

Final Examination
Property Spring 2013
Professor Grimmelmann

This is an open book examination. You may use any preexisting materials that you wish to answer the questions, though you need not consult any sources other than those we used for class. You may not discuss this examination or your answers with anyone, in any medium, under any circumstances, until after the end of the examination period. **Any work you submit must be exclusively your own.**

This eight-hour examination must be downloaded and submitted using the Online Exam/Paper Management System. The examination will be available beginning at **8:30 AM on Tuesday, April 30**. Your answer must be returned within **eight hours** of when you downloaded the examination, and in no event later than **6:30 PM on Tuesday, April 30**.

This examination consists of three equally-weighted essay questions. You may divide your time between the questions as you wish. Each essay is subject to a word limit, which will be strictly enforced. You may not reuse extra words from one essay when answering another.

This examination is final. No clarifications or corrections will be provided. If you believe there is an error, inconsistency, or omission in the examination, please state your assumptions about the issue within your discussion of that issue. No reasonable resolution of an ambiguity will be penalized.

Please pay attention to the specific questions you are being asked and to the roles the questions place you in. I am looking for the application of appropriate legal standards to relevant facts to yield defensible conclusions. Simple citations (e.g. “Armory.”) are appreciated but not required. Spelling, grammar, clarity, organization, and good advice to your clients are all parts of the grading.

You may not identify yourself in any way to me as the author of an answer until the grades are published. Therefore, you must remove personal identifying information from your answer document. Failure to remove any personal identifying information is an examination violation which will be referred to the Ethics Counsel. Instructions on how to remove personal identifying information from your take-home examination are available online at <http://www.law.georgetown.edu/campus-services/registrar/exams-papers-grades/exams/index.cfm>.

Please be sure that you use your examination number (not your student ID number or social security number).

This examination has **five pages total**, including this cover sheet.

By submitting your answers through the online system, you affirm on your honor that you are aware of the Student Disciplinary Code, and (i) have neither given nor received any unauthorized aid to or from any person or persons, and (ii) have not worked more than eight hours on this examination.

GOOD LUCK!

General Information

All questions are set in the (fictional) state of Publica. You should assume the following about the property law of Publica:

- The statute of limitations for all personal property torts and the limitations period for the adverse possession of personal property are three years.
- The statute of limitations for all real property torts, the limitations period for the adverse possession of real property, and the limitations period for the acquisition of an easement by prescription are ten years.
- Publica has enacted a recording act, which reads, “All deeds, mortgages, and other instruments in writing conveying, encumbering, or affecting the title to real property may be recorded [description of recording procedure]. The filing for recordation of such instrument in proper form shall be deemed to be record notice of the facts it recites and of the existence of any interests it creates as of the date of such filing. No such instrument, if unrecorded, shall be valid against any subsequent purchaser in good faith and for valuable consideration who takes without notice notice of such instrument, or against any persons claiming under such a subsequent purchaser.”
- Publica has enacted Article 2 of the Uniform Commercial Code. Any relevant sections have the same text as that provided in the course supplement.
- Publica’s automobile registration system is of the “nondirective” type (see page 914 of the casebook). Ownership of automobiles is governed by common law and the UCC. Publica also issues certificates of title, which can provide notice of ownership and can be used as deeds if signed by the owner. An automobile owner must obtain a certificate of title from the Department of Motor Vehicles (DMV) within 30 days of acquiring ownership and is required to surrender to the DMV the previous certificate of title, signed by the previous owner. Failure to comply with these formalities does not affect ownership, but does subject the new owner to a \$200 fine. Any person who fills out an online form and pays \$25 can obtain the name and address of the last owner to whom a certificate of title was issued.
- Publica’s climate is similar to that of the Washington, DC metropolitan area.

(1) Wait, Wait . . . Don't Evict Me!

Word Limit: 1500 words

You represent the real estate holding company Poundstone, Pierce, and Provenza (“PPP”), which owns 22 Bodett Street, a split-level house whose lower floor has a side entrance and a floor plan suitable for a professional office. In September 2011, PPP was approached by two recent graduates of the Public School of Dentistry, Dr. Luke Sagal and Dr. Roxanne Kasell, who were planning to open a dental practice together.

