

QUESTIONS

PART ONE

DIRECTED ESSAYS

SUGGESTED TIME: TWO HOURS (120 MINUTES)
PERCENTAGE OF EXAM POINTS: 70%

INSTRUCTIONS FOR PART ONE:

This part consists of ten (10) short fact patterns, each of which has a number of questions that follows and inquires about the law and analysis that applies to the particular fact pattern. You are to read each fact pattern carefully and answer each question that follows. There are a total of 50 questions, and you are to answer them all.

Please place your answers in the space provided in **this exam book, not in the blue book**. Please limit your answers to the lines provided below each question. I will not read beyond the lines provided under each question. Please make each answer readable in terms of neatness and the size of your handwriting. (I will not use a magnifying glass to read your answers.) Please answer the question responsively; don't provide information not asked for in the question. For example, if the question asks "Who wins?" please state the name of the person who wins; don't state why he or she wins. Please state your reasoning only if the question asks for it.

Please work quickly but carefully through these questions. You will have enough time to answer all of the questions within the suggested time if you have adequately learned the law.

If you have not finished this Part of the exam when the suggested time is up, you should go onto the next part of the exam, and come back to finish it later.

QUESTIONS:

Questions 1 through 16 are based on the following facts:

Elaine Blaustein (Elaine) is a resident of Newton and owns the property known as 163 Beach Avenue, Hull, Massachusetts, which contains 5,107 square feet (the Blaustein lot). Fred and Maryann Marmo own the adjacent lot at 161 Beach Avenue, Hull, Massachusetts (the Marmo lot). The Marmos live in Wakefield, Massachusetts, and the Marmo lot is undeveloped. A sand dune covered with beach grass encompasses approximately one-third of the total lot area of the Marmo lot. In the center of the Marmo lot were a few large pieces of concrete that remained from a building that once stood on the property. Tall, unkempt shrubs were located south of the concrete pieces and extended to the southern boundary line of the Marmo lot. Most of the remainder of the Marmo lot was essentially a grass area that measured approximately 3,189 square feet (grass area).

Elaine purchased the Blaustein lot on May 23, 1962. At the time Elaine bought the Blaustein lot, William L. Starr (Starr) held title to the Marmo lot. On August 17, 1966, Starr conveyed the

Marmo lot to Max Salk (Salk). By deed dated September 10, 1966, Salk conveyed the Marmo lot to Harry Avnet, who in turn deeded the Marmo lot to Paul and Hilda Moses on January 6, 1971.

Shortly after taking title in 1962, Elaine built a single-family house on the Blaustein lot. She installed a concrete driveway (driveway) on the Blaustein lot at the time they built the house. Since its construction, the driveway has not been expanded or widened. Measured along the westerly line of Beach Avenue, the driveway encroaches onto the Marmo lot by one and three-tenths (1.3) feet. The driveway encroachment occupies thirty-five (35) square feet of the Marmo lot.

Soon after moving into their house, Elaine and her husband began to park their two cars on the Marmo lot every day. Guests of the Blausteins frequently parked on the Marmo lot. As many as eight or nine cars belonging to Blaustein guests parked on the Marmo lot on a busy summer day. For a period of time after moving into their house, the Blausteins maintained a swing set on the Blaustein lot until it rotted. Thereafter, the Blausteins placed a new swing set on the Marmo lot. At various times, the swing set was relocated onto the Blaustein lot. Consequently, there were periods of time during which no swing set was located on the Marmo lot. The last swing set on the Marmo lot was removed in or about 1978.

The Blaustein children played on the Marmo lot in their youth. In more recent years, the grandchildren of Elaine have used the Marmo lot as a play area. The Blausteins planted a vegetable garden on the Marmo lot in or about 1971. The garden was no longer there when the Marmos purchased the Marmo lot in 1973. Several years later, however, the Blausteins again planted a garden on the Marmo lot. Elaine's son, Craig, mowed the grass area on the Marmo lot from approximately 1976 until 1999.

On September 4, 1973, Paul and Hilda Moses conveyed the Marmo lot to the Marmos. No swing set was present on the Marmo lot when they purchased the property. During the first three summers after they bought the property, the Marmos went onto the Marmo lot a few times a month. While at the Marmo lot, the Marmos used the beach that is situated directly across Beach Avenue. When at the beach, the Marmos parked on the Marmo lot, along the side of, but not on, the driveway built by Elaine. Occasionally, the Marmos parked further into the Marmo lot if the Blausteins had a number of cars already parked on the Marmo lot.

