

REAL PROPERTY
Professor Justin O'Connell
Final, Spring 2023

Instructions:

Answer three (3) questions in this examination.

Total Time Allotted: Three (3) hours.

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and facts upon which the case turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other. Your answer should evidence your ability to apply the law to the given facts and to reason in a logical, lawyer-like manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles; instead, try to demonstrate your proficiency in using and applying them. If your answer contains only a statement of your conclusions, you will receive little credit. State fully the reasons that support your conclusions and discuss all points thoroughly. Your answer should be complete, but you should not volunteer information or discuss legal doctrines that are not pertinent to the solution of the problem.

Question 1

Oscar owned and lived on Blackacre, which was real property adjacent to a public road called Camden Drive. Adam owned Whiteacre, which was a parcel of land that bordered Blackacre on the far side away from Camden Drive. Whiteacre was adjacent to another public road.

In 1998, Oscar gave Adam oral permission to drive back and forth from Whiteacre across a 20-foot-wide strip of grassy land on Blackacre to access Camden Drive. At that time, Adam told Oscar that Adam would not make improvements to the access way. Thereafter, Adam often drove across the access way..

In 1999, Oscar came home to find that Adam had graded the access way flat with a bulldozer, and a drainage ditch had been dug on Blackacre along the access way. Oscar was angry Adam had done this but did not object to Adam. Thereafter, Adam continued to often drive across the access way.

In 2021, Adam asked Oscar if Adam could place gravel on the access way. Oscar said no. The next day, Adam did so anyway. When Oscar saw the gravel, he told Adam that Adam could not use the access way ever again. Adam apologized and offered to pay Oscar \$10,000 to keep using the access way in its current, improved condition. Oscar agreed and said Adam could keep using the access way "as is." Adam immediately paid Oscar the \$10,000 as agreed and continued to often drive across the access way.

In 2022, Adam asked Oscar if Adam could pave the access way if Adam paid the \$25,000 cost of paving Oscar's driveway. Oscar agreed. Adam then hired a paving company that paved Oscar's driveway. Oscar then placed Blackacre on the market for sale. About a week later, Oscar sold Blackacre to David, at which time paving of the access way had not begun. Prior to the sale, Oscar did not disclose to David that Adam had any rights to the access way.

Soon after David bought Blackacre, he placed a fence across both ends of the access way, thereby preventing Adam from using the access way and preventing the paving company from paving it. The jurisdiction has a 20 year statute of limitations for prescriptive easements.

Discuss the rights of Adam and David regarding any easement claims.

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Question 2

Able and Charles inherited Blackacre as joint tenants. Blackacre consisted of 10 acres of land that is unimproved other than a single-family home on it.

After receiving ownership, Charles moved into the home on Blackacre. Charles lived on Blackacre for three years without paying anything to Able for the use of Blackacre. Able never attempted to enter into possession of Blackacre during that three-year period. Charles made all the property tax payments during that three-year period. He also spent \$100,000 building a motorcycle dirt race track covering 2 acres of Blackacre.

After Charles had been living on Blackacre for three years, he leased Blackacre to David for a two-year period. David paid Charles monthly rent. David paid nothing to Able, and Charles did not share any of the rental income with Able. Able never attempted to enter into possession of Blackacre during David's tenancy. Charles made all property tax payments for Blackacre during David's tenancy.

At the end of David's two-year tenancy, Charles renewed David's lease for another two-year term. Able immediately found out, was angry, and executed a grant deed transferring all his rights, claims and interest in Blackacre to Esther and such deed was delivered and accepted.

What claims could Esther and Charles make against each other in a partition proceeding?

What remedies does Esther have regarding David's occupation of Blackacre?

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Question 3

Alex bought Blackacre, a one-acre parcel of undeveloped property in the country. When Alex bought Blackacre, an adjacent property, Whiteacre, was a fifty-acre parcel with a small, free-range chicken egg farm owned by Bob, with 300 chickens. Bob was legally entitled to house and farm up to 1,000,000 chickens on Whiteacre for their eggs or meat.

A week after Alex purchased Blackacre, Bob sold Whiteacre to Chicken Town, a national meat company.

After Chicken Town purchased Whiteacre, Chicken Town began legal construction of immense, industrial chicken houses. Within months, construction was complete, and Chicken Town was legally raising up to 500,000 chickens at a time for meat.

A faint odor from the chickens occasionally drifted onto Blackacre. There were large, compressed bundles of plucked feathers stacked each day on Whiteacre, near the joint property line with Blackacre, being readied for transport offsite. Alex visited Blackacre many times and could smell the odor, see the bundles of feathers, hear the chickens, and hear sounds of machinery coming from Whiteacre. Alex was a staunch animal rights activist and became physically ill whenever he visited Blackacre. Alex wanted to build his home on Blackacre, but he felt he could not do so as long as Chicken Town operated on Whiteacre.

Alex set up bright lights on Blackacre that shined only towards the chicken houses on Whiteacre at night. The lights caused the chickens to suffer from a lack of sleep causing some to lose weight and others to die.

What rights and remedies do Alex and Chicken Town have against one another under the doctrine of nuisance?
