

**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 the grade for this final exam 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 any other 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 90 minutes.
5. You have up to 3 hours total to complete this exam: 90 minutes for the multiple-choice section and 90 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 and on the **front side only** of each page. 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:

Sadly, Simon's mother Molly recently died. Although handwritten by Molly, her will was legally valid under Delvania state law. The relevant provisions of the will provided:

“I leave my interest in Commercialacre to my son Simon. However, Simon shall not have the power to convey Commercialacre until he reaches the age of 30, unless Barb Salomon, my trusted friend and real estate lawyer, gives her consent to the conveyance, such consent not to be unreasonably withheld. If Simon ever violates this condition, then the property will pass to the Widener University School of Law forever.”

When his mother died, Simon was 21 and Commercialacre was being used to house a small family owned and operated pharmacy. Indeed, Molly had been the sole operator and owner of the business her whole life, and she left the pharmacy business to Simon as well. The pharmacy primarily sold prescription and nonprescription drugs and other incidental health related supplies (like sunblock and toothpaste) to the public, and about 75 local residents a week shopped there. It also had a small stand at the cashier's check-out counter that sold candy, gum and newspapers, along with one specialty item: fresh bread baked daily by Molly herself. The pharmacy was housed on the bottom floor of a two-story building, and used 1000 square feet of space. The top floor had been used as a storage area for Molly's personal belongings and some incidental supplies from the pharmacy.

After three months of owning Commercialacre and the pharmacy, Simon concluded that the pharmacy was not profitable enough and he developed a plan to make more money. Some 20 years ago, after the pharmacy had been in operation for a decade, the neighborhood in which the pharmacy was located had been rezoned to allow residential use only. The residential zoning was intended to enhance the safety and quality of life of the citizens who lived there, by among other things, limited conflicting uses of property and diminishing traffic and population density. Nonetheless, the pharmacy had been allowed to continue its operations. As a result, now the pharmacy was the only commercial property allowed for miles around. Simon viewed this monopoly of sorts to be a great commercial advantage for the property. He entered into a 10 year lease with CVS to take over occupancy of the space in 6 weeks. Simon rented out not only the first floor to CVS, but the second floor as well. CVS is a chain drug store and a discount store combined in one. CVS sells prescription and nonprescription drugs and many other items as well, including children's toys, baby supplies (diapers, formula etc.) cosmetics, and some basic foods like canned soup, milk, juice, bread and cereal. It typically has an entire aisle dedicated to candy and greeting cards. CVS anticipated that it would serve over 350 customers a week.

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Before CVS moved in, both Barb Solomon and the neighborhood learned of the lease and brought legal action against Simon from going forward with his plan. Barb thought that Simon was probably right that the CVS would be a more profitable use of Commercialacre. Barb's objection was based on her perception that Molly would never have wanted Simon to be able to go forward with this plan. CVS wants Simon to quickly resolve this issue or it may well sue for possession and lost profits.

QUESTION: Simon has come to you seeking your legal advice. Describe and evaluate the issues for him, presenting your neutral legal analysis of these circumstances. Fully discuss all relevant and applicable law and facts regardless of who you predict will be successful. Be sure to raise any relevant counter-arguments and possible alternative outcomes. In your discussion, when relevant, explain to Simon the policy rationales underlying the rules of law and what role if any they play in the application of the rules to the facts.

DO NOT DISCUSS regulatory takings law or vested rights.

NOTE: Estimated time allocation is 90 minutes.

END OF EXAMINATION

HAPPY HOLIDAYS!

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