

**PROPERTY II**  
**FINAL EXAMINATION**  
**PROFESSOR CADGENE**  
**SPRING 2008**

1. You have **three (3) hours** to complete this exam.
2. This is a **closed** book exam.
3. This exam contains two (2) parts.

**Part One** consists of twenty-five (25) multiple-choice questions. This part constitutes one-third (33.33%) of the examination. You should complete this part in approximately sixty (60) minutes. You will be given credit for the number of correct answers. A wrong answer and no answer will be treated the same. Correct multiple choice answers are to be marked on the separate "ParSCORE TEST FORM" using pen or pencil and following the instructions on that form. If you change your answer, place a clear "**X**" through the wrong answer and mark the correct answer. A machine will score the exam and any ambiguities will be counted as a wrong answer.

- Unless a particular jurisdiction is indicated (e.g. California), in which case you are to apply the law of that jurisdiction, or the question references an actual rule (e.g. the minority rule), your answer should reflect the majority rule.

**Part Two** consists of two (2) essay questions. Each essay question constitutes one-third (33.33%) of the examination. You should complete this part by allocating approximately sixty (60) minutes per question. Please write your response in the blue books provided. Please write clearly. Write on every other line and every other page to permit instructor comments.

- 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.

- 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.
4. Write your student exam number on your exam envelope. Put your student exam number 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.
  5. At the conclusion of the exam, all examination papers—including the Part I ParSCORE test form, your answer for Part II, the examination questions, these instructions, and all notes—must be placed back in the exam envelope. Failure to return all materials will result, among other sanctions, in a failing grade of “F” for the course. **Do not** seal the envelope.

## **PART TWO: Essay Questions**

**Suggested Time: 2 hours**

### **QUESTION I**

Hank Lane (“Lane”) was originally interested in purchasing an existing home and in the course of viewing open houses on Sundays, Lane met agent Jennie So (“So”) who was employed as a licensed salesperson by Barbara Boxer (“Boxer”) who did business as Lighthouse Realty. Lane met So while she was holding an open house on one of her listings. So began to show Lane luxury houses that were for sale in areas he was interested in. On one Sunday, So showed Lane two houses listed by Bethram Realty. With respect to the first house, So told Lane that the house was very overpriced. She had heard that the Seller was very wealthy and it was unlikely that he would take less than his asking price. With respect to the second house, So told Lane that she heard that the Seller was under severe financial stress and that he might be able to get the house for substantially less than the asking price. Unfortunately, Lane liked the first house and disliked the second house. After several months of looking at existing houses, Lane became frustrated because he could not find the house he wanted at a price he could afford.

Lane had a friend who was a contractor who suggested that he might be able to get the house he wanted at a price he could afford by buying a vacant lot and building the house of his dreams. Lane then asked So to show him vacant lots for sale. So told Lane that she would show him vacant lots for sale, but she also advised him that she was not experienced in building or developing vacant land and that he would have to rely on

others to conduct investigations as to the suitability of a particular parcel of land for building his dream house. Lane told So that, although he had no experience in construction, he had a friend who was a contractor, who is willing to build his dream house. After several more frustrating months of looking at various parcels of vacant land, So located a vacant lot at 1 Hill Top (“Hill Top”). The lot was situated on a hilly terrain, enjoyed panoramic views of the whole area, and appeared to have a flat area large enough for an estate home and pool. Lane fell in love with the lot and his contractor friend shared his enthusiasm.

Hill Top was owned by Jack and Rita Gleason (the “Gleasons”). Jack Gleason was a commercial real estate developer. The Gleasons had bought Hill Top, which had never been improved, in order to build their own dream house. Hill Top was listed with So’s real estate firm Lighthouse Realty. The listing agent was Boxer. The Gleasons told Boxer that they had decided to sell Hill Top because they were too busy with other projects. A six (6) month written listing agreement was executed between Gleasons and Lighthouse Realty (Boxer) on June 1, 2005 at a listing price of \$1,000,000. The listing agreement provided for a six percent (6%) commission.

