

PROPERTY I – Professor Terrell
Final Examination – Spring, 1998
Time Allowed: 4 hours and 15 minutes

INSTRUCTIONS:

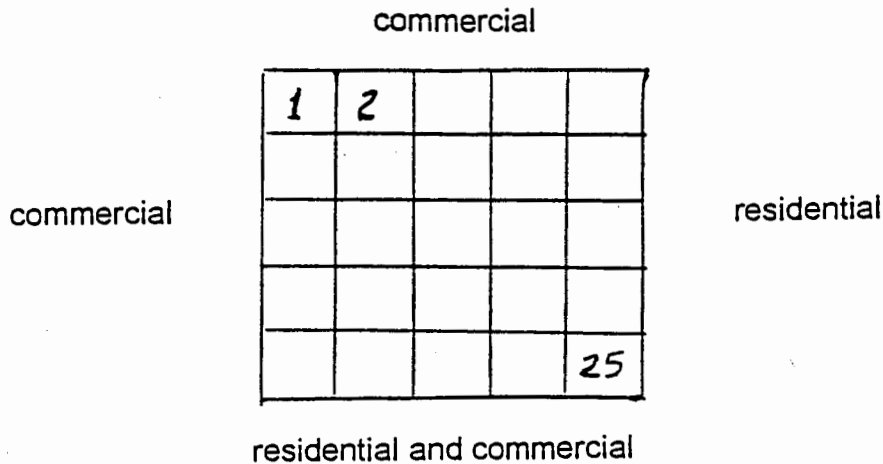
- (1) This is a closed-book examination.
- (2) You have a maximum of four (4) hours and fifteen (15) minutes to complete the examination.
- (3) The examination consists of five (5) questions. Please be certain that your copy of the examination contains all five questions.
- (4) **You must return this copy of the examination with your examination answers.**
- (5) A total of 120 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.
- (6) Any announcements concerning the examination shall be made in the room assigned for the examination and the typing room.
- (7) Three 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) With regard to all other doctrinal areas – for example, landlord-tenant, easements, and so on – you may assume that the question places you in a generally "modern" jurisdiction. Although this information may not be terribly illuminating, it at least gives you some context for discussion of issues.
 - (c) 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."
- (8) Good luck.

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Question 1

(35 raw score points; 1 hour, 10 minutes)

Sam owned a thirty acre tract of land that he intended to develop into a commercial and office park. The tract is roughly square in shape, is zoned for commercial use, and is surrounded by other land as indicated in the following simplified figure:



The first lot sold by Sam was Lot #1 above, which he sold in 1990 to the ABC Office Supply Company. In the deed to ABC, Sam inserted the following language:

“Buyer shall have all rights of ownership to this parcel only so long as the parcel is used for private commercial purposes.”

ABC started construction of a building immediately, one with a wood siding exterior, and in six months was operating a showroom and warehouse on the lot.

Four months after the sale to ABC, Sam started selling other lots in the tract, and he sold the last remaining lot – #25 – in 1995 to the Speedy Mail Company, a firm specializing in next day delivery of important letters and packages anywhere in the country. The facility it put on Lot 25 is one of its major regional customer-contact centers. In the deeds for Lots 2 through 25 Sam included the following provisions:

- “(1) The said parcel shall be used for commercial purposes only.
- (2) No use will be made of this parcel that would be in direct business competition with the use of any other parcel.
- (3) Only one structure of not more than two stories and 35,000 square feet shall be permitted on this parcel.

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- (4) The structure on this parcel shall bear an architectural and visible resemblance to the structure on Lot 1 by utilizing in its construction the same materials as those in the external walls and roof of the structure on Lot 1."

By the middle of 1998 all was peace and harmony in this commercial community, with many businesses operating from buildings with attractively coordinated wood siding exteriors. But then the federal government struck. The government purchased ABC's lot by eminent domain and converted the building on the lot into a large metropolitan postal facility, and it added two smaller buildings to the lot to serve as regional claims offices for recipients of food stamps and veteran's benefits. The government also changed dramatically the exterior appearance of the original structure on Lot 1, converting it to a modern steel-and-glass facade.

