

Master Copy

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COLLEGE OF LAW, UNIVERSITY OF ILLINOIS

Examination in Property  
Professor Humbach

December, 1979  
17 pages ( plus  
answer sheet )

YOU WILL HAVE 3 HOURS TO COMPLETE THE ENTIRE EXAMINATION

GENERAL INSTRUCTIONS:

This examination consists of 65 multiple choice questions. The questions are to be answered on the answer sheet provided. Write your examination number on the answer sheet in the space provided. Write it NOW.

Answer each multiple choice question selecting the best answer. Indicate your choice on the answer sheet by X-ing through the appropriate letter. Select only one answer per question; if more than one answer is indicated, the question will be marked wrong. Make X's, not circles.

If you want to change an answer, you must fully erase your original answer and make an X through the one which you consider correct.

When you complete the examination, turn in the answer sheet together with this question booklet.

Unless the context otherwise requires, base your answers on general common law principles as generally applied in American common law jurisdictions without regard to modernizing statutes (those enacted since the American revolution). Do not assume the existence of any facts or agreements not set forth in the questions. For purposes of the Statute of Uses, assume that all conveyances of real estate are capable of taking effect as bargain and sale transactions.

Questions 21 to 50 are worth one point each and each of the other 35 questions is worth 2 points; i.e., a perfect raw score for all 65 questions would be 100.

ANSWER SHEET

- |                         |                         |                         |
|-------------------------|-------------------------|-------------------------|
| 1. (A) (B) (C) (D) (E)  | 26. (A) (B) (C) (D) (E) | 51. (A) (B) (C) (D) (E) |
| 2. (A) (B) (C) (D) (E)  | 27. (A) (B) (C) (D) (E) | 52. (A) (B) (C) (D) (E) |
| 3. (A) (B) (C) (D) (E)  | 28. (A) (B) (C) (D) (E) | 53. (A) (B) (C) (D) (E) |
| 4. (A) (B) (C) (D) (E)  | 29. (A) (B) (C) (D) (E) | 54. (A) (B) (C) (D) (E) |
| 5. (A) (B) (C) (D) (E)  | 30. (A) (B) (C) (D) (E) | 55. (A) (B) (C) (D) (E) |
| 6. (A) (B) (C) (D) (E)  | 31. (A) (B) (C) (D) (E) | 56. (A) (B) (C) (D) (E) |
| 7. (A) (B) (C) (D) (E)  | 32. (A) (B) (C) (D) (E) | 57. (A) (B) (C) (D) (E) |
| 8. (A) (B) (C) (D) (E)  | 33. (A) (B) (C) (D) (E) | 58. (A) (B) (C) (D) (E) |
| 9. (A) (B) (C) (D) (E)  | 34. (A) (B) (C) (D) (E) | 59. (A) (B) (C) (D) (E) |
| 10. (A) (B) (C) (D) (E) | 35. (A) (B) (C) (D) (E) | 60. (A) (B) (C) (D) (E) |
| 11. (A) (B) (C) (D) (E) | 36. (A) (B) (C) (D) (E) | 61. (A) (B) (C) (D) (E) |
| 12. (A) (B) (C) (D) (E) | 37. (A) (B) (C) (D) (E) | 62. (A) (B) (C) (D) (E) |
| 13. (A) (B) (C) (D) (E) | 38. (A) (B) (C) (D) (E) | 63. (A) (B) (C) (D) (E) |
| 14. (A) (B) (C) (D) (E) | 39. (A) (B) (C) (D) (E) | 64. (A) (B) (C) (D) (E) |
| 15. (A) (B) (C) (D) (E) | 40. (A) (B) (C) (D) (E) | 65. (A) (B) (C) (D) (E) |
| 16. (A) (B) (C) (D) (E) | 41. (A) (B) (C) (D) (E) |                         |
| 17. (A) (B) (C) (D) (E) | 42. (A) (B) (C) (D) (E) |                         |
| 18. (A) (B) (C) (D) (E) | 43. (A) (B) (C) (D) (E) |                         |
| 19. (A) (B) (C) (D) (E) | 44. (A) (B) (C) (D) (E) |                         |
| 20. (A) (B) (C) (D) (E) | 45. (A) (B) (C) (D) (E) |                         |
| 21. (A) (B) (C) (D) (E) | 46. (A) (B) (C) (D) (E) |                         |
| 22. (A) (B) (C) (D) (E) | 47. (A) (B) (C) (D) (E) |                         |
| 23. (A) (B) (C) (D) (E) | 48. (A) (B) (C) (D) (E) |                         |
| 24. (A) (B) (C) (D) (E) | 49. (A) (B) (C) (D) (E) |                         |
| 25. (A) (B) (C) (D) (E) | 50. (A) (B) (C) (D) (E) |                         |

Darnell owned a brooch and some bonds. She wanted her niece, Marcy, to have the brooch after her (Darnell's) death.

