This is a closed book, essay examination.
You have four continuous hours to complete this examination.

Professor Mitchell F. Crusto Thursday, December 7, 2006

INSTRUCTIONS:

1. Use the "Crusto analogical and deductive legal analysis method" ("Crusto IRAC") to answer all questions: topic, sources of law, issues, rules (and authority), rationale, applications, answers, and comment; except where indicated otherwise.

2. Where indicated not to use the Crusto IRAC, answer each question with an issue, a rule and authority, and an answer only.

3. Answer the following utilizing as legal authority the material/cases found in the Dukeminier casebook, and any material handed out in class.

4. Please apply the facts as presented. You should not find it necessary to assume additional facts in any question. If you choose to assume additional facts, please state the additional facts that you are adding and state your reason(s) for adding them.

5. Answer each question in order, and number your answer to correspond to the question.

6. Do not repeat the call of the question in your answer. You can repeat facts in your answer.

7. Time given after each question refers to projected time you should allocate to each question.

8. All questions are equally weighted unless otherwise indicated.

9. Write legible, complete answers on only one side of each page or type answers using ExamSoft software on your laptop.

10. Neither the examination nor any material may be removed from the examination room(s) assigned.

11. This examination is subject to the provisions of the Honor Code.

EXAMINATION BEGINS ON NEXT PAGE
QUESTION 1:  (30 MINUTES, 30 POINTS OUT OF 240 TOTAL POINTS)

In January 2006, Landlord Lisa leased a commercial office to tenant Eve for $2,000 a month for a two-year term. Eve is a constant traveler and is seldom in town. On January 15, 2006, Lisa passed the office and noticed that Eve was not there.

In February, 2006, Lisa leased the same office to Mia, believing that Eve had abandoned the office. When Mia moved in, she noticed Eve’s stuff was still there and threw it away.

In March, 2006, Eve returned and upon entering the office found Mia’s stuff there and threw it away.

Landlord Lisa goes to a law firm for advice. The firm’s property lawyer asks you for a memorandum analyzing the problem and answering the following questions:

(1) Did Mia have the right to take possession of the office?

(2) What cause of action, if any, does Eve have against Lisa?

(3) Which tenant, Eve or Mia, has the legal right to possess the office?

(4) Can Lisa collect rent from both Eve and Mia? How?

(5) What is Mia’s best argument for evicting Eve?
QUESTION 2: (30 MINUTES, 30 POINTS OUT OF 240 TOTAL POINTS)

In August, 2006, Tanisha Taw, a Wash U law student, signed a month-to-month lease on an apartment in a building at 2020 Washington Avenue in St. Louis, Missouri. After a series of lease negotiations, she agreed to pay rent at 50% below the market value for the apartment. Larry Landlord gave Tanisha ample opportunity to inspect the apartment prior to signing the lease. Tanisha hired a professional inspector who did not find any problems with the condition of the apartment. Tanisha signed a lease that stated the apartment was being rented “as is,” and that the Tenant agreed to make any and all needed repairs and to be responsible for any and all damage resulting from Tenant’s failure to make repairs in a timely manner. Tanisha paid Larry $1,000 as a security deposit for the apartment.

In October, 2006, two months after Tanisha’s living in the apartment, there was a hailstorm, and the roof of the building began to leak. Tanisha’s apartment was located on the top floor so she noticed the leaking roof first. She chose to do nothing to repair the roof and eventually the leak created a problem for Nick, the tenant living below Tanisha’s apartment. As a result of the leak, Nick’s computer was ruined as well as his antique carpet, damages totaling $5,000.

Nick comes to the law firm where you work. The partners in the firm ask you to draft an analytical memorandum addressing and answering the following questions:

(1) Is Tanisha liable for the damage to Nick’s property?
(2) Is Larry liable for the damage to Nick’s property?
(3) Is Tanisha liable to Larry to repair the roof leak?
(4) What is Tanisha’s best defense against an action by Larry?
(5) Can Larry use Tanisha’s security deposit to repair the roof, without Tanisha’s permission or court order?

