

Property

Section 7
Spring 2011
Professor William Fisher

This examination will be administered in two parts. Part I consists of a “take-home” test. It will be distributed on April 22, 2011 and is due no later than 5:00 p.m. on May 10, 2011. Part II consists of a three-hour in-class test, administered from 2:00 p.m. to 5:00 p.m. on May 11, 2011.

Instructions for Part I

This portion of the exam is open-book. In preparing your answer, you may read any material you wish. You are also free to discuss your answer with classmates or other persons. However, you must indicate in the footnotes of your answer the sources of any ideas you have derived from others.

Your answer to Part I may not exceed 2000 words. You must submit it before 5:00 p.m. on May 10 to the Registrar’s office, using the Exam 4 software.

Instructions for Part II

Part II of the exam consists of six questions. You must answer all six. You will have three hours to complete your answers.

This portion of the exam is closed-book. You may not bring any written materials into the exam room.

The Exam 4 software mode, for this portion of the exam, is “CLOSED.” This means that you will not have access to the hard drive of your computer or to the Internet. Nor will you have access to your answer once you have submitted it.

Be sure to include in your response your five-digit Exam ID number. To preserve the anonymity of your response, do not write your name on any part of your response and avoid including any information that would enable the instructor to identify you.

Your answers to the questions in the exam will be weighted as follows:

- Part I: 50%
- Part II, Question #1: 7%
- Part II, Question #2: 7%
- Part II, Question #3: 7%
- Part II, Question #4: 7%
- Part II, Question #5: 7%
- Part II, Question #6: 15%

Part I

Choose one and only one of the following options:

- (A) Select a judicial opinion assigned in this course with which you disagree. Write a dissenting or concurring opinion. You should feel free, in your opinion, to deploy policy arguments that are relevant to the issue(s) presented by the case.
- (B) Select one of the three theories of property we examined this semester and one of the major doctrines considered in the course. (For these purposes, a “major doctrine” is a topic designated by a capital letter in the course syllabus.) Apply the theory to the doctrine in a way not discussed in the readings or in class. Then indicate how, if at all, your analysis illuminates the strengths or limitations of the theory that you employed.
- (C) “The theories upon which courts rely when defining the constitutional limitations on the power of governments to regulate private property are – and should be – different from the theories upon which courts (and other lawmakers) rely when creating and allocating property rights in the first instance.” Comment.

Your answer may not exceed 2000 words.

Part II

Question #1:

Andrew and Beatrice Baxter own a house in Cambridge, Massachusetts, as tenants by the entirety. In addition, Andrew owns shares in Microsoft valued at \$1 million, and Beatrice owns a cottage in Chatham, Massachusetts, valued at \$1 million. They have no other significant assets. They have three children: Carl, Deborah, and Edward. In May 2011, Beatrice dies, leaving a will that provides, in pertinent part: “I give my Chatham cottage to my beloved husband Andrew for life, then to Carl if he is able to avoid all use of alcohol for one full year; if not, to Deborah and Edward jointly. All my remaining assets I give to the Sierra Club.”

If this language were given effect, who would have what interests in the cottage? (In your answer to this question and in your answers to all succeeding questions, you may use the abbreviations set forth in the appendix.)

Several of the members of Beatrice’s family are unhappy with this provision of her will. Could any of them successfully challenge the provision?

If you need more information to answer these questions, say what that information is and why it matters. Your answer may not exceed 500 words.

Question #2:

O devises his chalet in Vermont “to my children for life, then to the first of my grandchildren to graduate from Harvard Law School, but if none of my grandchildren has graduated from Harvard Law School within 21 years after the death of my last surviving child, then the chalet shall go to Harvard Law School.”

Would any aspect of this devise violate the classic, common-law rule against perpetuities? Explain why or why not. Your answer may not exceed 200 words.

Question #3:

Six couples own modest houses on adjacent one-acre parcels on a quiet, dead-end street in a rural town in the state of Ames. They all bought their houses in the 1970s when they were young. They soon became close friends. Their children played together (before they grew up and moved away). They shoveled each others' driveways, looked after each others' pets, and took care of each other in times of crisis. All are now nearing retirement. None of the couples is eager to move away, but they recognize that financial constraints or deteriorating health may soon force them to do so.

At a dinner party last week, the twelve friends were lamenting the apparent diminution in community feeling in other neighborhoods in the town. Most of the newcomers to the area, they agreed, were distressingly selfish and ambitious. They erected large houses that they could barely afford, girded their lawns with fences, and paid little attention to their neighbors. The friends all expressed anxiety that, if one of the six couples left the neighborhood, the purchaser(s) of the vacated house would behave in this fashion. One of the friends suggested that they make a pact. They would all agree (a) never to build fences between their parcels; (b) to allow any member of one of the six households to play in any of the other five yards (during daylight hours); and (c) never to build any house (or other structure) on their parcels that would have a total floor area of more than 3000 square feet. Most important, they would devise a way to ensure that anyone who purchased one of their parcels would be bound by these constraints. All of the friends quickly agreed to the plan.

