

Property II Examination
Fall 2014
December 8, 2014
6:00 p.m. - 9:00 p.m.
Josh Blackman

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%)

You are a junior associate at the law firm of Gohs, Baz, & Ters LLC. Your senior partner asks you to prepare a memorandum of no more than 500 words about a case currently pending before the New York Supreme Court. This dispute involves competing claims to Redacre involving Gozer, Louis, Jeanine, and the heirs of Zul and Vigo. New York adheres to all common law property rules, as articulated in the Restatement (First) of Property. New York applies a Race Notice Recording Statute.

On January 1, 2014, Gozer offered to sell Redacre to Louis for \$100,000. Redacre, located in an area zoned for residential purposes, was a perfect spot for Louis to live. Before he acquired Redacre, Louis took a trip to the Records Hall to investigate the history of the property.

At the Records Hall, Louis retrieved the following records from the Grantee and Grantor indexes, starting his search with “Gozer” in the Grantee index:

Grantee Index

Grantee	Grantor	Property	Description	Date of Deed	Date Recorded
Gozer	Vigo	Redacre	General Warranty deed in Fee Simple	6/1/1977	6/15/1980
Vigo	Zul	Redacre	General Warranty deed in Fee Simple	1/1/1900	7/15/1900
Zul	Zul	Greenacre	Covenant to only use Greenacre for “commercial purposes”	1/1/1900	6/25/1900
Oscar	Zul	Whiteacre	Covenant to only use Whiteacre for “commercial purposes”	1/1/1900	6/18/1900
Oscar	Zul	Whiteacre	General Warranty Deed in Fee Simple	1/1/1900	6/18/1900
Zul	Zul	Blackacre	Subdivision of Blackacre into Whiteacre, Redacre, and Greenacre	1/1/1900	1/10/1900

Grantor Index

Grantor	Grantee	Property	Description	Date of Deed	Date Recorded
Zul	Zul	Blackacre	Subdivision of Blackacre into Whiteacre, Redacre, and Greenacre	1/1/1900	1/10/1900
Zul	Oscar	Whiteacre	General Warranty Deed in Fee Simple	1/1/1900	6/18/1900
Zul	Oscar	Whiteacre	Covenant to only use Whiteacre for commercial purposes	1/1/1900	6/18/1900
Zul	Zul	Greenacre	Covenant to only use Greenacre for “commercial purposes”	1/1/1900	6/25/1900
Zul	Vigo	Redacre	General Warranty deed in Fee Simple	1/1/1900	7/15/1900
Vigo	Gozer	Redacre	General Warranty deed in Fee Simple	6/1/1977	6/15/1980

In order to afford Redacre, Louis secures two mortgages. The first for \$75,000 from City Bank. The second for \$15,000 from Ecto Bank. Louis puts up the remaining \$10,000 as a down payment from his savings.

Gozer offers Louis a general warranty deed, which provides that Louis takes Redacre “subject however, to all restrictions and covenants applying to this property.” After reviewing the records, Louis asks Gozer if there are any covenants on Redacre. Gozer replies, “No.” Without purchasing title insurance, Louis acquires Redacre on 2/1/14. Louis does not record his deed.

However, soon after Louis moves onto Redacre, things get thrilling. Out of nowhere, Louis hears an ominous voice bellow: “Darkness falls across the land. The midnight hour is close at hand. Creatures crawl in search of blood. For no mere mortal can resist the evil of the thriller.”

Instantly, the ghosts of Vigo and Zul appear. Louis screams, “Ah! The ghosts of property past! How Dickensian!” Both Zul and Vigo had long since died, but their spirits have haunted Redacre for years. While some ghosts remain in this world in order to perfect souls to enter the afterlife, these ghouls had a different goal--to perfect title to property.

First, the ghost of Zul hovers in front of Louis and shows him a covenant on Redacre, dated 1/1/1900. Zul is listed as the “covenantor” and Vigo is listed as the “covenantee.” The Covenant says Redacre may only be used for “commercial purposes.” Louis asks Zul and Vigo if they ever recorded the covenant. They both shake their heads no. “There is no data, only Zul,” the ghost replies. Louis says, “How was I supposed to know about that covenant!” Zul again shakes his head.

Second, the ghost of Vigo holds up a document, dated 1/1/50, signed by Vigo. The document states that “the owner of Redacre shall never remove the ghosts that haunt this land.” Louis asks if the document was ever recorded. Vigo shakes his head no, but explains that the ghosts have lived peacefully on the land since then. Louis said he had no knowledge of such an arrangement.