1. If Darnell desired specifically to keep full legal title to the brooch until the moment of her death, the way to effectuate the gift would be:
  - A. By a gift causa mortis.
  - B. By will.
  - C. By delivering the brooch to Lester in trust for the benefit of Marcy.
  - D. Either B or C above.
2. If Darnell declared herself trustee of the bonds for the benefit of Marcy:
  - A. No delivery would be required to pass equitable title.
  - B. No transfer of legal title would be required to effectuate the transfer of equitable title.
  - C. Both A and B above.
  - D. Delivery to some third person, even if only for a moment, would be required to effectuate the gift.
3. Suppose that when Darnell handed the brooch to Marcy, Darnell said: "If I die, this brooch is yours."
  - A. The gift would have a better chance of succeeding if Darnell were acting in apprehension of death at the time.
  - B. The gift would have an equal chance of succeeding irrespective of whether Darnell was acting in apprehension of death at the time.
  - C. The gift could not succeed under any circumstances because it amounts to an attempted oral will.
  - D. The gift would fail for lack of in praesenti donative intent, irrespective of apprehension of death.
4. If Darnell were on her deathbed when she decided to give the brooch to Marcy:
  - A. A gift causa mortis would be the only available method of donative transfer.
  - B. The gift to Marcy would definitely be revocable if Darnell recovered rather than died.
  - C. The gift would probably not fail even if the brooch were in Darnell's possession at her death.
  - D. The gift to Marcy would be presumptively revocable.

## Property

8. After making some money performing, Sweetbow decides to have the scratches fixed and leaves the violin with an instrument repair shop. If, while there, the shop is broken into and the violin stolen:
- The shop owner would be absolutely liable to Sweetbow for misdelivery.
  - The shop owner would be liable to Sweetbow because he failed to use ordinary care, as proved by the break in.
  - The shop owner would generally have the burden of proving that he did use ordinary care to protect the violin from theft.
  - If the shop owner had insurance, he would be liable only up to the amount of the insurance.
9. Assume that the violin was a Stradivarius worth \$100,000, and it was stolen from the shop as in the preceding question:
- The shop owner would have had no duty to protect the violin from theft unless notified by Sweetbow of its value.
  - The specific behavioral requirements appropriate to the shop owner's duty of care would be determined in relation to the apparent value of the violin, irrespective of its actual value.
  - If the shop owner did not meet his duty of care, he would be liable for the full actual value of the violin, irrespective of its apparent value.
  - Both B and C above.
10. Suppose that the shop owner's assistant, Glumpf, mixed up Sweetbow's violin with a cheaper imitation, also left for repairs, and that Sweetbow's violin was "returned" to Swift, an unscrupulous person whose whereabouts are now a mystery. The shop owner can avoid liability to Sweetbow:
- By showing that Sweetbow did not have good title to the violin.
  - By showing that ordinary care, and then some, was used to prevent the confusion of the instruments.
  - By offering Glumpf as a hostage until the violin is returned.
  - None of the above.
11. Assume that Sweetbow finds Swift and sues him in trover for the value of the violin. After protracted negotiations, Sweetbow accepted a settlement of \$65,000. The true owner can now:
- Recover the \$65,000 from Sweetbow.
  - Maintain his own trover action against Swift, but his recovery will be limited to the extent that the value of the violin exceeds \$65,000.
  - Maintain replevin but not trover against Swift.
  - Maintain his own trover action against Swift.

## Property

15. In the preceding question, if Hunger had shot the dove on his own land:

- A. Hunger would have an absolute right to it under the doctrine of *ratione soli*.
- B. The result would be the same as though it were shot on land whose ownership was indeterminate.
- C. Both of the above.
- D. Neither of the above.

16. Senghali Pete gave Susan Sweete  
A ring, for they were to be wed;  
Then Susan Sweete met Harold Neat  
And ran off with Harold instead.

