

**CONVEYANCING  
SPRING 2007**

**Final Examination**

**Professors Malaguti & Morris**

**Instructions**

This exam consists of four (4) essay questions of equal weight. The suggested time for each question is 45 minutes. You have three (3) hours to complete the examination.

Please take three (3) blue books. Please write "Scrap" on one of the blue books. Please write "One and Two" on another blue book, and please write "Three and Four" on the final blue book. Please write your social security number *on all three* blue books as well as on this exam booklet. Please do not identify yourself in any way other than by social security number.

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Please do not use your own scrap paper. You may use the blue book labeled "Scrap" as scrap paper. Please turn in your scrap blue book with your exam blue book and this exam booklet. I will not accept any blue books after you have turned in your exam materials -- no exceptions.

The page limit for each answer is four (4) single-spaced bluebook pages. The front side of a sheet in a blue book is one page, and the back side of the same sheet is an additional page. In other words, writing on both the front and back of a blue book sheet counts for two pages. Questions One and Two are to go in one blue book, and questions Three and Four are to go into a separate book; do not put more than two questions into a single blue book.

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**GOOD LUCK!**

### Question One

Olsen died testate in 1995 and left Blackacre, a house and several acres of land located in Town, to his two sons, Al and Bob “for their joint lives and then to the survivor.” Al resided at Blackacre for the past ten years and has paid the taxes during this period. Bob conveyed his interest in Blackacre to Charles in 1999.

Al listed Blackacre for sale with a licensed Broker for \$1 million dollars. Broker negotiated with Paul to buy Blackacre. On November 1, 2006, Al entered into a written contract with Paul to sell him Blackacre for \$900,000, and Paul gave Al a \$200,000 deposit. The closing was scheduled for February 2, 2007. Al also agreed to pay Broker a 5% commission for negotiating the sale.

Al died on December 10, 2006 and left a will giving his realty interests to his friend Jim and his personal property to Al’s three surviving children.

On December 15, 2006 Paul notified Fred, the executor of Al’s estate, that he would not buy Blackacre and demanded a refund of the \$200,000 deposit. Fred has refused Paul’s demand to return the deposit. Broker has demanded that Fred pay him the 5% commission.

What are the rights of the parties?

Question Two Is On The Next Page

## Question Two

The following events happened in the order stated in a race-notice jurisdiction:

1. Appenzeller, the fee simple owner of Dogacre, sold it to Boxer for \$437,000. Boxer did not immediately record the warranty deed he received from Appenzeller.
2. Appenzeller granted a mortgage on Dogacre to the Collie National Bank ("CNB"). CNB immediately recorded the mortgage.
3. Appenzeller conveyed Dogacre to his nephew, Dachshund, as a gift (for no consideration). Dachshund immediately recorded the quitclaim deed he received from Appenzeller.
4. Appenzeller sold Dogacre to Labrador for \$431,000. Labrador immediately recorded his quitclaim deed from Appenzeller.
5. Boxer recorded his deed from Appenzeller.

Please fully identify and discuss all interests each party has in Dogacre after the five events stated above.

Question Three Is On The Next Page

### Question Three

In 1998 A conveyed Blackacre to B for \$600,000. A gave a special warranty deed with the covenant of quiet enjoyment and covenant against encumbrances. In 1999 B conveyed Blackacre to C for \$625,000. B gave a general warranty deed with the covenant of quiet enjoyment and covenant against encumbrances. In 2000 C conveyed to D for \$650,000. C gave a quitclaim deed with no covenants. In 1995 A had placed an easement on the property in favor of E. E recorded the easement immediately after it was created. B, C and D failed to do title searches, and thus did not find the easement. After C conveyed to D, E began to use the easement. D now wants to sue someone for breach of the covenant against quiet enjoyment and the covenant against encumbrances. Assume that the easement is so extensive that the value of Blackacre is rendered worthless.

Question Four Is On The Next Page

#### Question Four

Abraham owned in fee simple absolute Blackacre, a 20 acre parcel of wooded land with a large steel frame building used as a dealership to sell heavy excavation equipment. In 1991, Abraham signed a promissory note and gave a mortgage on Blackacre to the Thirty-Seventh National Bank in the amount of \$450,000. There was no “due on sale” clause in either the mortgage or promissory note.

In 1994, Abraham signed another promissory note and gave another mortgage on Blackacre, this time to the Second Street Bank, in the amount of \$125,000. There was no “due on sale” clause in either the mortgage or promissory note.

In 1996, Abraham leased Blackacre to Tolland for a term of 30 years. In the lease was a provision that “the lessee hereby agrees that this lease agreement shall be subordinate to any and all mortgages the landlord grants on Blackacre to institutional lenders.”

In 2001, Abraham sold Blackacre to Barbara “subject to the Tolland lease and the mortgages to the Thirty-Seventh National Bank and Second Street Bank, which the grantee assumes and agrees to pay.” In order to finance the acquisition of Blackacre, Barbara signed a promissory note and gave a mortgage to the Twelfth Bank of Nighttime in the amount of \$215,000. As the same time, the Twelfth Bank of Nighttime gave Barbara an equity credit line of \$50,000, and Barbara gave the Twelfth Bank of Nighttime a mortgage to secure the credit line. When the Twelfth Bank of Nighttime’s attorney recorded his client’s mortgage and equity credit line mortgage, he accidentally recorded the equity credit line first.

Immediately after Barbara closed on Blackacre, the Twelfth Bank of Nighttime sold “the paper” on the equity credit line to the First National Bank of Justice. By late 2004 Barbara was in deep financial difficulty and unable to pay any of her mortgages.

Please discuss the rights, duties and liabilities of the parties.

**END OF EXAM**

# CONVEYANCING SPRING 2006

## Final Examination

### Professors Malaguti & Morris

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**GOOD LUCK!**

## **Question One**

### **Suggested Time: 45 Minutes**

In 2001, Stanley sold ten acres of land, known as Williamsacre, in Desire, Massachusetts, to Stella for \$267,000. Stella did not record the deed and never occupied the property. In 2002, Stanley made a gift of Williamsacre to Blanch to celebrate her victory in the Mardi Gras Queen Contest. Blanch, who did not know about the prior deed to Stella, immediately recorded the deed. In 2004, Blanch granted a mortgage to the Street Car National Bank in the amount of \$150,000. The Street Car National Bank, which had no actual knowledge of the conveyance to Stella, immediately recorded its mortgage. In 2005, Stella recorded her deed. In 2006, Blanch fell several months behind on her mortgage payments and the Street Car National Bank commenced foreclosure proceedings on Williamsacre. Massachusetts has a recording statute which states, "no conveyance or mortgage of real property shall be good as against a subsequent purchaser who first records, pays substantial value and takes without notice, unless the same be recorded." Considering these facts, please give full explanations (applying law to fact) for the following two questions:

- A. In an action between Stella and Blanch, in which each claims ownership of Williamsacre, who will prevail?
- B. In an action between Stella and the Street Car National Bank, in which Stella claims that the bank cannot foreclose as against her, who will prevail?

## **Question Two**

### **Suggested Time: 45 Minutes**

In 1999, Yossarian conveyed Catch-22-Acre to Dunbar for \$250,000. Yossarian gave a general warranty deed with the covenant of quiet enjoyment and covenant against encumbrances. In 2000, Dunbar placed an easement on Catch-22-Acre, in favor of Scheisskopf, which allowed him to use all of Catch-22-Acre as an airfield. Scheisskopf promptly recorded the easement. In 2001, Dunbar conveyed Catch-22-Acre to Orr for \$300,000. Dunbar gave Orr a special warranty deed with the covenant of quiet enjoyment and covenant against encumbrances. Orr did not know about Schweisskopf's easement. In 2003, Orr conveyed Catch-22-Acre to Major Major for \$350,000. Orr gave Major Major a quitclaim deed. Major Major did not know about Schweisskopf's easement. After Orr conveyed to Major Major, Scheisskopf began to use the easement. Now, in 2006, Major Major wants to sue whoever he can for breach of the covenant against quiet enjoyment and the covenant against encumbrances. Assume that the easement for the airfield is so extensive that the value of Catch-22-Acre is rendered worthless. Considering these facts, please give full explanations (applying law to fact) for the following questions:

- A. What will be the result if Major Major sues Orr in a "consideration paid" jurisdiction? What about a "consideration received" jurisdiction?
- B. What will be the result if Major Major sues Dunbar in a "consideration paid" jurisdiction? What about a "consideration received" jurisdiction?
- C. What will be the result if Major Major sues Yossarian in a "consideration paid" jurisdiction? What about a "consideration received" jurisdiction?



### **Question Three**

#### **Suggested Time: 45 Minutes**

Your clients, Jay Gatsby and Daisy Buchanan, real estate developers, own a 100 acre parcel of land named West Egg which they intend to develop into a residential subdivision. Jay and Daisy figure they can build 50 large houses as well as streets, a central park with a park and community center. They have expressed to you the following goals they desire to achieve:

1. They want all the houses to be maintained strictly as residences.
2. They would like the houses to be slightly different from each other, yet maintain a style and size that will ensure that the market value of all remaining unsold lots remains as high as possible. Specifically, they want each house to be at least 4,000 square feet in size. They want the ability to review and veto unacceptable plans for each proposed house.
3. They want each purchaser to pay a yearly fee to maintain the park, community center, roads, drainage systems and other capital improvements in the subdivision.

Please render advice to Jay and Daisy regarding their goals. Please make suggestions about the legal devices they can use to accomplish their goals. Please discuss the benefits and detriments of the legal devices.

## **Question Four**

### **Suggested Time: 45 Minutes**

Caulfield entered into a written purchase and sale agreement with Stradlater whereby Caulfield contracted to sell Pency, a parcel of land with a home on it in Massachusetts, to Stradlater for \$394,000. Caulfield was living at Pency at the time the purchase and sale agreement was signed. The purchase and sale agreement, which was silent as to the quality of title that Caulfield was to deliver, set a closing date of August 8, 2005. Two weeks before the closing date, Stradlater received the title report on Pency from his title examiner. The report showed that Ackley conveyed Pency to Gallagher by quitclaim deed in 1975, and that Spencer conveyed Pency to Caulfield in 1987. No records in the Registry of Deeds indicate how Spencer obtained his title; there is no recorded deed from Gallagher and Spencer. Furthermore, the Registry of Probate across the hall from the Registry of Deeds does not reveal that any probate was taken out on Gallagher. By all appearances, Gallagher is still alive. Stradlater expressed his concern about this to Caulfield, who expressed no knowledge about the matter, but said he would look into it. Stradlater did not hear back from Caulfield prior to the closing.

On August 8, 2005, both Caulfield and Stradlater appeared at the place designated for the closing. Stradlater asked Caulfield if he had any more information about the title, and Caulfield said that he did not; he had no doubt in his own mind that he owned Pency and had the right to convey a proper title. Stradlater refused to give Caulfield any of the purchase price and told Caulfield that he was backing out of the purchase and sale agreement. Caulfield has since sued Stradlater for specific performance.

Please discuss the rights, duties, obligations and liabilities of the Caulfield and Stradlater.

**END OF EXAM**

# CONVEYANCING

## FINAL EXAMINATION

*Professor Peter M. Malaguti*

*Spring 2005 Semester*



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This is a comprehensive examination designed to test your ability to analyze and apply the concepts we covered over the entire semester. You will score points only for a proper recitation of the relevant law, and a proper application of the law to the presented facts in a cogent, efficient manner. This is not a brain dump; you will not receive any points for merely regurgitating pre-memorized law. You should not waste precious time spouting irrelevant law, esoterica or minutiae. Please assume I know the facts, but nothing else. I will not guess that you know concepts you have not explained.

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### Question One

**Suggested Time: 45 Minutes**

**Please assume multistate law for this question. In each instance, please explain whether Massachusetts law would produce a different result.**

Solaris conveyed Blackacre to Boxford by a general warranty deed for \$400,000. Boxford did not immediately record the deed. After Solaris sold to Boxford, Caulfield obtained a civil judgment against Solaris in the amount of \$100,000. Caulfield had no actual knowledge of the deed to Boxford when he obtained the judgment against Solaris. He did not immediately record his judgment. Then Boxford recorded his deed. Then Caulfield recorded his judgment. Then Solaris sold Blackacre to Dunedin for \$375,000. Dunedin recorded his deed immediately and had no actual knowledge of the judgment to Caulfield, or the deed to Boxford, when he obtained the deed from Solaris.

Assume that there are two pertinent statutes in the jurisdiction pertaining to this question. The first says: "any judgment properly obtained shall be treated in the same manner as any other conveyance or mortgage of real property." The second statute says: "No conveyance or mortgage of real property shall be good as against a subsequent purchaser for value and without notice unless the same be recorded."

Please address the following questions:

- A. In an action between Boxford and Caulfield in which Boxford claims he is not subject to Caulfield's judgment, who will win? Please explain.
- B. In an action between Caulfield and Dunedin in which Dunedin claims he is not subject to Caulfield's judgment, who will win? Please explain.
- C. In an action between Boxford and Dunedin in which both claim ownership of Blackacre, who will win? Please explain.
- D. Would your answer to questions A, B or C have been different if the second statute had instead read as follows: "No conveyance or mortgage of real property shall be good as against a subsequent purchaser for value and without notice, who first records, unless the same be recorded?" Please explain.

### Question Two

**Suggested Time: 45 Minutes**

**Please assume multistate law for this question. In each instance, please explain whether Massachusetts law would produce a different result.**

Oscar, the owner of Blackacre, a 20 acre parcel of land with a house on it, gave Bank a \$325,000 mortgage on it in 1999. In 2004 Oscar entered into a written purchase and

sale agreement with Bronson in which Oscar agreed to sell Blackacre to Bronson for \$679,000. The purchase and sale agreement required Oscar to deliver "a good, clear record title," but said nothing about marketable title. The purchase and sale agreement did not mention the mortgage to Bank, and Oscar and Bronson never discussed that mortgage.

Please address the following questions:

- A. For this subpart, assume that, prior to the closing, Bronson discovered the mortgage and demanded that Oscar discharge it. Oscar refused to do so under any circumstances. Is Oscar within his rights in so refusing? Please explain.
- B. For this subpart, assume that Bronson did not discover the mortgage until three months after Oscar delivered a special warranty deed, which gave the covenant against encumbrances and the covenant of quiet enjoyment. Bronson wants Oscar to either pay off the mortgage or take back the title to Blackacre. Oscar refuses to do so under any circumstances. Is Oscar within his rights in so refusing? Please explain.
- C. For this subpart, assume that shortly before the closing on Blackacre, Bronson discovered the outstanding mortgage. He also discovered another property that he liked much better than Blackacre. In an effort to get out of the deal, and knowing that Oscar did not have much cash or savings on hand, Bronson told Oscar that Oscar was required to discharge the mortgage prior to delivery of the deed and receipt of the purchase price. Oscar said he needed the proceeds from the closing and would allow Bronson to appoint an escrow agent to take the proceeds from the closing, and use them to secure a mortgage discharge of the Bank mortgage right after the closing. Bronson refused to agree to this. At the closing, Bronson refused to accept the deed without first obtaining a discharge. Oscar wants to keep the deposit. Bronson purchased another property and has sued Oscar for a return of the full deposit. Who will win in that lawsuit? Please explain.

### **Question Three**

**Suggested Time: 45 Minutes**

**Please assume multistate law for this question. In each instance, please explain whether Massachusetts law would produce a different result.**

In 2000 Alice conveyed Blackacre to Beppo for \$250,000. Alice gave a general warranty deed with the covenant of quiet enjoyment and covenant against encumbrances. In 2001, Beppo placed an easement on the property in favor of Eddie, and never disclosed it. In 2002 Beppo conveyed Blackacre to Colson for \$300,000. Beppo gave Colson a special warranty deed with the covenant of quiet enjoyment and covenant against encumbrances. In 2004 Colson conveyed to Danielle for \$250,000. Colson gave Danielle a multistate quitclaim deed. After Colson conveyed to Danielle,

Eddie began to use the easement, which is so extensive that the value of Blackacre is rendered worthless.

Please address the following questions:

- A. Who wins in a suit by Danielle against Colson? Please explain.
- B. Who wins in a suit by Danielle against Beppo? Please explain.
- C. Who wins in a suit by Danielle against Alice? Please explain.

#### **Question Four**

**Suggested Time: 45 Minutes**

**Please assume multistate law for this question. In each instance, please explain whether Massachusetts law would produce a different result.**

Abraham owned in fee simple absolute Blackacre, a 20 acre parcel of wooded land with a large steel frame building used as a dealership to sell heavy excavation equipment. In 1991, Abraham signed a promissory note and gave a mortgage on Blackacre to the Thirty-Seventh National Bank in the amount of \$450,000. There was no "due on sale" clause in either the mortgage or promissory note. In 1994, Abraham signed another promissory note and gave another mortgage on Blackacre, this time to the Second Street Bank, in the amount of \$125,000. There was no "due on sale" clause in either the mortgage or promissory note. In 1996, Abraham leased Blackacre to Tolland for a term of 30 years. In the lease was a provision that "the lessee hereby agrees that this lease agreement shall be subordinate to any and all mortgages the landlord grants on Blackacre to institutional lenders."

In 2001, Abraham sold Blackacre to Barbara "subject to the Tolland lease and the mortgages to the Thirty-Seventh National Bank and Second Street Bank, which the grantee assumes and agrees to pay." In order to finance the acquisition of Blackacre, Barbara signed a promissory note and gave a mortgage to the Twelfth Bank of Nighttime in the amount of \$215,000. As the same time, the Twelfth Bank of Nighttime gave Barbara an equity credit line of \$50,000, and Barbara gave the Twelfth Bank of Nighttime a mortgage to secure the credit line. When the Twelfth Bank of Nighttime's attorney recorded his client's mortgage and equity credit line mortgage, he accidentally recorded the equity credit line first.

Immediately after Barbara closed on Blackacre, the Twelfth Bank of Nighttime sold "the paper" on the equity credit line to the First National Bank of Justice. By late 2004 Barbara was in deep financial difficulty and unable to pay any of her mortgages. Please discuss the rights, duties and liabilities of the parties.

**END OF EXAMINATION**



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# CONVEYANCING

## FINAL EXAMINATION

Peter M. Malaguti

Spring 2003 Semester



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SS #: \_\_\_\_\_

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**Question One**

Several years ago, Bart purchased Goldacre, financing a large part of the purchase price by a loan from Mort that was secured by a mortgage. Bart made the monthly mortgage payments regularly. Bart's mortgage to Mort contained a due-on-sale clause stating, "If Mortgagor transfers his/her interest without the written consent of Mortgagee first obtained, then at Mortgagee's option the entire principal balance of the debt secured by this Mortgage shall become immediately due and payable."

Last year, Bart persuaded Pam to buy Goldacre, subject to the mortgage to Mort. They expressly agreed that Pam would not assume Bart's debt to Mort. Without seeking Mort's consent, Bart conveyed Goldacre to Pam, the deed stating in pertinent part " . . . , subject to a mortgage to Mort [giving details and recording data]."

Pam took possession of Goldacre and made several mortgage payments, which Mort accepted. Then, Pam sold Goldacre to Vero, subject to a mortgage to Mort [giving details and recording data]." Pam and Vero agreed in a separate contract that Vero would "assume all monthly mortgage payments, and save Pam harmless therefore."

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No one has made the last three mortgage payments, and Mort is looking to protect his interests.

Please discuss the rights, duties and liabilities of the parties.

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## Question Two

Corp, a corporation, owned Blackacre in fee simple, as the real estate records showed. Corp entered into a valid written contract to convey Blackacre to Barbara, an individual. At closing, Barbara paid the price in full and received an instrument in the proper form of a deed, signed by duly authorized corporate officers on behalf of Corp, purporting to convey Blackacre to Barbara. Barbara did not then record the deed or take possession of Blackacre.

