

Property
FOUR HOURS

Day Division
Professor Grimmelmann

Friday, May 2
9:00 AM – 1:00 PM

Exam No. _____ Submitted Electronically? Yes ___ No ___

Signature: _____

Print Name: _____

This examination consists of THREE equally weighted questions. There is a word limit of 1200 words per question. It will be enforced strictly; extra words from one question may not be used on another.

This is an closed-book examination. You may NOT consult the casebook, supplement, notes, the Internet, or any other source during the examination.

Your work on this examination is subject to the Student Honor Code. You may not discuss this examination or your answers with anyone under any circumstances until after the end of the examination period, as some of your classmates may be taking the examination out of sequence. **Your work must be exclusively your own.**

It is your responsibility to make sure that your answer does not contain any identifying personal information. Do not identify yourself in any way to me as the author of an answer until grades are published.

Please pay attention to the roles the questions place you in and to the specific questions you are asked to answer. Support your answers with detailed analysis, reference to specific statutes and cases as appropriate, and explanations of how you applied the law to the facts. Simple citations (e.g. "Pierson v. Post.") are appreciated but not required. Basic headers to organize the different parts of your answer are also a good idea. Spelling, grammar, clarity, organization, and good advice to your client are all parts of the grading.

If anything about a question is ambiguous, say what you think it means and answer it accordingly. If you need to assume additional facts, say what they are and how they affected your answer. No reasonable resolution of an ambiguity will be penalized.

The problems in this examination are set in the (fictional) American state of Carrollton. The names in the problems are fictitious. Please disregard any resemblance to actual persons or institutions, living, dead, or nonexistent.

This examination has SIX pages total, including this cover page and the page of Exam4 and handwritten-answer information that follows.

GOOD LUCK!

General Information

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

Statutes of Limitations and Adverse Possession—The limitations periods for all personal property torts and for the adverse possession of personal property are three years. Carrollton courts have adopted a discovery rule for tolling the statute of limitations for personal property torts. The limitations period for all real property torts, for the adverse possession of real property, and for the acquisition of an easement by prescription are ten years. Carrollton courts do not require that an adverse possessor have acted in good faith so long as the other elements are met.

Wills and Estates—Carrollton has adopted a standard Wills Act governing the formalities for making a will. Carrollton's intestacy statute distributes a decedent's estate in the following order: surviving spouse, surviving children and their issue, surviving parents and their issue, escheat to the state.

Personal Property—Carrollton has enacted a version of the Uniform Commercial Code and an automobile registration statute that are identical to Maryland's.

Real Property—Carrollton has abolished the fee tail and the rule against perpetuities. All possibilities of reverter and rights of entry are void if not exercised within thirty years of the effective date of the instrument creating them. The statute of frauds for real property applies to all freehold estates (fee simple and life estate), to all future interests capable of becoming a freehold estate, and to all leases for more than one year. Carrollton courts follow the modern preferences for construing ambiguous conveyances as fees simple and as tenancies in common. Carrollton follows the lien theory of mortgages. Foreclosures take place by judicial sale unless the instrument creating the mortgage specifically provides for power of private sale.

Recording Act—Carrollton has enacted a recording act, which reads in relevant part:

“Every recorded deed takes effect from its effective date as against the grantee of any deed executed and delivered subsequent to the effective date, unless the grantee of the subsequent deed has:

(1) Accepted delivery of the deed:

(i) In good faith and without [actual, record, or inquiry] notice of the prior deed, and

(ii) For a good and valuable consideration; and

(2) Recorded the deed first.”

General—Carrollton's climate, geography, and economy are similar to that of the Baltimore, MD metropolitan area.

A Reminder—*The material in assignments 8 (intellectual property), 9 (property's limits), and 26 (the mortgage crisis) will not be tested on this examination.*

Exam4 Instructions

Computers *may* be used on this examination:

Option 1—Closed—no access to computer-based notes or Internet

If you use a computer on this examination, you must use the Exam4 examination-taking software provided by the law school. You must provide your own computer and must have downloaded a copy of the Fall 2013 version of the Exam4 software to your computer. You should have completed this download, tested the software, and made sure the computer is in working order well before the date of this exam.

