



The University of New Mexico

School of Law Library
MSC11 6080
1 University of New Mexico
Albuquerque, NM 87131-0001
Telephone (505) 277-0939
FAX (505) 277-0068

This document was scanned pursuant to the express permission of its author and rights holder.

The purpose of scanning this document was to make it available to University of New Mexico law students to assist them in their preparation and study for Law School exams.

This document is the property of the University of New Mexico School of Law. Downloading and printing is restricted to UNM Law School students. Printing and file sharing outside of the UNM Law School is strictly prohibited.

NOTICE: WARNING CONCERNING COPYRIGHT RESTRICTIONS

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material.

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is no to be "used for any purpose other that private study, scholarship, or research." If the user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement.

This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.

608 Property II

Semester II, 1997-98

**University of New Mexico
School of Law
Final Examination**

**Professor Christian G. Fritz
Monday, May 11, 1998
9:00 a.m. to 12:00 noon**

THREE HOURS

GENERAL INSTRUCTIONS

1. This exam consists of three (3) essays questions for which you should allocate approximately one hour apiece. While some questions may seem easier to you than others, they are all equally weighted and you should bear that in mind.
2. **This is a limited open book exam.** Only the class materials and handouts, and notes and outlines you have prepared may be brought into the exam room. You may not refer to any other source during the exam.
3. Do not assume that the law of any particular jurisdiction applies.

Good Luck and have a great summer!

Question # 1.

In 1980 James Jones owned five adjacent parcels of property (Parcels 1-5) located in the Blue Ridge Hills between the Blue Ridge Line Road to Lake Pleasant (See diagram above). There is a gravel access road along the southern portion of the five parcels that provides public access by connecting them to the county maintained Blue Ridge Line Road to the east of the parcels. (There is, on the west shore of Lake Pleasant, a public boat access.) Jones, an avid fisherman, went out to Parcel 1 on weekends and during the summer to fish the trout in Lake Pleasant. Because he believed in what he called “an authentic experience” with nature, Jones camped out on those occasions when he fished from the shore of Parcel 1. In 1980 many of the landowners of the surrounding area (north and south of Jones’s five parcels and the other land around Lake Pleasant) were only making a seasonal use of their land (mainly during the summers), although a few people were living all-year round on their property and all of them, except for Jones, had constructed homes or at least cabins on their land.

In 1982, Jones sold Parcels 2-5 to separate individuals and the deeds to Parcels 2-5 contain the following restriction: “In order to preserve the peace and quiet of untrammled nature, this lot is conveyed with the understanding that it is limited to single-family residential purposes.” The owners of Parcels 3-5 soon built homes on their property while the owner of Parcel 2 left it vacant. In 1983 Jones sold Parcel 1 to Matt Main by a deed that contained no use restrictions and Main proceeded to build a large home on the property. In 1985, Chris Clever bought Parcel 1 and moved

into the home. Seeing an opportunity and having room to spare Clever opened up a bait and tackle shop and a gasoline refilling dock to cater to the hoards of boaters and fishermen who were increasingly using Lake Pleasant—word having gotten out about the beautiful setting and great trout. In 1986 the owner of Parcel 2 sold that parcel to Bill Bates, who built a home on it.

The deeds for all of the above transactions were recorded.

Chris Clever's business continued to prosper, but Bates became increasingly annoyed by the sounds of motor boats zooming up to Clever's gasoline filling station dock and by the smell of unused bait. What has especially disturbed Bates is the fact that Chris is luring fish to their death; that prospect has kept him awake at night. Bates, as well as the owners of Parcels 3-5, were also annoyed by the service vehicles that use the gravel access road to deliver the fuel and the bait supplies for Clever's business.

Clever has recently bought Blackacre, an acre of land just south of Parcel 1 that is also adjacent to the lake. He intends to expand his bait and tackle operation and possibly rent motor boats from additional docks extending out from Blackacre. Due to the objections raised by Bates and the owners of Parcels 3-5, Clever consults you before going any further with his plans.

Specifically, he wants to know what his legal rights are in running his business, what legal actions Bates and the owners of parcels 3-5 might reasonably be expected to take and the expected outcome?

Question # 2

McDonald had a farm on the outskirts of Pleasantville. And on that farm he had some animals; some cows, sheep, chickens, and a precocious pig named “Babe.” Once upon a time McDonald’s farm was well outside of the city limits, but over time the town grew in the direction of his farm. By now, while the character of the land around the farm remained largely rural, it was no longer strictly agricultural, but increasingly residential in nature. This circumstance spurred McDonald to do something with his 20 acre farm. He decided to develop 3 acres into rental property composed of a series of townhouses.

In 1990 McDonald entered into a contract with BuildRight Construction the terms of which called for the construction of fifteen units. During the construction, McDonald would often go over to the site after the workers left for the day to examine their progress. Toward the end of the job McDonald noticed that the framing of the ceilings of the townhouses did not meet the Building Code requirements (the distance between the overhead beams was twice what it should have been) and that sub-standard sheet rock was being used. McDonald kept quiet and intended to confront BuildRight Construction at the end of the job, when he thought his information could be used as leverage to get additional modifications (solar energy panels for all the units) at no cost.

McDonald never did say anything because just before the townhouses were completed, his pig “Babe” began speaking in a high-pitched voice. McDonald’s talking pig completely captured his attention and all McDonald could think of was hitting the talk show circuit with “Babe.” Soon after the townhouses were completed in 1991, McDonald arranged for a quick sale of his farm and the townhouses to Susan Curtis, a retired CEO of a major corporation who wanted income property and was attracted by the rural atmosphere of the farm. McDonald had his lawyer arrange the sale to Curtis and nothing was said about the construction methods of BuildRight.

