

**WASHINGTON UNIVERSITY SCHOOL OF LAW  
FINAL EXAMINATION  
IN  
PROPERTY**

**OPEN BOOK FOUR HOURS**

**Professor Deborah Dinner**

**Fall 2013**

---

**INSTRUCTIONS**

This examination consists of three parts: short answers, a policy question, and an issue spotter. You have four hours to complete this exam.

The exam has a total of 240 possible points corresponding to the number of minutes in the exam period. The points are allocated to each question according to the time I expect that you might spend on each question. Thus, you might want to spend about a half hour on a question worth 30 points and an hour on a question worth 60 points.

The exam is open book. You may consult your casebook, as well as outlines, brainstormers, study aids, and other materials that you or your classmates have prepared. These materials are valid no matter the source you consulted to prepare them. You may not, however, use commercial outlines, treatises, or similar material external to our course during the exam. Once you receive the exam, you are not permitted to engage in any additional research (either electronically or in the library). All answers must consist entirely of your own work. You may not collaborate with anyone during the exam or otherwise discuss the exam in any way with anyone until the end of the exam.

The first part of the exam, worth 100 points out of the exam's total 240 points, consists of four short-answer problems. The first three short answer problems are each worth 30 points and the fourth short answer problem is worth 10 points. Please answer the questions succinctly. Do not spend a disproportionate amount of time on any short-answer problem. There are no word-limits for the short-answer problems, but lengthy answers are not necessary and will only use up your time. The last short answer question is a future interests problem. For this problem alone, and for none of the other questions on the exam, you can answer with bullet points and sentence fragments (so long as they are clear) and still receive full credit.

The second part of the exam, worth 60 of the exam's total 180 points, asks you to apply relevant theories and policies to a new doctrinal question. The word limit is 1,500 words.

The third part of the exam, worth 80 of the exam's total 180 points, consists of an issue spotter. The word limit is 2,000 words.

Please do not feel pressured to reach the word limits for the second and third parts of the exam. It is purposefully generous. Concise, well-reasoned answers are more effective than rambling ones.

Type your answers to each of the three parts of the exam in separate question fields. You will be able to check your word count in ExamSoft from the menu in the toolbar. If your answer exceeds the number of words allotted, that portion of the answer which exceeds the allotment will not be considered.

If you handwrite the exam, you will not be bound by the official word count because you will not have a digital means to count words. However, I do not expect that anyone handwriting an exam can exceed the word count in the allotted amount of time. If you do choose to handwrite the exam, please remember that I can only give points for legible content.

In sum, there are a total of six questions on the exam.

If you run out of time, I will give partial credit for an outline that is in the typed (or handwritten) text of the exam. The amount of credit will correlate to the level of detail in the outline. You should include the outline in your word count. You should view partial credit for an outline as a last resort and not a test-taking strategy; please do not rely on it as a means to evade the timed character of the exam.

Good luck!

**EXAMINATION BEGINS ON THE NEXT PAGE**

## **PART I: SHORT ANSWERS , WORTH 100/240 POINTS**

### **QUESTION 1, WORTH 30 POINTS**

Dahlia and Zach are cousins who own a house in St. Louis as tenants in common. Dahlia had plans to go on an extended vacation. She left on December 1, 2012 and told Zach she would return on the morning of January 10, 2013. As Dahlia was about to walk out the door, she and Zach had a major argument about who had responsibility for watering the plants. While Dahlia was away from the house, Zach changed the locks on the house. He had lost his keys and was worried about the security of the house. Zach also had a set of new keys made for Dahlia and set them aside for her.

Late in the evening on January 3, Dahlia returned to the house. She had decided to cut her vacation short and return a week early because she had gotten bored of the beach. But Dahlia's old keys could not open the door. She did not ring the doorbell. Instead, she assumed her cousin was mad at her because of the argument over the plants and had locked her out purposefully. Dahlia moved into a hotel for a week. After Dahlia spent seven nights in the hotel, on the afternoon of January 10, Zach called Dahlia's cell phone. He asked where she was and why she had not yet come home. In the course of the conversation, Zach explained to Dahlia what had happened with the locks. Dahlia moved back home— happy and relieved. Yet all did not remain peaceful. One month later, Zach decided to take a temporary job in Washington, D.C. for six months. On February 15, 2013 he executed a six-month lease with his best friend Jerry. The next day, Zach moved out of the house and Jerry moved in to the house.