Nancy, Fred, and their children often parked on the Marmo lot on weekdays and weekends during the summer months of 1974 through 1976. Outside of the summer months, Nancy Marmo went to the Marmo lot six to eleven days a year when visiting friends or enjoying the local amenities. Beginning in the summer of 1977, Nancy and Fred visited the Marmo lot on alternate weekends. At some point between 1978 and 1980, Nancy and Fred stopped going to the Marmo lot on a regular basis. The last time that Nancy parked on the Marmo lot was in or about 1992.

At various times, a person from the Blaustein house would move automobiles to permit Nancy to park on the Marmo lot. Fred Marmo had a friendly relationship with Elaine's husband. In the presence of Nancy Marmo, Elaine's husband had a conversation with Fred Marmo in the summer of 1974 during which Elaine's husband discussed his family's use of the Marmo lot to park cars. Fred Marmo gave Elaine's husband permission to park their cars on the Marmo lot. In a second conversation in the summer of 1975 or 1976, Elaine's husband stated that the area was getting crowded and asked if there was anything that could be done. In the presence of Nancy Marmo, Fred Marmo gave Elaine's husband permission to do anything he wanted on the

Marmo lot. In neither conversation did Elaine's husband and Fred Marmo discuss the driveway. Elaine never authorized or directed her husband to talk with the Marmos on her behalf about using the Marmo lot.

At some point, Elaine placed one- or two-foot-long segments of telephone poles on the Marmo lot, which remained in place until the Blizzard of '78. For a number of years, Ms. Blaustein maintained wine barrels on the Marmo lot that were used for flowers and a tomato plant (the planters). For approximately ten years, Elaine stored firewood on a portion of the Marmo lot along the side of the garage standing on the Blaustein lot.

In 1982, the Blausteins established their primary residence in Newton, Massachusetts. Thereafter, the Blausteins lived full-time on the Blaustein lot only during the summer months.

In 1987, Meredith Murphy bought a lot neighboring the Marmo lot, at 159 Beach Avenue, Hull, Massachusetts (the Murphy lot). Meredith observed people passing through the Marmo lot on their way to and from the beach. As the dune grass grew higher on the Marmo lot, people crossed from the Marmo lot onto the Murphy lot to use the concrete walkway situated thereon. After her children grew older, Meredith asked for and received the permission of Mr. Marmo for her children to play on the Marmo lot. Meredith's children played on the Marmo lot along with other neighborhood children. Meredith's children called a portion of the Marmo lot on which they played "the bunny fort."

Eventually, Meredith became concerned about the increased number of persons cutting through the Marmo lot and the Murphy lot for access to the beach. In 1991, Meredith and Elaine discussed erecting a fence along the rear or westerly boundary of the Marmo lot (proposed fence) which would connect with a fence that Meredith intended to erect along her northerly boundary. Meredith informed Elaine that she was going to request permission from Mr. Marmo to erect the proposed fence. Following a telephone conversation with Fred Marmo, Meredith wrote a letter to Fred dated June 24, 1991, to summarize the conversation. The letter first gave Fred background information concerning individuals using the Marmo lot and her efforts to stop that use. Meredith then wrote that "Elaine Blaustein and several other property owners on Beach Avenue have suggested that we erect a fence from the Blaustein property, across the back of your property and subsequently connecting with my fence. We are willing to pay for the labor and materials provided you sign a permission document."

After receiving the letter from Meredith, Fred Marmo called Meredith and gave her his permission to erect the proposed fence. Subsequently, Fred Marmo visited Meredith at her home and discussed the erection of the proposed fence. Elaine gave money to Meredith's husband who contracted to have fences, including the proposed fence, erected.

In the Spring of 2004, the Marmos had the Marmo lot surveyed because they were thinking of selling it. The survey revealed that the 1.3 foot strip of Elaine's driveway sat on the Marmo lot. The Marmos then demanded that Elaine rip up the portion of the driveway that sat on their land. Elaine refused and commenced an action for adverse possession as to the portion of the driveway that sat on the Marmo lot and the grass area.

1. In regard to the Marmo lot, what was the status of Elaine when she caused the concrete driveway to extend into the Marmo lot in 1962?

