

Property I § 3
Professor Stanley -- Spring 2005 Final Exam
Saturday, May 7, 2005

General Instructions

1. You have **three (3) hours** to complete this exam.
2. This is an entirely **closed** book exam. You may not use any books, notes, outlines or materials during the exam.
3. This exam consists of 14 pages, including these Instructions. Check to make sure you have all pages before beginning the exam.
4. Write your **exam number** on your exam envelope, at the top of the exam question packet, and on the ParScore form. Also, write your exam number on the cover of **each Blue Book. Do not use your name, student ID number, or Social Security Number on any exam.**
5. There are two parts to this exam. There is, however, no formal restriction of time between Parts I and II, and you may allocate the full three hours as you deem best.

• **Part I consists of 25 Multiple Choice questions. Each question in this Part is worth five points, with the total of all multiple-choice questions worth 125 points or roughly 40% of the exam.** Part I should consume approximately 75 minutes of the allotted time. Please answer the multiple-choice questions on the ParScore provided to you using a #2 pencil (or blue/black ink). If you change your answer, please be sure that your erasures are complete (or put a clear "X" through the incorrect answer). The exam will be scored by a machine and ambiguities will be counted as a wrong answer

• **Part II consists of two essay questions, the first worth 100 points and the second worth 75 points (with both questions comprising a total of 175 points or roughly 60% of the exam).** You should allocate one hour to question #1 and 45 minutes to question #2; please start each question on a separate page. Make sure you answer the questions that are asked, and include your reasoning and analysis as well as your conclusion. If writing, please answer the essay questions in the blue books provided to you, writing only on the right hand side of the page.

Please take time to organize your answer before you begin to write, and write clearly and concisely. **Read the facts carefully.** Answers based on incorrect facts are treated as incorrect answers. 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. It is possible that 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. Furthermore, unless otherwise noted, if you conclude that different results could be reached depending on the applicable law of a particular jurisdiction, your answer should

cover alternative situations, e.g., the majority, the minority, and the California rule. You may abbreviate where appropriate.

6. Unless otherwise stated, assume: (a) all parties are unmarried and unrelated to each other; (b) all property is separate (not community) property; (c) the jurisdiction has adopted the common law Rule Against Perpetuities without modification by statute, and (d) the jurisdiction has **not** adopted the Rule in Shelley's Case, the Rule Regarding Destructibility of Contingent Remainders, and the Doctrine of Worthier Title.

7. The entire exam and all scrap paper are to be turned in at the end of the exam period, together with your exam blue books. Answers appearing on scrap paper will not be read.

8. At the conclusion of the exam, return all test materials to the exam envelope and submit it to the proctor. Do not seal the envelope. Failure to return all materials will result in academic sanctions, which may include a failing grade for the course.

**GOOD LUCK!
THANKS FOR BEING SUCH A GREAT CLASS!
HAVE A GREAT SUMMER,
AND BE SURE TO TAKE A
TAX COURSE SOMETIME BEFORE YOU GRADUATE!**

**PART II
ESSAY QUESTION #1
(100 POINTS -- 60 MINUTES)**

In 1998, T devised Blackacre "to A, B, and C as joint tenants with right of survivorship." The property consisted of a 50-foot lot fronting on a busy street in Urbana, a large urban city in the Midwest. One half of the lot was covered by a retail store building (Store X) which was not currently leased, and the other half was a vacant lot. At the time of the conveyance, the land alone was worth \$16,000,000. The Store X building was worth an additional \$5,000,000 but needed \$1,500,000 worth of repairs, including repairs to the roof which were an absolute necessity to make it habitable for business purposes. The vacant lot portion of Blackacre was also zoned for commercial/retail use, but it would cost \$6,000,000 to construct a building on that portion of the property that could be used as a store.

A asked B and C to contribute \$500,000 each to repair Store X and an additional \$2,000,000 each to construct a second store (Store Y) on the vacant lot. B and C refused to contribute any funds, but told A it was okay if he went ahead with the plan. So, in 1999 A spent \$1,500,000 to make the necessary repairs to Store X and spent an additional \$6,000,000 to build Store Y on the vacant lot. The work was completed in December

1999, and the total value of Blackacre at that point was \$25,000,000. Shortly before the end of the year, C sold his interest in Blackacre to D for \$8,000,000.

A rented Store X to a national retail clothing company (“EagleGap”) and Store Y to an upscale shoe store (“Jimmy’s Shoes”). Each lease was identical in the following respects:

- Each lease term was for five years, from January 1, 2000 to December 31, 2005.
- Each lease precluded assignment and subletting
- Each lease provided for annual rent of \$450,000 pre-paid to A on January 1 of each year
- Each lease restricted use to a clothing store and a shoe store, respectively
- Neither lease said anything about which party would make repairs

In February 2000, EagleGap transferred its lease to its wholly owned subsidiary, PapayaNation (“PN”), which opened a more upscale women’s clothing store in Store X. On each subsequent January 1, A accepted the \$450,000 annual rent payment from PN.

