through the Marmo lot on their way to and from the beach. As the dune grass grew higher on the Marmo lot, people crossed from the Marmo lot onto the Murphy lot to use the concrete walkway situated thereon. After her children grew older, Meredith asked for and received the permission of Mr. Marmo for her children to play on the Marmo lot. Meredith's children played on the Marmo lot along with other neighborhood children. Meredith's children called a portion of the Marmo lot on which they played "the bunny fort."

Eventually, Meredith became concerned about the increased number of persons cutting through the Marmo lot and the Murphy lot for access to the beach. In 1991, Meredith and Elaine discussed erecting a fence along the rear or westerly boundary of the Marmo lot (proposed fence) which would connect with a fence that Meredith intended to erect along her northerly boundary. Meredith informed Elaine that she was going to request permission from Mr. Marmo to erect the proposed fence. Following a telephone conversation with Fred Marmo, Meredith wrote a letter to Fred dated June 24, 1991, to summarize the conversation. The letter first gave Fred background information concerning individuals using the Marmo lot and her efforts to stop that use. Meredith then wrote that "Elaine Blaustein and several other property owners on Beach Avenue have suggested that we erect a fence from the Blaustein property, across the back of your property and subsequently connecting with my fence. We are willing to pay for the labor and materials provided you sign a permission document."

After receiving the letter from Meredith, Fred Marmo called Meredith and gave her his permission to erect the proposed fence. Subsequently, Fred Marmo visited Meredith at her home and discussed the erection of the proposed fence. Elaine gave money to Meredith's husband who contracted to have fences, including the proposed fence, erected.

In the Spring of 2004, the Marmos had the Marmo lot surveyed because they were thinking of selling it. The survey revealed that the 1.3 foot strip of Elaine's driveway sat on the Marmo lot. The Marmos then demanded that Elaine rip up the portion of the driveway that sat on their land. Elaine refused and commenced an action for adverse possession as to the portion of the driveway that sat on the Marmo lot and the grass area.

1. In regard to the Marmo lot, what was the status of Elaine when she caused the concrete driveway to extend into the Marmo lot in 1962?

2. Please state and explain the legal reason you chose your answer to the prior question.

3. Please list the five elements of adverse possession.

A. _____

B. _____

C. _____

D. _____

E.. _____

Go on to the next page.

4. Please describe each of the elements you listed above in your answer to Question 3.

A.

B.

C.

D.

E.

5. Briefly apply each of the elements stated in your answer to Question 3 to *the Elaine's claim of ownership of the driveway on the Marmo lot*. Don't forget to state whether each element is satisfied.

A. _____

B. _____

C. _____

Go on to the next page.

D. _____

E. _____

6. Briefly apply each of the elements stated in your answer to Question 3 to *the Elaine's claim of ownership of the grass area on the Marmo lot*. Don't forget to state whether each element is satisfied.

A. _____

Go on to the next page.

B. _____

C. _____

D. _____

Go on to the next page.

E. _____

7. In the space provided below, describe and give the elements of “constructive adverse possession,” otherwise known as “color of title.”

8. Does the concept of “constructive adverse possession,” otherwise known as “color of title,” help Elaine with her case? (Circle the best answer.)

YES

NO

9. In the space provided below, please explain why or why not?

10. In the space provided below, describe the “seasonal use doctrine.”

11. Does the “seasonal use doctrine” help Elaine with her case? (Circle the best answer.)

YES

NO

12. In the space provided below, please explain why or why not?

13. For the purposes of *this and the next questions only*, assume that Elaine wins her adverse possession claim as to both the driveway and grass area. Further assume that the Hull National Bank held an outstanding mortgage on the Marmo lot with a payoff balance of \$50,000. After the Marmos lost to Elaine, they stopped paying their mortgage and the Hull National Bank commenced foreclosure proceedings against the Marmo lot. If Elaine brings an action to enjoin the foreclosure, and seeking a declaratory judgment that the bank cannot foreclose the mortgage as to the driveway and grass area, should Elaine prevail? (Circle the best answer.)

YES

NO

Go on to the next page.

14. In the space provided below, please explain why or why not?

15. For the purposes of *this and the next questions only*, assume that Elaine wins her adverse possession claim as to the driveway and grass area, and at the time of the judgment both Fred and Nancy Marmo were alive. Further assume that the Marmos only owned a life estate in the Marmo lot, and that their children owned a remainder. What estate will Elaine obtain in the driveway and grass area:

A. As to Fred and Nancy Marmo?

B. As to the Marmos' children?

16. In the space provided below, please explain your answer to the previous question.

Go on to the next page.

Questions 17 through 21 are based on the following facts:

Ohner conveyed Blackacre to Hermes, Winifred, Haggas and Wanda using the following grant language: "I hereby convey my entire right, title and interest in Blackacre to Hermes, Winifred, Haggas and Wanda, meaning and intending to convey to Hermes and Winifred as tenants by the entirety, to Haggas and Wanda as tenants by the entirety, and as tenants in common as between the couples." At the time of the grant, Hermes and Winifred were legally married to each other, and Haggas and Wanda were engaged to be married. Haggas and Wanda did in fact marry each other two weeks after the grant.

17. Please state and explain the concurrent estates owned by the parties at the time of the grant. You may (but are not required to) draw out a chart or figure if you think it would help explain the grants.

18. Five years after the grant Hermes sold his "entire right, title and interest" in Blackacre to Stoddard by general warranty deed. What concurrent estate did Stoddard own after the sale by Hermes?

19. Two years after Hermes's sale to Stoddard, Wanda sold her "entire right, title and interest" in Blackacre to Kevlar. Immediately after Wanda's sale to Kevlar, 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):

Go on to the next page.

Concurrent Estate(s):

Percentage/Fractional Interests:

20. One year after Wanda's sale, Hermes and Winifred got divorced, but their interests in Blackacre were not sold or given exclusively to one of them under the divorce decree. Immediately after the divorce of Hermes and Winifred, 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:

21. One year after the divorce of Hermes and Winifred, Kevlar died with a valid will leaving his interest in Blackacre to Festivus. Immediately after the sale to Festivus, 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 22 through 26 are based on the following facts:

Oblio conveyed Blackacre to Angina for life, and then to Bubba and his heirs, but if Bubba dies without having gone to Disney World, to Consolata and her heirs.

22. Please state the estate or interest that each person owns *on first look before completing an analysis under the rule against perpetuities.*

Oblio: _____

Angina: _____

Bubba: _____

Consolata: _____

23. Now, please state the estate or interest that each person owns *after completing your analysis under the rule against perpetuities*.

Oblio: _____

Angina: _____

Bubba: _____

Consolata: _____

24. Things change. Ten years after the grant, Angina dies. Immediately after Angina's death, what estate or interest does each person own?

Oblio: _____

Bubba: _____

Consolata: _____

25. Things change again. Two years after Angina's death, Bubba goes out "a huntin' for some food" on Blackacre, and "up from the ground come a bubblin' crude . . . oil that is." Bubba struck oil and as soon as practicable erected six oil rigs on the property. Oblio and Consolata have brought an action seeking monetary damages and an injunction ordering Bubba to cease and desist his drilling activities. Who will win that suit? (Please circle the best answer.)

Oblio and Consolata

Bubba

Go on to the next page.

26. In the space provided below, please explain your answer to the previous question.

Question 27 is based on the following facts:

27. 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 Smith one hundred and 00/100 (100.00') feet; thence turning and running due west by the land of Jones fifty and 00/00 (50.00') feet; thence turning and running due south by the land of said Jones fifty and 00/00 (50.00') feet; thence turning and running due west once again by the land of said Jones fifty and 00/00 (50.00') feet; thence turning and running due south by the land of Erlanger fifty and 00/00 (50.00') feet; and thence turning and running due east one hundred and 00/00 (100.00') feet along said Main Street to the point of beginning.



MAIN STREET

Questions 28 through 32 are based on the following facts:

As part of your pro bono work, you have been assigned to serve as “lawyer of the day” at the Middleshire County Land Court. One of your tasks is to monitor the Court’s email account for questions that laypersons send. You have just received the following email and need to provide a quick response:

Hi,

I own two residentially zoned parcels in Middleshire County that are landlocked by one landowner. On one of my parcels, there was formerly a vacation home that was used seasonally for 40 years. The previous owner crossed the surrounding parcel to access the vacation home with full support from the previous owner of the surrounding parcel, albeit without a written agreement or easement to do so.

The vacation home burned down 30 years ago, the stone chimney and part of the foundation remain, and the previous owners, who now live overseas, stopped going to the property at that time (30 years ago). The surrounding parcel also now has a new owner, who is not inclined to allow an easement, since he is currently unsure of his plans for their own parcel at this time.

I bought the property, knowing the situation, and am now needing to figure out what my legal rights are as a property owner to, a) access my property, to even physically stand on it, and b) if there is any vehicle with which to force the surrounding parcel owner to sell me an easement, and/or if there is any kind of law that allows property owners to obtain legal access to their property in the event their property is landlocked (other than an easement, for instance), and lastly, if the term "prescriptive rights" has any relationship to any aspect of my situation...?

Thanks,

Bob

28. Assuming that Bob’s neighbor is unwilling to grant a easement to him, please list the two implied easements (not a prescriptive easement) that Bob might try to establish as a matter of law:

A. _____

B. _____

Go on to the next page.

29. Please state the elements of the easement you listed in "A" above.

30. Please state the elements of the easement you listed in "B" above.

Go on to the next page.

31. Please state what additional facts you would like to know in order to make a better determination of whether either of the easements you listed in your answer to Question 28 apply?

32. If, instead, Bob’s only chance would be to prove an easement by prescription, please state the four elements he would have to show to establish such an easement.

- A. _____
- B. _____
- C. _____
- D. _____

Questions 33 through 36 are based on the following facts:

Alex conveyed Blackacre to Billy. The deed contained 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 approximately 20 recovering drug addicts. Alex, who now lives next door to Blackacre, is about to file a legal action against Dirk.

On what legal issue that we considered this semester should Alex base his complaint?

33. _____

34. There are two sets of elements (with three elements each) for the legal issue you identified in your answer to the last question. In the spaces provided below, please appropriately label each set of elements and state the elements below each label:

A.

Label: _____

Elements: 1. _____

2. _____

3. _____

B.

Label: _____

Elements: 1. _____

4. _____

5. _____

35. Under which set of elements does Alex have a better chance of prevailing? (Please circle the best answer.)

A

B

Go on to the next page.

36. Please explain the legal basis of your answer to the previous question.

Questions 37 through 39 are based on the following facts:

Sidney, the owner of several parcels of land in the City of Eldorado, including Blueacre, entered into an oral agreement to sell Blueacre to Popeye for \$100,000. Popeye delivered the entire purchase price to Sidney by a check. In the "memo" area of the check, Popeye wrote "purch. price/Sidney's land/Eldorado." Sidney endorsed and deposited the check in his bank account. The parties signed no other documents. Sidney has changed his mind about selling the property and has attempted to return the purchase price, plus interest. Sidney refuses to give Popeye a deed.

37. If Popeye were to sue Sidney for specific performance, what would be Sidney's best defense?

38. Given the facts, will Sidney prevail in his defense? (Please circle the best answer.)

YES

NO

Go on to the next page.

39. Please explain the legal basis of your answer to the previous question.

Questions 40 through 46 are based on the following facts:

At all relevant times, Blackacre was a 20 acre wooded, unoccupied parcel of land in a rural county in the State of Multistate.

