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University of New Mexico
School of Law
Final Examination-Property II

Professor Christian G. Fritz
Tuesday, May 8, 2000
9:00 a.m. to 12:00 noon

Property II

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.

Archaic Acres is a gated residential community of some 20 acres within the city limits of Fair City. Louie Luddite, the developer of Archaic Acres, was determined to create an oasis from what he regarded as the worst aspects of the fast-paced, modernized world of technology. To that end, he created a subdivision of eighty lots that sought to effectuate those objectives.

All of the rather large lots (with homes already built on them) in Archaic Acres are located around a large artificial lake, Lake Placid. Each house faces Lake Placid and every lot has a large backyard. Although there are fences dividing the backyards of each of the lots, the front portions of all the homes were built without fences, resulting in an unobstructed expanse of lawn ringing the entirety of Lake Placid. [See diagram below]

Louie intended Archaic Acres to be a throw back to an earlier time, when people strolled through their communities and were not annoyed by leaf-blowers and other sounds of technology. While he knew many of the buyers of lots in Archaic Acres would probably remain attached to their VCRs, computers, and other technological trappings (like hot and cold running water and flush toilets, for example), he wanted the external face of Archaic Acres to have as much as possible an early 19th century “feel.”

To that end, Louie sought to prohibit the use by lot-owners in Archaic Acres of all power tools (including gas or electric) outside their houses as well as their use of motorized vehicles within Archaic Acres. A parking lot situated at the gateway to Archaic Acres provided parking for the residents, who would be transported from the parking lot to their homes via a horse and buggy shuttle system. Louie was aware of the idiosyncratic nature of his scheme and its contradictions (that is, maintaining an old-fashioned façade while tolerating modernity inside the homes). Still, he thought, it was better than nothing and proceeded to sell the lots in Archaic Acres.

In most of the lots sold by Louie, their deeds contained the following language:

“The grantee for his or her heirs and assigns agrees to:

1. Refrain from using anything but hand tools in the maintenance and care of the yard (front or back) of the purchased lot.
2. Pay an annual assessment (not to exceed 5% of the lot’s property tax) to the Archaic Acres Property Association to defray the costs of maintaining the common grounds of Archaic Acres without the use of power tools and motors.
3. Allow passage by other lot-holders of Archaic Acres across the first fifteen-feet of the lot measured from the Lake Placid shoreline.

These restrictions are part of the philosophy behind Archaic Acres and the attempt to recapture the serenity of days gone bye.”

In 1990, Louie started selling the eighty lots that compose Archaic Acres. It is now 2000 and all the lots have been sold. In 1993, Louie sold lot X to Marsha Wellborn, in a deed that contained the language quoted above. As a member of the Society for Creative Anachronism, Marsha was fully in accord with Louie’s philosophy for Archaic Acres and reveled in the thought of living in a community free of leaf-blowers, among other so-called improvements of modern life. Part of Marsha’s commitment to perpetuating the ways of the Middle Ages—particularly that of Merry Old England—included a disdain for the recording system (which she rightly points out only belatedly emerged in England in the late nineteenth-century). As such, she did not record her deed to lot X. Unfortunately, some of the ways of the modern era caught up with Marsha—she found herself deeply in debt—and she needed to sell her lot on Lake Placid.

Several months ago Marsha, in the midst of her credit-crunch, met by chance encounter Bob Mod, a hot-shot computer whiz whose start up company just went public with a major splash. Bob is rolling in more cash than he knows what to do with. Marsha tells him about Archaic Acres generally but does not specifically mention the restrictions against power tools, the annual fee, or the lake front passage. Bob is momentarily charmed by Marsha’s enthusiasm for Archaic Acres and on a sudden impulse says he’ll buy her property. Bob pays Marsha in cash and to make things simple (“Who needs lawyers?” he says), he accepts a Quit Claim Deed (“I hear those work really well,” he says) from Marsha for her lot X.

Soon after Bob moves into Marsha’s old place, he receives the annual assessment notice from the Archaic Acres Property Association which he immediately protests, saying, “Hey, I’m rolling in dough, but I refuse to perpetuate such a stupid idea as hiring ten guys to rake leaves when one can do the job with a single ‘Turbo Jet Leaf Blaster’!” Moreover, Bob also wants to convert his backyard into a show-case garden, but needs to cut down trees, move a lot of dirt and construct ponds and fountains. For the past month

he's been using gas-powered chain saws, electric drills, and roto-tilling equipment—immediately triggering objections from his next-door neighbor, an original lot holder, but whose complaints he has ignored.

One of the first things Bob did after buying the lot, was to erect a 10-foot chain link fence along the lot lines of his property down to the water's edge of Lake Placid. He did this to keep out other Archaic Acre owners who were audaciously strolling across his front property, particularly in the evening.

Bob has just received notice of a law suit brought by the Archaic Acres Property Association to collect the annual assessment as past due. Moreover, his next door neighbor has also brought suit seeking damages as well as an injunctive relief with respect to Bob's work on his back yard and has demanded that Bob remove his 10 foot chain link fence.

You represent Bob. Advise him of his rights and obligations in this situation.

Question 2.

Chris Bookbuyer had long enjoyed books: he liked their looks, their feel, their smell, and, occasionally, he even liked to read them. Chris worked for the University Library and in his spare time had become quite a collector of books relating to the Southwest. He had long nurtured the dream of quitting his boring cataloging job with the Library and going into the book selling business. He knew that used book stores faced increasing competition from internet on-line sales and book store consortiums, but Chris thought his Southwest specialization would allow him to make a go of the business.