2. Please state and explain the legal reason you chose your answer to the prior question.

3. Please list the five elements of adverse possession.

- A. _____
- B. _____
- C. _____
- D. _____
- E.. _____

Go on to the next page.

4. Please describe each of the elements you listed above in your answer to Question 3.

A.

B.

C.

D.

E.

5. Briefly apply each of the elements stated in your answer to Question 3 to the *Elaine's claim of ownership of the driveway on the Marmo lot*. Don't forget to state whether each element is satisfied.

A. _____

B. _____

C. _____

Go on to the next page.

D. _____

E. _____

6. Briefly apply each of the elements stated in your answer to Question 3 to *the Elaine's claim of ownership of the grass area on the Marmo lot*. Don't forget to state whether each element is satisfied.

A. _____

Go on to the next page.

E. _____

7. In the space provided below, describe and give the elements of "constructive adverse possession," otherwise known as "color of title."

8. Does the concept of "constructive adverse possession," otherwise known as "color of title," help Elaine with her case? (Circle the best answer.)

YES

NO

9. In the space provided below, please explain why or why not?

10. In the space provided below, describe the "seasonal use doctrine."

11. Does the "seasonal use doctrine" help Elaine with her case? (Circle the best answer.)

YES

NO

12. In the space provided below, please explain why or why not?

13. For the purposes of *this and the next questions only*, assume that Elaine wins her adverse possession claim as to both the driveway and grass area. Further assume that the Hull National Bank held an outstanding mortgage on the Marmo lot with a payoff balance of \$50,000. After the Marmos lost to Elaine, they stopped paying their mortgage and the Hull National Bank commenced foreclosure proceedings against the Marmo lot. If Elaine brings an action to enjoin the foreclosure, and seeking a declaratory judgment that the bank cannot foreclose the mortgage as to the driveway and grass area, should Elaine prevail? (Circle the best answer.)

YES

NO

Go on to the next page.

14. In the space provided below, please explain why or why not?

15. For the purposes of *this and the next questions only*, assume that Elaine wins her adverse possession claim as to the driveway and grass area, and at the time of the judgment both Fred and Nancy Marmo were alive. Further assume that the Marmos only owned a life estate in the Marmo lot, and that their children owned a remainder. What estate will Elaine obtain in the driveway and grass area:

A. As to Fred and Nancy Marmo?

B. As to the Marmos' children?

16. In the space provided below, please explain your answer to the previous question.

Go on to the next page.

Questions 17 through 21 are based on the following facts:

Ohner conveyed Blackacre to Hermes, Winifred, Haggas and Wanda using the following grant language: "I hereby convey my entire right, title and interest in Blackacre to Hermes, Winifred, Haggas and Wanda, meaning and intending to convey to Hermes and Winifred as tenants by the entirety, to Haggas and Wanda as tenants by the entirety, and as tenants in common as between the couples." At the time of the grant, Hermes and Winifred were legally married to each other, and Haggas and Wanda were engaged to be married. Haggas and Wanda did in fact marry each other two weeks after the grant.

17. Please state and explain the concurrent estates owned by the parties at the time of the grant. You may (but are not required to) draw out a chart or figure if you think it would help explain the grants.

18. Five years after the grant Hermes sold his "entire right, title and interest" in Blackacre to Stoddard by general warranty deed. What concurrent estate did Stoddard own after the sale by Hermes?

19. Two years after Hermes's sale to Stoddard, Wanda sold her "entire right, title and interest" in Blackacre to Kevlar. Immediately after Wanda's sale to Kevlar, please state all those who own any interest in Blackacre, along with the type of concurrent estate, if any, they own, and the percentage/fractional interest each person owns:

Owner(s):

Go on to the next page.

Concurrent Estate(s):

Percentage/Fractional Interests:

20. One year after Wanda's sale, Hermes and Winifred got divorced, but their interests in Blackacre were not sold or given exclusively to one of them under the divorce decree. Immediately after the divorce of Hermes and Winifred, state all those who own any interest in Blackacre, along with the type of concurrent estate, if any, they own, and the percentage/fractional interest each person owns:

Owner(s):

Concurrent Estate(s):

Percentage/Fractional Interests:

21. One year after the divorce of Hermes and Winifred, Kevlar died with a valid will leaving his interest in Blackacre to Festivus. Immediately after the sale to Festivus, state all those who own any interest in Blackacre, along with the type of concurrent estate, if any, they own, and the percentage/fractional interest each person owns:

Owner(s):

Concurrent Estate(s):

Percentage/Fractional Interests:

Questions 22 through 26 are based on the following facts:

Oblio conveyed Blackacre to Angina for life, and then to Bubba and his heirs, but if Bubba dies without having gone to Disney World, to Consolata and her heirs.

