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**608 Property II
Fall Semester 2006**

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

**Professor Fritz
Wednesday, December 13, 2006
9:00 – 11:00 a.m. (2 hours)**

**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. This exam consists of two parts. Part One is an essay question to which you should allocate 90 minutes. Part Two is a multiple choice section to which you should allocate 30 minutes. The two parts are weighted accordingly: 75 % for the essay and 25% for the multiple choice section.
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.

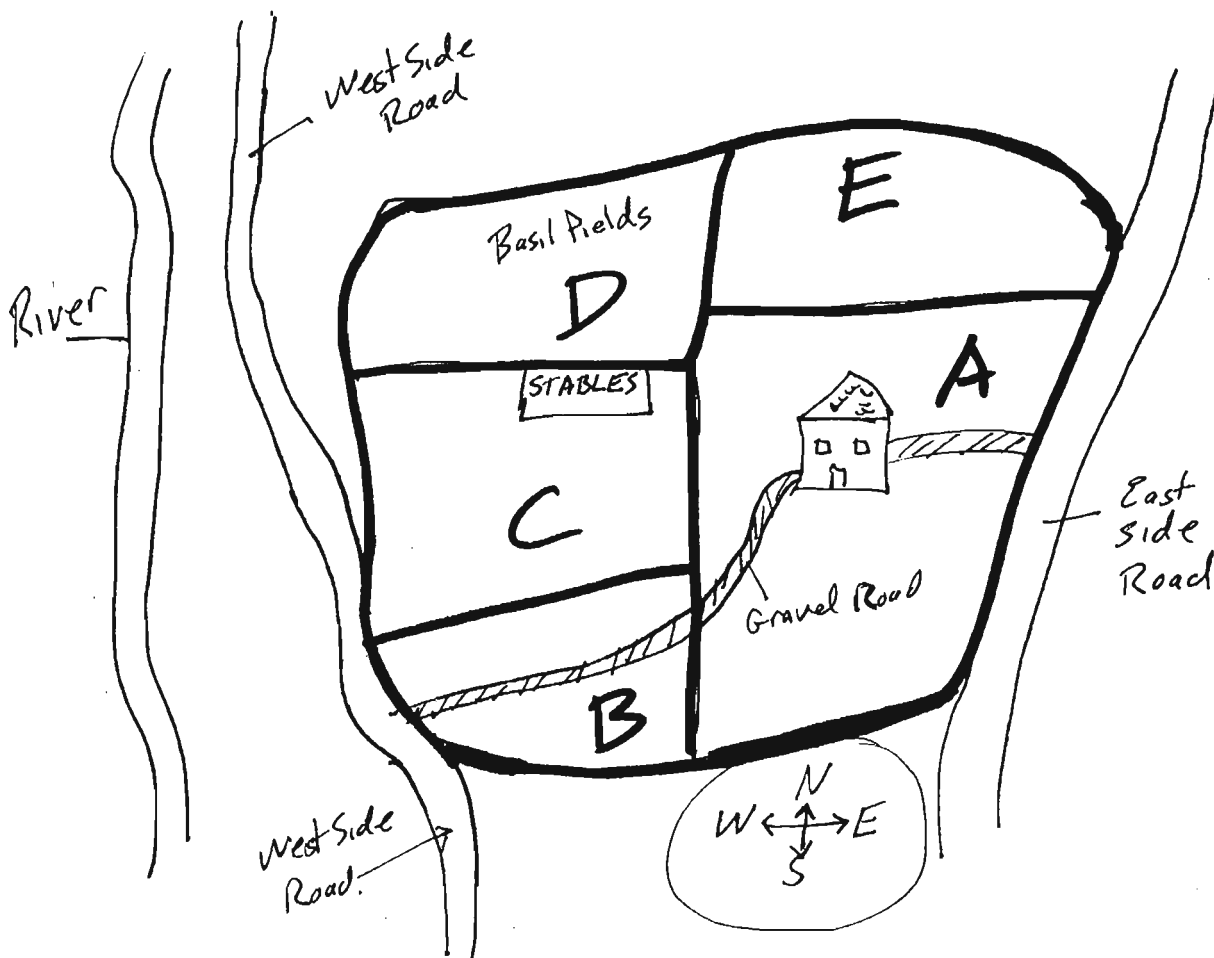
Good Luck and have a happy and restful holiday!

