

Property
FOUR HOURS

Day Division
Professor Grimmelmann

Thursday, April 28
1:30 PM

Exam No. _____ Submitted Electronically? Yes ___ No ___

Signature: _____

Print Name: _____

This examination consists of **THREE** questions. Questions 1 and 2 are worth 40 points each and have a word limit of 1500 words each and a recommended time of 90 minutes each. Question 3 is worth 20 points and has a word limit of 750 words and a recommended time of 45 minutes. The word limits will be enforced strictly; extra words from one question may not be used on another. The recommended times leave 15 minutes for a final review.

This is an closed-book examination. You may **NOT** consult the casebook, supplement, notes, the Internet, or any other source during the examination.

Your work on this examination is subject to the Student Honor Code. You may not discuss this examination or your answers with anyone under any circumstances until after the end of the examination period, as some of your classmates may be taking the examination out of sequence. **Your work must be exclusively your own.**

Make sure that your answer does not contain any identifying personal information. Do not identify your authorship of your answers to me until grades are published.

Please pay attention to the roles the questions place you in and to the specific questions you are asked to answer. Support your answers with detailed analysis, reference to specific statutes and cases as appropriate, and explanations of how you applied the law to the facts. Simple citations (e.g. "Pierson v. Post.") are appreciated but not required. Basic headers to organize the different parts of your answer are also a good idea. Spelling, grammar, clarity, organization, and good advice to your client are all parts of the grading.

If anything about a question is ambiguous, say what you think it means and answer it accordingly. If you need to assume additional facts, say what they are and how they affected your answer. No reasonable resolution will be penalized.

The problems in this examination are set in the (fictional) American state of Schuyler. The names in the problems are fictitious. Please disregard any resemblance to actual persons or institutions, living, dead, or nonexistent.

This examination has **SEVEN** pages total.

GOOD LUCK!

General Information

All questions are set in the (fictional) state of Schuyler. You should assume the following about the property law of Schuyler:

Statutes of Limitations and Adverse Possession—The limitations periods for all personal property torts and for the adverse possession of personal property are three years. Schuyler courts have adopted a discovery rule for tolling the statute of limitations for personal property torts. The limitations period for all real property torts, for the adverse possession of real property, and for the acquisition of an easement by prescription are ten years. Schuyler courts disallow adverse possession claims when the adverse possessor acted with bad faith, defined as “actual, conscious knowledge of the true owner’s rightful title.”

Wills and Estates—Schuyler has adopted a standard Wills Act governing the formalities for making a will. Schuyler’s intestacy statute distributes a decedent’s estate in the following order (proceeding to the next category only when there are no surviving members in any previous category): spouse, children and their descendants, parents and their descendants, escheat to the state.

Personal Property—Schuyler has enacted the Uniform Commercial Code; all relevant provisions are identical to the versions we studied in this course. Personal property lien priorities are first in time, first in right except that a mechanic in possession has first priority, and that a subsequent creditor has priority over a prior lien of which it lacks notice. Liens on motor vehicles may be recorded with the Schuyler Department of Motor Vehicles, which maintains a public registry and issues certificates of title noting all outstanding liens recorded against that vehicle.

Real Property—Schuyler has abolished the fee tail and the rule against perpetuities. The statute of frauds for real property applies to all freehold estates (fee simple and life estate), to all future interests capable of becoming a freehold estate, and to all leases for more than one year. Schuyler courts follow the modern preferences for construing ambiguous conveyances as fees simple (rather than life estates) and as tenancies in common (rather than joint tenancies or tenancies by the entirety). Schuyler follows the lien theory of mortgages. Foreclosures take place by judicial sale unless the instrument creating the mortgage specifically provides for power of private sale.

Leases—In residential but not in commercial leases, Schuyler follows the “English rule” requiring a landlord to put the tenant in physical as well as legal possession, the *Sommer v. Kridel* rule requiring a landlord to mitigate damages when a tenant vacates the premises, and the implied warranty of habitability.

Recording Act—Schuyler has enacted a race-notice recording act for real property.

General—Schuyler’s climate, geography, and economy are similar to that of the Baltimore, MD metropolitan area.

Exam4 Instructions

Computers *may* be used on this examination:

Option 1—Closed—no access to computer-based notes or Internet

If you use a computer on this examination, you must use the Exam4 examination-taking software provided by the law school. You must provide your own computer and must have downloaded a copy of the Exam4 software to your computer. You should have completed this download, tested the software, and made sure the computer is in working order well before the date of this exam.

At the end of the examination, choose the “Submit Electronically” function on the Exam4 software. The software will request your Exam ID (Examination Number). Put the course name on your answer as instructed in the handout, but do not put your name anywhere on your answer. Submit your answer within the time limits for the examination; no allowance for additional time will be given for equipment failure. After submitting your answer electronically, note on your exam questions that you “Submitted Electronically.” The administration will print your Exam4 answers and provide them to me for grading.

