SOCIAL SECURITY #

THESE EXAMINATION QUESTIONS MUST BE RETURNED AT THE END OF THE EXAMINATION.

SANTA CLARA UNIVERSITY
SCHOOL OF LAW
FINAL EXAMINATION

PROPERTY 104
PROFESSOR CARBONE
3 QUESTIONS

MAY 6, 1992
SPRING SEMESTER
3 1/2 HOURS

THE REVISED EXAMINATION RULES ISSUED IN MARCH 1991 APPLY TO THIS EXAMINATION EXCEPT THIS IS AN OPEN BOOK EXAMINATION.

INSTRUCTIONS:

1. This examination consists of three questions. You must answer all three. The credit for each question will be proportional to the time allowed. The diagrams included are an integral part of the examination.

2. Unless you are typing the exam, please write your answers in the bluebooks provided. Write on every other line and on every other page. Please identify the question you are answering on the outside of the bluebook and begin Question II in a separate bluebook. Please write your social security number on the outside of each bluebook and on the examination.

3. This is an open book examination. You may consult the textbook and your notes, but not commercial outlines or hornbooks.

4. The examination takes place in a mythical jurisdiction which has very little law and is influenced by the precedents from other jurisdictions. If jurisdictions are split on a particular issue, you should discuss the different possibilities and the outcome you think will be most likely in this jurisdiction.

* 5. THE STATUTE OF LIMITATION FOR ACTIONS IN REAL PROPERTY IN THIS JURISDICTION IS 5 YEARS.

6. Each question contains directions at the end which indicate how you should approach the answer.
QUESTION I (1 hour 10 minutes)

The Jonsons leave Blackacre to their sons, James and Jared, "to hold jointly, with the entire interest to pass to the surviving brother in the event of the other's death, but if both die within a year of each other, to be split among the two estates." The will is not recorded.

Jared, with James' knowledge, brings his horses to graze on the western part of Blackacre. James, with Jared's knowledge, builds a house on the eastern part of Blackacre. To finance construction of the house, James obtains a loan from Rhonda giving his interest in Blackacre as security. Rhonda knows nothing about Jared's interest in the property, Jared knows nothing about the loan from Rhonda, and Jared does not contribute in any way to the construction of the house. Some years later, Jared acquires a lot adjoining Blackacre to the east. (See map).

James dies, and Rhonda attempts to foreclose on the property, citing the following statute:

When any real estate subject to an encumbrance is specifically bequeathed or passes by joint tenancy with right of survivorship or by the terms of a trust agreement, the legatee, surviving tenant or beneficiary to whom the real estate is given or passes, takes it subject to the encumbrance and is not entitled to have the indebtedness paid from the real or personal property of the decedent.

Part A

Jared comes to you for advice. He tells you that Rhonda claims an outstanding balance on the loan of $60,000, and that the market value of Blackacre is $90,000. He wishes to know a) whether Rhonda's claims will prevail; and b) if so, what she is likely to get. In answering this question, you should address the common law outcome, the likely construction of the statute, any challenges that Jared may be able to raise to the statute itself if it is applied to his interest in the property, and the various ways in which the property could be allocated.

Part B

Over your vigorous objection, the court divides the property along the dotted line indicated on the map, awarding the eastern portion with the house to Rhonda, and the western portion with the grazing lands to Jared. Jared continues to use the land solely for grazing, walking his horses over the bridle trail that partially encroaches on Rhonda's property. Rhonda moves into the house that James built, using the dirt road for access.
Four years later, Rhonda sells her portion of Blackacre to Karl. Karl and Jared soon quarrel, and Karl instructs Jared to stop using the bridle trail. He also posts a sign at the point where the bridle trail enters his property, reading "Private Property. Trespassers will be prosecuted." Jared writes back:

I have always had good relations with my neighbors and I hope to continue to do so. I understand your desire to keep strangers off your property, but I trust that you do not put me in that category. I intend to continue using the bridle trail and I hope that you will similarly feel free to continue using the dirt road. In the future, I may decide to develop the property, but until then consider yourself entitled to use the road in any way you like.