Next, George (who had no knowledge of the contract or the deed) obtained a substantial money judgment against Corp. Then, Barbara recorded the deed from Corp. Thereafter, George properly filed the judgment against Corp. A statute of the jurisdiction provides: "Any judgment properly filed shall, for ten years from filing, be a lien on the real property then owned or subsequently acquired by any person against whom the judgment is rendered."

Afterward, Barbara entered into a valid written contract to convey Blackacre to Polly. Polly objected to Barbara's title and refused to close. Barbara wants to force Polly to close. The recording act of the jurisdiction provides: "Unless the same be recorded according to law, no conveyance or mortgage of real property shall be good against subsequent purchasers for value and without notice."

Please discuss the rights, duties and liabilities of the parties.

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### Question Three

Abel owned Blackacre in fee simple. Three years ago, Abel and Betty agreed to a month-to-month tenancy with Betty paying Abel rent each month. After six months of Betty's occupancy, Abel suggested to Betty that she could buy Blackacre for a monthly payment of no more than her rent. Abel and Betty orally agreed that Betty would pay \$25,000 in cash, the annual real estate taxes, the annual homeowner's insurance premiums, and the costs of maintaining Blackacre, plus the monthly mortgage payments that Abel owed on Blackacre. They further orally agreed that within six years Betty could pay whatever mortgage balances were then due, and Abel would give her a warranty deed to the property. Under this agreement, Betty's average monthly payments did turn out to be about the same as her monthly rent.

Betty fully complied with all of the obligations she had undertaken for the next five years. She made some structural modifications to Blackacre. Blackacre is now worth 50% more than it was when Abel and Betty made their oral agreement. Betty made her financing arrangements and is ready to complete the purchase of Blackacre, but Abel has refused to close. Betty would like to bring an action for specific performance against Abel to enforce the agreement.

Please discuss the rights, duties and liabilities of the parties.

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#### **Question Four**

Vendor owned Greenacre, a tract of land, in fee simple. Vendor entered into a valid written agreement with Purchaser under which Vendor agreed to sell, and Purchaser agreed to buy, Greenacre by installment purchase. The contract stipulated that Vendor would deliver to Purchaser, upon the payment of the last installment due, "a warranty deed sufficient to convey the fee simple." The contract contained no other provision that could be construed as referring to title.

Purchaser entered into possession of Greenacre. After making 10 of the 300 installment payments obligated under the contract, Purchaser discovered that there was outstanding a mortgage on Greenacre, securing the payment of a debt in the amount of 25% of the purchase price Purchaser had agreed to pay. There was no evidence that Vendor had ever been late in payments due under the mortgage and there was no evidence of any danger of insolvency of Vendor. The value of Greenacre now is four times the amount due on the debt secured by the mortgage.

Purchaser quit possession of Greenacre and demanded that Vendor repay the amounts Purchaser had paid under the contract. Vendor has refused to do so.

Please discuss the rights, duties and liabilities of the parties.

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### **Question Five**

Ven owned Goldacre, a tract of land, in fee simple. Ven and Pur entered into a written agreement under which Pur agreed to buy Goldacre for \$100,000, its fair market value. The agreement contained all the essential terms of a real estate contract to sell and buy, including a date for closing. The required \$50,000 down payment was made. The contract provided that in the event of Pur's breach, Ven could retain the \$50,000 deposit, and that this would be Ven's "sole and exclusive remedy at law and in equity."

Before the date set forth for closing in the contract, Pur died. Addy was duly qualified as administratrix of the estate of Pur. On the day she became administratrix, which was after the closing date, Addy made demand for return of the \$50,000 deposit. Ven responded by stating that he took such demand to be a declaration that Addy did not intend to complete the contract and that Ven considered the contract at an end. Ven further asserted that Ven was entitled to retain, as liquidated damages, the \$50,000. The reasonable market value of Goldacre had increased to \$110,000 at that time.

Please discuss the rights, duties and liabilities of the parties.

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**End of Examination**



# CONVEYANCING

## FINAL EXAMINATION

Peter M. Malaguti

Spring 2002 Semester



SS #: \_\_\_\_\_

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Please do not identify yourself in any way other than by social security number. Please do not write any information in your blue book, scrapbook, or this exam booklet that might reveal who you are.

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Please do not use your own scrap paper. The only thing you may use as scrap paper is the "scrap" blue book. Please **turn in your scrap blue book with your exam blue books and this exam booklet**. I will not accept any blue books after you have turned in your exam materials; no exceptions.

This examination consists of four (4) parts. The first part consists of fifteen (10) short answer questions, and the suggested time is forty-five (45) minutes. Please answer the 10 short answer questions in the space provided after the applicable question **in this examination booklet, not in a blue book**. The first part counts for 25 of a possible 100 points.

Parts Two, Three and Four consist of essay questions of equal length. The suggested time for each essay is forty-five (45) minutes. Please put your answer to Part Two in the blue book labeled "Part Two." Please put your answer to Part Three in the blue book labeled "Part Three." Please put your answer to Part Four in the blue book labeled "Part Four." **Do not exceed five (5) single-spaced pages for each essay answer**. Do not test me on this; I will not read beyond the fifth page on either essay. Also, **do not put more than one essay answer in any one blue book**. Each essay counts for 25 of a possible 100 points.

When you are finished, please put all three blue books and this exam booklet into your "Scrap" blue book and place them in the box at the front of the room. Please do not hand these materials to me.

Unless the facts of the questions suggest otherwise (such as a Massachusetts address), please use "multistate" law. This is a comprehensive examination designed to test your ability to analyze and apply the concepts we covered over the entire semester. You will score points only for the **application of properly stated rules of law to the presented facts** in a cogent, efficient manner. This is not a brain dump; you will not receive any points for merely regurgitating pre-memorized law. You should not waste precious time spouting irrelevant law, esoterica or minutiae. Please assume I know the facts, but nothing else. I will not guess that you know concepts you have not explained.

Please make your answers legible. I cannot grade what I cannot read.

Although the suggested total time for the four parts is three (3) hours, I will give you three and one-half (3½) hours to complete the exam.

I will tell you when there are 15 minutes left, at which point no one may leave the room. I will also warn you when there are 5 minutes left and 1 minute left. When I call time, you are to bring up your exam and blue books *immediately*.

## **PART ONE**

### **10 SHORT ANSWER QUESTIONS**

**SUGGESTED TIME: FORTY-FIVE (45) MINUTES)**

**TOTAL POINTS: 25**

### **INSTRUCTIONS:**

Please place your answers in the space provided in **this exam book**, not in the blue book. Please limit your answers to the lines provided below each question. I will not read beyond the lines provided under each question. Please make each answer readable in terms of neatness and the size of your handwriting. (I will not use a magnifying glass to read your answers.) Please answer the question responsively; don't provide information not asked for in the question. For example, if the question asks "Who wins?" please state the name of the person who wins; don't state why he or she wins. Please state your reasoning only if the question asks for it.

### **QUESTIONS:**

1. Blackacre is a large tract of land owned by the Catholic Archdiocese of Boston. Originally, the only buildings on Blackacre were a church and attached residence for the priests. There is also a parking lot on Blackacre which accommodates 75 automobiles. The only means of ingress and egress to Blackacre, a landlocked property, is an easement over a 30 foot wide strip of land the church had purchased from Able, who owned a parcel of land adjacent to a public road. The church had built an asphalt driveway on the easement, and used for 20 years without incident or objection.

Last year, the church constructed a "community center" on Blackacre and commenced running "bingo" games on Friday nights. The bingo games were so successful that, on Fridays nights, there were not enough parking spaces for all the people wishing to play. Visitors soon started parking their automobiles all along the driveway, down to the public road. About a month after the church started the bingo games, Able erected a "jersey" barrier across the driveway, preventing all use of the driveway. The Church objected. In a single lawsuit, Able and the church have brought claims against each.

Based on the foregoing facts, please circle ALL of the following statements that are CORRECT:

- Able will obtain an injunction preventing the church from allowing parking on the driveway because the church improperly exceeded the scope of the easement.
- Able will prevail on a claim that the easement should be extinguished in its entirety because the parking on the easement exceeded the scope of the easement.
- The church will obtain an injunction preventing Able from placing the barrier across the driveway only if it can demonstrate that it acquired an easement by prescription.

- The church will obtain an injunction preventing Able from placing the barrier across the driveway even if it cannot demonstrate that it acquired an easement by prescription.

2. B agreed in writing to buy Blackacre, S's single-family residence, for \$310,000. B paid S a \$15,000 deposit to be applied to the purchase price. The purchase and sale agreement gave S the right to retain the deposit as liquidated damages in the event of B's default. The closing was to take place on November 15. Two weeks prior to the closing, B's employer notified him that he was to be transferred to another job 1,000 miles away. B immediately notified S that he could not close and demanded the return on his \$15,000. S refused, waited until after the stated closing date in the purchase and sale agreement, listed the property with a broker, and then conveyed to C \$320,000. S has refused to return any of the deposit. In an action by B against S for the return of the deposit, what will the result be?

Who wins (please circle):                      B    S

How much \$\$, if any?                      \$ \_\_\_\_\_

On What Grounds?

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3. A conveyed Blackacre to B by a general warranty deed. B did not record the deed until three days later. Between the time of the delivery of the deed and the recording, C recorded a civil judgment against A. There are two pertinent statutes in the jurisdiction pertaining to this question. The first says: "any judgment properly recorded shall, for ten (10) years from filing, be a valid lien on the real property then owned or subsequently acquired by any person against whom the judgment is rendered." The second statute says: "no conveyance or mortgage of real property shall be good against a subsequent purchaser for value and without notice unless the same be recorded according to law." What is B's best argument that he does not take subject C's judgment?

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5. O, the owner of Blackacre, a 20 acre parcel of land with a house on it, gave Bank a \$125,000 mortgage on it in 1997. In 2000 O entered into a written purchase and sale agreement with A in which O agreed to sell Blackacre to A for \$579,000. The purchase and sale agreement required O to deliver marketable title. The purchase and sale agreement did not mention the mortgage to Bank, and O and A never discussed that mortgage. Shortly before the closing on Blackacre, A discovered another property that he liked much better than Blackacre. At about the same time, A's title search came back and revealed the outstanding mortgage to Bank. In an effort to get out of the deal, A told O he would back out of the transaction unless O could provide a mortgage discharge at the closing. O said he would allow A to appoint an escrow agent to take the proceeds from the closing, and use them to secure a mortgage discharge of the Bank mortgage right after the closing. A has continued to insist that O discharge the mortgage prior to any payment of the purchase price, and the closing date has passed. In an action by O against A for specific performance,

Who wins (please circle):                      O                                      A

On What Grounds?

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Questions 6, 7 and 8 are based on the following fact pattern:

In 1998 A conveyed Blackacre to B for \$200,000. A gave a special warranty deed with the covenant of quiet enjoyment and covenant against encumbrances. In 1999 B conveyed Blackacre to C for \$225,000. B gave a special warranty deed with the covenant of quiet enjoyment and covenant against encumbrances. In 2000 C conveyed to D for \$250,000. C gave a general warranty deed with the covenant of quiet enjoyment and covenant against encumbrances. In 1995 A had placed an easement on the property and never disclosed it. For whatever reason, B, C and D did not find the easement in their title searches. After C conveyed to D, the owner of the easement began to use it. D now wants to sue someone for breach of the covenant against quiet enjoyment and the covenant against encumbrances. Assume that the easement is so extensive that the value of Blackacre is rendered worthless. Assuming there are no statute of limitations problems, please address the results of a lawsuit in the following circumstances:

6. In a suit by D against C for breach of deed covenants, who wins? (circle one):

C

D

How much \$\$, if any?           \$ \_\_\_\_\_

On What Grounds?

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7. In a suit by D against B for breach of deed covenants, who wins? (circle one):

B

D

How much \$\$, if any? \$ \_\_\_\_\_

On What Grounds?

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8. In a suit by D against A for breach of deed covenants, who wins? (circle one):

A

D

How much \$\$, if any? \$ \_\_\_\_\_

On What Grounds?

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10. Assume for the purposes of this question that the applicable statute said: "No conveyance or mortgage of real property shall be good against a subsequent purchaser who pays value, takes without notice, and who first records his or her conveyance or mortgage, unless the same be recorded according to law." In 2001, about a year after recording his deed, A sold Blackacre to B for \$300,000, and B immediately recorded his deed. B had no knowledge of O's prior quitclaim deed to S. After recording his deed, B discovered that S claimed ownership, and brought an action for declaratory relief against S asserting that he is the true owner of Blackacre.

Who wins (please circle):

S

B

On What Grounds?

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**End of Part One**

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**PART TWO**

**ESSAY QUESTION**

**SUGGESTED TIME: FORTY-FIVE (45) MINUTES)**

**TOTAL POINTS: 25**

**PLEASE LIMIT YOUR ANSWER TO FIVE (5) SINGLE-SPACED BLUEBOOK PAGES  
IN ONE BLUE BOOK.**

In 1948, Pierino and Concetta DiClemente, as tenants by the entirety, purchased a parcel of land on Jackson Street in Newton Center, Massachusetts, that contained a single-family home, which they later converted into a two-family house. In 1955, they subdivided their parcel of land into two lots, a front lot (where their single-family home was located) and a rear lot (consisting of the rear area of the parcel and a strip of land that connects this rear area to Jackson Street). This type of rear lot is commonly referred to as a "pork chop lot" because it resembles a pork chop, with the meat being the rear area and the bone being the strip of land that provided limited street frontage. A two-family house was later built on this rear lot. The "bone" of the rear "pork chop lot" contained a driveway used to reach both the garage of the house on the rear lot and the garage of the house on the front lot. Because of the applicable zoning laws, there is insufficient land area on the front lot to install another driveway or means of access to a public road.

Pierino DiClemente died on October 20, 1969, and Concetta became the sole owner of both the front and rear lots. Concetta moved into one of the units in the two-family house on the rear lot. On November 24, 1969, Concetta conveyed a one-half undivided interest in the house and land on the rear lot to her son, Domenic DiClemente, as tenants in common. Concetta died on December 28, 1997.

Under Concetta's Last Will and Testament, which was probated in June 1998, Concetta made the following bequests:

1. She gave Dominic her one-half interest as tenants in common in the rear lot, thereby making Dominic the sole owner of the rear lot;
2. She gave her three daughters, Anna Venuto, Leontina Anastasia and Mary Louise Visco, the front lot as tenants in common, but with one restriction: "So long as DOMENIC DICLEMENTE is an owner of the [rear lot], no sale or other conveyance of any interest in the [front lot] shall be valid without his written consent."
3. She divided the balance of her property equally among her four children, and appointed Domenic as the executor of her estate.

A dispute arose among the four children regarding the settlement of their mother's estate, which was eventually resolved through a "Settlement Agreement" dated March

5, 1999. As part of the Settlement Agreement, the three sisters granted their brother Domenic "an additional right of first refusal respecting any potential sale of [the front lot]."

The Settlement Agreement sadly did not resolve all the problems that have divided the four children since their mother's death. On August 9, 1999, Domenic, through his attorney, informed the attorneys for his three sisters that, effective November 1, 1999, they were prohibited from using the common driveway at all. In addition, the three sisters, none of whom reside in the house on the front lot, have attempted to put the front lot up for sale, but have found no broker who will accept the listing because of Domenic's right of first refusal under the Settlement Agreement and the need for his written consent before any sale of the front lot can become valid.

Please discuss the rights, duties and liabilities between Dominic and his three sisters.

**GO ONTO THE NEXT PAGE**

## **PART THREE**

### **ESSAY QUESTION**

**SUGGESTED TIME: FORTY-FIVE (45) MINUTES)**

**TOTAL POINTS: 25**

**PLEASE LIMIT YOUR ANSWER TO FIVE (5) SINGLE-SPACED BLUEBOOK PAGES  
IN ONE BLUE BOOK.**

In 1995 Austin, the owner of Blackacre, executed and delivered to the Third Bank of Obstreperous (Third Bank) a promissory note and mortgage on Blackacre in the amount of \$100,000. The mortgage did not have a "due on sale" clause. Third Bank immediately recorded its mortgage.

In 1997 Austin secured an "equity credit line" mortgage in the amount of \$50,000 from the First Bank of Consternation (First Bank). Upon receiving the mortgage, Austin withdrew the entire \$50,000 allowed under the equity credit line agreement. The First Bank did not record its mortgage at that time because the attorney representing the First Bank accidentally filed it away in his filing cabinet.

In 1998 Austin sold Blackacre to Chantal for \$25,000, subject to the mortgage to Third Bank. Chantal further agreed in the deed that she would accept full responsibility for making all monthly mortgage payments directly to Third Bank, and absolved Austin from all liability on the mortgage. Austin told Chantal nothing about the equity credit line with First Bank, and she was totally unaware of the transaction. Chantal immediately recorded her deed.

Within a month after purchasing Blackacre, Chantal entered into a written lease with Donnie for a term of 10 years. Donnie had no actual knowledge of the prior transactions. Unrepresented by an attorney in the transaction, Donnie failed to record the lease at that time.

In 1999, during a routine check of his filing system, First Bank's attorney found the equity credit line mortgage given in 1996 and recorded it.

In 2000 Donnie hired a lawyer who inquired whether Donnie had recorded the lease with Chantal. When Donnie replied in the negative, his lawyer obtained the lease and recorded it immediately.

In 2001 Chantal sold Blackacre to Edith for \$50,000. The deed said the sale was "subject to the \$100,000 mortgage given by Austin to the Third Bank of Obstreperous." Chantal made no mention of the lease to Donnie and the equity credit line to First Bank (which she still did not know about). At the time of the sale, Edith gave a mortgage in the amount of \$75,000 to the Second Bank of Frivolity (Second Bank) in order to pay the purchase price. The Second Bank recorded its mortgage immediately.

The jurisdiction in which Blackacre is located has a statute which states: "A prior conveyance of an interest in real estate shall not be valid as against any person who pays substantial value and takes without notice of the prior interest, unless the interest in real estate is recorded in the registry of deeds for the county or district in which the land to which it relates lies."

It is now 2002, and the First Bank has not been paid on its equity credit line since 1998 when Austin sold to Chantal. The First Bank would like to foreclose, but before doing so would like you, its new attorney, to apprise it of the rights, duties and liabilities of the parties. Please do so.

**GO ONTO THE NEXT PAGE**



## **PART FOUR**

### **ESSAY QUESTION**

**SUGGESTED TIME: FORTY-FIVE (45) MINUTES)**

**TOTAL POINTS: 25**

**PLEASE LIMIT YOUR ANSWER TO FIVE (5) SINGLE-SPACED BLUEBOOK PAGES  
IN ONE BLUE BOOK.**

On November 13, 1998, the Trustees of the 24 LedgeWood Road Realty Trust ("the Trustees"), as "seller," and the Galantes, as "buyer," entered into a purchase and sale agreement for the sale of a house lot on property in Winchester, Massachusetts. The house lot is a portion of a larger piece of property owned by the Trustees, who intended to create a small, residential subdivision on the remaining property.

At the time the Agreement was executed, the boundary lines for the Trustees' proposed subdivision lots were not definite and the subdivision plan was not yet approved by the town. To allow for the town's future approval of the subdivision plan, the Trustees and the Galantes included an option in the Agreement for a post-closing exchange of property ("the exchange option"), codified in Paragraph 40 as follows:

40. The BUYER acknowledges that the SELLER plans to subdivide other premises owned by the SELLER adjacent to the premises to be conveyed to the BUYER. If at any time prior to December 11, 2005, the SELLER shall obtain the necessary final approvals to so subdivide their adjacent property, then the BUYER and SELLER agree that upon ten (10) days' written notice from the SELLER to the BUYER:

(a) the BUYER shall convey to the SELLER, for consideration of \$1.00, the area necessary to make the premises conform to the boundaries shown on Exhibit "B" attached hereto and entitled "Plan of Land 'B' "; and

(b) the SELLER shall convey to the BUYER, for consideration of \$1.00, the area necessary to make the premises conform to the boundaries shown on Exhibit 'B' attached hereto and entitled "Plan of Land 'B.' "

The BUYER acknowledges that the location of the boundaries shown on Exhibits "A" and "B" may change during the approval process. The SELLER agrees, however, that after the conveyances as described immediately above, the BUYER's property shall comply with the Zoning By-law of the Town of Winchester and will not violate existing property covenants.

