



SCHOOL of LAW

PROPERTY

Practice Question 4

This is the Cover Page. Don't read the Practice Question that follows until you're ready to write an answer to it.

- ***Topic Coverage: Section I.A.3; reviewing Section III.B.3.b is also recommended***
- ***Time: 75 minutes.***
- ***Format: Closed book.***
- ***I would suggest you spend 15 minutes or so outlining your answer before you begin to write it.***

Practice Question 4
(75 minutes)

Alcee is a migrant farmworker. In July 2024 he arrives from Texas and finds work harvesting tomatoes on a Florida farm owned by FarmCo.

He moves into barracks-like housing on the farm. FarmCo owns the housing, and rents rooms in it exclusively to employees of the farm, charging \$75/week for a room.

FarmCo supervisors tell everyone who moves in or starts working there that “we have one absolute rule here: no reporters on the farm or in the boarding house. We had one come here a few years ago and she made us look really bad. We don’t want that happening again.”

When Alcee first moves in, he notices that the sink and showers in the common bathroom sometimes have no water at all. Also, the toilets are often stopped up, and garbage is only infrequently taken away, piling up in the meantime. He doesn’t like the conditions, but is happy to have a job, so he doesn’t complain. He pays the rent weekly until the third week of September, and then stops making payments because he wants to send money to a family member who is ill. It’s not uncommon for workers living in the boarding house to be a couple of weeks late in paying their room charge.

Alcee asks his supervisor one Monday to have his wages for the week paid early, so he can send money to the family member who urgently needs to buy medicine. The supervisor says, “nope, we don’t ever pay in advance.”

Feeling angry, Alcee invites a reporter out to see the boarding house. “Why don’t you come by around 7:00 this evening,” he says. The reporter arrives at 7:15 p.m. that day. A sign at the entrance states. “Visiting hours 8:00-9:00 p.m. Monday through Sunday. No reporters.”

Alcee lets the reporter in and shows her the bathrooms and the piled-up garbage. The reporter is interviewing Alcee in his room when Alcee’s supervisor discovers her, around 7:30 p.m. He orders her to leave at once. “Can’t you read the sign?,” he screams. “No reporters. And visiting hours don’t even start until 8:00 p.m.”

The next day, the reporter’s story runs in the local newspaper, detailing bad conditions at the boarding house, including the hot water, toilet, and garbage problems. An official of the Florida Department of Health reads the story and subsequently goes to the farm to inspect it. He sees the sign and thinks to himself, “Hmm, I don’t think we have that on file.” Once in the barracks he sees the bad conditions Alcee was complaining about. The Department fines FarmCo for violating Fla. Stat. § 381.0081(3). The citation states that the boarding house lacks “adequate personal hygiene facilities ... sewage disposal, and garbage disposal.” The citation comes with a fine and an order to correct the problems.

Alcee’s supervisor hits the roof, telling him he’s evicting him. “You violated the rules by inviting a reporter in,” he tells Alcee. “And you’re behind in your room charges.” “So are a lot of other people,” replies Alcee. “But I don’t see you evicting them.”

Does Fla. Stat. § 381.00895 preclude FarmCo from evicting Alcee?

Note: You may take it as given that the Department’s citation of FarmCo under § 381.0081(3) was valid. We did not go over § 381.00895 in class, but your skills at statutory interpretation should enable you to analyze it. Ch. 381 is attached so you can read § 381.00895. In answering this Question you may need to refer to other provisions of Ch. 381 that we did go over.

Fla. Stat. §§ 381.008-381.00897
TITLE XXIX PUBLIC HEALTH
CHAPTER 381 PUBLIC HEALTH; GENERAL PROVISIONS

381.008 Definitions of terms used in ss. 381.008-381.00897.

381.0081 Permit required to operate a migrant labor camp or residential migrant housing; penalties for unlawful establishment or operation; allocation of proceeds.