In 1999 Alison, the owner of Blackacre placed an easement on Blackacre in favor of Edsel's property named Greenacre. The easement gave Edsel the right to run and maintain a buried water line over a five foot wide strip of land near the eastern border of Blackacre. Edsel, a neighbor who believed he might some day build on Greenacre, needed the easement to make that property accessible to water. Edsel promptly recorded the easement but did not immediately make use of the easement.

In 2001, Alison conveyed Blackacre to Bennie for \$350,000. In that conveyance, Alison gave a general warranty deed with the covenant of quiet enjoyment, covenant against encumbrances, covenant of general warranty and covenant of further assurances. Bennie promptly recorded the deed.

In 2002, Bennie placed an easement on Blackacre in favor of Eduardo. The express purpose of the easement was to allow "Eduardo, his heirs and assigns, the undisturbed right to enjoy all portions of Blackacre for the purposes of hiking, fishing, bird watching and other passive recreation, excluding hunting, in a peaceful and undeveloped atmosphere." Eduardo, who did not own a nearby property, paid \$150,000 for the easement which was silent as to its duration. Eduardo promptly recorded his easement and immediately began to use the easement for its intended purposes. Bennie used Blackacre for the purpose of cutting down selected hardwood for use as cordwood. He did so in a judicious manner that did not interfere with Eduardo's easement.

In 2003, Bennie conveyed Blackacre to Castelton for \$400,000. Bennie, who said nothing to Castelton about Eduardo's easement, gave Castelton a special warranty deed with the covenant of quiet enjoyment, covenant against encumbrances, covenant of general warranty and covenant of further assurances. Castelton promptly recorded his deed and continued to use Blackacre in the same fashion as Bennie.

In 2004, Castelton granted a mortgage on Blackacre to the Rural National Bank in the amount of \$50,000. The Rural National Bank promptly recorded that mortgage.

In early 2005, Castelton entered into a purchase and sale agreement to sell Blackacre to Danielle for \$450,000. Danielle intended to build a single family home on Blackacre and live there. Danielle intended to build a single family home on Blackacre and live there. The purchase and sale agreement was silent as to marketable title, but expressly required that Castelton deliver a "good clear record title." Danielle failed to do a title search or physically inspect Blackacre prior to the closing date, and Castleton conveyed to Danielle for \$450,000. Castleton, who said nothing to Danielle about either easement or the mortgage to the Rural National Bank, gave Danielle a quitclaim deed which Danielle promptly recorded.

Danielle quickly discovered that Eduardo was using his easement on Blackacre. She then did a title search and discovered the easements to Edsel and Eduardo, as well as the mortgage to the Rural National Bank. Castelton stopped paying the mortgage to the Rural National Bank after he sold Blackacre to Danielle, and the bank has commenced foreclosure proceedings. The nature of Eduardo's easement prevents anyone from developing or living on Blackacre, with the exception of Edsel's water line easement which will be buried.

For the purposes of answering the questions following this common fact pattern, please assume that Blackacre is in a "consideration paid" jurisdiction.

40. In a suit by Danielle against Castelton for breach of the seller's duty to deliver marketable title and record title, who wins? (Please circle the best answer.)

Castelton

Danielle

Go on to the next page.

41. Please explain the legal basis of your answer to the previous question.

42. Assume for *this and the next questions only* that, just prior to the closing, Danielle discovered the mortgage to the Rural National Bank and demanded that Castelton discharge it before the closing. Castelton refused, stating that he needed to use the proceeds from the sale to pay off the mortgage. He did offer, however, to place the sale proceeds in escrow to ensure that the mortgage was promptly and properly discharged. Danielle refused the offer and demanded back her deposit. Castelton refused and sued for specific performance. In that suit, who will win? (Please circle the best answer.)

Castelton

Danielle

Go on to the next page.

43. Please explain the legal basis of your answer to the previous question.

43. Please ignore the assumptions made In Questions 42 and 43, and go back to the facts stated in the common fact pattern. In a suit by Danielle against Castelton for breach of deed covenants, who wins? (Please circle the best answer)

Castelton

Danielle

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

44. Briefly explain the legal reasoning of your answer to the last question.

Go on to the next page.

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

Bennie

Danielle

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

46. Please explain the legal basis of your answer to the previous question. (Please circle the best answer.)

Question 47 is based on the following facts:

Martin borrowed \$100,000 from the Burlingame Savings Bank and used the money to buy Blackacre. In order to borrow the funds, Martin executed a note and mortgage in favor of the Bank, neither of which contained a due-on-sale clause. The Burlingame Savings Bank immediately recorded the mortgage. Two years later, Martin sold Blackacre to Arnold "subject to" the mortgage to the Bank. Arnold immediately recorded the deed. Arnold lived on Blackacre for a year and sold it to Barbara "subject to" the mortgage to Bank. Barbara also agreed to "assume" the obligations thereon. Barbara immediately recorded her deed. Six months later, Barbara sold Blackacre to Carrie, who took "subject to, and assumed," the mortgage. Carrie subsequently defaulted on the payments to Bank. The Burlingame Savings Bank foreclosed but was left with a deficiency. It has brought actions against Martin, Arnold, Barbara and Carrie on the deficiency. Below, please state whether the Bank will recover against each defendant, and the ground of recovery.

<u>Defendant</u>	<u>Circle Whether Bank Recovers</u>		<u>Ground of Recovery</u>
Martin	YES	NO	_____
Arnold	YES	NO	_____
Barbara	YES	NO	_____
Carrie	YES	NO	_____

Questions 48 through 50 are based on the following facts:

Oliver owned Eldorado in the State of Euphoria. In 1992 he conveyed Eldorado to Appleby for \$200,000. Appleby did not immediately record his deed and did not take possession of the property. In 1994, Oliver conveyed Eldorado to Nancy, his favorite niece, "for \$1.00 and love and affection." Nancy, who knew nothing about the grant to Appleby, immediately recorded her deed. In 1997, Appleby realized that he had not recorded his deed, and finally did record it. In 2000, Nancy granted a mortgage in Eldorado to the Nirvana National Bank. The Bank promptly recorded its mortgage. In early 2006, Nancy sold Eldorado to Brian for \$650,000. Brian immediately recorded his deed.

The State of Euphoria has a recording statute that states:

A conveyance of an interest in real estate shall not be valid as against any subsequent person who pays substantial value and takes without notice of the prior interest unless the interest in real estate is recorded in the registry of deeds for the county or district in which the land to which it relates lies.

48. What kind of a statute is the Euphoria recording statute?

49. In an action between Brian and Appleby in which both claim ownership to Eldorado, who will win?

Your legal reason for the above answer:

Go on to the next page.

50 In an action between Brian and Nirvana National Bank, in which Brian claims he is not subject to the mortgage, who will win?

Your legal reason for the above answer:

PART TWO

ESSAY QUESTION

SUGGESTED TIME: FORTY (40) MINUTES

PERCENTAGE OF EXAM POINTS: 20%

INSTRUCTIONS FOR PART TWO:

This part consists of one (1) medium-length 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:

Oaner owned a four-acre square-shaped parcel of land fronting Forest Avenue in Green Pines, Massachusetts. In August 2001, Oaner agreed to sell to Byer a two-acre portion of the property which included the entire frontage on Forest Avenue. During negotiations, Oaner and Byer discussed the reservation of an easement from Forest Avenue to Oaner's remaining landlocked parcel. During these discussions, the parties agreed that Oaner would have the right in the future to designate the location of an easement up to 50' in width on Byer's property.

The local zoning and subdivision laws at the time required 50' rights of way as a standard, but they did not call for rights of way wider than 59' under any circumstances. In September 2001, Oaner delivered the deed for the front two acres to Byer. The deed contained the following provision:

Grantor reserves to himself, his heirs, successors and assigns a right of way over the lands conveyed hereby to Grantee for vehicular and pedestrian traffic between Forest Avenue and the remaining lands of Grantor.

In 2003, Byer contracted to sell his front parcel to Uzer. Byer approached Oaner and requested Oaner to designate the location of his right of way. Oaner refused to do so and demanded instead that Byer purchase his remaining property at a price that was then twice its fair market value. Byer refused and conveyed his parcel to Uzer by a quitclaim deed containing the covenant against encumbrances and the covenant of quiet enjoyment. Byer said nothing to Uzer about the right of way.

In 2004, Uzer built a manufacturing plant on the front two acres and erected a fence around the perimeter of the property to provide for the security of his operations. Recently, Oaner decided to develop the back two acres by erecting an office building. Such a use is permitted by the Green Pines zoning and subdivision laws, but those laws now require a 60' wide right of way if the back two acres is to be used. The local zoning and subdivision laws would permit a 20' wide right of way if the back two acres were used for residential rather than office purposes.

Oaner would like to force Uzer to provide a 60' wide right of way over a section of the front two acres that would include Uzer's present 40' wide driveway. Uzer is willing to permit a 20' wide right of way along the boundary line, which would not include the existing driveway.

1. Please discuss the rights and liabilities of Uzer; and
2. Please draft easement language that you would have requested on behalf of Oaner if you had represented him at the time of his conveyance to Byer.

Go on to the next page.

PART THREE

ESSAY QUESTION

SUGGESTED TIME: TWENTY (20) MINUTES
PERCENTAGE OF EXAM POINTS: 10%

INSTRUCTIONS FOR PART THREE:

This part consists of one (1) shorter essay question. 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 four (4) single-spaced bluebook pages.

QUESTION:

Please use the step-by-step methodology we learned in class to give the appropriate state of the title for the following grant. Do not forget about the rule against perpetuities.

"A conveys to B for life and then to C and her heirs if she survives B, and if not, to D and his heirs."

END OF EXAM

HAVE A HAPPY HOLIDAY!

**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.

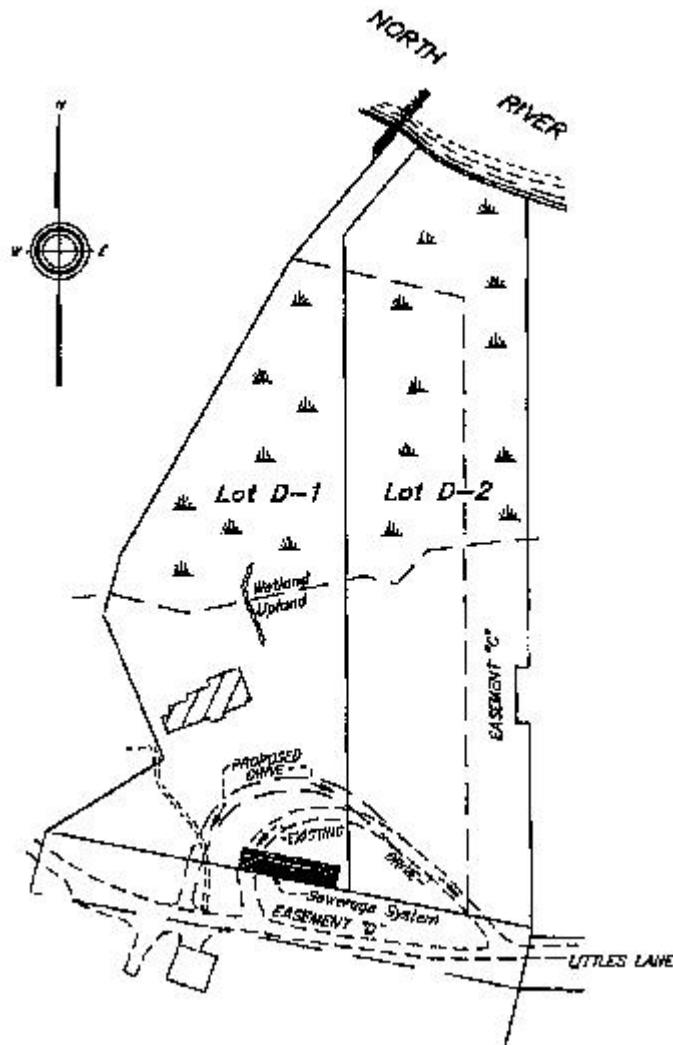
If you have not finished this Part of the exam when the suggested time is up, you should go onto the next part of the exam, and come back to finish it later.