The provisions of this Paragraph 40 shall survive the delivery of the deed

and shall be binding upon the BUYER's successors and assigns. The SELLER shall have the right, however, to terminate the provisions of this Paragraph 40 by written notice to the BUYER.

The BUYER and SELLER further agree that upon the request of the SELLER, the parties shall execute an instrument in recordable form which sets forth the terms of this Paragraph 40.

The exchange option, if exercised, would require the Galantes and the Trustees to swap a portion of the Galantes' property east of their house for a portion of the Trustees' property located north of the Galantes' house.

The property to be conveyed to the Galantes under the Agreement, absent exercise of the exchange option, is depicted in an unrecorded plan attached as Exhibit "A" to the Agreement. Attached as Exhibit "B" to the Agreement is a plan purporting to show the boundaries of the Galantes' property should the exchange option be exercised by the Trustees.

The Agreement also includes an integration clause, which states:

27. CONSTRUCTION OF AGREEMENT This instrument ... sets forth the entire contract between the parties, is binding upon and enures to the benefit of the parties hereto and their respective heirs, ... and may be cancelled, modified or amended only by a written instrument executed by both the SELLER and the BUYER . . . .

On December 11, 1998, the closing took place. The Galantes were present at the closing, along with their attorney and an attorney for the Trustees. At the closing, the Trustees requested that the Galantes execute a Notice of Option, pursuant to the last sentence of Paragraph 40, to be recorded with the Middlesex County Registry District of the Land Court; the Galantes did so. The Registry District would not accept the Notice of Option, however, because the property subject to the exchange was not then shown on an approved Land Court plan.

In October 2000, the Trustees gained approval for a four-lot subdivision. The subdivision plan the Trustees presented to the town did not include the Galantes' lot as depicted on Exhibit "A" or Exhibit "B" to the Agreement, but rather set out different boundaries for the lot. Following the town's approval of their subdivision plan, the Trustees attempted to exercise the exchange option pursuant to Paragraph 40 and sent the Galantes on November 14, 2000, a plan of land for the proposed exchange. The Galantes refused to comply with the exchange option because the land they would receive, as shown in revised Exhibit "B," had substantially different boundaries from those depicted on Exhibit "B" attached to the Agreement.

A lawsuit followed in which the Trustees sought specific performance of the exchange option and both parties seek declaratory relief. Please discuss the rights duties and liabilities of the parties.

**END OF EXAM**

**I've enjoyed our semester together, and hope you have a great summer.**

**CONVEYANCING  
FINAL EXAMINATION  
MAY 14, 2001**

**PETER M. MALAGUTI**

**YOUR SOCIAL SECURITY NUMBER:** \_\_\_\_\_

**INSTRUCTIONS:**

Please take three (3) blue books. Write "Part Two" on one blue book. Write "Part Three" on another blue book. Write "Scrap" on the third blue book. Please write your social security number on all three books.

Please do not identify yourself in any way other than by social security number. Please do not write any information in your blue book, scrap book, or this exam booklet which might reveal who you are.

This is a closed-book examination; other than writing implements, you are not to have any materials on your table or at your feet. Please place all books, knapsacks, briefcases, etc. at the side or front of the room.

Please do not use your own scrap paper. You may use the third blue book as scrap paper. Please turn in your scrap blue book with your exam blue book and this exam booklet. I will not accept any blue books after you have turned in your exam materials. No exceptions.

This examination consists of three parts. The first part consists of 30 short answer questions, and the suggested time is one hour. Please answer the 30 short answer questions in the space provided after the applicable question in this examination booklet, not in a blue book. The first part counts for 30 of a possible 100 points.

The second part is a long essay question, and the suggested time is one and one-half hours (90 minutes). Please answer the long essay question in one separate (1) blue book. The second part counts for 50 of a possible 100 points.

The third part consists of one short essay question. Please answer the short essays in one separate blue book. The third part counts for 20 of a possible 100 points.

You may not exceed one blue book each for parts two and three. When you are finished, please put all three blue books and this exam booklet into one of your blue books and hand them in.

Please make your answers legible.

You have three and one-half (3-1/2) hours to complete the exam. I will tell you when there are 15 minutes left, at which point no one may leave the room. This is done as a courtesy to those who need the whole 3-1/2 hours, and can do without the normal noise associated with a lot of people leaving the room at once. I will also warn you when there are 5 minutes left and 1 minute left. When I call time, you are to bring up your exam and blue books immediately.

**PART ONE**

**30 SHORT ANSWER QUESTIONS**

**SUGGESTED TIME: ONE HOUR (60 MINUTES)**

**TOTAL POINTS: 30**

INSTRUCTIONS:

Please place your answers in the space provided in this exam book, not in the blue book.

Please limit your answers to the lines provided below each question. I will not read beyond the lines provided under each question. Please make each answer readable in terms of neatness and the size of your handwriting. (I will not use a magnifying glass to read your answers.) Please answer the question responsively; don't provide information not asked for in the question. For example, if the question asks "Who wins?" please state the name of the person who wins; don't state why he or she wins. Please state your reasoning only if the question asks for it.

Please note that the lines provided sometimes extend onto the next page.

QUESTIONS

1. A and B own Blackacre as joint tenants in a title theory state. A grants the Yahoo National Bank a mortgage on his interest. One year later A pays off the mortgage. Then B dies leaving all real estate he owns by will to C. Who owns Blackacre? Why?

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2. Under what body of law must a bank chase a mortgagor whose property has been foreclosed, leaving a deficiency in the amount collected at foreclosure?

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3. State the three (3) situations that cause restrictive covenants to “touch and concern” the land.

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4. What are the elements required to create a constructive trust?

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5. Explain the difference between the Massachusetts rule and multistate rule regarding risk of loss under the doctrine of equitable conversion.

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6. State the exception to the marketable title rule (title must be marketable just before delivery of the deed) regarding mortgages.

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7. Circle all of the following descriptions or phrases which do not involve, or are unrelated to, the doctrine of equitable conversion:

- The "risk of loss" when real estate is destroyed after a contract for sale has been signed.
- Whether the seller has "real" or "personal" property after a contract for sale has been signed.
- The "conversion" of covenants contained in a contract for sale into deed covenants once the deed is delivered.
- Whether the buyer has "real" or "personal" property after a contract for sale has been signed.
- Whether the seller has agreed to give general warranty covenants in the deed.

8. State the three requirements for a covenant to run in equity:

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9. State the three requirements for a covenant to run at law:

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10. What is the mortgagor's most important right which he or she keeps right up until a mortgage foreclosure sale?

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11. Generally, how are priorities determined when a mortgage is foreclosed?

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12. Generally, what two circumstances create unmarketable title?

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13. Who may enforce covenants created by way of a common scheme?

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14. State at least two elements of the statute of frauds as it relates to real estate.

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15. Name at least one of the rules required to make a deed description adequate?

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16. Why is it important to know the difference between “present” covenants for title in deeds and “future” covenants for title in deeds?

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17. In regard to damages under the a breach of covenants for title in a deed, what is the difference between the “consideration paid” theory and the “consideration received” theory.

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18. True or false, it more likely than not that written “Offers to Purchase” in Massachusetts are binding contracts.

TRUE

FALSE

19. In a deed, what is the difference between the covenant for seisin and the covenant of the right to convey?

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20. True or false, recording is necessary for title to pass from grantor to grantee under a warranty deed, but not necessary under a quitclaim deed.

TRUE

FALSE

21. What three elements are required for a grantor to transfer title to a grantee?

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22. What three types of notice are there?

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23. If encumbrances have to be cleared before delivery of the deed to properly assert the right to marketable title, and a mortgage constitutes an encumbrance, what happens if a seller can't discharge a mortgage without first delivering a deed and receiving the purchase price?

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24. When is the buyer's right to marketable title not implied in a purchase and sale agreement?

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25. Name at least one circumstance that might modify the normal priorities in regard to a mortgage foreclosure.

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26. What kind of mortgage does not have to satisfy the statute of frauds?

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27. Please briefly state a factual circumstance for which rescission of a real estate transaction should be granted.

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28. What must be accomplished for an instrument to be recorded “properly?”

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29. What is “unequivocal referability?”

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30. What kind of recording system is used in Massachusetts and predominantly on the multistate bar exam?

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**END OF PART ONE  
GO ON TO NEXT PAGE**

## **PART TWO**

### **ONE LONG ESSAY QUESTION**

**SUGGESTED TIME: ONE AND ONE-HALF HOURS (90 MINUTES)**

**TOTAL POINTS: 50**

On August 13, 1995 Michael E. Stith purchased Northacre for \$272,000. In order to finance the acquisition of Northacre, Stith signed a promissory note and obtained a mortgage from the Homestead Savings Bank in the amount of \$150,000. That mortgage was immediately recorded.

Stith's hobby was playing roulette. He traveled to Foxwoods, Mohegan Sun, Atlantic City and Las Vegas on a regular basis, and was known to occasionally drop up to \$30,000 in a given night. He also was occasionally known to win large sums.

On October 17, 1997, the Everclear National Bank loaned Stith \$28,000. To secure the loan, Stith signed a promissory note and gave a mortgage for \$28,000. The mortgage was immediately recorded, but was accidentally indexed under the name "Michael E. Smith," rather than "Michael E. Stith."

On June 5, 1998, the Everclear National Bank loaned Stith another \$35,000. To secure the loan, Stith signed a promissory note and gave a mortgage for \$35,000. The Bank did not immediately record its mortgage.

On May 18, 1999, Billy Bob Jones loaned \$35,000 to Stith, who was in desperate need of money. Upon receiving the money, Stith executed a promissory note that stated in part: "This note shall be collateralized by Northacre." At the same time Stith signed a warranty deed that correctly described Northacre, and named Billy Bob Jones as the grantee. Stith delivered the deed to Eddie Earnest, who agreed with Stith and Jones to hold the deed, and not deliver or record it for one year. Earnest's agreement further provided that he would return the deed to Stith if Stith paid back the \$35,000 with 20% interest within the year, and would record the deed at the Registry of Deeds at the end of the year if Stith did not pay back the money with interest. Prior to making the loan to Stith, Billy Bob Jones caused a title examination to be done; his title examiner assured Billy Bob that the only encumbrance on Northacre was the \$150,000 mortgage Stith had given to the Homestead Savings Bank when he purchased the property.

On July 1, 1999, Stith leased Northacre to Lawrence Letch for a period of 10 years. Letch immediately recorded the lease, and started paying Stith the \$2,000 a month in rent called for under the lease

On November 22, 1999, the Everclear National Bank recorded the \$35,000 mortgage that Stith had given on June 5, 1998.



On March 30, 2000, Stith sold Northacre to I.M. Stupido for \$300,000. Stith gave I.M. a special warranty deed that contained the covenant against encumbrances and the covenant of quiet enjoyment. The parties used a portion of the proceeds to pay off and discharge the \$150,000 mortgage to the Homestead Savings Bank. I.M. agreed in writing "to assume all monthly note payments, and take subject to the \$35,000 mortgage dated June 5, 1998 given to the Everclear National Bank."

Although I.M. has made the monthly payments on the \$35,000 mortgage, the Everclear National Bank started foreclosure proceedings on the \$28,000 mortgage on May 15, 2000. Eddie Earnest recorded the May 18, 1999 deed on May 19, 2000. Billy Bob Jones has commenced an eviction action to gain possession from Lawrence Letch. All the parties have been joined in an action for declaratory relief which seeks to determine their rights, duties, status and liabilities. As judge of the Massachusetts Superior Court, please decide the case, making sure to explain the reasons for your conclusions.

**END OF PART TWO  
GO ON TO NEXT PAGE**

## **PART THREE**

### **ONE SHORT ESSAY**

**SUGGESTED TIME: ONE-HALF HOUR (30 MINUTES)**

**TOTAL POINTS: 20**

Since the late 1980s, Jim and Diane Zurcher have lived near Barbara Herveat on Rabbit Bay, which is located in Massachusetts. Over the years, Herveat and Diane Zurcher became friends. During conversations, Herveat occasionally expressed interest in selling her cottage, and Diane Zurcher always responded that she and her husband would buy the property if Herveat decided to sell. In June 2000, unable to keep up with maintenance on the property, Herveat decided to sell her cottage. Herveat sent a letter to the Zurchers to inform them about this decision, stating:

Dear Diane & Jim,

I have decided to sell Rabbit Bay. I had it appraised last summer. It was valued at \$359,900, so that's what I'm asking. I promised you first chance. Please let me know if you're interested, if possible by July 5. I want to sell this summer. If you aren't interested, I want to get it on the market fast.

Love Barb

The same day the Zurchers received the letter, Diane Zurcher called Herveat and told Herveat that she and her husband would buy the cottage. That week, the Zurchers visited a loan officer at the Peninsula National Bank for the purpose of obtaining a mortgage. When the Zurchers met with the loan officer, he told them that they should obtain a written contract, and provided them with a standard form purchase and sale agreement.

Diane Zurcher completed the form, which stated that Herveat was the seller, and the Zurchers were the buyers. The form stated the street address of the cottage and listed a selling price of \$359,900. It stated a closing date of August 31, 2000. The Zurchers signed the purchase agreement on July 21, 2000, and mailed the signed purchase agreement to Herveat for her signature. Herveat never signed that document but told the Zurchers she intended to close on August 31, 2000.

Shortly after she received the form from Diane Zurcher, Herveat visited her attorney, who prepared a warranty deed for the transfer of the property in exchange for \$359,900. Herveat signed the deed and left it with her attorney to deliver at the closing because Herveat was leaving the area and could not attend the closing in person. However, at about the time the deed was being prepared, a neighbor approached Herveat and offered to help with the maintenance of her cottage. Herveat decided that she could not go through with the sale. In early August 2000, Herveat telephoned Diane Zurcher and told her that the deal was off.

The Zurchers have sued Herveat in an attempt to force a transfer of the real estate. Please state all the issues the Zurchers should raise, the affirmative defenses Herveat should raise, and discuss whether each will be successful. Please justify each conclusion you reach with analysis (application of law to fact).

**END OF EXAM**

**HAVE A GOOD SUMMER VACATION**

**CONVEYANCING  
FINAL EXAMINATION  
MAY 16, 1999**

**PETER M. MALAGUTI**

**YOUR SOCIAL SECURITY NUMBER:** \_\_\_\_\_

**INSTRUCTIONS:**

Please take three (3) blue books. Write "Part Two" on one blue book. Write "Part Three" on another blue book. Write "Scrap" on the third blue book. Please write your social security number on all three books.

Please do not identify yourself in any way other than by social security number. Please do not write any information in your blue book, scrap book, or this exam booklet which might reveal who you are.

This is a closed-book examination; other than writing implements, you are not to have any materials on your table or at your feet. Please place all books, knapsacks, briefcases, etc. at the side or front of the room.

Please do not use your own scrap paper. You may use the third blue book as scrap paper. Please turn in your scrap blue book with your exam blue book and this exam booklet. I will not accept any blue books after you have turned in your exam materials. No exceptions.

This examination consists of three parts. The first part consists of 30 short answer questions, and the suggested time is one hour. Please answer the 30 short answer questions in the space provided after the applicable question in this examination booklet, not in a blue book. The first part counts for 30 of a possible 100 points.

The second part is a long essay question, and the suggested time is one hour (60 minutes). Please answer the long essay question in one separate (1) blue book. The second part counts for 35 of a possible 100 points.

The third part consists of two shorter essay questions. Please answer the short essays in one separate blue book. The third part counts for 35 of a possible 100 points.

You may not exceed one blue book each for parts two and three. When you are finished, please put all three blue books and this exam booklet into one of your blue books and hand them in.

Please make your answers legible. I cannot grade what I cannot read.

You have three and one-half (3-1/2) hours to complete the exam. I will tell you when there are 15 minutes left, at which point no one may leave the room. This is done as a courtesy to those who need the whole 3-1/2 hours, and can do without the normal noise associated with a lot of people leaving the room at once. I will also warn you when there are 5 minutes left and 1 minute left. When I call time, you are to bring up your exam and blue books immediately.

**GOOD LUCK!**

**PART ONE**

**30 SHORT ANSWER QUESTIONS**  
**SUGGESTED TIME: ONE HOUR (60 MINUTES)**  
**TOTAL POINTS: 30**

**INSTRUCTIONS:**

Please place your answers in the space provided in this exam book, not in the blue book.

Please limit your answers to the lines provided below each question. I will not read beyond the lines provided under each question. Please make each answer readable in terms of neatness and the size of your handwriting. (I will not use a magnifying glass to read your answers.) Please answer the question responsively; don't provide information not asked for in the question. For example, if the question asks "Who wins?" please state the name of the person who wins; don't state why he or she wins. Please state your reasoning only if the question asks for it.

Please note that the lines provided sometimes extend onto the next page.

**QUESTIONS**

1. State the essential characteristics of an appurtenant easement.

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2. State the 5 requirements of an easement by implication.

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3. State the 2 requirements of an easement by necessity.

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4. What is the difference between a notice and a race-notice recording jurisdiction?

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5. What is the difference between a race and a race-notice jurisdiction?

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6. What two circumstances create unmarketable title?

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7. A restrictive covenant “touches and concerns” the land in three circumstances. Name one of them.

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8. Who may enforce covenants created by way of a “common scheme”?

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9. State at least two elements of the statute of frauds as it relates to real estate.

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10. In regard to equitable conversion, who gets legal title and who gets equitable title?

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11. What is required to make a deed description adequate?

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12. Why is it important to know the difference between “present” covenants for title in deeds and “future” covenants for title in deeds?



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13. In regard to damages under the a breach of covenants for title in a deed, what is the difference between the “consideration paid” theory and the “consideration received” theory.

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14. In class, we discussed a recent Massachusetts Supreme Judicial Court involving liquidated damages clauses in purchase and sale agreements (Kelly v. Marx). Will the SJC allow sellers to keep deposits under purchase and sale agreements that say they can when the amount of the deposit exceeds the actual damages suffered by the seller?

YES

NO

15. True or false, it more likely than not that written “Offers to Purchase” in Massachusetts are binding contracts.

TRUE

FALSE

16. In a deed, what is the difference between the covenant for seisin and the covenant of the right to convey?

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17. True or false, recording is necessary for title to pass from grantor to grantee under a warranty deed, but not necessary under a quitclaim deed.

TRUE

FALSE

18. What three elements are required for a grantor to transfer title to a grantee?

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19. Buyer contacts a real estate broker, Baker, to show her new homes for purchase. Baker takes Buyer to see Blackacre, which is being shown by another real estate broker, Bobeck. Buyer likes Blackacre and wants to buy it. Why shouldn't Buyer say the following to Baker, outside the hearing of Bobeck: "I'd be willing to pay as high as \$220,000, but I start bidding at \$205,000"?

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20. What three types of notice are there?

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21. Please describe the “procurement” theory of earning a broker’s commission.

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22. If encumbrances have to be cleared before delivery of the deed to properly assert the right to marketable title, and a mortgage constitutes an encumbrance, what happens if a seller can’t discharge a mortgage without first delivering a deed and receiving the purchase price?

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23. When is the buyer’s right to marketable title not implied in a purchase and sale agreement?

