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Exam No. \_\_\_\_\_

**608 Property II  
Fall Semester 2005**

**UNM School of Law  
Final Examination  
Three Credits**

**Professor Fritz  
Wed. Dec. 7, 2005  
9:00 a.m to 12:00 noon**

**Examination Format  
Essay Answers**

1. **Laptop** computer users: Start the Secureexam 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, and your examination number. Make sure to number each bluebook in order. DO NOT WRITE YOUR NAME ON BLUEBOOKS.

A five-minute warning will be given prior to the conclusion of the examination. When time is called, stop immediately. If you are handwriting, lay down your pen & close bluebook immediately. If using a laptop, save & exit the program.

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

**Professor's Instructions**

1. There are three questions to this exam and they are equally weighted. Thus, you should allocate approximately 60 minutes for each question.
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

Professor Ritz is a legal historian deeply immersed in a decade-long research project that is **nearing completion**. Over the years he's collected a small archive of materials and while writing his book has been a labor of love, it's hardly going to be a best-seller. His wife, a budget analyst has sought over the years to supplement the family income by making investments in local real estate. Professor Ritz's wife is off on an extended assignment out-of-state, leaving the management and investment of those real estate concerns to her husband during her absence. Unfortunately, the lure of footnotes and note-taking has been more appealing to Professor Ritz than the details of overseeing the property holdings.

Ritz and his wife have a primary residence but also own two houses purchased as rental properties. Each of the rental properties has problems about which the Professor seeks your advice. The background and the situation is as follows.

Three months ago Professor Ritz rented one of the houses (four rooms plus a detached garage) located near the university area to Dan Dotcom. The lease was for a one year term at \$12,000, payable at \$1,000 per month. Dan explained to Ritz that he hopes to develop a company that will make him rich and that he's employed four graduates students from the university to help him develop the software and a marketing strategy for his business. The idea is to develop an on-line, interactive web site called "Property U" where customers can log-on and get a lot of information about property law issues, how to buy a house, finance land investments etc.

The house's proximity to the university is useful to Dan because he plans to rely on some of the university faculty as consultants and the space of the house is sufficient for the present needs of the business, namely computer stations for five people. Neither Dan nor his employees live in the house, though they use the kitchen to fix snacks and on occasion suppers when they work late.

All was going well until about a month ago, when Dan and his staff experienced intermittent power outages which turned out not to be the result of the power company or the failure to pay the electrical bill, but rather the result of old wiring. The loss of electricity was creating real problems for Dan and he notified Professor Ritz. Ritz did send an electrician out to the house, but no repairs were made. A week after reporting the problem to Ritz, Dan called him again to complain about the situation and was told that repairing the wiring would pretty expensive and that Ritz wasn't sure when he'd be able to arrange for re-wiring. Dan is still dealing with on-again, off-again electricity.

About the same time as the electrical problems surfaced, Professor Ritz—faced with a mounting collection of xeroxes and other research materials and needing more space to store the stuff—drove over to the house Dan was renting, entered the locked garage, stored the material, and replaced the lock with a new one for which Dan does not have a key. When Dan discovered this he was annoyed, but as he wasn't really using the garage he didn't really want to make a big fuss; besides, he was more concerned about the electrical situation.

Dan is still using the house to develop his website, but he's stopped paying rent and he's now threatening to sue Professor Ritz and his wife.

With respect to the second rental property, it had long been vacant, but after Ritz's wife went off on her assignment, Professor Ritz was contacted by Sarah Superstar, recently hired by the University. Sarah wanted to buy a house fast. The second rental property, a 3-bedroom house with attached garage, was also conveniently located in the University area. Sarah wanted to see the house, and Professor Ritz tore himself away from his beloved books to give Sarah a tour of the house.

Sarah decided the house was just what she wanted, "a nice quiet place near the University" as she expressed it to Ritz. Sarah and Ritz signed a printed contract for the sale of the house, with closing to occur in three weeks. Shortly after signing the contract, Sarah went back to the house one weekend and discovered to her horror that she was surrounded by "frat houses" and that the noise they generated (from what she learned were regular parties at the frat houses) undermined her objective of a quiet home for a book-minded academic.

