

Property II Examination

Section D

November 29, 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 client, Ayn. You are in a jurisdiction that, for the most part, adopts the rules of the Restatement (First) of Property, but is gradually moving towards the Restatement (Third) of Property. The jurisdiction has a “Notice” recording statute. Here are all the facts. If you draw any inferences beyond these facts, please explain why you drew those inferences.

Ayn is the high priestess in the order of the Randiologists, a religiously atheistic group that steadfastly believes in the sanctity and perfection of the individual. Ayn sought to open a temple of reason in the community of Staten’s Gulch. A core element of the Randiologist’s faith is to “detox” people of collectivist evils through therapy and counseling sessions. The treatment consists of berating patients while forcing them to balance heavy globes on their shoulders until they finally break down, mentally and physically, so that they are ready to receive the *Gospel of Ayn*.

Ayn chose Blackacre as an ideal location to build her house of worship. Adjacent to Blackacre was Whiteacre, which Ayn determined would be an ideal location for the therapy center. Both Blackacre and Whiteacre were located in a residential community of Staten’s Gulch, though there were several churches and mosques in the area.

First, Ayn entered into negotiations with Boark who lived on Blackacre. Boark told Ayn that he owned the land in fee simple, and that there were no encumbrances on his title. Ayn goes to the county record office and performs a title search, but cannot find Boark’s name in the index. Boark insists that he owns the property, and offers Ayn a general warranty deed. Ayn accepts his offer, and pays \$100,000 for Blackacre. Ayn records the deed for Blackacre the same day.

Second, Ayn entered into negotiations with Cagny who stated that she was the owner of Whiteacre. Ayn goes to the records hall, and sees Cagny’s name in the chain of title for Whiteacre. Cagny told Ayn that Whiteacre had a restrictive covenant on it that limited the use to “medical purposes.” Ayn agreed, and purchased Whiteacre from Cagny for \$50,000. Cagny accepted the money for Whiteacre, but never delivered the deed to Ayn. Ayn entered Whiteacre the same day.

The clerk in Staten’s Gulch is quite sloppy. The reasons that Ayn could not locate Boark’s name in the index is that the clerk had accidentally recorded the entry as “Roark” instead of “Boark.” Had she looked under “Roark,” Ayn would have seen that there was a restrictive covenant on Blackacre that said: “the said property is hereby restricted to the use and occupancy by any persons who believe in God.” Second, Cagny did not own Whiteacre. Though the clerk

mistakenly wrote “Cagny” in the record, she should have written the name of the actual owner, “Dagny.”

Still unaware of the clerk’s errors, Ayn hired Dominique as an architect to build her temple and treatment center. Dominique, most famous for designing a gas station in the desert, drew up plans for a grandiose temple dedicated to the human spirit, with the walls painted gold, capped off by a two-hundred foot tall spire as a testament to the power of human productivity. In front of the temple was a 30-foot gold-plated nude statue of Ayn, wearing only a dollar sign necklace. Compared to the rest of the neighborhood, which was mostly small, brick homes, the intimidating golden tower and striking statue stood out.

Ayn submitted the plan to build the temple and the treatment center to the City Planning Commission, led by Mayor Ellsworth. Repulsed by Ayn and her godless atheists being selfish in his backyard, Ellsworth hastily signs into law a number of land-use and zoning ordinances in rapid succession. The first ordinance amended the zoning code such that medical facilities could not be built within 500 feet of a house of worship, finding that worshippers seeing sick people diminishes the religious experience. The second ordinance amended the zoning code to cap the maximum height of all buildings at 75 feet, citing potential fire hazards of tall structures. The third ordinance amended the zoning code so that all non-residential buildings must be “harmonious with the surrounding structures” and “aesthetically pleasing.” The fourth ordinance banned all displays of “public nudity” within 500 feet of any house of worship.

Ayn was incensed (as she often is) when she learned about the city’s new ordinances. Begrudgingly, she submitted a revised plan, lowering the towers to 70-feet, and changing the gold paint to a brick facade, so the temple conformed with the neighborhood. She refused to move her treatment center, proclaiming that the “detox” process was a core attribute of her beliefs, and needed to be attached to the temple. Ayn also refused to cover up her statue. Ellsworth denied the request, and insisted that Ayn make her temple resemble the character of the other buildings on the block. *Ayn shrugged*, and resigned herself to challenging Ellsworth’s decisions in court.