22. Please state the estate or interest that each person owns *on first look before completing an analysis under the rule against perpetuities.*

Oblio: _____

Angina: _____

Bubba: _____

Consolata: _____

23. Now, please state the estate or interest that each person owns *after completing your analysis under the rule against perpetuities*.

Oblio: _____

Angina: _____

Bubba: _____

Consolata: _____

24. Things change. Ten years after the grant, Angina dies. Immediately after Angina's death, what estate or interest does each person own?

Oblio: _____

Bubba: _____

Consolata: _____

25. Things change again. Two years after Angina's death, Bubba goes out "a huntin' for some food" on Blackacre, and "up from the ground come a bubblin' crude . . . oil that is." Bubba struck oil and as soon as practicable erected six oil rigs on the property. Oblio and Consolata have brought an action seeking monetary damages and an injunction ordering Bubba to cease and desist his drilling activities. Who will win that suit? (Please circle the best answer.)

Oblio and Consolata

Bubba

Go on to the next page.

26. In the space provided below, please explain your answer to the previous question.

Question 27 is based on the following facts:

27. In the space provided below the following metes and bounds, courses and distances description, please draw the proper shape of Blackacre, keeping the accompanying compass rose in mind:

Beginning at Main Street, running north by the land now or formerly of Smith one hundred and 00/100 (100.00') feet; thence turning and running due west by the land of Jones fifty and 00/00 (50.00') feet; thence turning and running due south by the land of said Jones fifty and 00/00 (50.00') feet; thence turning and running due west once again by the land of said Jones fifty and 00/00 (50.00') feet; thence turning and running due south by the land of Erlanger fifty and 00/00 (50.00') feet; and thence turning and running due east one hundred and 00/00 (100.00') feet along said Main Street to the point of beginning.



MAIN STREET

Questions 28 through 32 are based on the following facts:

As part of your pro bono work, you have been assigned to serve as "lawyer of the day" at the Middleshire County Land Court. One of your tasks is to monitor the Court's email account for questions that laypersons send. You have just received the following email and need to provide a quick response:

Hi,

I own two residentially zoned parcels in Middleshire County that are landlocked by one landowner. On one of my parcels, there was formerly a vacation home that was used seasonally for 40 years. The previous owner crossed the surrounding parcel to access the vacation home with full support from the previous owner of the surrounding parcel, albeit without a written agreement or easement to do so.

The vacation home burned down 30 years ago, the stone chimney and part of the foundation remain, and the previous owners, who now live overseas, stopped going to the property at that time (30 years ago). The surrounding parcel also now has a new owner, who is not inclined to allow an easement, since he is currently unsure of his plans for their own parcel at this time.

I bought the property, knowing the situation, and am now needing to figure out what my legal rights are as a property owner to, a) access my property, to even physically stand on it, and b) if there is any vehicle with which to force the surrounding parcel owner to sell me an easement, and/or if there is any kind of law that allows property owners to obtain legal access to their property in the event their property is landlocked (other than an easement, for instance), and lastly, if the term "prescriptive rights" has any relationship to any aspect of my situation...?

Thanks,

Bob

28. Assuming that Bob's neighbor is unwilling to grant a easement to him, please list the two implied easements (not a prescriptive easement) that Bob might try to establish as a matter of law:

A. _____

B. _____

Go on to the next page.

29. Please state the elements of the easement you listed in "A" above.

30. Please state the elements of the easement you listed in "B" above.

Go on to the next page.

31. Please state what additional facts you would like to know in order to make a better determination of whether either of the easements you listed in your answer to Question 28 apply?

32. If, instead, Bob's only chance would be to prove an easement by prescription, please state the four elements he would have to show to establish such an easement.