A large group of angry people – representing businesses on the other lots – has now come to your firm for advice. Although the federal government has paid an amount into court as "just compensation" for its acquisition of Lot 1, the sum only represents the value of a lot of this size in a commercial area of this city. While ABC is willing to accept this amount and move its operations elsewhere, the owners of Lots 2 through 25 believe they have interests that have been "taken" from them as well that require compensation. Speedy Mail is of course particularly adamant in this regard. Representatives of the federal government responded to their initial complaints by asserting not only that no such claim for additional compensation was viable, but that the owners of Lots 2 through 25 were *themselves* in violation of the restrictions in their deeds and the government was considering injunctive and damage actions against *them*.

Amidst all the hubbub as these facts are recited, the owner of Lot 2 stands up to announce that if he does not get any compensation from the government, he intends to convert his present modest building into a 20-story modern glass office building. The response from the group is a cacophony of boos, catcalls, and threats of law suits.

Sam is also among the group of angry people in your firm's conference room, and he too claims that he has an interest in Lot 1 that deserves compensation. But he asserts moreover that the compensation amount that the federal government has already paid into court should not go to ABC, but to *him*.

Your job, obviously, as the junior associate in the firm, is to sort this mess out as best you can in a rather short period of time. The partner in charge of this matter wants your analysis of the situation before he faces this mob.

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Question 2

(15 raw score points; 30 minutes)

At common law, (a) easements were presumed to be appurtenant, and (b) there was a strong presumption against implying easements through an implied reservation. Succinctly explain what these two rules mean, and assess whether they are economically efficient rules.

Question 3

(20 raw score points; 40 minutes)

T is the President of Fastlane, Inc., one of your firm's largest clients. Fastlane is an interstate trucking operation that serves a number of large manufacturing concerns. T has just learned that the Clinton administration has decided (apparently as part of a complicated budget negotiation with congressional Republicans) to remove many of the regulations that apply to the interstate trucking industry. Present regulations permit, among other things, a government agency to set industry-wide fees for hauling certain kinds of cargo, to fix mileage charges for long-distance jobs, to set safety standards for trucks and drivers, and to prohibit any company from violating any of the regulations it may promulgate. T argues that the regulations were, and still are, necessary to prevent "cut-throat" competition among trucking firms (*i.e.*, one company trying to cut its rates drastically for a temporary period in order to drive competitors out of the market), and to preserve public safety on the highways. Proponents of deregulation have argued, to the contrary, that the regulations exist merely to protect existing large trucking firms (and large unions) from competition. T argues to you, however, that his own company is one that operates on a rather small profit, and the disappearance of the regulations could lead to "price wars" and "route wars" that will ruin it. He argues further that this government agency has been in existence since about 1890, that it has been regulating the trucking industry basically in the manner described since 1935, and that the industry in general and his company in particular have been structured with these regulatory patterns in mind.

T's question to you is simple enough: If deregulation occurs, shouldn't his company be entitled under the Taking Clause to compensation for the losses it will suffer?

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Question 4

(23 raw score points; 45 minutes)

Bad times have befallen Reverend Quark and the congregation of the Church of Perpetual Motion. One year ago their church sanctuary building was struck by lightning and totally destroyed by the resulting fire. In order to continue meeting regularly thereafter, Rev. Quark leased a nearby vacant warehouse from Larry Landlord. The lease signed by the two men was a rather informal document, with Larry agreeing to let the Church use the warehouse "for its worship services for as long as need be," and the Church promising to "leave the building in good repair," and to pay Larry \$400 per month.

Since moving into the warehouse the congregation has been debating whether to rebuild its old church, and because of their indecision no construction activity has begun.

One of the activities to which the Church has been devoted over the years has been assistance to homeless philosophers. The basement of the old church building had in fact been leased from the Church by the Society for the Preservation of Irrelevance, which set up a temporary shelter for these poor, confused souls. Beginning in January of this year Rev. Quark permitted the attic of the present structure to be used for this same purpose by the Society, at a rent of \$100 which the Society sent regularly to Larry. Starting in February, the Church paid Larry \$300, to which Larry protested. Although he stated that he "would not accept this situation," he nevertheless cashed their check.

