

**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 appendices.
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, blog or Facebook posting, cell phone, voice-over-IP, or any form of instant- or text-messaging is permitted during the exam.

GOOD LUCK!

Question I

Mary Frances Scalise purchases a 10-acre piece of property, "Virginia Gentleman," in rural Buchanan County, Virginia. Her deed conveys a fee simple absolute interest, and refers to no easements or other encumbrances. Unbeknownst to her, Charlie Bob Jordan has been camping on a one-acre section of the property for 21 years during hunting season, so he can hunt deer with a .30 caliber rifle. Mary Frances builds a retirement home on the property, and takes some friends there on 10 November 2010, including Drew Logan, who has just returned from several tours of duty in Afghanistan. Hunting season starts on 15 November. She and her guests are startled by the sound of gunfire. Drew grabs the M16 automatic weapon he somehow managed to bring back from Afghanistan and runs out to investigate. He sees Charlie Bob and his hunting buddies, set up in a tent with a small pickup truck loaded with beer and ice. They are shooting at what they believe to be deer. Drew confronts Charlie Bob and demands identification.

Deciding not to shoot the hunting party, Drew returns to the retirement home and reports to Mary Frances. She asks Drew, who recently was admitted to the Virginia bar, to file a lawsuit against Charlie Bob in the Circuit Court of Buchanan County located in Grundy, the county seat. She tells him she wants Charlie Bob never to come on her property again and to pay her as much money as possible for interfering with her vacation. Drew does a title search in the Office of the Clerk of the Buchanan County Circuit Court, which is authorized and obligated to record deeds and other instruments pertaining to real property in the county. He finds a chain of title running to Mary Frances's grantor dating back to the land grant of all of Virginia to the Virginia Company by King James I of England in 1606. None of the deeds refers to any encumbrances.

- A. (20 minutes) What legal theories should Drew assert? What arguments should he make and what counter arguments should he anticipate on each theory? What are the prospects for success on each?
- B. (25 minutes) The Board of Supervisors of Buchanan County adopts an ordinance, restricting deer hunting to blow guns. A blow gun is a device that expels a projectile when the user blows hard on one end. Firearms for hunting are no longer allowed under the ordinance. Charlie Bob comes to you, a member of the Virginia bar, and asks you to represent him in an attempt to get a court to invalidate the ordinance, or, in the alternative, to award him enough money that he can hunt large animals in Nepal, which welcomes firearms. You decide to sue Buchanan County in the Circuit Court of Buchanan County. What legal theories would you assert? What arguments would you make on each and what counterarguments would you expect from the county? What are your prospects for success on each?
- C. (15 minutes) Mary Frances loses her lawsuit against Charlie Bob. Charlie Bob wins his lawsuit against the county. Charlie Bob continues to camp and to hunt on the same

piece of property he has always used. Mary Frances's neighbor, Peyton Randolph, has a pet pig that he is accustomed to let run free. The pig comes back each evening to be fed and to sleep on Peyton's couch. The pig ventures onto Mary Frances's property. Charlie Bob's buddies see it and, believing it to be a deer, shoot it. Greatly distressed, Peyton retains you, a member of the Virginia bar, to sue Mary Frances for common-law nuisance. What arguments would you make, what counter arguments would you expect? What are your prospects for success?

- D. (20 minutes) On 2 January 2011, Charlie Bob records the court judgment giving him the right to camp and hunt on "Virginia Gentleman." Mary Frances decides to buy another piece of property in Miami/Dade County Florida, which does not allow hunting. Unable to obtain a purchase-money mortgage on the Florida property, she mortgages "Virginia Gentleman" to Six-and-a-half Second Bank in Virginia for \$800,000. The Bank records the mortgage with the Clerk of the Circuit Court in Buchanan County, on 15 February 2011. Mary Frances defaults, the Bank forecloses, and Drew buys Virginia Gentleman at the foreclosure sale. He still has his M16. What civil remedies are available to Charlie Bob if Drew tries to run him off? What legal theories should he assert? What arguments should be made, what counter arguments should he expect, and what are his prospects for success?
- E. (15 minutes) Drew decides to sell Virginia Gentleman to Spencer Taylor. He asks you to draft language for the deed that gives Spencer a life estate that will terminate if Spencer allows Charlie Bob or anyone else to store firearms or blowguns in any structure belonging to Drew at the time of the conveyance. If Spencer's life estate terminates because of a violation of this proviso, then a fee simple interest automatically vests and becomes possessory in Drew's son Andy. If the life estate ends with the death of Spencer, the property goes back to Drew's heirs without the proviso. Draft the pertinent language, using precise legal terms of art, and being as economical in the language as possible. Name the estates you have created, and apply the Rule Against Perpetuities to them.