Boxer informed So and Lane that the Gleasons had told her that electricity, gas, and city water had been brought to and were available at Hill Top, but that Hill Top was not served by the City’s sewer system. The Gleasons indicated that it would be prohibitively expensive to extend the City’s sewer system to Hill Top. Building a house would therefore require a septic system and that a Percolation Test would be necessary to establish that a septic system could be installed. So asked what a Percolation Test was and Boxer explained that a Percolation Test determined the absorption rate of soil for a septic drain field or “leach field” that had to meet certain specifications before the City would allow a septic system to be installed. Boxer indicated that she thought that the Gleasons had already done a Percolation Test.

Lane indicated that he wanted to make an offer on Hill Top and asked So whether the Gleasons would take less than the asking price. Although So had heard that the Gleasons were experiencing financial problems and wanted to sell Hill Top quickly, she did not inform Lane about what she had heard. She told Lane that she didn’t know whether the Gleasons would take less and he should offer what he thought it was worth. Lane decided to offer \$900,000. So prepared a purchase agreement dated July 1, 2005. The purchase agreement provided for a thirty (30) day contingency period during which time the Purchaser was given an opportunity to investigate physical, legal, and architectural issues with respect to Hill Top to determine its suitability for building his dream house. The purchase agreement also included the following provision:

1. This offer is contingent upon Sellers providing a copy of a Percolation Test report to Purchaser within ten (10) days of acceptance. Purchaser may terminate this Agreement if Purchaser determines the Percolation Test report to be unsatisfactory within ten (10) days of receipt of the Percolation Test report.

Sensing that Lane had fallen in love with Hill Top, the Gleasons accepted his offer except for the price. They countered at their full asking price of \$1,000,000 which Lane reluctantly accepted on July 15, 2005. Within the ten (10) day period, the Gleasons delivered a document identified as a Percolation Test report, dated July 1, 2004, which So immediately sent to Lane. As his contractor was away, Lane did not show him the Percolation Test report. Escrow closed on September 1, 2005.

Sometime after the escrow closed, Lane learned from an engineer that the Percolation Test report he received was too old to be valid. The engineer then performed a new Percolation Test. The engineer's new report indicated that Hill Top was not suitable for construction of a home because an onsite septic system would not satisfy existing Health Department criteria, which had been revised as of December 1, 2004.

During the course of the transaction, Boxer learned that she forgot to renew her real estate broker's license, which expired on May 1, 2005. Boxer successfully renewed her license on August 31, 2005. The Gleasons have refused to pay Boxer (and So) the six percent (6%) commission provided for in the listing agreement.

Lane is upset that he cannot build his dream house and Boxer and So are upset that the Gleasons are refusing to pay them their commission.

First, discuss Lane's rights and remedies against 1) the Gleasons and 2) So and Boxer. Second, discuss Boxer's and So's rights and remedies against the Gleasons.

Your discussion should include a discussion of possible defenses and rights and remedies that one party may have against another party based upon the conclusions you reach in your initial discussion.

## **END OF ESSAY QUESTION 1**

### **QUESTION 2**

On June 22, 2002, B+D Development, Inc. ("B+D") purchased a tract of land commonly known as "Troubled Acres" consisting of approximately twenty-four (24) acres of unimproved land which B+D planned to subdivide into lots and sell. B+D paid \$300,000 for Troubled Acres making a down payment of \$100,000 and obtaining a loan of \$200,000 from Federal Valley Bank ("Bank"). This loan was evidenced by a promissory note (the "Note") and secured by a deed of trust (the "Deed of Trust") on Troubled Acres. The Deed of Trust was recorded on June 22, 2002.

Troubled Acres was bordered on the south by Hill Street and on the east by Main Street. B+D proceeded to subdivide Troubled Acres into twenty-one (21) lots. Lot 21 was a corner lot bordered on the south by Hill Street and on the east by Main Street and consisted of approximately four (4) acres. Main Street was the main commercial street in

the City of Little Hope, State X. Soon after the subdivision was approved by the City of Little Hope, Lot 21 was sold on January 15, 2003 to Joel Carter (“Carter”). As part of the conveyance of Lot 21 to Carter, Bank agreed to execute and record a partial release from its Deed of Trust so that Lot 21 would no longer be encumbered by the Bank’s Deed of Trust. After the sale of Lot 21, Lots 1-20 continued to serve as security for the Bank’s loan.

