SANTA CLARA UNIVERSITY
SCHOOL OF LAW

FINAL EXAMINATION

PROPERTY 104
PROFESSOR CARBONE
4 QUESTIONS

MAY 1994
SPRING SEMESTER
3 HOURS 15 MINUTES

THE REVIS ED EXAMINATION RULES ISSUED IN JUNE 1993 APPLY TO THIS 
EXAMINATION (EXCEPT THIS IS AN OPEN BOOK EXAM).

INSTRUCTIONS: The exam consists of one fact pattern, a diagram and 
4 questions. The questions are designed to be read and answered in 
the order given. The weight given to each is proportional to the 
time allowed. Extra time is provided for reading the questions.

Please begin Questions I, II, and III in separate bluebooks and 
write the number of the question on the OUTSIDE of each bluebook.
[Question IV may be answered in the same bluebook as III.] Please 
write on every other line, and on every other page. Write your 
social security number on the outside of each bluebook and on the 
examination.

This is an open book examination. You may consult the textbook, 
your notes, and any materials distributed in class, but not 
commercial outlines or hornbooks.

The examination takes place in a mythical jurisdiction which has 
little law, but is strongly influenced by precedents from other 
states. If the other states split on a particular issue, you 
should discuss the different possibilities and the most likely 
outcome. This jurisdiction has adopted, however, the following 
statutes:

1) "Every conveyance of real property is void as against any 
subsequent purchaser or mortgagee of the same property, or any part 
thereof, in good faith and for a valuable consideration, whose 
conveyance is first duly recorded..."

2) a statute of limitations for all actions of 5 years;

3) a statute adopting the majority rule, which recognizes 
implied reciprocal servitudes;

4) the statute in the appendix governing implied covenants;
5) the statute in the appendix governing disclosures.

FACTS

Miranda inherits a large farm outside of a growing urban area. For several years, Miranda and her friend Carmen, who always wanted to be a farmer, farm the land together. Carmen contracts AIDS. To raise money for Carmen’s care, Miranda sells off parts of the farm. Initially, she sells ten half acre lots in the southernmost part of the farm. In the deed to each lot, Carmen specifies that:

- Grantee agrees to restrict use of the lot to one story, single family housing.
- Grantee further agrees that Grantor may continue to use all retained land for agricultural purposes.

All of the deeds are recorded.

As Carmen’s illness worsens, Miranda discontinues farming altogether. She sells off all of the remaining land except for the land immediately surrounding her single story farmhouse. Miranda is eager, however, to limit development in the area. In selling the lots, she emphasizes the quiet, open nature of the neighborhood and its promise as a residential community. She informs the purchasers that the lots will be restricted to residential use, and in each of the later deeds, Miranda inserts the following language:

- Grantees agree, on behalf of themselves, their heirs, successors, and assigns, to restrict use of the land to one story, single family housing.

All of the deeds are recorded by December 31, 1993.

Carmen, who also owns a home of her own, spends her last days on the farm, dies and is buried there. Not long after, Miranda volunteers for the Peace Corps for a two year stint in Macedonia. Before she leaves, she asks her brother, Sandiego, to take care of the property for her. Sandiego agrees, and Miranda sends Sandiego a letter indicating that, if she should not return, the property is "his." Enclosed is a deed which states that Miranda "grants the aforesaid property to Sandiego . . . , from and after June 1, 1996." The date is just over two years after Miranda’s departure. The deed is not recorded.

Shortly before Miranda’s scheduled departure from Macedonia, war breaks out. Miranda does not return, and Sandiego is unable to obtain any information about her. On July 1, 1996, he enters into a contract to sell the property to the Benedicts. The contract of sale provides that:

- Seller will convey a general warranty deed and an owner’s policy of title insurance. It shall be
understood that Seller shall have sufficient time to correct any imperfections that may exist.
QUESTION I (50 minutes)

The Benedicts come to you for advice. They plan to grow shiitake mushrooms on the land. Although they need only a small area of land, they are concerned that the neighbors may try to block their plans because of the intensive (and smelly) use of manure that such farming involves. Your preliminary investigation reveals that the owner of lot 8, one of the first 10 lots sold (and downwind from Miranda’s farmhouse), is particularly likely to object along with some of the neighbors who purchased their lots more recently. The Benedicts have asked you to evaluate any grounds that the neighbors may have to block their plans to grow mushrooms, any defenses that may strengthen the Benedicts’ position, and the likely outcome. [You may assume that the land is still zoned for agricultural as well as residential use.]

