PROPERTY II, SECTION M MIDTERM EXAMINATION Professor Wells March 14, 1994

## **INSTRUCTIONS:**

## DO NOT TURN TO PAGE TWO UNTIL I TELL YOU TO BEGIN.

This examination consists of three essay questions. Use a separate bluebook for each question. I do not expect you to fill all these bluebooks but I want to keep your answers separate. Put your midterm examination number on your bluebooks, and fill in all the other pertinent information on the front of each bluebook.

You have two hours to complete the entire examination. It will be important that you use your time wisely. Each section of the exam will be accorded the stated weight in computing the final grade (i.e., 40% for Part 1, 40% for Part II, and 20% for Part III), You may answer in any order you wish. Again, use your time wisely and work within the time constraints for the exam.

Take time to organize coherent answers. Be thorough but concise. No points will be awarded for discussion, which is not pertinent. Inclusion of much irrelevant discussion will detract from your grade.

WRITE LEGIBLY. Since you will have more than ample space, use only one side of the page. If your writing is sometimes less than legible, consider writing on every other line and using both sides of the paper.

Clearly mark which question you have answered on the front of each respective bluebook. Turn them in at the front of the room when you are finished.

## GOOD LUCK!

Ι.

(Credit: 40 Per Cent)

Carver appeals from an order of the chancery court holding that Tullis has an implied easement for ingress and egress across Carver's lands and enjoining Carver from interfering with Tullis's use of the easement. The order further enjoined Carver from interfering with the use of the same road by Norman Jones, Tullis's tenant under a lease of hunting rights.

In 1969, Tullis conveyed forty acres off the west side of his property to Carver. Tullis testified that, for many years prior to the conveyance to Carver, access from a county road to the property retained by Tullis was gained by a lane which ran though the property sold to Carver. Tullis also testified that he continued to use that roadway for access to his remaining property after the conveyance, as the conveyance left him only one other access to the county road -- a narrow dirt

lane which ran to the northeast through a wooded area. Travel over this alternate route was difficult except in dry, cold seasons. During rainy, warm seasons, this lane was overgrown with vegetation and also frequently became muddy. Finally, Tullis testified that if forced to use this route, he must travel a great distance (about 5 miles additional) over to a roadway to the north of his property which connected to the county road to the west.

In June 1987, Tullis leased the hunting rights on his property to Jones for a period of five years at an annual rental of \$120.00. In July 1987, Tullis purported to grant the right to use the easement across Carver's land to Jones, so as to provide a "reasonable passageway" to the western portion of the Joneses, own property. Jones owns a tract of land lying east of that retained by Tullis, but they do not derive their title from a common source. Jones has an independent means of access to his own property from the east but not to the county road, on the west. However, the existence of a creek on the western portion of Jones's property makes access to that portion of his land west of the creek, and to Tullis's abutting land, extremely difficult, if not impossible, except in a specially equipped vehicle during very dry seasons.

Carver barricaded the entrance to the roadway in question and successfully prevented either Tullis or Jones from using it to connect the Tullis land with the county road. Tullis and Jones sued to enjoin further interference with the use of the roadway. The chancellor granted injunctive relief in the following language:

"Plaintiff Tullis has an easement over the above-described land. That this easement by way of necessity is to allow Plaintiff Tullis and his assigns full use and enjoyment of their tract of land.

"Said easement right of way is for the purpose of connecting the Tullis tract of land with the county road.

"Defendant Carver and his assigns are hereby permanently enjoined against closing said right of way so that it may be freely used by Plaintiff Tullis, their assigns, and persons authorized by Plaintiff Tullis in he proper use of the way to pass over the way of Defendant Carver's tract of land.

"Defendant Carver is further specifically permanently enjoined against interfering in any way with the use by Plaintiff Jones of the above-described easement."

Decide the appeal.

(Credit: 40 Per Cent)

The plaintiffs are, individually, owners of five contiguous lots located along Oakway Drive. They brought this action to enjoin the defendant McCown, also the owner of a lot on Oakway Drive, from subdividing his lot in violation of a deed restriction.

In late 1954 and early 1955, William Crane and Phyllis Crane sold the six lots now owned by

plaintiffs and McCown; five of the lots were sold within a thirteen-day period, and the sixth was sold approximately two months later to McCown. The deeds to each of the six lots contained the following restrictive covenants:

"SUBJECT, HOWEVER, to the following restrictive covenants, (Items 1-6, inclusive) . . . which shall run with the land and which shall bind the said land as well as the present and all future owners thereof:

- 112. Only one principal residential dwelling shall be erected on the said above described land, provided, however, this shall not be construed to prevent or prohibit the construction and occupancy of a servants quarters and/or garage on said premises, separate from the main dwelling, if construction thereof is either simultaneous with the main dwelling construction or subsequent thereto.
  - 114. The above described property shall not be subdivided or re-subdivided.

Each of the first five lot owners constructed residences on their lots. While all were single family homes, the architectural styles varied as well as the costs of the homes. The houses were constructed at varying distances from the front of their property lines. McCown did not immediately build upon or occupy his lot.

On December 26, 1980, some twenty-five years after the conveyance of these lots, the Cranes and McCown executed an instrument entitled "Amendment to Restrictive Covenants," which, purported to release the covenant prohibiting subdivision. This instrument was recorded in the office of the county probate judge.

Many years later, McCown sold a portion of his lot to Vladimir and Susan Wertelecki, who constructed a residence on the land they bought. McCown then began preparations for construction of a residence of his own on the portion of the lot which he retained.

The plaintiffs then brought this suit against McCown to enjoin construction of the residence. Decide the lawsuit. Explain your decision.

(Credit: 20 Per Cent)

During 1950 and 1951, the predecessors in title to lands now owned by the respective Homeowners (plaintiffs) conveyed by deeds of easement to Power Company. The operative clause of each of the deeds of easement, to the extent pertinent read as follows:

... said party of the first part hereby grants, bargains, sells, conveys and warrants to the party of the Second part, its successors and assigns forever, a right of way and easement with the right, privilege and authority to said party of the second part, its successors, assigns, lessees, and tenants to construct, erect, operate and maintain a line of poles and wires for the purpose of transmitting electric or other power, including telegraph or telephone wires in, on, along, over, through or across the described lands .

The deeds granted did not specifically state whether the grantors contemplated that the easements granted would be exclusive or non-exclusive.

Power Company thereafter erected poles and power lines on such rights of way. Prior to this action, Power Company executed a document purporting to sub-lease and assign to Cable TV Company "so much of its rights of way and easements" on Homeowners' properties as necessary "to construct, erect, operate and maintain a line of wires and pole attachments for the purpose of transmitting electric and other power in, on, along, over, through and across" Homeowners' lands. Pursuant to this document, Cable TV Company entered twice upon Homeowners' lands to install certain hardware and wire cable on Power Company's poles.

Homeowners filed this lawsuit, seeking an injunction against cable TV requiring cable TV to remove its installation and to refrain from further entry on their lands for any similar installation on Power Company's poles and against Power Company, restraining it from permitting cable TV, or any one else, from using its poles on plaintiffs' lands for cable television purposes.

State the issues and arguments, which will be presented by each side and resolve the case.