EXAM NUMBER

PROPERTY LAW – CROUCH
Spring 2017
May 5, 2017, 8:30 am

Honor Code Reminder: Under the Honor Code, the submission of any academic work constitutes a representation on the student’s part that such work has been done and submission is being made in compliance with all applicable provisions of the Code.

EXAM INSTRUCTIONS

1. START OF EXAM: Do not start reading (other than this cover page) or writing on scrap paper until the proctor starts the exam.

2. EXAM NUMBER: Write your exam number on the line above.

3. LENGTH of EXAM: THREE (3) HOURS

4. EXAM MODE: The exam is to be taken using the OPEN LAPTOP mode.

5. MATERIALS: OPEN BOOK EXAM
   During the exam, you may use the assigned casebook, any reading assigned in class, and any of your own work-product. Your work product includes any material that you substantially participated in developing. You may not access the internet during the exam.

6. NUMBER OF PAGES: This exam consists of 4 pages. Please check to make sure that you have the correct number of pages.

7. SPECIAL INSTRUCTIONS:
   a. Topics: The exam is designed to focus on assigned reading and class discussion.
   b. Word limits: There will be a penalty for going over the word limit and you will receive no points for the portions beyond the limit. Points allocated for each question roughly correspond to the respective word limits.
   c. Location: Assume that all events take place in the United States, except as otherwise indicated. This exam is entirely fictional.

* DO NOT BEGIN EXAM UNTIL TOLD TO DO SO *
**Question 1** (intro) The college town of Crumblia, Missouri includes a residential district known as “East Campus” that houses about 4,000 people. East Campus includes two distinct regions – East Campus Heights (Heights) and East Campus Village (Village). 90% of the houses and residential buildings in Heights are owned by landlords (a handful of landlords actually own the majority of the residential units, including several buildings that house about 400 people each). Conversely, Village is made up entirely of single family homes, 85% of which are owner-occupied. For the past 20 years at least, Heights has been zoned (by the City) for multi-family residences (allowing for both multi-family buildings as well as single family homes) while Village has been zoned for only single family homes. About one year ago, the City enacted a comprehensive zoning ordinance that now allows multi-family residences in both Heights and Village.

When East Campus was initially developed in the 1920’s, the developer created a home owners association (HOA) that includes a set of covenants, conditions, and restrictions (CCRs) regarding use of the land, and that includes a set of by-laws allowing for amendment by a majority of members. To be clear, the HOA is a single HOA covering all of both Heights and Village. A unique feature of the CCR is that membership is on an owner-by-owner basis with each owner receiving only one vote, regardless of how many residences or units are owned by that particular owner. The result is that the HOA is effectively controlled by the home-owners even though the landlords own so much of the land.

**Question 1(a)** (300 words) Hoping to forestall any further high-density development, HOA members recently voted to prohibit any lost in the Village from being used for multi-family residential purposes. Although almost all of the landlords voted against the measure, it still easily passed. CROSBY owns a single-family home in Village that sits on a substantial land area near Heights. CROSBY voted “No” on the prohibition; he is hoping to sell his land and understands that the sales price will be higher if a developer would be free to tear-down and rebuild an apartment building. Will the covenant be binding on CROSBY? What action would you suggest CROSBY take to pursue his cause?

**Question 1(b)** (250 words) MASON is one of the landlords operating a 400-unit building. MASON advertises apartments available for “College Students” in a local housing ZINKEL. A single PARENT sees the ads and perceives that “college students” is code for “no children” while an elderly gentleman (GMAN) perceives the ads as code for “no elderly.” Both PARENT and GMAN decide to sue after each is refused tenancy (BAKER
indicated only that he found “other more-suitable tenants.”) Do they each have a case under the Fair Housing Act of 1968 (as amended)?

42 U.S.C. § 3604(a)-(c) is substantially reproduced below. Please cite it as appropriate.

[I]t shall be unlawful—

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.

**Question 1(c) (450 words)** KIRCHER owns one of the larger lots in East Campus that she purchased back in February 2000 (via quitclaim deed) from BOOTH. In the transfer, BOOTH divided her land (selling a portion to KIRCHER) and retaining the other portion where she lived for several years. Although the transfer purported to transfer Fee Simple Title to KIRCHER, it also purported to retain an easement for BOOTH to enter the land and cut a ‘reasonable amount of firewood’ from the land each year. The easement was documented as part of the February 2000 deed transfer and duly recorded with the Boone County Recorder of Deeds.
For several years, BOOTH continued to cut enough wood to supply the wood stove she uses to heat her home (usually one or two dead trees each year). In January 2005, BOOTH sold her house to GIROIR. GIROIR had no idea that such an easement existed while he lived there (buying wood from Lumberjack RAMU rather than getting his hands dirty). During that time, KIRCHER trimmed her own trees as needed. In October 2014, GIROIR sold the land to JESKE, now under a warranty deed. JESKE prudently inspected the deeds, and after noticing the easement walked over with his chainsaw to begin cutting. However, before he could begin cutting, KIRCHER told him to leave the land (threatening physical violence if he failed to comply). JESKE backed-off to nurse his fragile ego. It is now March 2015, and JESKE hopes to use his easement to prepare wood for next winter. Does he have a case? (Please ignore torts issues associated with the potential assault).

**Question 2(a)** (150 words) Please explain why *Kremen v. Cohen*, 337 F. 3d 1024 (9th Cir. 2003) should not be considered a Trademark Case even though it involved domain name designed to uniquely identify a website. [Note – *Kremen* is found in the Supplement]

**Question 2(b)** (150 words) Explain the impact of (a) a servitude prohibiting the use of land for multi-family-residential-purposes as compared with (b) a defeasible estate triggered by use of land for multi-family-residential-purposes. Explain why the servitude beneficiaries need not worry about the Rule Against Perpetuities (RAP).

**Question 3** (400 words) NIMBLELOOP is proposing a 760 MPH train from St. Louis to Kansas City that would cut travel time to 23 minutes. NIMBLELOOP has requested that the State of Missouri grant it power of eminent domain to complete the line as contemplated under Missouri Revised Statute 523.262 (“A private utility company, public utility, rural electric cooperative, municipally owned utility, pipeline, railroad or common carrier shall have the power of eminent domain as may be granted pursuant [by the state]). Missouri law also provides that “No condemning authority shall acquire private property through the process of eminent domain for solely economic development purposes.” Missouri Revised Statute 523.271. Once a private entity (such as a railroad) is given power of eminent domain, that entity can act to condemn property without asking for further consent from the government, so long as the laws and procedures are otherwise followed (such as paying just compensation).

You are a State Senator considering whether the state should grant this power to NIMBLELOOP? What are your thoughts? Should the state place any further administrative limits on NIMBLELOOP’s land acquisition process?