

Exam No. _____

Social Security No. _____

THE UNIVERSITY OF AKRON
School of Law
9200:615-001/002

FINAL EXAM – PROPERTY II
Professor Lee
Thursday, May 13, 1999
9:00 a.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 are not permitted.
5. **"No unpermitted aid given, received, or witnessed." Transcribe the previous Honor Code statement to the front of each bluebook you use. By so doing, you acknowledge its requirements.**
6. Please write only on the right hand pages of each bluebook, skipping every other line.
7. 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.

PART I is 40 percent of your exam (4 questions, 10 percent per question).

PART II is 30 percent.

PART III is 30 percent.

You have three hours total to complete the exam. I suggest you allocate your time approximately as follows:

PART I One hour (15 minutes per question).

PART II 45 minutes.

PART III 45 minutes.

The remaining time (30 minutes) to allocate as necessary.

Remember to take time to organize your answers. Stay calm. Stay focused. Good luck.

PART I

40 percent (10 % per question). Suggested time allocation: 1 hour (15 min. per question).

1. Betty Bonafide contracts to purchase Blackacre from Sue Seller for \$250,000. During the negotiations, Bonafide tells Seller that she plans to add a third floor to the house. Seller says nothing. Two days before closing, Bonafide discovers that there is a zoning ordinance in effect that restricts residences on Blackacre to two stories. Bonafide calls Seller and says, "I want to rescind the contract." Seller shouts, "You can't do that!" Bonafide calmly replies, "Yes, I can. You should have told me that the property is encumbered by zoning regulations." That night, the house is destroyed by a fire. Seller sues Bonafide for the purchase price of \$250,000. Assess Bonafide's legal position.
2. Donna Developer wants to build a cluster development called Whispering Hills in an area zoned residential in the Town of Endor. Instead of the single family homes that would be allowed under the zoning ordinance, plans for Whispering Hills include 800 condominium apartments. The design exceeds the per-parcel density requirements of the zoning ordinance, although overall density for the development is the same as that required by the zoning ordinance. The Endor Planning Commission (EPC) reviews the design and issues a permit conditioned on Donna Developer dedicating 10 acres and \$2 million dollars for the construction of an interactive science museum. (DO NOT discuss the form of approval given, i.e., variance, special exception, or floating zone.) The EPC explains that the residents of Whispering Hills will increase the demand for recreational facilities in Endor. The new museum will not only serve residents but attract tourist dollars to the Town. Advise Donna Developer whether the condition can be challenged as an unconstitutional taking.
3. Orlon owns a large parcel which was subsequently subdivided into lots A and B. Orlon's house sits on lot B, and an underground sewage pipe runs from the house across lot A to the public sewage line. Orlon sells lot B, with the house on it, to Benji. The deed contains no mention of the sewage pipe. Orlon then conveys lot A to Aida. Aida builds a house on lot A and digs her own independent sewage line to the street. A few years later, Aida decides to put a swimming pool in her back yard, and the excavation crew discovers Benji's sewage line. Aida informs Benji that she intends to remove the pipe, and Benji sues to enjoin Aida, claiming to have the right to drain his sewage across lot A. It would be expensive but possible for Benji to install a new sewage line on his own property. Advise Aida as to her options. DO NOT discuss any recording act or deed warranty issues.
4. Two women, each with a child from a former relationship, are living together in a house in Eden City. They are cited for violation of the local zoning ordinance, which restricts land use to single family residences. "Family" is defined as "two or more persons related by blood, adoption or marriage, or no more than two persons who are unrelated." Eden City is located in the State of Bliss. The women challenge the ordinance as unconstitutional under the Bliss State Constitution. The issue has never been raised before in this state. Review the arguments they might raise and the counterarguments they should expect to face.

PART II

30 percent. Suggested time allocation: 45 minutes.

Olamina owns Greenacre, a single family residence in a subdivision called Happy Hollow. Happy Hollow consists of 100 homes built by the Notis Construction Company. Greenacre was the last home in the subdivision to be sold. Olamina's deed contains a requirement that she must be a member of, pay dues to, and obey rules adopted by the Happy Hollow Homeowners Association. She plans to install a large swimming pool, with a diving board and a slide, as well as outdoor lights, for the use of her 23 racially diverse grandchildren, who often visit her. There are no Association rules prohibiting these plans.

After hiring a designer to draw up plans for her project, contracting with a pool company and a lighting company to do the installation, and talking with the neighbors, Olamina starts to receive complaints.

First, some neighbors advise her that the homes in Happy Hollow are subject to a restriction that prohibits the use of large outdoor lights. Olamina discovers that 20 homes in Happy Hollow that are all on the edge of a large duck pond have deeds which contain this explicit restriction.

Second, the Homeowners Association informs her that it has just adopted a new rule prohibiting the further construction of any new swimming pools. The Association explains that swimming pools are hazards for young children. Recent studies show that fencing requirements and other safety regulations are ineffective.

Finally, the city building inspector arrives and tells her that a new zoning ordinance allows the new installation of lit swimming pools only if the owner satisfies two conditions: 1) there will be no diving boards, slides, or other equipment that encourages "excessive horseplay"; and 2) there will be no detriment to the public welfare. The inspector explains that the local legislative body is concerned about the many accidents that occur at nighttime pool parties. He tells Olamina that she will have to apply for a permit and meet the criteria in order to be allowed to install her pool.

Olamina observes that 34 other homes in the subdivision already have swimming pools, 6 of which are lit. Two have outdoor lit tennis courts, and 24 have decks or patios with lights as large or larger than the lights she is planning to install.

Advise Olamina of the likelihood of her being able to install her pool.

PART III

30 percent. Suggested time allocation: 45 minutes.

In 1972 Oshkosh sells the mineral rights to Stripedacre to Athos, a speculator, for \$1,000. The deed is signed and dated, but through an oversight, nothing is recorded. In March of 1975 Oshkosh enters into an installment sale contract to sell Stripedacre to Bathos for \$50,000, at 8% interest to be paid monthly over 10 years. Bathos has no actual knowledge of Athos' mineral rights. Under the terms of the contract, Bathos has the right to possession, but Oshkosh retains legal title until paid in full. In addition, Bathos must pay Oshkosh a monthly fee for the cost of insurance, taxes, and utilities, which Oshkosh keeps in his own name. In the event of default, Oshkosh retains the right to terminate the contract and repossess the property, with all payments to be considered rent. Bathos pays no down payment, moves in, and commences making payments.

1) If Bathos defaults after 5 years, will he be entitled to the return of any money?

Assume Bathos continues to make all payments. In February of 1985, Athos discovers gold on Stripedacre. Athos' secretary realizes that the mineral deed has never been recorded. He shows the signed deed to a notary, who obligingly affixes a notary seal, and dates it. The secretary then deposits the deed for recording with the court clerk.

The court clerk turns out to be Bathos' uncle, and the next day he mentions the incident to Bathos, who searches the record and discovers the mineral deed. Bathos notices that the date next to the signature on the deed and the date on the notary seal are 13 years apart. Bathos makes his last payment, receives a deed from Oshkosh, and has it recorded.

Meanwhile, the area around Stripedacre, originally rural, has become solidly residential. A recent zoning ordinance prohibits mining in residential areas due to the noise and the danger of subsidence.

All of this occurs in the Commonwealth of Aynes, which is a race-notice jurisdiction.

2) Advise Athos as to whether he will ever get rich off of the gold in Stripedacre.

END OF EXAMINATION