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24. What body of law is represented by the promissory note in a mortgage transaction?

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25. What body of law is represented by the mortgage in a mortgage transaction?

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26. Generally, how does one determine "priorities" in regard to a mortgage foreclosure?

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27. Name at least one circumstance that might modify the normal priorities in regard to a mortgage foreclosure.

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28. What kind of mortgage does not have to satisfy the statute of frauds?

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29. Please briefly state a factual circumstance for which rescission of a real estate transaction should be granted.

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30. What must be accomplished for an instrument to be recorded properly?

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## **PART TWO**

### **ONE LONG ESSAY QUESTION SUGGESTED TIME: ONE HOUR (60 MINUTES) TOTAL POINTS: 35**

In 1986, James and Wendy Symmes, a married couple, searched for property on which to build a home; they were particularly interested in land that was suitable for raising horses. In December of 1986, a real estate broker, Tristram Landing, showed them an unimproved 3.36 acre parcel in Hamilton, Massachusetts ("the Property"), owned by the Myopia Development Company ("Myopia"). According to a plan of the land that Mr. Landing showed them, the Property was to have separate means of access to two nearby public roads: Pierson Lane to the west and Post Road to the south.

On June 6, 1987, the Symmes signed a purchase and sale agreement on the "Greater Boston Real Estate Board" standard form to purchase the Property, on which Myopia was to construct a house. The agreement was silent about the quality of title that Myopia was to deliver, but did require Myopia to deliver a "Massachusetts Quitclaim" deed. The description of the real estate to be conveyed referred to the plan Mr. Landing had shown them, which was "attached to, and made a part of," the agreement. The plan showed that a .4 acre triangular parcel of land in the northeast corner of the Property ("the triangular parcel") was included in the Property. In addition, the plan indicated that, although the Property would be almost completely surrounded by adjacent properties, the Symmes would have access to Pierson Lane by means of a "panhandle strip" that they would own in fee simple; they would also have use of a right-of-way to Post Road ("the right-of-way"). Attached to the agreement was a "Right-of-Way Agreement and Declaration of Maintenance Obligations" for the common use of the right-of-way.

At the closing on September 14, 1987, Myopia delivered to the Symmes a "Massachusetts Quitclaim" deed which contained a metes and bounds description of the Property. Unknown to them at the time, however, the deed did not convey either the triangular parcel or the panhandle strip.

The Symmes did not learn of any problems with the title to their Property until the spring of 1988, when James Symmes was clearing shrubs in the triangular parcel. Ralph Polo, who, along with his wife, Estelle Polo, owned the immediately contiguous parcel of land, approached Mr. Symmes and told him that he believed Myopia had sold the triangular parcel to him, and that he would look into the matter. After the Symmes heard nothing from Polo for several weeks, they decided to look into the matter themselves. Mr. Symmes obtained a copy of his deed and "plot plan" and took them to a surveyor.

After the surveyor compared the Symmes' deed and his survey of the Property, he advised the Symmes of several problems with their title. First, neither the triangular parcel nor the panhandle strip was conveyed to the Symmes. Second, the Symmes were "landlocked," because their Property had no access to any public roads. Moreover, the instrument by which Myopia had previously created the right-of-way actually identified the Polos' lot, and not the Symmes' lot, as one of the properties benefitted by the right-of-way. Accordingly, the Symmes were not entitled to use the right-of-way.

In early 1990, Donald Doright, the owner of the property that the right-of-way crossed, hired an attorney who sent the Symmes a letter instructing them not to use the right-of-way across his property. Doright also erected cattle fencing and a barricade that substantially narrowed the right-of-way and made it difficult for the Symmes to drive their horse trailers on it, although the right-of-way was not completely blocked. Myopia has refused to do anything about the Symmes' title problem.

At some point during this time period, the Symmes discovered an additional problem with their title; Myopia had created but not discharged two mortgages on the Property. Myopia has refused to cause the mortgages to be discharged.

The Symmes would like to know whether they have any recourse. They need access to and from their property, would like the .4 acre triangle, and would like to cause the mortgages to be discharged. Please discuss the rights, duties and liabilities of the parties.

## **PART THREE**

### **TWO SHORT ESSAY QUESTIONS SUGGESTED TIME: ONE HOUR (60 MINUTES) TOTAL POINTS: 35**

#### **QUESTION ONE**

The following events happened in the order stated in a race-notice jurisdiction:

1. Harry owned Blackacre.
2. On August 8, 1982, Harry conveyed to Debbie for \$125,000. Debbie did not record her deed at this point.
3. On September 7, 1985, Harry sold Blackacre to Carl for \$150,000. Carl was unaware of the prior conveyance from Harry to Debbie. Carl did not record his deed at this point.

4. On January 31, 1986, Carl recorded his deed.
5. On September 8, 1986, Debbie recorded her deed.
6. On October 4, 1991, Carl sold Blackacre to Terry, who had no knowledge of the transfer from Harry to Debbie and paid \$175,000 for the property. Terry immediately recorded her deed.

Please fully identify and discuss all interests each party has in Blackacre after the six events stated above.

### QUESTION TWO

On August 1, 1966, Able sold Blackacre to Baker and included the following statement in the deed: "Blackacre shall only be used for residential purposes, and all structures thereon shall be built in colonial style with at least 2,000 square feet on living space." Baker immediately recorded the deed.

On April 12, 1973, Baker sold Blackacre to Collier, and included the same statement in the deed. Collier immediately recorded that deed.

On November 7, 1974, Collier sold Blackacre to Dobler. The deed did not contain the above-quoted statement or anything similar to it. Dobler immediately recorded that deed.

On December 3, 1974, Eddie began adversely possessing Blackacre. His adverse possession ripened into ownership on December 3, 1994. Eddie obtained and recorded a declaratory judgment demonstrating his acquisition of ownership by adverse possession in 1995.

On March 17, 1996, Eddie sold Blackacre to Fred. Fred has started to erect an office building on Blackacre.

Please discuss the rights, duties, liabilities and remedies of the parties if a claim is made that Fred cannot erect an office building on Blackacre. Please address both an action at law and an action in equity.

**END OF EXAM**

**HAVE A GOOD VACATION**



CONVEYANCING  
FINAL EXAMINATION

MAY 19, 1997

PETER M. MALAGUTI

Closed book examination. No materials on your desk or by your feet.

Please do not identify yourself in any way except by SS#.

Please make it legible. I cannot correct what I cannot read.

Only one person at a time may use the rest room. Please sign out.

Unless the question states otherwise, assume that Massachusetts law applies. However, you will get additional points on the essays by discussing contrasting multistate law.

GOOD LUCK!

PART ONE

RECOMMENDED TIME: ONE HOUR

PORTION OF GRADE: ONE-THIRD

INSTRUCTIONS:

PART ONE CONSISTS OF ONE ESSAY QUESTION. PLEASE ANSWER THE QUESTION FULLY, ATTEMPTING TO IDENTIFY AND DISCUSS ALL APPLICABLE ISSUES.

QUESTION

On March 1, 1992, Bryan Birdie made an offer to purchase Blooperacre, located in Nantasket Beach, Massachusetts. The Seller, Silas Seltzer, accepted the offer to purchase on March 2, 1992. The offer to purchase is set forth in its entirety in Exhibit "A" attached to the back of this examination.

Bryan Birdie did not have \$128,000 to purchase Blooperacre; he expected to obtain a mortgage. He told this to the broker, Bebe Bozo, at the time he made the offer. Bebe told Bryan that the parties would incorporate a mortgage contingency clause into the purchase and sale agreement that was to be signed by April 1, 1992. Bryan also wanted a home inspection to occur to make sure Blooperacre did not have any significant defects, but did not state this to anyone at the time he made the offer.

Although Bebe told Bryan that the bank offering the mortgage would do a title search, Bryan wanted to hire his own lawyer to ensure valid title. He immediately got his lawyer to begin a title examination. Bryan also immediately made a mortgage application to the Keating National Bank for a mortgage loan of \$115,000.

After negotiating for several weeks without success, Bryan and Silas were unable to agree on the terms of the purchase and sale agreement. Bryan demanded his \$500 deposit back on April 2, 1992. Silas instructed Bebe not to deliver it.

On May 4, 1992, the Keating National Bank informed Bryan that he would not qualify for the mortgage unless he put down another \$5,000 from his savings account toward the purchase of Blooperacre. Although he had the money, Bryan considered the deal to be dead and told the bank he no longer wanted the mortgage.

On May 15, 1992, Bryan's lawyer told him that he had searched the record title to Blooperacre and that everything appeared to be fine. However, on driving past Blooperacre, the lawyer noticed a large chemical truck emptying its contents in the woods behind the house. The lawyer advised Bryan to conduct

a hazardous waste inspection if he planned to purchase Blooperacre.

On May 16, 1992, Bryan ran into Silas at the check-out counter of the Star Market. Bryan told Silas he would be willing to buy Blooperacre if Silas would let him conduct a hazardous waste inspection. Silas agreed. Bryan immediately reapplied for his mortgage with the Keating Bank and was quickly approved. However, the inspection revealed unacceptable levels of hazardous waste. Bryan orally notified Silas of the inspection results.

On June 1, 1992, Silas attended the closing with a quitclaim deed in his possession. Bryan did not attend. Three days later, Bryan rethought the situation and decided that, even with the hazardous waste, Blooperacre was a good deal. He called Silas and told him that he would accept the deed. Silas told Bryan that it was too late; he would never sell Blooperacre to him.

Bryan has sued Silas. Please identify all the causes of action and issues the parties will raise. Please discuss the rights, duties, obligations and liabilities of the parties.

## PART TWO

SUGGESTED TIME: ONE HOUR

PORTION OF GRADE: ONE-THIRD (1/3)

### INSTRUCTIONS:

PART TWO CONSISTS OF TWO ESSAY QUESTIONS. EACH QUESTION PRESENTS A LONG FACT PATTERN, BUT IS NARROWER IN SCOPE THAN THE FACT PATTERN PRESENTED IN PART ONE. I WILL WEIGH EACH QUESTION EQUALLY. THE RECOMMENDED TIME FOR EACH QUESTION IS 30 MINUTES (NOT COUNTING THE EXTRA HALF HOUR FOR THE WHOLE EXAM).

### QUESTIONS

1. Megalo owned Bigacre, a 200 acre tract of land in Cumbersome, Massachusetts. In early 1986, Megalo obtained from the Cumbersome Planning Board permission to subdivide Bigacre into 175 separate lots. The subdivision approval required Megalo to install roads, drainage systems and sewage systems throughout the subdivision. Megalo had prepared a subdivision plan depicting the 175 lots, as well as the roads and drainage systems. The Cumbersome Planning Board signified its approval by signing the plan, and Megalo caused it to be recorded in the appropriate Registry of Deeds. Megalo named his subdivision "Megalomeadows."

In late 1986, Megalo had his attorney draft a document entitled "Declaration of Protective Covenants." The document stated that all houses built in Megalomeadows must be used for only residential purposes, must contain at least 2,500 square feet of living area, and must be built in a "classic, center-entrance colonial style." Megalo signed the Declaration and caused it to be notarized. However, he neglected to record the document.

By early 1987, Megalo had sold 25 lots. Each deed stated that, "By accepting this deed, the grantee agrees that the premises shall be used only for residential purposes, that the dwelling constructed thereon must contain at least 2,500 square feet of living area, and that the dwelling must be constructed in a classic, center-entrance colonial style, all as provided in a Declaration of Protective Covenants previously recorded." In June, 1987, however, the real estate market collapsed and Megalo found it difficult to sell the remaining lots. By January, 1990, Megalo had only sold an additional five lots, each of which he transferred by a deed containing the quote provided in this paragraph. One hundred forty-five of the lots remained unsold. Megalo found himself in deep financial trouble.

In January, 1990, Megalo sold 130 of the remaining 145 lots to Maniac, another real estate developer. Megalo retained 15 lots for himself. At the time of the transfer, Maniac informed Megalo that his title examiner discovered that Megalo had failed to record the Declaration of Protective Covenants referred to in each of the 30 deeds he had delivered. Megalo checked his files and discovered the original, executed Declaration. Megalo decided not to record the Declaration at that time.

Maniac prepared his own Declaration of Protective Covenants. Although much of the wording differed from the unrecorded Declaration prepared by Megalo, Maniac's version contained the same substantive provisions: the houses could only be used for residential purposes, the houses must contain at least 2,500 square feet of living area, and the houses must be built in a center-entrance colonial style. Maniac immediately recorded his Declaration and proceeded to sell the lots. By 1996, Maniac had sold 100 of his 145 lots. Each deed referred to the Declaration Maniac had recorded. All of the purchasers of those 100 lots erected residential dwellings that conformed with the Declaration Maniac had recorded.

In January, 1997, Megalo started marketing his 15 lots in the Megalomeadows subdivision. Megalo expressly stated to interested purchasers that each of his 15 lots would be sold subject to only one restriction: that the premises could be used only for residential purposes. When prospective purchasers questioned whether they would be bound by the Declaration Maniac had recorded, Megalo assured them that the recorded Declaration only pertained to the 145 lots owned, or previously owned, by Maniac. Megalo showed each prospective purchaser the original

Declaration he had signed but not recorded. Each time he said, "See, this is the original. I never recorded it. It's not binding on the lot you want to buy."

In February, 1997, Megalo sold the first of his 15 lots to Jimmy Proletariat, a bricklayer who made \$27,000 a year. By May, 1997, Jimmy had installed the foundation, framing and sheathing of his house. By this point, it was painfully clear to the other homeowners in Megalomeadows that Jimmy's house was to be a ranch. When questioned by his future neighbors, Jimmy admitted that his ranch was to have only 1,250 square feet of living area. Jimmy decried that Maniac's Declaration did not pertain to his land since he had purchased it from Megalo rather than Maniac. Jimmy asserted that he could not afford to build a bigger house and that he had a right to "get a piece of the pie" and move to a town such as Cumbbersome where his five children could obtain a first-rate education. Megalomeadows was Jimmy's American dream.

Fearful that development of Megalo's 15 lots without adherence to the Declaration recorded by Maniac would drive down the values of the other 160 lots in Megalomeadows, Maniac and several lot owners have sought an injunction preventing the construction of Jimmy's home. They also seek a binding declaration preventing Megalo and any purchasers of Megalo's lots from failing to adhere to the Declaration recorded by Maniac. Discuss the rights, duties, liabilities and obligations of the parties. Please state a conclusion whether Jimmy, Megalo and future purchasers of Megalo's lots should be required to comply with a common development scheme. Please support all conclusions.

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2. In 1982, Ruth and Antonin, an unmarried couple, began living together in an apartment in Boston, Massachusetts. Neither Ruth nor Antonin believed in marriage, an institution both claimed was "forced and unnatural." Despite their disdain for marriage, Ruth and Antonin kept their feelings to themselves, and even held themselves out as "husband and wife."

In 1985, while Ruth was expecting their first child, she and Antonin decided to purchase a home together. In June, 1985, they purchased Supremeacre which was located in Certiorari, Massachusetts. They received a Quitclaim deed which conveyed title to "Ruth and Antonin, husband and wife as tenants by the entirety." In early 1986, Ruth and Antonin had a son named Clarence. Ruth and Antonin lived happily until 1990.

By 1990, Ruth had fallen deep into debt. Without telling Antonin, she obtained a \$60,000 mortgage on her interest in Supremeacre from the Reversal National Bank. In 1991, Ruth won \$36 million in the "Big Game" lottery (It's a big deal!), and repaid the mortgage in full. Ruth never fell into debt again.

In 1991, Antonin began having an affair with Sandra.

Antonin believed that Sandra's politicagreed to sell Supremeacre to Breyer. Antonin forged Ruth's name on the purchase and sale agreement. Antonin and Sandra attended the closing on September 21, 1991. Antonin introduced Sandra as "my wife Ruth." Antonin signed his name to the deed. Sandra signed Ruth's name to the deed. Breyer accepted the deed. Breyer did not intend to live at Supremeacre; he decided to purchase it as an investment property.

In 1992, Ruth died suddenly, leaving all her real estate by will "to my dear friends Bill and Hillary." Ruth's only heir was her son, Clarence. In 1993, Sandra left Antonin for Rehnquist. Despondent, Antonin committed suicide. His will left all his real property to his children, "Powell and Douglas, or the survivor thereof."

In 1995, Breyer sold his "entire right, title and interest" in Supremeacre "to Darden and Clark with rights of survivorship." Darden and Clark were legally married. In 1996, Clark died leaving all her real estate by will "to my good friend, Ito."

Please trace the ownership through the death of Clark. Please determine who owns Supremeacre at Clark's death. Please determine what concurrent estates have passed. Please determine the fractional interests all have owned. Please explain your conclusions.

### PART THREE

SUGGESTED TIME: ONE HOUR

PORTION OF GRADE: ONE-THIRD (1/3)

#### INSTRUCTIONS:

PART THREE CONSISTS OF 30 SHORT ANSWER QUESTIONS.

PLEASE ANSWER THE FOLLOWING QUESTIONS ON THE SPACES PROVIDED ON THIS EXAMINATION BOOK. DO NOT WRITE YOUR ANSWERS IN YOUR BLUEBOOK.

PLEASE ANSWER EACH QUESTION. FOR EXAMPLE, IF THE QUESTION ASKS "WHO WINS?" PLEASE MAKE SURE THAT YOU TELL ME WHICH PARTY WILL PREVAIL. A CORRECT STATEMENT OF LAW WHICH DOES NOT ANSWER THE QUESTION WILL BE MARKED INCORRECT.

ALL YOU NEED DO IS ANSWER THE QUESTION TO GET IT CORRECT. FOR EXAMPLE, IF I ASK "WHO WINS?" YOU NEED ONLY STATE THE PARTY WHO WINS; YOU DO NOT NEED TO STATE THE THEORY ON WHICH S/HE WINS. HOWEVER, IF I ASK FOR A LEGAL THEORY, YOU MUST GIVE IT TO ME TO

GET THE QUESTION CORRECT. THEREFORE, PLEASE READ EACH QUESTION FULLY AND CAREFULLY.

PLEASE CONFINE THE LENGTH OF EACH ANSWER TO THE LINES PROVIDED BELOW EACH QUESTION. I HAVE GIVEN SUFFICIENT SPACE TO ANSWER EACH QUESTION. I WILL NOT READ PAST THE LINES. I WILL NOT READ TWO LINES CRAMMED ONTO ONE. I WILL NOT READ RIDICULOUSLY SMALL WRITING. PLEASE NOTE THAT SOMETIMES THE LINES RUN ONTO THE NEXT PAGE.

PLEASE ASSUME THAT MASSACHUSETTS LAW APPLIES UNLESS OTHERWISE STATED, OR UNLESS OTHERWISE CALLED FOR BY THE PARTICULAR FACT PATTERN.

QUESTIONS

1. The Massachusetts Legislature has enacted a statute, G.L. c. 244, sec. 17B, which sets forth a "condition precedent" to a mortgagee's recovery of a deficiency from a mortgagor after the mortgage is foreclosed. What is that condition precedent?

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2. What element does the "easement by implication" and "easement by necessity" have in common?

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3. True or false, Carraccio v. Lowell Five Cents Savings Bank, 415 Mass. 145 (1993), stands for the proposition that a bank which has taken a mortgage from only one spouse on property owned as tenants by the entirety can acquire a wholly defeasible interest in it.

