

PROPERTY SECTION 7

Professor Donahue

**Available for download:** November 1, 9:00 a.m.

**Due:** By 4:30 p.m., November 25

**PRACTICE EXAM**

The exam mode for this exam is TAKEHOME.

This exam is 4 pages long. Please check to see that you have all 4 pages. [*The following will be on the “real” exam but does not apply to this one:* (If you don’t, try downloading it again; if that doesn’t work, get in touch with [UserSupport@extegrity.com](mailto:UserSupport@extegrity.com).)]

There is one essay question.

This is an open-book exam. You may use your casebook, your notes, and any other material that you wish (including material that is “online”). [*The following will be on the “real” exam but does not apply to this one:* Collaboration is not permitted. Your answer must be entirely your own work. Please do not discuss these questions with anyone until 4:30 p.m. today.]

[*Once more, the following will be on the “real” exam but does not apply to this one:* There is no page or word limit, but conciseness will be rewarded and verbosity penalized. I won’t tell you how to allocate your time, but I would strongly encourage you to spend at least an hour reading through the exam and making notes of issues that you see. I would also urge you to spend at least an hour at the end editing and proofreading your answers. Seven hours of non-stop writing can produce an impressive amount of paper, but the thought reflected is likely to be incoherent. *For this exam, consider the following:*] This exam was originally given as an hour and a half essay question on an in-class exam. That wasn’t enough time, but three hours should be plenty. Once more, a stream-of-consciousness writing for three hours can produce a lot of bytes. Resist that temptation. Think before you write and edit what you write.

[*Once more, the following will be on the “real” exam but does not apply to this one:* Once you have entered your exam in Exam4, copy what you wrote and paste it into a document using your word-processing program. Once you submit the exam electronically, only an encrypted copy is saved on your hard drive, and you will not be able to access it. If you want me to comment on your effort, send me a copy by email ([rspang@law.harvard.edu](mailto:rspang@law.harvard.edu)). I’ll do my best to get it back to you within a few days. *For this exam, consider the following:*] If you get your practice exam back to me by email (same address as above) by 4:30 on the Wed. before Thanksgiving, I promise you that I will get it back to you within a week with a grade on it. I usually can do better that, i.e., provide a few comments. If you get the practice exam to me after that, I’ll try, but I can’t promise.

You will note that the parties’ names in this case lead to initials (A., B., C., etc.). I thought about using the Armenian alphabet, but decided that that might be too much of a good thing.



PROPERTY, SECTION 4, PRACTICE EXAM, CONTINUED

Yes, this is a story about a farm. Many property exams contain stories about farms, because it allows one to work out a genuinely mucked up title over a long period of time, and also because most Americans have an ambiguous relationship to farms. We imagine that we have left the farm (even if the farm was in another country) and in leaving the farm, we left a simpler, and, in some ways, a better life. But, as I said, the relationship is ambiguous; there were reasons why most of us left the farm. So this is a story about a farm that tries to capture our nostalgia for rural life but also our horror of it. Whether, and how, this might affect the results in the following case is for you to decide.

The family was named Stark, and they farmed east of Eden, in the American state of Ur. It was a good farm when we pick up the story: forty acres of good arable for a cash crop, fifteen acres of woods, five acres for a house, a barn, a vegetable garden, a chicken coop, etc. Don't forget the vegetable garden. It's going to become important.

In 1980, Andrew Stark was the owner in fee simple of the Stark Farm, with an unimpaired chain of title going back to a grant from the Federal Government in the mid-nineteenth century. In that year, Andrew and four of his neighbors all signed and delivered to one another copies of a written instrument, which read in pertinent part:

“Whereas the parties anticipate the likely emergence in Eden of heavy demand for conversion of open and agricultural land to residential and commercial development; and whereas the parties agree that the common welfare of Eden requires the preservation of sizeable tracts of land in an open or natural state; now, therefore, the parties do agree and covenant with one another, each for themselves and their successors in consideration of one another's covenants, that if any of the parcels hereinabove described [and the descriptions were good descriptions of the Stark Farm and the four adjoining parcels] is ever used for other than agricultural purposes, it shall immediately become the property of the Eden Audubon Society.”