Dahlia is extremely angry. She is upset about the prior incident in January, when she had to spend \$1,000 for the week in the hotel. She also does not want to live with Jerry, whom she thinks is untidy and rude. She hires your law firm to discuss her options. What legal remedies are available to Dahlia?

### **QUESTION 2, WORTH 30 POINTS**

Several states have enacted “right-to-farm” statutes in the last few decades. These statutes authorize the creation of “agricultural areas.” Landowners in the agricultural areas can obtain certification as state approved farmers. These farmers then have immunity from claims by nearby landowners related to their farming activities. Neighboring landowners cannot sue the farmers for several claims including claims related to agricultural runoff that pollutes the neighbors' land.

Assume that Missouri passed a “right-to-farm” statute in September 2013. The month prior, in August 2013, Beautiful Homes Real Estate Company had bought twenty-five acres of land in a rural, predominantly agricultural area outside St. Louis. Beautiful Homes had planned to subdivide the twenty-five acres to create an upscale, rural retirement community composed of fifty half-acre plots. Now Beautiful Homes is worried that it will have no legal recourse to combat the ill effects of nearby farming. In particular, Beautiful Homes wants to build wells on each of its fifty plots. But the company is concerned that nearby farms are using toxic pesticides. Although Beautiful Homes does not yet evidence of this effect, the company believes that the

pesticides will run off the farms into the groundwater of the planned retirement community. These pesticides, the company believes, will pollute the water and make it impossible to build usable wells. Beautiful Homes hired your firm to challenge the constitutionality of the “right-to-farm” statute. Write a short statement to the senior partner in the firm advising her whether you think a federal district court will uphold the constitutionality of the “right-to-farm” statute.

### **QUESTION 3, WORTH 30 POINTS**

Assume that in 2012 a small town outside St. Louis, Sunrise Village, passed a zoning ordinance restricting its land use to “single-family dwellings.” The ordinance defines family to mean: “one or more persons related by blood, adoption, or marriage; or no more than two persons not related by blood, adoption or marriage.” Paul Jones and John Smith are unmarried, same-sex partners who purchased a home in Sunrise Village in April 2013. In May, they moved into the home with their three foster children. They are not related to their foster children by blood and have no plans to adopt their foster children. In October 2013, Sunrise Village served Paul Jones and John Smith with an “Order to Remedy Violations” of the ordinance.

In November, Paul and John hired your firm to challenge the statute in state court as a violation of both the U.S. Constitution and the Missouri Constitution. The Missouri state constitution has a due process clause that protects the fundamental rights of its citizens. The constitutionality of an ordinance of this sort is an issue of first impression in Missouri. The Missouri courts do not apply strict scrutiny to classifications on the basis of sexual orientation, whether deciding cases on federal or state constitutional grounds. Write a short memorandum explaining what arguments you can make on behalf of Paul and John under both the U.S Constitution and the Missouri Constitution, applying relevant precedent and looking to case law in other states for guidance. (Your senior partner advises you not to challenge the constitutionality of the prohibition on same-sex marriage in Missouri). Assess the likelihood of success of your various arguments.

### **QUESTION 4, WORTH 10 POINTS**

Clark grants Blackacre to Carla for life, then to Sylvia and her heirs, but if Sylvia does not use Blackacre as a school, then to Jacob and his heirs. What interests are created?

### **POLICY QUESTION, WORTH 60/240 POINTS**

#### **QUESTION 5, WORTH 60 POINTS**

Plaintiff Corporation invests \$1 million in exploring for oil on its 100-acre property. It discovers oil in the southeast corner of its property. After Plaintiff begins to extract the oil for sale, the neighboring landowner to the southeast, Defendant, notices this activity and recognizes a lucrative opportunity. The neighboring landowner, Defendant, also begins to extract the oil. The oil is part of a common pool under both properties. Defendant’s costs are considerably less than the plaintiff because Defendant did not have to expend money searching for the oil.