True

False

4. In 1993, Able and Baker entered into an oral agreement to jointly purchase real estate for the purpose of making a profit. They agreed to split all profits and losses equally. That year, they bought six parcels containing residential

structures. In order to finance the acquisition of each parcel of real estate, Able and Baker obtained mortgages on each parcel from the Essex County Commercial Bank. The mortgage amount on each parcel was 80 percent of the purchase price. Able and Baker operated each of the six parcels at a significant loss for the next four years. In accordance with their oral agreement, Able and Baker each provided half of the money to cover such losses. In 1997, Baker decided he no longer wanted to expend his own money on the properties. Over Able's objections, Baker refused to pay anything toward taxes, insurance, upkeep and mortgage payments. Able does not have the money to cover these expenses on his own, and does not want the Essex County Commercial Bank to foreclose the mortgages. Able brings an action against Baker to force Baker to assume responsibility for his share of the expenses. Baker claims that the agreement is unenforceable. Can Able enforce his agreement with Baker?

Yes

No

5. Please briefly state why your answer to Question 4 is correct.

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6. Please state the three elements required to show equitable estoppel, as stated in Cellucci v. Sun Oil Co.

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7. Please state the three elements required to avoid the statute of frauds under Section 129 of the Restatement.

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8. Briefly describe the standard sellers are required to follow in attempting to deliver premises which conform to the terms of purchase and sale agreements.

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9. Fred and Wilma were legally married. Together they purchased Bedrock as tenants by the entirety. One day, while on his way home from the bowling alley, Fred was involved in an auto accident. The driver of the other vehicle was killed. Fred had allowed his auto insurance to lapse. The estate of the driver who died in the accident has sued Fred and seeks a real estate attachment on Fred's interest in Bedrock. In Massachusetts, may the estate properly attach property owned as tenants by the entirety?

Yes

No

10. Please read Questions 10, 11 and 12 before beginning this question. By will, Owen left Confusionacre to his four sons, "Alan, Bubba, Colin and Dirk; jointly." In 1987 Dirk took a mortgage with the Enigma Savings Bank on his interest in Confusionacre. In 1988, Dirk paid off that mortgage and discharged the obligation. In 1990, Colin died leaving all his real estate by will "to my good friends Moe, Larry and Curley, to share and share alike." In 1992, Alan died with a will leaving all his real estate "to my beloved wife Janine." Please circle the persons who have interests in Confusionacre immediately after Alan's death in 1992.

Janine      Moe, Larry & Curley      Dirk

Enigma Savings Bank      Bubba

11. Please state all the concurrent estate relationships between the persons you have circled in your answer to Question 10 (i.e. tenancy in common, joint tenancy or tenancy by the entirety).

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12. Please state the fractional interest owned by each per

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13. True or false, under the Massachusetts statute of frauds, a contract required to be in writing may only be varied or modified by a subsequent written instrument.

True

False

14. The default provision of the Greater Boston Real Estate Board purchase and sale agreement states:

If the Buyer shall fail to fulfill the Buyer's agreements herein, all deposits made hereunder by the Buyer shall be retained by the Seller as liquidated damages unless within thirty days after the time for performance of this agreement or any extension hereof, the Seller otherwise notifies the Buyer in writing.

Assume that (1) the Buyer defaults, (2) the Seller notifies the Buyer within thirty days that he will both keep the deposit as liquidated damages and seek additional, actual damages, and (3) the Seller subsequently sells the property for a higher price to another seller. Should a court award to the Seller actual damages in addition to the deposit?

Yes

No

15. Please briefly explain your answer to Question 14.

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16. Able purchased Wasteacre in 1980. At some point after purchasing Wasteacre, Able learned that that it was located in an area the Massachusetts Department of Environmental Protection had determined to be a "priority site" for hazardous waste. In 1994, Able offered Wasteacre for sale to Baker. Although Able knew that Wasteacre might contain hazardous waste, and was located in a "priority site" area, he did not provide any information whatsoever to Baker about the condition of the property. Baker purchased Wasteacre and immediately discovered that it contained hazardous waste. Baker is seeking to rescind the transaction with Able. Should Baker prevail?

Yes

No

17. Please briefly explain your answer to Question 17.

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18. What is the primary difference between the Massachusetts and Multistate applications of the "estoppel by deed" concept?

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19. The statute of frauds requires that, to be enforceable, a written instrument must describe the property. How does one

determine whether a property description in a deed or purchase and sale agreement is sufficient?

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20. The ABC Bank has a valid first mortgage on Troubleacre. The DEF Bank has a valid second mortgage on Troubleacre. The GHI Bank has a valid third mortgage on Troubleacre. The ABC Bank is foreclosing its mortgage. Please briefly describe the rights of the DEF Bank and GHI Bank in regard to the ABC Bank's foreclosure.

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21. Assume the same facts as in Question 20 except that the GHI Bank, and only the GHI Bank, is foreclosing its mortgage. The GHI Bank is considering bidding on Troubleacre at foreclosure. In making the determination whether to purchase at foreclosure, what must the GHI Bank consider in regard to the ABC Bank and DEF Bank mortgages?

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22. Please state the primary relationship involved in a "Massachusetts nominee trust."

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23. Is it a general rule in Massachusetts that mortgages must be supported by consideration?

Yes

No

24. According to the Supreme Judicial Court case of Dunham v. Ware Savings Bank, when is a restraint on alienation valid?

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25. When will a Massachusetts court of competent jurisdiction impose an equitable mortgage?

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26. Keeping the "unities" in mind, why is it so difficult for a cotenant to maintain an adverse possession against another cotenant?

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27. When considering whether a covenant is enforceable in equity, please state the types of "notice" recognized in Massachusetts.

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CONVEYANCING  
FINAL EXAMINATION

MAY 20, 1996

PROFESSOR MALAGUTI

THIS IS A CLOSED BOOK EXAM. YOU ARE TO HAVE NO MATERIALS ON YOUR DESK OR BY YOUR FEET EXCEPT FOR WRITING IMPLEMENTS.

PLEASE DO NOT IDENTIFY YOURSELF IN ANY WAY EXCEPT BY SOCIAL SECURITY NUMBER.

PLEASE MAKE THE EXAM LEGIBLE.

ONLY ONE PERSON AT A TIME MAY LEAVE THE ROOM TO USE THE RESTROOM. PLEASE SIGN OUT.

GOOD LUCK!

## PART ONE

RECOMMENDED TIME: ONE HOUR

PORTION OF GRADE: ONE-THIRD

INSTRUCTIONS: PART ONE CONSISTS OF ONE (1) FAIRLY-LONG ESSAY QUESTION. PLEASE ANSWER IT AS COMPREHENSIVELY AS TIME PERMITS.

Eddie Fingers and Angela Tagliatelle met at an Aerosmith concert in July, 1975, and fell in love. Angela was a student at the Harvard Business School and Eddie was an auto mechanic. After two months of dating, Eddie and Angela together moved into a small apartment in Harvard Square. In 1976, Angela graduated from the Business School and accepted a \$125,000 a year job with a financial company in Boston. Eddie continued to work as a mechanic.

In 1977, after discovering she was pregnant, Angela felt that she and Eddie could not continue to live in the small apartment in Harvard Square. After discussing the matter, Angela and Eddie decided that, although they were not married and did not intend to get married, they should purchase a home. They found one in Brookline, Massachusetts for \$199,000. At the time, Angela made \$143,000 a year and Eddie made \$14,500 a year. Angela put down the entire \$40,000 deposit. On November 4, 1977, Angela and Eddie took title to 1313 Mockingbird Lane, Brookline, Massachusetts as "Edward Fingers and Angela Tagliatelle-Fingers, husband and wife as tenants by the entirety." At the time of the purchase, they gave a \$159,000 mortgage to the Brookline Savings Bank. The only reason Eddie and Angela qualified for the

mortgage was because of Angela's large salary.

Eddie's and Angela's first child, a daughter named Dinah, was born on March 23, 1978. Their second child, a daughter named Donna, was born on April 12, 1980. Eddie continued to work as a mechanic and Angela continued to work in finance. Eddie eventually developed addictions to alcohol, women and gambling. He found his habits to be quite expensive, and at times was unable to find the requisite cash for his booze, women and bets because Angela kept a tight family budget.

In 1989 Eddie placed with his bookie a \$15,000 bet on what he thought was a sure winner in a horse race at Rockingham Park. Eddie's horse lost and Eddie did not have the money to cover the bet. Afraid that his bookie would break his legs, and too embarrassed to ask Angela for the money, Eddie decided to borrow \$15,000 from the Brookline Savings Bank and allow the Bank to secure the loan with a second mortgage on 1313 Mockingbird Lane. The bank did not require Angela to sign any documents and gave Eddie a \$15,000 second mortgage on his interest in the property. Eddie decided never to tell Angela of the loan. Luckily, Eddie won \$18,000 on the 1990 World Series and paid off the entire \$15,000 second mortgage to the Brookline Savings Bank.

In 1992, Angela discovered that Eddie had been having affairs with numerous women. Rather than leaving, Angela convinced Eddie that the two of them should seek family counseling. During counseling, Eddie admitted that he was an alcoholic and a gambling addict. Eddie successfully completed treatment for his addictions in 1993 and swore he would cease his



illicit affairs. In January, 1994, Eddie and Angela got married in a private, civil ceremony.

By 1995, however, Eddie was again drinking, gambling and womanizing. Once again, he found himself strapped for cash. In February, 1995, Eddie gave another mortgage, this time for \$35,000, in his "entire right, title and interest" in 1313 Mockingbird Lane to the Brookline Savings Bank. Again, Angela did not know of the mortgage. This time, Eddie did not get lucky enough to win the money to pay back the mortgage. Needing even more cash, Eddie agreed in a written contract to sell the entire fee simple interest in 1313 Mockingbird Lane for \$290,000 to Grimsley, a real estate investor, "subject to" the mortgages to the Brookline savings bank. The written contract was silent about the quality of title that was to pass. In June, 1995, Eddie showed up at the closing with his mistress Mitzie, whom Eddie referred to as his wife, Angela. Eddie signed his name to the deed to Mockingbird Lane, and Mitzie forged Angela's name. The deed gave "quitclaim covenants" to Grimsley. Eddie took the cash from the closing, got on a plane with Mitzie, and flew off to Monaco. Grimsley never made a single mortgage payment on 1313 Mockingbird Lane.

In March, 1996, Angela, having discovered that Eddie had resumed his vices and had flown off to Monaco with another woman, died of a broken heart. In her will, she left all of her real estate to her daughters, "Dinah and Donna jointly." She left \$1 to Eddie. In April, 1996, Dinah was killed in an automobile accident. Her will left all of her real estate "to my beloved

father, Edward Fingers."

The Brookline Savings Bank has commenced a foreclosure procedure and would like to obtain judgment on a possible deficiency against all possible parties. Eddie and Mitzie got married and have returned to Massachusetts.

Please fully discuss the rights, liabilities and responsibilities of the following parties in regard to 1313 Mockingbird Lane: Eddie, Mitzie, Grimsley, the Brookline Savings Bank, Dinah's estate and Donna.

## **PART TWO**

RECOMMENDED TIME: ONE HOUR

PORTION OF GRADE: ONE-THIRD

INSTRUCTIONS: PART TWO CONSISTS OF THREE SHORT ESSAYS, EACH OF WHICH CONTAINS FEWER ISSUES THAN THE ESSAY IN PART ONE. I RECOMMEND THAT YOU SPEND ABOUT 20 MINUTES ON EACH ESSAY.

A. Danny Dimwitt was a real estate developer. He owned a 200 acre tract of land in North Brookfield, Massachusetts for which he obtained government approval to divide into 250 lots with streets, utilities and drainage facilities. Danny conveyed all of the 250 lots between 1965 and 1970. The first 225 deeds contained provisions expressly requiring that the lots be used only for single-family residential purposes. Danny did not place any such restrictions in the deeds for the final 25 lots sold. In 1970, Butch bought the last lot which had no restriction. Butch never occupied that lot. In 1971 Alice came upon Butch's lot and began maintaining adverse possession. Alice obtained title to Butch's lot by adverse possession in 1991 and obtained a

declaratory judgment to that effect in 1992. Alice now intends to erect a "Store 24" on the lot. Danny and the other lot owners would like to prevent Butch from erecting such a use. Please discuss the rights, liabilities and responsibilities of the parties.

B. Tony, the owner of Flakeacre, entered into an oral agreement with Sally whereby Sally would purchase Flakeacre for \$200,000. As Tony knew, Sally had to move into Flakeacre on October 20 because she had agreed to sell her prior residence on that day and had nowhere to go if the closing did not occur. One week before the agreed-upon closing date, Tony received an offer on Flakeacre from Bill for \$210,000. On the agreed-upon closing date, Tony told Sally that he would not sell Flakeacre to her unless she was willing to pay more than \$210,000. Sally has found temporary living arrangements and would like to sue Tony for specific performance and/or damages. Please discuss the rights, liabilities and responsibilities of the parties.

C. Alan and Alda agreed in writing that Alan would sell Mashacre to Alda for \$190,000. Their written agreement provided that on October 21 Alan would deliver a fully executed proper deed to Tom Trustworthy. On the same day, Alda would deliver the \$190,000 in certified funds to Trustworthy. Trustworthy would hold the deed and not deliver it to Alda until Alda completed a title search to ensure that title to Mashacre was marketable. Furthermore, Trustworthy would not deliver the \$190,000 to Alan

until Alda's title search was completed and title was shown to be marketable. In the event that title was unmarketable, or that the title search could not be completed prior to November 21, Trustworthy would give the deed back to Alan and the \$190,000 back to Alda. On October 21 Alan gave Trustworthy the deed and Alda gave Trustworthy the \$190,000. On November 2, before Alda completed his title search, Alan died. On November 10, Alda completed his title search and still wanted to take title to Mashacre. Alan's estate, however, wanted to back out of the deal and cited the death of Alan for support of their position. Please fully discuss the rights, liabilities and responsibilities of the parties.

### **PART THREE**

SUGGESTED TIME: ONE HOUR

PORTION OF GRADE: ONE-THIRD

#### **INSTRUCTIONS:**

PART THREE CONSISTS OF 30 SHORT ANSWER QUESTIONS.

PLEASE ANSWER THE FOLLOWING QUESTIONS ON THE SPACES PROVIDED ON THIS EXAMINATION BOOK. DON'T WRITE YOUR ANSWERS IN YOUR BLUE BOOK.

PLEASE ANSWER EACH QUESTION. FOR EXAMPLE, IF THE QUESTION ASKS "WHO WINS?" PLEASE MAKE SURE YOU TELL ME WHICH PARTY WILL PREVAIL. ALL YOU NEED TO DO IS ANSWER THE QUESTION TO GET IT CORRECT. FOR EXAMPLE, IF I ASK "WHO WINS?" YOU NEED ONLY STATE THE PARTY WHO WINS; YOU DON'T NEED TO STATE THE THEORY ON WHICH S/HE WINS. HOWEVER, IF I ASK FOR A LEGAL THEORY, PLEASE GIVE IT TO ME. THEREFORE, PLEASE READ EACH QUESTION CAREFULLY.

PLEASE CONFINE THE LENGTH OF EACH ANSWER TO THE LINES PROVIDED BELOW EACH QUESTION. I WILL NOT READ PAST THE LINES. I WILL NOT READ TWO LINES CRAMMED ONTO ONE. I WILL NOT READ RIDICULOUSLY SMALL WRITING. PLEASE NOTE THAT SOMETIMES THE LINES RUN ONTO THE NEXT PAGE.

1. Please state the basic difference between a "nominee" trust and a "classic" trust?

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2. True or false, the touchstone of a limited partnership is the maxim "mutual agency, mutual liability"? Please circle the correct answer.

True

False

3. Circle all of the following descriptions or phrases which do not involve, or are unrelated to, the doctrine of equitable conversion:

- The risk of loss when real estate is destroyed after a contract for sale has been signed.
- Whether the seller has "real" or "personal" property after a contract for sale has been signed.
- The "conversion" of covenants contained in a contract for sale into deed covenants once the deed is delivered.
- Whether the buyer has "real" or "personal" property after a contract for sale has been signed.
- Whether the seller has agreed to give general warranty covenants in the deed.

4. True or false, because of the statute of frauds, the requirement that the seller deliver "marketable title" is only present in purchase and sale agreements when expressly stated in a writing signed by the party to be charged, and when the contract expressly states that title shall be marketable?

True

False

5. Please state the basic difference between "marketable" title and "record" title.

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6. What type of title does the Greater Boston Real Estate Board form purchase and sale agreement require the seller to deliver to the buyer?

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7. What type of effort must the buyer employ in attempting to obtain a mortgage when the purchase and sale agreement between buyer and seller provides for a "mortgage contingency clause?"

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8. Colonel Parker sells Graceland to Elvis and gives him a Massachusetts quitclaim deed. Elvis soon discovers that Little Richard had obtained title to Graceland by making out an adverse possession against Colonel Parker. Will Elvis prevail in an action against Colonel Parker for breach of the Massachusetts quitclaim covenants?

Yes

No

9. True or false, in Massachusetts, the interest of a debtor spouse in real estate held as tenants by the entirety shall not be subject to seizure or execution by a creditor of the debtor spouse as long as the property is the principal residence of the nondebtor spouse and the debt is not a joint debt of both spouses or does not involve "necessaries?"

True

False

10. Circle all of the following type of deeds to which the doctrine of estoppel by deed applies:

- multistate warranty
- Massachusetts warranty
- multistate special warranty
- Massachusetts special warranty
- multistate quitclaim
- Massachusetts quitclaim

11. How can a seller ensure that a purchase and sale

agreement he signs does not require him or her to deliver marketable title?

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12. What is the basic difference between "unmarketable title" and "economic unmarketability?"

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13. Circle all of the following phrases which do not create a joint tenancy in multistate law:

- "To Able and Baker as joint tenants and not as tenants in common."
- "To Able and Baker jointly."
- "To Able and Baker as joint tenants with rights of survivorship."
- "To Able and Baker."
- "To Able and Baker or the survivor thereof." Able and Baker are legally married.

14. Circle all of the following phrases which do not create a joint tenancy in Massachusetts law:

- "To Able and Baker as joint tenants and not as tenants in common."
- "To Able and Baker jointly."
- "To Able and Baker as joint tenants with rights of survivorship."
- To Able and Baker."
- To Able and Baker or the survivor thereof." Able and Baker are legally married.

15. Describe the one practical circumstance where the difference between the "title" theory and "lien" theory of

mortgages actually matters.

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16. State the three requirements for a covenant to run in equity:

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17. State the three requirements for a covenant to run at law:

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18. The following "unities" are present: time, title, possession, and interest. Circle all of the concurrent estates that could possibly be implicated:

- tenancy in common
- joint tenancy
- tenancy by the entirety

19. The following "unities" are present: possession. Circle all of the concurrent estates that could possibly be implicated:

- tenancy in common
- joint tenancy
- tenancy by the entirety

20. The following "unities" are present: time, title and possession. Circle all of the concurrent estates that could possibly be implicated:



- tenancy in common
- joint tenancy
- tenancy by the entirety

21. Under what theory of law does a mortgagee peruse a mortgage deficiency?

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22. State the circumstances under which a cotenant may seek an equitable accounting from another cotenant for improvements made to the property:

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23. State the method of calculating damages in an equitable accounting when one cotenant seeks recovery for improvements made to real estate:

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24. What makes a restraint on alienation unreasonable?

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25. Briefly, why does the Massachusetts Supreme Judicial Court believe that "due-on-sale" clauses in mortgages are not unreasonable restraints on alienation?

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26. Generally describe the circumstances under which an equitable mortgage will arise.

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27. What do the following legal doctrines have in common: adverse possession, eminent domain, and governmental takings for failure to pay taxes?

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28. What type of particularity is required when describing real estate in a deed?

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29. Circle all of the following which do not create unmarketable title in Massachusetts:

- A restrictive covenant which is less restrictive than applicable zoning. ---
- The discovery of hazardous waste on real estate.
- The next door neighbor places his or her garage 1 foot over the property line and onto your property.
- A prior deed which does not give a description in "metes and bounds."

30. What is the major difference between the Massachusetts and multistate versions of the doctrine of equitable conversion?

