

PART II (2 hours, 9 minutes)
ESSAY QUESTIONS (1 question, 3 subparts)

1. Unless you are typing the exam, please write your answers in the bluebooks provided. Write on every other line and on every other page. (*I.e.*, do not write on the backs of the pages. The ink shows through.) Begin each question in a separate bluebook. Write your student I.D. on the exam and on the outside of each bluebook.

2. If you believe that there is an error or ambiguity in any of the questions, note the error or ambiguity and any assumptions you are making in answering the question.

3. You are in the State of Misery, a mythical jurisdiction in which there is very little law and in which the courts are influenced by precedents from other states. The jurisdiction has, however, adopted the following statutes:

- a. a statute of limitations of **five** (5) years for all property actions;
- b. a **race-notice** recording act; and,
- c. a statute recognizing implied reciprocal servitudes and third party beneficiaries.

FACTS

D. Vel O’Purr buys a large tract of land in a growing suburb. She draws up plans for 24 units, which she plans to sell as condominiums, and begins construction. She sells two units in the first complex (units 1A and 1B), with restrictions in the deeds that provide that the units shall be part of Parkside Village Condominiums, the owners shall be members of the Parkside Village Condominium Association, yearly fees of \$1000 per unit shall be due and payable to the Association, and the Association shall have the right to promulgate further rules of community governance and the duty to maintain the tennis courts, playground and other common areas for the benefit of the community. The two deeds are recorded. (See diagram).

O’Purr completes the construction, but the condo market has tanked and she decides to sell the remaining units as individual homes. She contacts the owner of unit 1A, who signs an agreement rescinding the condominium agreement. O’Purr keeps the agreement in her office, but does not record it. She discovers that the owner of unit 1B has been badly injured in an automobile accident, and his distraught relatives refuse to discuss the matter with O’Purr.

O’Purr markets the remaining units as “Parkside Village Homes.” She sells units 1C and 1D without restrictions. She then sells all of complexes 2, 3, 4 and 5 with deeds providing that each home will be restricted to single family residential use, the owners shall belong to the Parkside Village Association, yearly fees of \$2000 per home shall be due the Association, and the Association shall maintain the playground, tennis courts and other common areas. All of the deeds are recorded. In selling these homes, O’Purr uses the term “Parkside Village Homes” in her ads and in the deeds to complexes 2, 3, 4, and

5, but she keeps on display in her office the original plans for Parkside Village Condominiums.

O’Purr sells Complex 6 to the local Catholic diocese for use as a hospice for terminally ill nuns. The deed, which is recorded, has no restrictions. The diocese revamps the complex so that the three units are connected, and there are offices for the round-the-clock custodial staff.

O’Purr sells Complex 7 to three older couples who have decided to coordinate their living arrangements. Meals for all three couples are served in one of the units. A full time health care worker lives in one of the other units and assists with all three. The deeds to the three homes, which are recorded, contain no restrictions. At the time Complexes 6 and 7 are sold, however, O’Purr still has the plans for Parkside Village Condominiums on display in her office.

QUESTION A (64 minutes)

The tennis courts need maintenance, and the playground, which is littered with broken bottles, has fallen into disrepair. The area is an eyesore, and it has become a hangout for teens who wander in from a nearby park. Eight years after the sale of the last home, the owners of units 1A, 2C and 7B sue to compel the Parkside Village Association to make repairs. The Association, which has not met in 4 years, joins the diocese (the owner of Complex 6), and the owners of units 1B, 1D, 3C, and the units in Complex 7 and counterclaims for payment of their association fees. The diocese, the owner of 1D, and the residents of Complex 7 have never paid association fees, and the owners of units 1B (who purchased the unit from the estate of the original owner) and 3C have not paid for several years. Assess the various causes of actions, the strength of the defenses, and the likely outcome.

QUESTION B (45 minutes)

The Association settles the litigation above and sells the area on which the playground and tennis courts are located to the XYZ Club, which plans to build an athletic club with a new indoor swimming pool where the playground now stands. When the XYZ Club applies to the city for a permit for construction, the city conditions the permit on the Club’s ability to show a right of way to the property. You have been retained by the XYZ Club. In the course of your investigation, you learn that 1) the Club’s general warranty deed makes no mention of an easement, and the Association members oppose opening the roads in the complex to Club members because of concerns about noise, traffic and parking; 2) the Club secured a standard title insurance policy when it purchased the land; 3) for the last six years, the Association has permitted outsiders to use the tennis courts for \$5 per hour. Most of the tennis players have come through the park located directly below the open area on the map, and the park lists the tennis courts among the park facilities available to the public; 4) the state is considering selling the park to a private developer; and 5) the state has waived sovereign immunity as

a defense to rights of way over public lands. Advise the Club of every possible basis for a right of way over any of the surrounding lands, any possible claim against its insurance carrier, and the likelihood of prevailing.

QUESTION C (20 minutes)

In an answer not to exceed **250** words (i.e., approximately one typed page double-spaced or two bluebook pages), compare the constitutional bases, if any, on which XYZ might challenge two scenarios:

1) The XYZ Club does not have an easement as a matter of right. The city conditions grant of an easement over park land, which the Club needs if it is to have any economically feasible use of the property, on the Club permitting public use of its facilities 10 hours a week.

2) The XYZ Club does have an easement as a matter of right. The city conditions grant of a permit to build the swimming pool on the Club permitting public use of its facilities 10 hours a week.

The bulk of the credit for this question will go to the explanation of why one scenario creates the stronger constitutional argument for XYZ than the other.

END OF EXAMINATION

ENJOY THE SUMMER!