381.0082 Application for permit to operate migrant labor camp or residential migrant housing.

381.0083 Permit for migrant labor camp or residential migrant housing.

381.0084 Application fees for migrant labor camps and residential migrant housing.

381.0085 Revocation of permit to operate migrant labor camp or residential migrant housing.

381.0086 Rules; variances; penalties.

381.0087 Enforcement; citations.

381.0088 Right of entry.

381.00893 Complaints by aggrieved parties.

381.00895 Prohibited acts; application.

381.00896 Nondiscrimination.

381.00897 Access to migrant labor camps and residential migrant housing.

Fla. Stat. § 381.008. Definitions of terms used in §§ 381.008-381.00897

As used in §§ 381.008-381.00897, the following words and phrases mean:

(1) “Common areas”--That portion of a migrant labor camp or residential migrant housing not included within private living quar-

ters and where migrant labor camp or residential migrant housing residents generally congregate.

(2) “Department”--The Department of Health and its representative county health departments.

(3) “Invited guest”--Any person who is invited by a resident to a migrant labor camp or residential migrant housing to visit that resident.

(4) “Migrant farmworker”--A person who is or has been employed in hand labor operations in planting, cultivating, or harvesting agricultural crops within the last 12 months and who has changed residence for purposes of employment in agriculture within the last 12 months.

(5) “Migrant labor camp”--One or more buildings, structures, barracks, or dormitories, and the land appertaining thereto, constructed, established, operated, or furnished as an incident of employment as living quarters for seasonal or migrant farmworkers whether or not rent is paid or reserved in connection with the use or occupancy of such premises. The term does not include a single-family residence that is occupied by a single family.

(6) “Other authorized visitors”--Any person, other than an invited guest, who is:

(a) A federal, state, or county government official;

(b) A physician or other health care provider whose sole purpose is to provide medical care or medical information;

(c) A representative of a bona fide religious organization who, during the visit, is engaged in the vocation or occupation of a religious professional or worker such as a minister, priest, or nun;

(d) A representative of a nonprofit legal services organization, who must comply with the Code of Professional Conduct of The Florida Bar; or

(e) Any other person who provides services for farmworkers which are funded in whole or in part by local, state, or federal funds but who does not conduct or attempt to conduct solicitations.

(7) "Private living quarters"--A building or portion of a building, dormitory, or barracks, including its bathroom facilities, or a similar type of sleeping and bathroom area, which is a home, residence, or sleeping place for a resident of a migrant labor camp. The term includes residential migrant housing.

(8) "Residential migrant housing"--A building, structure, mobile home, barracks, or dormitory, and any combination thereof on adjacent property which is under the same ownership, management, or control, and the land appertaining thereto, that is rented or reserved for occupancy by five or more seasonal or migrant farmworkers, except:

(a) Housing furnished as an incident of employment.

(b) A single-family residence or mobile home dwelling unit that is occupied only by a single family and that is not under the same ownership, management, or control as other farmworker housing to which it is adjacent or contiguous.

(c) A hotel or motel as described in chapter 509, that is furnished for transient occupancy.

(d) Any housing owned or operated by a public housing authority except for housing which is specifically provided for persons whose principal income is derived from agriculture.

(9) "Personal hygiene facilities"--Adequate facilities for providing hot water at a minimum of 110 degrees Fahrenheit for bathing and dishwashing purposes, and an adequate and convenient approved supply of potable water available at all times in each migrant labor camp and residential migrant housing

for drinking, culinary, bathing, dishwashing, and laundry purposes.

(10) "Lighting"--At least one ceiling-type light fixture capable of providing 20 foot-candles of light at a point 30 inches from the floor, and at least one separate double electric wall outlet in each habitable room in a migrant labor camp or residential migrant housing.

(11) "Sewage disposal"--Approved facilities for satisfactory disposal and treatment of human excreta and liquid waste.

(12) "Garbage disposal"--Watertight receptacles of impervious material which are provided with tight-fitting covers suitable to protect the contents from flies, insects, rodents, and other animals.