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

Part One - Suggested Time: 2 ½ Hours

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

On Friday, November 14, 2008, Megan Berns was driving her daughter to a preschool class at the People's Pentecostal Church in Holyfield, Delaware, where she was scheduled to perform excerpts from her role as Clara in the Central Delaware Dance Academy's performance of the Nutcracker Ballet. As Megan neared the church on Route 13, a two-lane highway with a posted speed limit of 40 miles per hour, she came upon a fallen tree that blocked the roadway entirely. Just before the fallen tree, on the right, was a driveway leading to the home of David and Debra Doan. In an attempt to turn around so she could reroute her trip and get her daughter to the church on time, Megan turned into the driveway and pulled up toward a parked car at the back of the driveway. Unbeknownst to Megan, the parked car was occupied by Debra Doan, who had just entered the vehicle and was in the process of starting it. After Megan's car was fully into the Doan driveway, and in front of Debra's parked automobile, Megan put the automobile into reverse and started to back out of the driveway. Just as the rear end of her car was about to enter the street, however, Megan stopped fully to check for traffic. Through her rear view mirror, Debra saw Megan pull in, stop, and start to back out. At that point, Debra put her car into reverse without looking again into the rearview mirror, and not realizing that Megan had stopped near the end of the driveway. The rear end of the Doan automobile collided with the front end of the Berns automobile, and Megan and her daughter were injured. The accident occurred entirely on the Doan property.

Berns sued Doan, contending that she negligently caused the collision that resulted in injuries to her daughter and her. A Delaware statute states that property owners owe a duty of reasonable care (they are liable for ordinary negligence) to all those who are lawfully on their property, but are only liable for willful or wanton conduct to trespassers. Doan claims that Berns and her daughter were trespassers, that there is no evidence that she engaged in willful or wanton conduct, and that the case should be dismissed on summary judgment.

Question 1 is on the next page.

1. Please state the definition of trespass.

2. Apply the elements to determine whether Megan Berns and her daughter were trespassers.

3. Which of the following exceptions provides the Berns's best argument that they were not trespassers? (Circle only one.)

Human Dignity
(State v. Shack)

Necessity/
Emergency

Hot Pursuit of
Property

Blocked Public
Way

Attractive
Nuisance

Question 4 is on the next page.

4. State the elements of, or describe, the exception that you circle above.

5. Briefly apply those elements to the facts.

Questions 6 through 10 are based on the following fact pattern:

Thanksgiving Day 2008 was ideal for hunters in southern Alaska. A soft blanket of freshly accumulated white snow covering the ground readily revealed the tracks left behind by wild animals as they scrambled for safety from their pursuers, and a low-atmospheric ceiling muted the cacophony of forest noises during open hunting season. Sarah Palin, a resident of Wasilla, knew

the neighboring forest well and, faced with such excellent conditions, decided to try her luck at fetching a moose that afternoon.

Ambling along a snowmobile trail, toting her Elite 308 Model 99C rifle with lever action and a Weaver 4-power scope, she noticed two moose tracks in the snow. Continuing to follow the moose tracks along the trail, she had walked only about one hundred yards when she also came upon the tracks of a human. For a while, the human's tracks joined the moose tracks, but soon the moose tracks diverged into the woods. It was unclear to Palin whether the moose tracks and human tracks were formed at the same time, but she doubted it. Palin left the snowmobile trail to follow the moose tracks into the woods.

The moose tracks looped through the woods for about a mile and, when Palin got within about 400 feet of returning to the snowmobile trail, she saw the moose. It was a beautiful, fully-antlered, mature male that caused Palin to mutter softly, "Do I want to bag me a mavericky, big old moose like you? You betcha. I'm gonna' hang those big old antlers above the fireplace in my family room, and feed my family moose stew for weeks!" Palin raised her Elite 308 Model 99C rifle and sighted the moose with the Weaver 4-power scope. She pulled the trigger and, with the crack of her gun and a puff of smoke, the moose dropped. Before she could repair to the fallen beast in order to gut it, however, the moose rose and galloped off toward the snowmobile trail. Palin followed in hot pursuit. Soon she was back on the snowmobile trail, directed ahead by the moose tracks and a trail of blood. Palin doggedly pressed on for over a mile. Then she saw the moose again; it obviously was slowing down. Soon, the moose was walking and Palin really started to gain. She was within 100 yards of the moose and, just as the moose was beginning an attempt to lie down in the snow, raised her gun and methodically sighted it in.

Before Palin could shoot, however, she heard a shot ring out from the other side of the moose. Immediately, the moose collapsed, completed its descent to the ground, and rolled over, dead. Palin started running toward the moose but saw that a man was also running toward it with his rifle, from the other side. The man got there first. As Palin approached she looked intently at the man and, in horror, realized it was him, Joe Biden. All Palin could utter was, "Say it ain't so, Joe." Biden bellowed, "It sure is Governor. I just bagged me a moose. Man, it's been a good year for me! The only thing missing is that I couldn't share this moment with my good friend, John

McCain. Although we disagree vehemently on politics, and I believe he lacks the temperament to be an effective President, I love that man. We're like brothers."

Palin retorted, "Not so fast Joe. That's my moose, gosh darn it, and you're not gettin' it. Huntin' like that just isn't right. It's not the way we do it in Alaska." She fired three shots into the air. Within seconds a massive snowmobile powered onto the scene, hauling a large flat-bed sled. Todd Palin and his son, Track, jumped off the snowmobile, looking quite sharp in their racing jumpsuits. They pulled off their racing helmets and rolled the dead moose onto the flat-bed sled before Biden could even react. As they sped off with Sarah and the moose, Biden shouted, "I'm going to tell my good friend, John McCain, about this, Governor. As you know, we're great friends. In fact, I love him like a brother. And, you know what he's like when he gets angry." Palin, however, just rode off into the sunset, never looking back. She felt utter joy; it was just her, her men and her moose carcass.

Biden has sued Palin in the Alaska Superior Court, claiming he was the owner of the moose, that Palin converted it, and demanding compensation for the value of the moose.

6. What rule of law will apply in determining who owned the moose?

7. Please state the rule in its entirety.

Question 8 is on the next page.

8. Based *strictly* on the facts given above, and drawing no inferences from them in favor of either party, who has the best chance of prevailing under the rule of law you stated above? (Circle only one.)

Sarah Palin

Joe Biden

9. Please explain your reasoning for your answer to the prior question.

10. Sarah Palin has called noted Alaska veterinarian, Bull Winkler, DVM, to testify on her behalf. Dr. Winkler is an expert on the Alaskan moose, has been practicing large-animal veterinary medicine for more than 30 years, has published numerous articles on the subject, and claims to have done a full autopsy on the moose in question before Governor Palin gutted the animal. What expert opinion could Dr. Winkler give which, if uncontroverted, would warrant a finding in favor of Governor Palin?

Questions 11 through 26 are based on the following fact pattern:

Gary Glitzen, an only child, became an orphan in 1984 when his wealthy parents, Gerry and Glenda, were killed in an avalanche while skiing in the French Alps. Gary was 15 years old at the time, and was Gerry and Glenda's sole heir. Among the various properties his parents left him at their death was a 1 acre waterfront tract of land with a small, cabin on Lake Chargoggagoggmanchauggagoggchaubunagungamaugg (usually called "Webster Lake") in Webster, Massachusetts. The locals call the Glitzen property "Fishacre" because of its proximity to some of the finest fishing grounds on Webster Lake. Gerry had inherited Fishacre, and used it often prior to Gary's birth. However, Fishacre fell into disuse upon Gary's birth. Shortly thereafter, the property became overgrown, and the cabin slowly became rickety and in need of repair. Gary had never been to Fishacre prior to his parents' death, had never heard about it, and had no idea that he had inherited the property after his parents had died.

Attorney Primo Properi, one of the most prominent estate planning and estate administration attorneys in Massachusetts, was named the executor of Gerry and Glenda's estate. Primo is exceptionally ethical and competent, unlike his identical twin brother, Secundo Properi, who is also an attorney. Although Secundo is a known scamp in the legal community, he is fun-loving, fun to be with, and generally well-liked. Primo thinks the world of his brother, who often hangs out at Primo's office.

After Gerry and Glenda's death, Primo had Faith, his legal assistant, go to the Glitzens' safe deposit box to retrieve all the personal property and deeds to the various pieces of real estate the Glitzens had owned. Faith placed all the deeds into a box, brought the box back to Primo's office, and placed it on Primo's desk who, at the time, was attending a continuing education seminar in Palm Springs.

While Primo was at the seminar, Secundo came into his office and started to review the deeds. Realizing that no one would think twice about Fishacre, considering all the other valuable and impressive property that Gerry and Glenda owned, Secundo saw an opportunity when he came upon the Fishacre deed. He decided to take the deed, sell the property, and never tell Primo about it.

On June 23, 1985 Secundo forged Primo's name to a deed to Fishacre and, purportedly on behalf of the Glitzen estate,

delivered it to Alvin Angler, who paid \$125,000. Alvin moved in immediately and began to make improvements to the cabin.

Because the cabin was not winterized, Alvin was not able to live at Fishacre during the winter months of 1985-1986, 1986-1987, 1987-1988 and 1988-1989. But Alvin did live in and continue to improve Fishacre during all other months of the year. Alvin did finish winterizing the cabin in April 1989, and lived there year-round after at that time. Alvin also did substantial work to the landscaping on Fishacre. By 1990, he had cleared all the overgrowth on half of the one-acre lot, and continued to use and care for the cleared half acre throughout his time there. The remaining half acre consisted of woods, which was not used by anyone.

In 1985, Alvin built a dock on Webster Lake and thereafter fished it regularly, except when it was frozen. He erected a mail box, had the mail and a newspaper delivered daily, built a driveway visible from the road, shoveled that driveway in the winter, came and went regularly, paid the taxes on Fishacre, and became friendly with several of the neighbors. He continued to make improvements to the camp. As to the Glitzen estate, Secundo was right; no one even realized that Fishacre should have been part of the estate.

Alvin lived on Fishacre until he died in 1996, with a valid will leaving Fishacre "to my best fishing buddy, Colin Carp." Colin used Fishacre much the same way as Alvin did until he sold it by deed to Delvin Dogfish for \$225,000 in 2003. Delvin has continued to live on Fishacre until presently, and has used it in the same way as both Alvin and Colin.

In 1986, when Gary was 17 years old, he was injured in an automobile accident, and went into a coma for the next three years. Gary came out of the coma in 1989, when he was 20, and has been fine since.

