PROPERTY II Spring 1990 Professor Wells Section M

FINAL EXAMINATION

Exam Number

INSTRUCTIONS

- 1. This is a closed book examination. No books, outlines, notes or other study materials are allowed. If you have any such materials with you, please remove them from the room.
- 2. This examination consists of three parts. Part I and Part II require well-developed essay answers. Please use a separate blue book for each of these: two sections of the examination. Part III consists of several short answer questions. Answer each of the questions in Part III fully in the space provided. Explain your answers carefully. Parts I and II are each worth 30 percent of the grade on the final examination; Part III is worth 40 percent.
- 3. Before beginning, check your examination to make sure all pages are included. There should be 10 pages in your examination.
 - 4. Write your examination number on each blue book and on the final examination.
- 5. You have three hours to complete this examination. If you finish before the end of the three hours, please turn in your exam at the front of the room.

GOOD LUCK

PART I

Theodore died in 1967 with a will leaving all of his real and personal property to Arthur, one of 15 nephews and nieces. Arthur presented the will for probate and notified all of the nieces and nephews except Belinda, his sister who was then in Germany. The estate was administered and Theodore's realty was distributed to Arthur. The real estate consisted of a house and 3.5 acres of land, all valued at \$250,000. Arthur immediately took possession of the house and commenced living there. He made some external improvements on the house and grounds and regularly entertained guests on the estate. In 1969, Arthur died in an automobile accident. His two children, Clifton and Dorothy, were his heirs. They paid the property taxes for the years 1969 through 1978. They entered the property, remodeled the old residence, and lived there continuously until 1978 when they began negotiations with Elvis P. for the sale of the house to Elvis.

In 1972 Belinda returned from Germany. In 1978 she filed a petition to set aside probate of Theodore's estate on the ground that she had not received notice. The order was granted and thereafter Belinda filed an action challenging the will on the ground that it was a forgery. Arthur planned to defend on the grounds of laches, alleging prejudice because both witnesses to the will had died, and of adverse possession on the basis of a statute setting a seven-year limitation period for an adverse possessor who has paid real estate taxes under color of title and in good faith. The state has a 15-year litigation period for adverse possession under all other circumstances. The jurisdiction has not ruled on the question of whether good faith is required for adverse possession under the general adverse possession statute.

Belinda planned to argue that the will did not constitute color of title because it did not identify the real estate and that Arthur did not act in good faith because the will was a forgery. She also planned to present evidence of a handwriting expert who will testify that all of the signatures on the will were forged. Belinda also was prepared to argue that she is exempt from, the running of the limitation because, the statute states that when "the holder of such adverse title is a minor, person under legal disability, imprisoned or out of 'the limits of the United States, such person shall commence an action to recover such lands within 3 years after the disabilities cease to exist."

Before hearing on the matter, Clifton and Dorothy closed a deal to sell the estate to Elvis P. at a handsome price. They delivered to Elvis a warranty deed conveying title to the property.

- (1) Who will prevail in Belinda's lawsuit against Clifton and Dorothy?
- (2) If Belinda prevails, what are Elvis' rights against Clifton and Dorothy?

PART II

In your capacity as trial judge, an action to quiet title is brought before you by the personal representative of a deceased grantor's estate. At trial, the following testimony has been presented:

On December 12, 1979, Mary O'Brien executed a quitclaim deed conveying her real property in the town of Smytheville, Anywhere, USA, to her only surviving daughter, Peaches. The property consisted of her home and the surrounding land, all of which represented considerable worth at current market value. O'Brien and Peaches shared a safe deposit box at the First Bank of Smytheville. The deed was placed in the safe deposit box. Both Peaches and her mother had equal access to the box. When mother and daughter closed their account at the bank in December 1982, Peaches took possession of the deed. Peaches testified that she had maintained possession of the deed continuously from that time until the present, that her mother had never requested that she return the deed, and that she (Peaches) believed herself to be the owner of the property in 1982.

From 1977 to 1983, O'Brien paid the property taxes and claimed a senior citizen's tax exemption on the property. In order to obtain the exemption she was required to swear that she was fee owner of the property. During that period of time, she also paid for insurance,

maintenance and repairs of the property.

In September 1982, O'Brien moved out of the house in Smytheville. She thereafter occupied a rented beachfront house in Hawaii. After O'Brien vacated the premises, Peaches and a roommate moved into the house.

On April 23, 1983, Mrs. O'Brien suffered a severe stroke. On April 29, 1983, after two physicians told her that her mother was not likely to recover and would need expensive convalescent care, Peaches recorded the deed. Mrs. O'Brien died on July 4, 1983 without recovering consciousness. She left no will. The heirs, other than Peaches, are three granddaughters who are the children of Mrs. O'Brien's deceased daughter, Patricia.

Nona Moe, a close friend of Mrs. O'Brien, testified that Mrs. O'Brien had a very close and loving relationship with her grandchildren as well as her daughter. Nona also testified that six weeks before her death that Mrs. O'Brien had told her that Peaches "would handle things" to make sure that the grandchildren received their share of her estate. She testified that the deceased told her that she had deeded everything to Peaches. Nona said she believed Mrs. O'Brien had already executed the deed but intended it to take effect upon her death. She also said, however, that as little as six months before Mrs. O'Brien died she discussed selling the property.

