



Spring, 1996

Professor Terrell

Final Examination

Time Allowed: 4 hours and 15 minutes

INSTRUCTIONS:

- (1) This is a closed-book examination.
- (2) You have a maximum of four (4) hours and fifteen (15) minutes to complete the examination.
- (3) the examination consists of six (6) questions. Please be certain that your copy of the examination contains all six questions.
- (4) A total of 124 raw score points is available on the examination. The raw score points available on each question are noted at the beginning of each question, along with a suggested time allotment for each question corresponding roughly to the relative number of raw score points available on that question.
- (5) Any announcements concerning the examination shall be made in the room assigned for the examination and the typing room.
- (6) Two matters of substance:
 - (a) You are to assume throughout this examination that the general English common law of estates in land after the Statute of Uses is applicable in the jurisdictions involved in the questions, except that fee estates may be established by reference to a grantee without words of inheritance. If this information is in any way insufficient for you to answer any part of a question, so note the information you lack, and make any reasonable assumption you deem necessary to complete your answer.
 - (b) For ease of reference, if you believe them relevant, the Due Process Clause and Taking Clause of the Fifth Amendment read as follows: "[n]or shall any person . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."
- (7) Good luck.

Question 1

12 raw score points

Suggested time: 25 minutes

- (a) Compare and contrast the standard legal requirements for an easement implied from quasi-easement and an easement implied from necessity.
- (b) Do these doctrines reflect basic principles of economic analysis, in your opinion? That is, do they lead to "efficient" results? Explain briefly.

Question 2

14 raw score points

Suggested time: 25 minutes

You are the legislative assistant to a member of the Georgia legislature. She has been asked by other members to support a bill that would recognize the "tenancy by the entireties" in this state. She asks your advice on the matter.

- (a) Explain to her what this "tenancy" is, particularly as it compares to other concurrent property interests.
- (b) Because she knows of your unusual legal education, she asks you whether any aspects of property theory suggest how she ought to vote on the matter.

Question 3

28 raw score points

Suggested time: 55 minutes

(a) O conveys his property in 1990 in a deed with the following language: "to A for life, then to A's widow for life, and then to all of B's grandchildren when they reach the age of 21, as joint tenants."

In 1990, A is married to W; B is dead, but has three grandchildren, ages 18, 10, and 5.

In 1992, the youngest grandchild dies, but two more are born later this same year.

In 1993, A dies.

In 1996, W dies.

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Beginning with 1990, analyze the ownership interests in this property.

(b) Assume that the interest above given to B's grandchildren is valid, and that in 1994 the oldest grandchild conveys his interest in the property to X. Any problems? What impact on the final result?

(c) O conveys other property in 1996 in a deed with the following language: "to A for life and then to B, provided that he is a non-smoker, but if B should die before he reaches the age of 30 of any lung-related ailment, then to C's children or their heirs."

What is the current state of the title to this property?

(d) O conveys yet other property in 1996 in a deed with the following language: "to A for life, then to A's nieces and nephews when they reach the age of 25." What advice can you give on the current state of the title?

(e) Draft an example of a conveyance in which a contingent remainder is destroyed by the application of the Rule in Shelley's Case. Be sure to explain your example briefly.

Question 4

22 raw score points

Suggested time: 40 minutes

Laura owns a luxurious country estate -- "Tara" -- that she leases to others on either short- or long-term bases. Tara consists of an unfurnished ten-room house together with six acres of landscaped lawns and grounds and a large heated swimming pool.

Ted leased the estate for a three year term beginning in May of 1995 at \$3,000 per month. All went well until the first of July when the heating and filtering system on the pool broke down, rendering the pool unusable. the estimated cost of repairing the system is \$4,800. Although the pool equipment was in good working order in May, the malfunction does not appear to be due to any neglect or abuse by Ted or his family.

The lease consists of a one-page printed form which, although legally valid, contains nothing pertaining to the responsibility for such a repair. Laura has refused to make the repair, claiming that it is Ted's responsibility. Ted responds by vacating the premises at the beginning of August and sending a letter to Laura which reads in relevant part:

I hereby surrender Tara to you because the premises are now uninhabitable.

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Not only does the pool not function, but the grounds are a mess since you have failed to have the grass cut and shrubs trimmed for the entire time we have been there.

Laura is infuriated and replies to Ted's letter by saying that she expects Ted "to fully live up to [his] end of the bargain."

