

# Sample Exam Essay Answer

LAW-518-003, Property Law

Charles Duan

Spring 2025

*This sample answer is intended to be more comprehensive than necessary, and in particular addresses several issues only to explain why they are irrelevant. Footnotes provide commentary on the answer.*

## 1 Question 1

This question asks about violations of real property rights, namely property rights in land and houses.<sup>1</sup>

### 1.1 Bob's House

Interests relating to Bob's house<sup>2</sup> begin with Dave's initial ownership of the land that became Evewood, which he held in fee simple absolute following the death of Eve (due to the right of survivorship from the tenancy by the entirety). The conveyance to Bob, "to Bob for life," resulted in Bob holding a life estate for the life of Bob, and Dave holding a reversion following Bob's life estate to become fee simple absolute.

As a life tenant, Bob enjoys rights to possess and use the house, as well as a right to exclude others. Alice's explosion of the propane tank interferes with

---

<sup>1</sup>Note the instructions for the question.

<sup>2</sup>I've organized this essay around the physical resources, rather than the people. While either approach is fine, the risk of organizing around people is that a lot of the analyses end up being repeated (for example, the discussion of life estates must appear twice, in the sections about Bob and Dave). So organizing around resources may save you some writing time.

these rights, either as a trespass or a nuisance (depending on whether a court considers the shockwave to be Alice entering upon Bob's land).<sup>3</sup>

Alice also enters Bob's land to help get Bob out of the collapsed house. It seems unlikely that a court would deem that sort of helpful action a trespass.

The covenant of quiet enjoyment is inapplicable to Bob's house, because he is not leasing it. (Even if there were a covenant of quiet enjoyment in the deed from Dave to Bob, that covenant would only cover title defects and not the quality of the house; in any event Alice could not violate that covenant because it obliges only Dave.)

Dave, as the holder of a reversion, has a right to be protected against waste under *Jackson v. Brownson*. Here, Bob's failure to repair the crack in the foundation potentially contributed to the destruction of the house, potentially giving rise to a cause of action for Dave under the waste doctrine.

## 1.2 Driveway

Because the driveway is on Alice's land, Alice owns it, so Dave is a trespasser unless he has some other justification for entering the driveway. Dave obviously has implied permission when Alice asks Dave for a ride home, but what about the other times he has used the driveway?

Dave may have an easement to use the driveway through Alice's house. Because the propane tank has obliterated the easement, Dave's ability to use the driveway is now impaired, so his property rights in the easement have been violated.

There was no explicit conveyance of an easement in the driveway, and Alice's dislike of Dave's use of the driveway suggests that Dave has no license, revocable or irrevocable, to use it as a general matter. Thus, the easement must arise by operation of law, meaning it must be an easement by necessity, an easement implied by existing use, or an easement by prescription.

- The easement is not by necessity because Dave's property, abutting North Road, is not landlocked.<sup>4</sup>

---

<sup>3</sup>Again, pay attention to the text of the question, which instructed not to analyze the causes of action or remedies. As a result, all that was necessary was to name nuisance/trespass here in connection with the explosion, not to state or apply the rules for nuisance or trespass.

<sup>4</sup>This is one example of the "summary disposition" or one-sentence form of analysis. It identifies the issue with the doctrine's name, and then it identifies the key fact and doctrinal term ("landlocked") that answers the issue.

- There is no easement by prescription because Dave has been using the driveway only for about five years, less than the statutory period of 20 years.<sup>5</sup> For the same reason, Dave did not adversely possess the driveway (plus the fact that Alice almost certainly also used the driveway, making Dave's use nonexclusive).

**Easement Implied by Existing Use** Dave potentially has an easement to the driveway implied by existing use.<sup>6</sup> For an easement to be implied by existing use, the easement holder must show (1) common ownership of the claimed dominant and servient parcels, (2) subsequent conveyance or transfer separating that ownership, (3) before severance, the common owner used part of the united parcel for the benefit of another part, (4) this use was apparent and obvious, continuous, and permanent, and (5) the claimed easement must be necessary and beneficial to enjoyment of the parcel conveyed or retained by the grantor or transferrer.<sup>7</sup>

Here, Dave originally had (1) common ownership of the parcels now owned by Dave and Alice, and (2) subsequently conveyed the latter parcel to Alice separating that ownership. (3) Since before Evewood was created, Dave used the driveway of the united parcel, now on Alice's land, for the benefit of the other part, namely the northern parcel, and so his use predates the severance. (4) Presumably the use was apparent and obvious, continuous, and permanent, given that Alice acknowledged that "Dave has been using that driveway since before Evewood was even created" and seems to keep using the driveway, to Alice's annoyance.<sup>8</sup>

Regarding (5) necessary and beneficial, case law typically does not require absolute necessity, but rather that the easement be "reasonable, highly convenient and beneficial to the dominant estate."<sup>9</sup> Thus, Dave would argue that the ease-

---

<sup>5</sup>Pay careful attention to durations of time. The 20-year statutory period was given in the exam instructions, and the 5-year duration was implied by the fact that Dave and Eve bought the land 5 years ago.