Last month, November 2008, Gary ran into his Uncle Charlie, who he had not seen since his parents' death. Uncle Charlie was Gary's father's brother. Charlie told Gary all about the fun times he and Gary's father had spent on Fishacre, and how much they enjoyed fishing together. Gary immediately wondered whatever happened to Fishacre. After he and Primo looked into it, they figured the whole thing out with Secundo's forged deed.

It is December 2008, and Gary has just brought an eviction action against Delvin.

11. What title did Secundo give to Alvin in 1985 when he delivered the forged deed?

12. In the space below, please explain your answer to the prior question.

13. What was the status of Alvin when he moved onto Fishacre in 1985?

14. Please state the rule of law you employed in coming to your conclusion in your answer to the prior question.

Question 15 is on the next page.

15. Apply the facts to show how the elements you stated in the rule above were satisfied.

16. Please list the five elements of adverse possession.

1. _____
2. _____
3. _____
4. _____
5. _____

17. Please describe each of the elements you listed above in your answer to the prior question.

1. _____

2.

3.

4.

5.

18. In the space below, apply each of the elements to the facts to determine whether each element is met. Don't forget to state whether each element is satisfied.

1. _____

2. _____

3. _____

4. _____

5. _____

19. In the space below, please explain the seasonal use doctrine.

Question 20 is on the next page.

20. In the space below, please explain whether the seasonal use doctrine applies to these facts, and if so, how it does.

21. In the space below, please describe "tacking" and its elements.

Question 22 is on the next page.

22. In the space below, please explain how tacking applies to these facts.

23. In the space below, please describe "tolling" and its elements.

Question 24 is on the next page.

26. In the space below, please describe the impact, if any, that "constructive adverse possession" will have on the facts stated in this series of questions.

Questions 27 through 42 are based on the following fact pattern:

Harry Holdonnow and Wilma Holdonnow, who were legally married to each other and owned no real estate. They also had never had a good marriage. In 2001, Harry and Wilma decided to fly together to a Caribbean island where, according to an advertisement, the couple could obtain a 24 hour divorce. They paid \$3,000 apiece for the divorce, which included court filing fees, local legal representation, airfare and a two-night stay at one of the local resorts.

Harry and Wilma arrived on the island on a Friday afternoon, and each checked into their respective rooms. The next morning, the couple went to an island government courthouse where a divorce ceremony was performed which, they were told, would become final the next morning before they left the island. On Saturday evening, Harry met Lola Looker, who was also on the island to obtain a divorce. The two fell in love, exchanged cell phone numbers, and promised to get in touch with each other once they returned to the states. On Sunday afternoon, believing that their divorce had become final, Harry and Wilma boarded a plane and flew back to the United States. Unbeknownst to Harry and

Wilma, the state in which they lived, as well as a vast majority of states in the United States, did not recognize 24 hour divorces from the Caribbean island they had gone to. No state in the United States allows anyone to marry another if he or she is already married to someone else.

Harry contacted Lola almost immediately after he returned. The two dated for about two weeks, then flew off to the "Elvis Pressley Love Chapel" in Las Vegas where they joined in a wedding ceremony presided over by a minister clad as "The King." The next day they flew back to their home in "Multistate."

A short time later, Harry and Lola decided to purchase a home. They found "Blissacre," made a down payment, granted a mortgage to Bank, and took a deed granting title to: "Harry Holdonnow and Lola Holdonnow, husband and wife, as tenants by the entirety."

27. Please state the concurrent estate and fractional interest that Harry and Lola obtained in Blissacre.

28. In the space provided below, please fully explain why you chose the concurrent estate and fractional interest stated above.

About a year after buying Blissacre, Harry and Lola found that they were having trouble making their mortgage payments to Bank. At that point they decided to have Lola's sister, Liza, and her husband, Butch, take joint title with them, and help them lower their monthly payments. Liza and Butch, matched the downpayment Lola and Harry had put down, put their names on a refinance mortgage (with Lola and Harry), and took title in a new deed from Harry and Lola that read as follows: to "Harry Holdonnow and Lola Holdonnow, husband and wife, as tenants by the entirety, who as a couple own as tenants in common with another couple, Butch Blusterer and Liza Blusterer, who as to each other are husband and wife, as tenants by the entirety."

29. After this grant, please state the concurrent estates and fractional interests owned by Harry and Lola and Butch and Liza.

Question 30 is on the next page.

32. Under the purchase and sale agreement, what present estate, if any, did Harry agree to give to Salvatore?

Forty-five days after the purchase and sale agreement was signed, Harry and Mitzie appeared at the closing, with Mitzie passing herself off as Lola. Harry delivered to Salvatore a general warranty deed signed by Harry and Mitzie (which forged Lola's name), and which granted to Salvatore "the entire right, title and interest of Harry Holdonnow and Lola Holdonnow in said Blissacre." Harry and Mitzie took the money directly from the closing, got on a plane, flew to a Caribbean island, and commenced spending it at the chemin de fer tables in the local casinos.

33. In the space below, please fully explain what interest Salvatore obtained as a result of accepting the deed from Harry.

Then, a week after Harry disappeared, Liza was hit and killed by an automobile while she was crossing the street. She had a will which, surprisingly, left her entire interest in Blissacre to Harry. It seems that, unbeknownst to anyone but themselves, Liza and Harry had been carrying on a secret affair.

With no place else to go, Harry returned home. Upon Harry's return, Salvatore brought a two-count complaint against Harry.

38. The first cause of action in the two-count complaint was for breach of the covenant to convey marketable title contained in the purchase and sale agreement. Who should prevail in that cause of action? (Circle only one.)

SALVATORE

HARRY

39. In the space provided below, please fully explain why you chose your answer to the prior question.

40. If you represented Salvatore, what cause of action would the second count articulate?

Question 41 is on the next page.

Questions 43 through 48 are based on the following fact pattern:

In 1999, Oliver, the owner of Blackacre in fee simple absolute, conveyed by deed as follows: "to my daughter, Alice, for her life, then to the children of Alice for their lives, and then to the grandchildren of Alice who survive their parents. At the time of the grant, Alice was 62 years old, unmarried, and had a 26 year old son named Jason.

- 43.** What was the state of the title *immediately* after Oliver's grant, *not considering* application of the common law rule against perpetuities? (Give fully developed interests such as "vested remainder subject to complete divestment." Partial answers, such as "vested remainder," or "future interest," are incorrect.)

Oliver: _____

Alice: _____

Alice's Children: _____

Alice's Grandkids: _____

- 44.** What was the state of the title *immediately* after Oliver's grant, *specifically considering* application of the common law rule against perpetuities? (Give fully developed interests such as "vested remainder subject to complete divestment." Partial answers, such as "vested remainder," or "future interest," are incorrect.)

Oliver: _____

Alice: _____

Alice's Children: _____

Alice's Grandkids: _____

45. Things change. In 2005, Alice died. Oliver was alive at the time. Alice's only surviving child was Jason, then 32 years old. Jason had a three year-old daughter named Bella. What was the state of the title *immediately* after Alice's death, *specifically considering* application of the common law rule against perpetuities? (Give fully developed interests such as "vested remainder subject to complete divestment." Partial answers, such as "vested remainder," or "future interest," are incorrect.)

Oliver: _____

Jason: _____

Alice's Grandkids: _____

46. Things change, again. In 2007, Jason was killed in a hunting accident. His only child was Bella, who was five years old at the time. What was the state of the title *immediately* after Jason's death, *specifically considering* application of the common law rule against perpetuities? (Give fully developed interests such as "vested remainder subject to complete divestment." Partial answers, such as "vested remainder," or "future interest," are incorrect.)

Oliver: _____

Bella: _____

Question 47 is on the next page.

47. Things change, one final time. In 2009, Oliver died with a will leaving "my entire right, title and interest in Blackacre to my grandson, Jason, except that if he shall predecease me, then Jason's children shall take in equal shares, by right of representation, the share Jason would have." What was the state of the title *immediately* after Oliver's death, *specifically considering* application of the common law rule against perpetuities? (Give fully developed interests such as "vested remainder subject to complete divestment." Partial answers, such as "vested remainder," or "future interest," are incorrect.)

48. Considering the original grant and all the "things that changed," what is ironic about the end result?

Questions 49 through 52 are based on the following fact pattern:

Figaro owned Mozartacre, a vacant lot, in fee simple absolute. In 1990, in consideration of \$5,000, he granted an underground easement to the City of Salzburg which permitted Salzburg to construct, maintain and repair a water and sewer line over a 30-foot wide path of land down the middle of Mozartacre. The scope of the easement was such that nothing could be built upon it, because that would be deemed an interference with Salzburg's rights. Salzburg immediately recorded the easement.

In 2003, Figaro sold Mozartacre to Susanna for \$125,000. The general warranty deed that Figaro delivered said nothing about the easement, and Susanna recorded the deed immediately. It included the covenant against encumbrances, the covenant of

promissory note, secured by a mortgage, giving Mingus National Bank an interest in Birdland. Mingus National Bank, which had no actual notice of the mortgage to Coltrane Savings Bank, recorded its mortgage immediately. In 2004, Thelonious gifted Birdland by deed for no consideration to his favorite niece, Billie. Thelonious did not disclose either deed to Billie, who immediately recorded her deed. In 2005, Coltrane Savings Bank recorded its mortgage. In 2007, Billie sold Birdland by valid deed to Miles for \$375,000, its fair market value. Miles had no actual notice of either of the mortgages mentioned above. Jazz has a recording statute stating:

No interest in real property is superior to a subsequent interest for substantial value, and taken without notice, unless it is first recorded at the county where the property is located.

After the sale to Miles, no one has made any mortgage payments to either the Coltrane Savings Bank or the Mingus National Bank.

54. What kind of recording statute does Jazz have?

55. In an action between Miles and Mingus National Bank, in which Miles claims he is not subject to that mortgage, who will win? (Circle only one.)

MILES

MINGUS NATIONAL BANK

56. In the space provided below, give your reasoning for your prior answer.

57. In an action between Miles and Coltrane Savings Bank, in which Miles claims he is not subject to that mortgage, who will win? (Circle only one.)

MILES

COLTRANE SAVINGS BANK

58. In the space provided below, give your reasoning for your prior answer.

Question 59 is based on the following fact pattern:

Othello, who owned Globetheatreacre in fee simple absolute, borrowed \$300,000 from Desdemona, as evidenced by a signed promissory note and mortgage granting an interest in Globetheatreacre. Desdemona immediately recorded the mortgage.

Then, Othello sold Globetheatreacre to Cassio for \$25,000, subject to the \$300,000 mortgage to Desdemona. Cassio made all mortgage payments while he owned Globetheatreacre.

Then, Cassio sold Globetheatreacre to Iago for \$35,000 and Iago's promise to assume the mortgage obligations due on the Desdemona mortgage.

Two years later, Iago's financial business failed because of the consistently bad advice he had given his clients. He abandoned Globetheatreacre and has made no mortgage payments in some time. Desdemona foreclosed her mortgage and was left with a \$75,000 deficiency. She has sued Othello, Cassio and Iago on the deficiency.

Question 59 is on the next page.

59. As to each of the defendants, please circle whether Desdemona will or will not recover and then, in the space below the answer you circle, briefly state the legal grounds for your answer.