The gift of the ring:

- A. Was presumptively a gift *causa mortis*.
- B. Could not be revoked under any respectable authority.
- C. May be treated as carrying a condition subsequent that the marriage to Pete occur in some jurisdictions.
- D. Was invalid since the acceptance by Sweete was repudiated.

17. Martell recently paid \$75,000 for a deed to Headacre, which was previously owned by Lenthrow. Martell's attorney, Dingbat, now discovers that Lenthrow's grantor, Hannibal Sly, was probably a married man at the time Lenthrow took title, seven years ago.

- A. It appears that Martell may have a problem if dower is still recognized locally.
- B. It appears that Martell may have a problem if either dower or curtesy is recognized locally.
- C. Martell would have no worries if the deed from Sly stated that he was unmarried.
- D. Martell's problem would not be significantly lessened if he were a young man and Sly's putative wife were an elderly woman in frail health.

18. If Martell were married at the time he took the deed, which named only Martell as grantee, and the land was in a community property state:

- A. Martell would be sole owner of the interest received from Lenthrow.
- B. Martell and his wife would both be owners of the interest received from Lenthrow.
- C. On Martell's death, Martell's wife would be entitled to all of the interest received from Lenthrow.
- D. None of the above can be determined from the facts given.

- C. life estate (in possession)
  - D. fee simple absolute (in possession)
  - E. none of the above
23. B has
- A. determinable life estate
  - B. life estate (in possession)
  - C. vested remainder for life
  - D. contingent remainder for life
  - E. none of the above
24. A's heirs have
- A. contingent remainder in fee simple absolute
  - B. vested remainder in fee simple absolute
  - C. executory interest
  - D. fee tail
  - E. none of the above
25. In a modern jurisdiction, you would expect to find statutory changes in the law affecting real property. Which of the following would be most relevant to an analysis of this problem.
- A. a statute abolishing the Doctrine of Destructibility of Contingent Remainders
  - B. a statute abolishing the Doctrine of Worthier Title
  - C. a statute abolishing the Rule in Shelley's case
  - D. none of the above.
26. Under such a statute, A's heirs would have
- A. nothing
  - B. a contingent remainder
  - C. a vested remainder
  - D. a shifting use

31. The concurrent estate of B and C, however otherwise described, at common law was
- A. a joint tenancy
  - B. a tenancy in common
  - C. an estate in coparcenary
  - D. a tenancy by the entireties
  - E. none of the above
32. B and C have
- A. executory interest
  - B. contingent remainder in fee simple absolute
  - C. vested remainder in fee simple, subject to divestment
  - D. vested remainder in fee simple absolute
  - E. none of the above
33. If, following T's death, the heirs of T convey any interest they may have to W, this will
- A. destroy A, B, and C's interests
  - B. have no legal effect
  - C. destroy the interests of A and B but leave C's interest intact
  - D. none of the above
34. Some of the answers you have given above would be different if
- A. the Statute of Uses was not in effect
  - B. the Rule in Shelley's Case had been abolished
  - C. the Doctrine of Worthier Title had been abolished
  - D. the Doctrine of Destructibility of Contingent Remainders had been abolished
35. O conveyed Swampacre "to A for life, remainder to O's heirs." O has
- A. nothing
  - B. fee simple absolute
  - C. vested remainder in fee simple absolute
  - D. reversion
  - E. none of the above

O conveyed Happyacre "to A and his heirs until the premises are no longer used as a massage parlor, then to O." Immediately following the conveyance

40. A has

- A. fee simple on condition subsequent
- B. fee simple determinable
- C. determinable life estate
- D. fee simple conditional
- E. none of the above

41. O has

- A. possibility of reverter
- B. executory interest
- C. vested remainder in fee simple
- D. reversion
- E. right of entry

42. If the final phrase had read "then to B and his heirs if B is then still alive," B would have

- A. a vested remainder
- B. a contingent remainder
- C. an executory interest of the springing type
- D. an executory interest of the shifting type
- E. nothing

O conveyed Blackacre "to H and W and their heirs." H and W are married. Immediately following the conveyance (in a jurisdiction following the traditional common law interpretation):

43. H has

- A. life estate (possessory)
- B. joint tenancy
- C. dower
- D. tenancy by entireties
- E. undivided 1/2 as tenant in common



## Property

48. In a modern jurisdiction, some of the answers you have given in questions 45 and 46 above would

- A. probably be changed by statute
- B. probably be changed by the developing case law without aid of a statute
- C. probably be unchanged either by statute or developing case law
- D. depend on the current status of the Rule in Shelley's Case