<sup>6</sup>This section uses the "extended" or multi-paragraph analysis. In this case, as with other extended analyses below, it is actually excessive and a good answer would have used the one-paragraph form. I'm just using it here for demonstration purposes.

<sup>7</sup>Although the numbers are unnecessary, I highly recommend them as it makes the analysis easy to follow and also ensures that you don't miss any elements.

<sup>8</sup>In an extended analysis, each element is given either a summary disposition or a paragraph analysis. Here, several of the elements only deserve summary dispositions, all of which are combined into this paragraph.

<sup>9</sup>This element of the implied easement rule requires more discussion and also has a specific sub-rule. Thus, the sub-rule should be stated first, and then the arguments as to the element are

ment is convenient for accessing his property via South Road, benefiting his land. Alice would respond that, given the presence of North Road, use of the driveway is duplicative and thus unreasonable. She could also point to the common law rule (applicable because the Restatement is not in effect in this jurisdiction) that implied reservation of an easement requires a showing of strict necessity on the theory that the grantor could easily have made the easement explicit at the time of conveyance. Here, Dave conveyed land to Alice and could have explicitly reserved the easement to the driveway; his failure to do so arguably ought to be construed against him based on this strict-necessity rule.

On balance, it is difficult to see who should win, but Alice's position has the merits of encouraging more explicit clarity of property rights and avoiding ongoing encumbrances of fee simple title that could limit future productive uses, so there are good reasons to believe that no easement implied by existing uses was present.

### 1.3 Covenant

Evewood, as the HOA, holds a real property interest<sup>10</sup> in the form of restrictive covenants that limit uses of property within the HOA, including Alice's property.<sup>11</sup> It is stipulated that the covenants are validly formed.<sup>12</sup>

However, in order for the HOA bylaw against open flames to be enforceable, the bylaw must be "reasonable."<sup>13</sup> Per *Hidden Harbour v. Norman*, a reasonable bylaw is one that is not an arbitrary or capricious rule bearing no relationship to the health, happiness and enjoyment of life of the various unit owners.<sup>14</sup>

Here, Evewood would argue that the bylaw against open flames is reasonable. Prevention of fires bears a relation to the health, happiness and enjoyment of the

---

given next in the paragraph. As an exercise, consider how you would convert this paragraph to one or two sentences so that you could write up the entire implied-easement analysis in the one-paragraph form.

<sup>10</sup>A covenant is a real property interest because it determines rights and duties in land.

<sup>11</sup>The interest belongs to the HOA, as a legal entity. Dave as the president of the HOA does not personally have the benefit of the covenant, nor do any of the other HOA members.

<sup>12</sup>It was thus unnecessary to analyze the validity of the covenant or the HOA.

<sup>13</sup>This and the next paragraph exemplify the standard one-paragraph analysis form. This sentence here states the issue: It identifies the relevant doctrine in connection with the disputed factual situation.

<sup>14</sup>This is the rule statement. The case citation is unnecessary; the important thing is that the rule statement contains the key terms (elements) of the rule.

unit owners' lives, so the rule is not arbitrary or capricious.<sup>15</sup> Alice might respond that the rule is far too restrictive, going so far as to restrict private activities like lighting matches that have no plausible effect on anyone else in the community.<sup>16</sup> But courts are typically deferential to HOA restrictions on private uses, as seen in the *Narstedt* case involving the rule against even indoor cats; such deference is warranted to respect private parties' economic preferences reflected in covenants without courts injecting their own value judgments.<sup>17</sup> Thus, the bylaw against open flames is likely reasonable, and Alice's violation of that bylaw constitutes a violation of Evewood's property interest in the covenant binding Alice's land.

## 1.4 Other Land

Neighbors to Bob's and Alice's houses, including Dave, may have nuisance claims in view of the destructive activities described above, which may pose an eyesore or danger to the neighborhood. (These would likely not be a public nuisance, but rather private, given that relatively few people would be affected.)

Additionally, Charlie and Alice both entered each other's house unannounced, which could constitute trespasses. But the two of them obviously knew each other well; one imagines that longstanding friendship ought to play a role in the trespass determination.

## 2 Question 2

Since the prize money is awarded to "the owner" of the pies, the allocation of the prize money depends on who has property interests in the pies.<sup>18</sup> The pies are made from the bag of Hershey's Kisses, so it is necessary to first determine who owns the Kisses, and then to determine who owns the pies based on that.