Laura has never found it necessary in the past to advertise the estate in order to find a tenant, and sure enough, within two months another tenant – Tom – signs the same sort of lease that Ted had: a three year lease at \$2,500 a month, beginning the first of October, 1995. However, Tom fails to pay the rent for November and December, and just as Laura is about to call and fuss at him, on December 15 a person named Ace appears at her office with a document which reads as follows:

TRANSFER

I, Tom, in consideration of \$2,000, do hereby relinquish my rights to Tara under the lease dated October 1, 1995, to Ace for the balance of the term of the lease; provided, however, that if Ace fails to pay the rent due under the lease to Laura, I retain the right to sue Ace for any amounts he fails to pay. Ace agrees to pay all rental amounts directly to Laura.

Ace offers Laura \$2,000 to cover the rent for November and December. She refuses, and insists that this time she will speak to her lawyer first. The lease, of course, contains no provision concerning transfers of the leasehold interest.

She comes to you with this story and seeks a full description of the probable legal relationships that presently exist concerning Tara – who may be liable to whom, and whether she can take possession of the estate.

Question 5

24 raw score points

Suggested time: 50 minutes

Smith and the U.S. Department of the Interior enter into an agreement whereby Smith is "authorized to use" a single family dwelling and ten acres of land located in a National Recreation Area and owned by the United States. The agreement is for the period September 1, 1995, to September 1, 2005. Under its terms, Smith pays no money to the Department but is obligated to "rehabilitate, restore, and maintain" the dwelling and to assist in the detection and reporting of fires. Smith has the right to exclusive possession of the premises during the term of the agreement, subject to the government's "right to enter the premises at any time for inspection in cooperation with

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Smith and for any purposes associated with the mandated activities of the Department of the Interior, such as fire prevention, tracking and tagging of wildlife, etc." The Department also retains the right to terminate the agreement "for any just cause at the discretion of the Director, National Park Service." The agreement is also made expressly "subject to the right of Jones [a neighboring private landowner] to the exclusive use and enjoyment of Silver Lake," which is located on the ten acre tract. Jones uses a single lane dirt road across Smith's tract to reach Silver Lake.

Smith comes to you for advice about several issues:

(a) Under an applicable statute, local municipalities may levy a tax on tenants based on the market value of their tenancies. Smith's ten acres are within a local municipality, and he is notified of a tax assessment against him in the amount of \$2000, based on a market value of the ten acres of \$100,000. Smith would like to avoid this tax, if possible. Are there any ways to do so? (Assume that local governments can impose such taxes on leases involving federal land.)

(b) Smith has now invested considerable sums in the renovation of the structure on the premises, but he has heard that the Department may be planning to terminate the agreement in the very near future to permit extensive logging operations in the area. He asks if there are any possible claims he might make concerning this possible government plan.

(c) Smith does admit, however, that the arrangement he has gotten himself into does not now appear to be quite the same sweet deal that he thought it was back in 1995, for he has identified other renovation projects that are of more interest to him. He anticipates that it will be to his benefit to walk away from this arrangement by the end of 1999. Can he do so?

(d) Smith is also upset by the fact that Jones has sold his land to a company that has built a hotel on the neighboring property, and this company is bussing large groups to Silver Lake every day. Smith has also learned that this company plans to widen the existing road to two lanes to improve access to the lake. As if this were not bad enough, the company has objected to *Smith's* use of Silver Lake in any way, and has threatened him with an injunction if he and his family continue to fish and boat on the lake. Smith wants to know whether he has any basis for opposing these actions by the company.

Question 6

24 raw score points

Suggested time: 50 minutes

AIDS Awareness, Inc. ("AAI") is a non-profit group that establishes and operates group homes for persons diagnosed with AIDS. AAI has found that persons with AIDS have difficulty maintaining independent living arrangements -- in part because their disease makes them increasingly weak and unable to care for themselves, and in part because they often lose their accommodations through either eviction or foreclosure.

AAI has recently purchased a large older house in a residential neighborhood of Decrepit, Georgia, and has announced plans to open another of its groups homes there. Homeowners in the area are incensed. Predictably, property values in the area have plummeted -- down 20% to 80% depending on proximity to the group home.

(a) Assume that Decrepit has no zoning ordinance. Several homeowners in the neighborhood come to you to get any advice or perspective you might have to offer about the situation. (They are, by the way, a rather intellectual group. Consequently, be certain to discuss with them, for example, any possible relevance economic theory might have here.)

(b) Assume that Decrepit *does* have a zoning ordinance and that the neighborhood is zoned for single-family residences. However, the Decrepit Zoning Board has just granted AAI a variance to the zoning plan to permit this group home in this neighborhood. The homeowners are furious about this as well, and want to sue the City. Any possibilities?