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Exam No.

**608- 001 Property II
Fall Semester 2004**

University of New Mexico
School of Law
Final Examination
Three Credits

Professor Christian G. Fritz
Wednesday December 15, 2004
1:30 p.m. to 4:30 p.m. (3 hours)

Examination Format

1. **Laptop** computer users: Start the Securexam program entering your examination number, course name, professor's name, & date of examination. Click "proceed" to enter the program. Type START in the next window that is displayed but do NOT press the enter key until the proctor says to begin the exam.
2. **Bluebooks** for writing: write on every-other line and only on the front page of each sheet. On the front of bluebook record the class name, professor's name, & date of exam. Make sure to number each bluebook in order. DO NOT WRITE YOUR NAME ON BLUEBOOKS.

Go to the exam check-in table at the conclusion of the exam & fill out an examination receipt.

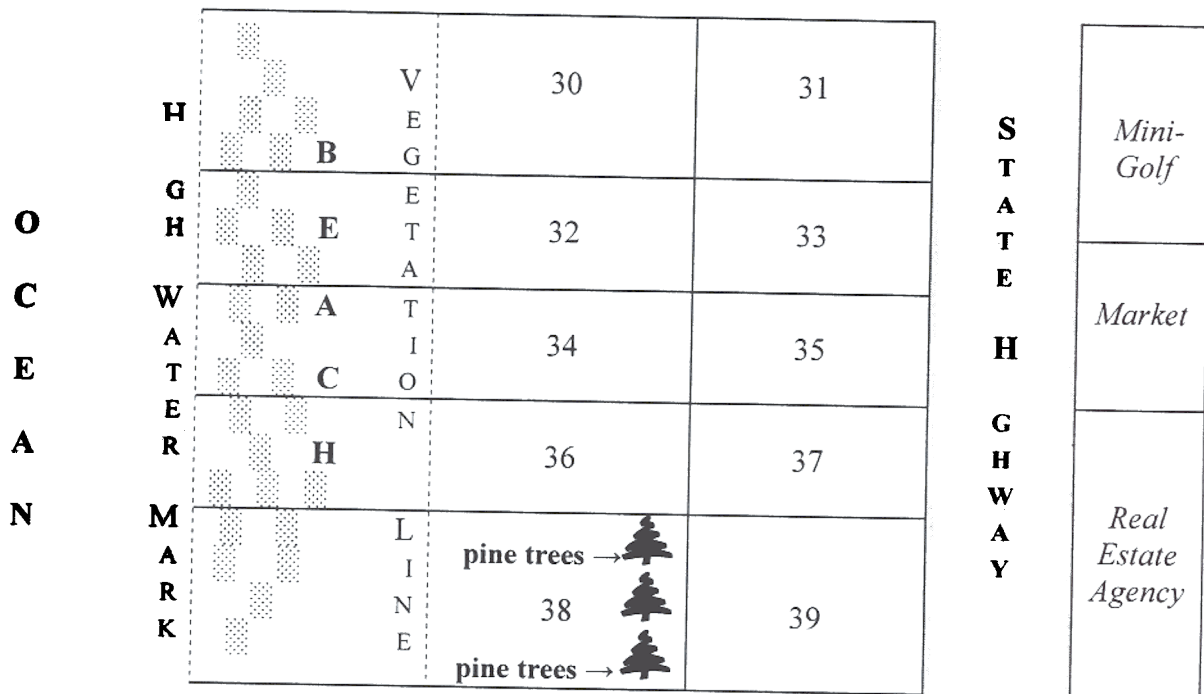
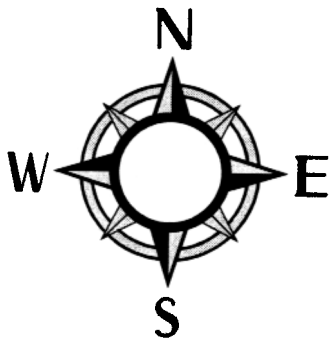
Professor's Instructions

- 1 This exam consists of three (3) essays questions. The questions are weighted differently, so please allocate your time accordingly. Question One is worth 50% of the exam, so you should devote 90 minutes to its answer. Questions Two and Three are each weighted 25% of the exam, so you should devote 45 minutes apiece to answering them.
2. **This is a limited open book exam.** Only the textbook and any handouts or materials distributed to the class as well as notes and outlines you have prepared may be brought into the exam room.
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 holiday break!