In February 2005, a large tornado blew through Urbania, killing B. The tornado caused substantial damage to both stores, breaking all of the plate-glass windows, completely destroying the inventory, and causing serious injury to some of the customers. J, the owner of Jimmy’s Shoes, told A that he was going to “move someplace safer, like San Francisco;” J refused to make repairs and abandoned Store Y, paying no further rent. A repaired Store Y and re-let the premises to another women’s clothing store for annual rent of \$300,000.

In May 2005, A agreed to sell Blackacre to BigCorp for \$30,000,000, but before the deal closed, B’s heir and D sued A to partition Blackacre and divide the sales proceeds. PN intervened, suing A, B’s heir, and D for damages for breach of the use restriction in the lease of Store Y to a competing clothing store, for destruction of its inventory, and for tort damages it had paid to its customers for their injuries. J intervened for damages claiming A had breached the covenant of quiet enjoyment. A counterclaimed against J for breach of its lease of Store Y and against B’s heir, C, and D for contribution.

You are the law clerk for the judge hearing the case, and she has asked you to write a legal memorandum concerning the following:

1. Explain and evaluate the respective rights of A, B’s heir, C, and D to the \$30 million sales proceeds. Advise how the proceeds should be divided between and/or among the claimants and whether any other amounts are owed;
2. Explain and evaluate the merits of the intervention suit by PN; and
3. Explain and evaluate the merits of the causes of action by and against J.

Ignore procedural issues, and discuss tort liability only as respecting the liability of a landlord to his tenant’s invitees.

Urbania has the following statutes which may assist your analysis:

Section 1234: An agreement to let upon hire binds the letter to secure to the hirer the quiet possession of the thing hired during the term of the hiring, against all persons lawfully claiming the same.

Section 1235: The letter of a thing may terminate the hiring and reclaim the thing before the end of the term agreed upon:

- a. When the hirer uses or permits a use of the thing hired in a manner contrary to the agreement of the parties; or,
- b. When the hirer does not, within a reasonable time after request, make such repairs as he is bound to make.

Section 1236: The hirer of a thing may terminate the hiring before the end of the term agreed upon:

- a. When the letter does not, within a reasonable time after request, fulfill his obligations, if any, as to placing and securing the hirer in the quiet possession of the thing hired, or putting it into good condition, or repairing; or,
- b. When the greater part of the thing hired, or that part which was and which the letter had at the time of the hiring reason to believe was the material inducement to the hirer to enter into the contract, perishes from any other cause than the want of ordinary care of the hirer.

Section 1237: The hiring of a thing terminates:

- a. At the end of the term agreed upon;
- b. By the mutual consent of the parties;
- c. By the hirer acquiring a title to the thing hired superior to that of the letter; or
- d. By the destruction of the thing hired.

ESSAY QUESTION #2
(75 POINTS -- 45 MINUTES)

A is the fee simple owner of Lot A, which lies in between B's two tracts, Lots B1 and B2. B has a flowing well on Lot B2 and wishes to build an irrigation ditch across Lot A to allow transfer of some of the water from Lot B2 to Lot B1. For consideration and in a written deed, A conveyed to B and his heirs and assigns a right of way across a strip of land 20 feet wide along the north edge of Lot A, in which B could construct an concrete irrigation ditch for the purpose of transporting the well water from Lot B2 to Lot B1. The easement was intended to be appurtenant to both Lots B1 and B2. In addition, B promised in the deed that he would install and maintain in perpetuity a cover over the irrigation ditch and a barbed wire fence around the ditch for the safety and protection of A's farm animals, workers, family members and the general public.

B installed the irrigation ditch, the cover, and the fence, but found he needed only 10 feet of the 20-foot wide right of way to do so. Consequently, despite B's objections, A planted crops on the unused 10-foot width of the land for the entire length of the right of way. A

had always grown crops on Lot A, and his doing so in no way interfered with B's use of the land for the irrigation ditch. However, at various times, B came on to Lot A to repair cracks in the irrigation ditch and in the process trampled on and destroyed some of A's crops that were growing in the right of way next to the irrigation ditch. A objected to this, but before he could convince B to stop, A died leaving Lot A to his heir, H. H continued A's same activities on the land.

B sold both Lots B1 and B2 to C. At first, C continued to come on to Lot A to repair the irrigation ditch (and in so doing destroyed some of H's crops), but C did not take any steps to maintain the cover or the barbed wire fence. After a few years, C discovered an oil well on Lot B2. C stopped the flow of well water into the irrigation ditch, removed the cover, tore down the fence, and laid a large pipeline in the ditch in order to transport the oil from Lot B2 across the right of way on Lot A to where her could pump it into a truck located on Lot B1.

H now sues C (1) to remove the pipeline and enjoin C's use of the irrigation ditch for transporting oil, (2) for damages arising from C's destruction of H's crops, and (3) to demand that C reinstall the irrigation ditch cover and barbed wire fence. C counterclaims to enjoin H from raising crops within the right of way adjacent to the irrigation ditch.

Who wins on these causes of action, and why?

END OF THE EXAM