

Property
Section II

Professor William Fisher

May 20, 1998

Pick up: 8:30 -- 9:30 A.M., Ropes-Gray Room

Return: 3:30 -- 4:30 P.M., Ropes-Gray Room

This is an eight-hour, "take-home" examination. If you wish to take the exam in a quiet room on campus, you may use Hauser 104.

The exam is "open book" in the following sense: You may read and rely on any written material drafted before the start of the test by you or anyone else. You may not consult in any way with anyone else while preparing your answers.

Do not write your name on any part of the exam. Write your student I.D. number on the cover of each of your exam books or at the top of each printed page. If you are handwriting, please write legibly, skip lines, and write on only one side of each page. If you are typing, please double space.

The exam contains two questions. Question #1 contains only one part, which you must answer. Your answer may not exceed 2000 words.

Question #2 contains two options. You should answer one and only one. Your answer may not exceed 2000 words.

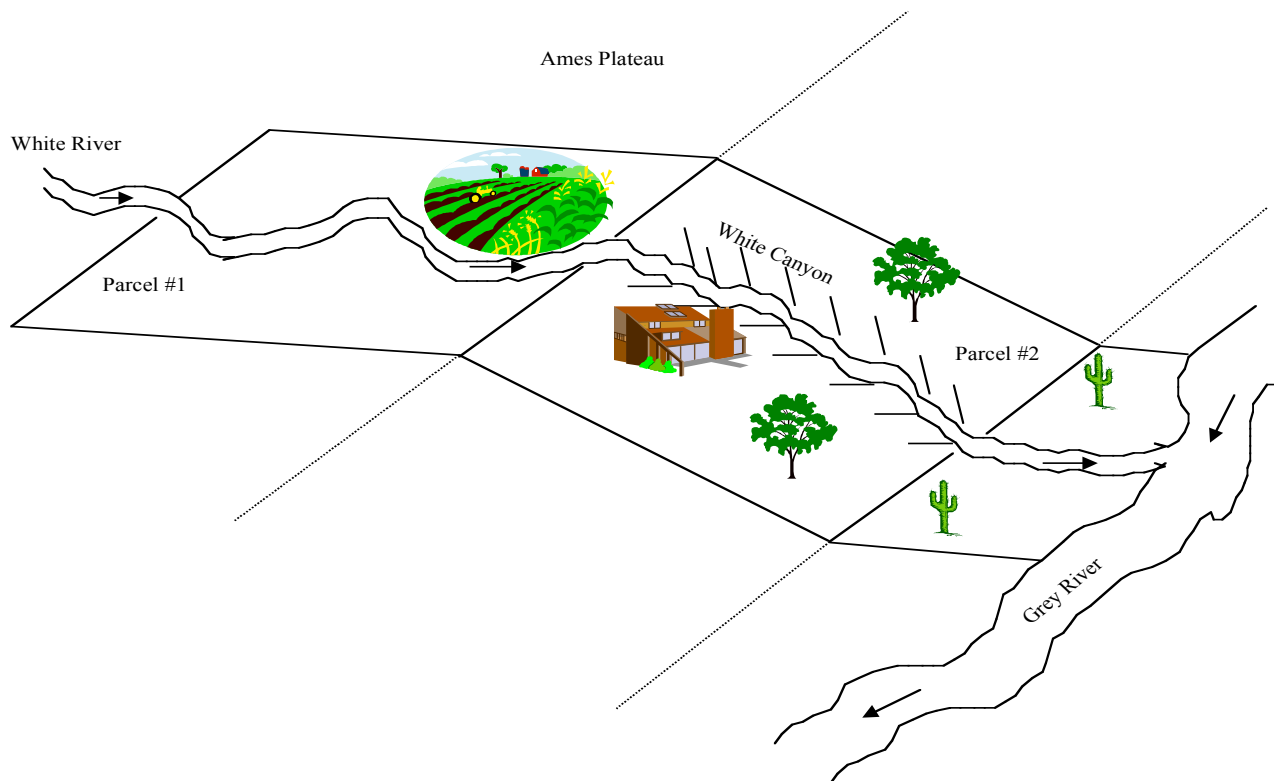
At the end of your response to each question, you must either indicate exactly how many words are contained in your response or provide a good-faith estimate of the number of words in your response plus a brief description of how you made that estimate.

Because they are weighted equally in the grading, you should devote approximately equal time and thought to Question #1 and Question #2.

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Question #1

In 1975, Alex Angel purchased Parcel #1, an undeveloped 1000-acre tract on the edge of the Ames Plateau -- a fertile, temperate region in the state of Ames. (See the map below.) Through the center of the tract meandered the White River, a medium-sized, clean, spring-fed stream. Cutthroat trout flourished in its waters.



Parcel #2 -- the tract immediately adjacent to Parcel #1 -- was owned by Bonnie Bacchus. Steep and rocky, it was ill-suited to agriculture. The White River tumbled down Parcel #2 in a dramatic, boulder-filled gorge, known locally as the White Canyon. The water in the canyon was also full of trout. Upon leaving Parcel #2, the White River traversed a short, barren lowland zone and then joined the highly polluted Grey River.

Both Bonnie and her husband, Carl, were architects. They lived in a large, modern, wood-frame house overlooking the canyon. Water for drinking and domestic purposes they drew from a deep well near the house. Their two grown children, Deborah and Edward, lived and worked in Ames City, a two-hour drive to the south.