Another friend, Edna Nelson, testified that O'Brien told her that she was leaving everything to Peaches. Edna said that she did not know if O'Brien meant by will or another way but she said O'Brien said she had "already done it."

A letter prepared by O'Brien in anticipation of an overseas trip was also introduced into evidence by Peaches. It directed Peaches to sell the real property and to distribute \$3,000 from the sale to each of her grandchildren.

Write the opinion and order of the court.

PART III

- 1. Inez, owner of two parcels of real estate, executed a will in March 1980 devising the property to her only heir, Lonnie. However, in February 1985 Sal Mineo, a noted land speculator, offered to purchase both parcels of land from Inez for a total purchase price of \$20,000. On March 1, 1985, Inez accepted Sal's offer and executed a contract for sale which required Sal to pay a \$5,000 deposit, the balance being due at closing three months later. On March 15, 1985, Sal paid the deposit as required by the contract. Unfortunately, Inez died on April 15, 1985. Lonnie now claims the real estate is his and refuses to complete the sale. Sal sues for specific performance. What are Sal's chances of winning?
- 2. Plaintiff owned a building facing east on Wicker Street and covering an entire block north and south. Plaintiff owned an express driveway easement whose width was 8.4 feet. The easement ran from the street one block to the west between two lots owned by the Defendant on the north and south of the easement. Defendant operated a store on the northern lot and leased a parking lot

on the southern lot. Trucks backing into plaintiff's business are 9 x 6 feet wide and can safely be backed into the business over a space 12.4 feet wide. For a period of 11 years, trucks making deliveries to the plaintiff's business encroached approximately 4 feet onto the defendant's parking lot. The statute for the establishment of an easement by prescription requires qualifying use for 10 years before plaintiff can claim an easement by prescription. During this time defendant has not complained. Plaintiff now sues to establish an easement by prescription. What must plaintiff prove? Will proof of any elements present a problem for plaintiff?

3. In 1900, Oscar conveyed Stately Oaks to Alvin, reserving a driveway easement. Alvin recorded. In 1927, Alvin conveyed the property to Bill, reserving rights to coal. Bill recorded. In 1930, Bill granted his mother Charlene a life estate in Stately Oaks, with remainder to his son Dave in fee simple. This transaction was promptly recorded. After Charlene's death in 1937, Dave conveyed the property to Elvin. The deed contained a covenant restricting the property to use for a single family dwelling only. Elvin recorded. In 1945, Elvin sold the property to Frank, "subject to restrictions in the 1937 deed." Frank recorded.

Stately Oaks was sold several more times in succeeding years: from Frank to Gloria in 1952, "subject to easements and restrictions of record"; from Gloria to Ilene in 1965; from Ilene to Jason in 1980, "subject to easements and restrictions of record". Each transaction was duly recorded. None of the deeds after 1927 referred to the severed coal rights.

The state has adopted a Marketable Title Act which states that "a person who has established an unbroken chain of title of record to real estate for 40 years or more has a marketable record title to the real estate, subject only to matters specifically reserved under or exempted under the Marketable Record Title Act of the Uniform Simplification of Land Transfers Act."

In 1990, Jason contracts to sell Stately Oaks to Kellogg. Advise Kellogg on the state of the title.

- 4. Harold owned a large parcel of land. He divided his land to create four lots on the southern half of the parcel. He sold the four lots to Abel, Baker, Cain and Davis in separate transactions. The sales were made in the following order: Lot I to Abel, Lot 2 to Baker, Lot 3 to Cain, and Lot 4 to Davis. Harold placed a restriction in the deed to Abel stipulating that only wooden fences could be constructed on the property. The same restriction appeared in the deed to Davis, but not the deeds to Baker and Cain. A few years later Harold sold his remaining land to developers who created 12 more lots. The deeds to these lots had restrictions, but none of the deeds referred to the restrictions in the deeds to Abel and Davis. Smith, a purchaser of one of the newly subdivided lots, constructed a wire fence around his property. His neighbor Roger, also a purchaser of one of the new lots seeks an injunction requiring Smith to remove the fence.
 - (a) What is Roger's best argument?
 - (b) What is Smith's best response in defense?
- 5. Apex Furniture, Inc., owned two adjacent lots in a commercial area. Apex's store was located on one of the lots. The other lot was unoccupied. Hess, Inc., approached Apex about

purchasing the second lot for the purpose of opening a sporting goods store. Apex sold the lot to Hess. The deed included a covenant that the grantee would not operate a furniture store on the second lot for a period of 25 years. Five years later Hess found itself in financial difficulty and sold the property to entrepreneur Ralph Miller. Miller immediately sold the property to Taylor. Taylor opened a furniture store and operated it for six months. Apex sued for an injunction and damages.

- (a) The trial court has ruled that the original parties intended that covenant run with the land and that the requirement of privity has been satisfied. What else must the court determine? How will the court rule?
- (b) If Apex chooses for strategic reasons to proceed on a theory of equitable servitude, who will prevail? Why?
- 6. Oscar, fee simple owner of a house and lot, conveyed his interest in this real estate to his aunt Nancy in consideration of her love and affection. Nancy promptly recorded. Oscar however had a change of heart and conveyed the same property to Bill for the sum of \$100,000. Bill also recorded his interest. Who prevails in a race-notice jurisdiction? Why?