- A. _____
- B. _____
- C. _____
- D. _____

Questions 33 through 36 are based on the following facts:

Alex conveyed Blackacre to Billy. The deed contained the following restriction: "Billy, his heirs, successors, grantees and assigns agree that Blackacre shall be used only as a single family residence." Billy promptly and properly recorded the deed. Billy moved into Blackacre and used the property as a single family residence. Ten years later, Billy sold Blackacre to Cara. The deed that Billy delivered to Cara made no mention of any limitation on the use of Blackacre. Cara never moved onto Blackacre, choosing instead to leave it vacant. Shortly after Cara bought Blackacre, Dirk began adversely possessing the property. Some 21 years later Dirk obtained a declaratory judgment in a court of competent jurisdiction demonstrating that Dirk

became the owner of Blackacre by adverse possession. Dirk promptly and properly recorded that declaratory judgment. Dirk has announced that he intends to begin constructing an addition onto the existing building and use Blackacre as a half-way house for approximately 20 recovering drug addicts. Alex, who now lives next door to Blackacre, is about to file a legal action against Dirk.

On what legal issue that we considered this semester should Alex base his complaint?

33. _____

34. There are two sets of elements (with three elements each) for the legal issue you identified in your answer to the last question. In the spaces provided below, please appropriately label each set of elements and state the elements below each label:

A.

Label: _____

Elements: 1. _____

2. _____

3. _____

B.

Label: _____

Elements: 1. _____

4. _____

5. _____

35. Under which set of elements does Alex have a better chance of prevailing? (Please circle the best answer.)

A

B

Go on to the next page.

36. Please explain the legal basis of your answer to the previous question.

Questions 37 through 39 are based on the following facts:

Sidney, the owner of several parcels of land in the City of Eldorado, including Blueacre, entered into an oral agreement to sell Blueacre to Popeye for \$100,000. Popeye delivered the entire purchase price to Sidney by a check. In the "memo" area of the check, Popeye wrote "purch. price/Sidney's land/Eldorado." Sidney endorsed and deposited the check in his bank account. The parties signed no other documents. Sidney has changed his mind about selling the property and has attempted to return the purchase price, plus interest. Sidney refuses to give Popeye a deed.

37. If Popeye were to sue Sidney for specific performance, what would be Sidney's best defense?

38. Given the facts, will Sidney prevail in his defense? (Please circle the best answer.)

YES

NO

Go on to the next page.

39. Please explain the legal basis of your answer to the previous question.

Questions 40 through 46 are based on the following facts:

At all relevant times, Blackacre was a 20 acre wooded, unoccupied parcel of land in a rural county in the State of Multistate.

In 1999 Alison, the owner of Blackacre placed an easement on Blackacre in favor of Edsel's property named Greenacre. The easement gave Edsel the right to run and maintain a buried water line over a five foot wide strip of land near the eastern border of Blackacre. Edsel, a neighbor who believed he might some day build on Greenacre, needed the easement to make that property accessible to water. Edsel promptly recorded the easement but did not immediately make use of the easement.

In 2001, Alison conveyed Blackacre to Bennie for \$350,000. In that conveyance, Alison gave a general warranty deed with the covenant of quiet enjoyment, covenant against encumbrances, covenant of general warranty and covenant of further assurances. Bennie promptly recorded the deed.

In 2002, Bennie placed an easement on Blackacre in favor of Eduardo. The express purpose of the easement was to allow "Eduardo, his heirs and assigns, the undisturbed right to enjoy all portions of Blackacre for the purposes of hiking, fishing, bird watching and other passive recreation, excluding hunting, in a peaceful and undeveloped atmosphere." Eduardo, who did not own a nearby property, paid \$150,000 for the easement which was silent as to its duration. Eduardo promptly recorded his easement and immediately began to use the easement for its intended purposes. Bennie used Blackacre for the purpose of cutting down selected hardwood for use as cordwood. He did so in a judicious manner that did not interfere with Eduardo's easement.

In 2003, Bennie conveyed Blackacre to Castleton for \$400,000. Bennie, who said nothing to Castleton about Eduardo's easement, gave Castleton a special warranty deed with the covenant of quiet enjoyment, covenant against encumbrances, covenant of general warranty and covenant of further assurances. Castleton promptly recorded his deed and continued to use Blackacre in the same fashion as Bennie.

In 2004, Castleton granted a mortgage on Blackacre to the Rural National Bank in the amount of \$50,000. The Rural National Bank promptly recorded that mortgage.

