

ST. MARY'S UNIVERSITY SCHOOL OF LAW

PROPERTY II

Spring Semester 1993

FINAL EXAMINATION

Professor Douglas R. Haddock

INSTRUCTIONS

1. Many, if not all, of the problems on your Final Examination will refer to the following Factual Information, consisting of nine pages including this page of instructions and the "Statutory Appendix" referred to in paragraph 2 of these instructions. The Examination will be based on the same general situation used in your Property I Exam, and much of the Factual Information included here is identical to the Information you are familiar with from your Property I Examination. Some additional facts have been provided, and other information will be included with some of the problems. The Factual Information in the following pages gives you general background and numerous clues as to problems that might be presented in the Examination. For reference purposes, the paragraphs in the Factual Information are numbered from 1 to 20.

2. Included in the attached materials is a "Statutory Appendix." In responding to the problems on the Examination you are to assume that these statutes are in force in all jurisdictions and, except as qualified in the statutes themselves, at all pertinent times. Except as modified by these statutes, or by additional statutes or instructions in the examination itself, you are to assume that the general common law of property, as studied in class, is in force at all times.

3. Prior to taking the Examination, you are allowed to get assistance from any and all resources, including the assigned problems and readings, your notes, and your colleagues, in studying and reviewing the Factual Information. You are encouraged to study the Factual Information thoroughly, individually and, if you desire, in groups, and to analyze questions you anticipate from reviewing the course.

4. During the three-hour Examination period, you will be allowed to use any printed or written material you wish, including the text, your notes and your outlines. You are advised, however, that this allowance will not necessarily help you. Undue reliance on the fact that this is an "open-book" examination, either before or during the Examination, will almost certainly hamper your performance. You are not allowed, of course, to get help from other persons during the Examination period and your responses to the problems must be your own work, composed and written during the Examination period.

Property II Final Examination Factual Information

Spring Semester 1993

Professor Douglas R. Haddock

THE APARTMENT BUILDING

[1] You will recall some of the following information from the examination in Property I. You may remember, for example, Alice Gore, who died in 1989 at the age of 75. She was a wealthy woman and left a substantial amount of property to relatives and friends. Her will established a trust fund in favor of her children and grandchildren. Last National Trust Company was named in the will as trustee and assets placed in the trust included \$500,000 in cash and a residential apartment building which Alice had owned since her husband's death. Pursuant to the dispositive provisions of the trust created by Alice's will, Grace and Gary (Alice's children) own an equitable life estate in the trust property. Although the trust provisions are poorly drafted, Alice's grandchildren also have some sort of future interest (equitable remainder or equitable executory interest) in the trust fund.

[2] At the time of Alice's death, she had two children, Grace and Gary, who were then age 42 and 37 respectively. Grace then had three children, Mark, Mary and Morton (then age 20, 16 and 12, respectively) and Gary then had two children, Hillary and Horace (then age 15 and 11, respectively). Alice's grandchildren and children are all still alive but of course all parties are about four years older than they were at Alice's death.

[3] During the past year or so, the Last National Trust Company has received numerous complaints from residents of the apartment building that is a part of the trust created by Alice's will. These complaints have been the subject of numerous discussions between the Trust Company and Gary and Grace, who, for much of that period, have received little or no income from that apartment building. Tenants have not been renewing their leases and very few new tenants have been moving in. Many of the problems have apparently been caused by an amusement center that was built near the apartment building about eighteen months ago. The amusement center offers patrons miniature golf, bumper boats, a video arcade, a miniature automobile race track and bungee jumping.

[4] After consultation with Grace and Gary, the Last National Trust Company last month signed an agreement with Real Investment Properties (RIP), a company that specializes in development of commercial real estate. Under the agreement, the Trust Company contracts to sell and RIP contracts to buy the apartment building and the land on which it sits. RIP intends to demolish the building and construct in its place a modern complex of retail shops and office space. The property is presently zoned for multi-family residential use, and the contract between the Trust Company and RIP provides that RIP's obligation to purchase is contingent upon a change in the zoning allowing the development planned by RIP. Under the trust created by Alice Gore, the Last National Trust Company has authority to sell trust property, provided that they consult with the income beneficiaries (in this case, Grace and Gary) prior to making any commitment to sell.

THE OFFICE AND FURNISHINGS

[5] Alice Gore's husband, George, died in December of 1988. During the later years of his lifetime, George had been involved in a business partnership with Tom Teeter. The activities of the business involved real estate development. Among the assets in George's estate at death were fairly expensive furnishings used to decorate the office used by Teeter and George in their real estate business. Included among these assets are office furniture and two expensive paintings. Tom Teeter continued to use the office after George's death. In 1991, however, Tom Teeter was killed in an automobile accident, survived by his wife Teri and two children. Tom did not have a will.