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31. Extra credit! Please properly spell the name of the professor who so ably taught this class. (Hint: it might be spelled properly on the cover of the exam.)

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HAVE A GOOD SUMMER! UNLESS, OF COURSE, YOU WILL BE STUDYING FOR THE BAR EXAM; IN WHICH EVENT HAVE A GOOD AUGUST!

CONV.96

CONVEYANCING  
FINAL EXAMINATION  
MAY 22, 1995

Professor Malaguti

Closed book exam. No materials on your desk or by your feet except writing implements.

Please do not identify yourself in any way except by SS#.

Please make it legible. I cannot correct what I cannot read.

Only one person may use the rest room at a time. Please sign out.

Otherwise, have a really good day!

GOOD LUCK!

Part I

Suggested Time: One Hour

PLEASE CONFINE THE LENGTH OF EACH ANSWER TO THE LINES PROVIDED BELOW EACH QUESTION. PLEASE ANSWER DIRECTLY ON THIS EXAM. PLEASE ALSO NOTE THAT SOMETIMES THE LINES RUN ONTO THE NEXT PAGE.

1. In the space provided below, describe the difference between a covenant running at law and a covenant running in equity:

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2. H and W lawfully own Blackacre as tenants by the entirety. In 1992, H and W get divorced but still continue to own Blackacre. What form of concurrent estate do they own after the divorce?

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3. Assume the same facts as in question 2. Further assume that W can no longer stand owning property jointly with H. However, H refuses to sell Blackacre and refuses to purchase W's share. What remedy, if any, does W have against H?

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4. What two law school subjects are involved in the law of mortgages?

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5. In the space provided below, explain the "equity of redemption."

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6. A, who owns Blackacre, gives a \$200,000 mortgage to the M Bank. A sells Blackacre to B, "subject to" the mortgage to the M Bank. Neither A nor B ever make another mortgage payment. The M Bank forecloses and, after a lawfully conducted foreclosure sale, obtains \$100,000. This leaves a \$100,000 deficiency. Against whom, and under what theory, may the M Bank obtain a judgment on the \$100,000 deficiency?

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7. A, who owns Blackacre, gives a \$200,000 mortgage to the M Bank. The mortgage contains a clause stating that the M Bank may "accelerate" the unpaid balance in the event that A transfers the property. Massachusetts case law has held that such a clause is not an impermissible restraint on alienation. In the space provided below, please explain the rationale for the Massachusetts rule:

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8. In the space provided below, explain the factors one would consider in determining whether an impermissible restraint on alienation exists:

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9. Assume the same facts as are contained in question 7. Also assume that A transfers Blackacre to "A and B, husband and wife as tenants by the entirety." What is A's best argument that, in Massachusetts, the mortgage should not be accelerated?

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10. H and W lived together for many years, but never got married. Both were employed and had good jobs. Together they decided to buy a house. H put down one-half of the purchase price and W put down the other one-half of the purchase price. They took title as "H and W, husband and wife as tenants by the entirety." The state they live in is a "title" theory state. Unfortunately, W had a gambling addiction. She eventually ran up large debts with her bookie. H knew nothing of W's problem. In order to pay the bookie, W convinced the M Bank to lend her \$100,000 and place a mortgage in that amount on the house H and W had purchased. M Bank lent the money and took a mortgage. Shortly after W placed the mortgage on the house, she went on a hot streak and won \$100,000. W immediately discharged the mortgage with the M Bank. Shortly after W discharged the mortgage, H was killed in an auto accident. H had a will which left all his real estate to D, a 21 year old daughter from a prior relationship. In a suit between D and W in which D claims an interest in the real estate, will D prevail? Why or why not? Please use only the space provided below:

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11. Please create an example of a "negative" easement.

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12. Please create an example of an "affirmative" easement.

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13. Please describe the difference between an "easement by grant" and an "easement by reservation."

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14. How does an "easement by prescription" differ from the attainment of fee simple title by adverse possession?

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15. A owns Blackacre. B owns Whiteacre. Blackacre's eastern boundary is Whiteacre's western boundary. Immediately east of Whiteacre is the Atlantic Ocean. In 1970, B gave a properly executed and recorded appurtenant easement for the owner of Blackacre to use a 10 foot wide strip over Whiteacre to walk to and from the ocean. In 1990, A bought Whiteacre from B, and owned both Blackacre and Whiteacre. In 1995, A sold Blackacre to C, but retained title to Whiteacre. C now desires to make use of the easement that was created in 1970. A seeks to prevent C from making such use. Will C prevail in an action seeking to establish rights to use the easement? Why or why not?

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16. Please describe the only type of mortgage we studied which does not have to satisfy the requirements of the statute of frauds.

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17. Name at least two occurrences that will break a chain of title and cause the creation of a new chain of title.

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18. What effect will the breaking of a chain of title have upon a person who seeks to enforce a covenant at law?

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19. State the minimum requirements of the statute of frauds as it applies to real estate in Massachusetts:

20. When is the purchase price required to be stated in writing to satisfy the statute of frauds as it applies to real estate in Massachusetts?

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21. Circle which of the following necessarily create unmarketable title in Massachusetts:

- A restrictive covenant that is less restrictive than applicable zoning.
- The discovery of hazardous waste on real estate.
- The next door neighbor places his or her garage 1 foot over the property line and onto your property.
- A prior deed which does not give a description in metes and bounds.

22. Describe the doctrine of "equitable conversion."

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23. In Massachusetts, what effect does the doctrine of equitable conversion bear on the risk of loss prior to delivery of the deed?

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24. A and B enter into a purchase and sale agreement by which A agrees to sell Blackacre to B. The purchase and sale agreement

contains a requirement that A deliver marketable title. A delivers the deed to B. Then B discovers that A had placed a mortgage on the property prior to sale and had never discharged it. Why can't B prevail against A in an action for breach of A's promise to deliver marketable title?

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25. A wants to make a gift of Blackacre, an ocean front estate, for B. A has his attorney draft a deed to B. A signs it and has it notarized. A brings the deed to the registry of deeds and records it, never saying a word of the gift to B. Six months later, A dies and B discovers about the deed. Has title passed to B? Why or why not?

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26. A wants to get rid of Blackacre because it is riddled with hazardous waste. A has his attorney draft a deed to B, his arch-enemy. A signs the deed and has it notarized. A brings the deed to the registry of deeds and records it, never saying a word to B. Six months later, the Department of Environmental Protection comes to B saying that, since B owns Blackacre, he must pay for the hazardous waste clean-up. Has title passed to B? Why or why not?

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27. If the purchase and sale and other agreements are silent on the subject, how does one determine whether a real estate broker has earned his or her commission in Massachusetts?

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28. State the rule involving "time is of the essence" in a purchase and sale agreement which is silent on the matter.

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29. A and B enter into a purchase and sale agreement whereby A agrees to sell to B. The agreement requires B to deposit 50% of the \$100,000 purchase price upon signing the agreement. B does so. The agreement also states that A gets to keep the entire deposit if B defaults on the contract. B later defaults, but only wants A to keep \$5,000, his actual damages. A wants to keep the entire \$50,000 deposit. What is B's best argument for a return of \$45,000?

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30. Describe the basic differences between the Massachusetts "warranty" deed and Massachusetts "quitclaim" deed.

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## PART II

Suggested time: One Hour

In 1984, Sickley conveyed Greenacre Springs, a 12 acre farm with an attractive farmhouse, to "Harvey and Wilma, husband and wife as tenants by the entirety." Greenacre Springs is located in Massachusetts. Harvey and Wilma were legally married. In order to finance their acquisition, Harvey and Wilma obtained a mortgage in the amount of \$116,000 from the Springtime Savings Bank. The mortgage had no "due on sale" clause.

After numerous arguments, Harvey and Wilma separated in 1989. Harvey moved out of the house. Wilma remained in Greenacre Springs and continued to pay the mortgage to the Springtime Savings Bank. Harvey made no further contributions to that mortgage. However, in 1990, finding himself in need of funds, Harvey applied for a second mortgage on Greenacre Springs. The Springtime Savings Bank granted Harvey's mortgage application and gave him \$78,000 after Harvey alone signed a promissory note and mortgage. Harvey never made a single mortgage payment on the second mortgage. Neither Harvey nor the Springtime Savings Bank told Wilma about the second mortgage Harvey had effected.

In 1991, Wilma filed for divorce against Harvey. In 1992, the Spring County Probate Court entered a judgment of divorce which became final later that year. The divorce judgment was silent

about the ownership of Greenacre Springs. In December, 1992, Wilma paid off the entire first mortgage with the Springtime Savings Bank. She still didn't know about the second mortgage.

In 1993, Harvey conveyed "my entire right, title and interest in Greenacre Springs to Harold and Maude, jointly." In 1994, Wilma married Kevin. Immediately after the marriage, Wilma conveyed Greenacre Springs to "Kevin and Wilma, husband and wife as tenants by the entirety." Unbeknownst to Wilma, she and Kevin were not legally married because Kevin's divorce from his former wife had not become final. Wilma and Kevin continued to live together as husband and wife.

Late in 1994, Maude died, leaving by will all her real estate "to Alison and Bert." Upset over the death of Maude, Harold committed suicide in early 1995. He had no will, but his heirs were Mo and Jose. Last month, Kevin died with a will leaving everything to Denise, his daughter from a prior marriage.

The Springtime Savings Bank has just declared a default and has accelerated the mortgage. The parties who potentially have interests in Greenacre Springs (Wilma, Alison, Bert, Mo, Jose and Denise) offered to bring the mortgage current, but the bank insists on acceleration.

The parties who potentially have an interest in Greenacre Springs have approached you to determine what their respective

interest are. They want to know whether they can abrogate the mortgage Harvey created with the Springtime Savings Bank. They also want to know, if they cannot abrogate the mortgage, whether they can force the bank to bring the mortgage current. Please write a memorandum of law addressing these questions. Please support your conclusions with fact and law.

### PART III

Suggested time: One Hour

Othello owned Blackacre and wanted to sell it for \$175,000. He contacted Brooks, a real estate broker, and asked Brooks to market Blackacre for him. Othello and Brooks met and discussed the terms of the brokerage. Brooks would list the property at \$175,000. Othello agreed to pay a five (5%) percent broker's commission. Their entire conversation lasted approximately three minutes. Othello and Brooks never committed their agreement to writing.

Porter told Brooks that he wanted to offer Othello \$160,000 for the purchase of Blackacre. Brooks told Porter to put his offer in writing. Porter wrote the following document, which he signed and delivered to Brooks:

I, Porter, hereby offer Othello \$160,000 for the purchase of Blackacre. This offer is subject to a mutually acceptable

Purchase and Sale Agreement between the parties to be signed within two weeks. I hereby give \$1,000 to bind this offer. The deal is subject to me obtaining 80% mortgage financing within 45 days. This offer must be accepted within 3 days.

Othello signed the written offer within three days and accepted the \$1,000 check. He thereafter asked his attorney to draft a Purchase and Sale Agreement. Othello's attorney drafted a Purchase and Sale Agreement substantially similar to the Greater Boston Real Estate Board form. Othello delivered it to Porter within ten days. Although Othello had signed the agreement prior to its delivery, Porter failed to execute the agreement within two weeks.

When the two weeks had expired, Othello called Porter and asked whether he was going to sign the Purchase and Sale Agreement. If not, Othello wanted to put Blackacre back on the market. Porter told Othello not to put Blackacre back on the market. He said that he intended to sign the agreement but had been ill. Porter said he was definitely going to buy Blackacre but that he was on his way to the airport for a business trip. Porter stated that he would sign Purchase and Sale Agreement when he got back in three weeks. In reality, Porter was not going on a business trip. He was having second thoughts on purchasing Blackacre because he was now interested in buying Greenacre. However, he wanted to keep Othello waiting in case his offer for Greenacre was not accepted.



In three weeks, Othello called Porter again. By this time, Porter was close to buying Greenacre. Porter told Othello to wait one more week, since he was very busy. Othello waited one more week. During that week, Porter closed on Greenacre. Othello called Porter at the end of the week. Porter told Othello that he had not obtained mortgage financing and that he was not bound anyway because the parties had not executed a Purchase and Sale Agreement.

Brooks wants his broker's commission of \$8,000. Othello wants to unload Blackacre for at least \$160,000 and to be compensated for his damages. Porter wants to live happily ever after at Greenacre. Please discuss the rights, liabilities, obligations and duties of the parties. Please support your conclusions with law and fact.

CONVERVANCING

Closed book exam

Clear everything from your desks

Do not write your name anywhere; only SS numbers

Write legibly

You have 3 1/2 hours

Spring 94

GOOD LUCK

PART ONE

Short Answer Questions

Please answer the following questions on the spaces provided on this examination book. Don't write your answers in your blue book.

Please answer each question. For example, if the question asks "who wins?" please make sure you tell me which party will prevail. All you need to do is answer the question to get it correct. For example, if I ask "who wins?" you need only state the party that wins; you do not need to state the theory on which s/he wins. However, if I ask for the legal theory, please give it to me. Therefore, please read each question carefully.

Unless a question states otherwise, you are limited to 10 words per question. I will not read past the 10th word. (I'm not kidding.)

1. Alfalfa and Spanky entered into a valid and binding purchase and sale agreement in which Spanky would sell Rascalacre to Alfalfa for \$120,000. Alfalfa paid a deposit of \$70,000. The purchase and sale agreement provided that if Alfalfa defaulted, Spanky could keep the deposit as his "sole legal or equitable remedy." Alfalfa defaulted. Spanky wants to keep the entire deposit even though he has suffered no actual damages. Alfalfa sues to get back the deposit. If Alfalfa wins it will be because:

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2. John delivered to Paul a duly executed, written instrument giving Paul the exclusive right to come on to John's property, cut down, and remove timber for a period of five years, and at the cost of \$1,000 per year. One day, Paul discovered a valuable source of kryptonite (which is very valuable) on the property. Paul began removing the kryptonite. Six months later John discovered that Paul was removing the kryptonite. What is the most effective remedy that John has to prevent Paul from ever removing kryptonite again?

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3. Please answer true or false. The three elements for a restrictive covenant to be enforceable at law are : 1) intent that the covenant run with the land, 2) "touch

and concern", 3) notice.

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4. Please answer true or false. Because of the statute of frauds, "marketable title" is only present in purchase and sale agreements when expressly stated in a writing signed by the party to be charged.

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5. Chuck sells Graceland to Elvis and gives him a Massachusetts Quitclaim deed. Elvis soon discovers that Bo had obtained title to Graceland by making out an adverse possession against Chuck. Will Elvis prevail in an action against Chuck for breach of the Massachusetts Quitclaim covenants?

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6. Alonzo sells Ravenwood to Bozo and puts the following restriction in the deed: "Ravenwood shall only be used for residential purposes." The deed is recorded. Cal then obtains title to Ravenwood by maintaining adverse possession against Bozo. Cal starts to erect a bowling alley on Ravenwood. Will Alonzo prevail if he seeks to enjoin Cal from erecting the bowling alley?

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7. In Massachusetts, Sonny grants to "Harold and Wilma, husband and wife, forever." Harold and Wilma are legally married. What concurrent estate do Harold and Wilma own?

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8. Assume the same grant as in question number 7. Also assume that Harold and Wilma are legally married. In a "multistate" jurisdiction what concurrent estate do Harold and Wilma own?

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9. Please answer true or false. In Massachusetts, the interest of a debtor spouse in property held as tenants by the entirety shall not be subject to seizure or execution by a creditor of the debtor spouse so long as the property is the principal residence of the nondebtor spouse and the debt is not a joint debt of both spouses.

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10. In 1930, Alfred granted to Bertha an appurtenant easement over his land. Please construct a brief situation (10 words or less), satisfying all requisite elements, in which Bertha can be said to have "abandoned" the easement.

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11. Please answer true or false. One who overburdens an easement will forfeit the easement.

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12. Name the five "unities" of a tenancy by the entirety.

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13. Adam desired to make a gift of Jibacre to Beth. Adam drafted a good and sufficient deed and handed it to Beth. Beth thanked Adam and took the deed home that night, but did not record it. The next day, Beth met Adam for lunch and said "I'm afraid I must return this deed because I owe Cathy \$100,000 and I'm afraid she will levy on Jibacre to satisfy the debt. Beth handed the deed back to Adam who threw it in a nearby wastebasket saying "I guess this isn't worth keeping around." Later that day, Cathy ate dinner in the same restaurant and found the deed in the wastebasket. Cathy now claims that Beth owns Jibacre and wants to get an attachment on the property. Does Beth own Jibacre?

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14. Allen owns Baltic Avenue. He gives Martin a mortgage in the amount of \$75,000 in 1983. In 1986, Allen sold Baltic Avenue to Bertha who agreed to "take subject to, and to assume the obligations of, the mortgage given to Martin." In 1989, Bertha was unable to make her mortgage payments. Martin foreclosed and received \$65,000 at the auction. In 1990, Bertha won \$5 million in the lottery. In 1991, Allen wrote a best selling novel and became wealthy. Martin would now like to collect the deficiency. Name the greatest number of people against whom Martin can proceed.

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15. Abidabba and his friend, Dep, orally agree that Abidabba will buy Blackacre for Dep and sell it to Dep for the same price that Abidabba paid. Dep gives Abidabba the money to purchase Blackacre. Abidabba purchases Blackacre but refuses to sell it back to Dep. Abidabba offers to give Dep his money back, but Dep refuses and sues Abidabba for specific performance. If Dep prevails, the most likely theory by which

he will win is:

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16. Assume the same facts as in question 15. If Dep loses, the most likely reason will be because:

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17. Priscilla owned a home in the town of Quagmire. She saw that a bigger and nicer home in the same town was for sale by Bert. Priscilla and Bert orally agreed that Priscilla would buy Bert's home. Priscilla told Bert that she would quickly put her house up for sale, and did so. Priscilla quickly sold her house. On the day of the agreed closing, Bert refused to sell to Priscilla. Will Priscilla be able to force Bert to sell to Priscilla? What theory supports your conclusion?

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18. Name the three requirements for a real estate broker to earn a commission. You may exceed 10 words on this question.

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19. In less than 10 words, describe the title a buyer has when he signs a purchase and sale agreement.

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20. In less than 10 words, describe the title a seller has when she signs a purchase and sale agreement.

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21. What effect, if any, does a signature "under seal" have on Massachusetts real estate contracts?

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22. Please answer true or false. Even in purchases of residential real estate, buyers must use due diligence in searching for a mortgage, including the acceptance of "commercially reasonable" mortgage terms. Otherwise, a buyer will not be able to void a contract under a "mortgage contingency clause."

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23. Alomar agrees to sell Wasteacre to James by a valid and binding purchase and sale agreement which says nothing about quality of title. Can James back out of the deal if he discovers before the closing that the title is not marketable?

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24. Assume the same facts as in question number 23 except that Alomar did agree to deliver marketable title in the purchase and sale agreement. Prior to the closing, James discovered that hazardous waste was present on Wasteacre. Otherwise there was marketable title. Will James be able to void the contract under the theory of unmarketable title?

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25. Assume the same facts as in question number 24. Under what theory will James have his best argument to void the purchase and sale agreement?

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26. Explain the concept of estoppel by deed. You may exceed 10 words on this question only.

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27. Explain the difference between the Massachusetts "warranty" and "quitclaim" deeds. You may exceed 10 words on this question only.

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28. In Massachusetts, Arthur conveys "to Bill and Caleb jointly." What type of

concurrent estate do Bill and Caleb own?

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29. Assume the same facts as in question 28, except that it is in a "multistate" jurisdiction. What type of concurrent estate do Bill and Caleb own?

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30. Describe the difference between the "title" theory of mortgages and the "lien" theory of mortgages. You may exceed 10 words.