§ 381.0081. Permit required to operate a migrant labor camp or residential migrant housing; penalties for unlawful establishment or operation; allocation of proceeds

(1) MIGRANT LABOR CAMP; PERMIT REQUIREMENT.--A person who establishes, maintains, or operates a migrant labor camp in this state without first having obtained a permit from the department and who fails to post such permit and keep such permit posted in the camp to which it applies at all times during maintenance or operation of the camp commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(2) RESIDENTIAL MIGRANT HOUSING; PERMIT REQUIREMENT.--A person who establishes, maintains, or operates any residential migrant housing in this state without first having obtained a permit from the department commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(3) RESIDENTIAL MIGRANT HOUSING; HEALTH AND SANITATION.--A person who establishes, maintains, or operates any residential migrant housing or migrant labor camp in this state without providing adequate personal hygiene facilities, lighting, sewage disposal, and

garbage disposal, and without first having obtained the required permit from the department, commits a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

(4) FINE.--The department may impose a fine of up to \$1,000 for each violation of this section. If the owner of land on which a violation of this section occurs is other than the person committing the violation and the owner knew or should have known upon reasonable inquiry that this section was being violated on the land, the fine may be applied against such owner. In determining the amount of the fine to be imposed, the department shall consider any corrective actions taken by the violator and any previous violations.

(5) SEIZURE.--

(a) In addition to other penalties provided by this section, the buildings, personal property, and land used in connection with a felony violation of this section may be seized and forfeited pursuant to the Contraband Forfeiture Act.

(b) After satisfying any liens on the property, the remaining proceeds from the sale of the property seized under this section shall be allocated as follows if the department participated in the inspection or investigation leading to seizure and forfeiture under this section:

1. One-third of the proceeds shall be allocated to the law enforcement agency involved in the seizure, to be used as provided in § 932.7055.

2. One-third of the proceeds shall be allocated to the department, to be used for purposes of enforcing the provisions of this section.

3. One-third of the proceeds shall be deposited in the State Apartment Incentive Loan Fund, to be used for the purpose of providing

funds to sponsors who provide housing for farmworkers.

(c) After satisfying any liens on the property, the remaining proceeds from the sale of the property seized under this section shall be allocated equally between the law enforcement agency involved in the seizure and the State Apartment Incentive Loan Fund if the department did not participate in the inspection or investigation leading to seizure and forfeiture.

§ 381.0082. Application for permit to operate migrant labor camp or residential migrant housing

Application for a permit to establish, operate, or maintain a migrant labor camp or residential migrant housing must be made to the department in writing on a form and under rules prescribed by the department. The application must state the location of the existing or proposed migrant labor camp or residential migrant housing; the approximate number of persons to be accommodated; the probable duration of use, and any other information the department requires.

§ 381.0083. Permit for migrant labor camp or residential migrant housing

Any person who is planning to construct, enlarge, remodel, use, or occupy a migrant labor camp or residential migrant housing or convert property for use as a migrant labor camp or residential migrant housing must give written notice to the department of the intent to do so at least 45 days before beginning such construction, enlargement, or renovation. If the department is satisfied, after causing an inspection to be made, that the camp or the residential migrant housing meets the minimum standards of construction, sanitation, equipment, and operation required by rules issued under § 381.0086 and that the applicant has paid the application fees required by § 381.0084, it shall issue in the name of the department the necessary permit in writing on a form to be prescribed by the department. The permit, unless sooner revoked, shall expire on September 30 next after the date of issuance, and

it shall not be transferable. An application for a permit shall be filed with the department 30 days prior to operation. When there is a change in ownership of a currently permitted migrant labor camp or residential migrant housing, the new owner must file an application with the department at least 15 days before the change. In the case of a facility owned or operated by a public housing authority, an annual satisfactory sanitation inspection of the living units by the Farmers Home Administration or the Department of Housing and Urban Development shall substitute for the pre-permitting inspection required by the department.

§ 381.0084. Application fees for migrant labor camps and residential migrant housing

(1) Each migrant labor camp operator or owner of residential migrant housing who is subject to § 381.0081 shall pay to the department the following annual application fees:

(a) Camps or residential migrant housing that have capacity for 5 to 50 occupants: \$125.

(b) Camps or residential migrant housing that have capacity for 51 to 100 occupants: \$225.

(c) Camps or residential migrant housing that have capacity for 101 or more occupants: \$500.

(2) The department shall deposit fees collected under this section in the County Health Department Trust Fund for use in the migrant labor camp program and shall use those fees solely for actual costs incurred in enforcing §§ 381.008-381.00895.

(3) Any existing migrant labor camp or residential migrant housing that is substantially renovated or newly constructed is exempt from the annual application fee described in this section for the next annual permit after the renovations or construction occurred.