Othello: SHE **WILL** RECOVER SHE **WILL NOT** RECOVER

Grounds: _____

Cassio: SHE **WILL** RECOVER SHE **WILL NOT** RECOVER

Grounds: _____

Iago: SHE **WILL** RECOVER SHE **WILL NOT** RECOVER

Grounds: _____

Questions 60 through 62 are based on the following fact pattern:

Jay Gatsby, a mysterious man of questionable character, who nevertheless was an ardent environmentalist, owned WestEggAcre, an undeveloped parcel of land in the State of Fitzgerald. Fearing that a crazed George Wilson was stalking him, and might cause his untimely end, Gatsby conveyed his beloved WestEggAcre

to Nick Carraway but placed in the deed a restriction that stated:

By accepting this deed, the grantee, and his heirs, devisees, assigns, and grantees hereby agrees to use WestEggAcre for passive recreational purposes only, including but not limited to hiking, camping, bird watching, and the like, but in no event shall the property be developed or improved upon.

Carraway immediately recorded the deed. Unfortunately, Gatsby was correct about Wilson. Shortly after the conveyance to Carraway, Wilson shot him while he was floating in his pool.

For five years, Carraway maintained WestEggAcre exactly as required in the deed, but then he moved back to the Midwest to live permanently. One year after Nick moved back to the Midwest, Daisy Buchanan moved onto WestEggAcre and, meeting all the elements of adverse possession, lived there for more than 20 years. Thereafter, Daisy went to a court of competent jurisdiction and obtained a declaratory judgment that she had become the owner of WestEggAcre by adverse possession. She properly recorded the judgment at the registry of deeds, within the chain of title.

Five years later, Daisy sold WestEggAcre to Meyer Wolfsheim for \$2.5 million. Two years after he bought the property, Wolfsheim sold WestEggAcre to Tom Buchanan for \$3 million. Tom Buchanan has started to construct a "luxury hunting lodge" with 250 rooms, which he believes will attract large numbers of patrons from New York City.

The executor of Gatsby's estate, Mr. Gatz, has brought an action to enforce the restriction in the deed from Gatsby to Carraway and to enjoin Buchanan's building efforts.

Question 60 is on the next page.

60. State and describe the three elements necessary to create a covenant enforceable in equity.

1. _____

2. _____

3. _____

Question 61 is on the next page.

September 2001, Opie delivered the deed for the front two acres to Barney. The deed contained the following provision:

Grantor reserves to himself, his heirs, successors and assigns a right of way over the lands conveyed hereby to Grantee for vehicular and pedestrian traffic between Forest Avenue and the remaining lands of Grantor.

In 2003, Barney contracted to sell his front parcel to Gomer. Barney approached Opie and requested Opie to designate the location of his right of way. Opie refused to do so and demanded instead that Barney purchase his remaining property at a price that was then twice its fair market value. Barney refused and conveyed his parcel to Gomer by a special warranty deed containing the covenant against encumbrances and the covenant of quiet enjoyment. Barney said nothing to Gomer about the right of way.

In 2004, Gomer erected a fence around the perimeter of his property. Recently, Opie decided to develop the back two acres by erecting an office building, but Gomer refuses to recognize any rights of Opie to cross over his land to reach Forest Avenue.

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

END OF EXAM

Part One - Suggested Time: 2 Hours

Questions 1 and 2 are based on the following fact pattern:

The Columbia-Snake River system, in the Pacific Northwest, covers portions of Wyoming, Idaho, Washington, Oregon, and British Columbia. From its origin in northwest Wyoming, the Snake River flows westerly across southern Idaho until it reaches the Idaho and Oregon border. At that point, the river winds northward to form the border between those States for approximately 165 miles, and then the border between Washington and Idaho for another 30 miles. Next, it turns abruptly westward and flows through eastern Washington for approximately 100 miles, finally joining the Columbia River. The Columbia, before this rendezvous, flows southward from British Columbia through eastern Washington. After it is supplemented by the Snake, the Columbia continues westward 270 miles to the Pacific Ocean. For most of the distance, it forms the boundary between Washington and Oregon.

Among the various species of fish that thrive in the Columbia-Snake River system, Chinook salmon and steelhead trout (so-called "anadromous fish") lead remarkable and not completely understood lives. These fish begin life in the upstream gravel bars of the Columbia and Snake and their respective tributaries. Shortly after hatching, the fish emerge from the bars as fry and begin to forage around their hatch areas for food. They grow into fingerlings and then into smolt; the latter generally are at least six inches long and weigh no more than a tenth of a pound. The period the young fish spend in the hatching areas varies with the specie and can last from six months to well over a year.

At the end of this period, the smolts swim down river toward the Pacific. It is believed that they pick up the river's scent so that in their twilight years they can return to their original home. Even under the best of conditions, only a small fraction of the smolts that set out from the gravel bars ever reach the ocean.

Once in the ocean, the smolts grow into adults, averaging between 12 and 17 pounds. They spend several years traveling on precise, and possibly genetically predetermined, routes. At the end of their ocean ventures, the mature fish ascend the river. They travel in groups called runs, distinguishable both by specie and by the time of year. All the fish return to their original hatching area, where they spawn and then die.

At issue in these questions are the runs of spring Chinook between February and May, the runs of summer Chinook in June and July, and the runs of summer steelhead trout in August and September.

Since 1938, the already arduous voyages of these fish have been complicated by the construction of eight dams on the Columbia and Snake Rivers. In order to produce electrical power, these dams divert a flow of water through large turbines that have devastating effect on young smolts descending to the Pacific. Spillways have been constructed to permit the smolts to detour around the turbines. The dams also present great obstacles to the adults. Fish ladders - water covered steps - enable the returning adults to climb over the dams; in addition, the ladders provide an opportunity for compiling statistics. Varying water conditions and the demand for power can increase the mortality of both descending smolts and ascending adults. The mortality rate for ocean-bound smolts averages approximately 95%. Their adult counterparts die at a rate of 15% at each dam. Only 25% to 30% of the adults passing over the first dam, the Bonneville, succeed in running the gauntlet to traverse the Lower Granite Dam and enter Idaho.

Another factor depleting the anadromous fish population is fishing, sometimes referred to as "harvesting." In 1918, Oregon and Washington, with the consent of Congress, formed the Oregon-Washington Columbia River Fish Compact to ensure uniformity in state regulation of Columbia River anadromous fish. Idaho has sought entry into the compact on several occasions, but has been rebuffed. Under the compact, authorities from both States estimate the size of the runs to determine the length of a fishing season the runs can support. The States do not permit commercial harvests of Chinook salmon or steelhead trout in any of their Columbia River tributaries; they do, however, permit sport fishing in most locations.

Although the parties disagree as to the causes, runs of all the relevant species in recent years have been significantly lower. In these years, Oregon and Washington have not permitted commercial harvests of summer Chinook; in both States, steelhead trout are now designated game fish and may not be harvested commercially.

Recently, the state of Idaho brought an action in court claiming that the states of Washington and Oregon have adversely and unfairly reduced the number of fish arriving in Idaho through

the Columbia-Snake River system. This, says Idaho, severely impedes its sport-fishing and tourist industries. Idaho's action was fashioned as one seeking an "equitable apportionment" of the value of the fish allegedly denied entry into Idaho.

1. Please state the so-called capture doctrine (including its elements) in its entirety.

2. Assume that the states of Washington and Oregon have at least partially based their defense of the claim on the so-called capture doctrine. Briefly apply the elements to the stated facts to draw a conclusion whether Idaho will prevail.

Questions 3 through 7 are based on the following fact pattern:

In 2003, Congress passed the so-called "Partial-Birth Abortion Act" (the Act). The Act states: "Any physician who, in or affecting interstate or foreign commerce, knowingly performs a partial-birth abortion and thereby kills a human fetus shall be fined under this title or imprisoned not more than 2 years, or both." The Act defines a partial-birth abortion as:

An abortion in which the person performing the abortion, deliberately and intentionally vaginally delivers a living fetus until, in the case of a head-first presentation, the entire fetal head is outside the body of the mother, or, in the case of breech presentation, any part of the fetal trunk past the navel is outside the body of the mother, for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus; and performs the overt act, other than completion of delivery, that kills the partially delivered living fetus.

The medical procedure targeted by the Act is called an "intact dilation and extraction." Although some physicians proclaim that the procedure is sometimes necessary to save a mother in emergency situations, Congress issued findings (that are included in the Act) proclaiming that a "partial-birth abortion . . . is . . . unnecessary to preserve the health of the mother." Although most laypeople believe that so-called partial-birth abortions occur when the mother would otherwise be ready to give birth (some 40 weeks into the pregnancy), in fact doctors usually employ the procedure in the second trimester (in the 14th to 27th week of a 40 week pregnancy).

A man has been conducting anti-abortion protests outside a doctor's office for the past year. The doctor conducts a full-service obstetrics and gynecological practice; he attends to women's gynecological health issues, delivers babies and conducts abortions. The protester is a member of the protest group known as "Operation Rescue." The protester's manner of protest is to approach women entering and leaving the doctor's office and tell them about the evils of abortion. He never threatens the patients entering and leaving the office, but sometimes shows them photographs of aborted fetuses and tells them that they are violating God's law. The protester has

always stayed at least 50 feet away from the entrance of the doctor's office, in accordance with applicable law.

One day, the protester observed an obviously-pregnant woman approach the doctor's office. The woman's appearance made it clear that she had progressed very late into her pregnancy. She had engaged the doctor to deliver her baby, and the doctor had been following her throughout her pregnancy.

The man approached the woman and began to tell her about the evils of abortion. Although the woman was not contemplating an abortion, she was in no mood to engage the protester, and sarcastically told the protester that she was on her way into the doctor's office to have a partial-birth abortion. She then turned away from the protester and brusquely walked past him and into the doctor's office.

Not realizing that the woman was being sarcastic, the protester pulled out his cell phone, called the Operation Rescue regional headquarters, and asked what he should do. The regional director informed the protester that Congress had outlawed partial-birth abortions and that the doctor was about to murder a baby. Without waiting for the regional director's further instructions, the protester dropped his cell phone and dashed into the doctor's office, waving his arms and shouting that the doctor must cease the partial-birth abortion immediately. He charged into an examination room where the doctor was conducting an obstetrical examination of the pregnant woman. The doctor called the police, who arrived within minutes.

3. Please state the definition of trespass.

Go onto the next page.

4. Apply the elements of trespass to determine whether the protester was a trespasser.

5. Which of the following exceptions provides the protester's best argument that he should not be liable for trespass? (Circle only one.)

Human Dignity
(State v. Shack)

Necessity/
Emergency

Hot Pursuit of
Property

Blocked Public
Way

Attractive
Nuisance

Go onto the next page.

Questions 8 through 12 are based on the following fact pattern:

A restaurant runs a coat-check concession as a convenience to its customers. A woman dining at the restaurant wore a cloth coat and silver fox fur piece out to dinner one evening. (Don't dwell on the tackiness of her choice of clothing!) Upon arriving at the checkroom, she stuck the fur piece into the sleeve of the coat, folded the coat around it, and handed the coat (with the fur piece inside) to the person running the checkroom on behalf of the restaurant. The person running the checkroom, who did not know there was a fur piece inside the coat, handed a check to the woman. After dinner, the woman presented the check to the person running the checkroom and the person delivered the correct coat. The fur piece, however, was no longer in the coat. The woman has brought an action against the restaurant for the value of the fur piece.

It is recommended that you peruse all the questions pertaining to this fact pattern before answering any of the questions.

