SANTA CLARA UNIVERSITY
SCHOOL OF LAW

FINAL EXAMINATION

PROPERTY 104
PROFESSOR CARBONE
THREE ESSAY QUESTIONS
15 MULTIPLE CHOICE

MAY 11, 1998
SPRING SEMESTER
3 HOURS 30 MINUTES

THIS IS A CLOSED BOOK EXAMINATION. THE EXAMINATION RULES AS REVISED 1997/1998 GOVERN THIS EXAMINATION.

INSTRUCTIONS: The exam consists of one fact pattern, a diagram, three essay questions, and 15 multiple choice questions. The multiple choice questions are last because the first four multiple choice questions depend on the facts in the essay section. Only 30 minutes are allotted to the 15 questions, and you may wish to reserve additional time.

PART I
ESSAY QUESTIONS

Please begin each essay in a separate bluebook or, if you are typing the exam, on a separate page and write the number of the question on the OUTSIDE of each bluebook. Write on every other line, and on every other page. Write your Exam ID number on the outside of each bluebook and on the examination.

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) "No conveyance, transfer or mortgage of real property, or of any interest therein, nor any lease for a term of one year or longer, shall be good and effectual in law or equity against creditors or subsequent purchasers for a valuable consideration and without notice, unless the same be recorded according to law."
2) a statute of limitations for all actions in real property of 5 years;
3) a statute recognizing implied reciprocal servitudes and third party beneficiary analysis;
4) the jurisdiction does NOT recognize deeds from a common grantor as giving record notice to subsequent purchasers unless the deed is within the burdened lot’s chain of title.
ESSAY QUESTIONS

In 1990, the State of Harmony adopted the following statute:

Development Agreements. Any city, county, or city and county, may enter into a
development agreement with any person having a legal or equitable interest in real
property for the development of property as provided in this article.

Shortly after the 1990 statute was adopted, the City of Los Ricos, an affluent suburb in Harmony,
rewrote its zoning laws to provide that all new construction required a permit from the Los Ricos
Zoning Board, that the Zoning Board had authority, on the city’s behalf, to condition such permits
on development agreements in accordance with the laws of Harmony, and that the entire city
would be zoned for single family residential housing, with the Zoning Board empowered to grant
exceptions in individual cases so long as “the requested use will not adversely affect the health,
safety, or general welfare of the public” or “tend to devalue or alter the essential characteristics of
the surrounding property.”

In 1994, the State of Harmony adopted new legislation requiring every city, county, and
other municipality to participate in comprehensive planning to address regional housing needs,
including the role of each city, county and other municipality in meeting its share of regional
housing needs for “all economic segments of the community.”

FACTS

Dante D. Veloier owns 100 acres of undeveloped land in the hills of Los Ricos. By 1991,
real estate prices are rising rapidly, and Veloier seeks a permit from the Los Ricos Zoning Board
to build single family houses on large lots that will sell for $600,000 and up. The City, however,
has almost no multi-family housing and has been under pressure from the State to assume greater
responsibility for low and moderate income residents. The Zoning Board therefore conditions its
approval of Veloier’s request on the following provisions:

1. Veloier will build at least 50 units of multi-family housing for senior citizens, with at
least 30 of the 50 units reserved for low to moderate income residents; and,

2. Veloier will provide a shelter for battered partners either by constructing one on the
site or financing the construction of such a shelter elsewhere within the region.

Veloier, eager to capitalize on the housing boom, agrees and begins to build. He draws up a
master plan, which displays a residential area of single family homes on the western portion of the
100 acres, and an undeveloped area on the eastern portion. He sells the first lot with a provision
that the lot “is to be restricted to single family residential use” and that “all land retained by the
grantor is to be similarly bound.” After consulting a lawyer, he deletes the clause referring to
“land retained by the grantor” from subsequent deeds, selling a total of 25 lots. All of the deeds
are recorded. [See map].
In early 1993, as the real estate market levels off, he sells the northern portion of the remaining land to Sally Senior, for use as an assisted living center for senior citizens that, when fully constructed, will satisfy the development agreement. [Space designated X on the map.] Veloper also enters into a 10 year lease for the southern portion of the lot to a Battered Partners’ Center. [Space designated Z on the map.] All of the deeds are recorded.

The Battered Partners’ Center opens shortly after bringing mobile homes onto Lot Z. The local TV news does a story on the center, over the center’s objections, highlighting the fact that it is the only such residential shelter in the county. Within a week of the story, a shelter resident’s estranged husband bludgeons her to death on the sidewalk in front of the center. The following month, security officers open fire on another abusive partner who threatens one of the residents, and there are several stalking incidents reported to the police. The Center responds to these incidents by increasing security, and adding bright lights that remain on all night. It is not unusual for the police to stop community residents walking by the shelter, or for police sirens to be heard during the night.

**Part A:** Consider any possible claims neighborhood residents might have against the Center or Veloper arising from the Center’s operation, any possible defenses, the likely remedies if they prevail, and their prospects for success. (40 minutes)

**Part B:** The litigation in Part A is settled and the Battered Partners’ Center remains in operation. Sally Senior loses her financing due to the unfavorable publicity and declares bankruptcy. In 1993, Simon Degree buys the property at a bankruptcy sale for half of what Senior paid Veloper. Degree petitions the City Zoning Board for permission to build a sports club on the premises or, alternatively, to subdivide the land for single family housing. He argues that, with the continued operation of the Battered Partner’s Center, it is impossible to profitably build senior citizen housing. The Board denies his petition, citing the agreement with Veloper. Advise Degree as to any possible grounds he or Veloper may have for challenging the Board’s action. (65 minutes)

**Part C:** Veloper dies intestate in May, 1997, leaving his three children Ann, Bill, and Chuck as his only heirs. At the time of his death, Veloper still owns lots A, B and C as indicated on the map. The heirs cannot agree, and the court awards Lot A to Ann, B to Bill, and C to Chuck, and designates the three siblings as tenants in common with respect to the remainder of the estate.

Lots A and C are still undeveloped, but, shortly before his death, Veloper built a large house on B, transporting most of the material over the dirt road on Degree’s land. The dirt road has existed in the same location since the early nineties, and Veloper used it during the period he owned the land, and sporadically thereafter. Neither Senior nor Degree have ever objected. Since Veloper’s death, only Bill, who lives in the house on Lot B has used the dirt road.

It is now May 1998 and Chuck would like to sell Lot C, but a real estate agent has informed him that he will not be able to get much for the land without a right of access. Discuss all of the possible grounds Chuck might have for claiming a right of way from the various neighboring lots, and his prospects of prevailing on each. (45 minutes)