**Property II Examination**

**May 11, 2013**

**3:00 p.m. - 6:00 p.m.**

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**Instructions:**

You will have three hours to complete this exam. There are two essay questions. Each question is worth 50% of the final score. Each question has a 500-word limit. Anything you write past 500 words will not be read. Please use the word-count feature to check the length of each answer.

The exam is completely open-book. You can use anything you wish, so long as it was printed *before* the distribution of this exam. Obtaining any new information from anyone or anything *after* the exam is prohibited.

**Please don’t turn the page until the proctor signals that the exam has begun.**

Good luck!

**Question 1 (50%)**

***Instructions****: The year is 1782. The American Revolution has come to an end. Many of the patriots who fought in the war, including Adams, Badison, Cashington, Damilton, Efferson, Franklin, Gayson, and Henry, have laid down their swords, and returned to their homes. However, during their years at war, much has changed. A massive property dispute, involving the estates of Vernon, Monticello, and Gunston has arrived at the Virginia Supreme Court. You are a law clerk for the Chief Justice of the Virginia Supreme Court, who has asked you to prepare a memo of no more than five hundred words addressing the issues raised in this appeal. Seeing that the year is 1782, Virginia applies all of the common law property rules, as articulated in the Restatement (First) of Property. No modern developments in property rules apply. The period for adverse possession is three years with color of title, and five years without color of title. Virginia has a notice recording statute.*

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At the dawn of the American Revolution in colonial Virginia, three of our founding fathers lived on three stately manors that bordered each other: Cashington lived on Vernon, Efferson lived on Monticello, and Gayson lived on Gunston.

These three neighbors reached a series of agreements about how to put their lands to best use.

First, on 1/1/70, Cashington, Efferson, and Gayson each signed an easement that gave the owners of Vernon, Monticello, and Gunston, the right to freely travel a cleared path that cut across all three properties. This easement was recorded the same day.

Second, Gayson really liked the vineyards on Monticello. On 1/2/70, Efferson sold Gayson the vineyards, but added a covenant to the deed that specified that the land could only be farmed every other year, in order to maintain the quality of the soil. The deed conveying the vineyards from Efferson to Gayson, with the covenant, was not recorded at that time.

On 4/19/75, with the “shot heard round the world” at the battles of Lexington and Concord, the American Revolution had begun. During the war, chaos reigned at home, and the ownership of these estates soon fell into disarray.

Cashington reluctantly, but with honor, assumed the role as General of the Continental Army, and departed from Vernon. At the time, no one expected the Union to prevail—and few expected Cashington to survive what would be a blood bath. Damilton—who was rumored to be Cashington’s illegitimate son—entered Vernon and began squatting on 1/1/76. While crossing the Delaware on 12/25/76, Cashington learned that Damilton was on his land, and wrote to Damilton to get off Vernon. Gingerly, Damilton ignored the warning, and began telling everyone that Cashington had given him Vernon. People soon believed it.

On 8/1/77, Damilton “sold” Vernon to Henry, by giving him a forged deed, which Henry promptly recorded. Every day, starting on 8/2/77, Henry walked along the path connecting Vernon, Monticello, and Gunston.

During the revolution, Gayson fell on hard times, and was unable to pay his mortgage. The *Poor Richard Bank* moved to foreclose the land, and held a foreclosure sale on 9/1/77. The sale was supposed to start at 10 a.m. according to the foreclosure notice Gayson received, but the auctioneer decided to start it at 9 a.m. Only one bidder showed up at the foreclosure sale: Franklin, who happened to be the president of the Poor Richard Bank. Unsurprisingly, Franklin placed the only bid, which was $1 more than the amount owed on the note. Gayson, who arrived just as the auction finished, was furious. Gayson insisted that he was prepared to pay off his mortgage that morning, but the foreclosure sale started an hour earlier than scheduled. Franklin, laughed, and said “Early to bed and early to rise makes a man healthy, wealthy, and wise.” Gayson proceeded to challenge the foreclosure sale in court.

After his “luck” at the foreclosure sale, Franklin, a rather unscrupulous businessman, had little faith that the Americans would win the war. He decided to enter into a series of fraudulent conveyances. First, on 9/2/77, Franklin sold Gunston to Adams with a quitclaim deed. Second, on 9/3/77, Franklin sold Gunston to Badison with a general warranty deed.

On 9/4/77, Gayson finally recorded the deed and covenant in which Efferson conveyed the vineyards on Monticello.

On 9/5/77, Badison recorded the general warranty deed from Franklin for Gunston.

On 9/6/77, Adams recorded the quitclaim deed from Franklin for Gunston.

On 9/7/77, both Badison and Adams tried to enter Gunston, but they disputed who owned the land. Badison, who was not really interested in all of Gunston, decided to simply tend the vineyard. Badison planned to farm the soil, even though it had been farmed the previous year. Adams was fine with this, and resided on the remainder of Gunston. However, in order to get to the vineyard, Badison had to cross the path across Vernon and Monticello. Henry objected to Badison crossing Vernon, and built a fence, blocking access to path across Vernon. Henry, a legendary orator, bellowed, “Give me entry, or give me fence!” Adams objected to this fence, which also blocked his access to Vernon, and on 11/1/77, built his own fence blocking access to Gunston.

On 1/1/79, Cashington learned of the sale to Henry, and wrote a letter to Damilton indicating that he changed his mind: Damilton could stay there until the war was over, so long as he put his heart and soul into farming the land, but Henry could not live there. In his haste, Cashington did not sign the letter. Damilton never showed Henry the letter.

On 6/4/81, the King’s army set out for Monticello. Efferson, with the British invasion imminent, decided to pursue happiness elsewhere, and cowardly fled Monticello, abandoning the land.

With the battle of Yorktown coming to a close in October of 1781, the Revolution concluded.

On 7/4/82, Cashington returned to Vernon, and was prepared to ask Damilton to leave. He was shocked that Henry was there. Henry claimed that he bought the land from Damilton, and showed Cashington the deed. Henry refused to leave. Efferson returned to Monticello, and found that the soil of the vineyard was ruined because of Badison’s over-farming. Gayson returned to Gunston, only to find he could not enter due to the fence that Adams built.

Then the litigation commenced.

1. Cashington sued to eject Henry for trespassing. Henry counterclaimed, filing suit to quiet title on Vernon, asserting that he now owned Vernon.
2. Gayson filed suit to quiet title on Gunston, challenging the foreclosure sale. Both Adams and Badison intervened in that suit, each claiming that they owned Gunston.
3. Efferson sued to evict Badison from the vineyards. Gayson intervened, and claimed that he owned the vineyards.
4. Efferson sued Badison for violating the covenant on the vineyard by over-farming the land.
5. Badison sued Henry for constructing a fence on Vernon, in violation of the easement. Henry counterclaimed that he had acquired that easement during his time on the land, and the suit should be dismissed.
6. Gayson sueed Adams for constructing a fence on Gunston, in violation of the easement.

For each of these six lawsuits, discuss the validity of the competing arguments of the adversarial parties, and address who will win.