Third, Vigo holds up another deed, indicating that Gozer sold Redacre to Jeanine on 7/11/77. Louis looks at the deed closely, and it indicates that the grantee was “Jeanine,” but the grantor was listed as “*Goser*.” The deed indicates it was recorded on 7/15/1979.

Louis, thinks to himself—”Who are you going to call?” Then it hits him: “The Ghostbusters!” The Ghostbusters work in a very peculiar line of business—capturing and storing ghosts. The quartet drive around the streets of Manhattan searching for ghosts, isolating them with special “proton packs,” capturing them in portable “traps,” and then storing the ghosts in a special “containment unit” at their headquarters. Louis shouts to the spirits that he is calling the Ghostbusters who will eliminate them. The ghost of Vigo warns him that his heir will enforce the

document prohibiting the removal of ghosts. Louis ignores him.

Soon, the Ghostbusters arrive. They isolate the spirits, trap them, and store them in their special containment unit. But left behind on the floor are the three documents: (1) the 1/1/1900 covenant between Zul and Vigo, (2) the document signed by Vigo on 1/1/1950, (3) and the deed from “Goser” to Jeanine on 7/11/1917. Louis shoves all three in a drawer.

The next day, the Ghostbusters send Louis the bill. Louis, who was broke, is unable to pay it.

Louis calls Gozer, and complains that the house was haunted. Louis demands that he refund the purchase price, and pay the bill to remove the ghosts. Gozer said the ghosts were “Not my problem.”

Gozer thought back to the time he purchased Redacre, and recalled that Vigo told him not to remove the ghosts. Gozer thought Vigo was crazy, and wanted to buy the property, so he said, “Sure. I’ll leave the spirits alone. I ain’t afraid of no ghosts.” Gozer didn’t believe such urban legends.

Gozer, who kept a copy of the key to Redacre, sneaks in and finds the three documents from the ghosts. Realizing that they may benefit him, on 10/1/14, Gozer brings all three documents to the records office. As the clerk is about to record the three documents about Redacre, he remembers that a week earlier Jeanine brought in a deed about Redacre, dated 7/11/1977 and originally recorded on 7/15/1979. Jeanine had asked the clerk to change the spelling on her deed of the grantor from “Goser” to “Gozer.” The clerk makes the change, and records Jeanine’s revised deed first. A few minutes later, the clerk records the three documents brought in by Gozer. Moments later, Louis storms into the Records Office, and frantically asks the clerk to record his deed from Gozer right away. The clerk does so, as the last act of the day before closing the records office.

After Louis fails to make payments on either of his mortgages, or the bill to the Ghostbusters, City Bank moves to foreclose Redacre. City Bank gives Louis one-week notice, and advertises the sale at the records hall. Louis begs for another week, telling the bank that he will soon get a lot of money from Gozer, who sold him a haunted house. The bank was not interested in delaying the sale. At the foreclosure sale, a manager from City Bank was the only bidder present. He places the only bid of \$80,000, and acquires title to Redacre. One week later, City Bank sells Redacre back to Gozer for \$79,000.

Like some ghoul in a late-night horror movie that repeatedly sits up in its grave and shuffles abroad, after being repeatedly killed and buried, this massive property dispute begins its legal battle from the beyond.

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1. Louis sues Gozer for failing to disclose the fact that Redacre was haunted. Gozer counterclaims that he had no knowledge that Redacre was haunted. As a matter of policy, discuss the validity of the doctrine of *caveat emptor* in this case. Specifically, address the strongest arguments in favor of Louis, and the strongest arguments in favor of Gozer.

2. Louis files suit against Gozer for giving him an unmarketable title. Please address (1) whether the title was marketable, (2) what present or future covenants were violated (if any), (3) should either Louis or Gozer have been on notice about any restrictions on the land, and (4) what is the significance of the clause that provides "subject however, to all restrictions and covenants applying to this property."

3.

(a) The heir of Zul—who still owns Greenacre—files for an injunction to stop Louis from living in the house on Redacre. The heir is seeking to enforce the 1900 covenant limiting the use of Redacre to commercial purposes. Please address (1) whether Louis is bound by this covenant, (2) and if so, what are his strongest defenses to the suit.

(b) The heir of Vigo files a suit against Louis seeking damages for removing the ghosts in violation of the 1950 document. Please address (1) how the court should treat this document, (2) whether Louis is bound by it, and (3) if so, what are his strongest defenses to the suit.