Question II

Stella Hummingberg conveys Scriptecture to Melissa Bullock and Trevor Applegate as Joint Tenants with Right of Survivorship, "for so long as no one uses the property to misappropriate any of the creative ideas of the grantor." Melissa and Trevor intend to use the property to work on a movie screenplay.

Stella is a good stand-up comic who tells stories orally. At the closing on Scriptecture, she keeps everyone present in stitches by telling a story about a dog who drank beer. Before

she begins, she cautions, “You must not write this down or record it.” Trevor nevertheless records the story on his iPhone.

Six months after the conveyance, Melissa gets frustrated with Trevor’s work ethic—or lack thereof—and gives a quitclaim deed to Ryan Kimball, “to have and to hold in fee simple absolute, but if Kimball publishes a novel, then to the children of Maggie White and their heirs and assigns.

Trevor is making little progress on the screenplay and so he leases Scriphtectare for one year to Emil Grundy. Emil Grundy gets a job as a waiter in an upscale bar in Austin shortly thereafter and assigns, in a signed writing, his leasehold to Ernest Steinbeck. The story of the beer-drinking dog has made the rounds, because Trevor lets almost everyone he meets hear the recording of Stella telling the story at the closing, and Steinbeck uses Scriphtectare to write and record a rap song about a dog and a pet alligator who get into a fight after playing “Pong,” a beer-drinking contest. He posts the recording of the song on YouTube. Stella sees and hears the song on a YouTube music video. Enraged, she storms into Scriphtectare and takes a sledge hammer to the guitars, keyboards, drum sets and recording equipment she finds there.

Melissa hears of the rap song and the trashing of Scriphtectare and dies.

Ryan publishes a story on his blog about the unhappy events at Scriphtectare.

Maggie White’s only child moves into Scriphtectare.

- A. (15 minutes) Melissa’s heirs ask you to represent them in a suit against Trevor for waste. What legal theories would you assert, what arguments would you make, what counterarguments would you anticipate, and what are your prospects for success?
- B. (15 minutes) Stella asks you to evaluate her prospects for success in suing Ernest Steinbeck for copyright infringement. Evaluate them.
- C. (20 minutes) Trevor sues to evict Maggie White’s child. You represent the child. What legal theories would you assert, what arguments would you make, what counterarguments would you anticipate? What are your prospects for success?
- D. (20 minutes) Ernest wants to recover against someone for breach of a covenant of quiet enjoyment. Who is his best target? Why? What arguments would you make, what counterarguments would you anticipate? What are your prospects for success?
- E. (15 minutes) Emil Grundy and Ernest Steinbeck are good friends, music collaborators, and drinking buddies. Emil “assigns” his lease to Steinbeck, not in writing, but orally, saying, “I’m outta here for a while. You take this sh**hole.” Ernest comes to you, a member of the bar, and asks you to advise him on what interest he holds in Scriptacre. What rights, duties, privileges, powers, and immunities does he have, vis-à-vis whom?

Appendices

Virginia recording law

The common law of Virginia gives a subsequent purchaser for value, without notice, priority over a prior purchaser. Recording the transfer to the prior purchaser, however, provides constructive notice to the subsequent purchaser, under *Richardson v. AMRESKO Residential Mortgage Corp.*, 592 S.E.2d 65 (Va. 2004).

Virginia home rule and hunting statutes

The Virginia Code gives the following powers to counties:

§ 15.2-1209. Prohibiting outdoor shooting of firearms or arrows from bows in certain areas.

Any county may prohibit the outdoor shooting of firearms or arrows from bows in any areas of the county which are in the opinion of the governing body so heavily populated as to make such conduct dangerous to the inhabitants thereof.