Blind Grading Number _________________

American University
Washington College of Law
FINAL EXAMINATION
Property II, Section One

Professor Margaret E. Johnson          Spring 2006

INSTRUCTIONS

1. This is an open-book exam. You may refer to the casebook, your notes, and any written materials you find helpful in answering the exam questions. You must write your blind grading number at the top of this exam copy.

2. This exam is designed to be completed within three hours. You have THREE AND ONE HALF HOURS to complete this exam.

3. The examination consists of four parts, each of which you need to complete. For each part below, I have identified the percentage of your examination grade and provided the approximate amount of time corresponding to that percentage:

   A. Part I: 35% of your examination grade; approximately one hour
   B. Part II: 35% of your examination grade; approximately one hour
   C. Part III: 15% of your examination grade; approximately 30 minutes
   D. Part IV: 15% of your examination grade; approximately 30 minutes
4. Your answers to the parts may be handwritten or typewritten. Whether you handwrite or typewrite your examination responses will not be a factor in your grade. Remember that organization and analysis counts.

5. If you are taking the exam with a laptop (or other computer), it may only be used as a wordprocessor. During the examination, you may not work, cut, copy or paste from any documents stored in your computer’s memory. You may not connect to any electronic network, including Blackboard or the internet, during the exam.

6. If you are using a computer, it is your responsibility to save your work frequently to protect against technological problems that might arise. Should your computer start acting up at any point, switch to using bluebooks.

7. If you type your exam answer, please use a 12 point font, doublespace, and number each page. Your answers to each part should each start on a new page. If you are typing, your blind grading number should appear also on each printed page.

8. If you type your exam answer, once you have completed your exam, save it to a diskette or flash drive. Then you will also be asked to turn in your exam copy. At that time you will be asked to sign the class roster to certify that you completed the exam within the time limit. You will then be asked to immediately use your diskette or flash drive to print your answer for submission. There is a dedicated printer for this purpose outside classrooms 100 and 101.

9. If you are handwriting your exam, please write on every other line of the bluebook and only on the front of the page (to leave yourself space if you need to make changes later).

10. If you are handwriting, your answers to each part should each start with new bluebooks. Please number your bluebooks, e.g., “1 of 3,” “2 of 3,” “3 of 3,” and place them inside one another along with your exam copy. Your blind grading number should appear on each bluebook.

11. All exam copies must be turned in with your answers.

12. Only your blind grading number, which you obtained from the Registrar, should appear on your exam copy and answers. Do not use either your name or your social security number anywhere on the exam.

13. The bottom of the page indicates the total number of pages for this examination, including the instruction sheet. Contact your proctor immediately if you do not have all of the pages.
14. Do not assume facts contrary to those stated. If you feel any additional facts or assumptions are necessary in answering any question, please state such additional facts or assumptions.

15. Lastly, the Registrar asks that I remind you that the Honor Code governs all phases of the exam.

   **Good luck!**
Lisa - perhaps suffering from a mid-life crisis – decided she wanted to leave behind her life in Washington, DC (if only for two years) and join the Peace Corps. She had enjoyed her many years of community development work in D.C., but decided it was time to try something new and go overseas. Prior to her departure, Lisa decided to rent rather than sell her only home, a beautiful row house. She sent out emails to friends announcing the availability of her home for rent. After interviewing many prospective tenants, she rented her home to Taylor, a single, male musician who charmingly broke out into song during his initial interview with Lisa.

Lisa and Taylor agreed upon a two-year lease, effective October 1, 2003, and a rent of $12,000 per year with payments of $1,000 per month paid directly into her bank account. The lease also precluded Taylor from subletting or assigning the lease to another person without Lisa’s consent. Unfortunately, they never signed the lease because Lisa unexpectedly was called up to service earlier than expected and had to get on a plane. Nonetheless, Taylor moved in on October 1, 2003, and dutifully deposited $1,000 on the first of each month into Lisa’s bank account. On December 1, 2003, unbeknownst to Lisa, Taylor rented the house to Xavier for only December 2003 and January 2004 for $1,000/month, during which time Taylor was going to be on tour with his band, “Soul Patrol.” Taylor and Xavier had an oral rental agreement, which included the fact that Xavier was to deposit his two rental payments into Lisa’s account directly. As it turned out, Xavier never paid rent. When Lisa emailed Taylor about the nonpayment of rent, he told her about Xavier and said she would have to get the money from him.

Taylor did return to the house on February 1, 2004, and directly deposited a $1,000 February rental payment into Lisa’s account. He paid the $1,000 again on March 1, 2004. On March 15, 2004, Taylor emailed Lisa to let her know that he could not live in the house any more and that the past few weeks had been unbearable. Taylor wrote that spring had come early to D.C., that there were record temperatures of 100 degrees, and the pollen and heat were horrible. Because the house’s central air conditioning was not working, he had had to open the windows, which resulted in pollen entering the home. He also told her that the front door was no longer properly closing, or even locking, due to the humidity. Accordingly, he told Lisa that his allergies and feelings of not being safe precluded him from being able to stay any longer in the house. He states that he was moving to Puerto Rico, which he had heard was pollen-free and had a vibrant music scene. He also could rent a safer house in which to live. Taylor also indicated in his email to Lisa that he suspected that the air conditioning in her house had probably been broken before he even started renting the home in the fall. After sending the email, Taylor packed up his possessions, moved out and never paid any more rent.