[6] The office used by George Gore and Tom Teeter is in a building owned by Majestic Peaks Realty. In August of 1991, two months before his death, Tom Teeter signed a lease, agreeing to rent the office space for another two years. Since Teeter's death, Majestic Peaks Realty has received no rent for the office but because of a surplus of office space on the market they made no attempt to find another lessee until two months ago. At that time, they entered the office, removed the furniture and paintings to a storage location, and painted the office in preparation for putting it on the market for rent. Within days of removing the furnishings, they also sent a letter by certified mail, addressed to Tom Teeter, explaining that items removed from the office had been stored by them and stating that they (Majestic Peaks) were authorized to dispose of the property if not claimed within 60 days.

THE SEASIDE PROPERTY: LOT B

[7] Soon after the commencement of his partnership with Tom Teeter, in 1972, George Gore transferred to Tom Teeter "all of my interest" in a large tract of land in the town of Seaside. Gore had inherited this land from his father who had purchased it in 1955 from a religious group known as "Branch Solomonians." The deed transferring the property to Gore's father had the following language in it: "to Horace Gore and his heirs, provided, however, that if any alcoholic beverages are ever sold on the premises, grantors reserve the right to reenter and terminate the estate granted hereby." Horace Gore (George's father) had executed a will during his lifetime, but it was determined to be invalid after his death; as a result of this, Horace died intestate (without a legally effective will).

[8] This Seaside property transferred by George Gore to Tom Teeter has been subdivided into smaller tracts, three of which are referred to for our purposes as Lot B, Parcel C, and Parcel D. Lot B is relatively small, not really suitable for further subdivision, but Parcels C and D contain several hundred acres. In 1975, the Teeters had plans to develop the land in Parcels C and D as a small subdivision of rather expensive residences. As a means of raising some money, they sold several smaller lots, including Lot B, during 1975. Teeters eventually sold Parcel D, but their plans to develop Parcel C never materialized.

[9] In June of 1975, Tom and Teri Teeter delivered a warranty deed to Lot B to Marie Esquivel. Lot B and two other lots sold in 1975 were closer to the sea than the land retained by the Teeters (Parcels C and D), and each of the deeds to the lots sold, including the conveyance of Lot B to Marie, contained the following language:

. . . provided that said grantee, her heirs, successors and assigns, agree not to construct on the premises any structure that will significantly impair the view of the sea from land retained by the grantor, described as follows: [a legal description of Parcels C and D is inserted here]. In the event this condition is breached, title to said property shall revert to grantors.

[10] In December of 1990, Marie Esquivel died, survived by Eric, her only child, and his family. Eric was then and is now married to Judy Esquivel and they have three children. Lot B is presently in the possession of Seafood Extraordinaire, Inc., a firm that processes, packages and sells fish products for human consumption throughout the United States. They have a ten-year lease on the property, granted by Eric Esquivel, with an option to renew the lease for another ten years. The commencement date of the lease was June 1, 1991, and between that date and the spring of 1992, when the plant started operations, a construction company (Seaside Contractors) employed by Seafood Extraordinaire was engaged in building a large building on the property to accommodate Seafood's operations.

[11] During the excavation involved with the construction of the fish processing plant, one of the employees of Seaside Contractors discovered a buried trunk. The trunk appeared to be very old and it contained some potentially valuable items. The employee put the trunk and its contents into the trunk of his automobile and stored it in his garage. In March of this year, the employee and her husband had a "garage sale": among the items sold during the garage sale were the trunk and a number of the items that were inside it when it was discovered on Lot B.

[12] Until the construction by Seaside Contractors, there were no improvements on Lot B. You will recall that Lot B had become the centerpiece of a controversy in that little community. Nora and Nick Nance, owners of a fee simple absolute in another tract of land, referred to as "Lot A," had for seven years operated a patio cafe ("Nora's Niche") on the property (Lot A). Nora's Niche had become a very popular eating place for tourists and townspeople alike, but its popularity and business took a rather precipitous downturn soon after Seafood Extraordinaire commenced its operations on Lot B. There are several city lots between the cafe and the plant, but foul and powerful odors emanating from the plant were frequently reaching the cafe, and customers of Nora's Niche complained about the odors and patronized the cafe less and less frequently.

