

Property II Examination
December 3, 2018
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 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 (not the character count) feature to check the length of each answer. The **character count** for the exam will be visible just above the formatting icons on your screen. By clicking on the document icon, you may view the **word count**. If you hand-write the exam, or can't utilize the word-count feature, please do a manual word count.

The exam is completely open-book. You can use anything you wish, so long as that it was created *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!

Part 1 (50%)

Instructions:

Please write a memorandum of no more than 1,000 words addressing five property issues affecting Elsa and Anna on Iceacre and Sunacre. The courts in this jurisdiction apply all American common law rules, are bound by the United States Constitution, and all statutes of limitations are five years.

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Question #1

Elsa and Anna live together on Castleacre, which is owned by their parents. Anna asks Elsa, "Do you want to build a snowman? Or ride our bike around the halls?" Elsa replied, "Sure!" However, Anna did not tell Elsa that their parents had prohibited building snowmen and riding bicycles on Castleacre. For the next five years, while their parents were traveling overseas, the sisters followed a precise schedule on Castleacre. On Mondays, Wednesdays, Fridays, and Sundays, Anna would ride her bicycle, and Elsa would build snowmen. On Tuesdays, Thursdays, and Saturdays, Ana would build snowmen, and Elsa would ride her bicycle. After five years, their parents returned and told Elsa and Anna to stop building snowmen and riding their bikes. The daughters refused. The parents then sought an injunction to block Elsa and Anna from building snowmen and riding their bikes on Castleacre. The daughters argued that they now have the right to take these actions.

1. How should the court resolve this dispute?

Question #2

Subsequently, Elsa and Anna purchased Castleacre from their parents as tenants in common with a general warranty deed. However, their parents failed to disclose a very important fact: Castleacre was haunted by a spirit. Specifically, the ghost would transfer to Castleacre's owner a magical power to create snow and ice. As they were signing the contract of sale, Elsa's mother thought to herself, "Conceal, don't feel, don't let them know." Moments after closing, the spirit possessed Elsa. Elsa realized she now had this magical power, but had difficulty controlling it. "Put on a show," she thought to herself. "Make one wrong move and everyone will know." However, one month later, she lost control of her powers, and she immediately froze over all of Castleacre. The Kingdom had a special land use ordinance, such that all residential properties must be heated in the winter to at least 60 degrees Fahrenheit. Now, Castleacre was far below that temperature.

Elsa and Anna sue their parents to rescind the contract of sale.

2. How should the court resolve this dispute?

Question #3

Elsa uses her magical powers to create a living, breathing snowman named Olaf. Across the street from Castleacre is Sunacre. In the center of Sunacre is a tall building with a glass exterior. Every day at noon, the sun reflects off the building, and focuses a heat ray onto Castleacre. Olaf is happy about the heat ray. He sings, “Winter’s a good time to stay in and cuddle. But put me in summer and I’ll be a—happy snowman!” One day, the heat ray hits Olaf, and partially melts him. Elsa sues the owner of Sunacre for a nuisance, and seeks an injunction to prevent Olaf from melting further.

3. How should the court resolve this dispute?

Question #4

Soon, Elsa becomes Queen of the Kingdom. She is now in charge of the local government. Elsa remains furious at the owners of Sunacre, and unleashes her powers. She sang, “It’s time to see what I can do. To test the limits and break through. No right, no wrong, no rules for me. I’m free! Let it go, let it go!” First, she drops the temperature on Sunacre below zero, so the lake on the property freezes over. The owner of Sunacre fished on the lake for recreation. Second, she buries Sunacre under 6 inches of snow. Third, she adds a layer of frost to the exterior of the building to eliminate the reflected heat ray onto Castleacre.

The owner of Sunacre files suit against Elsa, and claims that her actions, as Queen of the Kingdom, constitute a taking, without just compensation, in violation of the Fifth and Fourteenth Amendment.