(4) Any existing migrant labor camp or residential migrant housing that, during any permit year, has no major deficiencies cited by the department, no uncorrected deficiencies, and no administrative action taken against it is exempt from the annual application fee described in this section for the next annual permit period.

§ 381.0085. Revocation of permit to operate migrant labor camp or residential migrant housing

The department may revoke a permit authorizing the operation of a migrant labor camp or residential migrant housing if it finds the holder has failed to comply with any provision of this law or any rule adopted hereunder. To reinstate a permit for migrant labor camp or residential migrant housing from which a permit has been revoked, the operator shall submit another application with the appropriate fee and satisfy the department that he or she is in compliance with all applicable rules.

§ 381.0086. Rules; variances; penalties

(1) The department shall adopt rules necessary to protect the health and safety of migrant farmworkers and other migrant labor camp or residential migrant housing occupants, including rules governing field sanitation facilities. These rules must include definitions of terms, a process for plan review of the construction of new, expanded, or remodeled camps or residential migrant housing, sites, buildings and structures, and standards for personal hygiene facilities, lighting, sewage disposal, safety, minimum living space per occupant, bedding, food equipment, food storage and preparation, insect and rodent control, garbage, heating equipment, water supply, maintenance and operation of the camp, housing, or roads, and such other matters as the department finds to be appropriate or necessary to protect the life and health of the occupants. Housing operated by a public housing authority is exempt from the provisions of any administrative rule that conflicts with or is more stringent than the federal standards applicable to the housing.

(2) Except when prohibited as specified in subsection (6), an owner or operator may apply for a permanent structural variance from the department's rules by filing a written application and paying a fee set by the department, not to exceed \$100. This application must:

(a) Clearly specify the standard from which the variance is desired.

(b) Provide adequate justification that the variance is necessary to obtain a beneficial use of an existing facility and to prevent a practical difficulty or unnecessary hardship.

(c) Clearly set forth the specific alternative measures that the owner or operator has taken to protect the health and safety of occupants and adequately show that the alternative measures have achieved the same result as the standard from which the variance is sought.

(3) Any variance granted by the department must be in writing, must state the standard involved, and must state as conditions of the variance the specific alternative measures taken to protect the health and safety of the occupants. In denying the request, the department must provide written notice under §§ 120.569 and 120.57 of the applicant's right to an administrative hearing to contest the denial within 21 days after the date of receipt of the notice.

(4) A person who violates any provision of §§ 381.008-381.00895 or rules adopted under such sections is subject either to the penalties provided in §§ 381.0012, 381.0025, and 381.0061 or to the penalties provided in § 381.0087.

(5) Notwithstanding any other provision of this chapter, any housing that is furnished as a condition of employment so as to subject it to the requirements of the Occupational Health and Safety Act of 1970, 29 U.S.C.

§ 655, shall only be inspected under the temporary labor camp standards at 42 C.F.R. § 1910.142.

(6) For the purposes of filing an interstate clearance order with the Department of Economic Opportunity, if the housing is covered by 20 C.F.R. part 654, subpart E, no permanent structural variance referred to in subsection (2) is allowed.

§ 381.0087. Enforcement; citations

(1) Department personnel may issue citations that contain an order of correction or an order to pay a fine, or both, for violations of §§ 381.008-381.00895 or the field sanitation facility rules adopted by the department when a violation of those sections or rules is enforceable by an administrative or civil remedy, or when a violation of those sections or rules is a misdemeanor of the second degree. A citation issued under this section constitutes a notice of proposed agency action. The recipient of a citation for a major deficiency, as defined by rule of the department, will be given a maximum of 48 hours to make satisfactory correction or demonstrate that provisions for correction are satisfactory.

(2) Citations must be in writing and must describe the particular nature of the violation, including specific reference to the provision of statute or rule allegedly violated. Continual or repeat violations of the same requirement will result in the issuance of a citation.

(3) The fines imposed by a citation issued by the department may not exceed \$500 for each violation. Each day the violation exists constitutes a separate violation for which a citation may be issued.

(4) The citing official shall inform the recipient, by written notice pursuant to §§ 120.569 and 120.57, of the right to an administrative hearing to contest the citation of the agency within 21 days after the date of receipt of the citation. The citation must contain a conspicuous statement that if the citation recipient fails to pay the fine

within the time allowed, or fails to appear to contest the citation after having requested a hearing, the recipient is deemed to have waived the right to contest the citation and must pay an amount up to the maximum fine or penalty.