[13] Further developments have occurred and are now occurring with respect to both Lot A and Lot B. Bothered by complaints and threats of litigation from the Nances, Seafood Extraordinaire is considering a tentative offer from another company to purchase their interest in Lot B. The other

company is WHY, a clothing manufacturing firm. The lawyer for that firm has consulted with the lawyer for Seafood Extraordinaire and has examined the title records pertaining to Lot B. These efforts have revealed the facts discussed in paragraphs 14-16.

[14] The religious group (Branch Solominians) referred to in paragraph [7] were owners of a marketable fee simple title in the large tract including Lot B just prior to their 1955 transfer to Horace Gore, George Gore's father. Documents in the record also confirm that George Gore inherited all of his father's interest in the large tract of land. The 1972 deed from George Gore to Tom Teeter was also properly recorded in 1972 and the 1975 deed from Tom and Teri Teeter to Marie Esquivel was recorded in 1975. Also recorded in 1975 was a mortgage deed to Lot B, from Marie Esquivel to First Financial of Seaside. First Financial apparently loaned Marie funds with which to purchase Lot B, and under the terms of this arrangement, Marie was obligated to repay the loan over a ten year period. The mortgage deed would allow First Financial to take title to the property in the event Marie defaulted on the loan. No other documents pertaining to this mortgage deed appear in the record.

[15] From information supplied by Seafood's lawyer, WHY's lawyer also determined that the lease from Eric Esquivel to Seafood Extraordinaire had been recorded in 1991. No connection between this lease and Maria Esquivel or earlier owners appears in the record, however, because no documents confirming Eric's inheritance from Maria were ever recorded.

[16] Provisions in the lease agreement between Eric and Seafood include the following:

Rent to be paid by Lessee or its successors shall be \$800 per month over the term of the lease.

Lessee shall maintain the premises in good repair. In the event of substantial destruction of any improvements placed on the property, lessee will have no obligation to replace the improvements but this lease will in such event remain in full force and effect.

Lessee agrees, for itself and its successors in interest, that it and its successors in interest shall conform at all times to all state, county and city laws, ordinances and regulations affecting the property.

[17] Eric Esquivel has decided that he might prefer to convert his interest in Lot B to cash in order to finance other projects. He has mentioned this to his aunt and uncle, who have seemed somewhat interested in purchasing the property from Eric. They have discussed the matter with a lawyer friend but have not yet decided whether to pursue the idea with Eric. They are generally aware of the lease agreement between Eric and Seafood but they have never seen a copy of the agreement.

THE SEASIDE PROPERTY: LOT A

[18] Meanwhile, frustrated with their problems concerning Nora's Niche and Seafood Extraordinaire, Nick and Nora Nance several weeks ago signed a contract to sell Lot A to Mary and Mitchell Morris. The Morrises plan to convert Nora's Niche into an indoor Chinese restaurant. The contract was drafted by the Morrises and is a simple, two-paragraph document containing little more than the names of the parties, the address of the property, a statement that "Morrises agree to buy and Nances agree to sell" the property, the date, and signatures of all four parties.

THE SEASIDE PROPERTY: PARCELS C AND D

[19] As noted in paragraph [8], the Teeters never proceeded with their plans to develop Parcel C, and the "record title" to Parcel C is still in the name of Tom Teeter. Prior to Tom Teeter's death, in 1984, the Teeters sold Parcel D to a group of doctors who planned to hold the property for investment purposes. The transfer took place by means of a general warranty deed naming Tom and Toni Teeter as grantors and Lisa Lowery, Lewis Lorenzo, and Larry Lawrence, as grantees. The deed states that Lowery, Lorenzo, and Lawrence are granted the property "as joint tenants with rights of survivorship." The doctors still own Parcel D, but they have signed a contract to sell part of it to Gary Gulliver. The contract is fairly typical and includes provisions requiring vendors to furnish an abstract of title to the vendee, scheduling a "closing date" for May 25, 1993, and indicating that transfer of title would take place by quit claim deed from vendors to vendee.

[20] Before entering into the contract with Gary Gulliver, Lowery, Lorenzo and Lawrence signed and recorded a "Declaration of Covenants, Easements and Restrictions" pertinent to Parcel D. In that document, a fairly detailed land use plan is set forth for all of Parcel D. The declaration purports to restrict most of the affected land to single-family residential use. Minimum lot sizes are imposed and various restrictions affecting the location and size of structures are set forth. At the end of the document is a statement that "these covenants, easements and restrictions shall run with the various estates affected thereby."

Property II Final Examination Statutory Appendix

For purposes of the examination, you are to assume that the following statutes are in force at all pertinent times. Except as modified by these statutes, or provisions included with the problems, you may rely on the "general common law" of property, as studied in class.

