

Property Section E

Professor Grimmelmann

Final Exam – Fall 2009

December 14, 6:00 PM – Closed Book

This exam consists of TWENTY-FIVE multiple-choice questions, followed by TWO essay questions. Each correct multiple-choice question is worth one point; there will be a quarter-point deduction for each incorrect answer. (Blank answers count neither for nor against you.) The essay questions are each worth 25 points.

You have FOUR hours to complete this exam. You may divide your time between the sections as you wish. I recommend spending an hour and twenty minutes on the multiple choice questions, followed by an hour and twenty minutes on each of the essays.

You must mark your answers to the multiple choice problems on your Scantron form. Your essays, whether handwritten or typed, must be anonymous except for your exam number.

The essays are subject to a word limit. If you are typing, **you may not write more than 1,500 words for each**. If you are handwriting, you should not use more than one bluebook per question (assuming double-spacing and writing on both sides of each page).

This is a closed-book exam. You may not consult with any person or thing while taking it. You may not discuss the exam or your answers with anyone under any circumstances until after the end of exam period. **Your work must be exclusively your own.**

Please pay attention to the specific questions being asked and answer them. Support your answers with detailed analysis, reference to specific statutes and cases as appropriate, and an explanation of how you have applied the law to the facts. Keep any citations as simple as possible (e.g. “Pierson v. Post”). Feel free to shorten your answers by using an outline format or bullet points, so long as the substance of your points is clear.

Professor Grimmelmann will not answer ANY questions pertaining to exam content during the administration of the exam. If there are errors in the exam, it will nonetheless be fairer and less disruptive if all of you have exactly the same experience taking it. If anything about a question is ambiguous, say what you think it means, and answer accordingly. If you need to assume additional facts to answer a question, say what those facts are and how they affected your answer. No reasonable resolution of an ambiguity will be penalized.

This exam has **11 pages total**, including this cover sheet.

General Instructions: Unless specified otherwise in a question, you should assume that all events take place in a race-notice jurisdiction, and that the period for adverse possession and prescription is seven years, and that the statute of limitations for conversion is five years.

GOOD LUCK!

Multiple Choice

[omitted]

Essay 1: **Chateau Pushkin**

Chateau Pushkin is a mansion in the town of Onegin, in eastern Connecticut. It was built in 1922 in the style of a Russian country estate by an exiled aristocrat who managed to escape the Russian Revolution with most of his fortune intact. The Chateau and surrounding lands are now occupied by Tatiana, who rented them from Vladimir on a year-to-year lease at \$3,500 a month. She recently lost her job as a hedge fund analyst and is looking for a way to make rent without moving out to somewhere cheaper.

Enter your client, Eugene. Recognizing the Chateau's historic value, Eugene had the idea of fixing it up as a museum of 19th-century Russia. He plans to give tours, display a carefully curated selection of antiques, and operate a small gift shop. Tatiana herself will live in a small attached building that formerly served as servants' quarters. The agreement between Eugene and Tatiana, which is titled an "assignment," provides that Eugene will have exclusive occupancy of the main Chateau Pushkin building, will pay Tatiana \$5,000 a month, and that either of them may terminate the arrangement on two months' notice. They both signed it, and Eugene has given Tatiana a \$10,000 security deposit.

While Eugene was making plans to start up the business, he received a phone call from Vladimir, who informed Eugene that Vladimir's lease with Tatiana contained a clause prohibiting sublease or assignment without Vladimir's consent. "Can I have your consent," Eugene asked. "I'll pay you another \$1,000 a month on top of what you're getting from Tatiana." Vladimir's reply: "Nyet!"

Undeterred, Eugene went over to Chateau Pushkin himself to check out the property. He discovered that Vladimir had changed the locks, so the key Tatiana had given him was no good. In a further surprise, however, he ran into Vladimir's estranged wife, Olga (who expects to file for divorce sometime in the next few months). She explained that the house had been built by her great-grandfather, that she and Vladimir owned Chateau Pushkin as joint tenants and that she was more than happy to let Eugene use the chateau for his museum, rent-free, as a way of spiting Vladimir. Olga gave Eugene a copy of the new key. He let himself in, where he discovered that Tatiana had removed a crystal chandelier (leaving just a bare hook and an electric socket where it had been) and several ornate rugs. Also, because Tatiana had stopped paying utility bills on the main house, there was no running water and no working gas for the stove in the kitchen.

To make matters worse, the town of Onegin has just passed a revised zoning ordinance that prohibits all commercial uses in 90% of Onegin, including the section where P is located. And on top of that, Alexander, the neighbor in the next mansion over (half a mile up the gravel road leading to Chateau Pushkin, in a house with a ten-foot setback from the road) has gone to court asking for an injunction against the museum's operations as a nuisance, and has put up a large sign on the roadside saying "The Pushkin Museum is a Tourist Trap!"

Counsel Euguene. What are his rights and obligations, what are his chances of ever opening the museum, and what should he do next?

Essay 2: **Lake Trimalchio**

The orange-billed Ontario egret (or “OBOE” for short) has long and exceptionally soft feathers. A large population of OBOEs typically nests on the shores of Lake Trimalchio in early October for several weeks, leaving behind a large collection of feathers. Since approximately 1960, Jay has been going to the shores of Lake Trimalchio right at the end of OBOE season to pick up the feathers, which he then stuffs into pillows that he sells via mail order.

One of the sections on which he gathered feathers was East Egg, a twelve-acre undeveloped parcel of land belonging to Daisy. Daisy informally allowed Jay to collect feathers in exchange for a couple of boysenberry pies each year. In 1972, Daisy and Jay formalized this arrangement with a contract providing that Jay would give Daisy two boysenberry pies a year so long as both of them should live. In exchange, Daisy signed a deed stating that “in exchange for two boysenberry pies and other good and valuable consideration,” she gave Jay the right to come onto her property each fall and collect OBOE feathers.

Daisy died in 1980. Her will provided that Featheracre would pass “to Myrtle, but if East Egg is ever sold or mortgaged, then to George and his heirs.” Myrtle was Daisy’s daughter; George was her nephew.

In 1985, Myrtle took out a loan from the Carraway County Bank, which she secured with a mortgage. The Bank recorded the mortgage. Myrtle used the money for a series of round-the-world trips over the next few years, and fell substantially behind in her mortgage payments. During most of this time, including every OBOE season in the fall except for one (in 1989), Myrtle was out of the country. The Carraway County Bank initiated foreclosure proceedings, which were carried out in 1995. At the auction, Jay placed a bid of \$25,000 but lost out to Tom, who bid \$30,000. Jay then offered to buy the property outright from Tom for \$35,000, but did not explain the nature of his interest in purchasing it, lest Tom realize the value of the feathers. Tom declined Jay’s offer.

Tom moved in and erected a summer vacation cottage, which he occupied every weekend from June through August each year. In 2008, due to a warm fall, Tom stayed in the cottage on weekends through OBOE season. He saw Jay gathering feathers and flipped out, chasing Jay away with a shotgun. After consulting a lawyer, Tom recorded the deed confirming his purchase at the mortgage sale. This year (2009) Tom went out in the middle of OBOE season, gathered up the feathers, and burnt them in a bonfire. Tom has also demanded the return of all the feathers gathered in the past, back through 1960.

Jay has come to you for legal advice. He recorded the 1972 deed on his way over. He also has discovered that a 2005 tax assessment valued Featheracre (with the cottage on it) at \$370,000, and estimates that the cottage could not have cost more than \$100,000 to build.

Jay would like to know what his rights and obligations are, whether he will be able to continue gathering OBOE feathers each fall, and what steps he should take. Advise him.