

Property II Examination

December 10, 2015

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 1,000-word limit. Anything you write past 1,000 words will not be read. Both answers combined should not total more than 2,000 words. Please use the word-count feature to check the length of each answer. (Be sure to do a **word** count, and not a **character** count). 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: The year is 1920. You are a law clerk for the Chief Justice of the Supreme Court of Missouri. You are asked to prepare a memorandum of no more 1,000 words addressing five questions concerning an important property dispute involving Abe, Bob, Cam, Dave, Oliver, and Tim. Missouri applies all common law property rules as articulated in the Restatement (First) of Property, and the legislature has adopted a notice recording statute.

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Maple Street has historically been an upper-class residential block in St. Louis, Missouri. There are 50 homes on the cul-de-sac (a dead-end street). All of the lots on Maple street have a one-family house that is two or three stories tall. On 6/31/1915, thirty-five of the fifty lot owners on the block agree to form a homeowner's association. The homeowner's association agreement has three covenants:

1. **Covenant #1:** All lot owners on Maple Street covenant to maintain one-family residential houses that are no smaller than two stories and no taller than four stories.
2. **Covenant #2:** All lot owners on Maple Street covenant to pay to the Homeowner's Association an annual fee of \$1 for every 100 sq. ft. of land they own. This money will be used to pay for maintenance and landscaping of common areas.
3. **Covenant #3:** All lot owners on Maple Street covenant to only sell their properties to persons of the Caucasian race.

These covenants were recorded by each of the the thirty-five lot owners who agreed to join the homeowner's association. However, they were neither signed nor recorded by the other fifteen lot owners on Maple Street. Notably, among the fifteen who refused to join were several African-American families.

Abe has lived on Lots 1 and 2 on Maple Street—which are right next to each other—since 1913. Abe refused to join the homeowner's association in 1915, and did not record covenants for either lot.

Bob tells Abe that he wants to purchase Lot 2, and build a six-story tower for bird-watching. Bob admits that the tower will cast a shadow over Lot 1, and block a lot of sun light. Bob offers to pay for a covenant that will allow him to block the sun light over Lot 1. Abe agrees to the covenant. On 1/1/1916, Abe sells to Bob Lot 2 with the covenant on the deed. Bob is not Caucasian. Bob did not record the deed.

On 2/1/1916, Bob leases Lot 2 to Cam for one year. Over the following month, with Bob's permission, Cam proceeds to construct the six-story tower.

On 3/10/1916, Dave expressed an interest in acquiring Lot 1 from Abe. Dave conducts a title search at the records office and finds the following chain of title:

Grantee Index

Grantee	Grantor	Property	Description	Date of Deed	Date Recorded
Tim	Oliver	Lot 1	General warranty deed in fee simple	1/1/1900	2/15/1916
Abe	Sam	Lot 2	Quitclaim deed in fee simple	1/1/1914	1/15/1916
Abe	Oliver	Lot 1	Quitclaim deed in fee simple	1/1/1913	1/12/1916

Grantor Index

Grantor	Grantee	Property	Description	Date of Deed	Date Recorded
Oliver	Abe	Lot 1	Quitclaim deed in fee simple	1/1/1913	1/12/1916
Sam	Abe	Lot 2	Quitclaim deed in fee simple	1/1/1914	1/15/1916
Oliver	Tim	Lot 1	General warranty deed in fee simple	1/1/1900	2/15/1916

On 3/1/1916, Abe sells Lot 1 to Dave in fee simple with a general warranty deed. Dave promptly records his deed. Then the litigation begins.

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In a memorandum of no more than 1,000 words, please address how the Missouri Supreme Court should resolve the following five issues.

1. A member of the Homeowner's Association files suit against Bob, seeking to set aside the sale of Lot 2, because he is in violation of Covenant #3. Who should prevail? Please remember that since the year is 1920, the doctrine of "Separate but Equal" announced in *Plessy v. Ferguson* is still good law. There are no federal constitutional problems with the judicial enforcement of Covenant #3—this question must be resolved as a matter of property law.
2. A member of the Homeowner's Association files suit against Bob, claiming that he is in violation of Covenant #1 for having a six-story tower. Alternatively, the member argues that Bob should have been on notice that a six-story tower would be prohibited. Who should prevail?
3. The Homeowner's Association files suit against Bob, who refuses to pay the annual fee, for violating Covenant #2. The Homeowner's Association concedes that the covenant cannot be enforced as written, but argues that this promise should be construed as an equitable servitude, and enforced by the courts. Who should prevail?
4. Dave sues Cam for a nuisance, because the tower from Lot 1 casts a shadow on Lot 2. Who should prevail?
5. Tim sues Dave, seeking to quiet title, and determine the true owner of Lot 1. Who should prevail?