Technological Problems: If you experience a technological problem during the examination period, consider the amount of time remaining and decide whether you should continue (or restart) the examination in blue books. No additional time will be provided for technological problems. Responsibility for submitting your answers on time electronically lies entirely with you. The Information Technology (IT) Department will assist in retrieving examination files from your computer, and the Office of Registration & Enrollment will accept an IT-certified copy of an examination file retrieved from your computer as a timely submission, as long as there is no evidence of tampering with either your computer or the examination file.

Handwritten Answer Instructions

If you submit handwritten answers to the examination, both the envelope and your answers should contain your examination number, the course name, and the instructor's name. Do not put your name anywhere on the envelope or on the blue book answers.

Upon completion of the examination, put your answers in the envelope and hand in the envelope to the examination proctor. Be sure to enclose all of your answers in the envelope—you will be graded on only what is inside the envelope. Do not put the examination questions in the envelope. Hand in the questions separately to the examination proctor. You are responsible for ensuring that all of your completed answers and questions are handed in to the examination proctor.

START OF EXAMINATION

Your client is Alexander Miranda, no longer young, but still scrappy and hungry. He has sought your advice on a series of property-law problems.

Question 1: Non-Stop

40 points

1500 words

Recommended time: 90 minutes

Thomas and James, two friends and neighbors, decided to go into the taxi business together in 2010. They each contributed \$10,000 to create the Madison Avenue Taxi Company and each received 50% of the shares. Madison Avenue then purchased a taxicab for \$50,000, paying \$5,000 in cash and financing the rest with a \$45,000 loan from First National Bank. The loan was secured with a lien on the taxicab, which was recorded with the Schuyler DMV. Madison Avenue used its remaining \$15,000 to purchase a taxicab franchise from its previous owner. James attached the tin medallion reading "Schuyler Taxi Cab #1800" to the hood of the cab.

Unfortunately, one evening in December 2010, a tree fell on the cab in a storm. It was towed to Reynold's Repair Shop, which did \$2,000 worth of repairs to make it drivable again, including attaching a new hood. Madison Avenue lacked the cash to pay for the repairs, but James promised to pay as soon as Madison Avenue received a check from the insurance company. That was good enough for Reynold, who let James drive off in the cab.

When the check arrived in February 2011, however, Madison Avenue used it to pay for the next installment of the loan on the cab instead. Assuming he'd never be paid and looking for a way to cut his losses, Reynold looked at the various parts he'd taken off the cab during the repairs. Using a hammer, he was able to bang the hood back more or less into shape; he attached it to a car he was repairing for Lauren's Pants, charging \$250 for "parts." While he was doing this, Reynold removed the tin medallion from the hood. He then posted an advertisement for a "Schuyler taxi license" and sold the medallion to Maria for \$3,000.

A few weeks later, James noticed that the medallion was missing, but wasn't sure where it was. After a week, he went to the Schuyler Taxi Commission, paid a \$100 fee for a replacement medallion (also numbered #1800), and attached the replacement to the hood. In November 2015, James noticed medallion #1800 on the hood of a taxicab stopped at a red light next to him. He copied down the license plate number, identified and contacted Maria, and learned the story of how she had bought the medallion from Reynold. Two days later, Madison Avenue sued Maria for conversion, seeking the medallion and the \$240,000 in fares Maria had collected over the previous five years. The case is pending.

All of this matters to you because in March 2016, Thomas ran a red light with the cab and struck Alexander, who suffered a six broken bones and a concussion and required extensive medical treatment. In contemplating a potential lawsuit, you have investigated the assets of Madison Avenue and its owners. Madison Avenue still owes \$10,000 to First National Bank. After the accident, it sold the cab for \$10,001 to Bursar Enterprises, to which it did not disclose the existence of the loan or the associated lien. Its only other assets are the franchise, a \$100,000 liability insurance policy (the statutory minimum), any potential claims it has against other parties, and its owners' ruined pride. Thomas's house was conveyed to him and his long-time partner Lancelot "as tenants by the entirety" in 1992. When Schuyler legalized same-sex marriage in 2009, Thomas and Lancelot married. James lives in a six-bedroom mansion built in 1789. He rents it for \$100 a year under a lease from one A. Burr that states, "James and his heirs may occupy these premises for as long as he and they desire provided only that they make all required payments of rent."

If you think a lawsuit might be successful in obtaining compensation for Alexander's injuries, he's willing to wait for it. *If Alexander is successful in establishing that Thomas and Madison Avenue are liable for Thomas's negligent conduct, what assets, if any, are likely to be available to satisfy Alexander's tort judgment?*

Question 2: The Rooms Where It Happens

40 points

1500 words

Recommended time: 90 minutes

P.J. was a jazz trumpeter (known as "The Schuyler Senator") who played with big bands and smaller combos from the 1940s to the 1960s. In 1963, he purchased a two-story rowhouse where it was quiet uptown, on Mercer Street. He loved nothing more than to enjoy a moment alone in the shade of the fig tree that grew in the back yard before going inside to play with his daughters. At his death in 1979, his (properly signed and executed) will stated, in its entirety:

"I leave my house in equal shares to my daughters Angelica, Eliza, and Peggy. Upon the death of any of them, her share passes to her sisters."