Aardvark devised Blackacre "to Norma for life, and at her death to Sven and his heirs if he quits teaching and goes to work." The remainder of his estate passed by intestate succession. Immediately following Aardvark's death and the effectuation of the transfers called for by his will

49. Sven has

- A. fee simple on condition subsequent
- B. fee simple determinable
- C. vested remainder in fee simple determinable
- D. contingent remainder in fee simple absolute
- E. none of the above

50. If Norma dies while Sven is still teaching property, Aardvark's heirs have

- A. an estate pur autre vie
- B. a power of termination
- C. a vested remainder in fee simple absolute
- D. a fee simple absolute (in possession)
- E. none of the above

O conveyed Blackacre "to Able, Baker, Charlie, and Dog and their heirs as joint tenants with rights of survivorship and not as tenants in common." Able conveyed his interest in Blackacre to Harry. Dog then died leaving a will devising his realty to Phil, and his personalty to Wayne. His sole heir at law was Charlie. At this point a partition suit is filed

51. Baker owns

- A. undivided 1/4 as tenant in common
- B. undivided 1/3 as joint tenant
- C. undivided 3/8 as joint tenant
- D. none of the above

Facts for questions 56 to 62.

Bellyacre is a 15 acre tract of semi-wooded land, still in essentially a wild condition, located in a state which has a 20 year period of limitations on ejectment actions, including a ten year disability provision like the one we studied in class. In 1940, Osgoode received a deed to Bellyacre from Quench. Three months before delivering the deed to Osgoode, Quench had delivered a deed covering the eastern 5 acres of Bellyacre to Furst, but Furst has never taken possession.

56. Ignoring disabilities, Osgoode's title to the whole of Bellyacre would ripen:
- A. 19 years and 9 months after receipt of his deed.
  - B. 19 years and 9 months after receipt of his deed if he then took immediate actual possession of all of Bellyacre.
  - C. 20 years after he took actual possession of all of Bellyacre.
  - D. 20 years after he took actual possession of all of Bellyacre under his deed from Quench.
57. Assume that Furst was imprisoned for a term of seventeen years on March 31, 1940, exactly one month after his conveyance from Quench, and that he was released on March 31, 1957. Osgoode has actually and continuously possessed all of Bellyacre since he got his deed. His title ripened on:
- A. The same date as in the preceding question.
  - B. March 31, 1967.
  - C. March 31, 1977.
  - D. December 31, 1977.
58. Assume the same facts as in the preceding question except that Furst was imprisoned on July 31, 1940, 5 months after receipt of his deed from Quench and 2 months after Osgoode's deed. Osgoode's title would have ripened on:
- A. The same date as in the preceding question.
  - B. The same date as it would have ripened even if Furst had not been imprisoned.
  - C. July 31, 1967.
  - D. July 31, 1977.

- C. Osgoode as possessor could at very least recover for injury to his possession.
- D. Neither Osgoode nor Furst could recover except in a joint action where the respective rights of both could be protected.

Facts for questions 63 to 65.

Anchois answered an ad for a "one-bedroom apartment, 2 yr. lease, rent \$300 per month." The 2 year lease was an orally made deal concluded by a handshake between Anchois and Truite, the landlord.

- 63. If, after 4 months, Anchois wants to move out in order to take a job in another city:
  - A. He can probably avoid liability for most of the remaining one and two-thirds year's rent.
  - B. He could be held liable for all remaining rent for the rest of the 2 years under the traditional common law rule.
  - C. Truite would be obligated to mitigate his damages by finding a new tenant for the rest of the 2 years under the majority of modern cases.
  - D. Both B and C above.
- 64. If Anchois' apartment becomes impossible to live in because the furnace broke and there was no heat:
  - A. This would be an automatic constructive eviction at common law, even without an obligation on Truite to supply heat.
  - B. This would be a constructive eviction at common law if Anchois moved out promptly, even without an obligation on Truite to supply heat.
  - C. This would violate the implied warranty of habitability under a number of modern cases.
  - D. Both B and C above.
- 65. Assume that Anchois' lease was in writing and had a provision which permitted assignment and subletting. Anchois transferred the remainder of his leasehold to Darnel.
  - A. Darnel is a subtenant.
  - B. Anchois is still liable for rent based on privity of contract but not based on privity of estate.
  - C. Without the provision of the written lease permitting assignment and/or subletting, the transfer to Darnell would be impermissible.
  - D. All of the above.