Question 2 (50%)

Instructions: You are a law clerk for a judge in the trial court in Monopoly, New Jersey. You are asked to consider five property issues concerning six friends: Ted, Marco, Hillary, Rand, Bernie, and Donald. New Jersey applies all common law property rules as articulated in the Restatement (First) of Property. The statute of limitations for all causes of action in New Jersey is two years. New Jersey applies a notice recording statute.

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The seaside town of Monopoly, New Jersey straddles both sides of the proverbial train tracks. The properties range from the rundown houses on the Mediterranean to the gleaming hotels on the Boardwalk, and everything in between. Six friends start their real estate dealings, as always, with the roll of the dice.



Turn 1

Ted makes the first move, and seeks to acquire the blighted lots of Baltic and Mediterranean from Marco. Marco provides Ted with a survey stating that Baltic stands fifty feet to the east of the Community Chest Bank, and that Mediterranean stands fifty feet to the west of the Community Chest Bank.



Marco's Survey

Ted opts only to purchase Mediterranean, described on the deed as the lot 50 feet to the west of the bank. Marco gives Ted a quitclaim deed, which was never recorded.

The following week, Hillary offers to purchase both lots from Marco for \$60,000. Marco shows Hillary the same survey he gave to Ted. Hillary has a bad feeling about it, and commissions her own survey. It turns out Marco's survey was backwards. In fact, Baltic was fifty feet to the west of the Community Chest Bank, and Mediterranean was fifty feet to the east of the Bank.



Hillary's Survey

Hillary agrees to purchase both lots from Marco for \$60,000. Marco and Hillary shake hands on the deal, and Hillary hands him a suitcase full of \$60,000 cash. Later that night, Hillary called Marco, to ask him if he would give her a deed for the two lots. Little did she know that Marco was savagely beaten into a coma when a gang stole his cash-filled suitcase.

The next day, Hillary learns that Ted was living on the westward lot, which was in fact Baltic, and not Mediterranean. She shows Ted the survey, and tells him to get off. Ted refuses, and insists that he is staying on the westward lot, whatever it is called!

Three years later, Hillary files suit to eject Ted from Baltic, the westward Lot. Ted counterclaims that he has acquired Baltic through adverse possession. Marco, who miraculously awoke up from his coma, asserts that he was still the owner of both lots, and that Hillary never lawfully acquired them.

Turn 2

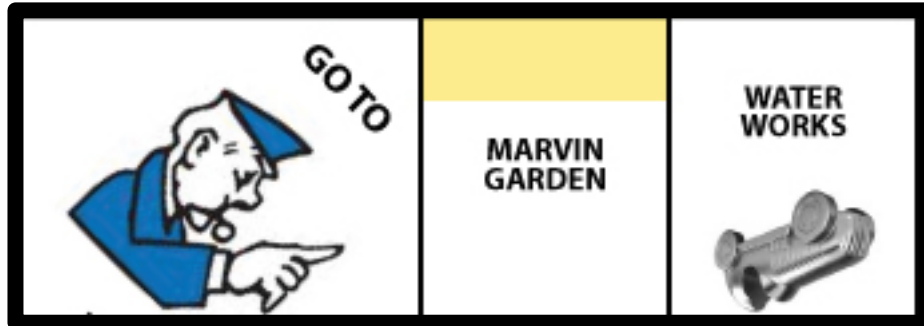
Rand owns the lots on St. James and Virginia. Between the two lots are train tracks for the Pennsylvania Railroad.



Rand has a house on Virginia. Rand seeks to build a hotel on St. James, and applies for a building permit. The Monopoly Planning Commission, without granting or denying his permit applications, suggests that Rand hire a local construction firm to build a bridge that stretches from St. James over the railroad tracks to Virginia. The Commission tells Rand that the bridge will help people walk from the train station to his hotel, and improve traffic conditions on the busy street. Rand is outraged, and refuses to pay to build the bridge. Rand files suit in the trial court, claiming that the Planning Commission violated his rights under the Takings Clause of the 5th Amendment.

