

FINAL EXAMINATION
PROPERTY I
SECTIONS 715 LS1A & LS1B
PROF. CHRISTIANSEN
FALL 2005

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 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.

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

Part I 30 minutes

Part II 60 minutes (Essay A) and 90 minutes (Essay B, two parts)

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.

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

GOOD LUCK!

PART II

ESSAY QUESTION A

Suggested time: 60 minutes

Oliver owned a 10,000-acre tract of undeveloped land. A public highway ran along the southern boundary of the tract. A narrow single-lane dirt fire road, cut twenty years earlier by the State Department of Forestry, ran through the middle of the tract from north to south. There were no other roads on the tract. The tract was bounded on the north, west, and east by tracts of land privately owned by other persons.

On January 1, 2001, Oliver sold a 4,000-acre portion of the 10,000-acre tract to Pauline, retaining the remaining 6,000 acres. The 4,000-acre parcel was carved out of the middle of the 10,000-acre tract. Thus, the 4,000-acre tract was bounded on all sides by Oliver's retained land. No easement rights were discussed at the time the 4,000-acre parcel was sold. Shortly after the sale, Pauline began building a good-sized house on the 4,000-acre parcel. Pauline used the fire lane to haul building materials in from the highway to the south. Once the house was finished, she continued to use the fire lane to get to and from the 4,000-acre parcel. Pauline never asked for Oliver's permission to use the fire lane, but Oliver knew that Pauline was using it and did not object.

On January 1, 2002, Oliver died. He had devised his retained 6,000-acre tract to Xavier, who was eager to use the land for his own purposes.

On January 1, 2003, Pauline sold her 4,000-acre tract of land to Yvette. The deed of sale made no reference to easement rights but attached a photocopy of the original deed (from Oliver to Pauline). Yvette decided to convert Pauline's former home into a small bed and breakfast. To support her new business, she began constructing a two-lane concrete road over the fire lane connecting her 4,000-acre tract to the highway to the south. She also planned to line both sides of the road with flowers and elm trees.

Xavier has come to you for legal advice. He does not want Yvette crossing over his property. He has recently put a sign across the road (on his own property) that says: License to pass is revoked. Yvette and Xavier had a heated argument about it and she told him that Pauline had an express easement from Oliver and there was nothing Xavier could do about it.

Xavier is a reasonable person and knows he should try to negotiate an agreement with Yvette, but before he does he wants to know the strength of his and her legal arguments.

Just in case we end up in court, he says. He wants to know about any license and easement issues and whether or not they affect him.

For your answer: Evaluate the merits of a court action by Xavier and review all reasonable claims Yvette might raise in response. In answering, **do not discuss** any issues of prescriptive easements or nuisance.

PART II

ESSAY QUESTION B

Suggested time: 90 minutes (approximately 65 minutes for B1; 25 minutes for B2)

To: My favorite law clerk

From: Judge Christiansen

Please draft me a memo regarding the case described below.

Part B: It is important that you 1) consider the legal arguments from both sides; 2) suggest how you believe I should rule on this matter; and 3) identify what remedies I should grant if I agree *or disagree* with your suggested ruling. As you know, our state follows the majority common law rules in such matters.

Part B2: Additionally, I believe it is time this state considers the appropriateness of a mental state component in matters such as those arising in this case. Please give me your thoughts on whether a good faith or bad faith requirement should be adopted and what policy arguments support your opinion. And, let me know if it would change your decision in this case.

Case facts:

Alice and Bill were neighbors owning similar, adjoining 20-square acre parcels of land. Alice's tract, located directly west of Bill's tract, was known as Westacre and Bill's tract was known as Eastacre. Both tracts were forested. The boundary line between the two tracts was not marked. Alice lived in a small house located at the very southern end of Westacre. Bill did not live on Eastacre; he used it for hunting deer, pheasants, grouse and ducks, which seasonally supplemented the offerings at his butcher shop in a large nearby city.

In July 1985, Alice built a large storage shed in the northeastern corner of Westacre. The shed was 120 feet long and 25 feet wide. It had a cement floor. As a matter of fact, the eastern side (the length) of Alice's shed encroached thirteen inches onto Eastacre. Alice didn't know this. However, as she was building her shed, she considered the possibility that the shed might be encroaching upon Eastacre. Alice didn't want to pay for a survey

and reasoned that Bill would probably never find out about an encroachment, if such in fact existed. Accordingly, Alice did not talk to Bill about the possibility of an encroachment. For his part, Bill never thought about the matter at all.

In November 1990, Bill died, leaving a valid will which left Eastacre to his ten-year-old nephew, Chuck. The age of majority in the jurisdiction was eighteen years. Chuck did not know about the shed's encroachment at that time.

In March 1991, Alice sold Westacre to Denise. Denise did not know about the shed's encroachment at the time she acquired the tract.

In April 1992, a hurricane completely destroyed the shed on Westacre. Denise promptly removed all the debris, including the cement floor. Three months later (not long after the spring rainy season ended), Denise erected a building on the very same location where the old storage shed had stood. So it would withstand future hurricanes, Denise used much sturdier and more expensive materials.

In October 1996, Chuck (with the agreement of his parents) decided to try to sell Eastacre. In preparation for putting it on the market, Chuck had a survey of Eastacre done. The survey disclosed the fact that the length of Denise's building in the northeastern corner of Westacre encroached thirteen inches onto Eastacre.

Lawsuit:

A lawsuit was commenced: Chuck (through his lawyer) brought an ejectment action against Denise, alleging that the encroachment of Denise's building on Eastacre constituted a continuing trespass. He requested that it be removed from his property even though that may require destroying most of the structure.

Additional law:

In addition to the common law, the following statute is applicable: An action to recover the title to or possession of real property shall be brought within ten years after the cause thereof accrued, but if a person entitled to bring such action, at the time the cause thereof accrues, is within the age of minority, of unsound mind, or imprisoned, such person, after the expiration of ten years from the time the cause of action accrues, may bring such action within five years after such disability is removed.

END OF PART II

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