Question One (allocate 90 minutes)

Diagram below to be used in conjunction with Question One.



When the State of Pacifica first granted its coastal land to private owners, the original deeds described the parcels as extending to the high water mark (i.e., the point to which water reaches at high tide) on the shoreline. From the high water mark eastward, the sandy beach area runs about 50 feet to the vegetation line (i.e., the point at which plants and grasses begin to grow). The land rises sharply at the vegetation line, then slopes more gently.

By 1975, a state highway follows the coastline about 250 feet inland. The public has always used the beaches along the coast of Pacifica for recreational purposes, such as swimming, fishing, and picnicking. Until the late 1980s the beaches near the town of Oceania, Pacifica, were relatively isolated and uncrowded. As public usage increased, most of the coastal property owner posted signs along the beach reading, "Private Property—No Trespassing," but rarely attempted to exclude the public from the beach.

In 1975, Developer bought up a number of parcels of coastal land from various private owners to assemble a mile-long tract just outside the town of Oceania. Developer then subdivided the tract into 100 lots, with the intention of reselling the lots to form a vacation home community, Oceanacres. The lots were laid out in two tiers, the even-numbered lots extending to the high water mark ("oceanfront" lots), and the odd-numbered lots (oceanview" lots), bordering the highway. (Oceanfront lots were given rights of way over the Oceanview lots directly east of them in order to gain access to the highway.) Developer filed a plat map of Oceanacres in the county recording office. He also filed a declaration of tract restrictions, which included:

1. Lots are restricted to residential use only; no commercial uses shall be permitted.
2. All residences must have proper and adequate water supply and sewage disposal facilities.
3. No structure on an oceanfront lot shall exceed 20 feet in height so as to obstruct the view of an adjacent oceanview owner.

In 1980 the town of Oceania incorporated Oceanacres, as well as surrounding land. The town zoned the property between the highway and the beach R-1, single family residential use only, with a provision for special exceptions to be granted for specified commercial uses upon fulfillment of certain enumerated conditions. Land east of the highway was zoned C-1 to allow light business and commercial use. Since 1980 a number of small businesses have been established in the C-1 zone, abutting the highway on the west. They include a convenience market, a real estate agency, and a miniature golf course in the vicinity of lots 30 through 39.

Developer engaged in an extensive advertising campaign to promote Oceanacres as a vacation community. By 1980 all the lots were sold to various individuals who erected vacation homes, with the exception of lots 30 through 33, which Developer retained. Most, but not all, of the deeds to individual buyers contained uniform restrictions identical to those declared on the plat map and the declaration of tract restrictions. With the delivery of each restricted deed, Developer orally promised to likewise restrict all future lot sales.

In 1975 Developer sold lots 38 and 39 to Alan Adams. (Adams' deed contained the restrictions.) Adams built summer homes on each of the two lots. He installed one water and sewage system to serve both houses with a well for water located on lot 39 and

the septic tank located on lot 38. Adams also planted a row of pine trees on the east border of lot 38. Adams uses the oceanview home (on lot 39) for his own use and rents the oceanfront home (on lot 38) on a weekly basis to vacationers.

By 1985 Adams decides that renting the oceanfront house has become too much trouble. He agrees to sell lot 38 to Bob Brown on the following conditions: Brown will maintain the house and yard of lot 38 in a well-groomed manner and Brown will haul Adams' trash to the dump once a week. The deed from Adams to Brown incorporates these stipulations, as well as the restrictions in the deed from Developer to Adams. The deed was duly recorded.

No problems occur until Adams dies in 1990. In his will Adams devises the oceanview property (lot 39) to his elderly sister, Cora Carter. Cora decides to live in the summer home year around. Cora spends most of her time trimming her bushes and manicuring her lawn and fussing at Brown for not doing likewise.

Brown grows tired of Cora's crankiness and conveys lot 38 to Don Dixon in 1995. Don and Cora also get along poorly, and the relationship deteriorates into a petty feud within a few years.

In 2000, in an attempt to keep the beaches open to increased public use, the town of Oceania amends its zoning ordinance to prohibit coastal owners from obstructing public access to the beach. Dixon, like many of his Oceanacres neighbors, decides to protest by erecting fences that prevent public access to the beach area of his lot.