A local parents' organization asked Larry if he would permit his building to be used on a weekly basis for high school dances on Friday evenings. Larry agreed, and since the beginning of February of this year has leased the building for this purpose. Rev. Quark and his congregation were furious. Dancing to music written after 1534 is very much against their religion. They complained to Larry, but he responded by saying that he needed the extra money since the Church wasn't paying its full rent. In fact, he permitted the parents' organization to leave the sound equipment and other paraphernalia associated with the dances in a storage room in the warehouse that Rev. Quark had been using as his office.

In March, the Klondike Construction Co. began excavating property it owned next to Larry's warehouse in preparation for a large office tower they intended to build. Their work has been extremely noisy, and vibrations have caused plaster to fall from the walls and ceiling of Larry's warehouse. Rev. Quark, his congregation, and the Society in the attic found this situation intolerable and moved out at the end of March, having paid rent only through that month. They have refused to pay anything further to Larry. The only other temporary facility Rev. Quark has been able to secure for church

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services, however, is several miles away, and costs the Church \$500 per month. Because of its distance, attendance at services has decreased significantly, the Church's revenues have correspondingly dropped by 50%, and the Society has set up its facility elsewhere.

Rev. Quark has come to you for advice. Like any good American, he is anxious to sue whoever he can for the indignities he and his Church have suffered. Rev. Quark wants to sue both Larry and Klondike, on behalf of the Church. Rev. Quark informs you, however, that Larry has already threatened to sue the Church of Perpetual Motion for breach of the lease, and that he intends to sue the Society for the Preservation of Irrelevance as well. Rev. Quark also informs you that the dances have continued, and that Larry has leased the warehouse beginning September 1, 1998, to a local law school for storage of old law professors, at a rental of \$300 per month.

Sort this situation out for the Reverend as best you can, and as completely as you can. Your advice at this point may be tentative and based on general and majority legal rules, but you should indicate those points that you will need to investigate further.

Question 5

(27 raw score points; 55 minutes)

Ben Babble died in 1990, leaving a will that read in relevant part as follows:

"My beloved estate, Rehnquistacre, I hereby give and devise to my widow for her lifetime, provided that she does not remarry or convert to Catholicism, and then to my son Saul if he is employed, and if not, then to my daughters as joint tenants provided that the estate is never used for commercial purposes, and if it is, then to those of my friend Fifi's children who are over 25 years of age."

At his death, Ben is survived by his wife, Wanda, his son, Saul, three daughters named Doris, Daisy, and Dimple, Fifi, and Fifi's two children.

The following events then occurred:

- 1991 – Wanda converts to Catholicism. Saul is still in college. Doris, Daisy, and Dimple are living with their mother at the estate.
- 1992 – Daisy moves out, joins a commune, and transfers all her "worldly possessions to the Church of Perpetual Motion."

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- 1993 – Dimple dies. Wanda remarries and moves to her new husband's home, leaving Doris as the sole occupant of Rehnquistacre.
 - 1994 – Doris, from her own savings, spends \$20,000 to put a new roof on the home that Ben had built on Rehnquistacre so many years ago, and she spends \$50,000 to add a new bedroom wing to the home.
 - 1995 – Daisy moves back into Rehnquistacre.
 - 1997 – Saul graduates, gets his first job, and while Wanda, her new husband, and Doris are away in Europe for the summer, moves back to Rehnquistacre. He opens it to the public as a tourist attraction, selling tickets, etc. Daisy simply ignores all the commotion.

When the rest of the family returns from Europe, Doris is appalled both by Saul's actions and Daisy's lack of response, and throws them both out of the house.

Saul and Daisy now come to you. Explain to them:

- (a) the probable interests in the estate held in 1990; and
- (b) the probable interests in the estate today, being sure to explain your steps along the way. Saul and Daisy are particularly concerned, of course, about whether they have any right to challenge Doris' eviction of them.