

**FINAL EXAMINATION
PROPERTY I
SECTIONS 715 – LS2A & LS2B
PROF. CHRISTIANSEN
FALL 2006**

1. You have three (3) hours for this examination.
2. This is a **closed** book examination.
3. This examination contains two parts: multiple choice questions and essay questions.

Part I consists of 15 multiple-choice questions. 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. I recommend you spend approximately 30 minutes on Part I.

Part II consists of two essay questions. I strongly encourage you to spend at least 10 minutes outlining each answer before writing. I have allotted sufficient time for you to outline, write and review your answers. Read the questions carefully to ensure you address all the issues identified.

NOTE: The multiple-choice question section and the essay questions have a suggested time allotment that reflects their overall value in the scoring of the exam.

Part I – 30 minutes

Part II— 80 minutes (Essay A) and 70 minutes (Essay B)

4. If you are handwriting the exam, use ink pen only (no pencils). Write legibly. Skip lines and writing on only one side of each page of the bluebook.
5. 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.
6. At the conclusion of the exam, all examination papers—including the Part I ParSCORE test form, your answers 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.

Relax and have confidence in your abilities. Now, take a deep breath and begin.

GOOD LUCK!

PART II**ESSAY QUESTION A -- Suggested time: 80 minutes**

Oscar owned two one-acre plots of land that bordered one another. Westacre was the location of his small Bed & Breakfast Inn and Greenacre was an undeveloped lot adjacent to the east. Oscar's neighbor Petunia owned a restaurant on Eastacre, a similarly-sized lot east of Greenacre. Petunia wanted to purchase Greenacre in order to host occasional outdoor events, setting up large temporary tents for weddings, birthday parties, etc.

In 1988, Oscar sold Greenacre to Petunia since the kinds of uses she described to him seemed harmless and she agreed to a limitation in the conveyance. The otherwise valid deed stated that the land was granted as a "defeasible fee" to "Petunia and her heirs so long as she or they never construct any permanent structures on the land, but if Petunia or her heirs ever construct any substantial buildings on Greenacre, all interest in the property shall pass automatically to Oscar's beloved nephew Quincy forever."

In 1989, Oscar died, having devised Westacre to Quincy and "all other real property interests" to his only child Rafael.

In 1990, Petunia erected a large brick event hall on the southern half of Greenacre. Quincy, aware of the limitations written in the deed to Petunia, claimed the land. Feeling "busted," Petunia turned over possession to Quincy without consulting a lawyer. Quincy agreed to reimburse her construction expenses for the improvements to the land (and the two had no dispute over that issue).

For the next ten years Quincy occasionally used the building and parking lot for parties associated with his business. He also hosted an annual family reunion to which all his relatives including Rafael were invited. In a friendly gesture, he always invited Petunia to all his parties. Such parties occurred on average once every month—except for during a two-year period in the mid-1990s when he closed up the B&B and traveled around the world. Quincy never used the remaining, northern half of Greenacre. In fact, the northern half of Greenacre was unused except when Petunia very infrequently walked across it to visit Quincy.

In 1998, Petunia died without a will. Her only surviving relative, her adult granddaughter Susanna, inherited all her property interests and moved to Westacre.

In 2001, Oscar's son Rafael graduated from law school. Equipped with an abundance of information about property law issues (his favorite class), he claims to own all of Greenacre.

- 1) What property interests in Greenacre were created by Oscar for Petunia, Quincy and Rafael? Evaluate their interests under the common law rules. Also, briefly assess whether the result have been different under modern modifications of the common law of estates?
- 2) Who owns Greenacre in 2001? What reasonable claims can Rafael, Quincy or Susanna assert to property rights in Greenacre if Oscar failed to make the conveyance he intended? What will a court most likely conclude about their rights if it applies the common law majority rules to those claims? (The statute of limitations in this jurisdiction is 10 years.)

ESSAY QUESTION B -- Suggested time: 70 minutes

In 1960, Babette bought a 45-acre parcel of undeveloped, unzoned land. She identified two neighboring 2-acre lots, A1 and B1, for herself and her dear friend Aaron. Aaron purchased the land for lot A1 from Babette. Babette included no restrictions in the deed. Aaron and Babette each built a large three-story home on their property and lived there with their families. Once the houses were constructed, Babette asked Aaron to sign a small document that was stated that it "limited his right to use his land" in certain ways. Specifically, Aaron agreed to "never use the property as a dwelling for more than one family." Aaron signed the document for Babette.

Babette divided the remaining area into 40 one-acre lots on a plat that included a central 1-acre artificial lake. Each lot extended from the shore of Doughnut Hole Lake to Outer Ring Road, an access road at the outer edge of the parcel. The plat identified 40 lots (C1-C40) and included two sentences printed at the bottom of the plat that said, "No construction within 50 feet of Lake. Residential Use only." A1 and B1 are not identified on the map. The plat was duly recorded in 1962.

By 1963, Babette had constructed the road and the lake and made other necessary preparations to sell the 'C' lots. She sold the first five lots (C1-C5) very quickly. She did not reference any restrictions in those purchasers' deeds.

In selling each of the next 30 lots (C6-35), Babette attached to each deed a list of "covenants, conditions and restrictions" and a copy of the previously-recorded plat. The use of each lot was "limited to one single-family, two-story maximum residential home set back at least 50 feet from the lake shore." The lots sold quickly and a house in compliance with the restrictions was soon built on each of the first 35 lots.

In 2004, Aaron died and his property passed to his son, Clive. In her grief, Babette moved away and formally gave lot B1 and the home on it to her niece Debra. Clive divided the A1 house into six apartments and is renting them out to six families. He has also opened a small convenience store on the property. Debra hates this and has been informed that the sale price of her house has decreased significantly because of the noise and congestion from the property next door.

In 2005, Babette finally sold the last five lots (C36-40) to Condo-Max Developers. The deed of sale included no restrictions of any kind. Condo-Max Developers have announced plans to build a 10-condo development on each of the five lots. Condos are much more commonly seen at lakeside developments in recent years in this area. It is now 2006 and they are ready to build.

Can Debra prohibit the new uses by Clive? If so, what remedies are available to her?

2. Can anyone restrict Condo-max from building their condos? If so, who can enforce it? What remedies will the enforcing party want and are they available?

END OF PART II

END OF EXAM