

Property II Examination
December 9, 2013
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. Both answers combined should not total more than 1,000 words. Please use the word-count feature to check the length of each answer. If you hand-write the exam, please do a manual word count.

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 in Bayou City. Your firm represents Cashby in a serious property dispute. Your senior partner has asked you to prepare a memorandum of **no more than 500 words** addressing the best arguments to make in favor of your client, Cashby. Bayou City is quite unique from a property perspective, in that it lacks a zoning code. The Bayou City Charter requires a voter-referendum to enact a zoning code (several attempts at passing a code have failed). While land-use can still be managed under the police power, no zoning laws can be enacted that limit the *use* of a property.

Austin lives in the Rice area of Bayou City. Rice is a very affluent, well-to-do neighborhood that consists almost entirely of single-family homes, designed in classical styles. But there is one lone eyesore. On a lot in Rice, Cashby owns a drab one-story church, dedicated to his religion of Cashianity. Cashby is the head pastor of the church.

Cashby announced that he would construct an additional six-stories above his church. Cashby had several plans for the property. On the first floor, he sought to expand one of the walls of the church so it could hold even more people. The old church was not big enough to fit all of his parishioners. On the second story, he planned to build a catering hall to host wedding receptions, though only those who were married in his church could use the space. On the third through seventh stories, Cashby planned a series of twenty two-bedroom apartments, where members of the clergy of his church would live. Each apartment would contain five members of the clergy. They would pay a reduced rent. Cashby intended to place restrictive covenants on those apartments, such that only those who adhere to the doctrines of faith of Cashianity could live there. Cashby believed that his church needed the clergy to live nearby so they could tend to their flock all day and all night.

Cashby designed the blueprints for the exterior of the building in a post-modern style. There were gilded dollar bill signs emblazoned on all four walls of the building. A spotlight was placed on the roof that rotated 360-degrees, and shined a light “to the heavens.” These symbols were religious icons, fundamental to the core tenants of Cashianity. Cashby had already hired an architect, and began planning the construction. They did not yet break ground.

When Austin learned of this plan, he panicked. Austin had long been resentful of the Cashians, and their odd ways, and did want more of them in the neighborhood. He contacted his lawyer, and asked him if there was anything that could be done to stop it. The lawyer responded that because of Bayou City’s lack of a zoning code, there were no mechanisms in place to stop the construction of a mixed-use property in a residential neighborhood. The construction would have met all other applicable building codes in existence that promoted health and safety.

So Austin decided to pursue other plans. He approached Mayor Ford, and threatened to release incriminating videos of the chief executive doing drugs, unless he complied with Austin’s

wishes. Mayor Ford *cracked* under the pressure, and persuaded the Bayou City Council to pass a series of ordinances.

First, the City Council passed Ordinance #1. The Ordinance provides that all of the land in Rice, but nowhere else in Bayou City, was designated as a “historical area.” (There wasn’t much historical value in the area). On land designated as “historical,” all new constructions must receive preapproval from the Board of Art and Aesthetics. This board was staffed by architects, artists, and other culturists appointed by the Mayor. The Board was given a charter to reject constructions that were “not harmonious with the surrounding area.” Cashby submitted his plan to the Art and Aesthetics Board, and they promptly rejected his permit, labeling his plan a “monstrosity.” Cashby was given the opportunity to appeal this decision to the Mayor, as the statute allows, but he did not. “Why bother,” Cashby asked.

Second, the City Council passed Ordinance #2. This law limits the heights of buildings in Rice to no more than five stories. At the time, there was no building in Rice that was greater than four stories, other than the proposed church. Special exceptions could be granted if the Mayor determines that the construction would “fit in with the rest of the neighborhood.” Cashby applied for a special exception, and Mayor Ford denied it.