8. What is the general legal relationship between the woman who checked her coat and the restaurant?

9. State the specific type of that relationship between the woman who checked her coat and the restaurant *at common law*?

10. What is the standard of care owed by the restaurant under the specific type of that relationship you identified in your answer to Question 9?

11. What is the standard of care owed by the restaurant under the modern rule?

12. Briefly make your best argument for the restaurant under the modern rule.

Questions 13 through 21 are based on the following fact pattern:

A childless widower, who was elderly and no longer ambulatory, gratuitously conveyed his vacation home on the ocean to "[my sister] and her heirs for as long as it is used solely as a residential vacation home, but if it is not, to [my brother] and his heirs." The sister and her family immediately commenced using the vacation home as a residential vacation home during the appropriate vacation seasons. Two years after the widower's

conveyance of the vacation home, he died with a valid will leaving his entire estate to a charitable organization espousing the prevention of cruelty to animals.

Five years after the widower's conveyance of the vacation home, the sister hired a painting contractor to remove the old paint from the exterior of the vacation home and to stain the wood a natural color. The sister did not carefully check the painting contractor's references and failed to inquire whether he carried sufficient liability insurance. In fact, the painting contractor carried no liability insurance. The painting contractor attempted to remove the paint with a heat gun. In doing so, he accidentally set the house on fire, which resulted in a near total destruction. The painting contractor has since declared bankruptcy, and the sister lacks the funds to rebuild the vacation home.

13. What was the state of the title *immediately* after the widower's grant, *not considering* application of the common law rule against perpetuities? (Give fully developed interests such as "vested remainder subject to complete divestment." Partial answers, such as "vested remainder," or "future interest," are incorrect.) NOTE: If a party owns no interest, answer: "none."

The Sister: _____

The Brother: _____

The Widower: _____

14. What was the state of the title *immediately* after the widower's death, *specifically considering* and applying the common law rule against perpetuities? (Give fully developed interests such as "vested remainder subject to complete divestment." Partial answers, such as "vested remainder," or "future interest," are incorrect.) NOTE: If a party owns no interest, answer: "none."

The Sister: _____

The Brother: _____

The Charity: _____

For the remaining questions, assume that, after the painting contractor's discharge in bankruptcy, the brother and the charitable organization sued the sister for waste.

15. What is the definition of waste?

16. What is voluntary waste?

17. What is permissive waste?

18. Will the brother prevail against the sister in his action for waste? (Circle one.)

YES

NO

Go onto the next page.

front lawn. And then, in 1995, the buyer died suddenly of a massive heart attack. His valid will left all of his real and personal property to his niece, who moved into the home almost immediately after the buyer's death.

The niece lived a much more reserved life than the buyer. Although she occasionally invited friends to the home, she never threw lavish parties. Rather than riding a bicycle around the neighborhood and engaging the neighbors in conversation, as had been the buyer's practice, the niece took quiet walks from the home and rarely spoke with any of the neighbors. Rather than conducting boisterous croquet tournaments, the niece could occasionally be seen sunbathing and reading alone around the grounds of the home. She continued to pay the real estate taxes, and did receive mail, magazines and newspaper deliveries at the home.

In 1999, the niece took a two week vacation to the Galapagos Islands. When she returned, the niece was shocked to find a stranger living in the home. The stranger refused to leave, stating that he had just as much right as the niece to possess the home.

22. What was the status of the stranger when the niece returned from vacation and found him in the home?

Go onto the next page.

26. Is the stranger correct in asserting that he had just as much right as the niece to possess the home? (Circle one.)

YES

NO

27. Please apply the law to the facts to support your answer to question 26.

Assume for the remaining group of questions based on this fact pattern that the niece convinced the stranger to leave the premises.

In 2001, the niece sold the home to a young couple with two toddler children. The young couple moved into the home immediately and used it much as had the niece, except that they entirely enclosed the back yard with a stockade fence and erected a swing set in the back yard for the children. The young couple and their children were often seen using the yard and strolling around the neighborhood streets.

It is now 2009 and the seller's daughter has just brought an action to eject the young couple and their children. The young couple has defended on the ground of adverse possession.

28. Did the niece's trip to the Galapagos Islands in 1999 cause her adverse possession claim to cease?

YES

NO

29. Please apply the law to the facts to support your answer to question 28.

30. In the space below, please describe "tacking" and its elements.

Go onto the next page.

35. Please apply the law to the facts to support your answer to question 34.

Questions 36 through 42 are based on the following fact pattern:

A seller conveyed a lot of land to a buyer for \$234,000. The deed contained the covenant of seisin and the covenant of quiet enjoyment. Four years later, the buyer sold the same lot of land to a new buyer for \$278,000. One year after buying the property, the new buyer was ousted by the true owner, who had acquired a fee simple absolute title prior to the sale from the seller to the buyer.

36. Assume that the deed from the seller to the buyer was a general warranty deed, and that the deed from the buyer to the new buyer was a quitclaim deed. Although he no longer owns the property, the buyer sued the seller for a breach of the covenant of seisin. Will the buyer prevail against the seller? (Circle one.)

YES

NO

Go onto the next page.

40. Please apply the law to the facts to support your answer to question 39.

41. Assume the same type of deeds described in Question 36, and once again it is the new buyer who is suing the seller. Will the new buyer prevail against the seller on the claim of breach of the covenant of quiet enjoyment? (Circle one.)

YES

NO

42. Please apply the law to the facts to support your answer to question 41.

The third buyer recorded immediately after receiving the deed. Then the second buyer recorded his deed.

44. The state in which the land was situated had a recording statute that provided:

Every conveyance of real estate within the state hereafter made, which shall not be recorded, shall be void as against any subsequent purchaser in good faith and for a valuable consideration, of the same real estate or any portion thereof, whose conveyance shall be first duly recorded.

As between the second buyer and the third buyer, who prevails? (Circle one.)

SECOND BUYER

THIRD BUYER

45. Please apply the law to the facts to support your answer to question 44.

Go onto the next page.

Part Two - Suggested Time: ½ Hour

One month ago Sally inherited House from her grandfather. House was on a two acre oceanfront parcel of land which included three hundred feet of a small beach that was under water at high tide. The only land access to House was through a parcel of land currently owned by Alex. One hundred years ago, the former owner of Alex's parcel sold the former owner of Sally's parcel the right to have a driveway to House from the town highway for use by "horses, buggies, carriages and foot traffic." For the last fifty years Sally's grandfather, as well as his guests, have driven their cars on the driveway on a regular basis to reach House. Sally owns a gardening store and thus drives a large pickup truck. Three weeks ago Sally received a letter from Alex telling Sally that she could not drive her pickup truck, or indeed any motor vehicle, on the portion of the House's driveway that was on his land. At the same time Alex placed a locked gate across the driveway at a location where the driveway was on his land. In response, Sally erected on a portion of her land a ten foot tall fence that partially blocked the view of the ocean from Alex's house.

What are the rights of Alex and Sally?

Part Three - Suggested Time: ½ Hour

Abigail, who owned Blackacre in fee simple, conveyed it: "fifty percent to Bertha and Caleb, husband and wife, as tenants by the entirety, and fifty percent to Dan and Ed with rights of survivorship." At the time of the grant, Bertha and Caleb were legally married to each other. Dan and Ed were not married to each other.

Then, Ed transferred "my entire right title and interest" to Fred. Then, Bertha, unhappy with Caleb's philandering, transferred "my entire right title and interest" to Gary. Then, Dan died with a will leaving "all my real estate, including Blackacre, to my daughter, Henna." And finally, Caleb made a gift of "my entire right, title and interest to my one true love, Ingrid."

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

END OF EXAM

**PROPERTY
FINAL EXAMINATION
Professor Peter M. Malaguti
Fall 2010 Semester**

Please provide **both** numbers requested below.

YOUR ENTIRE STUDENT ID NUMBER:

_____ 5 9

YOUR PR 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" on one of the other two blue books and "Three" on the third blue book. Please write your student id number and PR number *on all three* blue books.

Please do not identify yourself in any way other than by social security number and PR 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 (3) parts:

Part One consists of several 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 space provided **in this exam book**, not in a blue book. Please limit your answers to the lines provided below each question. Do not sandwich extra lines into the lines provided. I will not read beyond the lines provided under each question, and will not read doubled-up text; I

am not kidding about this. 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 2/3 of your exam (67 out of 100 points).

Please note that sometimes the lines given for your answers in Part One run onto the next page.

Part two consists of one (1) short essay question. Please put your answer in the blue book entitled "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 1/6 of your exam (16½ out of 100 points).

Part three consists of one (1) short essay question. Please put your answer in the blue book entitled "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 1/6 of your exam (16½ 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.

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.

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 use multistate law unless the facts or instructions suggest otherwise.

GOOD LUCK!

Part One – Suggested Time: 2 Hours

Questions 1 through 12 are based on the following fact pattern:

Honey bees comprise the genus *Apis* in the family *Apidae*, order *Hymenoptera*. Known specifically as *Apis mellifera*, the honey bee is one of several species of bees that produce honey. The honey bee is a social insect that can survive only as a member of a community called a “colony.” The colony inhabits an enclosed cavity, called, of course, a “hive” or “nest”.

The average honey bee hive houses 50,000 bees, but at times well over 80,000 honey bees can live in a hive. A honey bee colony consists of a “queen,” “drones” (male honey bees), and “workers” (non-reproductive female honey bees), each performing vital functions in a caste-like system to maintain the health and prosperity of the colony. Each caste possesses its own special instincts tailored to the needs of the colony.

The queen is the only sexually productive female in the colony and accordingly is the mother of all drones, workers, and future queens. Her capacity for laying eggs is stupefying, often exceeding 1500 eggs a day (roughly the equivalent of her own body weight). Anatomically, the queen is strikingly different from the drones and workers. Her body is long, with a much larger abdomen than a worker bee. Her “mandibles,” or jaws, contain sharp cutting teeth as opposed to the toothless jaws of her offspring. The queen has a curved, smooth stinger that can be used repeatedly without endangering her own life. In contrast, the worker honey bees are armed with straight, barbed stingers that remained anchored in the flesh of their victims. In an attempt to remove their stingers after a sting, workers tear their internal organs and later die. But the queen bee’s anatomy lacks the working tools possessed by worker bees, such as pollen baskets, beeswax-secreting glands, and a well-developed honey sac. The average lifespan of the queen is one to three years.

Worker bees are the most numerous members of the colony. Workers build and maintain the nest and care for the brood. They build the nest from wax secreted from glands in their abdomen. The hexagonal cells constructed by the workers are arranged in a latticework known as the “comb.” The cells of the comb provide the internal structure of the nest; comb used for storage of honey is called “honeycomb.” Workers leave the hive to gather nectar, pollen, water, and “propolis,” a gummy substance used to seal and caulk the exterior of the hive. They convert the nectar to honey, clean the comb, and feed the larvae, drones, and the queen. They also ventilate the nest and when necessary, and defend the colony with their stings. Workers do not mate and therefore can not produce fertile eggs.

