

**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 sued 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.

## **Question 2 (50%)**

***Instructions:*** You are an associate in the Law Offices of Jackie Chiles, a famous attorney in New York City. Alas, this is not a question about nothing. Several friends in New York City, Kramer, Jerry, George, and Elaine, are dealing with some complicated property issues affecting Blackacre, Whiteacre, Redacre, Pinkacre, and Greenacre. In Manhattan, no property right is safe under the reign of the maniacal Mayor Bloomberg. Mayor Bloomberg rules the isle of Manhattan with an iron fist, and is a frequent foe of our four funny friends. Chiles asks you to prepare a memorandum of no more than 500 words explaining each of the causes of action identified below. New York applies all modern rules of property, as articulated in the Restatement (Third) of Property. New York has enacted the Standard State Zoning Enabling Act, with caveats indicated below. If you draw any inferences beyond these facts, please explain why you drew those inferences.

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Kramer owned the surface and subsurface rights to bordering pieces of property on the East Side of Manhattan, Blackacre and Whiteacre. Years earlier, Kramer began a new religion called Kramerology. The main holiday of this faith was Festivus, which includes, among other rituals, worshipping around an aluminum pole. The 5-foot unadorned pole, which is a spiritual commentary on the commercial-nature of Christmas, is proudly displayed in the window of Whiteacre. Kramer turned his home on Whiteacre into a rectory for newly-inducted priests the order of Kramerologists. Kramer soon admitted a group of five Japanese tourists, who had taken to his new faith, deeming them “brothers” in this kooky family. Of course, Kramer charged them a high rent. With that money, Kramer built an underground temple, below the surface of Whiteacre, where the priests could engage in deep, silent meditation, characterized by the repetition of the Kramerologist mantra: “Hey, buddy.”

However, things would soon sour for Kramer. In order to deal with the influx of new people, Bloomberg ordered the construction of new subway tunnels on the East Side, that would run underneath Blackacre. The Empire State Development Corporation moved to condemn the subsurface rights underneath Blackacre to build the subway tunnels. Kramer objected to the condemnation, but Bloomberg would have nothing of it.

After the construction of the tunnels under Blackacre, the vibrations and noises of the trains caused a great commotion underneath the neighboring Whiteacre. These disruptions eliminated the ability of the Kramerologists to pray quietly in the underground temple. The trains were so noisy that Kramer had to entirely abandon the temple. It was no longer fit for habitation. Kramer barged into Bloomberg’s office in City Hall, and complained about the noise. The mayor dismissed Kramer.

Citing a need to maintain cohesive households, Bloomberg enacted an ordinance restricting the ability of more than four non-citizens from living in the same home, unless they are related by blood or adoption. This would have had the effect of disbanding Kramer's brotherhood of priests. Kramer begs for a variance to this ordinance, but Bloomberg just laughs, and refers to Kramer's friends as a "pig in the parlor instead of the barnyard." Then, Bloomberg makes Kramer an offer. Kramer would have to give the City an easement to the land underneath Whiteacre, that would allow the trains to cause vibrations and noises. In addition, citing the harmful carcinogenic effects of aluminum (based on some dubious science), Bloomberg insists that Kramer cannot mount the aluminum pole in the window—he calls the unadorned pole a nuisance and an eyesore. In exchange, Bloomberg would allow the "priests," whom he dubbed "parasites," to stay in the apartments on Blackacre. Kramer turns down this "offer," prays for a Festivus miracle, and calls his lawyer, Jackie Chiles.

Jerry, who owns Redacre, decides to build a comedy club in the shape of a bowl of cereal. He quipped, "I'm always telling jokes around a bowl of cereal—why not tell jokes in a bowl of cereal!" Jerry consulted with the relevant New York state zoning ordinance, which stated that the City must grant a permit for comedy clubs so long as all relevant health and safety regulations were met—all such requirements were met here. Bloomberg, appalled by the idea that such a high-calorie food would serve as the basis for a design, refused to grant the permit on the ground that it was not aesthetically pleasing. Jerry asked the Mayor, "What's the deal with that?" Bloomberg replied that he should redesign the club to be more aesthetically pleasing, and consistent with other buildings in the surrounding area—perhaps as a "stalk of broccoli." Also, Bloomberg cited concerns that such a construction would harm property values. Jerry also called Jackie Chiles, telling him "This is not a case about nothing!" Chiles tells him that he should be able to build his comedy club: "If the law don't fit, you must permit."

George owned a soda shop on Pinkacre called BubbleBoy. Bloomberg, as part of his plan to promote public health, amended the zoning code such that any building that sold carbonated beverages was no longer in conformance with the zoning code. George was given 30 days to bring his business into conformance with the zoning code—in other words, shut down his soda shop on Pinkacre. George, *tingling* with rage, screamed "Serenity Now!" He too called Jackie Chiles, and asked if he has a chance. Chiles replied, "Do we have a chance? You get me one soda drinker on that jury, you gonna walk outta there a rich man."

Elaine operated a profitable business of collecting sponges from the banks of the Hudson River, and packaging them on her shorefront property on Greenacre. Bloomberg is frustrated by this endeavor, as the City sells its own sponges, branded under the Spartan logo. Bloomberg doesn't like the competition, so he ordered the Empire State Development Corporation to condemn Greenacre, and use the powers of eminent domain to acquire the land. Elaine said that the city's

offer to acquire the land was not “sponge-worthy.” Though Elaine opposed the condemnation, she was unable to stop it. Once acquired, the City’s Spartan sponge factory opened up shop on Greenacre. After a trip in the sauna, Elaine gave Jackie a call.

The four friends paid a visit to the law offices of Jackie Chiles and explained all of their problems. Chiles responded, “That's totally inappropriate. It's lewd, lascivious, salacious, outrageous!” Chiles marches to court, and files a complaint with the following seven causes of action before the Honorable Arthur Vandelay.

1. Kramer asserts that the vibrations and noise from the train tunnels under Blackacre have deprived the underground tunnel under Whiteacre of all value, and claims that there has been a taking.
2. Kramer challenges the constitutionality of the ordinance limiting the number of non-related non-citizens from living together, and the denial of a variance. Kramer claims that this land-use decision violates his rights under the First Amendment’s rights of freedom of association and RLUIPA (Religious Land use and Institutionalized Persons Act).
3. Kramer claims that Bloomberg’s request for an easement underneath Blackacre is unconstitutional.
4. Kramer asserts that Bloomberg ordering the removal of the Festivus pole from the window violates his rights of freedom of speech, and exercise of religion.
5. Jerry claims that Bloomberg lacks the authority to deny the permit to construct the cereal-bowl shaped comedy club on Redacre.
6. George claims that the ordinance ordering him to shut down Pinkacre in thirty days is a taking, and demands compensation.
7. Elaine claimed that the city’s condemnation of Greenacre was not a taking for “public use,” and was thus unconstitutional.

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In a memorandum of no more than 500 words, please address the positions of the plaintiffs and Mayor Bloomberg for each cause of action, and explain who will likely win.