EXAMINATION CONTINES ON NEXT PAGE
QUESTION 3: (30 MINUTES, 30 POINTS OUT OF 240 TOTAL POINTS)

In 1996, George devised in fee simple his home Greenacre to his loving daughter, Mary, “to enjoy and never to be sold during her lifetime” and “but if Greenacre is not used for residential purposes, then to Grantor.” In 2000, Mary sold her interest in Greenacre to Bobbie for valuable consideration. In 2003, Mary Grantee purchased Bobbie’s interest in Greenacre from Bobbie for valuable consideration. In 2006, Greenacre is needed for a major development by the State to build a new sports stadium. In 2006, Mary demolished the house on Greenacre and built a commercial office to serve the stadium. In 2006, Mary sold her interest in Greenacre to Charlie.

Mary comes to a law firm where you are working as a clerk. Your boss requests your educated, analytical opinion as to the various property interests in Greenacre by writing a memorandum answering the following questions:

1. What are George’s property rights, if any, in Greenacre?
2. What are Mary’s property rights, if any, in Greenacre?
3. What are Charlie’s property rights, if any, in Greenacre?
4. Is George entitled to tear down the commercial office?
5. What can Charlie do, if anything, to quiet title to Greenacre?
QUESTION 4: (15 MINUTES, 15 POINTS OUT OF 240 TOTAL POINTS)

Adam had two sons, Cain and Abel. They all lived together, along with Adam’s wife, Eve, on an estate called Paradise which was world renowned for its fabulous gardens. Adam loved both his sons, and wanted there to be harmony amongst them after he died. Unfortunately, in a moment of jealousy, Cain killed Abel. In Adam’s will, Adam granted his interest in the Paradise estate to his wife Eve, but wanted his Paradise interest to be granted to Cain, if Cain returned from prison alive.

Answer each following question with an issue, a rule and authority, and an answer only. (Do not use the complete “CRUSTO IRAC” to answer these questions.)

(1) What granting language should Adam have used in his will to convey his desires?

(2) What kind of interests would he have created?

(3) Would Cain’s interest be valid, prior to 1536?

(4) What device could Adam’s lawyer have used to create a valid grant to Cain prior to 1536?

(5) Was result after 1536 to the device that Adam’s lawyer could have used to create a valid grant to Cain prior to 1536?

(6) What result if Adam transferred his legal title in Paradise to Eve with a fiduciary duty to manage it and receive benefits for Adam’s estate, then to Cain if he returned from prison alive?
QUESTION 5: (15 MINUTES, 15 POINTS OUT OF 240 TOTAL POINTS)

Which of the following future interests are valid or void under common law rules and why?

Answer each following question with an issue, a rule and authority, and an answer only.

(Do not use the complete “CRUSTO IRAC” to answer these questions.)

(1) John Kennedy grants fee simple in Camelot to Jackie for life, then to John Jr. for life, then to Jackie’s heirs.

(2) Richard Rich grants fee simple in Blackacre to Washington U., but if Washington U. serves liquor there, then Rich has the right to re-enter.

(3) George Bush grants fee simple in White House to George Jr. for life, remainder to Chaney when Chaney reaches 95 years old. When George Jr. died, Chaney was only 80 years old.

(4) Henry VIII grants fee simple in Buckingham Palace to Anne for life, remainder to Henry VIII’s heirs.
QUESTION 6:  (30 MINUTES, 30 POINTS OUT OF 240 TOTAL POINTS)

On December 25, 2005, Mrs. Kringle granted by way of an irrevocable inter vivos gift, fee simple absolute title in a $500 million estate, the North Pole, as follows:

“To my husband, Kris, for life, with the remainder to our elf-like children who reach twenty-five, and if all fails, then Mrs. Kringle has the option to repurchase for $50, reversion to our children.”

At the time of the gift, the Kringles were 90 years old and had two children, Merry and Nick.

Please write an analytical legal opinion answering the following questions:

(1) When were the granted interests created?

(2) Which granted interests, if any, violated the law?

(3) Under the common law rules, who will have title to the North Pole when Kris dies?

(4) Who will have title to the North Pole in a “cy pres” jurisdiction when Kris dies?

(5) Who will have title to the North Pole in a “wait and see” jurisdiction when Kris dies?
QUESTION 7:  (30 MINUTES, 30 POINTS OUT OF 240 TOTAL POINTS)

On January 1, 2000, two sisters, Eve and Mia, decided to purchase property and own it together. They bought Blackacre, a large tract of undivided land in a resort community. Eve paid 30% of the purchase price, and Mia 70%. Eve spent her time indoors, reading poetry, writing plays, and drinking expresso, and she wanted to use the land to build an indoor public theater. Mia loved the outdoors, was an environmentalist, and wanted to use the land as a nature preserve. Eve and Mia wanted to avoid probate.

