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 7, 1991
SPRING SEMESTER
3 HOURS

THE REVISED EXAMINATION RULES ISSUED IN OCTOBER 1990 APPLY TO THIS EXAMINATION.

INSTRUCTIONS: The exam consists of three questions and you must answer all three.

Please begin each question in a separate bluebook. Identify the question you are answering on the outside of the bluebook. You should write only on one side of every page and on every other line.

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

The examination takes place in a recently established, mythical jurisdiction. There are very few cases in this jurisdiction deciding property issues, and the courts tend to be strongly influenced by property precedents from other states. If the other states split on a particular issue, you should discuss the majority and minority positions and indicate which position you think should be adopted.

THE STATUTE OF LIMITATION FOR ACTIONS IN REAL PROPERTY IN THIS JURISDICTION IS FIVE (5) YEARS. THE JURISDICTION HAS A RACE-NOTICE STATUTE IDENTICAL TO THE CALIFORNIA STATUTE ON PP. 707-708 OF THE TEXTBOOK.

Each question contains directions at the end which indicate how you should approach the answer. If, in your opinion, there are errors in a question, please note the error, assume a reasonable position, and note your assumptions.

The weight given to each question is proportional to the time allowed.
QUESTION I (1 hour 10 minutes)

Developer acquires a hilly tract of land surrounding a lake, and divides it into 20 lake front parcels. The deed to the first lot specifies that the land is to be developed "only in accordance with the community master plan." The deed is recorded. The master plan restricts the community to "single family residences" and provides that all community residents will enjoy a right to use the shoreline. The developer keeps the master plan on file in his office and routinely shows it to prospective purchasers, but never records it.

Developer also persuades the county council to zone the area for "single family residences and compatible recreational use." "Family" is defined as "any number of individuals related by blood, marriage or adoption" or "not more than six unrelated individuals."

Developer sells the second lot to Smith pursuant to a deed that specifies that Smith, on behalf of his successors, heirs and assigns, accepts the lot subject to restrictions limiting development "to single family residences," and granting a right to all other community residents to use of the shoreline. The deed also provides that all land retained by the grantor shall be similarly restricted to single family residences and subject to community rights to the shoreline. This deed is not recorded.

Developer sells lots 3-20 without restrictions. The lots are nonetheless used for single family purposes except as noted below. Five years after the sale of the last remaining lot, Smith sells lot 2 to Jones. Jones records the deed, attaching to it the deed from Developer to Smith.

Ten years after Jones buys lot 2, a non-profit group purchases lot 3 for use as a camp for underprivileged children. The camp offers both day and overnight activities. Overnight campers, in groups that never exceed six at one time, sleep in tents provided by the camp. Community residents complain that the campers trample flower gardens planted near the water, that they are loud and noisy (the neighbors are especially incensed about disturbances at 3 & 4 a.m.), and that the campers' rough play threatens the safety of other children in the community.

The community residents file suit, seeking to enjoin operation of the camp or, in the alternative, use by campers of any part of the shoreline other than that located on Lot 3. You represent the camp. Explain any possible legal basis for the residents' suit, and any defenses the camp may have. You may assume that community residents have enjoyed hiking and other use of the lake shoreline for over fifteen years and that there are no public swimming facilities in the county.
QUESTION II (65 minutes)

Developer combines the fifth and sixth lots and builds a large house overlooking the lake. Later, he encounters hard times and redivides the two lots. First, he sells the upper portion of the lot to his brother-in-law. Several weeks later, he finds buyers for the lower portion, which adjoins the lake, and sells the property to Lydia and Vivian Grymm, "jointly during their lifetimes." The deed to the Grymm sisters' land (Lot 5) provides that the Grymm sisters acknowledge on behalf of "their heirs, successors and assigns" that "a perpetual easement of right to receive light, air and an unobstructed view of the lake is reserved for the benefit of lot 6." The deed is recorded.

Initially, the sisters share a small cottage on the western part of the lot. After Lydia marries, however, the sisters decide to build a second cottage on the eastern part of the lot. To avoid interference with the view from Lot 6, the house is constructed only 20 feet from the shoreline in violation of a county ordinance that prohibits development within 25 feet of the lake. Although the sisters jointly plan and pay for the construction of the new cottage, only Vivian lives there.

Some time later, Vivian dies. At her death, Lydia discovers a will devising all of Vivian's property to George and a deed in a shoebox in the original cottage (the one Lydia and her husband now occupy) transferring her interest in the property to George.

George hires you as his attorney. He wants to know 1) what his interests in the property are; 2) if he has an interest in the property, what he should request in a partition action and whether he is likely to receive it; and 3) whether the owner of Lot 6 can enforce the restriction on the use of the land. You may assume for purposes of this question that the single family restrictions and zoning provisions described in Question I do not apply.

QUESTION III (45 minutes)

Assume for purposes of this question that Lot 5 is partitioned. George receives the portion of the property on which Vivian's cottage is located. He enters into a contract to sell the property to Rachel. The contract provides that:

Seller will deliver to buyer a general warranty deed conveying good marketable title subject only to liens and encumbrances of record and an owners policy of title insurance, guaranteeing to the buyer good and indefeasible title. If objections are disclosed, Seller has thirty days to cure them.
After the contract is signed, Rachel learns of the existence of Lot 6's easement and the restriction on building within 25 feet of the lake. George informs her that the cottage is relatively easy to move and that he can have it moved the additional 5 feet within the month. He also tells her that he is prepared to deliver a standard warranty deed excluding only easements and encumbrances of record and a title insurance policy identical to the one starting at p. 671 of the textbook.

Rachel would like to get out of the contract. She had planned to demolish the cottage and build a much larger house in its place. She fears that, with the restrictions, she will not be able build the house that she had planned and that she will have great difficulty selling the house for the contract price. She asks you to advise her whether she has grounds to rescind the contract and, if not, whether she will be able to recover anything under either the standard warranty deed or the title insurance policy. You may assume for purposes of this question that the easement of view and the 25 foot building restrictions are valid and enforceable, but that no other restrictions apply.

END OF EXAMINATION