The daughters remodeled the house to split it into two separate apartments, one on each floor. Angelica occupied the apartment on the first floor of the house and Eliza the apartment on the second. Peggy stored a few suitcases in the basement and slept on a couch in Angelica's apartment for a few weeks each year around the holidays, but spent most of her time traveling for her job as a freelance news photographer.

In 1994, Eliza met and married Alexander and moved in with him. Starting in March 1995, she rented out the now-vacant second-floor apartment in the Mercer Street house to George for \$500 a month. In March 2005, George stopped paying

rent. Eliza had several shouting matches with him, during which George said, “You just want to move our money around.” She made no further attempts to collect the rent. Angelica was by this point bedridden and helpless with progressive dementia. Eliza and Alexander were too preoccupied with taking care of her to attempt to evict George.

In 2008, Angelica died without a will. Eliza and Alexander moved back in to Angelica’s apartment on the first floor, warily keeping their distance from George on the second floor. Eliza started working from home as a historical romance novelist, typing on a computer in a chair by the window.

In 2014, Peggy, who had gone to visit an ex-boyfriend in France, unexpectedly came back with guns. A lot of guns: two large suitcases full of antique 19th-century pistols. Eliza, scared of having the guns around her children, forbade Peggy from entering the house. Peggy then demanded an antique cabinet that had been in the kitchen of the house in the in the 1950s. During the renovations in 1979, the cabinet was removed from the kitchen, where it had been bolted to the wall, and reattached (using the same bolts) to the wall in Angelica’s room. Peggy insisted that P.J. knew how much she loved the cabinet and wanted her to have it; Eliza disagreed, stating that P.J. had come to her in a dream saying, “Do whatever you want. I’m super dead.”

While digging through old files, Eliza found two documents. One is the deed by which P.J. took title in 1963. It recites that the property is restricted by a reciprocal covenant in favor of all of the other properties on the block and “may never be owned, in whole or part, by a woman,” and also that the property “may never be used, in whole or part, for any commercial or money-making purposes whatsoever.” Eliza had never seen the deed before this; you have checked, and it was never recorded. The other is a survey dated 1970, which appears to show that all the boundary lines on the block are three feet to the east of where the walls between the houses are. Thus, P.J.’s house extends three feet onto the land shown on the survey as belonging to the neighbor to the east, and the neighbor to the west’s house extends three feet onto the land shown as belonging to P.J. You have checked, and the property description on the survey matches the one in the deed, so it appears all the houses on the block were simply built in the wrong place.

As if that wasn’t enough, in January 2016, the city zoning ordinance was revised to restrict the block on Mercer Street to single-story houses. The city immediately served Eliza with a notice ordering her to come into compliance within 180 days. The same day, she received a notice of an overdue payment on a loan for \$400,000 from the Seabury Bank. It appears that some unknown party photocopied P.J.’s autograph from an old concert program onto a loan application, and convinced the bank to give a loan secured by a mortgage on the rowhouse.

That’s when she and Alexander called you for help. Eliza wants, above all else to remain in this house that has meant so much to her family and which P.J.

promised his daughters would be “something they can never take away.” *What are Eliza’s legal rights and obligations with respect to the rowhouse and its contents?*

Question 3: Who Lives, Who Dies, Who Takes Your Picture

20 points

750 words

Recommended time: 45 minutes

Alexander is also embroiled in a dispute with his son Philip’s private school, the Kings College Elementary School. On October 6, Alexander received a letter from the school, telling parents to send in a check for \$20 if they wanted to purchase photos of their children. Alexander, who had plenty of photos of Philip already, ignored the letter. Four to six weeks later, Alexander opened the mail to find another letter from the school. This one contained a photograph of Philip in his school uniform, smiling broadly. The enclosed letter explained:

Photographer Hercules Mulligan visited our school and took wonderful photos of the children. We think you’ll agree that they look great when they talk less and smile more! The cost for the photographs, now that the early bird discount has expired, is \$25. Parents who do not wish to pay must return the enclosed photographs, which are the property of the Kings College Elementary School.

Alexander threw this letter in the trash, too, but he kept the photo and put it in a family scrapbook.

In January, Alexander was reading a magazine when he saw the photo of Philip in an ad for Hurricane whole-grain breakfast cereal. The photo was captioned “Take a Break” and had been edited to put a bowl of the cereal in front of the grinning Philip. Calling around, Alexander was able to learn that Mulligan had licensed the photograph of Philip to the Hurricane Cereal Company for use in the ad.

In February, Alexander further learned that when Philip went to the school nurse last year for a fever, she was concerned that he might be on drugs and obtained a urine sample from him, which she sent to the General Wee laboratory for testing. General Wee reported that the test found no illegal substances, but it also (without informing the school or requesting permission) used the sample for biomedical research and has succeeded in developing a headache-relieving pill from rare compounds found in Philip’s urine. General Wee has applied for a patent on the pill.

What are Alexander and Philip’s rights and liabilities with respect to the property described above?