In early 2005, Castleton entered into a purchase and sale agreement to sell Blackacre to Danielle for \$450,000. Danielle intended to build a single family home on Blackacre and live there. Danielle intended to build a single family home on Blackacre and live there. The purchase and sale agreement was silent as to marketable title, but expressly required that Castleton deliver a "good clear record title." Danielle failed to do a title search or physically inspect Blackacre prior to the closing date, and Castleton conveyed to Danielle for \$450,000. Castleton, who said nothing to Danielle about either easement or the mortgage to the Rural National Bank, gave Danielle a quitclaim deed which Danielle promptly recorded.

Danielle quickly discovered that Eduardo was using his easement on Blackacre. She then did a title search and discovered the easements to Edsel and Eduardo, as well as the mortgage to the Rural National Bank. Castleton stopped paying the mortgage to the Rural National Bank after he sold Blackacre to Danielle, and the bank has commenced foreclosure proceedings. The nature of Eduardo's easement prevents anyone from developing or living on Blackacre, with the exception of Edsel's water line easement which will be buried.

For the purposes of answering the questions following this common fact pattern, please assume that Blackacre is in a "consideration paid" jurisdiction.

40. In a suit by Danielle against Castleton for breach of the seller's duty to deliver marketable title and record title, who wins? (Please circle the best answer.)

Castleton

Danielle

Go on to the next page.

41. Please explain the legal basis of your answer to the previous question.

42. Assume for *this and the next questions only* that, just prior to the closing, Danielle discovered the mortgage to the Rural National Bank and demanded that Castelton discharge it before the closing. Castelton refused, stating that he needed to use the proceeds from the sale to pay off the mortgage. He did offer, however, to place the sale proceeds in escrow to ensure that the mortgage was promptly and properly discharged. Danielle refused the offer and demanded back her deposit. Castelton refused and sued for specific performance. In that suit, who will win? (Please circle the best answer.)

Castelton

Danielle

Go on to the next page.

43. Please explain the legal basis of your answer to the previous question.

43. Please ignore the assumptions made in Questions 42 and 43, and go back to the facts stated in the common fact pattern. In a suit by Danielle against Castelton for breach of deed covenants, who wins? (Please circle the best answer)

Castelton

Danielle

How much \$\$, if any? \$ _____

44. Briefly explain the legal reasoning of your answer to the last question.

Go on to the next page.

45. In a suit by Danielle against Bennie for breach of deed covenants, who wins. (Please circle the best answer.)

Bennie

Danielle

How much \$\$, if any? \$ _____

46. Please explain the legal basis of your answer to the previous question. (Please circle the best answer.)

Question 47 is based on the following facts:

Martin borrowed \$100,000 from the Burlingame Savings Bank and used the money to buy Blackacre. In order to borrow the funds, Martin executed a note and mortgage in favor of the Bank, neither of which contained a due-on-sale clause. The Burlingame Savings Bank immediately recorded the mortgage. Two years later, Martin sold Blackacre to Arnold "subject to" the mortgage to the Bank. Arnold immediately recorded the deed. Arnold lived on Blackacre for a year and sold it to Barbara "subject to" the mortgage to Bank. Barbara also agreed to "assume" the obligations thereon. Barbara immediately recorded her deed. Six months later, Barbara sold Blackacre to Carrie, who took "subject to, and assumed," the mortgage. Carrie subsequently defaulted on the payments to Bank. The Burlingame Savings Bank foreclosed but was left with a deficiency. It has brought actions against Martin, Arnold, Barbara and Carrie on the deficiency. Below, please state whether the Bank will recover against each defendant, and the ground of recovery.

<u>Defendant</u>	Circle Whether Bank <u>Recovers</u>		<u>Ground of Recovery</u>
Martin	YES	NO	_____
Arnold	YES	NO	_____
Barbara	YES	NO	_____
Carrie	YES	NO	_____

Questions 48 through 50 are based on the following facts:

Oliver owned Eldorado in the State of Euphoria. In 1992 he conveyed Eldorado to Appleby for \$200,000. Appleby did not immediately record his deed and did not take possession of the property. In 1994, Oliver conveyed Eldorado to Nancy, his favorite niece, "for \$1.00 and love and affection." Nancy, who knew nothing about the grant to Appleby, immediately recorded her deed. In 1997, Appleby realized that he had not recorded his deed, and finally did record it. In 2000, Nancy granted a mortgage in Eldorado to the Nirvana National Bank. The Bank promptly recorded its mortgage. In early 2006, Nancy sold Eldorado to Brian for \$650,000. Brian immediately recorded his deed.

