

**PROPERTY II
FINAL EXAMINATION
PROFESSOR CADGENE
SPRING 2007**

1. You have **three (3) hours** to complete this exam.
2. This is a **closed** book exam.
3. This exam consists of two (2) parts.
 - a. Questions I and II: Two (2) Essay questions. Please note that the special instructions for the essay questions are set forth in Sections 5, 6 and 7 below.
 - b. Question III: Twenty-five (25) Multiple Choice questions. Please note that the special instructions for the Multiple Choice questions are found at the beginning of Question III.
4. The questions are of equal weight. The questions will be weighted as follows:

	<u>Percentage</u>	<u>Suggested Time</u>
Question I	33.33%	60 min.
Question II	33.33%	60 min.
Question III	<u>33.33%</u>	<u>60 min.</u>
	<u>100%</u>	<u>180 min.</u>

5. Answer the essay questions in your blue books unless you are typing your exam. Start each question on a separate page. Please write on every other line and only on one side of the page. Please take time to organize your answer before you begin to write, and write clearly.
6. If you believe a question is vague or a material fact is lacking, state explicitly the assumption of fact you are making in answering the question. In some questions a key fact or facts may have been intentionally omitted. In these instances, in order to fully answer the question, you must make an assumption and supply the key fact or facts. Be sure to make your analysis and/or argument in the alternative: e.g., If X were the case, then the result would be Y. If W were the case, then the result would be Z.
7. Unless otherwise noted, if you conclude that different results could be reached dependant upon the applicable law of a particular jurisdiction, your answer should cover alternative situations, e.g. the majority, the minority, and the California rule. When applying California law, you should always indicate that this is the law which you are applying.
8. Write your exam number on your exam envelope. Put your correct class section and student exam # at the top of this page, each page of questions, each blue book, and the "ParSCORE TEST FORM." **Do not** use your name, student ID number or Social Security number on any exam materials.
9. At the conclusion of the exam, return all test materials, including blue books, ParScore answer sheet, scratch paper, and this exam packet to the envelope and submit it to the proctor. **DO NOT** seal the envelope. Students who do not return all exam materials at the end of the exam may not be graded.

GOOD LUCK!

QUESTION I
ESSAY QUESTION
(Suggested Time: 60 min)

Linda Lawrence (“Linda”) was awarded a \$250,000 judgment (the “Judgment”) for damages against Charles Hasting (“Charles”) stemming from an automobile accident that occurred on January 15, 2004 in State X. Charles carried no insurance. Linda caused an Abstract of Judgment to be recorded in the Recorder’s Office in County Y, State X on March 15, 2005.

Charles owned a single family residence, which he acquired in 2000 and which was located at 68 Martin Drive, County Y, State X (the “Property”). On March 20, 2005, Charles sold the Property to Roberta Ross (“Roberta”) for \$100,000. Roberta paid \$25,000 down and obtained a loan for \$75,000 from First Bank (“Bank”) which was to be secured by first deed of trust on the Property.

The Purchase Agreement between Charles and Roberta required Charles to deliver “marketable title” at the closing. In addition, Charles executed a deed in favor of Roberta conveying the Property to her which contained the following two covenants:

1. “That previous to the time of execution of this conveyance, grantor has not conveyed the same estate, or any right, title, or interest therein to any person other than the grantee.”
2. “That the estate at the time of the execution of this conveyance is free from encumbrances done, made, or suffered by the grantor.”

Prior to closing, Roberta and the Bank received a Preliminary Report issued by Secure Title Insurance Company (“Secure”) and after closing, Secure issued an American Land Title Association (“ALTA”) owner’s policy of Title Insurance to Roberta with \$100,000 as the amount of insurance and an ALTA Lender’s policy of Title Insurance to the Bank with \$75,000 as the amount of insurance.

Neither the preliminary report nor the final title policies showed Linda’s judgment as an exception. Secure had failed to find Linda’s judgment in its search of the public records because the Abstract of Judgment had been misindexed.