(5) The department may reduce or waive the fine imposed by the citation. In determining whether to reduce or waive the fine, the department must give due consideration to such factors as the gravity of the violation, the good faith of the person who has allegedly committed the violation, and the person's history of previous violations, including violations for which enforcement actions were taken under this section or other provisions of state law.

(6) Any person who willfully refuses to sign and accept a citation issued by the department commits a misdemeanor of the second degree, punishable as provided in § 775.082 or § 775.083.

(7) The department shall deposit all fines collected under §§ 381.008-381.00895 in the County Health Department Trust Fund for use of the migrant labor camp inspection program and shall use such fines to improve migrant labor camp and residential migrant housing as described in § 381.0086.

(8) The provisions of this section are an alternative means of enforcing §§ 381.008-381.00895 and the field sanitation facility rules. This section does not prohibit the department from enforcing those sections or rules by any other means. However, the agency shall elect to use only the procedure for enforcement under this section or another method of civil or administrative enforcement for a single violation.

(9) When the department suspects that a law has been violated, it shall notify the entity that enforces the law.

§ 381.0088. Right of entry

The department or its inspectors may enter and inspect migrant labor camps or residential migrant housing at reasonable hours and investigate such facts, conditions, and practices or matters, as are necessary or appropriate to determine whether any person has violated any provisions of applicable statutes or rules adopted pursuant thereto by the department. The right of entry extends to any premises that the department has reason to believe is being established, maintained, or operated as a migrant labor camp or residential migrant housing without a permit, but such entry may not be made without the permission of the owner, person in charge, or resident thereof, unless an inspection warrant is first obtained from the circuit court authorizing the entry. Any application for a permit made under § 381.0082 constitutes permission for, and complete acquiescence in, any entry or inspection of the premises for which the permit is sought, to verify the information submitted on or in connection with the application; to discover, investigate, and determine the existence of any violation of §§ 381.008-381.00895 or rules adopted thereunder; or to elicit, receive, respond to, and resolve complaints. Any current valid permit constitutes unconditional permission for, and complete acquiescence in, any entry or inspection of the premises by authorized personnel. The department may from time to time publish the reports of such inspections.

§ 381.00893. Complaints by aggrieved parties

Any person who believes that the housing violates any provision of §§ 381.008-381.00895 or rules adopted thereunder may file a complaint with the department. Upon receipt of the complaint, if the department finds there are reasonable grounds to believe that a violation exists and that the nature of the alleged violation could pose a serious and immediate threat to public health, the department shall conduct an inspection as soon as practicable. In all other cases where the department finds there are reasonable grounds to believe that a violation exists, the department shall notify the owner and the operator of the

housing that a complaint has been received and the nature of the complaint. The department shall also advise the owner and the operator that the alleged violation must be remedied within 3 business days. The department shall conduct an inspection as soon as practicable following such 3- day period. The department shall notify the owner or the operator of the housing and the complainant in writing of the results of the inspection and the action taken. Upon request of the complainant, the department shall conduct the inspection so as to protect the confidentiality of the complainant. The department shall adopt rules by January 1, 1994, to implement this section.

§ 381.00895. Prohibited acts; application

(1) An owner or operator of housing subject to the provisions of §§ 381.008-381.00897 may not, for the purpose of retaliating against a resident of that housing, discriminatorily terminate or discriminatorily modify a tenancy by increasing the resident's rent; decreasing services to the resident; bringing or threatening to bring against the resident an action for eviction or possession or another civil action; refusing to renew the resident's tenancy; or intimidating, threatening, restraining, coercing, blacklisting, or discharging the resident. Examples of conduct for which the owner or operator may not retaliate include, but are not limited to, situations in which:

(a) The resident has complained in good faith, orally or in writing, to the owner or operator of the housing, the employer, or any government agency charged with the responsibility of enforcing the provisions of §§ 381.008-381.00897.

(b) The resident has exercised any legal right provided in this chapter with respect to the housing.

(2) A resident who brings an action for or raises a defense of retaliatory conduct must have acted in good faith.

