

FINAL EXAMINATION
IN
PROPERTY
PROF. VETTER

Document Serial Number: _____

1. Multi-Type Exam

This examination consists of three sections, each of which has a particular unique focus, and is worth a different amount of the total points available on the examination. The sections, and their point weights, are given in the table below. All multiple choice questions are worth an equal number of points.

Given the point percentages for the three sections of the examination, one logical division of time in a four (4) hour examination is as follows.

Section	% of Points	Time (h:mm)	Comments
Multiple-Choice	50%	2:00	There are 44 multiple choice questions, allowing for a student to earn no more than 44 correct answers. Thus, each question is worth 1.136% of the examination total. Working all 44 questions in 2 hours amounts to spending 2:43 (2 minutes, 43 seconds) on each question.
Doctrine-Application	35%	1:24	This section is just under three (3) pages.
Policy Analysis	15%	0:36	This section is just under one (1) page.

2. Open Book

This is an “open materials” exam. You may use class notes or outlines (prepared by yourself or others), commercial outlines, and other similar materials. You may not communicate or collaborate with anyone during the exam or obtain direct or indirect information or assistance from anyone. You may not use any live or electronic retrieval/computer source during the exam.

3. Multi-Part Exam

The examination has multiple sections, corresponding to the table above. However, these sections are not timed separately.

You will receive four documents at the beginning of the examination: (1) this document, called the “Examination Document”; (2) the Multiple Choice Question Document; (3) one Scantron Answer Sheet for the multiple choice questions; and (4) a one-page form to report issues with multiple choice questions. Do not disassemble the Multiple Choice Question Document by removing its staple.

4. *Time Allotted*

The final exam is four (4) hours in length.

5. *Page Length*

Together, the Doctrine-Application and Policy Analysis sections are four (4) pages in length, pages 6 to 9 herein.

6. *Release Prohibited*

I have not determined whether I will make this examination available in the future. Accordingly, I am prohibiting it from release. Please return all pages of all documents provided. Copying, reproducing, or memorializing the examination in any form or fashion is prohibited.

7. *Other Instructions*

If using a blue book, please write on only one side of the page. Put your Exam Number on each blue book.

If you are typing your exam answer on a computer, you are allowed to use only the exam taking software implemented by the Law Center. In using that software, start your computer and start that software at the beginning of the examination period; this applies even if you are using the first couple of hours of the examination period to work the multiple choice questions and mark the scantron answer sheet for those questions.

Bring your copy of the three assigned book(s) for the course to the examination.

The law applicable to this examination is the law covered in this class from: the assigned reading from the course book(s) and any required supplement, and additional law (if any) provided in the class overheads and discussion (collectively, the “Materials”). Be sure to answer all questions on the basis of the law provided in the Materials.

Write an analysis for each of the issue(s) raised by the facts or information enumerated in the examination. At the end of each section or subsection the focus or “call” of the question is given in a short paragraph enclosed in a rectangle.

Organize your written answer logically by the sections or subsections of the examination. Your written answer does not need a general introduction. Proceed immediately to analyzing the issues, problems or questions.

The sections vary in the degree to which they suggest incorporating policy analysis. One section, IV, overtly suggests policy analysis. Another explicitly suggests traditional IRAC analysis: Issue, Rule, Application and Conclusion. The multiple choice question section has little to no policy analysis. Its questions have broad coverage and tend to be primarily informational, although some of them cover problems similar to the problems worked in class. Each multiple choice question is independent of the others unless stated otherwise.

a. Doctrine-Application “IRAC” Analysis

Write a short analysis for each of the issues raised by the facts enumerated in the examination question, based on the law and materials from the Property Law class. The analysis should communicate the following as briefly as possible based on the facts available: (i) discuss

the arguments, positions and rights that the plaintiff(s) should assert, or has asserted,^a against the defendant(s); (ii) evaluate the arguments and substantive merits from plaintiff(s) perspective and defendant(s) perspective, articulating defenses and counter-arguments each should/might assert; (iii) assess the strength of each party's arguments; and (iv) determine for each issue who is likely to prevail and explain why. Your written answer, however, should not be organized according to these four points.

Rather, for each issue, your analysis should communicate the issue, and then state/apply the law to the issue's facts (applying counterarguments as well), and then conclude on the issue. An exception to this is that there is no need to restate a legal test that has already been stated; simply refer to the previous statement of the rule. Another way to say this is that if a second issue arises where there is a need to apply a legal test already related and discussed, you may analyze the second issue by exception, i.e., discussing the differences in application and outcome.

If you believe that there are any additional critical yet unsupplied facts that would materially impact the outcome of a particular issue, you should note what such facts would be. In such case, *briefly* describe how such critical facts might impact the outcome, i.e., indicate ***at most one and only one*** differing result that would ensue from different reasonable factual assumptions about such unsupplied facts.^b

Apply majority rules from the primary cases; apply minority rules only when they are a prominent part of the primary case analysis. "Primary cases" are the cases listed in a dark, bold font on the class web syllabus. The "majority" rule for purposes of our "Law of the Course" is the rule applied by the primary case. The "minority" rule is the rule not selected by the court in the case, and is sometimes argued for by a dissent. Sometimes the cases used other labels for such rules. For example, the "English Rule" versus the "American Rule" as to the landlord's duty to provide the incoming tenant with physical possession of the premises. It is acceptable to identify majority/minority rules by such labels if the primary case used such labels to refer to the rules. Minority rules or dissents are also relevant in that they sometimes provide inspiration for counterarguments.

Organize your written answer logically by subdivisions within the law we studied.

