PROPERTY II Section A Professor Mortland Final Examination Spring 1991 Page 1 of 4

GENERAL DIRECTIONS

You have three hours and all questions are weighted equally, so divide your time accordingly. Put your answers in the same order as the questions (if you want to answer them in a different order, leave space for any you skip). Discuss all relevant issues. If you feel a question is ambiguous, make any necessary assumption and tell me what you have assumed, but please do not assume what you are to decide. It is always safer to assume that something not stated is not a fact.

QUESTION 1

Apex Grocery and BonTon Furniture Store owned adjoining lots. In 1958 Apex and BonTon entered into an agreement by which a right of way was moved north and the property line was moved south, onto Apex's lot. They also agreed that any future purchasers of BonTon's property must be acceptable to Apex; if not, the right of way would cease. In the same paragraph was a sentence stating that "Apex agrees to permit the use by BonTon's customers of parking facilities provided on the premises of Apex for its customers." The agreement was reflected in a recorded deed.

From 1958 to 1972, the customers of BonTon used from zero to four parking spaces on Apex's lot on any given day. In 1972 Carl bought BonTon's property and continued the furniture store, using about the same number of parking spaces on Apex's lot. Apex's approval was neither sought nor given. In 1982, Carl expanded the business and built an addition onto the building. Use of Apex's parking lot increased, BonTon's customers sometimes using as many as 10 of Apex's spaces, and up to 20 during special sales. Also in 1982, Carl's employees, sales 'people, and delivery people began using Apex's lot. In 1987, Carl planned a further expansion and submitted plans to the town planning board. The board informed Carl that additional parking space would be required. Carl told the board that he had the right, pursuant to the 1958 deed, to use an unlimited number of Apex's parking spaces. The board then approved the plan.

Apex objected to the plan, and brought an action for a declaratory judgment to determine Carl's rights. Decide the case.

QUESTION 2

Otto, planning to move into a nursing home, offered to sell a parcel of property with a residential trailer at a favorable price. Alice entered into a contract of sale with Otto and paid a \$100 deposit, with closing to take place on September 9. Otto offered the same property to Bob on September 1 at the same price. On September 2, Bob accompanied Otto to his attorney's office to close the sale, paid the agreed price, and accepted delivery of a properly executed general warranty deed. On September 6, after learning of Bob's deed, Alice recorded her contract. on

September 9, Bob recorded his deed.

The trailer used a septic system for waste disposal. Two weeks after Bob moved in, the sewage backed up into the trailer. Bob questioned Otto and found that this had happened twice in the last year. Repairs had been made each time, but drainage was still somewhat slow. Bob had a contractor make repairs; the contractor said the soil was not porous enough for a septic system.

Alice sued Otto and Bob for specific performance. Bob cross-claimed against Otto, alleging liability on the deed covenants and seeking damages for the deficient septic system. The trial court found that Bob had actual knowledge of Alice's contract on the basis of evidence that Otto, at some unspecified time, had indicated doubt about his ability to convey and that, after Bob accepted the deed, Otto had discussed with him the effect of the prior contract with Alice. The trial court ordered specific performance and gave Bob a judgment against Otto for breach of title covenants. It gave summary judgment to Otto on the damage claim. Otto and Bob both appealed.

The recording statute provides that "a deed of bargain and sale, a mortgage or other conveyance of land in fee simple or for life, or a lease for more than one year from the making thereof shall not be effectual to hold such lands against any person but the grantor and his heirs, unless the deed or other conveyance is acknowledged and recorded."

Decide the appeal.

QUESTION 3

Dan operates an elevated commuter service to a passenger depot in Chicago. Just north of the passenger station is a railroad bridge over a portion of a former railroad freight warehouse. In 1908 Dan's predecessor made an agreement with the owner of the warehouse that Dan's predecessor, its successors and assigns, would pay all taxes and assessments levied against the bridge and three-fourths of all taxes and assessments levied against the tract of land across which the bridge is located, and would maintain the bridge with a water-tight floor over the freight house. Dan is a successor to the bridge by conveyances recorded in 1920, 1949, and 1968. The 1920 deed was made subject to the agreement, the 1949 deed referred to easements and restrictions of record, and the 1968 deed was made subject to the agreement by reference to the 1908 deed. Paula, successor to the freight-house trace, has a chain of title with conveyances in 1925, 1933, 1951, and 1974; only the first refers to the agreement.

Paula sued to recover from Dan three-fourths of the taxes she had paid on the freight house, and to force him to maintain a water-tight floor on the bridge. Both parties moved for summary judgment. The trial judge denied Dan's motion and granted Paula's motion as to liability, reserving the issue of damages for trial. After trial, the judge awarded damages as requested and ordered Dan to repair the bridge floor. Dan appealed.

- 1. Decide the case.
- 2. Would your decision be different in a state with a 30-year marketable title act?

QUESTION 4

Opal executed quitclaim deeds conveying two pieces of property to Donna, her daughter. The deed was placed in a joint safe deposit box of Opal and Donna for two years; then they closed the box. After Opal's death, plaintiff, administrator of Opal's estate, sued to quiet title to the property. Donna counter-claimed, asking that the title be quieted in her.

Donna testified at trial that she took possession of the deed when the box was closed and kept it until her mother's death a year later. Donna recorded the deed a few months before Opal's death. Three other witnesses testified that Donna had stated at a family conference after Opal's death that Donna found "the deed" with Opal is other personal papers after her death; she did not, however, specifically identify this deed.

There was evidence that Opal had paid property taxes and claimed the senior citizen's tax exemption on the property until her death; to get the exemption she swore that she was the owner of the property. She also paid for insurance, maintenance, and repairs. After Opal entered a nursing home, Donna's daughter and her roommates moved into the house and paid Opal the approximate rental value.

A friend of Opal's testified at trial that Opal had a close relationship with all her family and had told a friend within six weeks of her death that Donna would handle things so that another daughter's children would be provided for. Another friend testified that Opal had said she was deeding everything to Donna because she had already helped the other daughter financially. That witness believed Opal had already executed the deeds but intended them to be effective at death.

The trial court gave judgment for Donna. Plaintiff appealed.

- 1. Argue the case for the estate.
- 2. Argue the case for Donna.