

**CHICAGO-KENT COLLEGE OF LAW  
FINAL EXAMINATION IN PROPERTY**

**INSTRUCTIONS**

1. This examination consists of 5 pages. Please check to make certain you have the complete examination, including the appendix.
2. Read these instructions carefully, read each question, and read the appendix carefully. As you answer each question, make use of any materials in the appendix that are pertinent. Think each problem through before you write and treat every appropriate issue in each question. Be direct and concise.
3. Answers will be graded upon the reasons given as well as the conclusions drawn. If more than one reason is pertinent to an answer, state every reason.
4. While you have been permitted to bring materials into the examination room, answering the questions appropriately will put time pressure on you. You should not do extensive research during the examination. Credit will be weighted according to the time allocations shown. Manage your time accordingly.
5. You may decide, in answering one or more questions, that a complete answer would require legal research. If this is so, you should identify the specific issue that you would research. If you have a mastery of the basic concepts, you will be able to frame research issues very narrowly and precisely.
6. It also may be that more factual information is required to answer a question. If this is the case, you should say what factual information is required and why you need it. A mastery of the underlying concepts will permit you to frame any factual inquiries very narrowly and link them precisely to the legal issue involved.
7. Organization and clarity are very important. A shorter answer that is well organized and evidences a clear understanding of basic concepts and their interrelationships is better than a long answer with disconnected fragments of information.
8. Do not write outside the margins of your bluebook pages, but write clearly. If it's not legible, it will not get credit.
9. Write your examination number on your bluebook(s) and on each page of this examination. Do not use your name.
10. When you have finished the examination place it inside your bluebook(s) and deposit them in the appropriate box in the examination room.

**MATERIALS WHICH MAY BE TAKEN INTO THE EXAMINATION ROOM**

Any material including any outlines whether commercially prepared or not, whether accessible by computer or not. No communication by e-mail, cell phone, voice-over-IP, or any form of instant- or text-messaging is permitted during the exam.

**GOOD LUCK!**

## QUESTION I

Jordan Saks and Damien Cannon own a storefront theatre building in the Lakeview neighborhood of Chicago in fee simple, as joint tenants with right of survivorship. They and their predecessors in interest have owned the building, known as “Take My Flag Stop Stage,” (“TMFSS”) for 50 years. The building has a large theatre with a stage and 75 seats on risers, a smaller elongated room on the second floor in which chairs can be set up, and a larger general purpose room on the third floor.

A small non-profit theatre company, “Random Nonstories,” has used the third-floor room to store its costumes, props and scenery for 21 years, and occasionally rehearses there as well. Saks and Cannon are annoyed by this use of their building but have never done anything about it.

TMFSS falls on hard times, and Saks and Cannon decide to sell the building to Hillary Steele. They give her a deed in fee simple, which reads, in material part: “to Hillary Steele and her heirs the structure and real estate known as Take My Flag Stop Stage in fee simple for so long as it is used for theatrical productions, then to Amy Phelps if she is still alive; otherwise to Corey Schuba and his heirs. Steele pays \$150,000 for the property interest deeded.

- A. (25 minutes) Steele enters into possession, and schedules rehearsals for her original “Wreck Opera” on the third floor. When her company arrives to begin rehearsals, they are confronted by personnel from Random Nonstories which threatens to go immediately to the emergency judge of the Circuit Court of Cook County to get an injunction against Steele for trespass. Suppose you represent Steele. What arguments would you make in court to oppose the injunction? Consider relevant arguments by Random Nonstories and evaluate the relative strength of your opposing arguments.
- B. (20 minutes) Are Phelps’ and Schuba’s interests valid? Why or why not? Be sure to explain every element of your reasoning.
- C. (20 minutes) Saks and Cannon reserve an easement in favor of Random Nonstories when they convey to Steele. The easement says, “subject to an easement entitling Random Nonstories to store its costumes, props, and scenery on the third floor and to use the third floor whenever it wants for rehearsals.” Random Nonstories, worried about the security of its interest, uses its influence with the Chicago City Council, which adopts an ordinance requiring “any owner of TMFSS to allow Random Nonstories to store its costumes, props, and scenery on the third floor and to use the third floor whenever it wants for rehearsals.” Suppose you represent Steele. What arguments would you make to avoid the effect of the ordinance and/or to obtain damages from the City? Consider relevant counterarguments and evaluate your prospects for success.
- D. (20 minutes) There is no ordinance now. No one records the deed to Steele. Steele, frustrated by the bad start on her ownership of TMFSS, decides to sell the property. She sells to Goodman Theatre, which pays her \$250,000 and receives a signed deed from Steele granting a fee simple absolute interest in TMFSS. Random Nonstories is rehearsing its newest random nonstory on the third floor of TMFSS while negotiations of the sale to Goodman are going on. The Goodman Theatre’s lawyer promptly records the

deed in the office of the Cook County Recorder of Deeds. Shortly afterwards, Goodman's stage manager for its newest production of the old, old, "Oklahoma" arrives to set up rehearsals on the third floor of TMFSS and is greeted by Random Nonstories which threatens to seek an injunction. Suppose you represent Goodman Theatre and are instructed to sue Steele. What legal theories would you assert and what counter arguments might you expect? Evaluate your prospects for success on each.

