

LAW 7122-03: PROPERTY II

FINAL EXAMINATION, SPRING 2011

Prof. Tom W. Bell

Friday May 6, 2:00 p.m. to 5:00 p.m.

Please write your exam number here: _____ and turn in this exam with your answers. If you fail to turn in your exam you may forfeit some or all of your grade.

This exam consists of 33 multiple-choice questions and two essay questions. The multiple-choice section is closed book and counts for 40% of your grade for this exam. You have 60 minutes to complete that section, or an average of 1.8 minutes per question. Indicate the one best answer to each multiple-choice question by filling in your Scantron sheet as directed. Even if you finish the multiple-choice questions early, you may not start the essay section until directed to do so.

The essay section is partial open book. You may use your casebook, any material that I or the academic fellow handed out for the course, and any notes that you or your study group prepared. You may not use other materials, such as nutshells or commercial outlines. The essay section counts for 60% of your grade for this exam and you have 90 minutes to complete it. You may not begin working on the essay section until directed to do so.

Because each essay question counts for a particular percentage of your grade, I advise you to allocate your time accordingly. Before you begin writing any essay answer, read the question carefully and note which issues you need to address. Good organization and writing may improve your grade.

Please write clearly. I cannot grade what I cannot understand. If you use a bluebook, write on only one side of each page, on every other line. If you use more than one bluebook, number the booklets so that I can easily follow their intended sequence.

Unless otherwise indicated, all events described below take place in a generic common law jurisdiction that has enacted the typical statutes. If you think it necessary to assume an unstated fact in order to answer an essay question you may do so, but you should clearly indicate that you are making the assumption and explain why you consider it reasonable to do so.

If you have any administrative questions about taking this exam, please contact the Registrar.

Do not turn the page until told to begin the exam.

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Multiple Choice Questions

40% of exam's total grade
(maximum time: 60 minutes, or 1.8 minutes/question)

[redacted]

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Essay Question 1

35% of exam's total grade
(suggested time: about 50 minutes)

Farmer and Rancher owned adjoining parcels of property. Farmer's property was served by a paved road whereas Rancher's was served by only a rutted dirt one. Once a year, Rancher needed to load his cattle onto a tractor-trailer truck to take them to market. Such trucks could not travel the road to Rancher's land, so Farmer allowed Rancher to drive his cattle across Farmer's land to a gate opening onto the paved road. With Farmer's permission, Rancher built and maintained a cattle chute on Farmer's land so that the cattle could be herded up and into the waiting tractor-trailer.

The two neighbors enjoyed this amicable arrangement for 5 years before Farmer decided to sell his land. Farmer promised Rancher that he would get the buyer of his farm to agree to continue to allow Rancher to cross his fields and use the cattle chute. Farmer hired Broker to sell his farm and directed her to tell prospective buyers about his understanding with Rancher. Broker did not tell buyers about the neighbors' understanding, however, because she reasoned that Rancher had no legal rights and feared the news might reduce the sales price (and, thus, her commission). She arranged a sale to Country, who purchased the land under a general warranty deed without knowing of the arrangement between Farmer and Rancher.

Soon after Country moved in, Rancher introduced himself and said that he looked forward to continuing to cross his neighbor's land to use the cattle chute. Country replied that she had no knowledge of the arrangement and denied Rancher the right to enter her property. When it came time to ship his cattle to market, Rancher disregarded Country's objections and did exactly as he had always done with Farmer's permission. Country protested and hung "No Trespassing!" signs on her fences and the cattle chute. That made no difference to Rancher, however, who repeated his performance the following year.

After five years of repeatedly objecting in vain to Rancher's annual transit of her land, Country sold her property to Urbane under a general warranty deed. Urbane purchased title insurance from Insureco and recorded her interest. Soon after Urbane moved in, she and Rancher fell into exactly the same sort of conflict that Country and Rancher had had. Urbane brought suit to enjoin Rancher's entry on her property.

Note: The prescriptive period in this jurisdiction is four years; a race-notice recording statute applies; and that Rancher recorded no interests pertaining to the land originally owned by Farmer. Analyze the rights and remedies of the parties under property law.

Essay Question 2

25% of exam's total grade
(suggested time: about 40 minutes)

Suppose that you work as a legal assistant to U.S. Representative Lex Solomon. Aggrieved constituents have of late complained to him that the federal government, under the guise of following various statements from the Supreme Court, has in recent years effectively taken personal property for public use without paying just compensation. He is thinking about drafting legislation to clarify the law in that area and seeks your input. He explained:

The manufacturers of Four Loko told me that they felt their constitutional rights were violated when their drink was simply banned, for instance. I'm not so sure about the merits of that claim, but it does raise some interesting questions. The upcoming federal ban on certain incandescent lights poses a slightly tougher problem—are they really akin to nuisances? Still more troubling is a report I got about the seizure by federal officials of private boats to carry out an emergency evacuation of flooded towns on the lower Mississippi. After using the boats, the government failed to moor them properly and they washed away to their destruction. In denying the owners' demand for compensation, the government claimed that the Fifth Amendment's Takings clause does not protect personal property as fully as it does real property. They're litigating the issue, now, but I'm a little surprised that it has come to that.

I'm thinking about sponsoring a law that would require the federal government to give *personal* property exactly the same treatment under the Fifth Amendment that *real* property already gets. Write me a brief memo about whether you think that would be a good idea, and why. Make sure to deal with the text of the Fifth Amendment, both as written and as interpreted by courts, and offer some hypotheticals illustrating how your preferred approach would work in practice.