

Law 203 -- PROPERTY

Instructor in Charge: Prof. Peterson

Time allowed (for essay section): 2 hours, 20 minutes

Special Instructions:

The essay section of this examination is open book. You may consult your casebook, course reader, handouts (including assignment sheets and ASP handouts), class notes, and any outline that you have prepared yourself. You may not use other materials, including commercial outlines, hornbooks or treatises. You may not access materials online during the exam.

There are two questions. The points and the suggested time allotted to each question are as follows:

Question #1 -- 100 minutes -- 100 points
Question #2 -- 40 minutes -- 40 points
Total: 2 hours, 20 minutes -- 140 points

Think carefully and organize your answer before you start writing. If you find it necessary to make any assumptions as to fact or law for purposes of your answer, state what they are. Do not just write your conclusions. Be sure to explain your reasoning.

The essay section of this exam consists of 7 pages. Please make sure that you have all 7 pages.

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Standard instructions:

Laptop Users: Create a header in a new Word document that includes your exam number, course name, instructor name, and semester. Title the document with the course name, instructor name, and your exam number (e.g.: Contracts_Berring_0234) and save it to your hard drive. Be sure to format your document with page numbers and double-spacing.

Writers: Place your exam label or clearly print your exam number on the cover of all bluebooks. Write the course name and instructor's name on each bluebook. Number your bluebooks to indicate their order, and state the total number of bluebooks that you are submitting (1 of 4, 2 of 4, etc.)

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If you need to leave the room during the exam, you may not take any of the exam materials with you.

You will be given a 10-minute and a 1-minute warning. When time is called, please stop typing/writing promptly and turn in your copy of this exam and your answers.

Please do NOT leave your exam or bluebooks on the desk.

All copies of this exam and bluebooks must be turned in to the person in charge, or if you finish early, must be taken to Exam Headquarters (Room 123).

Question #1 (100 points)
(suggested time: 100 minutes)

It's May 7, 2009. You are a new associate in a small law firm in the State of X. Penelope Partner has asked you to join her in meeting with Anne Martin, the daughter of a close friend of hers, who needs some pro bono legal advice. Anne is 26 years old. She and her husband live in the State of X.

"So, Anne," Penelope begins, "could you please tell us why you're here?"

Anne ("A") explains that a few months ago, in February 2009, Anne's Great Aunt Margaret ("GAM") died. At the time of her death, Great Aunt Margaret owned a home in the State of X as the sole owner in fee simple absolute. Great Aunt Margaret was single and had no children. In her will, Great Aunt Margaret left her home "to my beloved grandnieces, Anne and Barbara, when they reach the age of 25." Her will further provided that the rest of her estate would go to the American Red Cross. At the time of Great Aunt Margaret's death, Anne was 26 years old and her sister, Barbara ("B") was 28.

Five years before her death, Great Aunt Margaret had gone to live in a nursing home because she was frail and in a wheelchair and needed assistance, although she was still mentally alert. So far as Anne knew, Great Aunt Margaret's home had been left vacant while she was in the nursing home.

Great Aunt Margaret's home was hours away from Anne and Barbara's home towns, so they decided to wait until the summer to take some time off, go look at the house, find out what kind of shape it was in, and figure out what to do with the property. They had visited it many years earlier and remembered it as a gracious, old two-story home.

Two days ago, Anne received a phone call from someone named Jim Smith ("J"). He explained that he owned the lot right behind Great Aunt Margaret's lot and had lived there for 35 years.

Jim was upset because for several days, a fairly large truck had been parked on the driveway leading from the street

Question #1 (cont'd.)

across Great Aunt Margaret's lot to his lot. The truck was parked on Great Aunt Margaret's lot, right before the driveway entered his lot. Since the driveway had a fence on one side and a hedge on the other side, Jim could not drive around the truck. Jim said that he had been parking on the street and walking to his house, but that was inconvenient, so he decided to figure out whose truck it was and ask them to move it.

Jim rang the doorbell to Great Aunt Margaret's house to ask the family living there about the truck blocking the driveway. According to Jim, the family had moved into Great Aunt Margaret's house soon after she went into the nursing home. He had assumed they were renting from her. They seemed like nice people and had never blocked the driveway before.