After acquiring the Property, Roberta spent over \$200,000 completely remodeling the Property as well as adding on a bedroom addition. When Linda learned that Charles had previously owned the Property, it was valued at \$350,000 and the balance on the Bank’s loan had been paid down to \$70,000.

Linda is now threatening to execute on her Judgment. Discuss the respective rights, obligations, remedies and defenses of:

- 1) Linda, 2) Roberta, 3) Bank, 4) Secure, and 5) Charles

END OF ESSAY QUESTION 1

QUESTION II
ESSAY QUESTION
(Suggested Time: 60 min)

Jane Faulkner (“Jane”) purchased 55 Morningside Drive (the “Morningside Property”), located in City Y, State X on June 1, 2004. Since her purchase of the Morningside Property, Jane has occupied the property as her principal residence until it was sold. In order to sell the Morningside Property, Jane employed the services of Penny Cooper (“Penny”) who was a salesperson with Sands Realty, Inc. (“Sands”), who holds a valid real estate brokerage license in State X. The Morningside Property sold on May 25, 2006 to Carlos Dickson (“Carlos”), who was represented by Karen Wilson with Wilson Realty. Penny was aware that Jane was occupying the Morningside Property as her principal residence, but she did not know, and never asked when Jane had acquired the Morningside Property.

After Jane and Carlos entered into a purchase agreement for the Morningside Property, Penny started to show Jane other properties for sale in City Y. Penny showed her a condominium unit for sale located in a 50 unit high rise condominium building located on Bloom Avenue (the “Bloom Condominium”) in City Y. The Bloom Condominium was owned by Big Bank (“Bank”), who had acquired the property after a successful credit bid at a non-judicial foreclosure sale. Bank entered into an exclusive authorization and right to sell listing agreement (the “Listing Agreement”) with Sands and Jim Ellison (“Jim”), a salesperson, who worked for Sands to market and sell the Bloom Condominium. Jane made a written offer to purchase the Bloom Condominium through Penny.

The final Purchase Agreement for the Bloom Condominium executed by both parties contained the following provision:

“Buyer acknowledges that the property was acquired through foreclosure and that Seller therefore knows less about the Property than an owner occupant. The property is being sold in its present “as is” condition and Seller makes no warranties expressed or implied.”

Prior to entering into the Listing Agreement with the Bank, Jim had become aware that the homeowner’s association for the high rise condominium project in which the Bloom Condominium unit was located had filed an action against the building’s developer for construction defects, and the action was settled with the developer paying the association \$5.1 million.

Prior to close of escrow, the brokers and the Bank disclosed in writing that “Buyer should be aware of a lawsuit brought by the homeowner’s association against the developer for defects. Lawsuit has been settled for \$5.1 million.”

While walking through the Bloom Condominium with the brokers, Jane expressed a desire to have marble flooring installed. Jim told her that any alterations or improvements would require the prior submission to, and approval by the architectural committee of the homeowner’s association, but Jim told Jane that “there should be no problem”.

After close of escrow on the Bloom Condominium, Jane purchased marble for her flooring. However, when she sought approval from the architectural committee of the homeowner's association, she was informed that marble flooring could not be installed because of structural defects affecting the load capacity of the condominium building. In addition, Jane's accountant has informed her that she will have to pay tax on the \$200,000 gain she realized on the sale of her Morningside Property because she did not hold it for the requisite period under the applicable Internal Revenue Code provision.

Unhappy with the tax consequences on the sale of the Morningside Property, and the problems she was unaware of with respect to the Bloom Condominium, Jane has sought the help of Ready, William and Able, the law firm for whom you work.

The partner who has interviewed Jane has asked you to write a memorandum discussing and evaluating Jane's rights and remedies against Penny, Jim, Sands, and the Bank as well as discussing and evaluating expected defenses.

END OF ESSAY QUESTION II