Meanwhile Developer begins plans to develop lots 30 through 33. He has complied with the conditions of the zoning ordinance and plans to construct a Surf Shop to rent fishing and boating equipment and to sell bait and souvenirs, pending approval of a special exception from the town of Oceania. He also plans to seek a variance in order to extend a pier from the site of the Surf Shop building into the ocean. Dixon and other Oceanacres residents object to Developer's proposals.

Dixon seeks your advice on behalf of himself and other Oceanacre residents. He is willing to bring suit in his own name against Developer to enjoin construction of the Surf Shop and against the town to preserve the beachfronts for private use.

Additionally Dixon wants you to help him with problems he is having with Cora.

Cora is threatening to sue Dixon to force him to trim the pine trees on the border, which have now grown to over 30 feet tall and, Cora claims, are obstructing the view from lot 39. She additionally demands that Dixon, who enjoys "natural" landscaping, keep his lawn mowed and his bushes trimmed, and that he take her trash to the dump once a week.

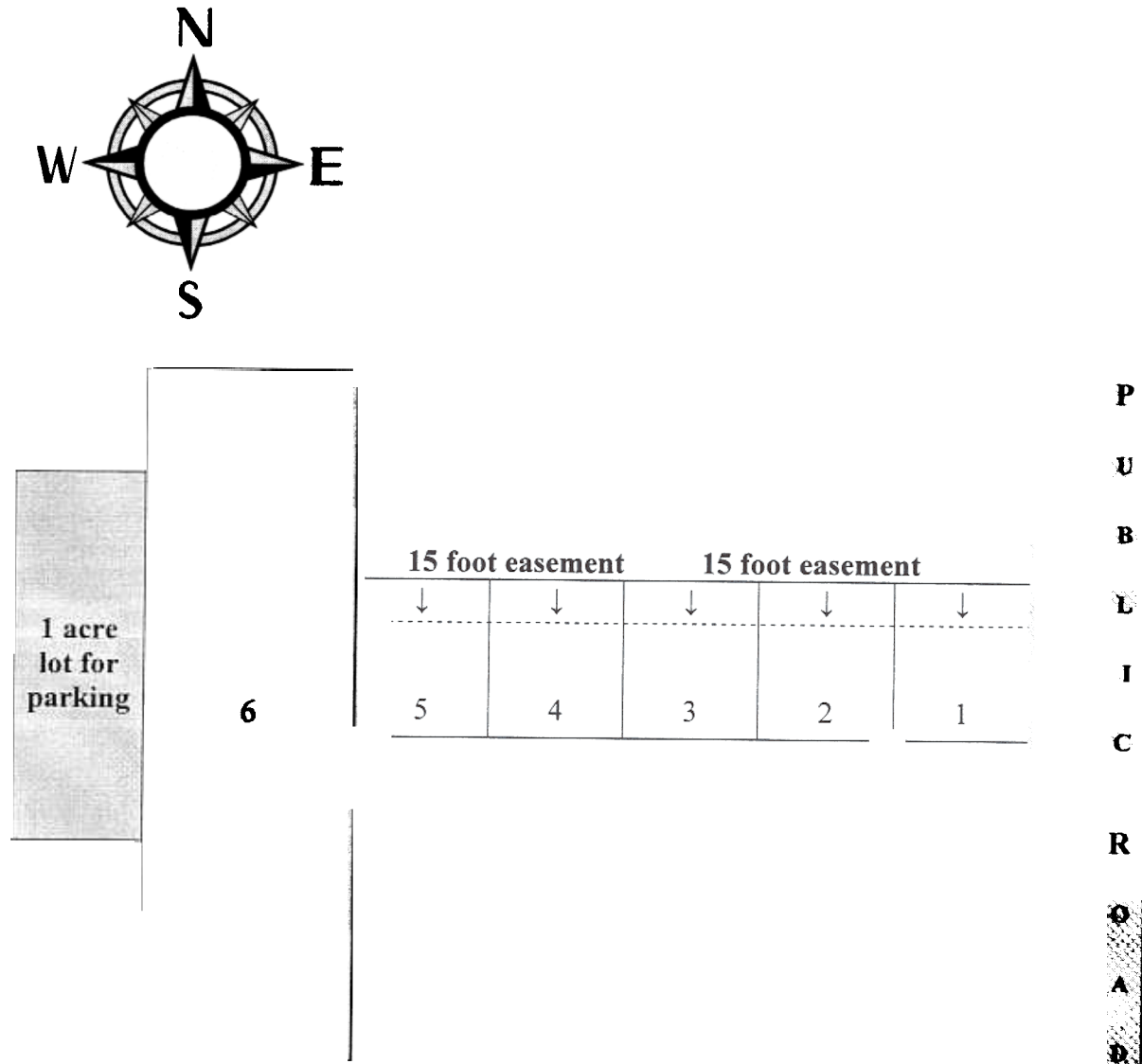
Dixon also wants to know what his rights and responsibilities are regarding the water and septic systems. The well on lot 39 is beginning to fail, and Dixon has