At the end of the examination, choose the “Submit Electronically” function on the Exam4 software. The software will request your Exam ID (Examination Number). Put the course name on your answer as instructed in the handout, but do not put your name anywhere on your answer. Submit your answer within the time limits for the examination; no allowance for additional time will be given for equipment failure. After submitting your answer electronically, note on your exam questions that you “Submitted Electronically.” The administration will print your Exam4 answers and provide them to me for grading.

Technological Problems: If you experience a technological problem during the examination period, consider the amount of time remaining and decide whether you should continue (or restart) the examination in blue books. No additional time will be provided for technological problems. Responsibility for submitting your answers on time electronically lies entirely with you. The Information Technology (IT) Department will assist in retrieving examination files from your computer, and the Office of Registration & Enrollment will accept an IT-certified copy of an examination file retrieved from your computer as a timely submission, as long as there is no evidence of tampering with either your computer or the examination file.

Handwritten Answer Instructions

If you submit handwritten answers to the examination, both the envelope and your answers should contain your examination number, the course name, and the instructor's name. Do not put your name anywhere on the envelope or on the blue book answers.

Upon completion of the examination, put your answers in the envelope and hand in the envelope to the examination proctor. Be sure to enclose all of your answers in the envelope—you will be graded on only what is inside the envelope. Do not put the examination questions in the envelope. Hand in the questions separately to the examination proctor. You are responsible for ensuring that all of your completed answers and questions are handed in to the examination proctor.

Question 1

Aristotle Amadopolis and Betty Burns are neighbors. Amadopolis's lot sits uphill from Burns's on a steep slope. In 1985, Amadopolis put in a driveway and garage close to the border between his lot and Burns's. The driveway and garage complied with all applicable zoning rules.

Late last year, Burns decided to put a swimming pool in her backyard. She hired Clancy Chalmers to do the construction. Chalmers asked Burns what to do with the dirt. "Just cart it off somewhere," replied Burns. Using a backhoe, Chalmers dug out a pit fifteen feet deep, twenty feet wide, and forty feet long. Chalmers hired Doris Duffman to remove the dirt.

While Duffman was dumping a load of dirt on a vacant lot she owned, she noticed something large and metallic in the pile. On investigating, she found an old metal safe, which had apparently been buried in Burns's backyard decades ago. She cleaned off some rust, opened it up, and found some old but apparently quite valuable jewelry. News of the find drew the attention of Edna Eddie, who claims that between 1915 and 1940, her grandmother, Francesca Flanders, owned the lot that today belongs to Burns. Eddie has a family photo showing Flanders wearing a necklace very similar to the one found in the safe.

Meanwhile, heavy rains caused the ground around the pit to soften—which set off a mudslide on Amadopolis's lot. The roof of his garage fell in, smashing his car, doing \$5,000 in damage to the garage and \$5,000 in damage to the car. To buy the car, Amadopolis had taken out a loan from the Gunderson Auto Finance Company and given a lien on the car to Gunderson. The unpaid balance of the loan at the time of the accident was \$3,500.

A county engineer examined the damage and filed a report stating that the excavation for the pool was the proximate cause of the mudslide. He opined that the mudslide would not have taken place if not for the added weight of the garage and car, and also that it would not have been possible to guard against the risk of a mudslide without building a \$50,000 retaining wall during the excavation.

You are law clerk to the judge hearing the case. **Write a memorandum summarizing Burns's liability (if any) for the mudslide, and whom should be awarded the jewelry.** Carrolton has no existing law on the duties, if any, that landowners owe to prevent each others' land from sliding. You will need to recommend appropriate law based on your knowledge of other property doctrines.