The State of Euphoria has a recording statute that states:

A conveyance of an interest in real estate shall not be valid as against any subsequent person who pays substantial value and takes without notice of the prior interest unless the interest in real estate is recorded in the registry of deeds for the county or district in which the land to which it relates lies.

48. What kind of a statute is the Euphoria recording statute?

49. In an action between Brian and Appleby in which both claim ownership to Eldorado, who will win?

Your legal reason for the above answer:

Go on to the next page.

50 In an action between Brian and Nirvana National Bank, in which Brian claims he is not subject to the mortgage, who will win?

Your legal reason for the above answer:

PART TWO

ESSAY QUESTION

SUGGESTED TIME: FORTY (40) MINUTES
PERCENTAGE OF EXAM POINTS: 20%

INSTRUCTIONS FOR PART TWO:

This part consists of one (1) medium-length essay question. Please put your answer in a blue book entitled "Part Two," and not into this examination booklet. Please limit your answer to four (4) single-spaced bluebook pages.

Please note that I will also grant points for any Civil Procedure issues that you spot.

QUESTION:

Oaner owned a four-acre square-shaped parcel of land fronting Forest Avenue in Green Pines, Massachusetts. In August 2001, Oaner agreed to sell to Byer a two-acre portion of the property which included the entire frontage on Forest Avenue. During negotiations, Oaner and Byer discussed the reservation of an easement from Forest Avenue to Oaner's remaining landlocked parcel. During these discussions, the parties agreed that Oaner would have the right in the future to designate the location of an easement up to 50' in width on Byer's property.

The local zoning and subdivision laws at the time required 50' rights of way as a standard, but they did not call for rights of way wider than 59' under any circumstances. In September 2001, Oaner delivered the deed for the front two acres to Byer. The deed contained the following provision:

Grantor reserves to himself, his heirs, successors and assigns a right of way over the lands conveyed hereby to Grantee for vehicular and pedestrian traffic between Forest Avenue and the remaining lands of Grantor.

In 2003, Byer contracted to sell his front parcel to Uzer. Byer approached Oaner and requested Oaner to designate the location of his right of way. Oaner refused to do so and demanded instead that Byer purchase his remaining property at a price that was then twice its fair market value. Byer refused and conveyed his parcel to Uzer by a quitclaim deed containing the covenant against encumbrances and the covenant of quiet enjoyment. Byer said nothing to Uzer about the right of way.

In 2004, Uzer built a manufacturing plant on the front two acres and erected a fence around the perimeter of the property to provide for the security of his operations. Recently, Oaner decided to develop the back two acres by erecting an office building. Such a use is permitted by the Green Pines zoning and subdivision laws, but those laws now require a 60' wide right of way if the back two acres is to be used. The local zoning and subdivision laws would permit a 20' wide right of way if the back two acres were used for residential rather than office purposes.

Oaner would like to force Uzer to provide a 60' wide right of way over a section of the front two acres that would include Uzer's present 40' wide driveway. Uzer is willing to permit a 20' wide right of way along the boundary line, which would not include the existing driveway.

1. Please discuss the rights and liabilities of Uzer; and
2. Please draft easement language that you would have requested on behalf of Oaner if you had represented him at the time of his conveyance to Byer.

Go on to the next page.

PART THREE

ESSAY QUESTION

SUGGESTED TIME: TWENTY (20) MINUTES
PERCENTAGE OF EXAM POINTS: 10%

INSTRUCTIONS FOR PART THREE:

This part consists of one (1) shorter essay question. Please put your answers in a blue book entitled "Part Three," and not into this examination booklet. Please limit your answer to each essay questions to four (4) single-spaced bluebook pages.

QUESTION:

Please use the step-by-step methodology we learned in class to give the appropriate state of the title for the following grant. Do not forget about the rule against perpetuities.

"A conveys to B for life and then to C and her heirs if she survives B, and if not, to D and his heirs."

END OF EXAM

HAVE A HAPPY HOLIDAY!