Turn 3

Bernie rolls the dice next. He owns a farm on Marvin Gardens. To the west of Marvin Gardens is the Monopoly Jail and to the east is the Monopoly Public Water Works reservoir.

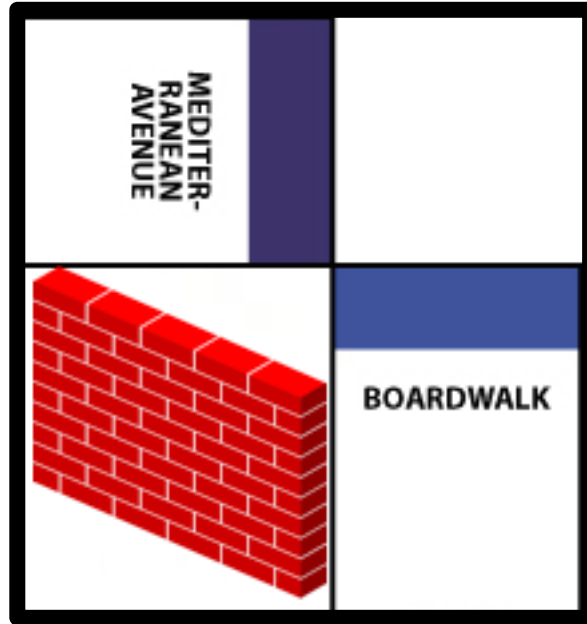


Bernie's sole crop is marijuana, which was recently legalized in the state. The soil on Marvin Gardens is ideally suited for cannabis. However, the scent of the marijuana, which wafts over the walls of the jail, incites the prisoners to try to escape on a daily basis. It has become a serious security problem. The Monopoly City Council passes an ordinance, requiring that all marijuana growers are required to install 50-foot screens around the borders of their farms that can filter out the scent. Bernie refuses to build the screen, and files suit against the City Council in the trial court, alleging that the ordinance violates his rights under the Takings Clause of the 5th Amendment.

Bernie's problems don't end there. In order to provide enough water for his marijuana crops, the Water Works built a subterranean pipeline from the reservoir to the ground underneath Marvin Gardens. In the middle of the winter—long after Bernie's crops were harvested—the pipeline bursts. The entire farm is flooded, and the ground underneath the farm sinks one inch. However, because the accident happened after the harvest, the flooding and subsidence did not damage any crops. Bernie files suit against the Water Works in the trial court, alleging that the burst pipeline resulted in a violation of his rights under the Takings Clause of the 5th Amendment.

Turn 4

Donald owns the opulent beachfront Boardwalk Hotel. Donald starts to build a “huge” wall surrounding the hotel, so he wouldn’t have to deal with or see the dispute on Mediterranean. The wall has a “beautiful” door to allow people cross onto the beach.



The Monopoly City Council amends the zoning code, and imposes a five-year moratorium on building anything that is “aesthetically unpleasing” on the beach. The purpose of the moratorium is to study how eliminating unsightly constructions near the beach improves the public’s physical and visual ability to access the shoreline. The moratorium may be renewed for additional five-year terms, in order to provide sufficient time to analyze the issue.

Donald submits his plans to finish the wall to the Monopoly Zoning Commission. The Commission determines that Donald’s red-brick wall would be “aesthetically unpleasing” because it is “out of place.” Donald asks for further clarification, but the Zoning Commission offers none. As a result, the Commission determines that the plan is subject to the moratorium, and Donald cannot complete his wall. Donald appeals the Commission’s findings to the trial court.

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Each of these five suits is consolidated in a single case. You are asked to write a memorandum of no more than 1,000 words considering the following five issues:

1. Please describe what interest, if any, Ted, Hillary, and Marco hold in Baltic (the westward lot) and Mediterranean (the eastward lot).
2. Did the Planning Commission violate Rand's rights under the Takings Clause of the 5th Amendment?
3. Did the City Council violate Bernie's rights under the Takings Clause of the 5th Amendment by requiring him to install the screens around his farm?
4. Did the Water Works violate Bernie's rights under the Takings Clause of the 5th Amendment when the pipeline burst?
5. Did the Zoning Commission have the authority to designate that Donald's property is subject to the moratorium?