Soon after buying the farm Curtis arranged for the rental of the townhouses, readily finding tenants who were attracted to the special attractions of “Bucolic Farm Acres,” the name Curtis gave to her townhouse development. The townhouses were arranged around an artificial pond, with landscaped walking paths, and a common recreation room, tennis courts, gym, and jacuzzi.

On June 1, 1991 Curtis rented her first unit to Bill Bard for three years at a monthly rental of \$800. Bard specialized in making hand-crafted woolen sweaters. The lease consisted of a standard printed form which included a clause making all terms of the lease binding on the successors and assigns of both parties. Curtis and Bard amended the standard form by adding three additional clauses which were handwritten:

1. Landlord agrees to leave Tenant one dozen farm fresh eggs each week.
2. Landlord agrees to provide Tenant the fleece of three sheep at each regular shearing time.
3. Landlord will replace the existing evaporative coolers with electrical air conditioning before the end of the first year of the lease and will install a six-burner stove within the first six months of the lease.

When Curtis and Bard signed the lease, Curtis had a full-time employee who maintained the pathways and kept the common recreational areas in good repair. Six months into the lease, the ceiling in Bard's living room collapsed, exposing the beams and the electrical wiring for the recessed lighting of that room. Bard was not injured, but notified Curtis of the condition. Curtis promised to make repairs to the ceiling, but two months after the collapse had not yet done so.

In January 1992 Curtis concludes that the trouble of dealing with tenants outweighs the benefits of rental income and sells all 15 townhouses to Danny Devain. Danny reaches a similar conclusion fairly quickly and in January 1993 sells the townhouses to Eric Estrada.

Bard has not received any fresh eggs nor any woolen fleece since Curtis sold the townhouses to Devain. Neither the electrical air conditioner nor the six-burner stove has been installed.

Since the time Devain became the owner, conditions around the townhouses have changed for the worse. Devain fired the maintenance person to save money and the pathways have become overgrown with vegetation. Moreover, the lights that used to illuminate the pathways have gone into disrepair. Recently, Bard was taking an evening stroll around the townhouse complex, tripped over tree branches he didn't see on the path and injured himself when he subsequently tumbled into the artificial pond.

At the time of their respective purchases of the townhouses, Devain and Estrada were aware of the Bard's printed lease and its amendments.

- A. What are Bard's rights against Curtis, Devain and Estrada?
- B. What claims might Curtis's have had during the time she owned the townhouses?

Question # 3

Oscar Overbight, a guilt ridden grandfather, has three grandchildren: Aaron, Betty, and Charles. After years of leading a vagabond life, Oscar has returned home to discover that he has inherited the family's farm, Greenacre, even though his only son, Pete, has been working the farm for the past ten years for Oscar's brother Jack. Jack has recently passed away and left Oscar the farm in his will. Pete, so distraught at those turn of events, expires soon after, leaving his three children, Aaron, Betty, and Charles to fend for themselves. Aaron has been living with his father on the farm and helping him run the place, but Betty and Charles were both away at college when their father and Uncle Jack passed away.

The farm is zoned for low density agricultural uses, which means that the present focus of the farm on growing pecans is acceptable, but that intense cultivation—say, for chiles—would not be allowed. The deed to Greenacre also includes a restriction secured by the original grantor and owner of an adjacent farm that limits the height of buildings, other than the main house, that can be constructed on Greenacre to 30 feet..

On January 1, 1998 Oscar executes a quit claim deed to Aaron (who was always his favorite) stating that Oscar conveyed Greenacre to Aaron for \$1.00 and "love and affection." Aaron fails to record this deed and, for fear of upsetting his siblings, says nothing about Oscar's wonderful gesture.

Three days later, on January 4, 1998, Oscar, feeling badly about Betty, offers to sell Greenacre to her for half its market value. That same day Oscar drafts the following language which both he and Betty sign.

"I, Oscar Overbight, agree to sell Greenacre to my granddaughter Betty, for one-half its fair market value to be determined by a reputable real estate broker of our joint choosing. Seller agrees to convey title upon a determination of Greenacre's fair market value and Buyers tender of 30% of that amount with a promissory note for the balance."

Two days later, Oscar conveys a deed to Betty for Greenacre in accordance with the contract. Betty intends to grow green chilies and plans to construct a 60 foot water tower on the farm. Anxious to share her news with her friends, Betty returns to college without recording the deed to Greenacre.

On January 10, 1998 Oscar's thoughts turn to his least favorite grandchild, Charles, and gradually guilt at having neglected him takes over. On that date he sells Greenacre to Charles for three-fourths the market value of the farm (he is the least favorite, of course) and Charles also fails to record his deed.

After getting back to college Betty tells her story to a friend going to law school, who strongly advises her to record her deed. She returns immediately and on January 13, 1998 records her deed. Unfortunately, the deed is recorded under the surname "Overbite" and not "Overbight."

In the meantime, Charles has been negotiating the sale of Greenacre with Danny Developer who intends to construct a residential community on the present site of the farm. Without hesitation, on January 15, 1988 Danny buys Greenacre from Charles at a price substantially above market value. Danny immediately records his deed from Charles.

- A. Assume that Betty consults you on January 5, 1998 because she is having second thoughts about the wisdom of going into the green chilie business and buying Greenacre. What advice can you give her about her situation at that point?
- B. After Danny records his deed, Aaron, , Betty, and Charles come forward and assert they have interests in Greenacre. Who will end up with Greenacre and why?