Just a few days ago, activities from one of the frat houses led to a competition to see how far "bottle-rockets" (a type of firecracker) could travel. One of those devices, by accident, landed on the roof of the garage of the house Sarah is buying and ignited a fire that destroyed much of the garage before the fire department was able to extinguish the fire.

As if this were not enough, it turns out that her home is directly in the guide path of commercial planes landing at the local airport. Anticipating the roar of the jets and the beer busts, Sarah wants out of her contract.

**Professor Ritz, whose single-minded interest revolves around his manuscript in progress, seeks your legal advice and wants you to advise him on where he stands legally with respect to the lease to Dan and the sale to Sarah.**

## **Question Two**

Grant is the owner of two adjoining city lots (Lot # 1 and Lot # 2) in downtown Albuquerque in an area that is zoned for commercial use. Grant conveys Lot # 2 to Susan by a deed that contains the following provision:

“...with this express stipulation, that no building of more than one story is to be erected by the grantee, her heirs or assigns, on the land conveyed.”

Lot # 1 currently enjoys a magnificent view of the Sandia Mountains, which a multi-story building on Lot # 2 would interfere with and partially block.

Susan subsequently conveys Lot # 2 to Jason by a deed that refers to the restriction in the deed from Grant to Susan. Jason then conveys Lot # 2 to Trish who does not know about the building restriction. The deed to Trish makes no reference to the restriction, and she makes no examination of the records concerning Lot # 2. Trish intends to take advantage of the recent commercial development in the area and plans to construct a four-story building on Lot # 2 that will feature restaurants and other businesses on the ground floor, but with apartments on the upper floors.

Grant, who just recently won the New Mexico Lottery, sells his lot to Amanda and buys a huge home on the West Side of the river with a truly stunning view of all of Albuquerque as well as the mountains.

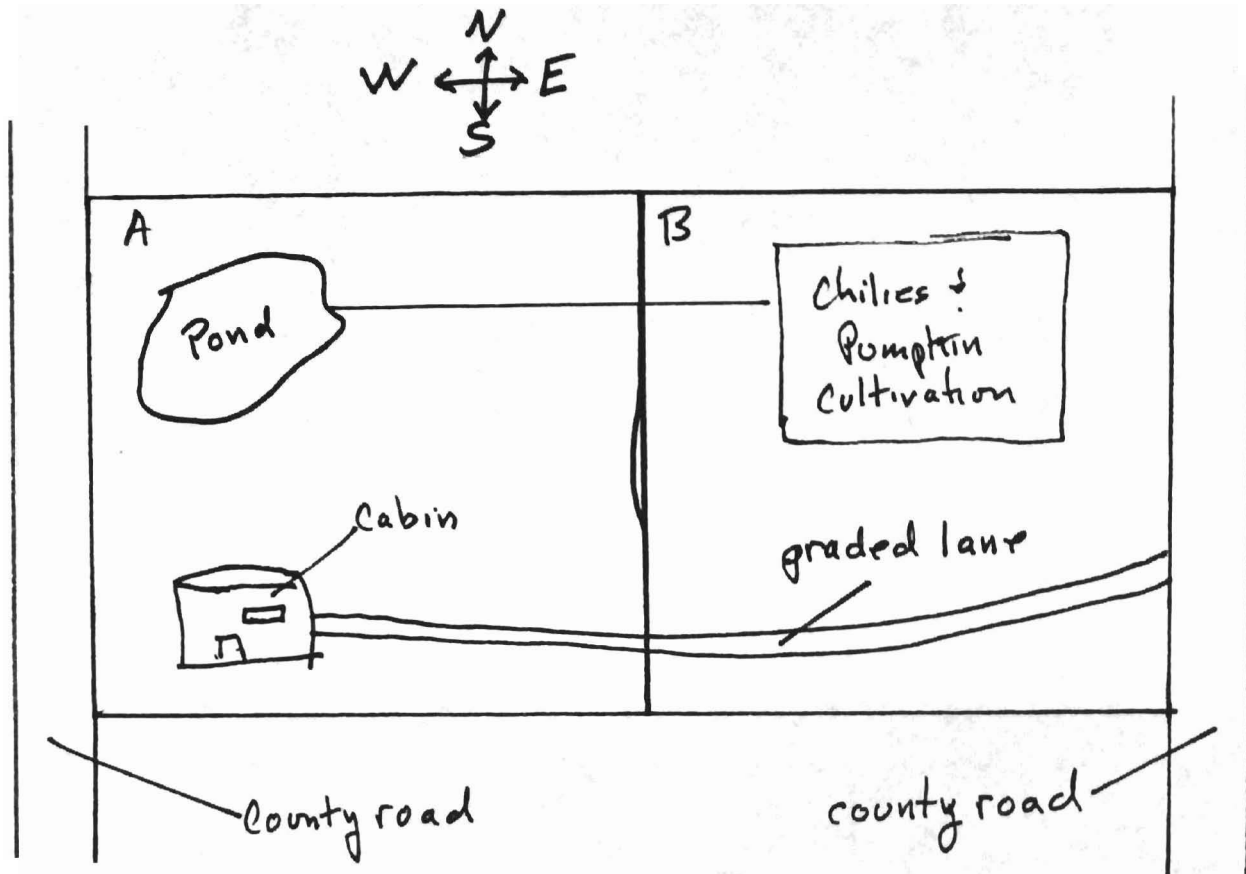
All of the deeds in the chain of title of these transactions are properly recorded immediately following their execution.