Charlie certainly gave Alice the bag of Kisses voluntarily, so Alice rightfully had possession of them. (Otherwise, Alice would have stolen the kisses, and

---

<sup>15</sup>This is an analysis sentence: It connects facts from the prompt with the relevant terms from the rule. (Notice, by the way, that the "one-paragraph" analysis can be split into two paragraphs, to highlight where the analysis starts—often this is a good idea.)

<sup>16</sup>The analysis should always consider plausible arguments on both sides.

<sup>17</sup>This is how you introduce legal theory, here the judicial value-judgment problem, into a legal analysis. It helps to decide between opposing arguments.

<sup>18</sup>Given that prompt, that means that this question was a matter of legal doctrine, not property theories. As a general matter, theoretical considerations should be a part of the legal analysis, but the legal rules and elements should always take priority.

Charlie would own the pies per *Wetherbee v. Green*.) The question, then, is the nature of Alice's property rights in the Kisses, and in particular whether Charlie retained property rights in them.

## 2.1 Bailment

Charlie would argue that delivering the bag to Alice created a bailment relationship between them. A bailment is created when personal property is (1) delivered from one person (the bailor) to another (the bailee), (2) for a particular purpose or on mere deposit, (3) on a contract express or implied, such that (4) after the purpose has been fulfilled, it shall be redelivered, otherwise dealt with according to the bailor's directions or kept until the bailor reclaims it.

Here, all the elements are likely satisfied. Charlie (1) delivered the chocolates to Alice by handing over the bag. His particular purpose (2) was to have her hold onto the candies until he could stuff them into Easter eggs. That expectation created a promise, that is, (3) an implied contract, between the two of them, particularly that (4) Alice would keep the chocolates until Charlie could retrieve them for purposes of the Easter egg hunt.

Accordingly, Alice is a bailee of the chocolates, and Charlie is a bailor. Under *Allen v. Hyatt*, a bailee is liable for negligence, and upon proof of non-delivery the bailor is entitled to a statutory presumption of negligence. Since Alice did not deliver all the chocolates back (she could not, since she baked them into pies), she would thus potentially be liable to Charlie for damages in the amount of the chocolates she used.

## 2.2 Gift

Alice would contend, by contrast, that Charlie gave Alice at least a portion of the Kisses as a gift. The requirements for a valid gift are (1) donative intent, (2) delivery, and (3) acceptance. Here, (2) delivery is unquestioned and the same as the bailments analysis above. Acceptance (3) is also clear since Alice took the bag. But donative intent is in question. Alice would argue that, in response to her asking Charlie whether she could use a few of the Kisses, Charlie said, "whatever," indicating that he assented to giving her some as a gift. Charlie would respond that, especially given his drowsy state, he never made a clear statement of intent to give them as a gift. Moreover, Charlie would point out that he did tell Alice that he had barely enough for his Easter egg purpose, and so would never have intended to let Alice have half the bag.

Although there are reasonable arguments on both sides, Charlie perhaps has the stronger position, insofar as his words never made a clear disposition of the Kisses as a gift, and clarity in property transfers is generally valuable. Accordingly, a court would likely determine that no gift to Alice occurred.

Alternatively, Alice could argue that she was entitled to use some of the chocolates as a term of the bailment contract between her and Charlie. This would require a similar analysis of Charlie's intent with respect to the quantity of chocolates he intended to let her have.

## 2.3 Improvement

Alice could next argue that even if her interest in the chocolates was merely as a bailee, she nevertheless owns the pies by virtue of being an improver. Under *Wetherbee v. Green*, one who in good faith takes another's personal property and works a transformation in identity to that property may keep the improved items, but potentially owes damages in the amount of the costs of the taken raw materials. However, a willful trespasser will not gain title to property regardless of improvement.

Regarding good faith, Alice would point to the fact that, even if her interest in the Kisses was merely that of a bailee, she believed that she was entitled to at least some of the Kisses as a gift, for the reasons given above. As in *Wetherbee*, an honest mistake can qualify as good faith, Alice would argue. Charlie would respond that Alice plainly should have known she was not allowed to take half the bag of Kisses, knowing the potential harm it would cause to Charlie's Easter egg plans. Here, it seems likely that Alice's good-faith argument would prevail, at least insofar as she did have permission and there is no reason to doubt the honesty of her personal belief. But it is not difficult to imagine courts going either way on this element.

Regarding transformation of identity: While historically courts have focused on chemical or material change to the personal property at issue, *Wetherbee* suggests that the more proper focus is on the economic change in value, namely that an improvement that gives the resulting property nearly all of its value will qualify as transformation of identity sufficient to give the improver ownership. Here, the bag of Hershey's Kisses is apparently worth just a couple of dollars, whereas the pies are worth apparently a \$3000 prize. That suggests that Alice's improvements, namely turning the chocolates into pies, gave the resulting property nearly all of its value and thus count as a substantial transformation of identity.

