Property

Professor Grimmelmann

Final Exam - Spring 2011

I graded each essay question using a twenty-item checklist, giving a point for each item (e.g., "Lucille receives a life estate.") you dealt with appropriately. Ten percent of the credit in each each question was reserved for organization and writing style. I gave bonus points for creative thinking, particularly nuanced legal analyses, and good use of facts.

Since the essays were graded on a scale of 0–20 and there were 30 multiple-choice questions, I multiplied your multiple-choice score by 4/3 before adding it to your essay scores to produce the exam total.

Model answers to the questions are below. They aren't perfect; no answer in law ever is. Indeed, it was frequently possible to get full credit while reaching different results, as long as you identified relevant issues and supported your conclusions. They also illustrate that the word limits weren't that constraining: this entire exam memo, including this introduction, uses fewer words than you were allowed on the exam.

If you would like to review your exams to compare them with the model answers, they will be available starting on Monday, June 13, in the IILP offices on the 9th floor of 40 Worth St. Please ask my faculty assistant, Alexzia Plummer, for your exam; she can also tell you your scores on the individual sections. The multiple-choice questions, the correct answers, and your answer sheets will also be available for review but may not be copied or removed from the IILP office. If you have further questions after reviewing your exam, or would like to discuss the course or anything else, please email me and we'll set up an appointment.

It has been my pleasure to teach and learn from you.

James

	Multiple Choice	Essay 1	Essay 2	Essay 3	Overall
Median	20.0	11.0	10.0	11.0	57.7
Average	19.4	11.2	10.4	11.4	58.8
Std. Dev.	3.3	2.7	2.6	2.6	9.4

Essay 1

Kitty probably will not succeed in claiming the Company lacks marketable title to Tract A or that it cannot deliver good title to the Seaward, but she probably can rescind the sale because the Company concealed defective conditions in the model home.

Marketable Title

The Company owns a fee simple interest in Tract A. The Company's conveyance "to Lucille for life, then to Michael" gave Lucille a life estate and Michael a remainder in fee simple. Michael's conveyance back to the Company gave it a remainder in fee simple. When Lucille conveyed her interest to the Zuckerkorn REIT, it received a life estate *pur autre vie* measured by Lucille's life. At her death, therefore, Zuckerkorn's interest terminated, and the Company's remainder became possessory, leaving it with a fee simple again. Buster took nothing under Lucille's will. Her life estate ended with her death (and she had already conveyed it to Zuckerkorn), so she had no interest in Tract A to convey to Buster

Since the Company holds fee simple title to Tract A, its title is marketable, and Kitty cannot rescind the contract for sale on this ground.

Condition of the Premises

Kitty is likely to be able to rescind the contract based on the Company's failure to disclose defective conditions in the model home. Under *Stambovsky*, the seller must disclose any conditions that (a) it created, (b) would not be discovered by a diligent buyer, and (c) materially affect the property.

Kitty's best argument is based on the condition of the wiring. The Company "cut corners" on it, so this is a condition created by the seller. The wiring is inside the walls, so the lack of insulation couldn't be discovered even by a careful inspection. The fact that Kitty didn't actually inspect the property carefully is irrelevant, as she couldn't have discovered the wiring problems even if she had been careful. The uninsulated wiring poses a fire risk (particularly if the moles chew on it), and therefore materially affects the value of the home. The moles probably aren't a condition created by the Company, and they may be easier to discover (e.g. if they make noise).

The Seaward

The Company holds good title to the Seaward. The Company's chain of title goes through Tres Hermanos, J. Walter Weatherman, and Wee Britain. (Since no one else that we know of is making a claim, it is appropriate to stop the analysis there, and assume that Wee Britain initially held good title.)

When J. Walter Weatherman bought the Seaward with a rubber check, he received voidable title. This was a delivery of goods in a transaction of purchase for a dishonored check, exactly as described in N.Y. U.C.C. § 2-403(1). Since Weatherman had voidable title, he was capable of giving good title to a good-faith purchaser for value. As far as we know, Tres Hermanos was just

such a purchaser. We are told explicitly that Tres Hermanos was unaware of the fraud; we can assume that when Weatherman "sold" the Seaward to Tres Hermanos, it was for fair market value. Kitty could argue that Tres Hermanos should have been on notice from the fact that Weatherman was a drifter, but this fact alone doesn't imply anything about the transaction (particularly since Wee Britain considered him trustworthy enough to give him possession of the boat).

Once Tres Hermanos had good title, it was able to give good title to the Company under the shelter rule. The Company's later knowledge of the fraud is irrelevant. It owns the Seaward, and therefore Kitty has no grounds to object to the quality of the title that the Company will give her.

Essay 2

Loblaw owns the cabin, subject to Oscar's lease for life.