QUESTION II (50 minutes)

Part A: After considering your proposed fees to represent them in Question I, the Benedicts query whether they can get out of the contract of sale. You may assume for purposes of this question that Sandiego is prepared to deliver a general warranty deed, and an owner’s policy of title insurance identical to the one at p. 521 of the book. You may also assume that the Benedicts learn of the circumstances surrounding Carmen’s death, and the transfer from Miranda to Sandiego only after they sign the contract of sale.

Part B: The Benedicts also wish to know whether if they proceed with the closing, and if they are unable to pursue their plans for a mushroom farm, they have any possible recourse against Miranda or her estate.

QUESTION III (30 minutes)

The Benedicts resolve the issues raised in Question II, and reach a settlement with the neighbors in which the neighbors agree to drop their objections in return for the Benedicts’ promise to grow mushrooms only within a specially designed enclosed space that minimizes the smell. The Benedicts readily agree because, although the enclosure will be expensive, mushrooms grow better in dark, enclosed spaces, and they expect to recoup the expense through greater productivity. In addition, the Benedicts are pleased that the settlement, which is promptly recorded, binds not only the immediate parties, but their heirs, successors and assigns. The Benedicts proceed with the closing, and construct a specially designed building ideal for mushroom farming. Shortly after they finish construction, the county passes an ordinance banning mushroom farming within a quarter mile of any residence.

Advise the Benedicts whether they have any grounds on which to challenge the ordinance. You may assume for purposes of this question that the settlement the Benedicts reached with the
neighbors is enforceable and that the building the Benedicts constructed is useless for any other purpose.

QUESTION IV (40 minutes)

You may assume for purposes of this question that the Benedicts settle the issues raised above, and continue growing mushrooms. At the time the Benedicts bought the property in 1996, there was an unpaved, dirt road running from the street to the back of the property. Miranda had used the dirt road when she farmed the land. During the construction of the building designed for growing mushrooms, the Benedicts paved the road, widening it an additional five feet in the process. The Nabors, who owned the adjoining lot, were away during the construction, and made no mention of it when they returned. Three years later (late 1999), the Nabors, who survey the land in preparation for putting it up for sale, discover to their surprise that the road is almost entirely on their property. They promptly construct a barricade across it. The Benedicts ask you for advice. They explain that the road is critical to their mushroom farming, and there is no other way for large trucks to reach the back part of the lot. Your preliminary investigation discloses that the Nabors bought their lot in 1993, three years before the Benedicts bought theirs, and that Miranda continued using the dirt road on occasion after she sold the property to the Nabors. Advise the Benedicts as to whether they have any basis to continue using the road, and whether any right they have would continue if they (the Benedicts) sell the land.

END OF EXAMINATION

HAVE A NICE SUMMER!
§ 1113. Implied covenants. From the use of the word "grant," in any conveyance by which an estate of inheritance or fee-simple is to be passed, the following covenants, and none other, on the part of the grantor for himself and his heirs to the grantee, his heirs, and assigns, are implied, unless restrained by express terms contained in such conveyance:

1. That previous to the time of the execution of such conveyance, the grantor has not conveyed the same estate, or any right, title, or interest therein, to any person other than the grantee;

2. That such estate is at the time of the execution of such conveyance free from encumbrances done, made, or suffered by the grantor, or any person claiming under him.

Such covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance. [1872.]

§ 1710.2. [Disclosure of AIDS information in real property transfers; Preemption of field by state] (a) No cause of action arises against an owner of real property or his or her agent, or any agent of a transferee of real property, for the failure to disclose to the transferee the occurrence of an occupant's death upon the real property or the manner of death where the death has occurred more than three years prior to the date the transferee offers to purchase, lease, or rent the real property, or that an occupant of that property was afflicted with, or died from, Human T-Lymphotrophic Virus Type III/Lymphadenopathy-Associated Virus. As used in this section, "agent" includes any person licensed pursuant to Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code. As used in this section, "transferee" includes a purchaser, lessee, or renter of real property.

(b) It is the intention of the Legislature to occupy the field of regulation of disclosure related to deaths occurring upon real property and of AIDS in situations affecting the transfer of real property or any estate or interest in real property.

(c) This section shall not be construed to alter the law relating to disclosure pertaining to any other physical or mental condition or disease, and this section shall not relieve any owner or agent of any obligation to disclose the physical condition of the premises.

(d) Nothing in this section shall be construed to immunize an owner or his or her agent from making an intentional misrepresentation in response to a direct inquiry from a transferee or a prospective transferee of real property, concerning deaths on the real property. Amended Stats 1987 ch 494 § 1.