

Question 1

Cashby will argue that the creation of the historical district was an invalid use of police power by Bayou City, as a non-zoning city, and thus unconstitutional. The use of the police power must promote the general welfare, and should not be used to attack Cashby's plan personally (evidenced by lack of actual historical value in the neighborhood). As per Stoyanoff, where the city government has the power, they are allowed to designate an architectural board of non-elected members to approve/disapprove of planned buildings. However, Cashby will be able to successfully argue that the vague standards utilized by the board give no guidance and are unconstitutional, thus making the denial invalid.

Cashby will attempt to argue that the church will be able to surpass the height requirement as a non-conforming-use. The city will argue that the ordinance was passed before the construction began, thus avoiding any constitutional non-conforming use issues. However, the ordinance allowing the Mayor to make special exceptions is an unconstitutional delegation of legislative authority and facially unconstitutional per Cope. The mayor will argue that since no other building in Rice was above four stories, Cashby should have been on constructive notice of some type of ordinance.

Cashby will argue that RLUIPA allows him to practice Cashianity (against same-sex weddings) without the burdens of government regulation. The enactment of the ordinance would impose a substantial burden on Cashby's religious exercise. The government will argue that they have a compelling governmental interest in same-sex rights and the ordinance is the least restrictive means of compelling that interest. Additionally, under doctrine of unconstitutional conditions, the council can not require Cashby to surrender its constitutional rights (protected by RLUIPA) in exchange for the dining hall permits where property sought has no relationship to the benefit conferred.

Cashby will unsuccessfully argue that the covenant regarding unrelated people living together is unconstitutional. Exclusions regarding the number of unrelated people, with no limitations regarding related family members, have been consistently upheld by SCOTUS. Cashby's substantive due process rights will be violated as the council is enacting the ordinance without a rational relationship to a permissible state objective. Defense will argue that their objectives include public health, safety, and general welfare. The turnstile will constitute a direct taking of possession and Cashby is entitled to the FMV of his deprivation of use of his property.

Cashby will argue that the council overstepped its constitutional eminent domain/taking powers in confiscating the property. Cashby will argue that the purpose of the taking, as evidenced by the lack of planning, was to prohibit his project, making the taking unconstitutional as there was no creation of a public use/purpose. Since the constitutional interpretation of "use" is fairly liberal, the city will argue that the economic developmental impacts of the entrance fee to the art exhibit will create public use under the fifth amendment, making the taking valid. If the court sides with the council, Cashby will argue that he should be justly compensated for his church.

Question 2

The first issue is to determine who has the highest claim to Toyota. Dwight will attempt to argue adverse possession of Toyota and the court will determine whether his use of the Toyota meets the requirements of AP. Ultimately, due to Beard's two disabilities (coma and psychotic) the two-year-SOL did not begin tolling until both conditions were removed (1/1/2009), so the two year continuity requirement would only be met if during his three-month-absence in 2011, Dwight intended to return to Toyota.

Because HTown is a notice jurisdiction that protects a subsequent purchaser who purchases without notice of previous claims, the issue of who recorded first between Chaub, Astro, and Hakeem is irrelevant in determining who currently has highest title to Toyota. Hakeem had some type of inquiry notice of a claim on Toyota because he kicked Dwight out of Toyota, indicating his knowledge of someone other than Dwight having a claim of title. It appears that Chaub, as the subsequent purchaser in respect to Astro, was a BFP who made a purchase for value with no notice of subsequent purchasers, thus he will have highest claim to Toyota.

Astro's suit for the violation of the covenant of seisin (a present covenant) will likely be unsuccessful because at the time the deed became effective, Beard had the highest claim of ownership to Toyota. As discussed above, D's AP claim would not meet the SOL. However, the suit for quiet enjoyment will likely be more successful for Astro. As a future covenant, under the GWD, Beard warrants that Astro would not be disturbed in his quiet enjoyment via claims of superior title. The additional claims on Toyota will likely violate this covenant.

The issue pertains to whether the covenants enacted in the deed between Chaub and Glide run with the land to Hakeem. Whether the covenants existed in the original thrown out deed or the deed between Chaub and Gilde, Gilde will have to obey the covenants, as both situations will meet the privity and covenant requirements. However, since Hakeem took a lessor leasehold estate in Reliant, vertical privity is lost and Hakeem need not obey the covenants. Glide's counterclaims for unmarketable title will only be valid if Chaub intentionally deceived the buyers, as caveat emptor rules this jurisdiction, thus, the hidden defects will not provide much weight to G's argument. Additionally, the traditional rule to sue for IWOQ states there must be privity of contract, so Hakeem cannot sue Chaub.

A mistaken boundary will be addressed using the Maine doctrine and since the encroachment was an accident, it did not constitute adverse possession because it wasn't hostile. Additionally, the SOL was not met.

A nuisance will likely be found, but the handling of the nuisance will require a balancing of equities by the arbitrator. Each side will respectively argue that the cost burden is too high to alleviate the problem. Thus, some type of Coasian bargaining would be beneficial so that each side could reduce the costs for a long-term, equitable solution.