As with all bees, pollen is the principal source of protein, fat, minerals, and vitamins, the food elements essential for the growth and development of larvae of all three castes. Adult bees can subsist on honey or sugar, a pure carbohydrate diet. For the first three weeks of their adult lives, the workers confine their labors to building the honeycomb, cleaning and polishing the cells, feeding the young and the queen, controlling the temperature, evaporating the water from the nectar until it thickens as honey, and many other tasks. At the end of this period, they function as field bees and defenders of the colony. The workers that develop early in the season live extremely busy lives, which, from egg to death, last about six weeks. Worker bees reared late in the fall usually live until spring, since they have little to do in the winter except eat and keep warm. Unlike other species of bees, honey bees do not hibernate; the colony survives the winter as a group of active adult bees.

Drones are male honey bees. They are stingless, defenseless, and unable to feed themselves; the worker bees must feed them. Drones have no pollen baskets or wax glands and cannot secrete royal jelly. Their one function is to mate with new queens. After mating, which always takes place in flight, in the open air, a drone dies almost immediately. The queen usually mates with six or more drones in the course of a few days. Drones are prevalent in colonies of bees in the spring and summer months. As fall approaches, they are driven out of the nests by the workers and left to perish.

Workers collect flower nectar. Upon entering the hive with a full honey sac, which is an enlargement of the esophagus, the field worker bee regurgitates the contents into the mouth of a young worker, called a "house bee," or "nurse bee." The house bee deposits the nectar in a cell and carries out the tasks necessary to convert the nectar to honey. When the honey is fully ripened, the bees seal the cell with an airtight wax capping. Both old and young workers are required to store the winter supplies of honey.

Worker bees use their hind legs to carry pollen into the nest, which they place directly in the cells. The pollen of a given load is derived mostly from plants of one species, which accounts for the honey bee's outstanding role as pollinator. If it flew from one flower species to another, it would not be effective in the transfer of pollen, but by confining its visits on a given trip to the blossoms of a single species, it provides the cross-pollination required in many varieties of plants.

Honey bees have become the primary source of pollination for approximately one-fourth of all crops produced in the United States and some other countries. The value of the crops that rely on such pollination has been estimated as high as \$10 billion annually in the United States. Examples of fruit crops that rely on honey bees are almonds, apples, apricots, avocados, blackberries, blueberries, cantaloupes, cherries, cranberries, cucumbers, pears, raspberries, strawberries and watermelons. The seeds of many vegetables are also produced with honey bee pollination; examples include alfalfa, asparagus, broccoli, brussel sprouts, cabbage, carrots, clover, cotton, cucumbers, onions, radishes, squash, sweet clover, and turnips.

Many species of wild pollinators have disappeared from the land as their habitats have been destroyed or altered by humans. The honey bee has taken over as pollinator of many of the wild plants that remain; its ecological value in this regard is tremendous. Additionally, honey bees are the sole source of honey and beeswax, a fine wax with unusual qualities. Additionally, propolis has antibacterial properties. Honey bee venom is extracted for the production of anti-venom therapy and is being investigated as a treatment for several serious diseases of the muscles, connective tissue, and immune system, including multiple sclerosis and arthritis.

* * *

At some point humans began to domesticate wild bees in artificial hives made from hollow logs, wooden boxes, pottery vessels, and woven straw baskets. Apiculture – beekeeping – is the human maintenance of honey bee colonies using scientific methods. A beekeeper, or "apiarist," manages bees in order to collect their honey and beeswax, to pollinate crops, or to produce bees for sale to other beekeepers. The location where bees are kept is called an "apiary" or "bee yard." The science of beekeeping has advanced substantially since the days of wooden logs, etc. Today, most beekeepers use moveable frame hives that allow the bees to do their work around the apiary, yet

return to the artificial hive where the honey later can be taken. Bees will not wander off to other colonies. They always return to their own hive and own colony.

A beekeeper's primary tasks in hive management are to assess the behavior of the bees, to monitor and anticipate the space needed by the colony, and to treat the colony for diseases. Beekeepers have a yearly set of activities that are required for good management of their hives. During the winter, equipment is typically repaired, painted, or replaced. In the late winter, the beekeeper will assess whether the colony has enough food to last until the spring. When the bees become active with the onset of springtime, the keeper will make sure that the brood nest is being formed in the lower tiers of the colony, remove any damaged equipment, and provide food if the colony needs an extra boost. As the weather reliably warms and flowers begin to appear, the primary task becomes monitoring the space needs of the hive. Once spring arrives, a beekeeper will visit each colony at least every two weeks to check on the bees. The beekeeper will remove honey made in the spring and early summer, leaving the bees an opportunity to rebuild the honey stores they will need to sustain them through the winter.

In past centuries, taking honey from wild colonies usually involved subduing the bees with smoke and breaking open the area of the hive where the colony was located. The honeycombs were torn out and destroyed along with the eggs and larvae. The honey was strained through a sieve or a basket to remove the broken pieces of comb and any other solids from the liquid honey. Modern beekeepers, however, have the benefit of moveable frame hives, and when the honey is removed using a hive tool and extracted from the honeycomb frames, the beeswax can be returned to the hive for refilling by the worker bees.

Exactly how a beekeeper removes honey frames from beehives depends on the number of frames and the number of colonies that the beekeeper is managing. A hobby beekeeper may harvest just a few frames of honey, while a large beekeeping operation might harvest hundreds of frames. The first challenge is to remove the bees from the frames of honey. A hobbyist may simply remove individual frames and use a soft bee brush to dust off the adult bees before taking the honey away, while a larger operation will use a machine – a “bee blower” – that creates forced air to blow the adult worker bees off the honey frames. Another technique is the use of chemical bee repellents, either benzaldehyde (almond oil) or butyric anhydride. A few drops of these liquids are placed on a board that is specially designed for hive fumigation, and the board is placed for two to five minutes on top of the honey frames. The bees in the honey area will move away, and the beekeeper can take the honey off but leave the bees inside the colony. If used properly, chemical repellents are effective, but if overused, they can disrupt the entire colony.

The next task is to remove the honey from the combs. Each frame of honey is capped with a thin layer of beeswax that must be removed so that the honey can be extracted. The cappings can be removed with an uncapping fork, an uncapping knife, or another mechanical tool. Next, the frames are put into a honey extractor, which works like a large salad spinner. As the extractor rotates, the honey is forced out of the frames and down into a large holding vessel, and then the honey is usually filtered to remove large bits of wax. In some larger honey-extraction facilities, the honey is heated so that it flows readily through the extraction and filtration process, but smaller honey extractors do not heat the honey as it is being processed.

The best honey produced in America is tupelo honey, made from the blossoms of the tupelo gum tree, *nysa aquatica*. The tupelo gum tree grows in flooded forest areas in states such as Florida, Louisiana, Georgia and Virginia, as well as along the Mississippi River, but tupelo honey is mainly only produced commercially in areas along the Choctawhatchee, Apalachicola and Ochlockonee rivers in Florida. Employing the pollen of the white tupelo gum tree, *nysa ogeche*, tupelo honey is valued for its uniquely delicious flavor and its inability to granulate.

White tupelo honey is sometimes called fine tupelo honey and is the most expensive honey because it is the most expensive to produce. The beekeepers must take care to clean the combs at the right time so that when the white tupelo gum tree blossoms only the honey from these blossoms is collected.

* * *

Beeson Barry, a master beekeeper from Wewahitchka, Florida, specialized in the production of tupelo honey until the State of Florida took the portion of his property supporting the apiary by eminent domain to construct a highway. Unable to practice his trade, and becoming increasingly depressed, Beeson wandered the county observing local bee operations and expatiating about beekeeping with old friends, who eventually came to worry about their friend's obvious depression and worsening economic condition. Beeson seemed to have no options.

One morning, Beeson decided to end it all. Toting a handgun, he walked to the rear section of his remaining property intending to accomplish the dread deed. The sun shone through the trees, hindering his ability to assay the landscape. As he put the gun to his head and girded for the impact, a passing cloud momentarily softened the sun's rays and Beeson saw before him something he had never seen on that part of his property: a tupelo gum tree. But this was not just any tupelo gum tree; it was a tupelo gum tree teeming with hyperactive tupelo honey bees. Beeson lowered his gun and realized that only divine intervention could have supplied this newfound tree; his life was about to begin anew. Beeson went to the tree, extracted a Swiss Army knife from his pocket, and carved his initials – “BB” – into the tree, a common act employed by apiarists to mark their territory.

Beeson didn't waste time in reestablishing his profession; he set up his moveable frame hives around the tree within hours. Toward the end of the day, his neighbor, Ulee Jackson, came over to see what was going on. Beeson described his gleeful discovery and announced his plans to put his life back on track. Ulee was thrilled for his friend, offered profuse congratulations, and brought over some good bourbon for the two to sip on while they savored Beeson's good fortune. What neither man realized, however, was that the tupelo gum tree, and now Beeson's frame hives, were located on Ulee's land.

Day after day, Beeson tended his hives as described above. His efforts paid off and he soon was again supporting himself. Often, Ulee came over to talk to Beeson. The two discussed their respective beekeeping businesses and often offered each other advice. Not once did Ulee question whether Beeson's frames were on his own property. Not once did Beeson ever assume or believe that the frames were not on his own property.

Question 1 is on the next page.

1. Given the facts described above, as well as a proper application of the law, honey bees are (circle only one answer below):

ANIMALS ANIMUS
REVERTENDI

ANIMALS FARAE
NATURAE

2. Please state the so-called capture doctrine (including its elements) in its entirety.

3. In the space below, please make your best argument that Beeson does not own the bees flying in and out of the moveable traps sitting near the tree on Ulee's land.

Assume for the remaining questions related to this fact pattern that Beeson carried on his beekeeping activities on Ulee's land as described for 11 years, and that Ulee continued to offer Beeson advice and further continued not to realize that Beeson was on his land rather than Beeson's. After 11 years, Beeson died and left his real estate to his daughter, Helga, who continued the beekeeping activities. For another 10 years, Ulee continued to support Helga as he had supported her father.

8. Please state the five (5) elements of adverse possession.

- i. _____
- ii. _____
- iii. _____
- iv. _____
- v. _____

9. In the space provided below, please define and describe each of the elements you just listed above.

- i. _____

- ii. _____

iii.

iv.

v.

10. In the space below, please describe “tacking” and its elements.

11. In the space below, please apply the law of tacking to the facts.

12. In the space below, please apply the elements of adverse possession – as stated and described in your answers to Questions 8 and 9 – to the facts to determine whether Beeson and Helga obtained title to the property by adverse possession.

Questions 13 through 18 are based on the following fact pattern:

Thirty years ago, Penelope Pious conveyed land by warranty deed the Holy Schmoly Evangelical Church “so long as the Church erects a church building within a year and maintains the land as its principal place of religious practice, but if not to the International Society of Apiculturists (ISA).”

13. What is the state of the title without applying the rule against perpetuities?

14. What is the state of the title, applying the rule against perpetuities?

Question 15 is on the next page.

20. State the specific type of that relationship between Ben and Al at common law?

21. What was the standard of care that Ben owed to Al under the specific type of that relationship you identified in your answer to the preceding question?

22. What is the standard of care that Ben owed Al under the modern rule?

After picking up the stereo system from the distribution center, Ben walked out to the parking lot to get to his car. He put the package on the roof of the car while he fumbled through his coat pockets to find the car keys. Ben dropped the keys as he pulled them out of his pocket. As he bent down to get the keys, Callie, who had been watching Ben leave the distribution center, saw his opportunity, grabbed the package, and dashed off before Ben could reach.