PPP signed the actual lease with a corporation, Lightning Fill-in-the-Cavity, LLC (“Cavity”), which was owned in equal shares by Drs. Sagal and Kasell. The lease was signed on Cavity’s behalf by its attorney, Adam Burbank, and on PPP’s behalf by one of its employees, Charles Blount. It contained the following terms:

- Rent was \$2,500 per month, payable on the first of each month.
- The lease was for a term of two years, to be renewed automatically, unless either party gave three months’ notice of an intent not to renew.
- Cavity paid a \$5,000 security deposit.
- Cavity was prohibited from subletting or assigning the lease without PPP’s consent.

The lease commenced on August 1, 2010. In August and September, Drs. Sagal and Kasell renovated the lower floor to make it suitable for a dental office. They installed dental chairs, an X-ray machine, a window between the waiting room and receptionist’s area, and wall-mounted cabinets. Cavity and Dr. Sagal executed a document entitled “Sublease Agreement” under which Dr. Sagal agreed to pay \$1000/month in exchange for exclusive possession of the upper floor, “for so long as he shall wish to continue in residence at his exclusive option.” Blount initialed the sublease agreement to indicate PPP’s consent. Dr. Sagal and his family moved in on September 1, 2010.

Matters continued without incident until the middle of February 2013, when Drs. Sagal and Kasell had an argument about the proper use of laughing gas that spiraled out of control. Dr. Sagal moved out on February 10 and stopped paying rent to Cavity. The upstairs has been vacant since then. Dr. Kasell approached Blount about bringing in a replacement for Dr. Sagal. She suggested another classmate, Dr. Amy Bodden, who had a small but thriving practice, and proposed that Dr. Sagal’s interest under the Sublease Agreement be assigned to Dr. Bodden. Blount refused permission on behalf of PPP, saying, “One woman dentist is enough; we’re not renting to two.”

On March 25, Dr. Kasell announced that she was vacating. Between the 25th and the 30th, she removed the dental chairs, the x-ray machine, the light bulbs, and the cabinets—removal of which left dozens of holes in the walls where the anchor bolts had been. She then sent PPP a letter claiming that the heat on the lower floor was inoperable and had been since the start of December. The letter demanded that PPP mail her a check for the security deposit. PPP did receive the rent installment due on April 1. Blount asked Dr. Kasell if she had a replacement tenant for PPP. “Not my job,” she said.

Counsel PPP on its rights, discuss its options, and advise it on how to proceed.

(2) Cah Talk

Word limit: 1500 words

You are clerking for Judge Lauren Order, who is hearing a mess of a case about a mess of a car.

The car, a 1963 Dodge Dart, was part of a collection owned by Myra Chunkle, an eccentric collector. Some of the cars were classics; some were hunks of junk. (The Dart, suffice to say, was one of the latter: it was rusty, barely operable, and hideously unsafe.) She established a trust for the benefit of her niece Iona Heep, and funded the trust with thirty cars from her collection, including the Dart. The trust document instructed the trustee, Rex Galore, to sell the cars, invest the proceeds, and pay the balance to Heep on her twenty-fifth birthday.

Galore sold the Dart to Tom Tappet for \$800. Tom then obtained a certificate of title from the DMV. Tom decided to give the car as a present to his brother Ray Tappet. He called Ray and said, “Guess what I bought you? It’s all yours.” Tom hired a driver, Picov Andropov, to bring it to Ray. Tom signed the certificate of title on the “previous owner” line and placed it in the glove compartment, so that Ray could register the Dart when it arrived.

While on the road, however, the Dart broke down. Andropov called for a tow from a nearby mechanic’s shop, Horseshoe Road Repairs, and requested that they fix the car. Horseshoe replaced a cracked radiator and gave the car a new paint job. Horseshoe’s total bill was \$1000. Andropov refused to pay for the repairs, saying that he was just the driver. Horseshoe called Tom and explained the situation. Tom was furious and also refused to pay for the repairs. “Are you at least going to come pick up the car so we can talk this over?” asked Horseshoe’s manager. “No!” shouted Tom, and hung up the phone.

A week later, Willy Bolt approached Horseshoe, said he was interested in buying the Dart, and asked for a test drive. Horseshoe gave him the keys, and Bolt drove off, never to return. Bolt was delighted to discover that Tom Tappet had left the car title sitting in the glove compartment. He sold the car to Drew A. Blank for \$5000. Bolt gave Blank the certificate of title with Tom’s signature. Blank surrendered it to the DMV and received a new certificate of title in its place.