Based on this analysis, Alice would be a good-faith improver of the Hershey's Kisses. She should receive the prize money, but would owe Charlie damages in the amount of the cost of the Hershey's Kisses that she used to make the pies.

If Alice is not a good-faith improver, then she would fall under the other rule of *Wetherbee*, namely that a bad-faith improver gains no title despite the increase in value. In that case, Charlie would own the pies and thus be entitled to the prize.

## 2.4 Other Issues

In view of the property damage caused, Alice may owe significant sums of money to Evewood, Bob, Dave, and others. She could potentially use the prize winnings to pay for these damages. But that does not make the injured parties entitled to the prize money; none of them have a property interest in the pies.

The rules for first possession or initial allocation are inapplicable because none of the relevant resources were unowned. Charlie owned the Kisses at the beginning of the scenario; Alice presumably owned all the other ingredients.

The rules for good-faith purchasers are also irrelevant, because no one purchased anything from anyone.

Alice may or may not have intellectual property rights in the pie recipe. But those do not affect who owns the pies themselves.

## 3 Question 3

Under the fair use doctrine, the use of a copyrighted work is not an infringement if that use is considered "fair" in view of the four-factor test of 17 U.S.C. section 107. The first factor of that test, to be discussed here, considers "the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes." That factor, in particular as it has been interpreted in *Campbell*, turns on a number of further elements that can be applied to whether the song lyrics in the examination text constitute fair use.<sup>19</sup>

### 3.1 Commercial Versus Nonprofit

First, the statutory text asks "whether such use is of a commercial nature or is for nonprofit educational purposes." Here, the obvious answer would seem

---

<sup>19</sup>Legal rules can arise from the text of statutes, and also from cases interpreting the statute. In this question, it was important to look at both.



that the use is for nonprofit educational purposes, since the use is a law school examination hypothetical. Further supporting fair use is the list of exemplary fair uses at the beginning of the statute: “teaching (including multiple copies for classroom use), scholarship, or research.” A law school examination is useful for teaching, and potentially for scholarship and research in that it puts forward complex, multifaceted questions of law.

However, there are possible arguments on the other side. Using the examination for purposes of testing is distinct from putting the examination on a public website for anyone to read or see. While the author of the examination might argue that public posting is meant to educate future law students or the general public, the response might be that the examination author is posting the examination to attract interest in and visitors to the author’s website, thereby conferring valuable reputational benefits that go beyond educational purposes.<sup>20</sup> Accordingly, it is not immediately clear whether posting the examination and song lyrics publicly is a commercial or nonprofit use.

### 3.2 Transformative

Nevertheless, *Campbell* states that the commercial/nonprofit distinction “is only one element of the first factor enquiry.” Another consideration is “whether the new work merely supersedes the objects of the original creation, or instead adds something new, with a further purpose or different character, altering the first with new expression, meaning, or message.”

This test of “transformativeness,” as *Campbell* puts it, raises further questions about the examination. On the one hand, the examination simply appears to reprint the song lyrics without making any commentary about what the song is about; the facts of the hypotheticals in the examination are unrelated to those lyrics. That would suggest that “the commentary has no critical bearing on the substance or style of the original composition,” weighing against fair use under the first factor. Indeed, one can easily imagine that the author of the examination “merely uses” the lyrics “to get attention or to avoid the drudgery in working up something fresh” for law students on their final.<sup>21</sup>

---

<sup>20</sup>There are many other possible arguments favoring commerciality (for example, the website might make advertising revenue, or the law school earns money from tuition). Any of these were acceptable and credited. However, the reputational benefit argument is one that lawyers tend to gravitate toward, so it is worth keeping in your mental collection of arguments.

<sup>21</sup>Since the exam gave a specific case to work with, it is highly advisable to mine the case for useful direct quotes that you can pair up with the facts, strengthening your argument that the

On the other hand, the included lyrics and the resulting examination hypothetical seem fairly different in content. The song seems to be about a romantic affair involving a physical “kiss”; the examination repurposes this to be about a candy called Hershey’s Kisses. This reimagining could potentially be deemed “transformative,” in that it “adds something new, with a further purpose or different character” to the original song.

There are thus good arguments on both sides, and insofar as the author of this sample answer is also the author of the examination, it would seem a bit of a conflict of interest to reach a conclusion. Nevertheless, it should be apparent that there are good policy arguments on both sides as well. Reprinting lyrics of a hit song appropriates creative labor of the original songwriters, but on the other hand there is a lot of value in encouraging creative reimaginings of works of cultural importance.

---

given facts are like or unlike the case’s analysis. This is what makes a performance test different from a regular issue-spotter essay.