

## **Property**

### Section 4

Professor William Fisher

May 17, 2006

Pick up: 8:30 -- 9:00 A.M., in Pound 107

Return: 3:30 -- 4:30 P.M., in Pound 107

This is an eight-hour, "take-home" examination.

The exam is "open book" in the following senses: In preparing your answers, you may rely upon any of the materials assigned in the course, any of materials distributed in class, any notes prepared before the start of the exam by yourself or by any other present or past student in the course, and any other material that you have actually read before the start of the exam. Once the exam begins, however, you may not do any additional research. Nor, after the exam begins, may you consult in any way with any other person concerning any aspect of the exam.

Do not write your name on any part of your response to the exam. If you are handwriting, please write legibly, skip lines, write on only one side of each page, and write your student I.D. number on the cover of each of your exam books. If you are using a typewriter or computer, please double space and write your student I.D. number on each page of your answer.

The exam contains four questions. You must answer all. The word limits for your answers are as follows:

Question #1: 500 words;

Question #2: 1000 words;

Question #3: 750 words;

Question #4: 750 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.

In the grading, the questions will be weighted as follows:

Question #1: 20%;

Question #2: 30%;

Question #3: 25%;

Question #4: 25%.

**Question #1**

Ophelia, a resident of Boston, has two children: Steven and Daphne. Steven and his wife, Trudy, have two children, Ursula and Victor. Daphne and her husband, Eric, have one child, Frank. Steven likes to ski; Daphne likes to sail. Ophelia's husband, Paul, died many years ago, leaving his entire estate to Ophelia. Ophelia dislikes Trudy and thinks Eric is a philanderer.

In 2006, Ophelia dies, leaving her chalet in the Berkshire East Ski Resort (located in Charlemont, Massachusetts) "to Steven for life, then to his children jointly, but if by the age of 21 any of Steven's children disclaims interest in New England skiing, then the sibling(s) of that child shall take his or her share, jointly." Ophelia's cottage on Cape Cod she leaves "to Daphne and Eric as tenants by the entirety, but if they should ever divorce, then Daphne shall get the property outright."

Who has what rights or interests? If you need more information, say what that information is and why it matters. Your answer may not exceed 500 words.

## Question #2

Nancy and Owen Pastoral (your aunt and uncle) love the outdoors. Their favorite leisure activities are hiking and watching birds. In the fall of 2005, they retired from their well-paid jobs as computer programmers, put their house in San Francisco up for sale, and began looking for an old farmhouse in a rural area where they could find some peace and quiet. In December, they located what seemed the perfect place: a small house, originally built in the nineteenth century, located on a five-acre parcel in the town of Rolling Meadows in the state of Ames. The house suited their tastes well, and they were charmed by the pond on the premises, which seemed likely to attract migratory birds and would provide a lovely swimming hole in the summer. Sam Strong, the current owner (in fee simple), was eager to move to Florida, and offered to sell the place to the Pastorals for the remarkably low price of \$500,000. (Comparable parcels in the area were selling for \$700,000 and more.)

The parcel is bordered on the north, east, and south by working dairy farms. To the west is a large tract of land that used to be a farm but is now owned by Tina Transient – a retiree much like the Pastorals. On the border between Transient’s land and Strong’s land is a row of tall evergreen trees. Immediately to the west of the trees is an even taller modern windmill. A map of the area is set forth below.



When the Pastorals first visited the area, there was snow on the ground, Transient’s house was empty, and the windmill was not operating. The Pastorals asked Strong about the neighbors. He

replied, “Well, the farmers pretty much keep to themselves. Transient is a little eccentric – belongs to Greenpeace, gardens a lot, and believes in ‘living off the grid.’ She’s never around in the winter though; I think she goes to Costa Rica.” The Pastorals then asked whether Strong was ever bothered by the windmill. He answered, “No.” “Do you know when it was built?” they asked. “1992, I think,” he replied. “It seems pretty durable.” (A photograph of the windmill, seen from the east, is set forth below.)



Reassured, the Pastorals formally offered to buy the parcel for \$480,000. Strong quickly accepted. The Pastorals did the usual inspections and title search, discovering nothing troubling. The closing was held in late February, and the Pastorals moved into their new house on March 1.

Transient returned from Costa Rica in mid-April, opened up her house, and a week later began operating the windmill. The prevailing wind in the area is from the west, and in the spring it is quite strong. As a result, the windmill generated considerable power, which Transient used for two purposes: providing electricity for the lights and appliances in her large house; and pumping water from a deep well on her property, which she then used to irrigate her enormous vegetable and flower gardens.

At first, the Pastorals were pleased with Transient and found her eccentricity endearing. But when she activated the windmill, they changed their minds. It sounded like a giant vacuum cleaner, drowning out the sounds of the returning songbirds. At night, the Pastorals were forced to keep their windows closed in order to be able to sleep. Worst of all, three or four times a week, a bird would fly into the whirling blades and be killed. Usually, the dead bird fell onto Transient’s land. But roughly once a week, the carcass was tossed by an upswinging blade over the row of trees onto the Pastorals’ land. Transient offered to retrieve and dispose of the birds, but the Pastorals, appalled by the carnage, refused, demanding that Transient find a way to stop the killing.

In early May, the Pastorals noticed that the water level in their pond was dropping rapidly. They hired a hydrologist to locate the source of the problem. He informed them that Transient’s extraction of large amounts of water from her well was causing the water table in the area to drop. “If she keeps it up, the pond will likely go dry by July.” “But don’t worry,” he assured them. “The autumn rains will fill it up again.”

You’ve just received an email from the Pastorals, recounting this story and asking you if they have any legal recourse against anyone. Write them a letter, no longer than 1000 words, providing them advice. If you need to know additional facts concerning either the case itself or the law of Ames, say what those facts are and why they matter.

**Question #3**

Pick **one** of the following two options.

(a) You are an aide to a legislator in the state of Ames. Long ago, Ames adopted the Standard State Zoning Enabling Act – described on pages 971-974 of the Dukeminier and Krier casebook. Your employer believes that, as it has been interpreted by the courts, the enabling act contributes to the haphazard and short-sighted ways in which zoning is commonly practiced in the United States. She asks you for a memorandum, no longer than 750 words, discussing what (if anything) is wrong with the current system of municipal zoning and how the Ames statute could and should be amended to remedy those problems. (You ask her for more guidance, more information concerning her own views on the matter, but she insists that she'd prefer to hear your own views first.)

(b) In the spring of 2008, the Democratic Party and the Republican Party are both in disarray. Jean Jones, a political outsider, mounts a serious third-party campaign for the Presidency, insisting that “we need fresh thinking on every issue.” Intrigued, you agree to work on her campaign. Your first assignment: draft a position paper, no longer than 750 words, describing how the federal anti-discrimination laws governing property should be revised.

**Question #4**

Pick **one** of the following two options. Your answer may not exceed 750 words.

(a) Which of the four Property Theories that we studied this semester do you find most helpful? How does that theory enhance your understanding of the merits and demerits of the law governing the relationship between a landlord and a residential tenant?

(b) Which of the four Property Theories that we studied this semester do you find most helpful? How does that theory enhance your understanding of the merits and demerits of the current “takings” doctrine?

**END OF EXAM**