Blank decided this “classic” car could use some souping up. He disassembled, cleaned, and reassembled the engine, replacing numerous worn-out parts. Then he covered the exterior with tens of thousands of brightly colored glass tiles to make a mosaic featuring the face of actress Odessa Goodwyn. It took him hundreds of hours; he spent \$2500 on parts and \$1000 on tiles.

Blank listed the Dart for sale online for \$25,000. By sheer coincidence, Ray Tappet saw the ad. He went to Blank’s home, where the Dart was sitting in the driveway. At 4:30 in the morning, Ray broke a car window, hot-wired the car, and drove it home, doing 85 on rural back roads. “Don’t drive like my brother,” said Tom.

Who owns the Dart, and are any of the parties civilly liable to each other?

(3) A Prairie Home

Word limit: 1500 words

You represent Barb Scott, who is upset that lately, things haven’t been quiet in her hometown on the edge of the prairie. In 1938, her grandfather, Garrison Ingqvist, purchased a two-hundred-acre parcel on the shore of Lake Wobegon, in the rural town of Fitzgerald. The parcel was lightly wooded and sloped gently down from Powdermilk Road to the lakeside. He built a modest house set a hundred feet back from Powdermilk road. He then laid down a gravel road, which

passed twenty feet from the side of the house and continued down to the lakeshore, where he built a small wooden dock.

In 1956, Ingqvist was one of forty-five property owners with parcels adjoining Lake Wobegon. They agreed that they wanted to preserve the lake's peaceful quality, so they executed a document titled "Property Use Restriction" that provided: "that none of the undersigned, their heirs, successors, or assigns will use or permit the use of Lake Wobegon by means of any powered watercraft." Each of the property owners retained a copy of the document. Ingqvist died in 1969. His will read, in relevant part:

I hereby bequeath my real property on the shore of Lake Wobegon to my beloved daughters, Dusty Scott and Lefty Russell, as follows. I wish Lefty to have the upper hundred acres fronting on Powdermilk Road, including the house. I wish Dusty and Lefty to have the lower hundred acres on the lake jointly for the use of both. If either parcel is ever used for commercial purposes it shall be forfeit and title shall immediately vest in the Professional Organization of English Majors.

Dusty and Lefty both used the dock in the summer, along with their families. Dusty would go out on the lake in a rowboat; Lefty preferred to sit in an easy chair at the end of the dock and fish, a hobby that her daughter Barb also enjoyed. Dusty died in 1992, leaving all her property to her son Guy, who lived in another state and stopped coming to the lake in the summers. In 2000, Lefty sold the upper hundred acres to Barb for \$1, using a quitclaim deed that included the above-quoted language from the Property Use Restriction. Barb recorded the deed and Ingqvist's will. Lefty died in 2003.

In June 2008, Guy sold the lower hundred acres to the Acme Corporation for \$300,000, using a warranty deed stating the title was free from all encumbrances. In September 2010, Barb awoke one day to see a backhoe outside her kitchen window. Acme was in the process of paving the gravel road. Barb said nothing, figuring that if someone was willing to pave her road for free, she wasn't about to object. In March of 2011, however, Acme brought in heavy construction equipment and built a marina. It greatly expanded the dock, installed a boat ramp for putting powerboats in the water, and built a large picnic area.

Since then, Barb has been subjected to escalating annoyances. All summer long, and especially on weekends, the roar of powerboats on the lake is constant and unremitting, as is the traffic up and down the road to the dock. Barb's husband Jim used to set out animal traps to catch squirrels during the hunting season, but the noise and commotion seem to have scared away the squirrels; he caught none this year, compared with a dozen in a typical year. To make matters even worse, Barb has tried to continue fishing from the dock, but was warned to leave and not return by an employee of Acme. Apparently realizing that Barb could be a source of trouble, Acme recorded its deed from Guy in March 2013.

Barb would like to return her home to its former peace and quiet. In addition to suing Acme, she has suggested petitioning the town of Fitzgerald to rezone the lakeside parcel so that only residential uses are permitted and to prohibit the use of the lake except by adjoining landowners. "I'll do my best," you said when she finished. "Honey, could we ask for more?" she replied.

Counsel Barb on her rights, discuss her options, and advise her on how to proceed.

END OF EXAMINATION