4. Discuss whether each of Elsa’s three actions violates the Takings Clause of the Fifth Amendment.

Question #5

Often when the government regulates land use, it must allocate the benefits and burdens in an inconsistent fashion to different property owners. For example, following a storm, the government may decide that it must flood a small number of properties in order to prevent flooding a much larger number of properties.

5. Discuss how courts should consider the balance of the benefits and burdens when deciding cases under the Fifth Amendment’s Takings Clause.

Part 2 (50%)

Instructions: In Gotham City, Batman is a superhero who fights evil villains, and also engages in sophisticated property transactions. Please write a memorandum of no more than 1,000 words addressing five property issues affecting Alfred, Batman, Catwoman, Dracula, and Joker concerning Caveacre, Wayneacre, Batacre, Fraudacre, and Arkacre. The Gotham District Court applies all American common law rules, a race-notice statute, the Texas Anti-Deficiency Statute, and is bound by the United States Constitution.

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Question #1

Alfred owned Caveacre in fee simple. Batman owned Wayneacre in fee simple. The lots border each other. Alfred sold Caveacre to Batman, with a covenant that the property could only be used for residential purposes. Batman sold Wayneacre to Alfred with a covenant that the property could only be used for commercial purposes. Alfred sells Dracula a life estate on Wayneacre. Batman sells Caveacre to Catwoman in fee simple. Dracula builds a house on Wayneacre. Catwoman builds a factory on Caveacre.

Dracula sues Catwoman to enjoin the operation of the factory on Caveacre. Catwoman sues Dracula to demolish the house on Wayneacre.

1. How should the court resolve this dispute?

Question #2

On Monday, Joker sells Fraudacre to Alfred. On Tuesday, Joker sells Fraudacre to Batman, who did not know about Alfred's deed. On Wednesday, Alfred goes to Gotham City Hall to record his deed for Fraudacre. The clerk accepts Alfred's deed, and records it in the Grantor Index, but forgets to record it in the Grantee Index. On Thursday, Joker offers to sell Fraudacre to Catwoman. That day, Catwoman performs a title search for Fraudacre. Later that day, Catwoman purchases Fraudacre from Joker, and promptly records her deed in both the Grantor and Grantee Index. On Friday, Batman records his deed.

Soon, Alfred, Batman, and Catwoman realize that they were scammed by the Joker. Alfred files suit in Gotham District Court to quiet title on Fraudacre.

2. How should the court resolve this dispute?

Question #3

Batman sought to purchase Batacre at a price of \$100,000. He paid \$10,000 for a down-payment from his own savings. Gotham Bank gave Batman a note for \$80,000, which was secured by a first mortgage. Arkham Bank gave Batman a note for \$10,000, which was secured by a second mortgage. Over the next year, Batman pays \$5,000 to Gotham Bank, and \$5,000 to Arkham Bank. However, Batman falls on hard times and defaults on the mortgages. Gotham Bank moves to foreclose Batacre. At the sale, there is only one bidder: a representative from Arkham Bank, who places a bid for \$50,000. After the conclusion of the sale, Gotham Bank and Arkham Bank both seek deficiency judgments against Batman. Batman moves to set aside the foreclosure.

3. How should the court resolve this conflict?

Question #4

Joker announces that he wishes to open an “insane asylum” on Arkacre for people with mental disabilities. The Gotham City Council promptly enacts a land use regulation that allows the Zoning Board to deny a permit for insane asylums with more than five residents if the public safety requires it, unless the asylum builds a 100 foot electric fence around the perimeter. The City Council found that criminals often congregate outside of these group homes. Currently, there are no other insane asylums in Gotham City.

Joker challenges the constitutionality of the land use regulation in Gotham District Court.

4. How should the court resolve this challenge? (Do not consider any statutory issues, only constitutional questions).

Question #5

Often, land use regulations closely implicate questions of race, socioeconomic status, and property values. State governments may make zoning decisions based on some, but not all of these factors.

5. Discuss what role courts should play—both under the federal and state constitutions—in scrutinizing such land use regulations.