Third, the City Council passed Ordinance #3. This law requires that all catering halls that host wedding receptions must be open to both same-sex and opposite-sex weddings. Permits for construction of new catering halls would be conditioned on agreeing to this stipulation. Otherwise, any non-complying catering hall must shut down within 90 days. Same-sex marriage violates the core tenants of Cashianity.

Fourth, the City Council passed Ordinance #4. This law requires that all new multi-resident dwellings must agree to place a restrictive covenant on each living unit. The covenant prohibits more than three unrelated people from living in one unit. If four or more unrelated people live in one unit, the owner of the building must contribute \$10,000 a year to the Rice school district. To enforce this covenant, the ordinance requires that the owner of the building must install a turnstile with a counter at the front entrance, to measure how many people enter and exit.

Fifth, the City Council passed Ordinance #5. This law delegated to the Bayou City Development Corporation the power to identify land to take through eminent domain to promote economic development. The following week, without much planning, the Bayou City Development Corporation identified Cashby’s lot to be taken by the City, and sought to transform it into an art gallery to feature paintings by local artists. The gallery would charge an admission fee, which would be contributed to the Art & Aesthetic Board’s budget. The corporation commenced condemnation proceedings against Cashby, and said the church must close within 90 days.

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Your law firm is about to file suit on behalf of Cashby against Bayou City in the Trial Court, making the following five claims:

1. Ordinance #1 is unconstitutional, and the denial of the permit by the Board of Art and Aesthetics was made on an invalid basis.
2. The Bayou City lacked the power to enact Ordinance #2. Further, the Ordinance can't apply to pre-existing structures, and the special exception was denied by the Mayor on an invalid basis.
3. Ordinance #3 violates the Religious Land Use and Institutionalized Persons Act (RLUIPA).
4. Ordinance #4 violates the takings clause, the First Amendment, and the Due Process Clause of the Fourteenth Amendment.
5. Ordinance #5, and the subsequent condemnation proceeding, violate the takings clause of the Constitution.

Your senior partner has asked you to prepare a memorandum of **no more than 500 words** addressing the best arguments to make in favor of your client, Cashby, on each issue. Also, address any foreseeable arguments that may be raised in defense by Bayou City.

Consider each claim independently. In other words, even if Cashby wins or loses on one claim, assume all other claims are valid.

Question #2 (50%)

Instructions: You are a law clerk for a District Judge in HTown. Your judge has asked you to prepare a memo of **no more than 500 words** addressing a pending case. There is a property dispute brewing in HTown between six prominent athletes: Astro, Beard, Chaub, Dwight, Hakeem, and Glide. At issue are the properties of Reliant, Toyota, MinuteMaid, and Dome. HTown applies all common law property rules, as articulated in the Restatement (First) of Property. The statute of limitations for all causes of action in HTown is two years. Htown applies a Notice Recording statute.

In HTown, there are four properties that border each other, all used for sporting events: Reliant, Toyota, MinuteMaid, and Dome.

Astro owns MinuteMaid in fee simple. Beard owns Toyota in fee simple. Chaub owns Reliant in fee simple. Dwight owns Dome in fee simple.

On January 1, 2008, Beard was in a car accident and entered a coma, and was hospitalized for that injury. Dwight, who is relatively new in town, sets his eyes on Toyota. On January 2, 2008, with Beard in the hospital, Dwight begins playing basketball there every day. Dwight never intended to stay in Toyota permanently. He just needed to practice shooting free throws. During his time there, he only stays on the basketball court at the massive Center, that seats 20,000 people. He even sleeps there at night after he tires of playing basketball. He leaves once a day for food.

At the hospital, on April 1, 2008, Beard begins coming out of consciousness, and learns that Dwight is playing basketball every day on Toyota, but does nothing to eject him. On July 1, 2008, Beard permanently comes out of his coma. He is told again that Dwight is playing basketball at Toyota. Beard does nothing to eject Dwight. The next day Beard enters a sudden psychotic state, and is hospitalized again.