On January 1, 2006, Mia borrowed $500,000, mortgaging her interest in Blackacre to Harmony Bank, and gifted the funds to her favorite wildlife preserve charity.

Eve approaches the law firm where you are a summer clerk. The firm’s partner asks you to write a memorandum answering the following questions:

1. Under the old common law, could Eve and Mia create a joint tenancy in Blackacre?
2. Under modern statutory developments, if Eve and Mia created a joint tenancy, what is Mia’s interest in Blackacre?
3. If Eve and Mia created a joint tenancy in Blackacre, what is Harmony Bank’s interest in Blackacre in a “lien” jurisdiction?
4. If Eve and Mia created a joint tenancy in Blackacre, what is Harmony Bank’s interest in Blackacre in a “title” jurisdiction?
5. Should Mia die, and her only daughter, Theresa, inherit Mia’s interest in the land, what can Theresa do, if anything, to remove Eve from Blackacre?
QUESTION 8: (30 MINUTES, 30 POINTS OUT OF 240 TOTAL POINTS)

In 1950, Deborah owned two parcels of land adjacent to one another, Blackacre and Whiteacre. In accessing the only public road adjacent to Blackacre, Deborah often used a well-worn path from Whiteacre across Blackacre. In 1960, Deborah sold Whiteacre to Rene and gave him oral permission to personally use the path across Blackacre to the highway.

In 1970, Deborah sold Blackacre to Al who chose not to live on Blackacre. Over the next thirty years, Rene openly and notoriously continued to use the path to cross Blackacre. Al knew that Rene used the path to cross Blackacre, but thought it was harmless and gave him permission to do so. In 1980, Rene laid down a road where the pathway was located, across Blackacre and began building a personal residence on Whiteacre. Al did not know about the road or the residence.

In 2003, Al moved onto Blackacre and erected a brick wall across the roadway. Al has threatened to shoot Rene with buckshot if Rene came on Blackacre again. In 2004, the state built another public access road directly serving Whiteacre. In 2005, Rene wants to sell Whiteacre to Kathy for valuable consideration.

Rene comes to your law firm for a legal opinion as to his property rights to the right of way over Blackacre, if any. The firm wants your legal opinion on the following questions:

1. Does Rene have an easement over Blackacre?
2. Can Rene seek an injunction against Al’s brick wall across the right of way?
3. Does Kathy have an easement over Blackacre?
4. In 2003, what are Rene’s options for gaining access to Whiteacre via Blackacre?
5. What is Al’s strongest argument for denying Rene an easement across Blackacre?

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QUESTION 9:  (30 MINUTES, 30 POINTS OUT OF 240 TOTAL POINTS)

Nate leased Blackacre, a forty-acre farm, to Wilma and required Wilma to covenant the land’s use to “farming purposes.” Wilma properly assigned the lease to Tiffany for consideration. Tiffany has begun using Blackacre as a piggery.

Nate later subdivided the balance of his land, Whiteacre, under a subdivision plan, which he properly recorded, subject to three restrictions:

1. Each lot must be five acres or more.
2. Each lot owner must agree to pay a $500 a month fee to maintain the golf course.
3. Each lot owner must agree to sell to registered Democrats only.

Kristian purchased one of the Whiteacre lots from Nate. Nate’s deed to Kristian failed to recite the land use restrictions. Kristian subdivided her lot, Greenacre, into five one-acre lots. Kristian also sold one of her lots to a well-known Republican. Cindy, one of the owners of the Whiteacre lots, has failed to pay her subdivision golf maintenance fee as she hates golf.

Nate comes to your firm for legal advice. Please draft a memorandum analyzing the following questions:

(1) Can Nate sue Tiffany for damages under English law prior to 1848 for violating the covenant?

(2) Can Nate sue Kristian for damages under English law after 1848 for violating the covenants?

(3) After 1848, Can Nate enjoin Kristian from selling a subdivided lot to a Republican?

(4) Can Nate enjoin Cindy to force her to pay the golf maintenance fee?

(5) Should the City rezone Blackacre to allow for piggery, can Nate successfully enjoin from doing so?

EXAMINATION ENDED, NO FURTHER PAGES/QUESTIONS.