Two years pass without further incident. In the interim, Karl decides to add an extra floor to the house, bringing in the materials over the dirt road. Before the renovations are finished, however, Jared notifies Karl that he will shortly begin construction on a large house that will cover most of the road. Karl retaliates by building a fence on the northern border of his property in the middle of the bridle trail. Evaluate any claims that Jared and Karl might raise against each other.

SEE MAP FOR QUESTION I ON NEXT PAGE.
The only roads in the area are those indicated.
QUESTION II (1 hr. 10 min.)

Maxine, a local developer, buys Whiteacre and divides it into four lots. (See map.) She sells the first lot with no restrictions. She sells lots 2, 3, and 4, in that order, each with deeds that provide that "Buyer, on behalf of his/her heirs successors or assigns, accepts this land for single family residential use only." All of the deeds are recorded.

Three years later, Anton, the owner of lot 1, decides to build a solar heated swimming pool. Anton chooses the location in the yard that gets the most sun. Anton's neighbor, Biaggio, is in the process of selling lot 4 to Carmen, and to insure that the pool will continue to receive full sunlight, Anton pays Biaggio to include a provision in Carmen's deed reserving "a perpetual easement of right to receive light and air" over the area occupied by the swimming pool and the solar heater. The deed is recorded.

A few years later, Carmen sells Lot 4 to Diana, and shortly thereafter Diana decides to open a nursery school in her home. The school is open from 8 a.m. to 12 noon, and enrolls 12 to 15 children. To accommodate the nursery school, Diana adds an additional room to the side of her house. Anton is very upset. He likes to work by the side of his pool, and the noise from the nursery school disturbs him. In addition, the children (and sometimes their parents) trample the prize garden he maintains in the front of his house, and Diana's addition partially blocks the sunlight on the swimming pool and the solar heater.

After a year of unsuccessfully attempting to persuade Diana to close the nursery school, Anton convinces the City Council to rezone the area to preclude "any commercial uses, including any sales, manufacturing, educational or other non-residential uses."

Diana comes to you for advice. Please discuss every legal basis that may exist for opposing the continued operation of the nursery school, any defenses that Diana may be able to raise, and the likelihood that she will ultimately prevail.

SEE MAP FOR QUESTIONS II AND III ON NEXT PAGE.
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Town houses

4a
Anton and Diana settle their dispute pursuant to an agreement that Diana will find a new location for her nursery school in exchange for Anton's waiver, on behalf of himself, his heirs, successors and assigns, of any rights he might otherwise have arising from the effect of Diana's addition on the sunlight that reaches his property. The agreement is not recorded.

Shortly thereafter, Diana enters into a contract to sell Lot 4 to Jake. The contract of sale states that Seller will convey

By Warranty Deed with an abstract of title certified to date showing good merchantable title and an Owners Policy of Title Insurance in the amount of the sale price, guaranteeing said title, free and clear of all encumbrances except restrictions and easements of record, it being understood that Seller shall have sufficient time to bring any abstract to date or obtain Report for Title Insurance and to correct any imperfections in the title if there be such imperfections.

After the contract of sale is signed, Jake learns of Diana's dispute with Anton. Jake is concerned because he planned to use the addition as an office for his thriving real estate practice. He had assumed that, given the location of a for profit nursery school on the premises, there would be no difficulties with a real estate office. Without the office, Jake could use the addition as an extra large family room, but Jake is single and has no need of that much space for himself.

Jake comes to you for advice. He tells you that Diana is eager to proceed with the closing and that she is prepared to convey a General Warranty Deed with an abstract of title and a title insurance policy identical to the one that starts at p. 671 of the textbook. Jake wants you to discuss a) any possible grounds that he might have to get out of the contract; b) any potential liability that he may face if refuses to proceed with the closing; and c) any recourse he may have against Maxine, Diana or the title insurance company if he buys the house.

END OF EXAMINATION