On January 1, 2009, Beard is cured of his psychotic condition and released from the hospital. That day, Beard sold Toyota to Astro with a general warranty deed. Beard does not mention that Dwight is on Toyota.

On June 1, 2009, Hakeem saw Dwight on Toyota, and kicked him out of Toyota. On August 1, 2009, Dwight muscled his way back in, and reclaimed Toyota. Rusty, Dwight resumes practicing his free throw shooting daily.

On January 2, 2011, Dwight gives Chaub a quitclaim deed for Toyota. Later that day, Dwight gives Hakeem a quitclaim deed for Toyota. Chaub and Hakeem both go to the records office, and record within moments of each other on January 2, 2011. Because names are sorted alphabetically in the index, Chaub's recording is listed first in the book. That day, Dwight vacates Toyota and Chaub enters Toyota. Hakeem never enters Toyota. Chaub, who has no

interest in basketball, proceeds to throw footballs throughout the entire center every day (he needs the practice).

On January 3, 2011, Astro learns that Chaub entered Toyota, but does not move to eject him. On January 4, 2011, Astro records the deed Beard gave him for Toyota.

In reliance on the sale of Toyota, Chaub sold Reliant to Glide on January 5, 2011. When Glide asked for the paperwork for Reliant, Chaub admitted that he accidentally *threw away* the 6-page deed. Chaub gave Glide a general warranty deed for Reliant with two covenants. First, “No structure on Reliant shall be taller than 200 feet.” Second, “To make it easier for fans to enter, the entrance to Reliant must be no more than ten feet from the street.” The deed concludes that Glide takes Reliant “subject to all restrictions.”

The next day, Glide leases Reliant to Hakeem for ten years.

Shortly after Hakeem enters Reliant, Hakeem discovers that the Stadium on Reliant began sinking into the ground. He learns that the foundation of the Stadium was cracked. This was not visible during any examination of the premise. Because of the crack, the Center began to tilt over, such that it encroached over the border onto MinuteMaid by two inches. Hakeem did not realize it crossed the border. And because the building was now on a slant, it violated a city ordinance that required a fifteen-foot setback from the street. It was now fourteen feet and ten inches from the street. Htown was aware of the setback issue and had made no plans of enforcing it. Further, as a result of the slant, one side of the building was a bit higher than the other. The higher side was now exactly 200 feet and one inch tall.

Dome was covered in reflective solar-powered mirrors. During the day, the mirrors focused a beam of light on MinuteMaid, and burned the grass on the baseball field. The cost of repairing the grass field annually was \$100,000. Without grass, MinuteMaid would have to shut down. Astro demanded that Dwight remove the mirrors. Dwight responded that it would cost \$1,000,000 annually to remove the tiles and obtain alternate sources of energy. Dwight refused.

On October 1, 2013, Astro ousts Chaub from Toyota.

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Several lawsuits are filed on November 1, 2013. In a memo, address how the following four issues, and one matter referred to arbitration, should be resolved.

1. Beard sues to quiet title on Toyota. Astro, Chaub, and Hakeem intervene, and each asserts an interest in Toyota.
2. Astro sues Beard for a violation of the covenant of seisin, and the covenant of quiet enjoyment.
3. Chaub sues Glide and Hakeem for the violation of the two covenants on Reliant. Glide counterclaims against Chaub, claiming that the title to Reliant was not marketable. Hakeem counterclaims, asserting that he is not bound by the covenants, and sues Chaub for the defects in the stadium’s foundation.

4. Astro sues Glide for trespass, claiming that Reliant has encroached over the border onto MinuteMaid by two inches. Glide counterclaims, arguing that since the foundation cracked, he acquired title to that two-inch strip.
5. In addition to these four claims, Astro sues Dwight for a nuisance, for the damage caused to Minutemaid by the Dome's mirrors. Dwight refuses to negotiate on this issue. The court decides to submit this matter to arbitration. Discuss how this issue can be resolved by the arbitrator without litigation.