In 1998, Chris finally decided to take the plunge. He quit his job, heavily mortgaged his small 2-bedroom house, and intended to buy a larger house near the Snob Hill Shopping area near the University. The house he had his eye on seemed perfect; it was one block back from the main street of commercial activity along the principle avenue in Snob Hill and is a one-story four bedroom house large enough to accommodate his book business. The house is part of an older residential subdivision in which each lot was restricted to single family residence, but the area within which the house is located is now zoned commercial. That zoning reflects the fact that the part of the subdivision nearest Snob Hill has increasingly become a thriving commercial center for the city, with busy streets and heavy commercial activity.

Unfortunately, Chris's efforts to buy the house from its owner, Julie Jones, have run into problems. Although he has lived frugally and saved money assiduously for thirty years, he's still shy of the purchase price for the house. Chris has gotten Julie to agree to a one year lease of the property for his book business, with an option to buy the house when the lease comes to an end. The idea was that Chris would be in a better financial position if he had one good year in his new business and since Julie faced a severely depressed seller's market, she was willing to accept a lease.

Six months into the lease, with his book buying business thriving, Chris notices the presence of wood beetles in and around his books and shelves. He's particularly worried that they might be damaging the books and in any event his customers have been grossed out by them and some have stopped coming back. Upon examination, it turns out the beetles are coming from the a vacant lot adjacent to the house Chris is renting, but property also owned by Julie. The vacant lot has a large stack of used timbers and wood building material in which the beetles have established a flourishing colony from which they've ventured forth to plague poor old Chris.

Chris immediately notifies Julie about the beetles; she says she'll look into it, but the situation does not improve. He complains again about the beetles and Julie tells him she sent out a bug person to "do something" to control the beetles, but she was opposed to using chemicals on the wood beetles. Julie's bug person spots some termites in the wood pile, tells Julie about them, but she doesn't mention that to Chris. Whatever Julie's bug person does as a remedy to stop the wood beetle migration isn't working, because they still seem to be flocking to Chris's bookstore. He keeps Julie apprised of the on-going beetle situation, but after a month he's still spotting the little critters in his store.

He tries to get rid of them by spraying the store's premises, but the fix is only temporary, for new beetles find their way in. Finally, after about a month of dealing with the beetles, Chris discovers that he can contain the effects of the infestation by sealing off the one room nearest to the vacant lot. He installs sheet rock in the door frame of the room and chinks the remaining seams. He still has to keep spraying the other three rooms, but he seems to be winning the battle of the "Wood Beetles vrs. the Books."

When the lease comes to an end, Chris has earned enough extra money to buy the house from Julie. They sign a simple contract stating the amount for which Julie agrees to sell her house to Chris and that closing would occur two weeks later. The contract recites that Chris agrees to take the house "as is." One week after signing the contract, Chris learns that termites were present in the foundation of the house and have significantly impaired at least two wooden "footers" of the house. In that same week, Chris receives a notice from several homeowners in the subdivision of which the house (now bookstore) is part of, indicating their intent to enjoin Chris from conducting his business.

At this point, Chris shows up at your office highly distraught at the circumstances and angry at Julie. **Chris wants to know several things:**

First, does he have to go through with the contract?

Second, if he buys the property will he be able to conduct his bookstore business?

Third, what rights or claims does he have against Julie?

Please advise him.

Question 3.

Hampton and Marlene own adjacent tracts of land in a wilderness area some fifty miles north of the city. A county road abuts Hampton's land on the western side of his property and connects to a major state highway south of the property. Marlene's tract has no public access, but from the time she bought the property, Hampton has given her permission to use a gravel road on his property that he uses to get to the county road. [see diagram]

After chatting with a friend in law school, Marlene has gotten nervous about relying on what she now recognizes is permissive use of a license from Hampton that he could revoke if he wanted. She approaches Hampton with the idea of formalizing the access arrangement and they produce a writing that grants Marlene a right of way across Hampton's land to get to the county road, but only so long as her property remains landlocked. On advice of her law school friend, Marlene records the writing given to her by Hampton.

One year later, Marlene divides her property into six tracts (A, B, C, D, E, and F—see the diagram) and sells tracts C, D, E, and F to four different people, while retaining tracts A and B for herself. Almost immediately the new owners of tracts C, D, E, and F start building vacation homes on their property and as a consequence of the construction activity there is a considerable increase of traffic and use of the gravel road on Hampton's land and he's getting increasingly annoyed.

After a while the construction is finished, but the owners of tracts C, D, E, and F really make use of their property and particularly in the summer friends and relatives that come to visit them create additional traffic on the gravel road. Just recently, the county has constructed a new county road that runs adjacent to the Southeast corner of tract F.

The owner of tract F now has public access by the new county road, but because it's more convenient to get to the state highway, he still sometimes uses the gravel road over Hampton's property. After the new county road is constructed, Marlene and the owners of tracts C, D and E continue to use the gravel road as their exclusive means of getting to and from their property.

Hampton has gotten fed up with the situation and sells his property one winter to Ashleen who takes possession and settles into her new home. Marlene as well as the owners of tracts C, D, E and F are "snowbirds," that is, they winter in a warmer climate, and so they were not using the gravel road to get to the county road. Come the spring, however, Ashleen begins to see all sorts of traffic over the gravel road from Marlene and all the other tract owners. To say the least, she's really annoyed. She says she bought the property without any knowledge of such an alleged right in her neighbors. In a huff, Ashleen constructs a log-jam on her property that prevents Marlene and tract owners C, D, E, and F from using the gravel road.

Marlene and the owners of tract C, D, E, and F file suit against Ashleen seeking to have the log-jam removed and the access restored.

Advise Ashleen of her rights and obligations in this matter.