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END OF THIS SECTION



## PART TWO

SUGGESTED TIME: ONE HOUR  
PORTION OF GRADE: 1/3

Oglethorpe owned Fakeracre in the town of Conveyance, Massachusetts. In 1963, he conveyed it to "my children, Antilles, Backgammon and Cellulite, jointly." In 1972, Oglethorpe died. In 1976, Backgammon died, leaving by will "my entire right, title and interest in all real estate to my daughter, Diva and her husband, Ned, husband and wife, as tenants by the entirety." In 1984, Cellulite gave a mortgage to Phil Rizzuto in the amount of \$12,000 to satisfy gambling losses made on the Red Sox. In 1986, Cellulite sold his portion of Fakeracre to Englebert for \$5,000.00. The deed that Cellulite executed stated that the sale was "subject to and dependent on the mortgage from Cellulite to Phil Rizzuto." In 1988, Antilles took a loan from Bob Breaker in the amount of \$25,000.00. To "feel comfortable," Bob insisted that Antilles execute a deed conveying his entire interest to Bob in the event that the loan was not paid back in six months. In 1990, Diva divorced Ned and moved onto Fakeracre with her boyfriend, Hogan. In 1991, Diva recorded validly executed deed by which she conveyed her entire right title and interest in Fakeracre "to Diva and Hogan, as tenants by the entirety." In 1992, Englebert paid off the entire outstanding balance of the mortgage to Phil Rizzuto. However, Antilles is only now offering to pay Bob the \$25,000.00 (plus all accrued interest) he borrowed. Bob had refused, stating that he would rather own Antilles' interest. In early 1993, Englebert sold his entire right, title and interest in Fakeracre to Farley for \$1,000,000.00.

All the parties are incredibly confused as to who owns Fakeracre. They have offered to pay you \$500.00 to free them from the quagmire. (You estimate that it will take about one hour to figure out the ownership interests and earn your cool \$500.00) Please determine the exact interests of each party. Please support your conclusions with fact and law.

## PART THREE

SUGGESTED TIME: ONE HOUR  
PORTION OF GRADE: 1/3

On March 1, 1992, Bryan Birdie made an Offer to Purchase Blooperacre, located in Nantasket Beach, Massachusetts. The Seller, Silas Seltzer, accepted the Offer to Purchase on March 2, 1992. The Offer to Purchase is set forth in its entirety in Exhibit "A" attached to the back of this examination.

Bryan Birdie did not have \$128,000 to purchase Blooperacre; he expected to obtain a mortgage. He told this to the Broker, Bebe Bozo, at the time he made the offer. Bebe told Bryan that the parties would incorporate a mortgage contingency clause into the Purchase and

Sale Agreement that was to be signed by April 1, 1992. Bryan also wanted a home inspection to occur to make sure Blooperacre did not have any significant defects, but did not state this to anyone at the time he made the offer.

Although Bebe told Bryan that the bank offering the mortgage would do a title search, Bryan wanted to hire his own lawyer to ensure valid title. He immediately got his lawyer to begin a title examination. Bryan also immediately made a mortgage application to the Keating National Bank for a mortgage loan of \$115,000.

After negotiating for several weeks without success, Bryan and Silas were unable to agree on the terms of the Purchase and Sale Agreement. Bryan demanded his \$500 deposit back of April 2, 1992. Silas instructed Bebe not to deliver it.

On May 4, 1992, the Keating National Bank informed Bryan that he would not qualify for the mortgage unless he put down another \$5,000 from his savings account toward the purchase of Blooperacre. Although he had the money, Bryan considered the deal to be dead and told the bank he no longer wanted the mortgage.

On May 15, 1992, Bryan's lawyer told him that he had searched the title record to Blooperacre and that everything in the Registries were fine. However, on driving past Blooperacre, the lawyer noticed a large chemical truck emptying its contents in the woods behind the house. The lawyer advised Bryan to conduct a hazardous waste inspection if he planned to purchase Blooperacre.

On May 16, 1992, Bryan ran into Silas at the check-out counter of the Star Market. Bryan told Silas he would be willing to buy Blooperacre if Silas would let him conduct a hazardous waste inspection. Silas agreed. Bryan immediately reapplied for his mortgage with the Keating Bank and was quickly approved. However, the inspection revealed unacceptable levels of hazardous waste. Bryan orally notified Silas of the inspection results.

On June 1, 1992, Silas attended the closing with a quitclaim deed in his possession. Bryan did not attend. Three days later, Bryan re-thought the situation and decided that, even with the hazardous waste, Blooperacre was a good deal. He called Silas and told him he would accept the deed. Silas told Bryan that it was too late and he would never sell it to him.

Bryan has sued Silas. Please identify all the causes of action and issues the parties will raise. Please discuss the rights, duties, obligations and liabilities of the parties.

COMPARISON/ESSAY

Exhibit "A"

APPENDIX

A:3

A:3. Offer to Purchase Real Estate\*

TO Silas Seltzer —SAMPLE—  
(Seller and Spouse)

DATE MARCH 1, 1992

The property herein referred to is identified as follows: 8/100 per acre

I hereby offer to buy said property, which has been offered to me by Bebe Bozo

1. I will pay therefore \$ 128,000 of which
- (a) \$ 500 is paid herewith as a deposit to bind this Offer.
- (b) \$ 17,500 is to be paid as an additional deposit upon the execution of the Purchase and Sale Agreement provided for below.
- (c) \$ 113,000 is to be paid at the time of delivery of the Deed in cash, or by certified, cashier's, treasurer's or bank check.
- (d) \$ \_\_\_\_\_

CHECK ONE:  
 Cash, subject to deduction  
 Cash

- (e) \$ 128,000 Total Purchase Price
2. This Offer is good until 5:00 P.M. on March 3, 1992 or before which time a copy hereof shall be signed by you, the Seller and your (husband) (wife), signifying acceptance of this Offer, and returned to me forthwith; otherwise this Offer shall be considered as rejected and the money deposited herewith shall be returned to me forthwith.
3. The parties hereto shall, on or before 5:00 P.M. April 1, 1992, execute the Standard Purchase and Sale Agreement recommended by the Greater Boston Real Estate Board or any form substantially similar thereto, which, when executed, shall be the agreement between the parties hereto.
4. A good and sufficient Deed, conveying a good and clear record and marketable title shall be delivered at 12:00 Noon on June 1, 1992, at the appropriate Registry of Deeds, unless some other time and place are mutually agreed upon in writing.
5. If I do not fulfill my obligations under this Offer, the above mentioned deposit shall forthwith become your property without recourse to either party.

7. The initialed riders, if any, attached hereto are incorporated herein by reference. Additional terms and conditions, if any: None

NOTICE: This is a legal document that creates certain binding obligations. If not understood, consult an attorney.

WITNESS my hand and seal. SIGNED Bryan Birdie  
Buyer ADDRESS 123 Mockingbird Lane PHONE NO. \_\_\_\_\_

This Offer is hereby accepted upon the foregoing terms and conditions and the receipt of the deposit of \$ 500 is hereby acknowledged at 3:45 P.M. on March 2, 1992

WITNESS my (our) hand(s) and seal(s). Silas Seltzer  
Seller (or spouse) \_\_\_\_\_

March 1 1992 RECEIPT FOR DEPOSIT  
Received from Bryan Birdie the sum of \$ 500 as deposit under the terms and conditions of above Offer.  
Broker Bebe Bozo

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GREATER BOSTON REAL ESTATE BOARD  
REVISED 1972



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CONVEYANCING FINAL EXAM

SPRING, 1993

PROF. PETER M. MALAGUTI

TIME: 3 1/2 hours

PAGE LIMIT: 5 single sided pages per question

NO NAMES--S.S. #S ONLY

MAKE IT LEGIBLE

CLOSED BOOK EXAM

GOOD LUCK!

QUESTION ONE

SUGGESTED TIME: ONE HOUR

PERCENTAGE OF GRADE: 1/3

Belinda wanted to buy a quaint commercial property in Marblehead, Massachusetts from which she intended to operate a "posh" boutique. Sampson owned a small antique store, named Moldacre, in a section of town that attracted many shoppers. Moldacre is one of 79 antique stores in Marblehead.

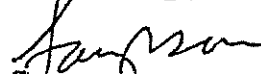
Belinda went to Moldacre on the afternoon of May 12, 1991 and asked Sampson if he would be willing to sell the store for \$250,000. Sampson immediately agreed, and the two shook hands on the deal. Before leaving, Belinda gave Sampson a personal check in the amount of \$100.00 "to bind the deal." Belinda signed the check, dated it, and wrote in the "memo" section in the bottom left corner of the check the words "deposit--antique store."

On May 13, 1991, Sampson deposited the check and wrote Belinda a letter, which stated in its entirety:

Dear Belinda,

Thank you for the deposit on Moldacre. The money will come in handy. In fact, I plan to retire to Revere and live off the proceeds from the sale of Moldacre. I think we should have the closing on May 30, 1991. Please let me know if this is inconvenient. Otherwise, I will have my attorney prepare a deed.

Sincerely,

  
Sampson

Belinda wrote back to Sampson on May 19, 1991, stating:

Dear Sampson,

Thank you for your recent letter. I'll let you know whether the date you suggested is convenient. In the meantime, I need to wrap-up a few business details like financing, etc. I also want to run the whole idea by my lawyer. Oh, I hope I'm doing the right thing! Please stay in touch.

Very truly yours,

  
Belinda

On May 21, 1991, Benny handed a written and signed "offer to purchase" stating that he would buy Moldacre for \$275,000.00.

Sampson handed the written document back to Benny and said "Sorry, I already committed to sell Moldacre to Belinda. Benny then committed to purchase a different piece of property.

On May 22, 1991, Belinda obtained a plot plan, survey and blueprints for Moldacre so that she could plan her renovations. She discovered that the city had an easement for the public sidewalk that ran in front of the store. Since this easement actually enhanced the property for Belinda's purposes, she decided not to mention this to Sampson. On May 24, 1991, Belinda learned that her bank was not willing to lend her as much money as she originally thought. On that same afternoon, Bart offered Sampson \$292,000.00 for Moldacre. Sampson turned down that offer, citing his commitment to Belinda. Bart eventually bought a store down the street.

On May 26, 1991, Belinda's automobile broke down beyond repair and Belinda discovered that a new one would cost her at least \$14,000.00. On May 27, 1991, Belinda's health insurance policy, which her former employer paid for, lapsed. Belinda learned that it would cost her at least \$700 per month to purchase a "family plan," which she needed for her three children and herself. Belinda no longer felt financially capable of opening the boutique.

On May 28, 1991, Belinda told Sampson that she needed more time to "get her act together." Sampson was angry, but orally agreed to continue the closing until June 15, 1991. On June 15, 1991, Sampson came to the closing, but Belinda did not show up. On June 16, 1991, Sampson's lawyer mailed Belinda a certified letter demanding that she tender the purchase price and receive the deed to Moldacre. Belinda has come to you for advice. She really does not want to purchase Moldacre and wants to know if she can get out of the deal. Please discuss the rights, duties, liabilities and obligations of the parties. Support your conclusions with fact and law.

#### QUESTION TWO

SUGGESTED TIME: ONE HOUR

PORTION OF GRADE: 1/3

Otter owned two large, contiguous parcels of land containing 100 acres each: Westacre and Eastacre. In 1985, Otter subdivided Westacre into 250 lots and obtained all necessary zoning and subdivision approvals. Between 1986 and 1990, Otter sold 175 of the lots in Westacre.

Picasso purchased one of the Westacre lots from Otter for the purpose of building a single-family residential dwelling. Otter placed the following provision in Picasso's deed:

It is agreed and covenanted that the property conveyed herein shall be used for a single family dwelling only, and that no other structure, other than a single family dwelling, shall be erected or maintained; further that occupancy in any dwelling built on this property shall be by single family for residential purposes only. This agreement is specifically made binding on the grantee and the grantee's heirs, their assigns and successors.

The same provision was contained in all the other 174 deeds that Otter delivered for Westacre between 1986 and 1990.

In 1992, Otter contracted with Condo King, Inc. to sell it all the 100 acres of Eastacre. As an inducement to make the sale, Otter agreed to throw in the remaining 75 unsold lots left in Westacre. Otter did not put any restrictions in the deeds that conveyed the remaining 75 Westacre lots to Condo King. Otter did not put any restrictions in the deed that conveyed the 100 acres of Eastacre to Condo King.

Condo King has just publicly announced that it plans to use all the property purchased from Otter for a mixed development of luxury condominiums and low income multi-family dwellings. Picasso is very upset about Condo King's development plans. He wants to stop the development at any cost. Please write him a memorandum discussing the rights, duties, liabilities and obligations of all the parties. Address Picasso's likelihood of success. Support your conclusions with fact and law.

### QUESTION THREE

SUGGESTED TIME: ONE HOUR

PORTION OF GRADE: 1/3

Oglethorpe owned Fakeracre in the town in Conveyance, Massachusetts. In 1963, he conveyed it to "my children, Antilles, Backgammon and Cellulite, jointly." In 1972, Oglethorpe died. In 1976, Backgammon died, leaving by will "my entire right, title and interest in all real estate to my daughter, Diva and her husband, Ned, husband and wife, as tenants by the entirety." In 1984, Cellulite gave a mortgage to Phil Rizzuto in the amount of \$12,000 to satisfy gambling losses made on the Red Sox. In 1986, Cellulite sold his portion of Fakeracre to Englebert for \$5,000.00. The deed that Cellulite executed stated that the sale was "subject to and dependent on the mortgage from Cellulite to Phil Rizzuto." In 1988, Antilles took a loan from Bob Breaker in the amount of \$25,000.00. To "feel comfortable," Bob insisted that Antilles execute a deed conveying his entire interest to Bob in the event that the loan was not paid back in six months. In 1990, Diva divorced Ned and moved onto Fakeracre with her boyfriend, Hogan. In 1991, Diva recorded

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END OF EXAMINATION



CONVEYANCING FINAL EXAM

SPRING, 1993

PROF. PETER M. MALAGUTI

TIME: 3 1/2 hours

PAGE LIMIT: 5 single sided pages per question

NO NAMES--S.S. #S ONLY

MAKE IT LEGIBLE

CLOSED BOOK EXAM

GOOD LUCK!

SECTION ONE

SUGGESTED TIME: ONE HOUR  
PERCENTAGE OF GRADE: 1/3

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*Sampson*  
Sampson

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*Belinda*  
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On May 21, 1991, Benny handed a written and signed "offer to purchase" stating that he would buy Moldacre for \$275,000.00.

Person handed the written document back to Benny and said "Benny, I already committed to sell Moldacre to Belinda. Benny had committed to purchase a different piece of property."

On May 22, 1991, Belinda obtained a plot plan, survey and blueprints for Moldacre so that she could plan her renovations. She discovered that the city had an easement for the public sidewalk that ran in front of the store. Since this easement actually enhanced the property for Belinda's purposes, she decided not to mention this to Sampson. On May 24, 1991, Belinda learned that her bank was not willing to lend her as much money as she originally thought. On that same afternoon, Bart offered Sampson \$292,000.00 for Moldacre. Sampson turned down that offer, citing his commitment to Belinda. Bart eventually bought a store down the street.

On May 26, 1991, Belinda's automobile broke down beyond repair and Belinda discovered that a new one would cost her at least \$14,000.00. On May 27, 1991, Belinda's health insurance policy, which her former employer paid for, lapsed. Belinda learned that it would cost her at least \$700 per month to purchase a "family plan," which she needed for her three children and herself. Belinda no longer felt financially capable of opening the boutique.

On May 28, 1991, Belinda told Sampson that she needed more time to "get her act together." Sampson was angry, but orally agreed to continue the closing until June 15, 1991. On June 15, 1991, Sampson came to the closing, but Belinda did not show up. On June 16, 1991, Sampson's lawyer mailed Belinda a certified letter demanding that she tender the purchase price and receive the deed to Moldacre. Belinda has come to you for advice. She really does not want to purchase Moldacre and wants to know if she can get out of the deal. Please discuss the rights, duties, liabilities and obligations of the parties. Support your conclusions with fact and law.

#### QUESTION TWO

SUGGESTED TIME: ONE HOUR

PORTION OF GRADE: 1/3

Otter owned two large, contiguous parcels of land containing 100 acres each: Westacre and Eastacre. In 1985, Otter subdivided Westacre into 250 lots and obtained all necessary zoning and subdivision approvals. Between 1986 and 1990, Otter sold 175 of the lots in Westacre.

Picasso purchased one of the Westacre lots from Otter for the purpose of building a single-family residential dwelling. Otter placed the following provision in Picasso's deed:

It is agreed and covenanted that the property conveyed herein shall be used for a single family dwelling only, and that no other structure, other than a single family dwelling, shall be erected or maintained; further that occupancy in any dwelling built on this property shall be by single family for residential purposes only. This agreement is specifically made binding on the grantee and the grantee's heirs, their assigns and successors.

The same provision was contained in all the other 174 deeds that Otter delivered for Westacre between 1986 and 1990.

In 1992, Otter contracted with Condo King, Inc. to sell it all the 100 acres of Eastacre. As an inducement to make the sale, Otter agreed to throw in the remaining 75 unsold lots left in Westacre. Otter did not put any restrictions in the deeds that conveyed the remaining 75 Westacre lots to Condo King. Otter did not put any restrictions in the deed that conveyed the 100 acres of Eastacre to Condo King.

Condo King has just publicly announced that it plans to use all the property purchased from Otter for a mixed development of luxury condominiums and low income multi-family dwellings. Picasso is very upset about Condo King's development plans. He wants to stop the development at any cost. Please write him a memorandum discussing the rights, duties, liabilities and obligations of all the parties. Address Picasso's likelihood of success. Support your conclusions with fact and law.

### QUESTION THREE

SUGGESTED TIME: ONE HOUR

PORTION OF GRADE: 1/3

Oglethorpe owned Fakeracre in the town in Conveyance, Massachusetts. In 1963, he conveyed it to "my children, Antilles, Backgammon and Cellulite, jointly." In 1972, Oglethorpe died. In 1976, Backgammon died, leaving by will "my entire right, title and interest in all real estate to my daughter, Diva and her husband, Ned, husband and wife, as tenants by the entirety." In 1984, Cellulite gave a mortgage to Phil Rizzuto in the amount of \$12,000 to satisfy gambling losses made on the Red Sox. In 1986, Cellulite sold his portion of Fakeracre to Englebert for \$5,000.00. The deed that Cellulite executed stated that the sale was "subject to and dependent on the mortgage from Cellulite to Phil Rizzuto." In 1988, Antilles took a loan from Bob Breaker in the amount of \$25,000.00. To "feel comfortable," Bob insisted that Antilles execute a deed conveying his entire interest to Bob in the event that the loan was not paid back in six months. In 1990, Diva divorced Ned and moved onto Fakeracre with her boyfriend, Hogan. In 1991, Diva recorded

validly executed deed by which she conveyed her entire right, title and interest in Fakeracre "to Diva and Hogan, as tenants by the entirety." In 1992, Englebert paid off the entire outstanding balance of the mortgage to Phil Rizzuto. However, Antilles is only now offering to pay Bob the \$25,000.00 (plus all accrued interest) he borrowed. Bob has refused, stating that he would rather own Antilles' interest. In early 1993, Englebert sold his entire right, title and interest in Fakeracre to Farley for \$1,000,000.00.

All the parties are incredibly confused as to who owns Fakeracre. They have offered to pay you \$500.00 to free them from the quagmire. (You estimate that it will take about one hour to figure out the ownership interests and earn your cool \$500.00.) Please determine the exact interests of each party. Please support your conclusions with fact and law.

