USC LAW CENTER

Final Examination

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PROPERTY

Professor McCaffery

May 3, 2012

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INSTRUCTIONS:

Three hours (3 hours), open book. You may have with you any written materials you would like.

The examination consists of four (4) equally-weighted questions. You should attempt to spend forty-five (45) minutes on each question. Please be sure to read the directions carefully, and to answer what (and only what) you are being asked to answer.

Where necessary, please make and clearly state any relevant assumptions. Please attempt to write neatly, and be as concise as possible.

*Please put only your examination number, and not your name, on any submitted materials.*

THANK YOU AND GOOD LUCK!
Question 1

(45 minutes)

Ray-money (Ray $) was just about the only distinct person in McLand, a jurisdiction subject to the principles of contemporary Anglo-American property law. Ray $ set out to sail one day across the inland Sea of Anonymity, a journey never undertaken by his peers. After sailing for more than a day, Ray $ came upon a small, deserted island. He landed, pitched a tent and made a campfire. As Ray $ lay under the stars, he noticed a strange effect from inhaling the smoke of certain leaves: his memory improved, and he suddenly understood all of property law. Ray $ traced the leaves to some nearby native bushes. He uprooted one of the bushes and took it back home with him.

Back home, Ray did some research. He discovered that the last recorded deed to the island dated from the prior century, granting the land to a mysterious Professor M, long since departed. Professor M had left a Last Will, leaving everything he owned to his only son Little Dude for life and, on Little Dude’s death, to his first child (Professor M’s grandchild) to reach age 25. Little Dude married Caitlin and had one child, Kevin. Alas, some years ago, Little Dude had been bitten by a strange snake and lapsed into an irreversible coma.

Ray $ decided not to say anything to anyone just yet. After verifying that he could reproduce the mysterious bush in his own yard, Ray $ developed an extract he called Memory Magic™. He then sailed back to the island, uprooted all of the bushes he could find, and poured salt in the ground. He also fenced off the portion of the island where the bushes had grown and posted a sign saying “Private Property: Keep Off.” Ray $ visited the island several times a year, mainly to make sure that the bushes did not grow back.

Years passed. Kevin, now aged 22, was out sailing one day when a strange wind carried him away and he chanced upon the island. Ignoring the sign, he set out on foot to explore the island including the fenced-off portion. Above a barren stretch of soil, Kevin discovered a motion-activated camera tied to a palm tree. He climbed the tree and took down the camera. Once back home, Kevin examined the film and learned that the camera was set up by his late grandfather Professor M. Viewing it, he sees footage of Ray $ starting the fire and uprooting the bushes.

Kevin consults with you, an esteemed lawyer-in-training. What claims exist over the island (all or part), the bushes, and Memory Magic™? Be sure to discuss the best arguments that could be made by Ray $, Little Dude/Caitlin, and Kevin and note the best counter arguments against each.
For some reason, Kevin, Caitlin, and Little Dude are never heard from again. Ray $, however, is doing just fine. He looks to open a plant in the midst of Townsville, the center of McLand, manufacturing the extract Memory Magic™.

Ric and Nic are a happy couple of law students living together in a tent on several acres of undeveloped land given to Ric by his Uncle Steve “to use for his educational and personal purposes.” The land is known as Green Acres. Ray $ decides that Green Acres would be a perfect site for his plant. He enters into a lease with his friend Ric for ten years, renewable for successive ten year periods. In lieu of rent, Ray $ agrees to give Ric another parcel of land and to supply him with Memory Magic™ for his and Nic’s personal use. Townsville has a zoning ordinance in place that limits Green Acre’s uses to single-family residential units, but Ric told Ray not to worry about it, that he could set things up. Ray $ meets with Mayor Fred and obtains a variance in exchange for contributing money to Mayor Fred’s discretionary fund. Ric also hooks up Green Acre with connections to Townsville’s water, sewage and electrical lines, all of which run just outside Green Acre’s borders.

Meanwhile the Supreme Court of McLand hands down an opinion legalizing same-sex marriages. Ric and Nic at once decide to get married, exchanging vows that read “we have always considered ourselves as one, and now we are blessed to make it official.” Ric drops out of law school to work on managing property and to support Nic. Nic’s standing as a law student takes off, partly because of his use of the free Memory Magic™ and his connections to Ray $ through Ric. Nic ultimately lands a lucrative job at a top law firm practicing real estate law. Ric does all of the domestic chores, helps Nic with his studies and professional activities, and builds a house for the couple on the land given by Ray $ in lieu of rent.

Alas, a conservative wave sweeps through the land and the citizens of McLand enact a law overturning the Supreme Court decision, making same-sex marriages illegal, and any marriages that had occurred under the Court decision null and void ab initio. Ric and Nic soon after have a falling out and decide to go their separate ways. Meanwhile, Juan, upset with Ray $ and his capitalist ways, forms a group of homeowners, Concerned Citizens of Townsville (CCT) to look into the various goings-on.

Write a Memorandum analyzing the various property rights claims that Ray $, Ric, Nic, Uncle Steve (or his heirs), and CCT might make, against each other or the government. Be sure to include counter arguments and indicate how a court might rule, and why.
Somehow, Ray $ never loses. He builds a plant on Green Acres and starts manufacturing Memory Magic™, employing many. Ray $ thinks he can save money by using the parts of Green Acres outside the plant for bungalows for low-income housing for his workers. Meantime, the surrounding area booms, benefiting from a general improvement of the economy. But Juan and the Concerned Citizens of Townsville (CCT) have grown tired of Ray $. They fear that emissions from his plant will have long-term ill effects on the health of them and their children. And they do not like the noise (that’s one thing they hated) from the plant, or the traffic from all the workers coming in and out of the area. They hire you as lawyer, and present you with the following ideas:

A. Sue Ray $ and his plant in common law nuisance;
B. Rezone Green Acres to require all residential structures to be of minimum size and value;
C. Shut off the water, sewage, and electrical connections to Green Acres; or
D. Condemn Ric’s lease and move to evict Ray $ and his plant.

Write a memo to Juan and CCT discussing the pros and cons of each idea. Feel free to include your own ideas for achieving their goals.
Question 4
45 minutes

Congratulations! Your work on Questions 1 through 3 has so impressed Ray $ that he has decided to make you the next Supreme Court Justice of McLand (somehow, Ray $ has the power to do that). You will get the opportunity to overrule or rewrite one of the seminal opinions in McLand. Choose one (1) of the following opinions we read (and consider it a McLand Supreme Court opinion):

Johnson v M’Intosh (CB 3)
Hilder v St Peter (CB 493)
Mt Laurel (CB 1037)

Write a memorandum laying out:

A. What the original opinion essentially said;
B. If you were (re)writing the opinion, what changes you at least consider?;
C. What would be the likely or possible effects of your considered changes?; and
D. Whether you think on balance your revision or the original opinion would make for a better state of the law.

END OF EXAM:
HAVE A NICE SUMMER!