Property II Exam 2006

Part One (90 minutes)

Question One

Oscar is the owner of a 30 acre tract of land nestled in the North Valley near the River in an area that while largely rural is close to the urban center of the city. The tract slopes gently down to the River and offers a wonderful vista of the River and the hills beyond. Oscar gains access to his property by two public roads, one that runs adjacent to his property on the east and another that curves around part of his property on the west. [see the diagram below].



Oscar constructed a large home on the eastern portion of his property, putting in a gravel road that gives him easy access to both the Eastside Road and the Westside Road. He's also a nut for basil and has placed the northwestern portion of his property under cultivation to grow that crop. In addition, he loves to ride horses—there being a considerable number of horse trails in the area—and has built a horse stable just south of the basil fields. Horseback riding and tending to his fields filled Oscar's days. But alas, this idyllic state of affairs came to an end when Oscar's financial situation faced reversals and he finds himself in desperate need of cash. Property values in the neighborhood have climbed and the area has increasingly witnessed housing development. Oscar decides to do what some of his neighbor have: divide his land and sell off individual lots.

Oscar decides to retain the land on which he's built his home (Lot A) and the land just north of it (Lot E), but sells in sequence Lots B, C, D to different buyers.

Initially, Oscar properly executes a deed conveying Lot B to Beatrice. Beatrice had inspected the property before she contracted to buy the land and intends to have a house constructed on the lot. The deed to Beatrice expressly provides that:

“the following covenant is to run with the land conveyed: no structure taller than 20 feet may be erected on the property, so as to maintain, to the extent reasonably possible, the beautiful views of the River and hills beyond. This restriction shall also apply to any land retained by the Grantor.”

There were no other restrictions mentioned in the deed. Beatrice dutifully records her deed.

Thereafter, Oscar sells Lot C to Clyde, an avid horse rider who was particularly pleased about buying property that already had a stable. But Oscar still wants to make use of the stable even if he has to share its use with Clyde. The deed to Clyde expressly provides, “Oscar retains the right of access to the stable and the right to stable his horses as long as he owns Lots A and E.” The deed contains no other restrictions. Clyde fails to record his deed.

Soon after the sale of Lot C to Clyde, a job transfer forced Clyde to move out of state and he arranged for a quick sale of Lot C to Quinton. Clyde properly executes a deed conveying Lot C to Quinton for valuable consideration. There is no mention of Oscar's right of access to the stable in the deed between Clyde and Quinton. Moreover, there is no evidence on Lot C of Oliver's right to gain access and use the stable because Oscar has temporarily stabled his horses with a neighbor with whom he often rides.

Finally, Oscar enters into negotiations with David for the sale of Lot D. David is an entrepreneur who used to be in the business of supplying basil, but got sick and tired of dealing with fussy customers. His secret intent is to cash in on the demand for housing in the area and he intends to construct townhouses on the four acres that comprise Lot D, The local zoning ordinance permits such a development. The issue of lack of public

access to Lot D is overcome when Oscar tells David he can build a road across Lot E to connect with the Eastside Road. Thereafter, the two enter into a contract for the sale of the land and David receives a deed to Lot D that contains no restrictions.

After the transfer of title David has a road constructed over Lot E and builds a small home on Lot D. After arranging for surveys of the land, architectural plans, and financing, David starts tearing up the basil fields to get ready for construction. Oscar is horrified at the destruction of the crops he lovingly planted and dismayed at David's development plans which will considerably exceed 20 feet in height. Oscar denies David permission to cross his land and begins to install obstructions that will prevent access to the Eastside Road via the road David had built over Lot E.

Needless to say David is not happy with Oscar. But then again neither are Beatrice and Quinton.

Beatrice is unhappy because soon after she had her house constructed she noticed that Oscar threw large parties and his guests (including Oscar) routinely used the gravel road on Lot B to get to Oscar's house from the West Side Road.

Quinton is upset because Oscar insists he has a right to come on Lot C and put the two horses he owns in the stable.

Apart from his dispute with Oscar, David is annoyed with the smell and noise of the stable on Lot C—on the boundary of the property where he intends to locate the townhouses. He wants Quinton to either stop using the stable or have them moved.

Discuss whether David can put in his development, whether he has a right of access over Oscar's land, and the merits of his claim against Quinton.

Also, discuss the rights Oscar may have in Lots B and C.