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608 Property II
Fall Semester 2009

UNM School of Law
Final Examination
Three Credits

Professor Fritz
Wed. May 8 or 13, 2009
9:00 a.m to 12:00 noon

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, 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.

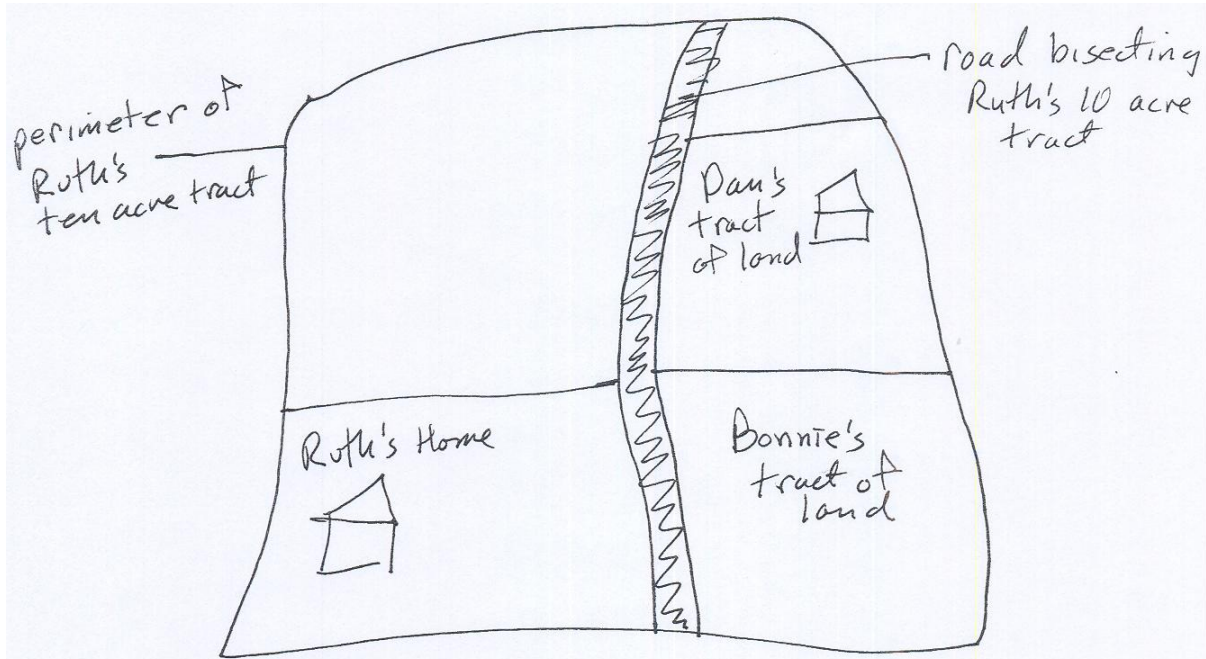
Professor's Instructions

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 summer!

Question One

(The following diagram pertains to Question One)



Ruth owns a ten acre tract of land on which she has constructed a home on the southwest portion. A road bisects her land roughly in a north and south direction. On January 1, 2000 Ruth sells a portion of her land to the east of the road to Dan who also proceeds to build a home. On February 1, 2000 Ruth sells yet another tract of her land (directly across the road from her) to Bonnie. In the deed from Ruth to Bonnie was the following language:

“BUT this land is being conveyed subject to certain restrictions as to the use thereof, running with said land by whomsoever owned; said restrictions, which are expressly assented to by [Bonnie], in accepting this deed, are as follows: (1) Said lot shall be used for residential purposes and not for business, manufacturing, commercial or apartment house purposes, and (2) Not more than two residences shall be erected or allowed to remain on said lot.”

In 2004 Ruth sells the property on which she built her home to Susan. In that same year Bonnie sells her land to Walter. Walter has come up with the idea of building a dozen condominium units on the land and is about to begin construction.

Both Susan and Dan bring suit, seeking to enjoin Walter's planned construction.

You are the judge; how do you decide this matter?

Question Two

Tim is a retired university professor who has always longed to own and run a used book store. After his retirement he used most of his savings to buy a sufficient inventory of books and sought a suitable location for his store. Along Central Avenue, near the University where he once worked, Tim found what seemed to be the perfect rental property, a storefront that has been owned for some ten years by Larry. As Tim told Larry, his potential landlord, the storefront was ideal from Tim's perspective—very few windows (thus allowing more shelf space along the walls for the books) and yet bright enough due to the many skylights in the ceiling. At far end of the store was an office area Tim intended to use for storage and the processing of books before putting them on display for his customers.

On January 1, 2008, Tim and Larry signed a lease for the premises for one year “or until Larry can find a tenant willing to pay \$2,000 per month for the leasehold.” The lease provided for an annual rent of \$12,000, payable \$1,000 per month due at the first of each month.

Tim began getting his bookstore ready, installing bookshelves along the perimeter walls of the store and in parallel rows in the store's interior space. To stabilize the bookshelves Tim had the shelves bolted to the walls and to the floor and ceiling. He then stocked his shelves with books and opened for business. Business was pretty slow for the first year and Tim wasn't sure about the long-term prospects for his business particularly as the economy continued to weaken.

As January 2009 neared, Tim was still uncertain of what to do. He paid no rent to Larry on January 1, 2009. Larry, who had never found a tenant willing to pay \$2,000 per month for the leasehold, figured that \$1,000 per month was better than nothing and when Tim wrote Larry a check for \$1,000 on January 15, 2009 as rent for that month, Larry accepted it. Every since then Tim has been paying Larry \$1,000 per month.