Before Trish starts construction on Lot # 2, Amanda tells Trish about the restriction. Unlike Grant, Amanda could care less about the view of the Sandia Mountains, but just doesn't want to face the prospect of the construction next door. Amanda warns Trish not to build the four-story structure. Nonetheless, Trish continues her plans.

**Amanda now comes to you and asks what her legal rights are against Trish. Please advise her.**

### Question Three

Saul is a UNM-SOL law professor who finds that relaxation and great joy comes when he turns from the word-parsing gymnastics of law to working the land with his own hands. In particular, planting, tending, growing, and ultimately harvesting green chilies and pumpkins is his passion. Saul has been fortunate enough to acquire four acres of land near the Northern New Mexico village of Cundiyo where he regularly goes on weekends during the growing season to cultivate the eastern portion of his land with chilies. (See diagram below)



Saul irrigates his crops by an unusual set of circumstances. Atypical for the area, there is a pond on the western portion of his land that mysteriously is recharged by an underground aquifer. He has constructed an irrigation ditch from the pond to the location of the growing chilies and pumpkins. Because he is the owner of the source of the water, he gets to play major-domo (ditch-master) to his heart's content. In essence, he opens and shuts the irrigation gates whenever he wants; indeed, he tends to over water crops. In water scarce New Mexico he can hardly believe his good fortune!

Because he lives and works in Albuquerque and only gets up to Cundiyo on the weekends, he's built a fairly rustic cabin on the western portion of the land, where he stays when he goes up on the weekends. Public access to the land he owns is provided by a county road that runs adjacent to the eastern portion of his property. Saul put in a small gravel lane from the county road to get to his cabin.

All was well for Saul until the down-turn of the stock-market and the mounting expenses of college tuition for his children. Reluctantly, Saul concluded that he needed to sell some of his land. Fortunately, one of his colleagues, a funny little guy named Ritz, seemed eager to find a place to work in solitude on some kind of interminable manuscript free from the distractions of Albuquerque. (It seems Ritz was having some marital problems, something about how he handled rental property the couple owned in town.) In any event, Ritz seems eager to have a place to get away to and write. Ritz buys the western two acres (tract A in the diagram) from Saul.

After the sale, Ritz uses the graded lane to get to his cabin and Saul continues to run the irrigation system that draws water from the pond to water the chilies and pumpkins he plants on the eastern portion of the property (tract B in the diagram). One year after the sale, the county opens up another road adjacent to Ritz's property that provides public access to his cabin. Nonetheless, Ritz continues to use the graded lane because it is more convenient for him and Saul, regretting having sold the land to Ritz, objects to Ritz using the lane when he now has public access via the new county road.

Ritz, annoyed by Saul's position, insists that Saul stop drawing water from his land. Ritz decides he wants to raise pumpkins and chilies *himself* (the manuscript is not going so well) and he seeks to stop the diversion of water to Saul's land and instead use it on his own land. In addition, when Ritz does try to make progress on the manuscript, the noise of the irrigation gates (they're of ancient metal design and make a creaking sound when Oscar opens or shuts them) breaks Ritz's concentration.

**What are the respective property rights of Saul and Ritz?**