Out of breath and tired of running, Callie stopped at Mollie's Pub to quaff a cold beer. Upon entering the establishment, Callie placed the package on top of the bar and made his order. Six or seven quaffs later, Callie settled his tab and left the pub, entirely forgetting about the package he had brought in.

Question 23 is on the next page.

23. What kind of property was the package as Callie walked out of the pub? (Circle only one.)

LOST PROPERTY

MISLAID PROPERTY

ABANDONED PROPERTY

EMBEDDED PROPERTY

TREASURE TROVE

PROPERTY FOUND FOR
AN EMPLOYER

24. In the space provided below, please apply the facts to the law to explain the reasoning for your last answer.

Mollie, the pub owner and chief bartender, placed the package in a safe but visible spot behind the bar hoping that its true owner would return to claim it. An hour later, Ben, who had been searching for the package, came into Mollie's establishment and told Mollie about his travails. Mollie pointed out the package and asked him if that was it.

25. The facts being as described, at that point was Mollie legally required to return the package to Ben? (Circle only one.)

YES

NO

26. In the space provided below, please apply the facts to the law to justify your conclusion.

27. Please place the four people mentioned in the facts into the proper order of rights in the package, with the person having the most rights being listed below in space number “i” and the person with the least rights being listed below in space number “iv.”

i. _____

ii. _____

iii. _____

iv. _____

Questions 28 through 32 are based on the following fact pattern:

On March 1, 2003, Lou, as landlord, leased Millacre to Tim, as tenant, by written lease for a term of 10 years. The lease was for commercial use, and the rent was \$3,500 a month. The lease was silent on the question whether Tim could assign or sublease Millacre.

Tim occupied Millacre from March 1, 2003 to February 28, 2005, and paid all his rent when it became due. As of March 1, 2005, Tim “assigned all [his] right, title and interest in Millacre” to Tammy.

28. Based on these facts, did Tim have the authority to “assigned all [his] right, title and interest” to Tammy? (Circle only one.)

YES

NO

29. In the space provided below, please apply the facts to the law to justify your conclusion.

Tammy moved in immediately and made rental payments to Lou as required under the original lease until, as of March 1, 2007, Tammy “assigned all [her] right, title and interest to Tony for a term of five (5) years.” Tony immediately moved in and began to pay the rent called for in the lease until January 1, 2008, when he stopped paying any rent at all.

In March 2008, Lou brought a breach of lease action against both Tammy and Tony to collect outstanding rent.

30. Absent any valid defenses, Lou should recover a judgment for the outstanding rent against:

YOU MAY CIRCLE ONE OR BOTH OF THE ANSWERS BELOW.

TAMMY

TONY

For the next set of questions, assume that Tony did pay all rent required by the original lease, and that Lou did not sue him and Tammy as of that time. As of September 1, 2010, Tony “assigned all [his] right, title and interest in Millacre” to Toliver. Toliver never paid any rent, and rent is now due and owing for the months of September 2010, October 2010 and November 2010.

31. Lou desires to bring a contract action to collect the \$10,500 he is owed in back rent. Absent any valid defenses, Lou should recover a judgment for the outstanding rent against:

YOU MAY CIRCLE ANY, SOME OR ALL OF THE ANSWERS BELOW.

TAMMY

TONY

TOLIVER

32. In the space provided below, please fully explain why each person is or is not liable under Lou's law suit.

TAMMY: _____

TONY: _____

TOLIVER: _____

Questions 33 through 37 are based on the following fact pattern:

Tammy leased a two-bedroom apartment from Larry under a written lease that: (1) identified the parties, (2) described the land by its proper address and apartment number, (3) stated the proper term, which began on January 1, 2009 and ended at midnight on December 31, 2009, and (4) was signed by both parties. The lease made no provisions for any extension after December 31, 2009.

As the end of the lease term approached, neither Tammy nor Larry notified the other of their intentions regarding a new lease term or extension of the current lease. At the end of the lease term on December 31, 2009, Tammy remained in the apartment. On January 1, 2010, Tammy mailed to Larry a rent check in the same amount as her payments for each of the previous twelve months. It is now January 4, 2010 and Larry has not deposited or cashed the check.

33. What kind of a tenancy existed at the inception of the tenancy between Larry and Tammy?

34. In the space provided below, please apply the facts to the law to justify your answer to the previous question.

35. What kind of a tenancy existed between Larry and Tammy on January 4, 2010 as Larry was contemplating what to do with Tammy's rent check?

36. What will be the effect of a decision by Larry to endorse and deposit the check he received from Tammy in January 2010?

37. In the space provided below, please apply the facts to the law to justify your answer to the previous question.

Questions 38 through 40 are based on the following fact pattern:

Tom Buchanan owned West Egg, a vacant lot, in fee simple absolute. In 1995, he conveyed West Egg by quitclaim deed to Myrtle Wilson, his secret mistress, in consideration of “love and affection.” Neither Buchanan nor Myrtle told anyone of the conveyance.

In 2006, Buchanan sold West Egg to Nick Carraway for \$525,000 by a special warranty deed that included the covenant of seisin, the covenant of quiet enjoyment, and the covenant of further assurances. Carraway was unaware of Buchanan’s prior deed to Myrtle Wilson.

In 2007, Carraway sold West Egg to Jay Gatsby by a special warranty deed that included the covenant of seisin, the covenant of quiet enjoyment, and the covenant of further assurances. Gatsby also was unaware of Buchanan’s prior deed to Myrtle Wilson.

In 2009, Buchanan and Myrtle ended their love affair and Myrtle brought a successful ejectment action against Gatsby that forced him to have to move off of West Egg. In turn, Gatsby has sued Carraway and Buchanan for breaching their deed covenants.

38. In his law suit, Gatsby will:

YOU MAY CIRCLE ONE ANSWER BELOW.

PREVAIL AGAINST
CARRAWAY ONLY

PREVAIL AGAINST
BUCHANAN ONLY

PREVAIL AGAINST BOTH
CARRAWAY AND BUCHANAN

PREVAIL AGAINST NEITHER
CARRAWAY OR BUCHANAN

Question 39 is on the next page.

Questions 39 through 41 are based on the following fact pattern:

Albert borrowed money from the JP South Bank and executed a promissory note for the amount secured by a mortgage on his residence. Several years later, Albert sold his residence to Bertram. As provided by the contract of sale, the deed to Bertram provided that Bertram agreed “to assume the existing mortgage debt to the JP South Bank.” Subsequently, Bertram defaulted on the mortgage loan to the JP South Bank, and the JP South Bank initiated appropriate foreclosure proceedings. The foreclosure sale resulted in a deficiency and the JP South Bank has sued both Albert and Bertram for the deficiency.

39. The JP South Bank’s law suit seeking the deficiency should be based on:

YOU MAY CIRCLE ONE OR BOTH OF THE ANSWERS BELOW.

THE PROMISSORY NOTE

THE MORTGAGE

40. The JP South Bank will prevail against:

YOU MAY CIRCLE ONLY ONE OF THE ANSWERS BELOW.

ALBERT

BERTRAM

BOTH ALBERT
AND BERTRAM

NEITHER ALBERT
NOR BERTRAM

41. In the space provided below, please apply the facts to the law to justify your answer to the previous two questions.

Questions 42 and 43 are based on the following fact pattern:

Sanctus, who owned a single family house, entered into a handwritten agreement with Balthus under which Balthus would purchase the house. Both Sanctus and Balthus signed the handwritten agreement, which was unconditional, named both parties, properly described the real estate, and stated both a closing date and the purchase price. The house on the land had been Sanctus's home, but he had moved to an apartment, so the house was vacant at all times relevant to the proposed transaction.

Three weeks after the parties had entered into their agreement, and one week after Balthus had obtained a written mortgage lending commitment from a lender, but prior to the closing date, lightning struck the house and it burned to the ground. The loss was not insured, because three years earlier, the seller had let his homeowner's insurance policy lapse after he had paid his mortgage debt in full.

The handwritten contract was wholly silent as to matters of financing, risk of loss, and insurance. Balthus has declared the contract voided by the fire, but Sanctus has asserted a right to enforce the contract despite the loss.

42. In a law suit brought to determine the rights of the parties, a court will find:

YOU MAY CIRCLE ONLY ONE OF THE ANSWERS BELOW.

BALTHUS MUST PURCHASE AND
PAY THE FULL PURCHASE PRICE

BALTHUS MUST PURCHASE BUT
WILL HAVE TO PAY THE PURCHASE
PRICE LESS THE COST OF REPLACING
THE HOUSE THAT BURNED

BALTHUS WILL NOT HAVE TO
PURCHASE AND WILL RECOVER
ANY DEPOSITS HE HAS PAID

Question 43 is on the next page.

Questions 46 through 48 are based on the following fact pattern:

Twenty-five years ago, Farmer Brown, who owned a 45-acre tract of farm land, conveyed 40 of the 45 acres to Dennis DaVelopa by a warranty deed. Farmer Brown retained the rear five-acre portion of the land and continues to live there in a large farmhouse. DaVelopa promptly and properly recorded the deed from Farmer Brown. It contained the following language: "It is a term and condition of this deed, which shall be a covenant running with the land and binding on all owners, their heirs and assigns, that no use shall be made of any portion of the 40-acre tract of land described in this deed except for residential purposes."

Subsequently, DaVelopa fully developed the 40-acre tract into a residential subdivision consisting of 40 lots with a single-family residence on each lot. Although there have been multiple transfers of ownership of each of the 40 lots within the subdivision, none of them included a reference to the quoted provision in the deed from the man to DaVelopa. Nor did any deed to a subdivision lot create any new covenants restricting use.

Last year, a major new medical center was constructed adjacent to the subdivision. Dotty Medico, a doctor who owns a house in the subdivision wishes to relocate her medical offices to her house. For the first time, Dotty learned of the restrictive covenant in the deed from Farmer Brown to DaVelopa. The applicable zoning ordinance would permit Dotty's intended use. Manny Manna, an owner of one of the house lots in the subdivision, objects to Dotty's proposed use of her property.

46. Will Manny prevail in enforcing the covenant by a law suit seeking monetary damages? (Circle only one.)

YES

NO

47. Would your answer to the previous question be different if Manny's suit was for an injunction seeking to restrain Dotty's use of her home as a medical office? (Circle only one.)

YES

NO

48. In the space provided below, please apply the facts to the law to justify your answer to the previous two questions.

Questions 49 and 50 are based on the following fact pattern:

Five years ago, Abigail, who owned a vacant lot in a residential area, borrowed \$25,000 from a Freddy and gave Freddy a note for \$25,000 due in five years, secured by a mortgage on the lot. Freddy did not record the mortgage. Three years ago, Abigail discovered that the friend had not recorded his mortgage. She sold the lot to Barbi for \$50,000. Barbi, who knew nothing of the mortgage to Freddy, did not record her deed at that time.

One month after the sale to Barbi, Freddy discovered the sale to Barbi, recorded his \$25,000 mortgage, and notified Barbi that he held a \$25,000 mortgage on the lot.

After learning of Freddy’s mortgage, Barbi immediately recorded her deed and brought a law suit against Freddy seeking a declaratory judgment that Freddy’s mortgage and note are not enforceable against her. The recording act of the jurisdiction provides: “No conveyance or mortgage of real property shall be good against subsequent purchasers for value and without notice unless the same be recorded according to law.”

49. In that law suit, Barbi will:

PREVAIL

LOSE

50. In the space provided below, please apply the facts to the law to justify your answer to the previous two questions.