§ 5. Instrument of Conveyance

A conveyance of an estate of inheritance, a freehold, or an estate for more than three years, in land and tenements, must be in writing and must be subscribed and delivered by the conveyor or by the conveyor's agent authorized in writing.

§ 13. Validity of Unrecorded Instrument

(a) A conveyance of real property or an interest in real property or a mortgage or deed of trust is void as to a creditor or to a subsequent purchaser without notice unless the instrument has been filed for record as required by law.

(b) The unrecorded instrument is binding on a party to the instrument, on the party's heirs, and on a subsequent purchaser who does not pay a valuable consideration or who has notice of the instrument.

§ 14. Effect of Recorded Instrument

An instrument that is properly recorded in the proper county is notice to all persons of the existence of the instrument.

§ 92. Landlord's Duty to Repair or Remedy

(a) A landlord shall make a diligent effort to repair or remedy a condition if:

(1) the tenant specifies the condition in a notice to the person to whom or to place where rent is normally paid;

(2) the tenant is not delinquent in the payment of rent at the time notice is given; and

(3) the condition materially affects the physical health or safety of an ordinary tenant.

(b) The landlord does not have a duty to repair or remedy a condition caused during the term of the lease, including a renewal or extension, by the tenant, a member of the tenant's family, or a guest of the tenant, unless the condition was caused by normal wear and tear.

(c) The tenant's notice under Subsection (a) must be in writing only if the tenant's lease is in writing and requires written notice.

§ 97. Effect on Other Rights

The duties of a landlord and the remedies of a tenant under this subchapter are in lieu of existing common law and other statutory law warranties and duties of landlords for maintenance, repair, security, habitability, and nonretaliation, and remedies of tenants for a violation of those warranties and duties.

§ 99. Removal of Property, and Exclusion of Commercial Tenant

(a) A landlord may remove and store any property of a tenant that remains on premises that are abandoned. In addition to the landlord's other rights, the landlord may dispose of the stored property if the tenant does not claim the property within 60 days after the date the property is stored. The landlord shall deliver by certified mail to the tenant at the tenant's last known address a notice stating that the landlord may dispose of the tenant's property if the tenant does not claim the property within 60 days after the date the property is stored.

(b) A lease supersedes this section to the extent of any conflict.

§ 224. Classification of Property Of Spouses

(a) All property of spouses is community property except that which is classified otherwise by this Act.

(b) All property of spouses is presumed to be community property.

(c) Each spouse has a present undivided one-half interest in community property.

(d) Income earned or accrued by a spouse or attributable to property of a spouse during marriage is community property.

- (e) Community property transferred to a trust remains community property.
- (f) Property acquired by a spouse during marriage is separate property if acquired:
 - (1) by gift or a disposition at death made by a third person to the spouse or to both spouses;
 - (2) in exchange for or with the proceeds of other separate property of the spouse;
 - (3) from appreciation of the spouse's separate property;
- (g) Property acquired by a person who is not married is separate property.

§ 225. Management and Control of Property of Spouses

- (a) A spouse acting alone may manage and control:
 - (1) that spouse's property that is not community property;
 - (2) property held in that spouse's name alone or not held in the name of either spouse;
 - (3) community property held in the names of both spouses in the alternative, including a manner of holding using the names of both spouses and the word "or".
- (b) Spouses may manage and control community property held in the names of both spouses other than in the alternative only if they act together.

ST. MARY'S UNIVERSITY SCHOOL OF LAW

PROPERTY II
Spring Semester 1993

FINAL EXAMINATION
Professor Douglas R. Haddock

INSTRUCTIONS

1. There are eight problems on the following three pages. You have three hours in which to complete the examination. Times suggested for each problem total two hours and fifty minutes.
2. All problems are based on a document labeled "Factual Information," which consists of thirteen pages of information, including a three-page "Statutory Appendix." This document, with a page of instructions, was distributed during the last two weeks of class, and is not included here. Additional information is included with some of the problems.
3. You are allowed to use any printed or written material you wish, including the text, your notes and your outlines. You are not allowed, of course, to get help from other persons during the Examination; your responses to the Examination problems must be your own work, composed and written during the Examination period. Your answers will be graded according to how well you recognize and how thoroughly you analyze the issues of Property II raised by the problems. Conclusions are sometimes important; your recognition of the questions to be asked is always important.
4. St. Mary's University School of Law prohibits the disclosure of information that might aid a professor in identifying the author of an examination. Any attempt by a student to identify herself or himself in an examination is a violation of this policy and of the Code of Student Conduct.
5. When you have finished with the examination, no later than the end of the examination period, turn in the examination and your responses.
6. After reading the oath, place your exam number in the space below. If you are prevented by the oath from placing your exam number in the space below, notify the student proctor of your reason when you turn in the examination.

