

Property II Examination

Section B

December 3, 2012

6:00 p.m. - 9:00 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 that 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: You are an associate at a law firm. Your lazy partner, who is quite short on time, asks you to prepare a memorandum of no more than 500 words addressing a situation affecting your clients: A-Woww, Booki, Cangelina, and Deena (collectively “the girls”). You are litigating in New Jersey trial court. New Jersey finds persuasive the precedents of the Texas Supreme Court (apparently they look fondly on the fact that a native son of Jersey became a law professor in Texas). Here are all the facts. If you draw any inferences beyond these facts, please explain why you drew those inferences.

Four best friends--A-Woww, Booki, Cangelina, and Deena, collectively known as “the girls”--live together in a beach house on Tanacre in Seaside Heights on the Jersey Shore. Known for raucous partying, debauched behavior, and meticulously maintaining an Oompa-Loompa-shade-of-orange tan, these animal-print wearing, techno-dancing, hair-bumping girls kept every fist pumping.

Though, not everyone was happy with their vivacious lifestyles--especially Mayor Pauly “E.” Pauly “E” hatched up a number of ordinances aimed at breaking up the Seaside quartet.

First, he enacted an ordinance that limited the occupancy of a dwelling to members of a single family, and defined “family” to mean one or more person related by blood, adoption, or marriage, or not more than three unrelated persons, living together as a single unit.

Second, in order to promote Seaside’s burgeoning solar power grid, he ordered that small solar panels be installed on the roofs of all houses facing the shore, where the sun’s rays were strongest. Due to the installation of the panels, the girls had to disconnect their beloved hot tub on the roof. But that repercussion *paled* in comparison with the bigger problem--the girls could no longer tan next to the panels that soaked up all the sun.

In response to this ordinance, the girls submitted a proposed plan to the Mayor to expand the roof-top terrace on Tanacre, so they would have space to tan. The Mayor agreed to grant the permit to build the expansion, so long as the girls granted the City an easement that consisted of a 100 foot by 2 foot plot of land at the edge of Tanacre, facing the water. Pauly “E” argued that this land would help passerbys understand that the beach was open to the public. The girls, incensed by this condition, refused, and erected a fence so that no one could walk from the water to the sidewalk through their property. In fact, they started to charge a high fee to access the beach through their property.

The Fitchuation, who lived across the street, and was accustomed to shirtlessly strutting across the sand on Tanacre, learned of this fence and was enraged. He turned fifty shades of orange, and said “Now, we’ve got a situation.”

Then, tragedy struck. SuperStorm Snooki ravaged the Jersey Shore, causing sudden erosion of the beach. The vegetation line, which had previously been about fifteen feet from the edge of the Tanacre, was pushed away from the shore, such that three feet of the house was now in front of the vegetation line. Pauly “E” proudly stated that the City now owned an easement, free and clear, for that three feet of Tanacre. In other words, the City claimed it owned part of the Tanacre.

A few months later, the Seaside Heights Development Corporation designated the remainder of Tanacre for condemnation (everything but the three feet the city claimed it already owned). The Corporation offered the girls payment, but they refused to accept it. The corporation condemned this land for the purpose of transferring it directly to a developer, who promised to build a hot new nightclub that was expected to bring many jobs and tax dollars to the city. The condemnation was made pursuant to a comprehensive plan to redevelop the shore.

Now without a home, the girls were not totally out of luck. They also owned another vacant plot of land on the shore, Orangeacre. They determined that they wanted to build another house to help reinvigorate shore life after the tragedy. Around the same time, the city imposed a five-year moratorium on new construction on the shore, citing the need to perform environmental assessments on the beach, and determine whether building anything near the water would result in harming the fragile Jersey ecosystem. The girls’ plan to build was denied under the moratorium. Really ticked off, the girls mixed some drinks, grabbed beach towels, and started tanning and partying on the empty lot on Orangeacre.

A tad inebriated, and extremely disoriented, Booki started to wander around the beach screaming quite loudly, “Where’s the beach?” The Fitchuation told Booki she was being a nuisance, and called the police, who promptly arrested Booki for being a nuisance. As she was being carted away in the patrol car, Booki bemoaned, “My number one rule, is never violate the 5th Amendment at the Jersey Shore.”

Questions to Address:

- *What causes of action do the girls have against Mayor Pauly “E” for the two ordinances enacted? Could Pauly “E” condition the grant of the permit on giving the easement on Tanacre?*
- *After SuperStorm Snooki, did Seaside acquire an easement, without paying compensation, for the three feet of Tanacre now in front of the vegetation line? Will the City’s condemnation of the remainder of Tanacre be successful?*

- *Will the girls be able to build on Orangeacre?*
- *What causes of actions does the Fitchuation have? Will the girls be liable to the Fitchuation for erecting a fence, and charging a fee to enter the beach?*

Question #2 (50%).

Instructions: You are a law clerk and your judge asks you to prepare a bench memo of no more than 500 words based on the following set of facts. You are in a jurisdiction that adopts the rules of the Restatement (First) of Property. The jurisdiction has a “Race-Notice” recording statute. The period required for adverse possession is ten years with color of title, and twenty years without color of title. Here are all the facts. If you draw any inferences beyond these facts, please explain why you drew those inferences.

Once known for sunny days that swept the clouds away, Sesame Street has fallen on hard times. Under the iron-fisted rule of Mayor Mutt, the air is no longer sweet, no matter how you get there. Today's problems are brought to you by the letter A, for *austerity*, and the number 99.

