

PART II -- ESSAY QUESTION 1

(80 points total -- Suggested time: 60 minutes)

In a written and legally binding agreement, Tenant leased from Landlord 1500 square feet of commercial space in a strip mall located in City. The lease provided for an annual rental of \$24,000 for the space, which Tenant could pay to Landlord in monthly installments of \$2,000 on the 1st day of each month. The lease commenced on April 1, 2006 and ended on March 30, 2008, and contained a standard paragraph which provided that Tenant could not sublet or assign the leased premises without Landlord's written permission. After installing new stylist stations and other improvements (costing around \$10,000), Tenant opened a hair salon, which was a new business venture for him.

A few months later, Tenant was approached by his friend, Fingers, a reputable masseuse, about using some of the salon space to provide spa services to her long list of customers. Believing this to be a great idea, Tenant converted an unused back room of the salon into a tranquil room where Fingers could give massages, facials, and other beauty treatments. Fingers regularly paid Tenant \$500 a month plus 20% of her monthly gross receipts for the use of the back room. Both businesses became very successful.

In February 2008, after receiving a small inheritance, Tenant decided to take an extended vacation. "No worries," said Fingers, "I will keep an eye on the place for you." After all, thought Tenant, he had been working hard for nearly two years and all of the stylists he employed had regular customers providing him a steady income. He also felt confident that Fingers could manage the business while he was away. Tenant gave Fingers control over the salon's bank account so that Fingers could pay rent and other expenses while she was on vacation. And Fingers did so faithfully for the first few months – for the months of March and August 2008 she paid Tenant's monthly \$2,000 rent to Landlord out of the salon's bank account. After April, though, Fingers stopped depositing her \$500 rent to the salon account because she was doing so much extra work as the salon manager.

No one could have foreseen the devastation caused by Hurricane Hubert, which blew through City on August 15, 2008. Although Landlord's strip mall was pretty much spared any damage (the glass storefront had broken, but nothing else), the storm caused a loss of power and disruption of phone and Internet lines throughout City. City services such as sanitation, police, fire, and health services were down for nearly 3 months. City seemed to resemble a ghost town, as nearly half of its residents moved away. Fingers, whose home was destroyed by the hurricane, received a large insurance settlement and moved to the Caribbean, abandoning the salon.

Tenant returned to City in November 2008 to find the salon boarded up, the fixtures either stolen or destroyed, and an apologetic note from Fingers taped to his chair. To Tenant's surprise, several other businesses in the strip mall were still open and functioning. When Tenant contacted Landlord, he discovered that the last time his rent had been paid was on August 1, 2008. Fingers had not paid her rent to Tenant since April 1, 2008. "The whole thing is a mess," bemoaned Tenant to you, his lawyer. **City is in a jurisdiction that follows the statutes contained in the Statutory Supplement. In light of these developments, Tenant wants you to describe his legal responsibilities, rights, and remedies with respect to the lease of the salon.** Do not advise him on contract, tort or other legalities.

ESSAY QUESTION 2

(80 points -- Suggested time: 60 minutes)

Doc and Architect are married and own as community property a large multi-million dollar estate (the "Estate") in an exclusive gated community of new homes known as The Woods. The Woods had previously been raw, undeveloped land in a beautiful and remote open space area, used by the public for all types of nature activities. The open space land was owned by Equestrian (known in the area as "Old E"). In order to protect his rights to the property, Old E posted signs at various locations in the open space which stated "Right to pass by permission, and subject to control, of owner" as provided by statutory law. In 2005, Old E sold some of the open space to a development company which built The Woods residential community and sold the Estate to Doc and Architect, and 14 homes to other buyers.

Adjacent to The Woods were two large parcels of land (let's just call them Parcel A and Parcel B) which Old E also owned. For at least the last 25 years, Old E maintained a stable, riding rink, and a barn on Parcel A and operated a horse boarding facility there for as many as 20 horses (he boarded his own horse there, too). Parcel B remained vacant. Old E daily rode his horse from Parcel A out to the open space trails. Old E always rode from Parcel A down a ridge to the open space; that ridge ultimately was graded and paved and became the half-mile driveway up to the Estate.