I HAVE NEITHER GIVEN NOR RECEIVED UNAUTHORIZED AID IN TAKING THIS EXAMINATION, NOR HAVE I SEEN ANYONE ELSE DO SO.

EXAM NUMBER

Property II Final Examination Problems

Spring Semester 1993

Professor Douglas R. Haddock

Analyze as thoroughly as you can all issues raised in the following problems.

Problem #1

(Suggested Time: 50 minutes)

Assume you are the lawyer representing WHY, the company that has offered to purchase the interest of Seafood Extraordinaire in Lot B. Based on the Factual Information (particularly paragraphs 7, 9, 10, 13, 14, 15 and 16), write a memorandum discussing the status of Seafood Extraordinaire's interest in Lot B and the advice you would give WHY concerning the contemplated transfer of Seafood's leasehold estate to WHY.

Problem #2

(Suggested Time: 20 minutes)

Discuss whether Seafood Extraordinaire will remain liable for rent under their lease (paragraph 16) if they assign their estate to WHY. Also discuss whether WHY would be liable for rent (a) in the event of an assignment of the lease to them and (b) after a second assignment by WHY to some other party. Assume there are no pertinent lease provisions other than those noted in paragraph 16.

Problem #3

(Suggested Time: 20 minutes)

Nick and Nora Nance have recently heard two items of news that have caused them to reconsider their plans to give up on Nora's Niche. For one thing, they have learned about the possibility that Seafood Extraordinaire might transfer its interest in Lot B to WHY. They have also been informed that the odors that have adversely affected Nora's Niche are probably caused by activity on Seafood's premises that is in violation of city ordinances concerning pollution control. Discuss whether Nick and Nora are in a position to take advantage of these developments (a) by continuing to operate Nora's Niche on Lot A and, (b) if necessary, by enforcing the pertinent provision concerning city ordinances in Seafood's lease (paragraph 16).

Problem #4

(Suggested Time: 10 minutes)

In paragraph 7 we are told that in 1972 George Gore transferred his interest in a large tract of land to Tom Teeter. George and Alice Gore were married from 1945 until George's death in 1988. Briefly discuss whether Alice's estate, upon her death in 1989, could, on the basis of her marriage to George, successfully claim any interest in the land referred to in paragraph 7.

Problem #5

(Suggested Time: 20 minutes)

Lowery, Lorenzo and Lawrence (paragraph 19) have consulted you for legal advice. In the process of preparing for the sale of part of Parcel D to Gary Gulliver, they have noticed the language in the 1984 deed naming them "as joint tenants with rights of survivorship." They have asked you what that language means and whether they should "change it." What advice would you give them?

Problem #6

(Suggested Time: 15 minutes)

Teri Teeter received the certified letter from Majestic Peaks Realty (paragraph 6) and promptly sent to Majestic Peaks a letter containing the following paragraph:

Please return the paintings removed from my husband's office to me. They were originally owned by my husband's business partner, George Gore, but he died in December of 1988. Before Tom (my husband) died, in response to a question I asked while visiting his office, he explained that during George's last illness, George had told Tom he could "leave the paintings in the office when I'm gone." I have inherited all of Tom's property and would appreciate your prompt return of the paintings to me.

Discuss the advice you would give Majestic Peaks Realty concerning whether they should comply with Teri Teeter's request. Include supporting reasoning and analysis.

Problem #7

(Suggested Time: 20 minutes)

Discuss whether Teri Teeter might be liable to Eric Esquivel for breach of any of the covenants of title contained in the warranty deed referred to in paragraph 9. Assume that Eric inherited his mother's interest in Lot B and that the deed purports to convey an unrestricted fee simple absolute.

Problem #8

(Suggested Time: 15 minutes)

Several weeks ago, the apartment building referred to in paragraphs 1, 3 and 4 was almost completely vacant. Some homeless people had been using the apartments on occasion, and last week, from unknown causes, the building burned to the ground. Meanwhile, Real Investment Properties (RIP) had been having second thoughts about whether they wanted to purchase the land and apartment building from the Last National Trust Company (paragraph 4). Briefly discuss whether RIP could now avoid their contract with the Last National Trust Company on the ground that the building has been destroyed. Assume there are no pertinent provisions in the purchase agreement.