Write your Exam Number Here: ____________________

**Introduction:** This is a **three-hour in-class examination.** The exam covers concepts derived from the assigned reading and in class discussions. The best answers will rely upon those concepts to provide a full explanatory answer to each question presented.

**Materials allowed:** During the exam, you may use your assigned casebook, and any reading assigned in class (including daily reviews), and any of your own work-product. Your work product includes any material that you substantially participated in developing. Thus, your “group outline” is permitted, but a commercial outline is not permitted. No other materials may be used during the exam. You may not access the internet during the exam.

**Blind Grading:** Write your examination number in the space indicated above on this page. Do not put your name on anything in connection with this examination. At the end of the exam, you must return this paper.

**Writing answers:** The essay questions are divided into subsections. The best answers will follow the same exam structure. Thus, the answer to question 1(a) should be labeled 1(a). Fully explain your reasoning and thought process supporting each answer -- including an analysis of why potential answers were excluded.

**Word limits:** I have imposed word limits on each essay question. There will be a penalty for going over the word limit and you will receive no points for the portions beyond the limit.

**Location:** You should assume that all events take place in the United States and that all characters are located in the United States, except as otherwise indicated.

**Thank you:** I truly enjoyed teaching property law this semester. I wish you the best of luck on the examination and look forward to seeing you at the law school over the next few years. DC
Question 1

[Note: Although the following question may parallel Professor Crouch’s own personal issues, please do not assume facts not provided below.]

Westmount Estates (Lots A-M in the diagram below) is located in Columbia Missouri and was originally platted in the year 1907 by the owner at the time – Judge Stewart. All of the lots have been developed as residences except for lots A, B, and C that are all owned by Dr. Cass. In March 2015, Crunch contracted to purchase those three lots from Cass with a closing date set for April 20, 2015.

When Judge Stewart originally sold the lots in Westmount Estates, he included a number of covenants that he thought would increase the ongoing value of the community. In particular, as each lot was sold the relevant deed was prepared with an inclusion of the requirements that (1) the lot only be used as a single-family residence and (2) any house built upon the land must be a two-story house. Almost all of the lots (all except for lot C, L, and M) included an additional covenant that (3) the front door of any house must face the front of the lot. Apparently, the original purchasers of C, L, and M thought that they would like for their houses to face Lathrop Street. As suggested above, lot C was never built upon, but the houses on lots L and M do indeed face Lathrop Street. It is clear from the original platting that the “fac[ing] the front of the lot” limitation described above should be construed as facing the north-south street (Garth or Thilly) abutting the respective lot.

As can be discerned from the estates plat, Lots A, B, and C do not have an adjacent north-south street. The historic explanation is that the original 1907 plat indicated that Garth Street would continue-on one block further south. However, that street-extension was never built and so Lots A and B have remained land-locked for a number of years. The City of Columbia held an easement to build the extension but abandoned the easement in 2011.

The original sales (by Stewart) also all included statements that all of the lots of Westmount Estates would be mutually bound by the same covenants; that any mutually-bound lot owner would have a cause of action to enforce the covenants; and that the covenants would bind all future lot owners. Finally, the deeds included a mechanism for amending the covenants with a vote of ¾ the Westmount Estates lot owners.

In 1956, the owner of Lot C (Harryman) purchased Lots A and B from their then-owner (Ignacio). Then, in 2010, Cass purchased lots A, B, and C from Harryman.
1(a) Crunch is curious as to whether the first restriction (Single Family Residence) should be seen as a real covenant, as an equitable servitude, or as a negative easement. Explain which ones fit the facts. (50 words).

1(b) Crunch is looking to build a two-story house on Lot B that would face toward Lathrop Street (across Lot C). However, he is concerned that would violate the covenant. Is there a good argument that the covenant is no longer applicable? (100 words).
1(c) Based upon your answer in 1(b), should Crunch take some action prior to closing upon the lot to ensure that he is purchasing good and marketable title? Does it matter that Crunch did not include a “suitability to build” condition in the original land purchase contract? (100 words). [Note – the contract does require Cass to provide “good and marketable title”]

1(d) After purchasing the lots, Crunch learned that the community has been organizing to implement an annual assessment of $500 per lot per year ($1,500 for three lots) to fund several activities including: (a) fancy street lamps and (b) the Fourth of July party. A vote was held, and everyone voted Yes except for Crunch who voted “H@## No!” Can Crunch challenge the new assessment? (150 words).

1(e) In 1990 the railroad track just south of Lot A was converted to a walking-trail. Many members of the community, including the owners of Lots G and H began regularly walking across Lots A-C in order to reach the trail. The frequent walking caused a dirt pathway to develop. When he owned the property, Harryman knew of the community usage, but made no move to stop the walkers because she had no current use for the property and because her insurance agent had assured her that she had adequate personal injury liability insurance. Cass never knew of the usage because Cass never actually visited the property and because in 2007, the city developed an alternative nearby public entrance to the RR Trail. Thus, by 2010 almost all usage had stopped. Does this prior usage create problems for Crunch? (200 words)

1(f) Several years after moving onto the wooded property, Crunch began to lease an above-the-garage apartment to a graduate student (James) and the lease term runs through August 2020. The overhanging oak-trees create a tremendous amount of pollen to which James is somewhat allergic. In particular, the Oak pollen causes him to sneaze many times per day and night. James asked Crunch to seal the windows and provide an improved house filtration system that James believes would greatly improve the problem. Crunch refuses because the anticipated cost of the improvements ($1000) is well above the monthly rent ($400) and because he believes that James’s problem is unreasonable.

Assume now that you are counseling James (as his lawyer) in April 2020. Provide him with advice and options. (150 words).
1(g) Now assume that you are advising a member of the Missouri House of Representatives who is considering proposing a new statute addressing the allergic-reaction issue with the following language:

No landlord or real property owner ("owner") shall be held liable or in breach of a residential lease based upon the owner’s failure to protect against airborne allergens.

Is this good policy? (150 words).

Question 2. When Oren died (unmarried at the time), he left the following valid Will:

My Vacation Home in Aspen: To Ally for the rest of her natural life and then to her first child (or grandchild) who graduates from law school;

My Boone County Farm: To Braden, on the condition that the land continues to be used as a farm for the next 20 years, but if it ceases to be used as a farm then Caroline has the right to enter and take possession; and

My remaining possessions to Deene.

Oren did in-fact own a vacation home in Aspen and a Boone County Farm at the time of his death. However, the farm was subject to a first mortgage held by BankOne and the Aspen home is subject to an easement that allows Ernie to cross the land in order to reach his adjoining estate. At his death, Oren also had an automobile (which he held as joint tenants with rights of survivorship with Greta) and $500,000 in cash.

At the time of Oren’s death Ally has one child aged 15 (who is actually hoping to go to law school). Oren’s closest living relative (‘heir’ under the law) is Favio.

Explain who holds what rights? (400 words).