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Note - the written portions of the exam have page limits. You must write all of your answers in ONE blue book. Answers must be written on every other line in the blue book.

SECTION C - DEFINITIONS
(5 questions, 20-25 minutes)

**PAGE LIMIT FOR EACH QUESTION IS ONE SIDE OF A PAGE,
WRITING ON EVERY OTHER LINE
(HINT: YOU PROBABLY DO NOT NEED TO USE ALL OF
THE SPACE TO GET FULL CREDIT.)**

**Typists - one fourth to one third of a standard - size double spaced page for each question,
limit of two pages total.**

1. conceptual severance
2. insurable title
3. builder's implied warranty of quality
4. planned unit development
5. "true" escrow of a real estate contract

Continued on next page.

SHORT ANSWER - SECTION D - POLICY AND ANALYSIS
(5 questions, 30-35 minutes)

**PAGE LIMIT FOR EACH QUESTION IS ONE SIDE OF A PAGE,
WRITING ON EVERY OTHER LINE
(HINT: YOU PROBABLY DO NEED TO USE ALL OF
THE SPACE TO GET FULL CREDIT.)**

**Typists - approximately one half of a standard-size double-spaced page for each question,
limit of two pages total.**

1. Explain the concepts of "crystal" and "mud" rules, as described by Professor Carol Rose. Give an example of each. The examples need not be those of Professor Rose.
2. Should we unify the law of servitudes? Why or why not? You should argue one side or the other, not both.
3. Explain the purposes of the statute of frauds in the context of the real estate contract. Why do we permit certain oral contracts to be enforced?
4. What is the purpose of the "touch and concern" requirement for real covenants and equitable servitudes? Give an example of a covenant that does not touch and concern.
5. Explain inclusionary and exclusionary zoning and give examples of each.

Continued on next page.

PART II - ESSAY
(one [1] question, 60-75 minutes)

**PAGE LIMIT IS 8 SIDES OF A PAGE, WRITING ON EVERY OTHER LINE.
DISCUSS ALL PROPERTY ISSUES RAISED BY THE FACTS BELOW.**
Typists - three standard size double-spaced pages.

Donna Developer owned a 500-acre tract of land in Horse County, State of Confusion. She wanted to develop the land, but it was zoned for farming and ranching uses only. She approached the Horse County Board about a re-zoning for residential and commercial uses. The Board agreed to re-zone the property, subject to several requirements:

Developer would agree to dedicate land for streets, sidewalks, utility easements, and a 10 acre park.

Residential lots must be at least 2 acres in size. This is twice the current requirement for the largest lots in Horse County.

At the time that each home is built, the final appraised value must be twice the value of the average home in Horse County. The values will be determined by the Horse County Appraiser's Office.

Developer thought the requirements were too burdensome. The neighboring landowners around the 500-acre tract opposed the development and the re-zoning.

One of the neighbors is claiming an easement across the east side of the property, for access to a county road. She has used the pathway for 5 years, before Developer bought the property.

After some time, Developer did proceed with subdivision and building on the parcel. A portion of the tract was platted for residential uses, as the Silver Spurs Subdivision. Developer also filed covenants with the plat. Most of the covenants were fairly standard, but one covenant required that all buyers of the real property pay dues to the Silver Spurs Country Club. The Silver Spurs Country Club does not admit people who are not married. However, the club will accept dues from all residents of the subdivision. Pat and Mel buy a lot in Silver Spurs, but do not wish to pay dues to the country club, since they are not married.

Another covenant requires that all building plans be submitted to an architectural review board. The board is to determine if the home designs maintain or are consistent with a western, ranch-style theme. As time passed, several homes were built without board review, in a southwestern, Santa Fe-style. Howard and Wilma bought a lot, and plan to build a Colonial-style two story home on their property. The board refused to approve the plan.

Yet another covenant requires that lot buyers use Developer's financing company if they need to borrow money to buy a lot. If a lot buyer defaults, the lender quickly forecloses and sells the property to back to developer, for the amount of the remaining loan balance, plus a small fee.

End of Examination

**PROFESSOR MATHER - SPRING 1994
PROPERTY II - EXAM**

ANSWER KEY:

DEFINITIONS: 3-4 pts. each

1. conceptual severance - severance of different property interests, used in takings case
examples: air rights, coal cases
2. insurable - title that an insurance company will insure (distinguish marketable title or perfect title)
3. builder's warranty - represented in M/T, applies to latent defects that arise within a reasonable period of time, the warranty is of workmanlike quality
Economic questions - efficient, expectations
4. PUD - mixed use development, usually allows density variations - promotes variety, permits individualized plans, may use with floating zone, distinguish cluster zone
5. True escrow - used in real estate closings, written contract for the escrow and surrender of control by grantor, neutral third-party escrow agent,
Doctrine of relation back applies

SHORT ANSWER: 5 - 6 pts. each

1. Crystal rule - clear rule, even if results may be unfair predictable, logical, legislation;
Mud rule - fuzzy rule, unpredictable, more realistic, court-made,
2. Unify servitude's:
Yes - same functions
use restrictions
courts confuse, manipulate
terminate similar
policies similar
efficiency
avoid confusion
No - history
expectations
fairness
dif. functions/
dif. policies
dif. elements
3. S/F Evidentiary
Ritual

Prevent Fraud

Permit enforce if part performance or equitable estoppel because concerns met and reasons of equity

4. T&C - prevent covenants that are not related to property, should not extend to remote purchasers
increase or decrease - value (old test physical T&C)
5. exclusionary - keep certain economic groups out
keep property values, tax base high, keep expenses & need for services low

inclusionary - keep/permit certain economic group in
provide fair share low & moderate income housing
spread out the poor & help support

ESSAY 50-60 pts.

A. Rezoning

Majority/minority legislative or administrative
consistent w/plan?
public need
appropriate device

Conditional or contract zoning - SZA
police pwer - contract away
spot zoning

Exactions - reasonable nexus
strict nexus
useful nexus
park is main question

Lot size - too large?
exclusionary
or preserve property values?

Easement -

5 yr - prescription Exclusive
Actual
Open
Hostile
Continuous
Statutory Period?

Prior use? Common O in past
severance of part
use - reasonably necessary
prior use
apparent

necessity other outlet for neighbor?

Covenants -

Country Club

covenant to pay \$
affirmative T & C?

But increase value, general benefit to have a club
Constitutional question
sexual; privacy, but what if gay?

Review Bd Preserve character & value
Standards - not arbitrary

Waiver/abandonment or change of circumstances since not reviewed
waiver limited to Sante Fe or include Colonial?
Pervasive

Financing Co.

Personal covenant
No T & C

Duties at foreclosure
advertise
Broker
minimum bid
duty to get best price
appraisal