The man who answered the door, Mark ("M"), said it wasn't his truck, but that it belonged to the family to whom he had rented the master bedroom and bath upstairs. Mark explained that the tenant family had lost their home because the bank had foreclosed on their mortgage, and now all their belongings were stored in the truck. Mark had given the family permission to park their truck at the end of the driveway, where it wouldn't be in Mark's way.

Jim explained to Mark that Jim had used the driveway for years, that he had a right to use the driveway, and that Mark's tenants needed to move the truck. Mark said he didn't know anything about that.

Jim asked, "Didn't your landlady, Margaret, mention it?"

"Well, no," said Mark. "We aren't renting the house. My wife and kids and I just moved into this home after I lost my job some years ago. Our mortgage was foreclosed upon, we were facing homelessness, and we knew this house was vacant."

Jim told Anne that he wanted her and Barbara to make sure the truck was removed immediately. He said that when he bought his lot from Great Aunt Margaret 35 years ago, he assumed he would be able to keep using the driveway and he still thinks he has a right to do so.

Question #1 (cont'd.)

Jim also said that when he bought the lot from Great Aunt Margaret, he and Great Aunt Margaret signed a written document stating, "Neither I nor any later owner or possessor of my lot will use the lot for anything other than single-family residential purposes." At the time, and now, the zoning permitted multi-family residential use. Jim said he thinks Mark's rental of the master bedroom and bath to a second family violates that agreement and that Anne and Barbara could be liable in damages. Moreover, he wanted Anne and Barbara to get both families out of the house immediately.

When Anne got off the phone, she told her husband, Sam ("S"), about her phone call with Jim. He said he didn't think the house was worth the hassle, and that she and Barbara should just sell it. "You can use your share of the proceeds to help pay for my law school tuition bill," he said. "Tuition is going to be even higher next year."

Anne then called her sister Barbara to fill her in on the phone call with Jim and to pass on Sam's suggestion about selling the house. Barbara said she felt very sentimental about Great Aunt Margaret's home and didn't want to sell it.

"At that point," Anne concluded, "I decided I needed some legal advice. I immediately thought of asking Penelope for help."

"I'm glad to do what I can," said Penelope. "What would you like to know?"

Anne then asked the following questions:

1) "Does Jim have a right to use the driveway if he doesn't have anything in writing to show that he has such a right? If he does have a right to use the driveway, am I legally responsible for the truck preventing his use of the driveway?"

(2) "Since I didn't know anything about Jim and Great Aunt Margaret's agreement restricting their lots to single-family residential use, am I bound by it? If I am, do I have to evict

Question #1 (cont'd.)

both families? If it weren't for Great Aunt Margaret's agreement, I might just ask Barbara whether we should let them stay for a while. After all, we aren't using the house right now, and I feel bad that they've lost their homes."

(3) "Do I have the legal right to evict both families if I decide that I want to or need to?"

(4) "If I decide to sell the house, could Barbara prevent me from doing so?"

(5) "If I do sell the house, is there any reason in terms of marital property law that I might not want to use the money I get from the sale of the house to pay my husband's law school tuition?"

Penelope promised to look into these matters and to contact Anne soon to let her know the answers to her questions. Shortly after Anne left, Penelope asked you to write a memo, addressing Anne's questions. "I have no idea what the answers to her questions are," said Penelope, "but I know that you recently took a course in property law. Do the best you can to answer Anne's questions, based on what you know about the facts so far and based on your existing knowledge of property law. Please let me know, though, whenever you need to learn more about the relevant law or facts."

Please write a memo responding to Anne's five questions. Assume that in the State of X, the statutory period to recover possession of real property from someone wrongfully in possession is five years. Assume that the State of X is a community property state and that the common-law Rule Against Perpetuities applies.

Question #2 (40 points)
(suggested time: 40 minutes)

You are a state legislator in a state in which the state supreme court has recognized an implied warranty of habitability for residential leases but has not fully spelled out the contours of the doctrine. You are considering proposing legislation on this topic.

What would you propose and why? You should discuss whether an implied warranty of habitability should be recognized for residential leases, and if so, whether it should be waivable, what the standard for a breach of the implied warranty should be (including whether a breach would occur before the landlord had received notice and/or a reasonable time to repair), and what the tenant's remedies should be if a breach occurs. Please explain the reasoning underlying your proposal.

