

**PROPERTY I
FINAL EXAMINATION: ESSAY COMPONENT**

1. This final examination is broken into two (2) parts: 1) a multiple-choice section (30 questions) worth 50% of your final grade for the course and 2) an essay section, worth 50%.
2. All exam questions are to be turned in with your answer sheets. Write your exam number in the upper right hand corner of this page. Write your exam number on the cover of each exam book too, or if you type your exam, put the number at the top of each page.
3. The directions for the multiple-choice component of the exam have been provided in a separate instruction sheet. This essay component is a limited open-book exam. For the essay component of the exam, **you MAY consult ONLY:** your casebook; your course syllabus; any handouts from class; and any materials prepared by you or by a group in which you were an active participant, including your notes and outlines. **You MAY NOT** consult any other materials, including, but not limited to, hornbooks; treatises or commercially prepared materials. You may not access any information in electronic form through your laptop or other technology for this exam. Except solely for use of ExamSoft, laptops, cell phones, hand-held computers or similar technology are strictly prohibited.
4. There is one essay question. It is worth 50% of your grade for the course and is estimated to take an hour and forty five (105) minutes.
5. You have up to 3 hours total to complete this exam: 75 minutes for the multiple-choice section and 105 minutes for the essay portion. Returning the exam late will result in your receiving NO points for the exam.
6. This essay portion of the exam is four (4) pages long (including these instructions). **Make sure that your copy is not missing any pages.**
7. If any pertinent facts appear to have been omitted, or if you are convinced there is an error, make reasonable assumptions, state them, and proceed with your answer.
8. **You MAY NOT consult with, or in any way receive assistance, from anyone during this exam.** Per the student code of conduct, if you witness, or have knowledge of, anyone who violates this rule, you have an obligation to report such violation to the proper authorities at the law school.

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9. Please write as legibly as possible. Write on **every other line** of the exam book. You may use as many exam books as you deem necessary.

10. Take time to think through and briefly outline your answers before you begin to write. Grading will be based on your responsiveness to the questions asked, the ideas and information contained in your answers, application of doctrines and rules to the facts, as well as organization, clarity and the careful nature of your analysis. Assume for all questions that the cases assigned this semester are all equally binding precedent for your evaluation, unless the question specifically directs you to do otherwise.

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FACTS:

Diane has a close relationship with her mother Maud, who is now 85 years old and in good health. Contemplating her death and a possible period of incapacity in her future years, Maud asked Diane if she would help her manage her financial affairs. Diane happily agreed and they went to Kelly Bank, Maud's financial institution, to open a joint account to replace the existing account solely in Maud's name. When they were at the bank, the bank teller presented them several choices for how to structure ownership of the account. Upon reflection, Maud chose a joint tenancy with right of survivorship account. She liked that option because she had been told by the bank teller that with this kind of an account Maud would retain ownership of the money in the account, but that it would transfer to Diane at her death. Maud alone funded the joint account with \$100,000 transferred from the sole account now closed. Both Diane and Maud were signatories on the account and thus both were authorized to make withdrawals and manage the account. In the months following, when Maud asked her to do so, Diane made several withdrawals from the account on Maud's behalf and for her benefit. Maud was very appreciative of the help.

About 6 months after opening the bank account with her mother, Diane had an opportunity to realize her dream of opening a printing shop, where customers could come print and photocopy documents and photos. She decided to go for it. But Diane needed more money to start up the business. Accordingly, Diane withdrew \$10,000 from the Kelly Bank account. She did not ask, nor advise her mother of the withdrawal, because she was not sure her mother would agree it was a good idea. Diane figured this was a time when ignorance was bliss. She took the \$10,000 and bought equipment for the shop, and entered into a 5 year lease with Larry, who owned a well located shopping complex to house the shop. During the first year of occupancy things went well, and Diane was making a nice profit from the business. The next year though, there were problems. The roof leaked intermittently in two different places and Diane complained to Larry that she was having difficulty reliably finding a dry place to keep her technological and other equipment safe and functioning. Larry tried to fix the roof himself, but it still leaked about once every two weeks. 3 months went by since the leaks first occurred, and Diane complained again. This time Larry hired a professional roofer to do the repairs, but after 3 months, the leaks reappeared. Part of the problem was the weather—the shopping complex was in a very windy area near the ocean, and the wind pushed the rain under the roof tiles as well as on top of them. Diane had had enough. Although she had managed to protect her equipment by shifting things around within the space, she was worried that even occasionally having buckets collecting water from the leaks was bad for business. What customer would want to risk getting their important documents and treasured photos wet? Adding insult to injury, just last month, Larry had allowed another printing shop to rent space and open up in the same complex. Diane probably should have asked Larry to include a clause in her lease preventing him from renting to competitors, but she hadn't thought of that until now. Diane felt she would have to move her business from the complex to survive the competition.

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During her occupancy, Diane had made some changes to the space. She herself installed attractive wood framing around the interior windows and doors of the shop, and also installed a whole wall of built in shelves for product display and storage. To really grab the attention of her customers, Diane had also painted the entire interior and exterior of the shop bright pink with gold polka dots. Additionally, Diane also had contractors install a bathroom for customers. The bathroom cost \$10,000, and the other work Diane did cost another \$2,000. If she does leave, Diane wants that money back from Larry, but she fears he will not agree once he discovers these changes.

To deal with all this stress, Diane started drinking a lot of coffee. There was a Starbucks next door to the shop that she frequented. A lot of times Diane would shop in the Starbucks barefoot, leaving her shoes behind. Also, she tended to be too warm in the shop, so she always wore sleeveless shirts to work. Starbucks always had a policy of “no shoes, no service.” Recently however, Starbucks adopted a ban on sleeveless shirts, and posted signs on the doors and windows now saying “No shoes? No sleeves? No service!” Starbucks hoped that requiring shoes would promote more sanitary conditions and prevent injuries, and that both the shoe and sleeve requirement together would make the coffee drinking experience more upscale and thus attract more and more affluent customers. Students from the local college tended to come in too casually dressed from the Starbucks manager’s perspective; they tended to buy more inexpensive coffees; and they tended to hang out for hours. The Starbucks manager wanted to shift the clientele not only for financial reasons, but for aesthetics—he felt that people just look nicer when they are more formally dressed. Diane was angry about the shoes and sleeves rules and refused to comply. As a result, last week, the manager asked her to leave Starbucks and never return.

QUESTION: Assume you are an associate attorney at a law firm where Diane seeks legal advice and she tells you the facts set forth above. Write a memorandum to your supervising attorney that fully describes and evaluates all issues raised from this situation. Be sure to raise any relevant counter-arguments and possible alternative outcomes. Further, assume that the state of Delavania where these events occurred has no controlling law addressing implied warranties of fitness. Should the law imply such a warranty? Why? Why not?

NOTE: You have an hour and 45 minutes to respond.

**END OF EXAMINATION
HAPPY HOLIDAYS!
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