4. Jeanine files a suit to quiet title on Redacre, claiming she acquired Redacre on 7/11/77 from Gozer. Louis counters that he had no notice of this deed. Under New York's Race Notice recording statute, who will prevail?

5. Ecto Bank files a suit against Louis for a deficiency judgment. Louis counterclaims that the foreclosure sale by City Bank was not valid, and seeks to set aside the foreclosure sale. Address (1) the strongest arguments in favor of Ecto Bank for receiving a deficiency judgment, (2) the strongest arguments in favor of City Bank that the sale was valid, and (3) the strongest argument in favor of Louis that the foreclosure sale should be set aside.

Question 2 (50%)

You are a law clerk for Chief Justice Cameron of the Court of Admiralty. You are asked to prepare a memorandum of 500 words that analyzes a series of *Titanic* property disputes that occurred on the high seas, and on land. While at sea, the ship captain acts as a governmental official, and all of his orders are subject to the restrictions imposed on the government by the United States Constitution. The Court of Admiralty adheres to all of the federal constitutional precedents as decided the United States Supreme Court, and follows a common law approach to property as articulated in the Restatement (First) of Property. There is no zoning law at sea, but all common law torts apply. With respect to the laws respecting accretion and avulsion, the Court of Admiralty follows the precedents of the Supreme Court of Texas. The adverse possession period for all claims is two years.

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Titanus was called the “ship of dreams.” And it was. It really was. The so-called unsinkable boat—the largest in the world—set out on its maiden voyage from Southampton, England to New York City.

The *Titanus* was under the control of Captain, who was responsible for making all of the orders and decision on board. He acted like the Mayor of the ship.

The decks of the *Titanus* were divided into separate classes, each treated as separate tracts of property at sea: Cabins on Firstacre, were owned by the wealthiest passengers. Middle-class passengers resided in cabins on Secondacre. Finally, cabins on Thirdacre were all the poorest passengers at sea could afford.

Residing in a cabin on Firstacre was Rose, the beautiful heiress, and her fiance Hockley, the wealthy industrialist. Rose was very unhappy with her situation. To cheer her up, Hockley put a gigantic 56-carat diamond on her neck, called “The Heart of the Ocean.” Rose couldn’t care less about it, quipping sarcastically, “It’s overwhelming.”

Slumming it in a cabin on Thirdacre was Jack. Jack, a drifter without a home, won a ticket onto the *Titanus* after playing a lucky hand in poker.

During the first evening of the voyage, Rose was leaning against the balcony, thinking about taking her own life by jumping into the ocean. Jack saw her, and talked her out of suicide. She was grateful, and invited Jack back to a dinner in the glamorous ballroom of Firstacre. In truth, it was love at first sight. “Near, far, wherever you are,” Rose sang to herself, “I believe that the heart does go on.”

Captain is furious that such a low-class vagabond was dining with the aristocrats. Captain cooks up a scheme to make it impossible for the poorest passengers to reside on Titanus.

In **Order #1**, the Captain orders that 75% of the cabins in Thirdacre be converted to more expensive cabins, that will be reassigned to Firstacre. The Captain reasons that there is not enough room for the upper-class passengers who pay higher fees—even though many cabins on Firstacre are vacant. He offers no compensation to those displaced.

In **Order #2**, the Captain orders that no more than 3 unrelated people can live together in a cabin on Thirdacre. He places no limitations on those who can live together on Firstacre and Second acre.

Jack is furious with these two orders. He shared a cabin on Thirdacre with three of his best friends, who were like family to him! As a result, he has nowhere to live on Titanus. Jack asks Captain, “Where am I supposed to live?” Captain replies, “Not my problem. Aren’t you the King of the World?”

With all this newfound space, Hockley has an idea. He proposes to expand his cabin on Firstacre, which was only one floor, to be three stories tall. The first floor would be on Thirdacre, the second floor would be on Secondacre, and the penthouse suite would be on Firstacre. It was undisputed that the extension would not impact the health, safety, or welfare of those on Titanus. However, the three-story cabin would not fit in with the appearance of the rest of the cabins, which are all only one-story tall. The Captain, appalled by the idea of having a three-story cabin, tells him to stop. Hockley refuses.

The Captain then issues **Order #3**, which designates any cabin that is “out of place” a nuisance that must be enjoined.