In 1976, Alex established an eggplant farm on a 100-acre portion of Parcel #1. He irrigated the plants using water from the river. Approximately one half of the water that he spread on the fields either was absorbed by the plants or evaporated. The remainder percolated through the ground and back into the river, carrying with it residues of the fertilizers and pesticides that Alex used to enhance his crop. The trout population in the river began to diminish.

In 1977, Bonnie wrote a will that provided, in pertinent part: "Parcel #2 I bequeath to my beloved husband Carl for his natural life, then to those of my grandchildren who are registered Democrats." The will contained no residuary clause. Two disinterested witnesses signed it.

In 1980, Alex increased the size of his farm from 100 to 200 acres. To handle the larger crop, he doubled his workforce from 20 to 40 employees. His consumption of water from the river increased proportionately. The resultant higher concentrations of fertilizers and pesticides in the stream further reduced the trout population.

In 1982, Bonnie died. Grief-stricken, Carl moved to Ames City. He, Deborah, and Edward occasionally visited Parcel #2 on weekends, but the house and land were deserted most of the time.

In 1985, Alex increased the size of his farm again -- from 200 acres to 500. He was now employing 80 people full-time. To irrigate the fields, he drew so much water from the river that the water level dropped noticeably. The increased runoff killed all the remaining fish downstream of his farm. No one noticed.

In February of 1998, Carl died. At the time, Deborah had two children, Frank (age 23) and Gertrude (age 21). Both were registered Democrats living in Ames City. Edward had one child, Holly (age 2). Frank had little interest in using the house on the canyon, but thought that the property could generate significant rental income. Gertrude, by contrast, loved to hike and fish and hoped to spend much of her time in the family home.

On April 1, 1998, Gertrude happily moved into the house. The following day, she walked all over the parcel and tried fishing in the river. She was surprised when she neither caught nor saw any fish. On April 15, she paid \$500 to have the stream stocked with young trout. All of the fish quickly died. Dismayed, she had the water tested and discovered the high concentrations of fertilizers and pesticides. The testing agency advised her not to swim in the stream. (Alarmed, she had the water in the well tested, but was relieved to find that it remained pure.) On May 1, she approached Alex and demanded that he cease ruining the water in the river. He refused, explaining that he could not continue to operate the farm without using fertilizers and pesticides. He offered her a substantial sum of money to "just forget about the whole thing." She brushed aside the offer and threatened to use "every legal means at my disposal to clean up the river and make you pay for the injuries

you have caused." That evening, she called her brother and explained the situation. He was unsympathetic. "We should just take the money," he argued. "What's a few fish?"

Meanwhile, El Niño continued to wreak havoc on the climate of the state. A smaller than usual snowpack, combined with an unusually light spring rainfall, reduced water levels in the White River to unprecedented lows. By May 15, Alex was consuming, through irrigation, two thirds of the water in the stream. The ground was so dry that the amount of water percolating back into the stream diminished sharply, reducing the seriousness of the contamination but also reducing further the volume of water in the canyon. Partially as a result, the water table (the level of the "underground percolating water" available to wells) in the area dropped. As a result, Gertrude found that the well no longer produced enough water both to satisfy her domestic needs and to water her lawn.

For the past few weeks, Gertrude has been mulling over her options. This morning, to her delight, she read a story in the Ames Times, indicating that the state legislature had just adopted a statute entitled the "Wild Streams Preservation Act." The governor has expressed a willingness to sign the bill. The stated objectives of the law are to increase tourism in the state and to preserve endangered stocks of fish. It mandates the creation of a "Stream Preservation Committee" (whose members will be appointed by the governor), which will have the authority to designate portions of rivers and streams in the state that are either unusually beautiful or unusually in need of preservation. The statute then prohibits persons who own land either adjacent to or upstream of those areas from altering in any way the natural flow of the water in the stream. Gertrude hopes that the new committee will designate the White Canyon as one of the protected sites. Alex, upon reading the same newspaper story, was outraged.

Write an essay containing no more than 2000 words analyzing the rights and potential liabilities of all of the players in this drama. If you need more information concerning either the facts of the case or the law of Ames, you should state in your essay what that information is and why it is relevant. (You may ignore, for the purposes of your answer, the Clean Water Act and all other federal environmental-protection statutes or regulations.)

Question #2

Answer one and only one of the following two options. Your answer may not exceed 2000 words.

Option A:

"American property law restricts excessively the ability of persons who hold or acquire interests in land to rearrange them by contract. There is no good reason, for example, why adjacent landowners should not be permitted to enter into binding agreements (whether they are called easements, covenants, or equitable servitudes) concerning the ways in which their respective parcels may be used -- and to commit themselves to passing those restrictions on to their successors in interest. Similarly, there is no good reason why a landlord and a tenant should not be permitted to specify which party is responsible for maintaining the premises, the amount of rent the tenant must pay, who shall be liable for injuries suffered on the premises, etc. Finally, the purchaser of a condominium should be bound by any covenant, condition, or restriction specified in the declaration of condominium (or adopted pursuant to voting procedures specified in the declaration). Few benefits and many harms result when courts refuse to honor voluntary agreements of these various sorts." Comment.

Option B:

During this semester, we examined four philosophic perspectives on property law: Labor-desert theory; Utilitarianism; Personality theory; and Social-planning theory. Select two of the four perspectives. Discuss the ways in which each has been -- or might be -- brought to bear upon the following topics:

- (a) the case of *International News Service v. Associated Press*;
- (b) the treatment of professional degrees and similar intangible assets upon divorce; and
- (c) property rights in bodily parts.

On the basis of these comparisons of the two perspectives, which do you find more helpful?

End of exam