- E. (15 minutes) During their financial difficulties, Saks and Cannon mortgaged TMFSS for \$125,000 to Irresponsible Bank, a corporate subsidiary of Goldman Sachs. No one recorded the mortgage. Cannon died of a broken heart just after the conveyance to Steele. Steele mortgages the property further to Sixth Fourth Bank for \$25,000. No one has paid any of the mortgage obligations during the ownership by Saks and Cannon, Steele, or Goodman. Irresponsible Bank brings a foreclosure action. Will it succeed? If it succeeds and the property is sold at a Sheriff's foreclosure sale to Brendan Buffrd for \$175,000, how should the proceeds be distributed?

## QUESTION II

Scott Blake bought Trump Tower in Chicago from Donald Trump, after Trump's income from his real estate empire collapsed and the proceeds from his television shows were not sufficient to prevent insolvency. Blake's interest is in fee simple absolute. All of the tenants and owners of units in Trump Tower abandoned their property during Trump's travails, so the building is completely vacant. Blake, needing immediate income to cover his student loans, embarks on an aggressive campaign to lease as many units as possible as quickly as possible.

- A. (20 minutes) He leases unit #101 to Josaphene LaBreck, who intends to use it as the headquarters for her "escort service" for visitors to Chicago. Blake intends to lease unit #102 to Shelby Minor, who intends to live there. But in his rush to get units leased, Blake makes an error and enters "unit #101" on the lease to Minor. Minor moves his furniture and other worldly possessions into unit #101, and is startled one evening when several of LaBreck's employees enter the part of the unit Minor uses as a bedroom and offer their affections. Suppose Minor does not favor this arrangement and retains you to represent him in a lawsuit against Blake. What legal theories would you assert? Consider counterarguments, and evaluate your prospects for success.
- B. (20 minutes) Blake leases unit #103 to Joel Souk, who enters into possession and begins deployment of a small wind farm on the balcony of his unit, using new micro-technologies that extract energy from the wind to generate electricity. The micro-wind-turbines make a rhythmic thumping noise as they rotate, and the vibrations cause rare turtles that Minor is raising as pets to become agitated. Several of them die. Suppose you represent Minor. What arguments would you make in a lawsuit seeking to eliminate the threat to the remaining turtles? Consider opposing arguments and evaluate prospects for success.
- C. (20 minutes) Blake, tired of the controversies among his tenants, waits for all the leases to expire and converts Trump (now Blake) Tower into a condominium project, filing the requisite declaration with the Cook County Recorder of Deeds. The declaration

establishes an elected Condo Association and recites that (1) the Condo Association shall have the power to make all reasonable regulations limiting use of condo units, the power to establish fines for violation of the regulations, (2) that any fines shall become liens on the property interest of condo owners, and (3) that any such regulations shall be deemed to be real covenants. The Condo association, persuaded by a single member who is opposed to natural foods, adopts a regulation prohibiting the cooking of any tofu in any unit. Teresa Mills bought a unit before the regulation was adopted. She, a health food enthusiast, loves tofu. She cooks some tofu, is threatened by the Condo Association enforcers with a lawsuit for violation of her covenants. Suppose you represent Mills. What arguments would you make, what opposing arguments would you anticipate, and what outcome would you expect?

- D. (20 minutes) Mills, having successfully opposed the Condo Association regulation, refocuses on her studies as a law student. She contributes a particularly good section of an outline on the Rule Against Perpetuities to her study group. Joe Dix, a member of the group, is a rock musician who decides to set Mills' section to music to make it easier for him to keep it in mind. Mills does not know he has done this. He plays and sings it to the other members of his rock band, who love it. They understand the words but do not know what any of them mean. None of them are law students. The band records the song, releases it in an album and the RIAA later catches a Boise, Idaho grandmother downloading it from a peer-to-peer site without permission and playing it for her dog and five-year-old grandson, neither of whom particularly enjoy it.

The grandmother has been threatened with legal action by both Mills and Dix. She asks you to represent her. What legal theories are you most concerned about? Is she liable on any of them? Why or why not?

## STATUTORY APPENDIX

(765 ILCS 5/30) (from Ch. 30, par. 29)

Sec. 30. All deeds, mortgages and other instruments of writing which are authorized to be recorded, shall take effect and be in force from and after the time of filing the same for record, and not before, as to all creditors and subsequent purchasers, without notice; and all such deeds and title papers shall be adjudged void as to all such creditors and subsequent purchasers, without notice, until the same shall be filed for record.

(Source: Laws 1871 §2, p. 282.)

(765 ILCS 5/31) (from Ch. 30, par. 30)

Sec. 31. Deeds, mortgages and other instruments of writing relating to real estate shall be deemed, from the time of being filed for record, notice to subsequent purchasers and creditors . . .

(Source: Laws 1871 §2, p. 282.)