A week later, Lisa decided to fly back briefly to find a tenant. This time, she wanted to be very careful about whom she selected. To avoid another tenant like Taylor, Lisa decided to find a tenant who was less mobile and therefore would be stable and actually rent the house for the remaining two years. Therefore, she placed an ad in the
“Northwest Current,” a neighborhood paper, requesting that only families with young children apply. Thereafter, Kellie, who was single, and Mandisa, who had a partner and three children, ages 1, 2 and 3, applied. Lisa thought Mandisa and her family were perfect and on April 1, 2004, Lisa and Mandisa signed a lease to rent the home from April 1, 2004, to September 30, 2005. Mandisa thought that $1,000 was too high a rent for the home and agreed to pay only $800 a month in rent. Lisa agreed, deciding she would get the balance from Taylor.

On October 1, 2005, Lisa returned to her house ready to transition back to living in D.C. Unfortunately, she found Mandisa and her family still living in her house and refusing to leave. Lisa checked her bank account and found that Mandisa had directly deposited an $800 payment on October 1, 2005.

Please assume that there are no statute of limitations issues. Accordingly, please analyze all legal claims, defenses and remedies available to Lisa, Taylor, Kellie and Mandisa.

PART II (35% of your examination grade; approximately one hour)

Owen owned 100 acres of land as diagrammed below. Owen’s house was located in the northwest quarter of the property. A stream ran north-south through the center of the property, and a bridge and gravel path in the southern portion of the property provided access from the east half of Owen’s property to County Road, which was the only accessible road to the property. Owen obtained water for his house from a well located in the northeast corner of the property. In 1993, Owen sold the northeast corner of his property to his daughter, Dina, who constructed a house. Owen reserved a well line easement for himself in the deed to Dina. Dina continued to use the path and the bridge in the southern half of Owen’s property to access County Road. In 1998, Owen died, and Elliott, Dina’s son, inherited the southern half of the property. Dina and Elliott had an oral understanding that Elliott could come onto Dina’s property to paint. Elliott was a great admirer of Monet’s series of haystack paintings, and was doing his own series using the water well on Dina’s property. Also in 1998, the northwest quarter of the property was sold to Bucky by Owen’s estate. Dina continued to use the southern half of the property for ingress and egress until 2005 when she sold the northeast corner to Ace. Shortly thereafter, Elliott sold the southern parcel to Chris, a friend from his painting group. After Ace used the path and bridge on Chris’s property for about a month to gain access to County Road, Chris placed a padlocked gate across the path on the property line between Ace and Chris’s parcels. In 2005, city water became available to all of the land in the diagram below. Meanwhile, Ace began construction of a swimming pool on his property which interrupted the well line to Bucky’s property. In addition, Ace was frustrated to discover that without Ace’s permission, Chris was coming onto Ace’s land to paint various landscapes. Additionally, Bucky just learned that in 1999, Elliott and Dina, who both hate the artificiality of swimming pools, entered into an agreement, which they recorded, that they and their heirs or assigns would never build a swimming pool on their land.
The statute of limitations for adverse possession and easements by prescription is 10 years. This jurisdiction has not adopted the Restatement (Third) of Property.

Please identify the property interests held by Ace, Bucky and Chris. Then please identify any possible legal claims and remedies to which Ace, Bucky and Chris are entitled.
PART III (15% of your examination grade; approximately 30 minutes)

The state of New Carolina has just passed the “New Carolina Beachfront Management Act.” This Act requires that all new homes built in the designated beach area be built on stilts at least 8 feet high. The rationale for the Act is that houses on stilts are a form of beach building traditional to the state, developed because such houses withstand higher category hurricanes better than traditionally built non-stilt homes. These benefits reflect the fact that storm waters flow below stilt houses, thereby avoiding damage that occurs when storm waves batter beachfront houses or rip them from their foundations and hurtle them against the houses behind them.

Developers who own undeveloped land in the designated beach area seek to challenge this Act claiming that it actually seeks to eliminate further beach house construction. They claim that this Act effectively bans development because building stilt homes is twice as expensive as non-stilt homes. They also point out that houses on stilts are not environmentally friendly as they still threaten water pollution.

The state claims that the developers’ allegations are not true. The state argues that because demand for beach homes traditionally has been strong at virtually any price and because beachfront homes in New Carolina are uniquely desirable because of New Carolina’s famous white sands and gentle surf, this Act does not in effect ban development.

Please analyze whether and why or why not this law would constitute a regulatory taking.

PART IV (15% of your examination grade; approximately 30 minutes)

During his presentation to our class, Clark Neily from the Institute for Justice stated that he knew how “public use” should not be defined in eminent domain jurisprudence, but failed to identify to our class how “public use” should be defined.

Please identify (1) how “public use” is defined in eminent domain jurisprudence; and (2) whether and why you agree or disagree that that definition best reflects good public policy for property law jurisprudence.

End of exam! Have a great summer!