Andrew died in 1983, leaving a will which was duly admitted to probate and which provided, in pertinent part:

“I devise the Stark Farm to my son Bartholomew and his heirs in fee simple for as long as they shall farm the property; and if they shall ever cease to farm it, then to my daughter, Clarissa and her heirs in fee simple, if she shall then be living; otherwise to the Eden Audubon Society.

“All the rest and residue of my property, real personal and mixed, I devise and bequeath to my aforesaid son Bartholomew and my daughter Clarissa, and to the survivor of them.”

Bartholomew took possession of the Stark Farm and farmed it until 1988 when he died intestate, a widower survived by his only child, David, who took over the farming operations on the Stark Farm. In 1995, Clarissa, and her husband, Ebenezer, received the following letter signed by David:

“Dear Aunt Clarissa and Uncle Eb.,



PROPERTY, SECTION 4, PRACTICE EXAM, CONTINUED

“Despite my respect for Grandpa Andrew’s wishes, I’ve found that the farmer’s life is not for me. Deeply as I love you both, I’m perfectly happy to have you take over the Stark Farm. The land is all yours. I’m sure that you’ll take care of it, and, particularly, that you, and anyone who comes after you, will see to it that nothing ever happens to the vegetable garden.”

Clarissa and Ebenezer wrote David that they would respect his wishes, and took over the farm. David joined the Foreign Legion.

From 1995 to the present (which is 2013) Ebenezer has managed the farm, hired the help, borrowed the necessary funds on his own signature, and paid the taxes by checks on his own bank account. Clarissa lived with Ebenezer on the farm and helped out until her death in 2011. None of her children survived her. She left no will, and under the common law of intestacy (which still prevails in Ur), her heir is her nephew, David.

In the meantime the development that Andrew and his neighbors anticipated in 1980 has come to fruition. Ebenezer has concluded that farming the Stark Farm is no longer feasible because of the combined effect of a number of circumstances: (1) Residential development in the area has prompted the adoption of environmental regulations that severely restrict the use of pesticides that are necessary for the profitable operation of the farm. (2) Huge mechanized farms are being developed in adjoining states (and in more rural areas of Ur) that are able to sell their produce at prices with which the Stark Farm cannot profitably compete.

Fiona, a land subdivider, is willing to pay Ebenezer a sum of money for the Stark Farm about twenty times its current worth as a farm, if satisfactory answers can be produced to the following legal questions:

- (1) Does Ebenezer own any interest in the Stark Farm? If so, what interest?
- (2) If Fiona acquired the property from Ebenezer, would anyone be able to invoke legal sanctions against Fiona for converting the land to residential uses?
- (3) Fiona is particularly concerned about the exchange of letters between David and Clarissa and Ebenezer. She knows that these letters will probably have to be made part of the public record if he is going to establish title in Ebenezer, and she has learned that the reference to the garden in the letters has to do with the fact that a young child of Andrew’s, who died in mysterious circumstances, is buried in the garden.

Your senior partner (Ebenezer’s attorney) has asked you for a preliminary memorandum analyzing the problem and indicating factual or legal questions requiring further investigation. You should write the memorandum, taking into account, to the extent necessary, the following statutes, the only ones in the state of Ur of any possible relevance to the case.

- (1) A common-law reception statute. (1785)
- (2) A married women’s property act. (1850)
- (3) A twenty-year statute of limitations on actions to recover real property. (1805)



PROPERTY, SECTION 4, PRACTICE EXAM, CONTINUED

(4) “Whoever, under claim and color of title, shall have maintained uninterrupted possession of land and paid the taxes on the same for a period of seven consecutive years shall be deemed the owner thereof.” (1920)

(5) “A conveyance to two or more persons, not husband and wife, shall be deemed to create a tenancy in common except as otherwise expressly provided.” (1803)

(6) A standard-form statute of frauds. (1790)

(7) A race-notice recording statute. (1850)

(8) A statute providing that no excavation shall be undertaken in burial grounds without first obtaining a permit from the local historical commission and the Federal Bureau of Indian Affairs. The historical commission is to conduct a hearing at which all parties who claim to be descendants of the persons buried in the grounds are to be allowed to present evidence that such excavation is not in the public interest. Any permit is to be conditioned on the excavator’s agreeing, at his or her own expense, to disinter the remains and to provide for their reburial elsewhere. (This statute was passed in 1990 at the behest of representatives of native peoples in the state, but it is not by its language confined to burial grounds of native peoples.)

THE END