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**608 Property II**

**Semester II, 2003**

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

**Professor Christian G. Fritz  
Wednesday May 14, 2003  
9:00 a.m. to 12:00 noon**

**THREE HOURS**

**GENERAL INSTRUCTIONS**

1. This exam consists of four (4) essays questions. The four questions are equally weighted, so you should allocate your time (approximately 45 minutes per question) accordingly.
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.
4. If any part of the exam seems contradictory to you, state the contradiction as you see it and on what basis you are proceeding.

Good Luck and have a great summer!

### **Question One**

Larry Landlord rented a furnished apartment in his building to Tommy Tenant, a medical student, for two years, beginning June 1. When Tommy arrived at the apartment on June 1, Ralph (the prior tenant) was still there. Tommy complained to Larry and Larry was able to evict Ralph on June 15. Tommy went into possession of the apartment on June 16.

The apartment above Tommy's was occupied by Coco, a member of a famous rock group (The Gyration). The daily rehearsals (typically 2:00 p.m. to 6:00 p.m.) of this group interfered with Tommy's medical studies so much that he complained repeatedly to Landlord. On July 15, three of Coco's friends (the other members of Coco's band) were arrested at Coco's apartment and charged with possession of narcotics. The noise stopped immediately thereafter.

On August 30, Tenant's stove in his apartment was no longer functioning. On August 31, Tommy, disgusted with all these events, knocked on Larry's door, tendered his key, and said, "This place is a zoo; I wouldn't live here if you paid me!" Larry took the key without saying a word. Larry now comes to you wanting to sue Tommy for the accrued rent (Tommy has yet to pay any rent) and prospective rent.

**What would you tell Larry about his rights and duties and the potential defenses Tommy might raise?**

### **Question Two**

Able owns Blackacre. On January 1 Able sells that property to Betty, who does not record the deed to Blackacre that she received from Able. On February 1, Able purports to sell Blackacre to Charlotte, who knows of the earlier transfer by Able to Betty. Charlotte records title to Blackacre on the same day of the sale, February 1st. One month later, on March 1, Betty finally gets around to recording her deed to Blackacre.

On April 1, Charlotte sells Blackacre to Dan, who does not know of Betty's claim or interest in Blackacre.

**In a law suit between Dan and Betty over who has title to Blackacre, who might prevail and why?**

### **Question Three**

Adam is the fee simple owner of Blackacre, a large lot in Happy Valley, a community nestled north of Albuquerque. Adam has young children and a wide assortment of animals (including llamas, horses, turkeys, and chickens)--all of whom have a great time running about the expanse of Blackacre.

Beatrice is the fee simple owner of Whiteacre, a large undeveloped lot adjacent to Blackacre. Beatrice has long desired to cultivate the state's premier basil—inspired by the example of Em Hall—a law professor whose pesto sauce has become legendary in New Mexico. Beatrice is convinced that Whiteacre has the perfect soil for growing competitive basil, but unfortunately Whiteacre has virtually no access to water.

To overcome this problem Adam and Beatrice come to an agreement, memorialized in a document they both sign, and have duly recorded. In the agreement Adam grants Beatrice a 6 foot right of way for an irrigation ditch on the northernmost part of Blackacre (See following diagram).

In the same document, Beatrice, for herself and her heirs and assigns, covenants to build and maintain a seven foot fence along each side of the six-foot strip in which the irrigation ditch is located on Blackacre. (The purpose here was to keep llamas and kids out of the ditch since Adam and Beatrice both knew that "Ditches are Deadly.")

Beatrice proceeded to construct the ditch and the fences. Sometime afterwards Adam dies intestate, leaving Henry his sole heir. Thereafter, both the fences on the north and south side of the irrigation ditch become dilapidated and are on the verge of falling down. Henry demands that Beatrice fix the fences, but Beatrice--too engaged with fine-tuning her basil--refuses.

**Henry sues Beatrice seeking damages for breach of contract. May Henry recover? Explain your reasons.**

#### **Question Four**

Chris Sparrow is an avid birder (one who delights in observing and identifying birds). Sparrow owns Lot A, large piece of vacant land in downtown Albuquerque, near the Rio Grande. Because of the proximity of the river, a number of unusual birds can be sighted from the property, particularly from the hilly, south-western portion of the lot.

Ben Builder wants to buy Lot A from Sparrow and Sparrow is agreeable to the sale. However, it turns out that the New Mexico Society for Birders owns Lot B (on which it has built the state headquarters for the Society). Lot B is located across a busy north-south street that separates Lot A from Lot B. (see diagram below)

Sparrow, a founding member of the Society, wants members of the Society to have continued access to the south-western portion of Lot A so that they can observe their feathered friends. Builder doesn't mind this because only the northern portion of Lot A is suitable for his plans for development. The deed executed by Sparrow to Builder included the following language:

"...after the transfer of Lot A from Sparrow to Builder members of the New Mexico Society for Birders shall have the right to enter Lot A and use the south-eastern portion of the lot for bird sightings."

After the deal went through, Builder proceeded with his development on the northern portion of Lot A and the birders from the Society do their watching from the south-eastern portion of the lot. After five years, Sparrow dies, leaving the Society the residue of his considerable estate. With this unexpected windfall the Society buys Lot A from Builder. All activities on Lot A continue as they have in the past.

Two years after the Society's purchase of Lot A, the appreciation of the land (and particularly the development on the northern portion) is so significant that the Society sells Lot A to Danny Investor. The deed is silent with respect to any interests the Society has in Lot A.

Two weeks after Investor takes possession of Lot A, he encounters a group of the Society's members coming across the southern portion of the lot headed for the lookout area in the south-western portion of the lot. Investor orders them off the land, calling them trespassers, but the birders insist they're still entitled to watch birds from the south-eastern corner.

**Discuss the respective claims of the New Mexico Society for Birders and Investor?**