

Property Section D

Professor Grimmelmann

Final Exam – Spring 2011

May 12, 1:30 PM – Closed Book

This exam consists of THIRTY multiple-choice questions, followed by THREE essay questions. You have FOUR hours to complete this exam. You may divide your time between the sections as you wish, but suggested times are provided.

You must mark your answers to the multiple choice problems on your Scantron form. Your essays, whether handwritten or typed, must be anonymous except for your exam number.

The essays are subject to a word limit. If you are handwriting, put each answer in a separate blue book.

This is a closed-book exam. You may not consult with any person or thing while taking it. You may not discuss the exam or your answers with anyone under any circumstances until after the end of exam period. **Your work must be exclusively your own.**

Please pay attention to the specific questions being asked and answer them. Support your answers with detailed analysis, reference to specific statutes and cases as appropriate, and an explanation of how you have applied the law to the facts. Keep any citations as simple as possible (e.g. “Pierson v. Post”). Feel free to shorten your answers by using an outline format or bullet points, so long as the substance of your points is clear.

Professor Grimmelmann will not answer ANY questions about the contents of the exam until after exam period. Even if there are errors in the exam, it will nonetheless be fairer and less disruptive if all of you have exactly the same experience taking it. If anything about a question is ambiguous, say what you think it means and answer accordingly. If you need to assume additional facts, say what those facts are and how they affected your answer. No reasonable resolution of an ambiguity will be penalized.

All events take place in New York, and all questions should be answered under New York law.

This exam has **13 pages total**, including this cover sheet.

GOOD LUCK!

Multiple Choice
(30 Questions, 40%, recommended time: 90 minutes)

[omitted]

END OF MULTIPLE CHOICE

Essays

You are a law clerk for the judge who is presiding over numerous lawsuits arising out of the collapse of the Bluth Company (the “Company”), a real estate development firm whose president, George Bluth, is currently in federal prison awaiting trial on charges of securities fraud and light treason. [For purposes of this exam, you may assume that Bluth and the Company are interchangeable.] The suits pertain to various properties Bluth was developing in Sudden Valley, NY.

Question 1 (20%, suggested time: 45 minutes)

Word limit: 800 words

The Company built a “model home” on Tract A: a walk-through demonstration to help buyers visualize what a Company-built home would look like. Since money was tight, the Company cut corners on the construction. The electrical wiring in the walls isn’t insulated and the crawlspaces are infested with moles.

Next, in a complicated and failed tax dodge, the Company conveyed Tract A “to Lucille for life, then to Michael.” Michael then immediately conveyed his interest in Tract A back to the Bluth Company. Lucille, however, sold her interest to the Zuckerkorn Real Estate Investment Trust in exchange for \$10,000. Two days later, she died after being bitten by a seal in a magic trick gone badly awry. Her will left all her property, personal and real, to her son, Buster.

George found a potential buyer, Kitty. He gave her a walking tour of the house, and then offered to throw in a used Company-owned powerboat, the Seaward. That was enough for Kitty, who signed a contract to purchase Tract A on the spot.

Two days later, however, Kitty discovered that the Seaward had been purchased in 2006 by the Company from Tres Hermanos Marine Supplies. Further investigation revealed that the man who sold the boat to Tres Hermanos – a drifter named J. Walter Weatherman – had purchased it from the Wee Britain Boating Emporium with a check that later bounced. Neither Tres Hermanos nor the Company had known about Weatherman’s fraud in 2006, but George Bluth had discovered it before signing the contract with Kitty in 2011.

“I’ve made a huge mistake,” said Kitty.

Does Kitty have valid grounds to rescind the sale?

Question 2 (20%, suggested time: 45 minutes)

Word limit: 800 words

The Company also owned two wooded parcels. One of them, Tract B, had a small (250 square foot) cabin on it; the other, Tract C was empty. The Company rented the cabin to George Bluth's friend Oscar starting in 1989. The lease, which they drew up on a cocktail napkin, reads in its entirety, "M can rent the cabin at [Tract B's address] for as long as he wants, for \$2000 a year due annually on September 1," and bears both of their signatures. Oscar has been sending Bluth a check each year and occupying the cabin except during the summer, when he goes to Cabo, in Mexico.

On June 1, 2010, the Company sold Tract B to Loblaw Realty. The deed conveyed "[the land comprising Tract B] together with all structures and fixtures thereupon." No one from Loblaw Realty had ever visited Tract B or knew that it contained a cabin, much less that Oscar was occupying it.

On July 1, 2010, Bluth was talking to Maggie in a bar when she mentioned that she had always wanted to own a cabin in the woods. The next weekend, he rented a flatbed tractor-trailer and physically moved the cabin from Tract B to Tract C. This required disconnecting the cabin's power, water, gas, telephone, and sewer connections. Bluth slipped a letter to Oscar under the door, explaining that the Company was canceling the lease and evicting Oscar, effective immediately.

Bluth brought Maggie in to see the cabin, which she loved. She immediately signed a contract to buy Tract C, and the deal closed on August 1, 2010. The deed used the same language as the deed the Company gave to Loblaw.

In mid-September, Oscar returned from Mexico and found Maggie in the process of moving in. "Oh, come on!" he said.

Who owns what interests in the cabin?

Question 3 (20%, suggested time: 45 minutes)
Word limit: 800 words

Finally, there are tracts D and E. They were originally a single, lightly wooded 2-acre parcel, owned by Tobias Fünke. Queen Mary Road runs north and south along the western edge of the parcel; a gravel road across the parcel connected it to Fünke's house, at the eastern end of the parcel. The western half of the parcel was undeveloped, so the house had a spectacular view of the sunset.

In 1985, Fünke divided the parcel in two: the western half became Tract D and the eastern half became Tract E. Fünke sold Tract D to his fellow actor Stan Sitwell. The deed did not mention the gravel road, which Fünke continued to use to reach his house over the following years.

Since Fünke was concerned about his view, he took a number of steps to preserve it. First, the deed that Fünke gave to Sitwell stated, "Stan Sitwell shall have no power to sell, give, mortgage, or transfer the Property in any way." Second, Fünke confirmed that the 2-square-mile area where the tracts were located was zoned AR-1, a low-density classification that allows only single-story houses. And third, Sitwell gave Fünke a written promise that he would never construct any new structures on the parcel. Sitwell recoded the deed he received from Fünke in 1986. Fünke put the written promise from Sitwell in his desk drawer.

Stan Sitwell died in 2006. He left behind an unsigned document marked "last will and testament" which left all his real property to Fünke. Sitwell's only living relative was his daughter Sally. In 2008, Sally Sitwell sold her her interest in Tract D, if any, to the Bluth Company, which immediately recorded the deed.

The Company immediately drew up plans for a three-story, 6000-square-foot house with four-car garage and attached greenhouse. At a meeting in August 2010, the county planning commission voted to rezone Tracts D and E from AR-1 to R-4, which permits all residential uses and allows buildings of up to four stories. To make room for the house, the Company removed the gravel road, leaving only a narrow dirt path not wide enough to fit a car.

When Fünke found, he was so mad he went blue in the face.

Can Fünke prevent the construction of the house?

END OF EXAM