To make matters worse, when Roark learns of Ayn’s plans, he filed a motion to oust Ayn from Blackacre claiming he is the rightful owner. Roark, a devout Catholic, also filed suit against Ayn to enforce the covenant on Blackacre. Likewise, Dagny files a motion to oust Ayn from Whiteacre claiming she is the rightful owner. Dagny, who doubts that Ayn’s questionable “treatment” qualifies as “medical,” files suit against Ayn to enforce the covenant on Whiteacre.

What are Ayn’s best defenses against Roark and Dagny? What causes of action, if any, does Ayn have against Roark, Cagny, and Ellsworth?

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, for the most part, adopts the rules of the Restatement (First) of Property, but is gradually moving towards the Restatement (Third) of Property. The jurisdiction has a "Notice" recording statute. Here are all the facts. If you draw any inferences beyond these facts, please explain why you drew those inferences.

In the city of Springfield, there is a crazy cast of characters with perplexing property problems.

Aggie, who always acts quite young for her age and never seems to grow up, owns Wetacre. Bart, her mischievous neighbor, raises chickens on Dryacre, which is adjacent to Wetacre.

In 1991, Bart acquired Dryacre in fee simple from Carl with a general warranty deed. Carl told Bart that there were no encumbrances on the title. Bart did not conduct a title search.

In 1995 after her father Domer died, Aggie inherited a life estate in Wetacre with the remainder to Aggie's heirs. When Aggie inherited the land, she was not aware of any encumbrances on the title.

Back in 1990, Carl and Domer, who were at the time the owners of Dryacre and Wetacre, respectively, reached a set of covenants. First, because the farm on Dryacre did not have any natural source of water, Domer gave Carl written permission to enter Wetacre, and water his chickens on the lake on Wetacre. Second, because Wetacre did not have access to a reliable source of power, Carl gave Domer written permission to install solar panels on Dryacre, which would be used to power Wetacre. Third, because Wetacre was surrounded on all sides by the lake, except for a narrow passageway across Dryacre, Carl gave Domer permission to walk across Dryacre to get to the main road. All three of these covenants were recorded in 1990.

Fast-forward to the present, and the situation between Aggie and Bart is quite bad. First, the lake on Wetacre became contaminated due to toxic waste runoff from the nearby nuclear power plant operated by Monty--a curious species of three-eyed fish has emerged. Bart, no longer willing to water his chickens in the contaminated lake demanded that Aggie honor the intent of the original promise between Carl and Domer, and provide him access to the creek on Wetacre, which had not been polluted. Without access to the creek, all of Bart's chickens will die. Second, in retaliation, Bart disconnects the solar panels that were powering Wetacre. Third, Bart puts up a road-block blocking Aggie's car from accessing the road to Springfield.

Aggie, unable to drive, walked across Dryacre, and traveled on foot to the Town Hall to do some research. First, she discovered that in 1970, Springfield passed an ordinance that prohibited “all farming activities” within city limits. Second, Aggie discovered that when Carl acquired Dryacre from Edna in 1985, Edna inserted a covenant into the deed so that the land could only be used for “agricultural purposes.” However, the clerk erroneously wrote “Homer” instead of “Domer” on the covenant. Third, Aggie discovered that Monty had been dumping toxic waste into the lake since the early 1980s.

Aggie informed Bart that she would be filing a lawsuit against him for disconnecting the solar panels and blocking vehicular access to the road to Springfield. Bart, responded that he would file a counterclaim against Aggie for denying him access to the creek on Wetacre, and for trespassing across Dryacre.

Your judge, who does not like to be surprised by woeful briefing, asks you to write a 500 word bench memo addressing the following questions based on the facts above:

Will Aggie’s claims against Bart be successful? Will Bart’s claims against Aggie be successful? Are there any other foreseeable suits against Carl, Edna, Monty, or Domer’s estate? What should the outcome be for those suits?