Is it possible for the six couples to achieve what they wish? If so, how? If you need more information to answer these questions, say what that information is and why it matters. Your response may not contain more than 500 words.

Question #4:

The state of Ames adheres to the “natural flow” rule (also known as “civil-law” rule) governing diffuse surface water. Gus and Hanna own adjoining parcels of land in a suburb of Ames City. Gus’ land is uphill from Hanna’s land. Hanna lives on her parcel in a small ranch house. Twelve years ago, Gus built an apartment building on his property. Adjacent to the building, he built a 20-car parking lot for his tenants. The apartment building and parking lot reduced the permeability of Gus’ land. The result is that, during rainstorms, water sometimes spills from Gus’ property onto Hanna’s property. Once or twice a year, the spillage is sufficient to cause Hanna’s basement to flood. When this problem first became evident, Hanna complained to Gus. Gus apologized but did nothing to ameliorate the problem. Hanna and Gus have not spoken since.

Hanna has put her house up for sale. Ingrid is considering buying it. Hanna has explained to Ingrid the problem with the basement and its cause. What rights, if any, does Hanna have against Gus? If Ingrid purchased Hanna’s house and land, what rights, if any, would Ingrid have against Gus?

If you need more information to answer these questions, say what that information is and why it matters. Your answer may not exceed 500 words.

Question #5:

Joan is a close friend of yours. She currently lives in Los Angeles, but will be attending a business school in New York City starting in September of 2011. After she graduates, Joan plans to start a business somewhere in the United States, but does not yet know the state in which she will eventually settle or the nature of the enterprise she will launch.

For the past two years, Joan has been in a stable heterosexual relationship. She and her partner, Karl, currently reside together and share expenses, but maintain separate bank accounts. Karl plans to accompany Joan to New York. Spurred by the impending move, Joan and Karl have been discussing marriage. Joan is happy in the relationship, but acknowledges that, statistically, there is roughly a 50% chance that she and Karl will eventually part.

Joan sends you the following email message:

“An awkward question: If Karl and I divorce someday, will it matter whether we got married before I started business school or after I graduated?”

Write Joan a response containing no more than 500 words. If you need to know additional facts to provide her advice, say what those facts are and why they matter.

Question #6:

The residents of Madison, Wisconsin have traditionally been more politically liberal than the residents of most other cities and towns in the state. The Madison Common Council (the agency with authority to modify the city's zoning code) is considering adopting a zoning ordinance that would forbid the construction anywhere in the city of any building or other structure that would cast a shadow on a solar collector. At a public meeting discussing the proposal, Louise Landis, the owner of a small vacant lot in the city, testified that last year her neighbor to the south had installed a bank of solar collectors close to the boundary between the neighbor's property and Landis' property. Any significant structure erected on Landis' property would cast a shadow on her neighbor's collectors at some time during the day. Landis testified that she purchased her lot 10 years ago for \$1,000,000. The proposed ordinance, Landis contended, would reduce the market value of her land to almost nothing. Landis also owns several other vacant lots in the city that are not yet abutted by neighbors who have installed solar collectors.

You are employed this summer at a law firm that has been hired by the Council to provide advice concerning whether application of the proposed ordinance to Landis' property (and to other, similarly situated parcels) would violate the federal Constitution. The partner handling the case asks for your preliminary views on the matter. Write the partner a memorandum containing no more than 1000 words. If your views would depend upon additional facts, say what those facts are and why they would matter.

Appendix: Estate-System Abbreviations

FS = fee simple (absolute)

FT = fee tail

FTM = fee tail male

FTF = fee tail female

FTS = fee tail special

FSD = fee simple determinable

FSCS = fee simple subject to a condition subsequent

FSEL = fee simple subject to an executory limitation

LE = life estate

LEAV = life estate pur autre vie

RV = reversion

PR = possibility of reverter

PT = power of termination (right of entry)

RM = remainder

VRM = vested remainder

VRMSD = vested remainder subject to divestment

VRMSO = vested remainder subject to open

CRM = contingent remainder

EI = executory interest

ShEI = shifting executory interest

SpEI = springing executory interest

TY = term of years

TW = tenancy at will

TP = periodic tenancy

TS = tenancy at sufferance

l = landlord

t = tenant

TC = tenancy in common

JT = joint tenancy

TE = tenancy by the entirety

CP = community property

End of Exam