

FINAL EXAMINATION
PROPERTY II
PROFESSOR CHRISTIANSEN
SPRING 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 fifteen (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 I is worth 20% of your final exam grade.

Part II consists of two essay questions. I strongly encourage you to spend 10-15 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. Each essay is 40% of your final exam grade; Part II is worth 80%).

NOTE: The multiple-choice question section and the essay questions have the following suggested time allotments.

Part I 30 minutes (20% of final exam grade)

Part II 75 minutes for each of the two essays (80% of your final exam grade)

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 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.

After this exam, you have finished your first year of law school - congratulations.

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

GOOD LUCK!

PART II

ESSAY QUESTION A

Suggested time: 75 minutes

In late May 2001, Sonja, the owner of Sonja's Hunting Huts, called her long-time customer Berto and offered to sell him her entire 10-acre property including three improved huts and a traditional log cabin home. Because they were sorta friends after all these seasons, Sonja did not want to haggle so she offered a really fair price of \$600,000. The land alone is worth nearly that, she said, but don't take my word for it; you should come up and have a look around before you decide. Sonja said she would like to sell it all soon.

Berto came up to visit the property but was very pressed for time. After looking around for less than an hour, touring the log cabin and some of the surrounding land, Berto and Sonja shook hands on the deal. Standing in Hut #3 (the one Berto always stayed in), Sonja showed Berto a detailed map of her property. She circled the three huts and wrote \$50k by each; she wrote 150k next to the log cabin and also wrote 300k for land in the map's corner. Sonja said Hut #3 was the nicest of the huts, but that they were all nice enough.

Berto knew he was getting a really good deal at this purchase price; he immediately wrote a check for \$150,000 to Sonja. In the memo field of the check he wrote 25% down payment for purchase of house, huts and 10 acres. The check was dated June 1, 2001. Sonja grabbed the map on which she had written the figures earlier and wrote on it \$150k rec'd on 6/1/01; rest due 7/1/01. Thanks! She then handed it to Berto without signing it.

Berto was very busy the next four weeks, so he did not return to inspect the property nor did he hire anyone else to do so. On July 1, 2001, Berto sent his son Joey to meet Sonja at the property. Joey gave her a check for \$450,000 signed by Berto, and Sonja gave Joey a standard Special Warranty Deed she had found on the Internet and filled out herself. She signed the completed deed, saying, With all the trouble this place has been in the last month, I am glad to be rid of it. Joey went to the county recorder's office and recorded the deed. He then put the deed in his car and promptly forgot about it.

Berto came to look around his new property two weeks later, still not having picked up his deed from Joey. Berto was shocked to discover that Hut #1 had sustained extensive

internal damage from a fire that took place about a month ago. Although it looked fine from the outside, it only remained upright because of temporary supports inside. It would have to be entirely rebuilt. Hut #2 had a woman named DiAnn living in it. DiAnn claims that she had lived there for 10 years and had recently acquired title through adverse possession. Berto has never seen her on his previous visits and believes her claims are invalid; he hopes Sonja will testify against DiAnn if necessary.

Suspicious now, Berto had a full inspection of the property. The inspection revealed the land was 9.6 acres, not 10. Hut #3 was undamaged and as he expected it, as was Hut #2 (except DiAnn's presence). But, the inspection revealed the log cabin's foundation was cracked and would need to be replaced. The inspector said that anyone living in the cabin in the winter would have to have known because the basement was sure to flood every year. Water marks on the basement walls had been cleaned off since the previous winter; but Berto had not previously visited the basement.

Please identify and evaluate all reasonable property law claims Berto has against Sonja. What is his likelihood of success with each of them and what are the likely remedies a court would grant if Berto were successful? (Do not evaluate the substantive merits of DiAnn's adverse possession claims but do address any impact it has on the other issues/claims/defenses.)

ESSAY QUESTION B

Suggested time: 75 minutes

The Ortiz family owned three large lots of property on the north side of Linx Lake. The three lots (A, B, and C) border each other; they are each roughly 20 acres in size but irregularly shaped because the north side of Linx Lake is steep and rocky. Because of the geography of the lots, significant use and development has not been possible, except on a two-acre portion of Lot A which holds the Ortiz family home, a medium-sized boathouse and a very dilapidated horse corral.

Generations of the Ortiz family have lived in the home and owned the three lots for more than 120 years. They have kept their own boat and five rental fishing boats at the boathouse for the last two years. They also keep horses to ride out across lots B and C, where previous generations of the Ortiz family have allowed other people's cattle to graze for a modest fee. The only other development on the lots are some unimproved campsites and some very rustic cabins right at the shore of Linx Lake in Lot B, the only place the land is level enough to construct upon. Lot C is empty except for wild vegetation and some horse and animal trails.

The nearby City of Independence has been growing significantly in the last several decades and includes all the land around Linx Lake. The City Council has always been concerned about development around Linx Lake, the beautiful heart of the Independence

community, but despite having carefully zoned the south side of the lake, they ignored the north side because they thought the steep geography made any development impossible. In early 2000, a development company let it be known they now have the technology and know-how to build housing on the steep north shore. The Ortiz family has been in talks with them to sell the company Lots B and C.

In late 2000, the City Council passed a comprehensive plan for development of all the property north of Linx Lake including Lots B and C (as well as eight other undeveloped lots surrounding them). The North Lake Plan zoned Lots B and C (and four other lots) as Env-4, which 1) allows no buildings, development or construction of any kind and 2) allows non-development uses on the property only with a permit. The Env-4 zoning is meant to protect the lake and neighborhood from the serious risk of mudslides running into the lake. Any significant mudslide on the steep hillside north of the lake would seriously damage the delicate ecosystem of the lake and a very large mudslide would result in flooding for the residents of the south side of the lake, according to reports by the city council. Mudslides are much more likely on developed land and a particularly high risk during construction periods.

The Ortiz family wishes to keep using their structures on Lot B. Additionally, the family has applied for a permit to graze cattle on Lot C and permission was granted on the condition that mudslide abatement banks be built on Lot C and two of its neighboring lots. The banks cost \$2,000 each and each lot will require approximately ten of them.

The City Council also announced that they will be using the power of eminent domain to take Lot A (which borders land already owned by the city) and the Ortiz home. Lot A and the City's other land will be used to develop a tourist-friendly environmental study center focused on the unique environment of the Linx Lake area. The Ortiz family has been offered \$500,000 for Lot A and their home (an amount equal to what similarly sized Linx Lake properties have sold for in the last few years) but they were offered nothing for the boathouse and corral because the City will be destroying them once it has title to the property. The Ortiz family was terribly upset about this and has offered Lot B to the City for only \$25,000 if the City would take that property instead. The City has refused.

You are the city attorney for Independence. The city council is concerned about a pending law suit from the Ortiz family; a loss could seriously impair their ability to protect the Linx Lake area. Please identify all the reasonable property law claims the Ortiz family has against the city and present the city's legal responses to such claims. Also, evaluate the likelihood of success for the city and suggest a best course of action for the city in light of your assessment of the situation.

END OF EXAM