^a The examination question is written in such a way that certain issues are sometimes clearly "in" the case/dispute because they have been asserted by either plaintiff of defendant(s). You should analyze these issues, but there may be other issues to be analyzed as well because the examination question is silent about whether they have been, will, or will not be asserted by either side, and there are facts to support them. In addition, the examination question may also indicate that certain other possible issues are "out" and not to be analyzed because the parties disclaim certain issues or protections.

^b Please note that if you find yourself discussing alternative outcomes for supposedly critical yet unsupplied facts for every issue you analyze, you are probably engaging in too much analysis of such alternative outcomes.

b. “Policy” Analysis

The policy oriented section is designed to allow one to employ some of the various policy arguments that arose during the class. A productive organization of the policy analysis depends on the context of the problems, disputes or questions posed in the policy-oriented section.

Application and deployment of arguments is the emphasis of the “policy” section. Some may view the question(s) in the “policy” section as having two “sides” along political or other ideological lines. Even assuming this perspective (without prescribing to it), however, an answer does not earn points by picking the “right” or “best” side of the issue, but rather by effectively marshaling arguments for the two (or many) facets of the issue. The most effective way to earn points on the policy section is to apply policy arguments arising from the course Materials.

The “policy” section, however, is not completely divorced from the doctrine studied in class. Question(s) in the “policy” section may require the application of, or recognition of, the doctrine studied in class to specific fact patterns.

c. Estates Problems and Issues

On this examination, including the multiple choice questions: (i) the common law “Rules Furthering Alienability” apply unless the question states otherwise; (ii) unless otherwise indicated, grantors own fee simple, transactions occur in current times (or at the time stated) and are regular and satisfy applicable formalities, named parties are ascertained, alive and competent, and are not charities unless so specified, and limitations periods have not run; (iii) assume that any facts given about actual persons, entities, places, things, etc., are actually true, even if you know them to be questionable or false; (iv) when conditions are expressed for a named party, the condition is met only by that named party meeting the condition, not by the named party’s successors or heirs fitting the conditional language; and (v) conditions pertaining to the use of the property are meant to only apply during the estate where the description of the condition is placed.

The common law “Rules Furthering Alienability” are: (i) Merger; (ii) the Doctrine of Destruction of Contingent Remainders; (iii) the Rule in Shelley’s Case; (iv) the Doctrine of Worthier Title; and (v) the Rule Against Perpetuities (RAP); all as expressed and described in the Estates book used during the course.

If a question asks you to state, or recognize as correct, the title or label for an interest, unless the question specifies otherwise, a correct statement of the title includes: (i) a statement as to whether any executory interests are “springing” or “shifting”; (ii) a statement as to whether classes are “subject to open” if not closed; and (iii) a statement as to whether vested remainders are additionally “subject to divestment.”

When a conveyance is described with additional facts such as, for example, the existence of ascertained class members or potential class members, those additional facts are part of the analysis to initially characterize the title at the time the conveyance becomes effective. Finally, post conveyance factual developments are to be considered if the question provides these and asks for the state of the title at different points in time.

The various efforts to reform the Rule Against Perpetuities are not applicable unless a question specifies that they are in effect. On the other hand, however, the Charitable Exception is in effect for the examination unless specified otherwise.

HONOR CODE: Turning in an examination answer to this final examination is deemed to be a pledge under the Law Center honor code that the exam taker has complied with the honor code in all respects in relation to this examination.

(the examination problem starts on the next page)

II. MULTIPLE CHOICE QUESTIONS SECTION (50%) { IN A SEPARATE DOCUMENT }

This section is intentionally left blank. These questions are provided in a separate document.

III. DOCTRINE-APPLICATION “IRAC” SECTION (35%)

{ omitted }

{ omitted }

{ omitted }

{ “call of the question” }

IV. POLICY ANALYSIS SECTION (15%)

Janet is a state legislator in the hypothetical U.S. state of Chamois. Janet has been worried about the fairness of the law of adverse possession and easement by prescription in Chamois.¹ The rural culture in Chamois is very similar to that described for Shasta county in the article by Ellickson in the *Perspectives* book used in the course. Janet happens to read the article by Merrill, beginning at page 190 in the *Perspectives* book. Janet proposes the following, hoping these measures will be good public policy.

(i) In any claim for adverse possession, implement a liability rule approach whereby even if the elements of adverse possession are met, the claimant (the adverse possessor) does not become the true owner unless the claimant pays the original true owner the fair market value of the real property. Fair market value would be determined by the court as part of the action to settle the claim of the adverse possessor.

(ii) In any claim for an easement by prescription, implement a liability rule approach whereby even if the elements of easement by prescription are met, the easement claimant does not become the owner of the easement unless the claimant pays the original true owner the fair market value of the easement for burdening the servient estate, and the easement claimant engaged in bad faith. Fair market value of the easement would be determined by the court as part of the action to settle the claim of the easement claimant.

(iii) In a court action under item (ii) in Janet's proposal, if the true owner of the property can show "personhood" in the property as conceived by Rose's article beginning at page 8 of the *Perspectives* book, then no easement by prescription will be awarded, regardless of good or bad faith, or regardless whether the elements of easement by prescription are met.

Critique the proposal using policy concepts from the course by addressing these lettered points: (A) what are the pros and cons of the traditional approach (property-rule approach) for adverse possession / easement by prescription?; (B) what are the proposal's benefits and downsides?; (C) in whole or in part, would you endorse this proposal or reject it? why?; and (D) suggest at least one alteration to the proposal and justify why the alteration improves the proposal.

END OF EXAMINATION.

¹ In Chamois, the statutory provisions of §34, and §38, §39, and §40, apply, as given on the bottom of pages 118-119 in the course case book. Any limitations period recited in those sections also applies to an easement by prescription.