Consequently, Defendant can sell the oil at a much lower price than the Plaintiff and begins to dominate the market for oil in the region. Plaintiff sues Defendant, asking for an injunction ordering Defendant to stop exploiting oil discovered by Plaintiff's investment and labor. Defendant claims a right to extract oil from beneath its property.

If you were the judge deciding the case, what rule or standard of law would you adopt? Please give a reasoned explanation for your answer that takes account of counterarguments.

### **ISSUE SPOTTER, WORTH 80/240 POINTS**

#### **QUESTION 6, WORTH 80 POINTS**

The Walford Cooperative Apartments is a cooperative apartment building in St. Louis. The Walford Cooperative lies on a parcel of land that was once the southern parcel of two parcels commonly owned by Tom Green. Everyone in St. Louis referred to the two parcels together as Greenacre. In 1928, Tom Green sold the southern parcel of Greenacre to Heather Hunter. Hunter and Green were both concerned about maintaining the high property values of their houses. Green and Hunter both promised to restrict their properties to residential uses and not to engage in commercial activities on their parcels of land. They included the restrictive covenant in the deed, which defined commercial activity to include retail stores and businesses.

Heather Hunter razed Green's former house on the southern lot. She built a new, modern mansion that she hooked up to a preexisting buried sewer pipe that had serviced Green's house. The sewer pipe ran underground from public sewer lines to the north of Hunter's property, under the northern parcel owned by Green, to Hunter's southern parcel. Hunter did not have any other means of connecting her house to the public sewerage lines. Other than the Green plot to the north, Hunter's property was surrounded by a public park, and city laws prohibited her from laying sewerage pipes through the park.

In 1953, Heather Hunter died and her will devised the mansion to her son, John Hunter. John Hunter lived in the mansion until 1973. In 1973, Hunter sold the mansion and the parcel of land on which it stood to the Walford Cooperative Association. The Cooperative Association has operated for the last forty years.

Recently, the cooperative has encountered considerable turmoil. In October 2013, a recent Washington University graduate with a Ph.D. in bioengineering, Janice Jewel, applied to become a member of the cooperative. Janice wanted to buy shares in the cooperative and lease unit 2A, which had recently become vacant. Janice was \$150,000 in debt from her college and graduate education and had no assets except for an old, used car. Janice, however, is an up-and-coming artist with enormous potential. She argues that as her fame grows, within a year she should have an annual income well above \$100,000, more than enough to afford the lease on her apartment. Nevertheless, the Walford Cooperative Board decided that Janice posed too great a financial risk and denied her membership in the cooperative. Janice is threatening to sue, claiming that the cooperative discriminated against her on the basis of her status as a starving artist.

The troubles unfortunately do not end with Janice. Because of the downturn in the housing market, Walford had to reduce the prices of several vacant units in the cooperative. Walford is now in debt. At a board meeting several months ago, some tenants in the cooperative proposed making a ground floor apartment into a yoga studio. The studio would earn money by holding classes and selling yoga mats and clothing. The Walford began making plans to proceed with the studio. Recently, however, the current owner of the Green mansion and successor in interest to Tom Green, Bill Brown, heard about the plans. Brown is concerned about increased traffic near his home due to the yoga studio. He is threatening to sue the Walford to enjoin the operation of the yoga studio.

Moreover, Bill Brown plans in his will to devise his estate (the northern parcel of the former Greenacre) to the St. Louis Society for the Preservation of Native Flora. Brown's will and documents he has executed with the Society for the Preservation of Native Flora specify what the Society will do with the land. The Society plans to raze Brown's house, rip up all pipes in the land, till the soil, and sow the ground with plants native to the St. Louis area. They will open the land to the public as a recreation area. Walford is concerned about the potential destruction and removal of its sewer lines, when Brown's land transfers to the Society.

The Walford Cooperative has hired your firm to represent the Cooperative in the various legal issues it faces. Write a memorandum evaluating the Walford's legal liabilities and remedies.