(3) This section does not apply if the owner or operator of housing proves that the eviction or other action is for good cause, including, without limitation, a good faith action for nonpayment of rent, a violation of the resident's rental or employment agreement, a violation of reasonable rules of the owner or operator of the housing or of the employer, or a violation of this chapter or the Florida Residential Landlord and Tenant Act.

§ 381.00896. Nondiscrimination

(1) The Legislature declares that it is the policy of this state that each county and municipality must permit and encourage the development and use of a sufficient number and sufficient types of farmworker housing facilities to meet local needs. The Legislature further finds that discriminatory practices that inhibit the development of farmworker housing are a matter of state concern.

(2) Any owner or developer of farmworker housing which has qualified for a permit to operate, or who would qualify for a permit based upon plans submitted to the department, or the residents or intended residents of such housing may invoke the provisions of this section.

(3) A municipality or county may not enact or administer local land use ordinances to prohibit or discriminate against the development and use of farmworker housing facilities because of the occupation, race, sex, color, religion, national origin, or income of the intended residents.

(4) This section does not prohibit the imposition of local property taxes, water service and garbage collection fees, normal inspection fees, local bond assessments, or other fees, charges, or assessments to which other dwellings of the same type in the same zone are subject.

(5) This section does not prohibit a municipality or county from extending preferential treatment to farmworker housing, including, without limi-

tation, fee reductions or waivers or changes in architectural requirements, site development or property line requirements, or vehicle parking requirements that reduce the development costs of farmworker housing.

§ 381.00897. Access to migrant labor camps and residential migrant housing

(1) RIGHT OF ACCESS OF INVITED GUEST.--A resident of a migrant labor camp or residential migrant housing may decide who may visit him or her in the resident's private living quarters. A person may not prohibit or attempt to prohibit an invited guest access to or egress from the private living quarters of the resident who invited the guest by the erection or maintenance of any physical barrier, by physical force or violence, by threat of force or violence, or by any verbal order or notice given in any manner. Any invited guest must leave the private living quarters upon the reasonable request of a resident residing within the same private living quarters.

(2) RIGHT OF ACCESS OF OTHERS.--Other authorized visitors have a right of access to or egress from the common areas of a migrant labor camp or residential migrant housing as provided in this subsection. A person may not prohibit or attempt to prohibit other visitors access to or egress from the common areas of a migrant labor camp or residential migrant housing by the erection or maintenance of any physical barrier, by physical force or violence, by threat of force or violence, or by any verbal order or notice given in any manner, except as provided in this section. Owners or operators of migrant labor camps or residential migrant housing may adopt reasonable rules regulating hours of access to housing, if such rules permit at least 4 hours of access each day during nonworking hours Monday through Saturday and between the hours of 12 noon and 8 p.m. on Sunday. Any other authorized visitor must leave the private living quarters upon the reasonable

request of a person who resides in the same private living quarters.

(3) CIVIL ACTION.--Any person prevented from exercising rights guaranteed by this section may bring an action in the appropriate court of the county in which the alleged infringement occurred; and, upon favorable adjudication, the court shall enjoin the enforcement of any rule, practice, or conduct that operates to deprive the person of such rights.

(4) CIVIL LIABILITY.--Other visitors are licensees, not guests or invitees, for purposes of any premises liability.

(5) OTHER RULES.--The housing owner or operator may require invited guests and other visitors to check in before entry and to present picture identification. Migrant labor camp and residential migrant housing owners or operators may adopt other rules regulating access to a camp only if the rules are reasonably related to the purpose of promoting the safety, welfare, or security of residents, visitors, farmworkers, or the owner's or operator's business.

(6) POSTING REQUIRED.--Rules relating to access are unenforceable unless they have been conspicuously posted in the migrant labor camp or migrant residential housing and a copy has been furnished to the department.

(7) LIMITATIONS.--This section does not create a general right of solicitation in migrant labor camps or residential migrant housing. This section does not prohibit the erection or maintenance of a fence around a migrant labor camp or residential migrant housing if one or more unlocked gates or gateways in the fence are provided; nor does this section prohibit posting the land adjacent to a migrant labor camp or residential migrant housing if access to the camp is clearly marked; nor does this section restrict migrant workers residing within the same living quarters from imposing reasonable restrictions on their fellow residents to accommodate reasonable privacy and other concerns of the residents.