

Exam No. _____

Social Security No. _____

THE UNIVERSITY OF AKRON
School of Law

9200:615-281
FINAL EXAM – PROPERTY II
Professor Lee
Monday, May 8, 2000
9:00 p.m. – 12:00 p.m.

GENERAL INSTRUCTIONS:

1. Write your Social Security number at the top in the space provided. DO NOT USE YOUR NAME. Retain your exam number for later reference to posted grades.
2. On each bluebook you use, write your Social Security number in the space marked, “Name.” Write your exam number in the space marked, “Exam Seat No.”
3. When you are finished, number each bluebook you use, giving both a sequence number and the total number of bluebooks used. For example: 1 of 5, 2 of 5, etc.
4. **PERMITTED MATERIALS:** You may refer to any handouts, the text, your notes, and any outline which you have prepared. Commercial outlines and study guides are not permitted.
5. “No unpermitted aid given, received, or witnessed.”
6. Transcribe the above Honor Code statement to the front of each bluebook you use. By so doing, you acknowledge its requirements.
7. Please write only on the right hand pages of each bluebook, skipping every other line.
8. Explain your answers fully. Give arguments on both sides of an issue where appropriate. If you need to make any assumptions about the facts or governing law, state those assumptions.
9. PART I is 55 percent of your exam (4 questions: 2 at 10%, 1 at 15%, 1 at 20%).
PART II is 45 percent.
10. You have three hours total to complete the exam. I suggest you allocate your time approximately as follows:
11. PART I One hour, 25 minutes (15 to 30 minutes per question).
 PART II One hour, 10 minutes.
12. The remaining time (25 minutes) to allocate as necessary.
13. Remember to take the time to organize your answers. Stay calm. Stay focused. Good luck.

PART I

55 percent (10% to 20% per question). Suggested time allocation: 1 hour, 25 minutes (15-30 min. per question).

1. **(10%/15 minutes)** Recall that in *Village of Euclid v. Ambler Realty Co* the vacant property at issue was zoned residential, precluding commercial development. The plaintiff alleged that the zoning action diminished the value of the property by 75 percent. The Court did not directly address whether the adoption of the zoning statute constituted an unconstitutional regulatory taking without just compensation. Suppose the basic facts of the Euclid case were presented fresh to the Court today as a takings issue. How should the case be decided?
2. **(15%/25 minutes)** Okapi is the owner of the family estate, Greyacre. Okapi tells Ash that she would be willing to sell Greyacre for \$125,000. Ash discovers that Baron would like to buy the property. Ash agrees to sell Greyacre to Baron for \$250,000. There is to be a 30-day closing period before the deed is transferred. They prepare a contract memorializing all of the significant terms, which Ash signs and records. Ash then goes back to Okapi and buys Greyacre for \$125,000 cash, receives a deed from Okapi immediately, and records the deed. At the closing, Baron discovers the scheme and refuses to pay the \$250,000. Can Ash enforce the contract?

Baron decides to go ahead with the purchase. Before Baron records the deed, Ash sells Greyacre to Cal. While waiting in line to record his deed at the clerk's office, Cal discovers that the person behind him in line is Baron, who is waiting to record his deed to Greyacre. Cal asks Baron to save his place in line, finds a phone and calls you. What do you tell him?

3. **(20%/30 minutes)** O'Neal owns two vacant parcels of property in an area in the town of Kobe that is zoned U-2. The Kobe zoning ordinance specifies that apartment buildings are allowed in a U-2 zone if they meet certain criteria: 1) the proposed apartment building must contribute to an appropriate mix in the supply of apartment types in the neighborhood, and 2) the proposed apartment building cannot cause harm to the general public welfare. O'Neal wants to build two- and three-bedroom apartments for single-parent and working families. The Kobe Zoning Board has determined that Kobe is sorely lacking studios and one-bedroom apartments to rent to young single professional people and young couples without children. The Board agrees to grant the permit on the condition that O'Neal executes and records a covenant restricting the use of the second lot to a building with at least 50 studio and one-bedroom apartments, unless the Zoning Board agrees to a different use. The Board tells O'Neal that if he does not agree to the condition, his proposal will not meet either of the criteria. O'Neal wants to sell the second parcel, and would like to avoid executing the covenant if he can. Advise O'Neal as to whether he will be able to build the apartment building without restricting the future use of the second parcel.
4. **(10%/15 minutes)** Property is often described as a bundle of rights, such as the right to use, sell, devise, alter, destroy, or keep property. But property can also be characterized as the right to limit or prohibit the behavior of others. Discuss why this is so, and give three examples.

PART II

45 percent. Suggested time allocation: 1 hour, 10 minutes.

Devon Developer owns a 100-acre parcel, Riverdale, in an area zoned for residential use. Riverdale is divided roughly in half by a small picturesque stream. Devon lays out the eastern half, Eastshore, into 200 lots, each $\frac{1}{4}$ acre. The western half, Westshore, is divided into 50 lots, each 1 acre. Devon records the plat map.

Devon builds the first house on lot A in Eastshore, and he moves in there. Every morning Devon walks from his house across lot B to the stream, and steps across some stepping stones to a shady spot which is his favorite fishing hole. Sometimes he brings clients there. His sales agents are instructed to mention the fishing hole to prospective customers. Ally is his first customer, who purchases the house on lot A. Ally's deed contains a restriction limiting use to single-family residences. The deed is duly recorded. Ally's children and their friends use the path across lot B to the fishing hole regularly. Devon's agents sometimes time their sales visits to be able to point out the happy children on their way to or from fishing.

15 years later, almost all the Riverdale lots have been sold. 124 of the Eastshore deeds contain the residential use restriction. Only 16 of the Westshore deeds contain the restriction. But the deed for lot C, which fronts on the stream and contains the fishing spot, does not contain a restriction for residential use. None of the 6 restricted Westshore deeds are for property that fronts on the stream. Chan, the owner of lot C, operates a catering business out of her kitchen. She plans to install a large patio near the stream to offer to her customers as a place to hold small private parties. She does not plan to charge for use of the deck itself, but only for her catering services. It would cover the fishing spot. It was common knowledge in Riverdale that Ally's children used that spot for fishing. But Ally's children, now in law school, have not used the fishing spot since they threw away their fishing equipment a year ago. But Ally expects that some day "really soon" her children will want to go fishing at their old spot again.

When Ally hears about Chan's plans, she tells Chan she's going to sue her to enjoin the construction of the patio. She also tells Chan she's going to get her friends on the City Council to amend the zoning ordinance to expressly prohibit catering businesses in Riverdale. Belden, who is in contract to purchase lot B, and has taken possession prior to closing, is a friend and customer of Chan. Belden decides to erect a fence, blocking the access from Ally's house to the stream. When Ally sees the fence, she is furious. She calls Belden and says, "You'll be sorry! I'm going to lead tour groups on fishing excursions across your property, my friend!" She then tells Belden she's going to sue her to make Belden take down the fence.

Advise Ally as to the prospects of the various actions she wants to initiate.

All of this has made Belden wonder if she can back out of this contract. Can she?

END OF EXAMINATION