

Part II
Written Answers

A. Short Answer/Definitions

4 questions, suggested time 30- 40 minutes.

The page limit for each question is 2 pages.

A page is one side of a page, writing on every other line.

1. What is the implied warranty of quality? Why is the modern trend to imply such a warranty?
2. What is the difference between an enterprise zone and an empowerment zone, or is there a difference?
3. What are the likely longer-term consequences for municipalities after the Supreme Court decisions in *First English* (compensation available for temporary regulatory takings) and *Dolan v. City of Tigard* (city may not require exactions for rain water runoff and jogging/bike trails as a condition of building permit to tear down old business and build a new one)?
4. You are the city attorney for the city of St. Maryville in the state of Happiness. The city council advises you that they wish to prohibit group homes (of all kinds - handicapped, alcoholics, juveniles, etc.) in residential areas. The members of the council are concerned about overcrowding and about property values, as well as safety of the residents. Advise the city council about this issue.

B. ESSAY

One question - suggested time is 60-70 minutes.

Page limit is 6 pages, a page is one side of a page, writing on every other line.

Sam and Sheila Seller were the owners of several pieces of property in the state of Grace. They owned Blackacre and Whiteacre, two large parcels which were used for farming. Sam and Sheila gave a quitclaim deed to Blackacre to their son, Sid. The deed included the following language: "the grantors reserve the right to sell Blackacre." Sam and Sheila conveyed Whiteacre to their daughter Denise, again using a quitclaim deed.

Whiteacre had a well for water already in place, but Blackacre did not. Sid and Denise entered into a written agreement that the well on Whiteacre could be used to supply water to Blackacre. In exchange for supplying the water, Sid agreed that Denise could use a road across Blackacre in order to reach the highway. The use of this road would save Denise several miles when she went to town.

After a few years, Denise decided to sell Whiteacre. She entered into a purchase money mortgage with Paula Purchaser, and conveyed Whiteacre to her by warranty deed. The purchase

PROPERTY II
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FINAL EXAMINATION
SPRING 1996

price for Whiteacre was \$300,000. Purchaser paid a down payment of \$30,000 and agreed to pay the balance in annual installments of \$30,000. Sid sold Blackacre to Bonnie Buyer. Buyer and Purchaser did not get along, and Purchaser refused to let Buyer use the well on Whiteacre. Buyer refused to let Purchaser use the road across Blackacre.

After 2 years, Purchaser missed a payment on the Whiteacre mortgage and Denise foreclosed on the property. The purchaser at the foreclosure sale was Frieda, a friend of Denise. She paid \$200,000.

Sam and Sheila lived in a old Victorian home on Greenacre, in Matherville. Sam died, and Sheila decided that the home required too much work for her alone. She entered into a contract to sell Greenacre to Charles. Sheila did not wish to be bothered with closing details, so she entered into a written agreement with Ann Attorney. The agreement indicated that Ann was to hold the deed to Charles and to transfer it to him when he delivered the purchase price for Greenacre to Ann. Before Charles could deliver the money, Charles discovered that the Victorian home was used as a famous brothel many years ago. Charles was distressed by this discovery, but before he could take action, he died.

Heidi, the heir of Charles, liked the idea of "returning the Victorian home to its history." She decided to look into the possibility of opening an adult entertainment business in the home. The Matherville city council promptly passed an ordinance prohibiting all adult entertainment uses in the city. Also, the neighbors objected, claiming that the private covenants on the land prohibited such a use. However, on the street where the home is located, there are 2 restaurants, 3 bed-and-breakfast inns, and 5 different offices. All of the lots were also subject to the private restrictive covenants in issue here.

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PROPERTY II
Spring 1996

KEY

Short Answer

1. Implied warranty: New construction - builder
Latent defects
Reasonable time
Workmanlike quality

Cannot discover defects
Cheapest cost avoider
Expectations
Discourage shoddy building
Mobile society -- reputation

C/L -- caveat emptor

2. Enterprise zone

Business base
Emphasis tax benefits/trickle down
Government/business selects sites

Empowerment zone

Community-based, local citizen control
Employment is key
Grants

3. Both represent a move toward property/individual rights

First English

Cities more reluctant to take action
Chilling effect -- fear loss of dollars

Dolan: Potential problem -- environmental regulation
Need close nexus regulation and exaction
Harder to work on quality of life issues

Administrative versus legislative action -- less efficient
Probably no real practical change

4. Group homes

FHA -- municipalities must make reasonable accommodations for the handicapped
May use maximum number occupancy

Constitutional

Definitional problems
National relationship legitimate government interest?
Maybe -- can we articulate it?
Cleburne case

Essay

Blackacre

Revocable deed -- reserve right to sell
Not allowed at common law
Quitclaim deed passes all title they have -- may alert subsequent purchasers of title defect
Revocable/conditional deed not strictly marketable

Also, if Sid used warranty deed, breached some covenants

Whiteacre/Blackacre agreement

Water -- covenant run with land
Elements -- Statute of frauds/writing
Horizontal privity (yes, because of the easement)
Intent is issue
Vertical privity -- yes
Notice -- Was it filed?
Other, actual or inquiry notice?
Touch and concern -- Seems yes, but remember case in text -- affirmative obligation
would not run
Breach wd covenants when sale because of encumbrances if not filed?

Easement

Appurtenant, affirmative
Again -- was it filed?

If not -- use prescription (permissive)
use necessity (not strictly)

License, Profit, Easement in Gross
PMM/Foreclosure

Purchaser had 90,000 invested in property
What was FMV? Get appraisal
Frieda was insider, Denise should advertise, get a broker, have competitive bidding,
minimum bid, good faith, due diligence

Also -- missing a payment -- very strict -- any statutory relief here?

Greenacre

Escrow-- Written, but is it revocable by Sheila. Is Ann her attorney? If so, no "true
escrow" and no doctrine of relation back

Charles -- Equitable owner of Greenacre
Equitable conversion

Brother -- Duty to disclose defects but does it actually increase value?
Did Sheila know?

Zoning -- First Amendment -- cannot prohibit all adult uses
Prior use?

Covenants -- Waiver/abandonment/changing conditions
Is it pervasive?
Is it pervasive on this street?
Is the covenant limited to residential use?