

**Final Examination
Property II
Professor Van Cleave
Spring 2007**

1. You have **three (3)** hours to complete this exam.
2. This is a **closed** book exam. Students may not use any outside materials or confer with each other during the exam.
3. This examination contains two parts:

Part I consists of twenty-five (25) multiple-choice questions. Please mark your responses to the multiple choice questions 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 **60 minutes on Part I**. Remember, your goal is to identify the **best** answer. Multiple choice questions are worth a total of **25 points**.

If you believe that any question or answer selection is unfairly ambiguous please articulate your concerns on the back of the last page of the exam. Be sure to identify clearly the relevant question. You should not ask anyone about a question during the exam. I strongly suggest that you not devote too much time to such endeavors.

Part II consists of one (1) essay question. I strongly encourage you to spend 15-20 minutes outlining your 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. I recommend that you spend approximately **two hours (120 minutes) on Part II**. Please write your response in the blue books provided. Please write clearly. Write on every other line and every other page to permit instructor comments. The essay question is worth a total of **50 points**.

4. Write your student exam number on your exam envelope. Put your correct class section and 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, return all test materials, including blue books, ParScore answer sheet, scratch paper, and this exam packet to the envelope and submit it to the proctor. **DO NOT** seal the envelope. Students who do not return all exam materials at the end of the exam may not be graded.

GOOD LUCK!

Part II: Essay Question (50 points)
Recommended Time: 2 hours

The relevant jurisdiction has enacted the following statute:

General Law § 20.5:

“No tenant may be removed from the premises or excluded therefrom by the landlord or his agent except pursuant to a valid court order, and upon one month’s notice.”

LePauw University, a private institution, owns and makes available several forms of housing for its undergraduate and graduate students, including dormitories, apartments for married couples and houses for fraternities and sororities recognized by the University. The University has an agreement with each sorority and fraternity that gives the University significant authority to withdraw its recognition of a sorority or fraternity. The agreements also state that the members of the sororities and fraternities are the “guests” of the University and may be required to vacate the house within 24 hours of a decision by the University to withdraw recognition. The individual members of the sororities and fraternities pay the University each semester to occupy the houses, and sign an agreement upon joining the sorority or fraternity and moving into the house, that specifies, “This is not a lease. If your sorority or fraternity loses University recognition, you may be required to vacate the house with 24 hours notice.” The sorority, Zeta Delta, has been recognized by the University since the LePauw chapter was established in 1909.

The land on which the sorority and fraternity houses are located is in the town of Whitecastle and has been zoned RM (Residential Multi-family), meaning the area is to be “used for garden apartments, boarding houses, rooming houses, lodging houses, private dormitories or fraternity houses.” All University sorority and fraternity houses have been in compliance with city zoning ordinances. After a number of incidents of excessive drinking on college campuses, in particular at sorority and fraternity parties, were reported in the national media, the City Council of Whitecastle recently amended this particular provision to exclude sororities and fraternities from the permissible uses. However, the amendment provides that sororities and fraternities are permissible if they satisfy certain conditions. Specifically, the amendment states: “If property in areas zoned RM is leased to or operated as a fraternity and/or sorority, the sale, distribution, or consumption of alcoholic beverages shall not be permitted anywhere on the premises” (the no-alcohol rule). This provision was effective immediately upon enactment.

The amendment also imposes another condition upon property used as a sorority or fraternity. Specifically, the owner of property leased or operated as a sorority or fraternity must hire an adult who has had 100 hours of training in each of the following: 1) recognizing alcohol abuse; 2) counseling youths who abuse alcohol; and 3) conducting programs on the dangers of alcohol abuse. The ordinance refers to this person as a “non-student adult resident counselor (resident counselor).” The ordinance requires that the resident counselor live in one of the sorority or fraternity house rooms and that the value of this housing be considered part of the resident counselor’s compensation. The ordinance provided that owners of property leased or

operated as a sorority or fraternity had 90 days from the effective date of the ordinance to hire a resident counselor. Failure to comply with the “no-alcohol rule” would result in a \$100 fine issued to the owner of the property for each violation. Failure to comply with the resident counselor requirement would result in a fine of \$50 for each day the owner was not in compliance.

The University notified each fraternity and sorority of this amendment and emphasized that each house is subject to its terms and must ensure that all sorority and fraternity members comply. The University has begun to draft a job description for the resident counselor position.

Two days before semester finals were scheduled to begin, Zeta Delta hosted a party at which alcohol was consumed. The City of Whitecastle fined the University \$2,000 after city officials concluded that at least 20 people consumed alcohol at the Zeta Delta house. The people found to have been drinking included Zeta Delta members and guests of members. Some people found to have been drinking were 21 years of age or older, and some were under the legal drinking age of 21. Some people were found drinking alcohol in common areas in the house and others were found drinking in residents’ rooms.

The University immediately notified Zeta Delta that it had withdrawn the sorority’s University recognition and that members had 24 hours to vacate the house.

At the time of the violations, the University still had 60 days to comply with the resident counselor requirement.

1. Assume that the University has challenged the amendment to the zoning ordinance. **Identify and fully analyze** the property law basis (or bases) for such a challenge and whether such a challenge is likely to be successful.
2. **Identify and fully analyze** whether the Zeta Delta members are protected by General Law § 20.5, and the effect of the agreement these members signed.

END OF EXAM