

South Texas College of Law

ID: **506653**
Exam Name: Property II A (Blackman) 2014 Fall Final Exams
Instructor: Blackman
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Grade: _____

Total Number of Words in this Exam = 1,000
Total Number of Characters in this Exam = 6,037
Total Number of Characters in this Exam (No Spaces, No Returns) = 5,026

Question 1

1) At CL, caveat emptor (buyer beware) does not impose a duty to disclose defects. Gozer will want this doctrine to stand, as it promotes alienability and there were no physical defects with the property. Louis should argue for rescission of the contract, since Gozer had a duty to disclose the fact that Redacre was haunted as it was not something Louis could have discovered upon a reasonable inspection, it materially impairs the value of the property, and it was something within Gozer's knowledge - Vigo told him (*Stombovsky v Ackley*).

2) The title Gozer gave Louis was unmarketable as there was a current violation of a restrictive covenant (used for commercial property). Louis will argue this a breach of the covenant against encumbrances. But if there is no indication the covenant will be enforced, Gozer can argue there is no actual breach as in *Frimberger v. Anzellotti*. Louis and Gozer should have been on inquiry notice about the covenant. Additionally Louis is bound through a reciprocal negative easement, evidenced in the record. Common grantor Zul previously conveyed Whiteacre and Greenacre with the restriction. Redacre was conveyed without it but Louis has constructive knowledge since at CL the buyer has a duty to look through the deeds from a common seller and would notice the other properties were similarly restricted.

3) a) Louis bound by the covenant because there was horizontal privity between Zul and Vigo (the original grantor-grantee, transfer of land with the covenant) and there is vertical privity between Vigo, Gozer, and Louis as each acquired the property in fee simple. His strongest defense will be that he had no notice of the covenant. However, this will fail under a reciprocal negative easement.

b) The court should treat this document as an easement appurtenant which runs with the land if the successor has notice. Vigo could argue there was an implied easement through prior use, since Gozer had notice of the easement and ghosts had lived peacefully on Redacre since. However, Louis had no

knowledge of the easement and will not be bound by it.

4) Under the Race-Notice statute, Jeanine will prevail. Although Louis was a subsequent purchaser, he is not protected from prior recorded deeds, he had notice from the ghosts, and he did not record first. Under *idem sonans*, Jeanine's deed is proper even though the grantor was listed as "Goser" and Louis is deemed to have record notice. Even if this doctrine did not apply, Jeanine's corrected deed was still recorded first by the clerk on 10/1/14.

5) Ecto Bank will want a deficiency judgment since as a second-in-priority lender, Ecto will only get excess proceeds over the amount of City Bank's loan (\$5K). The only way to get the remaining balance is to go to Louis directly. City Bank will argue the sale is valid since they acquired a reasonable and fair price for the property, shown by the fact they bought it for more than they were able to sale it later (\$80K v \$79K). Louis should argue City Bank breached their duty of good faith and due diligence at the foreclosure sale since didn't give enough notice or time before the sale, City was the only bidder present (Murphy) & immediately sold it back to Gozer.

Question 2

1) Order #3 is not a valid exercise of the police power as it is undisputed that the extension would not impact the health, safety or welfare of those on board. Although aesthetic regulation is permitted (Stoyanoff), the order cannot be strictly subjective in nature, making it vague and violation of the due process clause (Issaquah). Further, this order is unconstitutional spot zoning since it only focused on Hockley.

2) Order #1 constitutes a taking which requires just compensation to Jack. Jack's cabin is a pre-existing nonconforming use which is grandfathered unless the ordinance contains a reasonable

amortization provision (Pennsylvania NW Distributors). This order does not as the cabins were reassigned immediately. Further, Captain must affirmatively afford the realistic opportunity for low and moderate income cabins, not make it impossible (Mt. Laurel). Order #2 is permitted under Belle Terre. The Captain is allowed to regulate the number of occupants in a cabin under the police power. This order is a restriction on the First Amendment right of association. There is no rational basis for the orders other than to exclude the poorest passengers since it only affected Thirdacre and other Firstacre rooms were vacant.

3) Under Kelo and later SC cases, Captain's use of eminent domain to properties deemed "blighted" is acceptable if under a comprehensive plan for economic development (although later cases have determined it doesn't need to be "comprehensive" or even a "plan" to be valid), expanding "public use" to actually mean "public purpose." However, Captain must follow condemnation procedures and afford just compensation.

4) Under accretion and avulsion, the sudden change in boundaries does not affect the property rights, meaning likely the government is still the owner of the "new land." The government will also argue the land up to the vegetation line belongs in the public trust (Raleigh). Additionally, under Tahoe-Sierra, the government's action will not be considered a taking. A moratorium on building for environmental reasons does not constitute a complete diminution in value, and is not a taking under Lucas. The court must apply Penn Central but the Situation will lose since he doesn't have any DIBEs - he hasn't built anything on the new land.

5) As in O'Keefe, the SOL for AP of chattels begins under the discovery rule, when the owner knew or should have known. Hockley in fact knew that Rose was in possession of the necklace, as he put it in her jacket. Under CL, the state of mind for AP is aggressive. Rose had this mind frame when she discovered she still had the necklace and decided to keep it for herself. Rose adversely possessed the necklace continuously for the 2 year statutory period and Hockley's claim will fail.

Question #1 Final Word Count = 1000

Question #1 Final Character Count = 6037

Question #1 Final Character Count (No Spaces, No Returns) = 5019

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