Question 2

You represent the Hibbert Company, a developer planning a new 15-story office tower with retail space on the first two floors. Hibbert has assembled the land on which the tower will be built by buying five separate parcels, labeled A through E. Hibbert plans to raze all existing structures to construct the tower. The estimated project budget is \$30 million. Hibbert wants your opinion on several potential obstacles:

- When Hibbert purchased Parcel A, it conducted a title search, which disclosed the following: As of 1910, record title was in the ItchyCo corporation. In 1922, ItchyCo sold to Jones, who recorded. In 1990, Jones sold to Krustofski, who recorded. In 2000, Krustofski sold to Lovejoy, who did not record. Finally, Lovejoy sold to Hibbert in 2005; that deed was recorded promptly. In 2013, you became aware that in 1988, Jones gave a deed to Moleman, which was not recorded. You have obtained an affidavit from Moleman that he never entered into possession and did not reveal the existence of the deed from Jones to anyone else until last year.
- Parcel B was previously owned by Neagle, who rented it under a 20-year lease to Ormand in 2008. Ormand is using the property to operate a menswear store. Hibbert purchased all of Neagle's rights, subject to the lease.
- Parcel C was used from roughly 1970 to 2000 for a dry cleaning facility owned by Powell. Like most dry cleaners, it used perchloroethylene (or "perc"), a clear and colorless liquid that can cause liver damage and respiratory failure in people who are exposed to sufficiently high doses. Hibbert purchased Parcel C in 2010 from Quimby, Powell's son, who inherited the parcel on Powell's death.
- Parcel D is currently occupied by a single-story house and is zoned for single-family residential uses only. Hibbert has asked you how hard it would be to get "a zoning change or a variance or whatever they call it."
- Parcel E was given by Terwilliger in 1970, "To Üter for life, then to Van Houten, but if Üter is ever convicted of a crime of moral turpitude, then to Wiggum." Hibbert has obtained quitclaim deeds from Üter and from Van Houten. Üter is currently living and has never been arrested or convicted of any crimes.

Advise Hibbert on whether any of these issues would pose a substantial problem for its plan, or would create substantial legal risk for Hibbert. If so, are there any steps Hibbert should take to mitigate its risks?

Question 3

You are trying to clear up several property messes resulting from the estate of Akira, who died in 2002. He was survived by his widow, Brandine, two children, Cecil and Dolph, and a sister, Emily.

- Akira and Brandine owned their house as joint tenants. In 2000, they took out a home-equity loan, for which they both signed a note and mortgage to the Capital City Finance Company. Brandine is current with all payments on the loan. Akira's will stated, "I leave my house to Dolph."
- Akira owned a powerboat as tenants in common with Emily. His will stated, "I leave my powerboat to Cecil."
- Akira owned a small cabin in a rural part of Carrolton. His will made no mention of the cabin. Cecil moved in in 2003 and has been there ever since. Dolph at one point came by and told him he wasn't supposed to be there, to which Cecil replied, "No worries; it's mine under Dad's will."
- Akira's will left \$20,000 in a trust, of which Frink was the trustee and Gerald the beneficiary, with instructions to give the money to Gerald when he turned 18. Frink used the money to go gambling at the Carrolton Casino and lost it all.
- Akira, Brandine, and Emily each owned one third of the shares in the Android's Dungeon, a family-run comic book store. Akira's will left his shares to Horatio, a long-time employee. Following Akira's death, Brandine and Emily voted to expand the business into selling games. There is no dispute that the gaming line of business is profitable and legal, but Horatio vehemently opposed the move given Akira's long-standing dislike of gaming, which he considered immoral.
- Akira's will left several pieces of antique furniture (worth about \$5,000) to Dolph. He took them to Scratch Your Itch, a local used-furniture store that also does carpentry and restoration. While they were there, a customer, Julius, noticed them and offered to buy them on the spot. Scratch Your Itch accepted Julius's offer of \$10,000, not mentioning that the furniture had been brought in by Dolph only for cleaning.

Write a memorandum describing who owns what, and discussing whether any of the parties are liable to any of the others.