On March 23, 2004, B+D recorded a Declaration of Restrictions (“Declaration”) to establish a general plan for the improvement and development of Lots 1 through 20 as shown on the Subdivision Map of Troubled Acres, recorded on January 15, 2003. The Declaration provided in part that 1) the lots may only be used for residential purposes and not for business, manufacturing, or commercial purposes and 2) that no more than one single family residence could be built on each lot. In addition, the Declaration provided that on the downhill lots (Lots 1 to 10), no structure could be built more than twenty-five (25) feet in height in order to protect the view of the uphill lots (Lots 11 to 20). The Declaration indicated that it was intended to bind successors and assigns.

B+D entered into a written listing agreement with respect to Lots 1 to 20 with John Gee doing business as Evergreen Realty (“Realty”). The written listing agreement agreed to pay Realty a ten percent (10%) commission for procuring buyers for the lots. Because of the promised unobstructed views, Realty was successful in finding ten different buyers for the uphill lots – Lots 11 through 20. Realty was the only broker involved in the sale of the uphill lots. Each buyer of Lots 11 to 20 obtained a title insurance policy from First Title Company (“Title Company”) which listed the particular lot number (e.g. Lot 11, Lot 12, etc.) as shown on the Subdivision Map of Troubled Acres, recorded on January 15, 2003 under the Schedule A Legal Description and listed the Declaration recorded on March 23, 2004 under the Schedule B Exceptions from Coverage. Upon the conveyance of each uphill lot, the Bank executed a partial release from its Deed of Trust for the lot being conveyed so that the lot conveyed no longer served as security for the loan made by the Bank. The Deed to each of the lots made reference to the recorded Declaration and the conveyance was made subject to the recorded covenants and restrictions set forth in the Declaration. After conveyance of all of the uphill lots (Lots 11-20), the downhill lots (Lots 1-10) continued to serve as security for the Bank’s loan.

Realty was not successful in obtaining any buyers for the downhill lots - Lots 1 through 10. Realty did not seek to renew its listing agreement when it expired on June 30, 2005. B+D encountered financial problems with its other developments and was unable to pay off the Bank’s loan when it became due. In addition, B+D was not successful in its efforts to convince the Bank to further extend the maturity date of the loan in order to avoid foreclosure. At the time of the foreclosure sale of the downhill lots – Lots 1-10, the Bank was owed \$110,000 and the Bank successfully bid \$50,000 at the foreclosure sale which was conducted under the terms of the power of sale provisions in its Deed of Trust. After recording a deed naming the Bank as Grantee, as a result of being the high bidder at the foreclosure sale, the Bank sold Lots 1 through 10 in a bulk sale to Carter. The Bank’s deed to Carter did not refer to the Declaration nor did the title policy which Carter

obtained from First Title Company. No Broker was involved in the Bank's sale of Lots 1-10 to Carter. Carter paid the Bank \$80,000 for the downhill lots – Lots 1-10.

A generous political contributor, Carter thereafter successfully lobbied the City of Little Hope to change the zoning of Lots 1-10 and Lot 21 from residential to commercial. This zoning change allowed Carter to build a seven (7) story, seventy foot (70') high office building which would completely obstruct the views from the uphill lots - Lots 11-20. Lots 11-15 have been improved with completed single family homes. Lots 16-20 remain unimproved. All of the uphill lots would significantly decline in value should Carter be allowed to build his office building.

First, discuss the rights and remedies that the uphill lot owners, Lots 11 to 20 may have against 1) Joel Carter ("Carter"), 2) B+D Development, Inc. ("B+D") 3) Evergreen Realty ("Realty"), and 4) First Title Company ("Title Company"). Second, discuss the rights and remedies that Federal Valley Bank ("Bank") may have against B+D Development, Inc. ("B+D").

Your discussion should include a discussion of possible defenses and rights and remedies that one party may have against another party based upon the conclusions you reach in your initial discussion.

**END OF EXAM**