Even though Doc and Architect had purchased the Estate, Old E continued to ride his horses down the driveway to access the open space trails. While Doc didn't really mind, this really bugged Architect. Often they would see Old E on his horse as they were leaving or returning home; Doc would waive neighborly to him but Architect would grumble about the odorous droppings on the driveway and the injustice of Old E "just using our property without even asking!" Occasionally, they would see other horse riders using the driveway to get to and from Parcel A, and this really infuriated Architect. Architect wanted to post a sign saying "NO HORSES" or put up some kind of fence or barricade to keep them from riding down the driveway, but Doc's more hospitable nature prevailed so they did nothing.

Six years passed, and Old E died leaving all of his property to his son, Son E. Son E then built a large ranch-style home on Parcel B, and enlarged the stable and other facilities on Parcel A to accommodate up to 100 horses. To accommodate his new home and the additional stable patrons, Son E built a 2-lane paved and lighted driveway from Parcel B through and across Parcel A and finally connecting to the Estate's driveway. This was the final straw – Architect brought a lawsuit against Son E for trespass and for an injunction barring Son E's use of the Estate's driveway for any purpose.

As the judge hearing the lawsuit, draft a written opinion deciding the case. **Don't restate the facts**, but be sure to explain (1) the issue(s), (2) the parties' arguments, (3) the relevant law, and (4) apply the facts to the law to support your legal conclusion(s) and decision.

Statutory Supplement for Essay Questions

§ 1. Occupancy for five years is sufficient to bar any action for the recovery of the property and confers a title thereto, denominated a title by prescription, which is sufficient against all, but no possession by any person, firm or corporation no matter how long continued of any land, water, water right, easement, or other property whatsoever dedicated to a public use by a public utility, or dedicated to or owned by the state or any public entity, shall ever ripen into any title.

§ 2. No use by any person or persons, no matter how long continued, of any land, shall ever ripen into an easement by prescription, if the owner of such property posts at each entrance to the property or at intervals of not more than 200 feet along the boundary a sign reading substantially as follows: "Right to pass by permission, and subject to control, of owner: Section 2, Civil Code."

§ 3. The extent of a servitude is determined by the terms of the grant, or the nature of the enjoyment by which it was acquired.

§ 4. No action for the recovery of real property, or for the recovery of the possession thereof, can be maintained, unless it appear that the plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of the property in question, within five years before the commencement of the action.

§ 5. The hiring of a thing terminates: (1) At the end of the term agreed upon; (2) By the mutual consent of the parties; (3) By the hirer acquiring a title to the thing hired superior to that of the letter; or, (4) By the destruction of the thing hired.

§ 6. A hiring of real property, other than lodgings and dwelling-houses, in places where there is no custom or usage on the subject, is presumed to be a month to month tenancy unless otherwise designated in writing.

§ 7. If a lessee of real property remains in possession thereof after the expiration of the hiring, and the lessor accepts rent from him, the parties are presumed to have renewed the hiring on the same terms and for the same time, not exceeding one month when the rent is stated as monthly, nor in any case one year.

§ 8. A hiring of real property, for a term not specified by the parties, is deemed to be renewed at the end of the term implied by law unless one of the parties gives written notice to the other of his intention to terminate the same, at least as long before the expiration thereof as the term of the hiring itself, not exceeding 30 days; provided, however, that as to tenancies from month to month either of the parties may terminate the same by giving at least 30 days' written notice thereof at any time and the rent shall be due and payable to and including the date of termination.

§ 9. A lease may include a restriction on transfer of the tenant's interest in the lease. Unless a lease includes a restriction on transfer, a tenant's rights under the lease include unrestricted transfer of the tenant's interest in the lease.

§ 10. A restriction on transfer of a tenant's interest in a lease may require the landlord's consent for transfer subject to any express standard or condition for giving or withholding consent, including that (a) The landlord's consent may not be unreasonably withheld, or (b) the landlord's consent may be withheld subject to express standards or conditions.

§ 11. The hirer of a thing must use ordinary care for its preservation in safety and in good condition and must repair all deteriorations or injuries thereto occasioned by his want of ordinary care.

§ 12. The letter of a thing may terminate the hiring and reclaim the thing before the end of the term agreed upon (1) when the hirer uses or permits a use of the thing hired in a manner contrary to the agreement of the parties; or, (2) when the hirer does not, within a reasonable time after request, make such repairs as he is bound to make.