Lease to Oscar

The lease to Oscar is valid, assuming that "M" refers to Oscar. It complies with the Statute of Frauds because it is written, signed by the parties, and specifies the essential terms of the contract (location of the premises and the rent). The language of the lease, which is almost identical to the language in *Garner v. Gerrish*, gives Oscar a lease for life (which is recognized in New York, also per *Garner*). Therefore, the Company has no right to terminate the lease or evict Oscar, and its attempted eviction is ineffective.

Sale to Loblaw

Since the cabin was attached to the property with utility lines and took a tractor-trailer to move, it was a "fixture" and included in the contract. (It was also a "structure," a term that probably includes houses, sheds, barns, etc.) It doesn't matter that Loblaw didn't know about the cabin; the language of the deed is controlling. Since the Company's interest in Tract B was encumbered by the lease to Oscar, under *nemo dat* it could give no more than that to a purchaser. Loblaw took fee simple ownership subject to Oscar's lease.

Moving the Cabin

The Company no longer owned Tract B, so George Bluth trespassed when he went on it to move the cabin. By severing the cabin's utility connections and putting it on a truck, he committed conversion (in the process changing it from real property to personal property). He also rendered the cabin uninhabitable, causing it to be in breach of the implied warranty of habitability (Oscar's landlord, be it Loblaw or Maggie, will have a reasonable time to cure this), and probably engaged in an illegal self-help eviction.

Sale to Maggie

Maggie's deed from the Company purports to convey the cabin, by the same analysis as above (although it may be somewhat less likely to be a "fixture," it is probably still a "structure[] thereupon"). Since the cabin was at this point owned by Loblaw, however, the Company had no title in it to convey to Maggie, and she takes nothing. She could in theory be a a good-faith purchaser eligible for the protection of the recording act, but (1) there is no indication that she has recorded, and (2) the presence of Oscar's possessions in the cabin and its lack of utility connections may put her on inquiry notice of Oscar's and Loblaw's interests. She is likely to be able to recover from the Company for failing to convey good title to her, but this will depend on the language used in the deed.

Essay 3

Fünke will be able to require the Company to restore a gravel road for his use. He may also be able to challenge the rezoning. His other arguments are unlikely to succeed.

Fünke's Easement

When Fünke divided his parcel into Tracts D and E, the gravel road ran across Tract D but was used to reach the house on Tract E. This use continued after the division, it was apparently necessary to reach the house (as no other access to the house is described in the facts), and a gravel road would be readily apparent to anyone on Tract D. Thus, the result was an access easement from prior existing use burdening Tract D and benefiting Tract E. When the Company bought Tract D, the gravel road was still obviously visible, so it was on inquiry notice of Fünke's easement. As an alternative, Fünke has a good argument for an easement by prescription, since he has been using the road openly for over 15 years.

By removing the gravel road, the Company interfered with Fünke's right to use the easement. Since he had (presumably) been using it to drive to his house, he had the right to continue bringing vehicles along it, so the dirt path is not sufficient. At the very least, the Company will be required to scale back the house so that Fünke's ability to use the gravel road is restored. Unfortunately for Fünke, however, the Company will be allowed to relocate the road if it wishes to run around the house instead. The easement is not likely to help Fünke prevent construction of the house entirely.

The Transfer to Stan Sitwell

The provision in the deed Fünke gave Stan Sitwell prohibiting sale or transfer is void as a restraint on alienation, so Sitwell took a fee simple interest in Tract D, free and clear of the restriction. The promise not to build on the parcel that Sitwell gave to Fünke is also probably not enforceable as a real covenant or equitable servitude. Although it does touch and concern land (by restricting physical development of the land), it is not apparent that the parties intended the restriction to run with the land. Moreover, because Fünke kept the promise in his drawer, when the Company bought the land, it lacked notice of the promise, which was therefore unenforceable against it. (Indeed, because the promise was an interest in land, the Recording Act makes it ineffective as against the Company, which recorded first.)

Sitwell's Will

Stan Sitwell's will was invalid because it was unsigned. Instead, his estate, including Tract D, passed under the laws of intestacy to his only living heir, Sally Sitwell. She therefore had good title to Tract D to convey to the Company, which is therefore the fee simple owner of Tract D.

Rezoning

The Company's plans are legal according to the new R-4 zoning of Tract D. In general, zoning is constitutional and planning commissions have substantial discretion to establish zoning

ordinances. However, Fünke may be able to argue that the rezoning was impermissible spot zoning. Here, the rezoning affects only a small area and appears primarily designed to benefit the Company (it does affect Tract E as well, but Fünke already has a house with no plans to alter it, so is less able to take advantage of the rezoning). It also appears to be inconsistent with the AR-1 zoning of the 2-mile area around the tracts. We need more facts, however, to know the extent to which the surrounding area has been developed since 1985, how the zoning of other nearby parcels may have changed, and what the current comprehensive plan for the area requires. In addition, it is not clear that a single house on a one-acre parcel will substantially interfere with the character of the neighborhood, so the ultimate outcome of Fünke's spot zoning argument is unclear.