insufficient water pressure to take showers. Cora refuses to do anything, as her water supply is adequate, and tells Dixon he can drill his own well. However, Cora is demanding that Dixon have the septic tank cleaned as the system has become clogged and her plumbing is not draining properly.

Discuss Dixon rights and potential liabilities in relation to the City of Oceania, to Developer, and to Cora, regarding the issues suggested by the facts of this case.

Question Two (allocate 45 minutes)

Diagram below to be used in conjunction with Question Two.



Todd owned the tract of land described in the above diagram, consisting of lots 1 through 6. In 1987, he sold lots 1-5. The deeds to lots 1-5 imposed an easement over the northerly 15 feet of lots 1-5 for the use and benefit of lots 2-6. This easement provides the only public access to lots 2-6. The deeds to lots 1-5 also contained the following restriction: "This lot is conveyed on condition it be used solely for residential purposes." Residences were quickly built on lots 1-4. Lot 5 remained vacant. Todd sold lot 6 in 1990 without any use restrictions in the deed conveying it, and a residence was built on that lot.

In 1995, Chris, an avid history buff, purchased lot 6, attracted by its larger size and suitability for his business venture “History R Us”—featuring elaborate weekend reenactments of historical Civil War battles in which people pay good money to dress up and parade around like Union or Confederate soldiers. In 1998 Marlene purchased lot 5 and built a family home, but has frequently experienced noise disturbances from Chris’s reenactments—particularly the simulated gun fire and cannon bursts during the weekend events.

The deeds to all six lots were recorded.

Chris’s historical reenactments prospered as a business. In 2000, Chris purchases from Teresa, who owned 20 acres of rural land surrounding his tract on the north, west and south, a one-acre parcel adjoining lot 6 on the west for use as a parking lot to accommodate the weekend enactors.

Chris now consults you wanting to know what legal actions Marlene and the owners of lots 1-4 might reasonably be anticipated to take, what defenses he might reasonably assert, and his chances of success. Advise him.

Question Three (allocate 45 minutes)

Beth owns an apartment building. Thereafter, Beth acquires a nearby commercial building. Beth leases out the first floor of the commercial building to a group wishing to operate a nightclub at that location. The lease agreement covering the first floor provides that the entertainment is to be performed so that it cannot be heard outside of the building. To attract the “clubbing” crowd, however, the bar operators decide to bring in local bands to entertain the patrons and have the bands start playing rather late in the evening and into the early morning hours.

And play they do at great volume—heard not merely outside the building but along the entire block. The residential tenants in Beth’s nearby apartment building complain of the noise to Beth. When informed of the situation, Beth says she’ll talk to the operators of the bar. When she talks to the bar operators they assure her they will correct the situation, but each time, after a few nights, the volume of music returns to its original level. After several weeks of this, the tenants decide they have had enough and vacate their apartments by mid December 2003.

When the business of the noisy nightclub arose, Beth decided that she’d like to focus on her residential apartment building investment and arranged a sale of the commercial building at a fair market value to Peter. On January 1, 2004 Beth executed and delivered a deed for the commercial building to Peter, who did not immediately record the deed. Peter intended to take possession of the commercial building only after Beth agreed to straighten out the nightclub situation. Annoyed at the stupid deal she had struck, Beth arranged a sale of the commercial building to Joe on January 10, for valuable consideration. Joe had no actual knowledge of Peter’s deed. Peter recorded his deed on January 12 and Joe recorded his deed two days later on January 14.

In due course, Beth’s double-dealing becomes apparent. Two questions:

1. Who should prevail in a quiet title action between Peter and Joe?
2. What result should obtain when Beth sues the tenants for rent?