END OF EXAMINATION

Exhibit "A"

APPENDIX

A:3

A:3. Offer to Purchase Real Estate\*

TO Silas Seltzer —SAMPLE—  
(Seller and Spouse)

DATE March 1, 1992

The property herein referred to is identified as follows:

Blooper acre

I hereby offer to buy said property, which has been offered to me by Bebe Bozo as your Broker, under the following terms and conditions:

- I will pay therefore \$ 128,000 of which
  - \$ 500 is paid herewith as a deposit to bind this Offer.
  - \$ 14,500 is to be paid as an additional deposit upon the execution of the Purchase and Sale Agreement provided for below.
  - \$ 113,000 is to be paid at the time of delivery of the Deed in cash, or by certified, cashier's, treasurer's or bank check.
  - \$ \_\_\_\_\_

CHECK ONE:  
 Check, subject to collection  
 Cash

- (c) \$ 128,000 Total Purchase Price
- This Offer is good until 5 P.M. on March 3 1992, at or before which time a copy hereof shall be signed by you, the Seller and your (husband) (wife), signifying acceptance of this Offer, and returned to me forthwith; otherwise this Offer shall be considered as rejected and the money deposited herewith shall be returned to me forthwith.
- The parties hereto shall, on or before 5 P.M. April 1 1992, execute the Standard Purchase and Sale Agreement recommended by the Greater Boston Real Estate Board or any form substantially similar thereto, which, when executed, shall be the agreement between the parties hereto.
- A good and sufficient Deed, conveying a good and clear record and marketable title shall be delivered at 12:00 Noon on June 1 1992, at the appropriate Registry of Deeds, unless some other time and place are mutually agreed upon in writing.
- If I do not fulfill my obligations under this Offer, the above mentioned deposit shall forthwith become your property without recourse to either party.

7. The initialed riders, if any, attached hereto are incorporated herein by reference. Additional terms and conditions, if any: None

NOTICE: This is a legal document that creates certain binding obligations. If not understood, consult an attorney.

WITNESS my hand and seal.

SIGNED [Signature]  
Buyer Bryan Birdie

ADDRESS 123 Mockingbird Lane PHONE NO. \_\_\_\_\_

This Offer is hereby accepted upon the foregoing terms and conditions and the receipt of the deposit of \$ 500 is hereby acknowledged at 3 P.M. on March 2 1992

WITNESS my (our) hand(s) and seal(s).

Seller (or spouse)

Seller [Signature]

RECEIPT FOR DEPOSIT

Received from March 1 1992 Bryan Birdie the sum of \$ 500 as deposit under the terms and conditions of above Offer. Buyer

Broker [Signature]

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GREATER BOSTON REAL ESTATE BOARD  
REVISED 1978



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MASSACHUSETTS SCHOOL OF LAW

CONVEYANCING

FINAL EXAMINATION

SPRING, 1992

INSTRUCTIONS: This is a three hour examination consisting of three (3) questions. Although each of the three questions counts equally toward your final grade, it is suggested that you devote 1-1/4 hour to the second question while spending 1 hour each on the first and third questions. Therefore, you have 3-1/4 hours (three hours and fifteen minutes) for this exam. You will see that, although the second question takes quite a bit longer to read, it is no more difficult than the other questions.

This is a closed book exam. Please write legibly and be sure to support your conclusions.

GOOD LUCK!

QUESTION ONE

Suggested time: One (1) hour

The northwest portion of the City of Bucolic, Massachusetts consists of 150 acres of undeveloped land. The Bucolic zoning laws require that all lots in the northwest portion of the City be used only for residential purposes and that each lot contain at least one (1) acre. Allagash owns fifty (50) contiguous one acre lots in the northwest portion of Bucolic. Bushwacker owns fifty (50) contiguous one acre lots in the northwest portion of Bucolic. Canoe owns fifty (50) contiguous one acre lots in the northwest portion of Bucolic. Obviously, between the three of them, Allagash, Bushwacker and Canoe own the entire northwest portion of Bucolic.

Recognizing that they can make more money marketing the lots together, Allagash, Bushwacker and Canoe jointly obtained subdivision approval for the entire 150 lots which they called "Ravenhaven Acres." Each joined in signing and recording a subdivision map showing all 150 lots. The subdivision map was silent as to the use of the lots in Ravenhaven Acres. None of the developers of Ravenhaven Acres recorded a general declaration regarding use of the Ravenhaven Acres lots. Allagash, Bushwacker and Canoe never discussed or agreed upon the use of the 150 lots, although each understood that they were to be used for residential purposes. Each was permitted to sell his particular lots for whatever price he desired.

Allagash sold his 50 lots over time to 50 different people. One of the purchasers was Able Pugh. In each of the fifty deeds, Allagash included the following statement: "Ravenhaven Acres is Bucolic's premier residential subdivision. Only one single family house may be built on each lot and each such house must contain at least 2,300 square feet of living area."

Bushwacker sold his 50 lots over time to 50 different people. One of the purchasers was Barney Pebbles. In each of his fifty deeds, Bushwacker included the following statement: "Ravenhaven Acres is Bucolic's premier residential subdivision. Only one single family house may be built on each lot and each such house must contain at least 2,300 square feet of living area."

Canoe sold his 50 lots over time to 50 different people. One of the purchasers was Carrie Posse. Canoe did not place any restrictive language in any of his 50 deeds. He did not record a general restriction. He orally informed the first 25 purchasers, including Carrie, that they could only build one single family home containing at least 2,300 square feet of living area. However, Canoe did not bother to tell that to the last 25 purchasers.



Able Pugh died and left all his real estate to his daughter, Allison Pugh. Barney Pebbles died and left all his real estate to his son, Bam Bam Pebbles. Carrie Possee died and left all her real estate to her son, Charlie Posse. Charlie now seeks to build two buildings on his Ravenhaven Acres lot, each containing 1,300 square feet of living area. Allison and Bam Bam seek to enjoin him and/or collect damages. Will they succeed in a properly commenced civil action? Why or why not?

QUESTION TWO

Suggested time: One (1) hour and fifteen minutes

Instructions: The following are findings of facts from a real trial that lasted three days. Obviously, you will observe that they are lengthy. However, you should be able to quickly pick out the issues that pertain to this class and one hour is sufficient time to compose your answer. Don't panic! This is what real lawyers must deal with when presented with overwhelming facts.

The question you should answer is: what causes of action should the plaintiff trust raise in its complaint, will it prevail?, what will it recover?, and why or why not?

FINDINGS OF FACT

1. In 1950, the Carrollton Building Association, Inc. purchased all that property commonly known as 69 Central Street, Ipswich, Massachusetts ( hereinafter "the locus").

2. The locus consists of 18,950 square feet of land, and is improved by a three (3) story wood frame structure with a basement.

3. The Carrollton Building Association, Inc. (hereinafter "the Knights of Columbus") commenced using the basement of the locus as a Knights of Columbus Hall and used each of the three stories as a seperate apartment; for a combined four (4) unit mixed-use structure.

4. The Knights of Columbus engaged in work of a "literary and scientific nature and . . . promote[d] physical, mental and moral education and welfare . . . ." (Exhibit 1).

5. In 1957, the Town of Ipswich adopted its first zoning by-law, and the locus was, and still is, situated in the "Intown Residence (I.R.)" District.

6. The 1957 Ipswich Zoning By-Law permitted the following uses in all zoning districts:

"SECTION 5. PERMITTED USES

A.

3. Public or semi-public institutions of an historic, philanthropic or charitable character, hospitals, sanitoriums and other medical institutions.

\* \* \*

11. Private clubs, lodge, or other non-profit social, cultural, civic or recreational use (but not including any use the chief activity of which is customarily conducted as a business)."

(Exhibit 2). Therefore, the Knights of Columbus use was a legally permitted one under the zoning by-law.

7. The 1963 Ipswich Zoning By-Law repeated the uses quoted in paragraph 6 and the Knights of Columbus use remained as a legally permitted use. (Exhibit 3).

8. The use of structures as photography studios was not permitted as of right in the Intown Residence District under the 1957, 1963, 1970 and 1977 zoning by-laws. (Exhibits 2,3,4 and 5).

9. On June 3, 1968, the Knights of Columbus conveyed the locus to Donald R. Brunelle and Richard A. Snow (hereinafter "Brunelle" and "Snow").

10. On June 6, 1968, the Board of Appeals of the Town of Ipswich held a public hearing on the request of Brunelle and Snow for a "special exception" to convert the locus into a five (5) apartment dwelling.

11. In an undated written decision, the Board of Appeals granted the request of Brunelle and Snow for a special exception. That decision permitted Snow and Brunelle to

"make the basement into one apartment and convert the first floor apartment into two apartments. The second and third apartment would remain the same [one apartment on each floor]."

Therefore, the special exception unequivocally permitted

five "apartment" units spread among the basement and all three floors; and no non-residential units (since there were no other floors or basements in which to locate any such uses and since the Knights of Columbus use had ceased when it sold the building). (Exhibit 7). The special exception was misplaced by the town clerk and, despite numerous document searches by both the plaintiffs and defendants, was not discovered by the parties until well after this action was commenced.

12. On November 8, 1968, Brunelle and Snow conveyed the locus to the defendant, Edward P. Burke.

13. Mr. Burke alleges that he obtained a building permit to make some type of improvements to the locus in 1970. However, he admits to having no knowledge of the "special exception" prior to this litigation. Furthermore, although he was asked, he was unable to produce copies of any building permits, applications for building permits or certificates of occupancy regarding the building permit he claims to have obtained. The Ipswich Building Inspector testified that no such documents are located in the building department files. He also testified that a properly issued building permit after 1969 would have required at least two (2) means of egress from each residential apartment. Four of the five apartments Mr. Burke constructed contained only one (1) means of egress and were in violation of the Ipswich Building Code, and then the State Building Code, from the time they were constructed. No evidence, other than Mr. Burke's vague remembrance of obtaining some kind of building permit, exists confirming that one was issued in 1970. The overwhelming circumstantial evidence indicates that no proper building permits were issued to Mr. Burke.

14. Although Mr. Burke is unsure of the exact year, he placed a photography studio in the basement of the locus and increased the number of residential units to five (5) by adding an apartment to the first and second floors and by remodelling the apartment on the third floor.

15. The use of the basement as a photography studio was neither a legal one under the applicable zoning by-laws nor a prior non-conforming (grandfathered) one, since it had not been operated since 1957 when the zoning by-law was adopted. In short, Mr. Burke's photography studio was at all times an illegal zoning use.

16. Moreover, the increase of residential units did not match the configuration permitted in the June 6, 1968 special exception. Indeed, Mr. Burke admitted having no knowledge of that special exception prior to this litigation.

17. In April, 1974, Mr. Burke completed his improvements to the locus and it had five (5) residential apartments in the three above-ground floors and one (1) photography studio in the basement.

18. On August 15, 1984, Mr. Burke conveyed the locus to his wife Julia Burke, another defendant in this action.

19. From April 14, 1974 to August 15, 1984 (and even through early 1987), the locus was maintained as a structure containing five (5) residential units and one (1) commercial unit.

20. On December 10, 1985, the plaintiff, Thomas K. Blake (hereinafter "Blake"), entered into a written purchase and sale agreement for the locus, in which Mrs. Burke agreed to sell the locus to him for \$410,000.00.

21. That purchase and sale agreement contained the following representations of the seller:

Par. 8., Possession and Condition of Premises. Full possession of the Premises . . . is to be delivered at the delivery of the Deed, the Premises to be then not in violation of said building and zoning laws. . . .

Par. 22, Warranties and Representations.

(x) There is an existing Certificate of Occupancy for the entire Premises permitting the present uses thereof.

(xiii) All space listed on the Lease Schedule is legally occupied and approved by all government authorities having jurisdiction to the knowledge of the Sellers.

Par. 36, Building and Zoning Code Violations. Seller hereby warrants and represents to Buyer that Seller has no knowledge of the existence, at any time, of any violations of the building and zoning laws referred to in Subsection 4(a) hereof in the Premises and Seller warrants and represents that it has not received any notice or inquiry from any local or state governmental authority or representative thereof claiming or inquiring into the existence of any such violation. The Seller agrees to indemnify and hold harmless the Buyer for any claims, losses, damages or expenses, including legal fees, incurred by Buyer as a result of the failure of the warranties and representations contained herein, and Buyer shall have the right of setoff, upon at least one month's notice, with respect to any amounts owed by Buyer to Seller upon the occurrence or discovery of any such failure. The provisions of this Section shall survive the delivery of the Deed hereunder.

Attached to the purchase and sale agreement was a "Schedule of Leases and Tenancies" which represented five (5) residential apartment units and one (1) unit used by Mr. Burke as a photography studio.

22. Prior to Mrs. Burke's signing of the purchase and sale agreement, Mr. Burke sought out Blake in order to discuss a proposal to sell the locus to him. Mr. Burke told Blake that he and his wife owned the locus. Blake and Burke had several negotiating sessions regarding purchase and sale of the locus. On several occasions, Mr. Burke told Mr. Blake that the locus had six (6) units, five (5) of which were residential and one (1) of which housed Burke's photography studio. Mr. Burke represented that all of those units produced income.

23. Burke permitted Blake to inspect the locus and Blake determined that there were indeed a total of six units. Blake would not have signed the purchase and sale agreement and would not have purchased the locus for \$410,000.00 had he known that less than six (6) units were legally permissible.

24. On December 10, 1985, Mrs. Burke conveyed the locus to Blake's nominee, Thomas K. Blake, Trustee of the TKB Realty Trust (hereinafter "the trust") for \$410,000.00. The deed contained QUITCLAIM covenants. At the time of the sale, Mr. and Mrs. Burke owned another house in Ipswich and one in Florida. Neither Mr. Burke nor Mrs. Burke lived in the six unit locus. The Burkes used the locus to derive rental income and to house Mr. Burke's commercial photography studio.

25. As a portion of the purchase price, Mr. Blake and the trust delivered to Mrs. Burke a promissory note in the amount of \$195,000.00 secured by a second mortgage on the locus. The Ipswich Cooperative Bank holds a first mortgage of \$190,000.00.

26. In accordance with the Burkes' representations, the trust continued to rent out all six units to various tenants until early 1987, when Mr. Burke's successor in the photography business moved out of the basement. After the photography studio was removed, Blake made efforts to rent to another photography studio. He ceased such efforts in early November, 1988 when the Building Inspector ordered him to make use of no more than three (3) residential units. (Exhibit 17). Blake has made significant improvements to the locus since he purchased it. He has expended at least \$50,423 in capital improvements.

27. On October 28, 1988, Mr. Blake applied to the Ipswich Building Inspector for a building permit to repair a window and to upgrade kitchens and bathrooms in the locus. Believing that he owned a legal six unit building, Mr. Blake stated on the building permit application that the locus contained six units.

28. By letter dated November 3, 1988, the Ipswich Building Inspector notified Mr. Blake that the town records,

read together with the applicable zoning by-laws, showed only three (3) legal units and not six (6) as Mr. Blake had stated on his application. Despite the fact that the Burkes represented that they had a certificate of occupancy allowing six (6) legal units in the locus, there existed only one (1) certificate of occupancy pertaining to only one (1) unit and allowing use of only one (1) unit. Therefore, the Burkes' warranties regarding the certificates of occupancy were misrepresentations.

29. By letter dated November 21, 1988, the trust and Mr. Blake notified the Burkes, through their attorney, of these zoning problems. In that letter, the plaintiffs offered to seek a variance from the Ipswich Board of Appeals to attempt to obtain a legal six unit use and abate the zoning problem.

30. At Blake's invitation, the Burke's joined him in his effort to obtain a variance for a legal six unit use. Unfortunately, the Ipswich Board of Appeals denied the joint effort for a variance by decision dated February 9, 1989.

31. In May, 1989, the Ipswich Building Inspector discovered the June 6, 1968 special exception and presented it to the parties. This litigation had commenced almost six months earlier.

32. Despite the Burkes' representations that the locus legally contained a six unit use, the most units permitted by the special exception is five residential units. The photography studio conducted by Mr. Burke was never a legally permitted or prior non-conforming use. Current zoning would only allow three units.

33. The purchase price of the locus on December 10, 1985 was \$410,000.00. The fair market value of the locus as a six unit building on that date was \$287,000.00. The fair market value of the locus as a five unit apartment house on that date was \$211,000.00. The fair market value of the locus as a three unit apartment house on that date was \$143,000.00.

34. In an effort to facilitate possible settlement after the litigation began, Mr. Blake applied to the Ipswich Building Inspector to have issued a certificate of occupancy allowing five (5) residential units in accordance with the special exception.

35. The Building Inspector has refused to issue such a certificate of occupancy because several defects exist which violate the state building code. The Burkes' expert (architect) confirmed the existence of such building code violations. Therefore the Building Inspector will not issue the requested certificate of occupancy until the following improvements are made:

1. adding sufficient means of egress to several apartments; cost of \$11,725.00.
2. adding exit signs, improving doors and widening interior hallways; cost of \$9,977.00
3. Installing fire sprinklers throughout the building; cost of \$22,000.00.

These improvements would not have been necessary had the Burkes possessed the certificates of occupancy as they warranted. The total cost of improvements to obtain a proper certificate of occupancy for five units, therefore, is \$53,702.00

36. An additional \$11,040.00 must be spent to improve the front stairs. However, the front stairs were put into their current condition by Mr. Blake, and he should not recover therefor.



QUESTION THREE

Suggested time: One (1) hour

Othello owned Blackacre and wanted to sell it for \$175,000. He contacted Brooks, a real estate broker, and asked Brooks to market Blackacre for him. Othello and Brooks met and discussed the terms of the brokerage. Brooks would list the property at \$175,000. Othello agreed to pay a five (5%) percent broker's commission. Their entire conversation lasted approximately three minutes. Othello and Brooks never committed their agreement to writing.

Porter told Brooks that he wanted to offer Othello \$160,000 for the purchase of Blackacre. Brooks told Porter to put his offer in writing. Porter wrote the following document, which he signed and delivered to Brooks:

I, Porter, hereby offer Othello \$160,000 for the purchase of Blackacre. This offer is subject to a mutually acceptable Purchase and Sale Agreement between the parties to be signed within two weeks. I hereby give \$1,000 to bind this offer. The deal is subject to me obtaining 80% mortgage financing within 45 days. This offer must be accepted within 3 days.

Othello signed the written offer within three days and accepted the \$1,000 check. He thereafter asked his attorney to draft a Purchase and Sale Agreement. Othello's attorney drafted a Purchase and Sale Agreement substantially similar to the Greater Boston Real Estate Board form. Othello delivered it to Porter within ten days. Although Othello had signed the agreement prior to its delivery, Porter failed to execute the agreement within two weeks.

When the two weeks had expired, Othello called Porter and asked whether he was going to sign the Purchase and Sale Agreement. If not, Othello wanted to put Blackacre back on the market. Porter told Othello not to put Blackacre back on the market. He said that he intended to sign the agreement but had been ill. Porter said he was definitely going to buy Blackacre but that he was on his way to the airport for a business trip. Porter stated that he would sign the Purchase and Sale Agreement when he got back in three weeks. In reality, Porter was not going on a business trip. He was having second thoughts on purchasing Blackacre because he was now interested in buying Greenacre. However, he wanted to keep Othello waiting in case his offer for Greenacre was not accepted.

In three weeks, Othello called Porter again. By this time, Porter was close to buying Greenacre. Porter told Othello to wait one more week, since he was very busy. Othello waited one more week. During that week, Porter closed on Greenacre. Othello called Porter at the end of the week. Porter told Othello that he had not obtained mortgage financing and that he was not bound anyway because the parties had not executed a Purchase and Sale Agreement.

Brooks wants his broker's commission of \$8,000. Othello wants to unload Blackacre for at least \$160,000 and to be compensated for his damages. Porter wants to live happily ever after at Greenacre. Please discuss the rights, liabilities, obligations and duties of the parties. Please support your conclusions with law and fact.