The Captain then takes a walk down to Thirdacre, and is appalled by the squalid and filthy conditions. He issues **Order #4**, finding that Thirdacre is “blighted,” and ordering that all of the cabins on the deck be seized from their owners through the power of eminent domain. Captain decides that he will pursue the condemnation of Thirdacre in the Admiralty Court after the ship arrives in New York.

That evening, Jack was furious. He had nowhere to live, and his cabin on Thirdacre would soon be condemned. He plucked out Rose from her cabin, and the two partied below deck, before fingerpainting in a car. Hockley caught them *in flagrante delicto*, and demanded that Rose return the diamond to Hockley. Rose obliges and gives him the “Heart of the Ocean.” But Hockley has a better idea. When Jack isn’t looking, Hockley puts the diamond in Jack’s coat pocket, and then accuses him of stealing the jewelry. Jack is arrested on the spot, and locked up in Captain’s chambers.

Then, the unthinkable happened. The Titanus slammed into a massive iceberg, tearing an enormous gash in the side of the boat's hull. The unsinkable ship began to sink. Rather than honorably going down with the ship, Captain and Hoakley sneak onto a lifeboat by carrying a baby, as they sing along with the never-ending band, "For those in peril on the sea..."

Jack miraculously manages to escape, and finds Rose as the ship is sinking. Jack gives Rose his coat to keep her warm. What neither realizes is that the diamond was still in the coat pocket.

Silently, the Titanus falls into the fathoms below. Rose and Jack are left treading in the freezing water. For reasons that are totally unclear, the duo is not able to float together on a huge piece of wood adrift in the ocean. Rose stays warm on top, while Jack succumbs to hypothermia below. Rose promises Jack that she will "never let go." Five seconds later she lets go, allowing her soul mate to descend into the depths. But Rose survives. She must have meant that *her* "heart does go on," not Jack's, whose heart promptly stopped beating.

Soon Rose is rescued, and transported to New York harbor. As she passes the Statue of Liberty, she realizes that she has the diamond in her coat pocket. She thinks about selling it, but the thought of the money reminds her of Hockley. Instead, she holds onto it.

Rose was not the only one to arrive in New York. The Titanus had struck the iceberg so hard, that it changed its course, and the glacier washed up on the shores of Staten Island. After the iceberg melted, it dumped millions of gallons of water onto the Staten Island beach, and pushed the vegetation line of Tanacre towards the waterline by about 15 feet. Situation, the owner of Tanacare, started to cheer, and exclaimed "I just got a lot more land. Now that's a situation."

Situation files for a permit to build a combination Gym/Tanning Salon/Laundromat on the newly formed land on Tanacre. The government denies his permit, explaining that (1) the new land beyond the new vegetation line belongs to the state, and (2) that it is a protected wetland, so he cannot build anything on it. "It's worthless," he screams! The Situation's tan face turns pale with anger.

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Despite the fact that the Titanus rests on the bottom of the ocean floor, several lawsuits have bubbled up to the surface.

1. Hockley challenges Order #3, asserting that since there is no zoning law at sea, Captain has incorrectly applied nuisance doctrine. Captain counterclaims, asserting that in the absence of zoning law, Order #3 is an appropriate application of nuisance doctrine. Please address the strengths and weaknesses of Hockley and Captain's arguments, focusing on all relevant legal, economic, and policy grounds.
2. Jack challenges the constitutionality of Orders #1 and #2, asserting that they violated his rights under the First, Fifth, and Fourteenth Amendments. Captain counterclaims, asserting that each was a valid action taken pursuant to the police power. Please address the strengths and weaknesses of Jack and Captain's arguments with respect to (1) Order #1 and (1) Order #2, and conclude who should prevail on each claim.
3. Even though the Titanus is underwater—both literally and financially—Captain proceeds with the condemnations pursuant to Order #4. He wants to seize by eminent domain the “blighted” (and submerged) cabins on Thiridacre. Jack challenges the condemnation, asserting that this is not a taking for “public use.” Under the Supreme Court's precedents, how would this taking be resolved?
4. Following the denial of his permit, Situation files a suit, alleging that (1) he acquired the new land following the melting of the iceberg, and (2) the designation of his property as a wetland was a taking. How should the court resolve each of these two claims?
5. Three years after the sinking of the Titanus, Hockley files an action in replevin demanding the return of the “Heart of the Ocean” diamond from Rose. Rose claims she acquired it through adverse possession. How should the court resolve this claim?