Abby Cadabby--who accepted some wise advice, and went to law school to study property law, instead of becoming a princess--was the leading developer of land on Sesame Street. Abby lived on Oneacre, and subdivided it into four equal subdivisions: Blackacre, Whiteacre, Greenacre, and Yellowacre. Abby, who you may say is a schemer, inserted covenants on the deeds of each of the four plots of land at the time of the subdivision.

- Blackacre's Deed: Blackacre was limited to industrial use only. The owner of Blackacre was allowed to dump waste onto Greenacre. The owner of Blackacre was required to allow the owner of Whiteacre entry to Blackacre at any time for any reason.
- Whiteacre's Deed: Whiteacre was limited to single-family residential use only. The owner of Whiteacre was required to allow Abby to cross Whiteacre to access the main road.
- Greenacre's Deed: Greenacre could only be used for a nursery school. The owner of Greenacre was required to allow the owner of Yellowacre access to Greenacre at any time for any reasons.
- Yellowacre's Deed: Yellowacre was limited to a multi-family residential use only.

All of these deeds were recorded. After the subdivisions were completed, Abby engaged in a series of transactions.

First, Abby sold Blackacre to Big Bird in fee simple. Big Bird opened a Cookie Factory. Second, Abby sold Whiteacre to Cookie Monster in fee simple. Cookie moved in with his three children. Third, Abby sold Greenacre to Dexter, who opened up a nursery school. Fourth, Abby sold Yellowacre to Elmo, who moved into the land alone. None of these quitclaim deed were ever recorded.

However, some problems soon arose. Big Bird's bird-brained scheme to run a cookie factory on Blackacre never took off. Mayor Mutt, and his cronies at Brain Capital, flipped the bird onto the street after buying out and restructuring his failing cookie factory. Without a roost to call home, Big Bird fled the coop, and high-tailed it to Poppy Street. Brain sold Blackacre to Fozzy.

Dexter was arrested for a string of gruesome murder. In order to pay his legal fees, he sold Geenacre to Grover.

Elmo pleaded guilty to molesting children, and registered as a sex offender. One of the conditions of the registry was that Elmo was not allowed to own property within 100 feet of a school, playground, library, or any other place children may frequent.

After acquiring Blackacre from Brain Capital, Fozzy ramped up production at the cookie factory, but also quadrupled the amount of waste being dumped onto Greenacre. Fozzy also put up a fence to prevent Cookie Monster's children from entering Blackacre--they helped themselves to way too many cookies (nom nom nom).

Abby, who no longer had any interest in crossing Whiteacre, sold Henson her interest in Whiteacre. Cookie Monster, who did not care much for Henson, did not allow him to cross Whiteacre, and insisted that only Abby could cross the land.

Grover, who now owned Greenacre, was appalled at the amount of waste being dumped, and worried about the wellbeing of the children. Grover blocked Blackacre's access to dump on Greenacre. Likewise, when Grover learned of Elmo's sex-offender status, he barred Elmo from Greenacre.

Mayor Mutt, intent on wreaking more havoc in this quaint community enacted an ordinance that banned the baking of cookies in city limits, citing the noxious odors created during the process. Fozzy complained that the smell of baking cookies is in fact delicious, and Mayor Mutt was just trying to shut down the factory so his cronies at Brain could profit by outsourcing cookie production to Poppy Street.

Elmo the sex offender realized he could no longer own Yellowacre--which was very close to the nursery school on Greenacre. The real estate market on Sesame Street was dwindling, and no one would buy it from him. Tickled by how to resolve his dilemma, Elmo simply abandoned Yellowacre and moved away to Poppy Street.

Then, to make things more complicated, Kermit hops onto the scene, and croaks that Abby never had title to Oneacre, and thus the subdivisions were void. Kermit then recorded the deed transferring Oneacre to him--it was 20 years old at this point!

First, Kermit asserts that he had owned Oneacre for over 20 years. Second, he claimed that he negotiated with Abby to sell Oneacre eleven years ago, and even reached a price, but never actually delivered the deed to Abby. Nonetheless, Abby entered the land and continuously lived there for eleven years. Third, Kermit stated that Oneacre had a covenant restricting the use of the land to only agricultural purposes.

In response, Abby asserts that she in fact did pay Kermit for Oneacre, but never actually received the deed. Alternatively, Abby claims that she openly and notoriously stayed on Oneacre for eleven years and obtained Oneacre through adverse possession--thus, her subdivisions were valid.

Then, litigation commenced. The lawyers came and started to play, but everything was not A-OK. It is in the courthouse where we meet. That's the way it goes on Sesame Street.

- First, Kermit filed suit against the owners of Blackacre (Fozzy), Whiteacre (Cookie Monster), Greenacre (Grover), and Yellowacre (Elmo, who abandoned the land) with three causes of action: first, to quiet title on the four plots of land; second, to enforce the covenant restricting the use of the land to agricultural use on each of the four plots of land; and third, to oust Grover from Greenacre (Kermit quipped, "it isn't easy being on Greenacre").
- Second, Fozzy (owner of Blackacre) sued Mayor Mutt for enforcing the ordinance that prevented him from baking cookies, which Fozzy asserted resulted in a complete diminution in the value of Blackacre.
- Third, Cookie Monster (owner of Whiteacre) sued Fozzy to enforce the covenant granting Cookie Monster and his family entry onto Blackacre. Cookie Monster also sued to enjoin Henson from trespassing on Whiteacre, claiming that only Abby could benefit from the covenant.
- Fourth, Grover (owner of Greenacre) sued Fozzy (owner of Blackacre) for a nuisance for dumping waste on his land.
- Fifth, Elmo sued Grover for denying him access to Greenacre.

How should the court resolve each of these issues.