With declining sales in February and March, Tim's financial situation became ever more precarious. To save money he gave up his apartment in town and moved a cot into the office area of the store, brought in a microwave, a hot-plate, and a refrigerator. (Fortunately, the store already had a bathroom for the use of his patrons.) Conditions were crude, but he was saving money. Still, he discovered that it was impossible to get a good night's sleep because the Route 66 Bar and Grill (directly adjacent to his store and whose business owners were also tenants of Larry) generated loud music and raucous patrons who partied well past midnight. Tim complained about the noise and how it has interfered with his sleep, but Larry did nothing.

In addition, March turned out to be a particularly wet month (in contrast to the first year of Tim's lease which on the whole was quite dry). The skylights which Tim had initially admired turned out to have significant leaks when it rained, threatening water damage to his books. The office area also had several skylights and the leaks in that part of the store were among the worst, making that area very damp and uncomfortable.

Tim immediately contacted Larry and told him about the leaking skylights. Larry assured Tim he'd take care of it, but by the end of March the leaks continued whenever it rained. In early April, Larry sent someone to fix the leaks, but a downpour on April 10 revealed that the

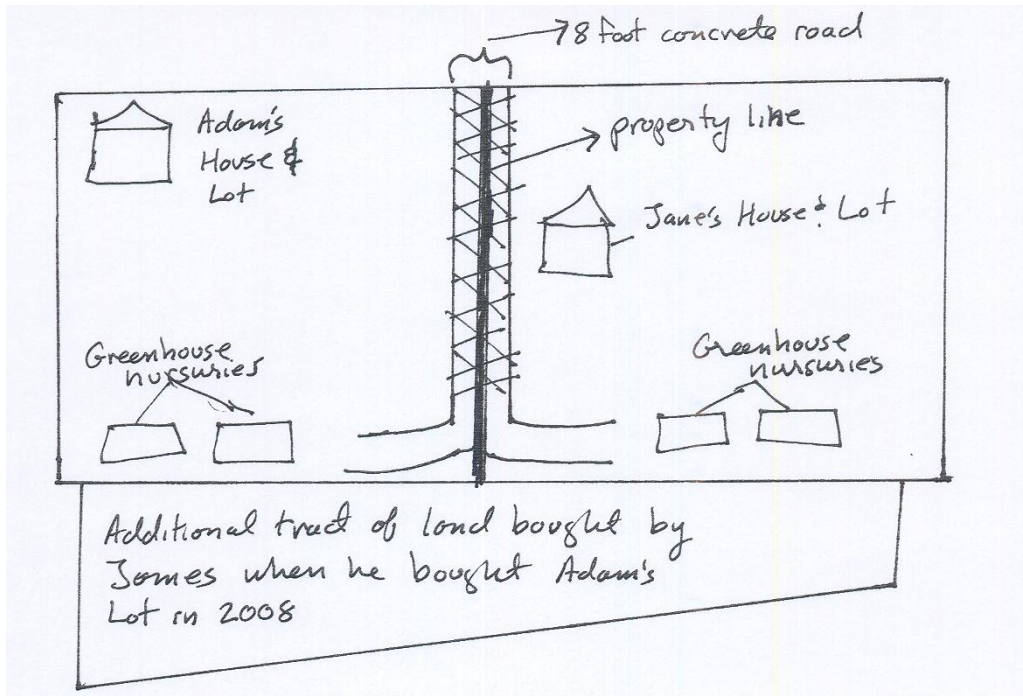
skylights were still leaking badly. Once again Tim complained to Larry and Larry promised he'd see what he could do. On April 29th a long and sustained rain saw considerable leakage from the skylights and Tim was now thoroughly fed up—particularly since some of his favorite books dealing with American constitutional history were ruined by water damage. Ten days later, with the help of some of his friends, Tim removed his books from the store and dismantled the bookshelves and took them with him as well.

Tim has not paid any rent for May.

What result if Larry now brings suit against Tim for rent? What tenancy did Tim have and what are the respective liabilities as between Tim and Larry?

Question Three

(The following diagram pertains to Question Three)



Adam and Jane are adjacent landowners who bought their respective twenty acre lots back in 1980. Each of them built a home on their property, Adam in the northwestern part of his lot and Jane in the center of her property close to the property boundary with Adam. In 1985 both Adam and Jane developed an interest in developing organic greenhouse nurseries on the southern portion of their lots. Neither Adam's lot nor Jane's lot was restricted to residential use and the zoning for the area permitted commercial uses. Given the size of their property the idea seemed like a good one and both of them started their venture with friendly mutual support.

In fact, one evening in early 1985, as they were making plans for their respective nursery businesses, Adam said to Jane,

"You know, it would be handy for each of our operations if we had access to the southern portions of our lots though a paved road straddling our property boundary. How about constructing a concrete road down the center, you pay for half and I'll pay half." Jane said, "Sure."

Indeed, each paid their share and an eight foot wide concrete road was constructed (four feet on Adam's property and four feet on Jane's property). Adam and Jane each made use of the road ever since 1985 as they developed and expanded their respective nursery operations over the years.

In 2008 Adam sold his property to James and the neighborliness that had existed between Adam and Jane was replaced with difficulties and a strained relationship between James and Jane. The source of their disagreement stems from the fact that when James bought Adam's lot, James also bought a large tract of land south of Adam's and Jane's property. Unlike the organic-based nurseries that Adams and Jane had operated, James has an "agri-business" approach to his nursery operation that he wants to develop on the two tracts of land that he now owns.

In 2009 James laid an additional four feet of concrete on his side of the road and threatened to erect a wall on the lot line between his and Jane's property. Given the proximity of Jane's house to the boundary, such a wall would leave her insufficient room for a driveway between her home and the property line.

Jane brings suit to enjoin Adam from building such a wall.

Discuss the right Jane and James have in using the original concrete road that currently straddles their two properties?